

Places Lived: An Ego-Historicist and Jurisographer Discuss Living with Law in Sydney

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The following essays, by John Docker and myself, were delivered on the final panel of the 'Lives Lived with Law' symposium, held at the Melbourne Law School in December 2014. The panel was called 'Places Lived', and our purpose was to reflect together on how intellectual traditions are inherited and inhabited in a place. The essays were written and presented as they are published here, commencing with this short introduction. We wanted to stage in public a long-standing personal discussion about what it might mean to write about Australia, in many forms and styles of address and how this involves, for us, self-fashioning a life through writing in Australia, and as Australians. In both instances, as will become evident in my essay, I have a debt to pay to John.

In staging the conversation in the ways we did at MLS it was important to John and I to explain – perhaps, by way of Introduction, unnecessarily assertively – that we subscribe to inhabit what Hannah Arendt (2007) called 'the status of the conscious pariah'. We stand outside (John), or inside but to the side (myself) of conventional institutional or disciplinary situations. We choose this standpoint in order to self-consciously address what duties we have to make the assumed or orthodox strange, and visible, where we live. This, we have long discussed, is in part a response to personal genealogies, which we

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understand as existing in relation with our writing personas. This is also part of what we consider in our essays, in which John explores writing autobiography as an *ego historiste*, and I consider what it means to write histories of jurisprudence as a (feminist) jurisographer (a persona invented in complicity with Shaun McVeigh and Peter Rush).

It is worth noting two things before reading our conversation that underscore our intentions, but are not the primary consideration of the essays. They are about how writing of lives lived in Australia, for us, is a concern with making sense of Australian experiences of law, politics, and culture as contested, and *sui generis*, but existing in response and engagement with other conducts of life and inherited intellectual traditions. The first concern we wish to note is that to write as Australians and about Australian lives as experiences of thought and practices is neither parochial nor nationalistic, nor irrelevant to conversations elsewhere. We understand our work as belonging to cosmopolitan traditions that are already Australian. More to the point (as John made very clear in his 1974 book *Australian Cultural Elites*) to pay attention fully to what has been inherited and contested in the everyday experiences of intellectual life in Australia, it is necessary to refuse an apologetic comparativism with England or elsewhere that deadens violence, pleasure, drama, or imagination. Without this refusal, we think, Australian work risks being cast (and cast aside) as the 'esoteric, familiar, and unnecessary', especially in the academic North (Curthoys 2003: 70). The other concern is the centrality of paying attention in our writing to what Indigenous scholars and friends have invited us to witness. In order to think properly about how we take care of our conducts of life in 'Australia' we must look to the experiences of living lawfully in place, and places that are not only, or always, about the 'nation state'. As John noted to me in preparation for the writing of our essays, for Anglo-Australian scholars this is often resisted, in many ways. In 1974, for example, although Australian intellectual life was in renaissance, John recalled that it was considered impetuous to want to draw out what made Sydney and Melbourne distinct from each other (as opposed to different to London), let alone to question how the intellectual traditions of Australia responded to the contentions

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of feminist and Indigenous politics (Docker 1974; Coleman 1962; Serle 2014).¹We note that considering Australian life as a matter of intellectual traditions *per se* is often, still, treated in many institutional contexts as perplexing or foolhardy.²

Yet, we take up our own practices and these traditions of imagination and responsibility seriously. Although the ‘Lived Lived with Law’ Symposium was held at Melbourne Law School, in Melbourne, and I live and write here, and John lived and studied here many years ago, we reflected in our conversation on what it means to live and write in, and of, Sydney. It is Sydney that draws us together, personally, and as a consequence, intellectually, in the forms and practice of our writing. It is for this reason that Sydney is the stage for our conversation in the essays that follow.

Notes

- 1 See also Manning Clark’s (1962) important observations about the diverse traditions of intellectual culture that Docker takes up; and also A.A. Phillip’s (1975) critical response to Docker’s arguments. Phillip’s review arguably performs the same insouciance and humour, and shows how Docker’s book joined and reimagined the literary critical tradition in Australian for his own time.
- 2 We note the recent series of books on Australian Capital cities published by UNSW Press, (for example, Sophie Cunningham *Melbourne* (2012)) are seen as ‘trade books’. Without the sweetener of spatiality or ‘grounded empiricism’, concerns with traditions of thought and politics in Australian states, territories, cities and towns, are, we would suggest, out of vogue in Australian academia (in ways they were not in the 1970s and 1980s). We would also note that scholarly writing about ‘international’ cities (New York, London, Berlin) remain translatable between ‘trade’ and ‘academic’ practices and audiences.

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Women have never constituted a closed and independent society; they form an integral part of the group, which is governed by males and in which they have a subordinate place. Hence the paradox of their situation: they belong at one and the same time to the male world and to a sphere in which that world is challenged.

Simone de Beauvoir, *The Second Sex* (1949) quoted by Norman MacKenzie, *Women in Australia* (1962: xi).

The pattern of Australian culture, as kaleidoscopic as it may seem to be, has certain motifs woven into by circumstances historical, social, and sociological... There were for instance the effects of the depression of the 1930s when, as never before or since, our great metropolitan public libraries were what they have always sought to be, the university of the people. And from that time can be traced the determination of many to see that their children by hook or by crook get higher learning.

Clemment Semmler, 'Australia's Cultural Pattern' (1964: 469).

1 Introduction

This essay, like much of my recent writing, is concerned with explaining how I go about my work, by reflecting on what I have inherited from others, how I have conducted my own practices over time as feminist, jurispudent, and historian, and how those personae join together. The central thread of this self-consciously explanatory writing, and the histories of jurisprudence and feminism that accompanies it, is to make plain that the personae I inhabit when I write, as much as what I write about and how, have a literal genealogy, are a matter of inheritance, as much as reimagination. The purpose of addressing this as a central concern in my work is neither to offer ‘personal experience’, as a confessional or Romantic gloss, nor as a political device. It is to train myself in the activity of writing within the conduct of life tradition; and to imagine forms of writing adequate to the engagements I believe are a necessary part of my own life as a scholar in contemporary Australia (Genovese 2013; Genovese 2014).

This ‘ancient tradition’ (Force 2009: 524) to which I am aligning myself has a central question: how do I conduct a life? This question, and how it might be addressed, weaves its way back to Greek philosophy, and has been diversely inherited. It shapes the essays of Montaigne as much as the literature of George Eliot, it is traceable in the jurisprudence of Peter Goodrich, and has come to be read most often in our own time through Foucault’s later work, on the History of Sexuality, and care of the Self (Foucault 2008: 3-7, 385-6; Foucault 1987: 3-32; Hadot 2011; Force 2009; Gatens 2009; Goodrich 2004). It is also a defining and particular concern of contemporary feminist practice, as exemplified through the work of Simone de Beauvoir (2011) (to whom I will return).¹ In this tradition the philosopher (or writer, or historian, or feminist, or jurispudent) does not stand apart from the world in which they live (Hadot 1995: 264-74). As philosopher Moira Gatens has argued:

As much as some philosophers would like to believe that they inhabit a plane beyond that of ‘the person on the street’, philosophers are themselves ‘the person on the street’. Not only has philosophy

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contributed to the historical cache of everyday consciousness, philosophers do not, and cannot, put aside their own historical specificity when they philosophize.' (Gatens 1996: xii)

Gaten's point is that when a person takes up a social role, or an intellectual *personae*, they live in place and time; and it is the conduct of their relations in that place and time that matter to the specificity of their practice. In this way, the comportment of an institutional intellectual life — how a person takes up a *persona* (Genovese 2013: 43-4) — can be readily understood as a training in a set of specific and identifiable disciplinary duties or tasks. But it must also be understood as experienced. This matter of experience, what it means to live in relation to one's duties- is often more difficult to see. This is because it involves rethinking and reimagining the manner in which specific disciplinary duties might be performed, in order to address the conditions of the temporal and embodied situation in which the philosopher (or other intellectual *personae*) find themselves. As historian of the tradition Pierre Hadot notes, this daily living with their philosophy is not only important for the philosopher themselves, but for those 'with whom [they] share temporal space, and intellectual conversation' (Hadot 2002: 245). It also, necessarily, becomes part of the training, in attitude and orientation and source, for those that follow.

More often than not, this training of self and others, and the acknowledgment of the relationships necessary to do so, is understood in the idiom of our own time as a practice of self-fashioning through writing (Genovese 2013; Genovese 2014). Writing in the conduct of life tradition is not, then, the same as writing from or within a tradition of critique, in which the writer stands conscientiously apart from their content and argument in order to engage in intellectual dispute or elucidation (Le Doueff 2007: 46-53). In the tradition of conduct, writing is a 'spiritual exercise' (in Hadot's terms) or 'project' (in Beauvoir's). The point is that the exercise of writing 'presents a continuous act, permanent and identical with life itself, that must be renewed at every instant' (Beauvoir 2011: 268). It is explicitly acknowledged as part of a training in which a person- through their *persona* — enters into a

‘mode of existing—in—the world’ (Beauvoir 2011: 265). Writing □ what is written, and how □ is then an exercise that shows the philosopher, (or jurispudent, feminist or historian) how to be responsible for what they inherit, as well as how they comport themselves in everyday life.

This can perhaps be best exemplified through the work of Beauvoir. Although Foucault, or Hadot, or Goodrich, are clearly working within the tradition of conduct in order to perform express tasks that correspond to their office, feminist practitioners make explicit (in ways that male practitioners do not, necessarily (Foucault 2013)), that there is a recognisable relationship between the persona and the person when they write. Moreover, Beauvoir makes plain that this relationship requires acknowledgment and attention. When Beauvoir, for example in *The Second Sex*, describes marriage, motherhood, abortion, work and sex as part of the “facticity” of woman, of why the experience of woman comes to be one thing, rather than another, she is telling us of her own world in Paris, in 1949, and how it came to be.² She is express that this requires particular forms of writing and particular accounts of sources (not only official accounts or philosophical tracts or laws, but diary and fiction, where the expression of women’s condition, and their exclusion from official or institutional record or public account can be found). This produces a book that is intimate, but in which she does not reify an essential experience, nor pose an attitude that enables self-reflection for its own sake. In this way, *The Second Sex* is a history of the writer’s own present; where sources are a matter of experience for which Beauvoir, as writer, is obligated to take responsibility. To do otherwise, and this is the core of her argument, refuses the potential agency of woman as human being to liberate herself, and to reimagine (or transform) her existence within the institutional practices and structures that are not separate to her experience of a life. What Beauvoir offers in her practices of writing is, then, a training in how to live as a woman, where persona and personal experience are not separated, and where the selection and organisation of sources for writing the present are a way of authoring those experiences and their affiliations (Genovese 2013: 49-51; Genovese 2014). It is this attitude, and demonstration of technique in what it means to write as woman,

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and also as philosopher, in time and place, that has been rightly acknowledged as forming the 'backbone' of 20th century feminism (Genovese 2013: 45). The training Beauvoir offered has had clear significance in the conscious imagination of feminist disciplinary practices in Australia, as I have discussed elsewhere. Historian Ann Curthoys, and philosophers Christine Battersby and Moira Gatens, have all argued in various ways that Beauvoir's writing offered them techniques to write in their own disciplines about relationality and embodiment, rather than only discourse, the linguistic or the analytical (see for example Battersby 2000; Gatens 1996: 77, Curthoys 2000). This makes available a particular feminist tradition of conduct of life for those of us who follow them, in Australia. This is because these scholars imagined and created institutional personae as feminists, where the imperative to make visible the relations between men and women as conditioned by complicity and mutual responsibility was not separate from the project of thinking relationally about the lived experience of settler colonial violence, how that might be written, in what institutions or circumstances, and by whom.

This training, and inheritance, matters for how I want to write about living with law in Australia in my own time. My own self-fashioning, the subject of my recent writing, has involved imagining a practice that might be adequate to that task. This has been a collaborative project with jurists Shaun McVeigh and Peter Rush, and we have, for now, called it jurisography. For us, jurisography is a way to train ourselves, as exercises, to explain how we think, and act with the writing of jurisprudence: what we inherit from different traditions and our different places, as well as what we collaborate on and create together and with others. Jurisography is not therefore conceptually programmatic. To write as a jurisographer means writing within the conduct of life tradition that sees as relational the duties of the historiographer and those of the jurist, and joins them as a matter of experience of life lived with law. The duties that attach to the persona of jurisographer, we suggest, are to take care of the many forms and sources of writing of *jurisprudence* the jurisographer inherits (and to note that these cannot be held only to what jurists and

judges and theoreticians might do and produce.) It is also to understand how the fragmentary sources and forms of jurisprudence that people live with everyday condition and contour the conduct of their lawful relations in our own time. For the feminist jurisographer, I would add, this includes being explicit in her own writing (as male jurisographers might not necessarily do, bringing their own traditions of office) that the personal experience of sources, and her personae in selecting and choosing forms for writing accounts with those sources, are not separate when she enters an institutional relationship with law (Genovese 2014: 444; Genovese and McVeigh 2015). To write about lives lived with law, as we do in expressly in this collection of essays, it is important for me to emphasise and offer as contribution that although there is a distinction between the persona of the writer of jurisprudence and their own life, they are not separate in the conduct of their projects. This is an embodiment, a putting the person back in to the conduct of the care of law, and is explicit that the training the writer receives happens somewhere, and with other people.

2 Intimate Relations: Mr and Mrs MacKenzie Go to Canberra

To offer an illustrative example of what a feminist jurisography might be, I would like to share some notes from my recent excursions to Libraries □ in Sydney, with a diversion to London. These excursions were to locate sources for my book *Intimate Relations*.

My aim in this book is to show the relations between Australian jurisprudence and Australian feminism: how they meet, in the 1950s, and to follow the tensions that occur between them, told through the empirical space of what was to become ‘family law’. It is a history of relations thought of and written as a history of experience (of men and women in law, as much as of feminism and jurisprudence). My project is intentionally different from, although it stands alongside, the expected narratives of reform and status recognition that are familiar as ‘women and the law’ histories. Acknowledging those political and legal struggles are essential, and although they are significant to record as

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part of our jurisprudence and as a matter of critical legal scholarship, I want to centralise the story of personal relations, rather than how family law came to be practiced and contested. Perhaps because it is intimate to law's traditions, how personal relations between men and women were experienced and lived is often hard to see in legal exegesis, and difficult to connect to other contemporaneous, mid century accounts of how forms of thought engage the condition of life, and living. For example, personal relations, as a matter of the experience of jurisprudence, are often reinterpreted as social or political 'context' for marriage and divorce law, that sits outside doctrinal legal twists, or is enveloped by persistent tropes of religion and morality as they cohabit with law.³ My intention is different, and it is to make visible the relation between how to think with law and how to think about women's experience. I want to pose Beauvoir's ontological intervention (crucial to the time it was written, in 1949, to how personal relations were lived) as a question to jurisprudence. To do this, in the book, I return to mid-century Australia, to the same moment that Beauvoir was writing, to see how law's exchanges, its personal and intellectual relations, and its performances, in fact perpetuated and spoke about its own thought. It is from rendering strange this starting point in law, one that is an assumed yet unregarded familiar, that I hope to glimpse the ways law recalibrated intimate relations between man and woman as a question of a particular kind of social fact; that enabled a particular kind of legal response. I also want to explore how in doing so, jurisprudence may have missed a reimagining of how to understand the conduct of relations from the perspective of those who experienced them.

The chapter of the book I want to consider here, in order to preform what the practice of writing this book as a feminist jurisographer might entail, is speculatively titled: 'On Conjugal Relations: Mr and Mrs MacKenzie Go to Canberra'. (I say speculatively, as the demands of my own everyday life □ inside the institution of the university, and outside □ have had the effect of prolonging the writing. It is perhaps unsurprising, as a matter of circumstance, as well as orientation, that this book has been appearing in installments, in notes, on reflection on practice, rather than as narrative history, or sustained articles).⁴

My notes for this chapter begin by taking up a point made by Julius Stone in *The Province and Function of Jurisprudence* (1949), which by the late 1950s was a central text on the Sydney University curriculum. Stone's book is well understood as a corrective to an Austinian jurisprudence that could not see outside of itself. Stone's juristic writing marked a moment, as he wrote, when 'the study of law' started to be seen differently: as 'a social instrument', that required, resultantly, 'an inquiry into the effects of the interaction of law and human behaviour', as well as an inquiry 'into what effects men ought to achieve through law' (Stone 1950: 387). This inquiry required jurisprudence to be understood as 'first of all the examination of law in light of other disciplines'. 'We have seen', Stone wrote, 'that there is wide spread modern agreement that any ideal of what 'ought to be' in the sphere of law must be based on a prior or concurrent assessment of the concrete stations in which it is sought to realise the idea' (Stone 1950: 386). What social science could add, in all its forms, he thought, was insight into 'the fact of actual ethical attitudes of real people' (Stone 1950: 386). Stone, importantly for my library excursion notes, was 'the jurist' on the foundation Social Science Research Council of Australia, formed in Canberra at the ANU in the early 1950s (Macintyre 2010: 30-54). He joined other leading men from other disciplines to shepherd and fund research that brought disciplines together to respond to the needs of post-war Australian society. The SSRC decided in 1957 that status of women in public life would be the topic of funded research (Macintyre 2010: 141-9). To undertake this research they hired an English scholar □ Norman MacKenzie □ who was personally recommended by Heinz Arndt (Secretary of the SSRC, who had met MacKenzie in London) (Macintyre 2010: 144).⁵ MacKenzie was a polymath, an educator, a modernist, a journalist, a Fabian socialist, a communist (not in that order), a soldier, and possibly a spy (Purcell 2014). He was also an editor of the *New Statesman*, and later a foundation professor of sociology at Sussex. *Women in Australia* (1962), the book he produced from the SSRC funding, I understand in these traditions, and find sympathetic. It is an important and famous book in Australian feminist historiography,⁶ particularly as it offers an empirical insight into Australian women's

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legal status before the upheavals and ethos of Women's Liberation Movement, and marks the point when law and social science start to join. The book includes, for example, an appendix by Enid Campbell (1962), that itemises the legislative impediments to women's equal status in the 1950s; and which was the product of surveys undertaken by each state law school. (MacKenzie's correspondence with Australian Law Deans, including Zelman Cowan at Melbourne University, asking them to undertake this task is in his papers. So are the responses of female secretaries and research assistants who did the work, and typed it (Papers of Norman MacKenzie, 1959-1961)). MacKenzie died in 2013, and his obituary tells a life of commitment and purpose. A life that contributed to postwar Britain, because of his imagination to use his experience to rethink practices. A very LSE story. But his obituary, in the English *Guardian*, does not mention *Women in Australia*, his book that is also my book (Purcell 2013).

3 Libraries in London

For my own project, I wanted to know more about how Mr MacKenzie went about writing this book, knowing as I did from other sources and other Libraries (Macintyre 2010: 144, 146-7) that his appointment had been considered an insult by women's organisations (Papers of Norman MacKenzie 1959c; Papers of Norman MacKenzie, Thomas 1959a).⁷ I wanted to see his papers, to see what they revealed about his experience of coming with his wife Jeanne and their daughters to live in Australia in 1958 to write about Australian women (Papers of Norman MacKenzie 1959b).⁸ I was also interested in Mrs Jeanne MacKenzie, who wrote her own book, *Australian Paradox* (1961), about what she experienced when she visited the South, (although to give Mrs MacKenzie her due, that is properly the subject of another paper). For now, it is worth noting that her book is in the form and tradition of travel writing by English women abroad. It is addressed to those 'at home', to give a first-hand account of what they might encounter if they emigrated. This is because, Mrs MacKenzie declares, '[i]n so far as English people think of Australia at all it is usually with

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a feeling of profound indifference' (MacKenzie 1961: 3). In giving English people something to think about, (and giving prominent Australian critic and historian Noel McLachlan (1962: 396) cause to describe the book in *Meanjin* in 1962 as an exercise in 'ignorance and apathy') Mrs MacKenzie (as an accompanying academic spouse) has polite disdain for the gendered and class relations she experiences at suburban Australian tennis clubs; and a general concern for seeking English manners, and their absence. (She also has a great deal to say about the differences between Australian capital cities; but in the end the distinctions were of little matter: 'All this is not to say that Sydney and the other cities do not have their intellectuals. Of course they do. But in most of the Capitals the numbers are too small to make an impression' (MacKenzie 1961: 23).)

Most of Mr MacKenzie's papers (on the production of *Women In Australia*) had been repatriated, unsurprisingly, to London after his two year visit to Australia; and stayed there.⁹ They ended up in the British Women's Library, because it is a repository that includes materials relating to Commonwealth relations (in particular, transnational exchange between feminist organisations on activism and campaigns to challenge political status questions, regarding work, and marriage, in different jurisdictions).¹⁰ (There is a whole other story I could interleave here, about the political purpose of archives of women's lives and organisations, what they chose to save, but my focus is on where things end up, and how they are then read and written, rather than how they are curated). The Women's Library had been had threatened with closure, but has been swallowed up, and saved by LSE (Kennedy 2014; LSE 2016). So I went to London, in which I felt disorientated, and kept getting lost in the walk between Bloomsbury, down Chancery Lane, to Lincolns Inn Fields and the LSE library. (It was not lost on me that I got lost navigating the heart of my own inherited common law traditions.) It was peculiar to sit in dark November days, as an Australian jurisographer, writing about what London men thought about Australian women, in London, in the basement of the LSE Library. I had a few conversations about this sense of disorientation with people I knew or met, but although polite in their responses, it is

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perplexing to many (especially legal scholars, regardless of where they come from) why looking for letters from the editor of the *Australian Women's Weekly* refusing to cooperate with Norman MacKenzie might be of core scholarly concern) (Papers of Norman MacKenzie 1960). I also discovered, once I was there, what was missing. His requests for assistance to women's organisations, and survey notes of their responses to his questionnaires were present, but not their attitudes, or correspondence with him about the conduct of the surveys, or his appointment. Their experiences and their ripostes had stayed in Sydney, but I knew where to look.

4 Libraries in Sydney

It is for this reason that I returned to the Reading Room at Mitchell Library in Sydney. For those that have not visited or worked there, the Mitchell at the State Library NSW is an important and loved Sydney Institution. The Library is the oldest in the country, and the first truly free public library. Although the library itself resides on Macquarie Street – with its weight of official colonial sandstone, sweeping to the Quay – the Mitchell, which opened in 1910, resides in its own wing and faces the Botanical Gardens. It is named after David Scott Mitchell, a collector of Australian maps, objects, documents, manuscripts and books. (Although he admits this may be hazy memory or rumour, John Docker, my conversationalist in these *Law Text Culture* essays, also suggests that Mitchell's collection includes a sizeable collection of erotica). Mitchell was a colonial aristocrat in the Australian sense that his father established the Sydney Hospital. (Interestingly, Mitchell Jnr trained as a lawyer but could never be bothered, it seems, to practice (Grunseit 2014; Mitchell 1974)). Mitchell gave his collection to the State of New South Wales, and the wing was conceived and designed as a national, Australian library, devoted entirely and solely to Australian content. Over time, the Mitchell Library has become a significant repository of the papers of many Australian writers, politicians, organisations, and intellectuals (including John himself, who deposited his own papers in 1992). It was designed as a meeting

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place for Australian writers to immerse themselves in the texts of their own making and traditions. The entrance steps and portico are a place for the public – appropriately represented in proper Sydney tradition, by writers and the homeless – to sit together in the sun, or out of the rain. The Reading Room itself is glass ceilinged and bright, its walls lined with stories of books.

When I moved to Sydney from Adelaide in 1993, I worked there all the time, writing my thesis long-hand in spiralled notebooks, on the immense Federation-era shared work tables. I had moved to Sydney to work with Ann Curthoys, then in Humanities at the University of Technology, Sydney, to be trained as a feminist historian. I sought in my project to explain what happened when feminist activism and experience met legal doctrine, and was writing about Sydney criminal cases, and the Sydney Women's Liberation Movement (of which Ann was an integral part). I enjoyed the daily activity of walking to the Mitchell, through Hyde Park and past the courts from my tiny flat above a video store in Crown Street in Surry Hills, a walk that included coffee and reading and conversation. Some of my materials for this project were documentary and also housed at the Mitchell. Others, unsurprisingly for someone whose project was a history of their own present and their own chosen city, were also still discoverable in old suitcases and boxes kept on top of peoples' wardrobes, and included protest posters, banners, and other material creations of the Women's Art movement.¹¹ I enjoyed the unhurried enterprise of Mitchell, the easy Sydney camaraderie of being with other writers, working on Australian manuscripts. Mitchell, as an institution, was therefore part of my daily life, and my training (a training I could, and did, take elsewhere, including Melbourne, and as a visitor on excursion, to London).

5 Sources and Experience

In encouraging me to work with what Mitchell offered, Ann taught the significance of distinguishing between what she (and I also) call stuff: the sources and materials necessary to show the concerns or our

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own time that condition the projects we write, and which shape the relations of life we experience as writers; and archives: the institutions in which official records are housed, to which you take an excursion. Understanding this distinction, and an archive as an institutional repository in this way, is an important part of training to be an historian in the tradition of conduct. It suggests, always, that there are sources and materials necessary to show the experience of lives lived that are not immediately or only identifiable as juridically or officially sanctioned; and also that the manner in which archival records are selected, collected or curated changes over time. It also suggests that the historian has a duty to understand that her own experience will orient her toward the sources necessary to show her own time as contingent and strange. That this should matter for stories and writing of law as a matter of lived relations, and as a jurisographer, seems to me axiomatic.

The cultural and feminist historian Carolyn Steedman, in *Dust: The Archive and Cultural History* (2002), also makes this distinction. (She also refers to her sources as stuff, interestingly (Steedman 2002: 69)). In a series of essays, from her standpoint as practising historian, she considers in different ways how Derrida's *Archive Fever* (1995) has been read and received. *Archive Fever*, interestingly, I think, has become both a shorthand citation and a trope for contemporary scholars conscious of how to consider relationships with and responsibilities to the past, a catchall for 'the archival turn', for 'thinking the archive.' It is Derrida's *Archive Fever*, maybe alongside Ann Laura Stoler's *Along The Archival Grain* (2009), but not always, that stands as a gesture toward something intangible in this thinking and turning by writers and scholars, who are not always historians, but who want to problematise how we come to know certain pasts. Steedman in her essay takes issue, to a degree, with the fungibility of this contemporary gesture. She notes that Archives for Derrida are indeed a psychoanalytic metaphor or conceptual analogue to consider the obsession of the Western scholar to 'recover moments of inception, beginnings and origins which-in a deluded way- we think might be some kind of truth' (Steedman 2002: 3-6). At the same time, she is careful to note that Derrida is clear that the actual archive, the

legal repository of official recordings, cannot be separated from the political projects of remembering and forgetting that mark the trauma of the France he lives in, and the post-war world that he is understood (all over the world) to theorise and write.

What I think that is worth drawing out of Steedman's account is that Derrida is, of course, also writing a mediation on history writing, a reflection on Yosef Hayim Yerushalmi's Freud's *Moses, Judaism Terminable and Interminable* (1991). Derrida's text is a 'brooding' on both what gets written out of formal institutional archives, and how the concept (and I would add, language) of archives carries with it a misplaced desire for origins that cannot refuse or fully acknowledge the violence, horror, or repression that went into its making.

And what I really like about her account, (besides the fact she uses the word stuff, too, and clearly knows it can be more and less than a documentary source) is that she reflects on what gets lost between Derrida's '*reves du mal*' and what she calls the 'archaic, faintly comic' English translation, and shorthand, of 'Archive Fever' (Steedman 2002: 9). '*Mal*' for Steedman is embodied and real, it is 'trouble, misfortune, pain, hurt, sickness, wrong, sin, badness, malice and evil' (2002: 9). Archives are experiential (as place of active practice) as well as philosophical. Steedman writes a recognisable, and sardonic, essay in *Dust* that speaks to these observations, and returns us to consider Derrida's intention anew. It is about what happens to historians in using the 'stuff' in archives: the feelings of exhaustion, discomfort, disorientation, as well as literal feverishness occasioned by spending time in places with all that inhalation of dust, real and metaphysical (Steedman 2002: 17-37). What she is exploring is that historians really do experience their sources, and that this is illuminated by Derrida's own deconstructive practices. Sources, even those inside the archive, are not outside of them. History writing, however, I would add, is not biography or autobiography. It is not a reviving or reviewing a life lived by a person, but a creative act of a persona, the historian, revealing multiple beginnings and no definite ends. It is the job of the historian to show that contingency out of stuff, out of dust, through her own

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embodied activity.

This is a point famously made by others too. In his essay 'Nietzsche, Genealogy, History' (1977), Foucault, in many idioms the master practitioner of the arts of the self, reminds that genealogy as a practice is inherited as a tradition of accidents and contingencies, rather than burdened upon the historian as an evolutionary map, a tale of destiny (Foucault 1984: 81). Genealogy's task, he writes, is to 'expose a body totally imprinted by history', and in which 'the body manifests the stigmata of past experience and also gives rise to desires, failings, and errors' (Foucault 1984: 83). I like this quote: it is dramatic, but reveals the experiential traditions (Marxist, existential, ontological...and French), and spiritual training and exercises, of its writer.¹² It is this tradition that makes Foucault accessible and useful to many feminist philosophers and historians, including in Australia those trained through an *a priori* reading of Beauvoir's *The Second Sex* (1949), and those they then train. Joining these things together offers a useful lesson that our sources and how we write with them cannot be separate from the conditions of our own living, in our own times and places.

6 Form and Experience

So, after that digression, and a disorienting trip to London, a return to Sydney, to Mitchell, to find some stuff that had been left out or left behind but had nevertheless been kept (probably in someone's wardrobe before it was sent to the Library). These were the letters, files, Christmas cards, reports, newsletters and even (as I would discover) old chocolate box lids, kept because of their use as notepaper, of the United Association of Women. The UAW were an umbrella group of organisations, many which had existed since the League of Nations, invested in agitating for a change in women's status in Australia, and doing so through international conversation (Simic 2007). These files held the missing parts of the experience of the writing of Mr MacKenzie's *Women in Australia*.

In advance of my trip to Sydney John Docker had warned me, now a Melbourne person, of the desecration of the Reading Room.

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John had been returning to the Mitchell to write, with a gesture to Pierre Nora (2014), his own *ego histoire*: his account of a particular Australian intellectual tradition and time, told through his own life, and experiences (Docker 2014).¹³ To write *Growing Up Communist and Jewish in Bondi* (a working title I have long admired), his story of a diverse and diasporic, yet uncomfortable but undeniably Australian critical sensibility, and how it came to be, John had cause to return to Mitchell, to read his own papers. There had been a decision, he warned, to make Mitchell Library a 'mixed use space', and to take out all the books, and the spirit of David Scott Mitchell. This decision had been met with derision and outrage from those who used the Mitchell (including local writers like David Malouf, and from international writers who when in Sydney had worked there, such as Margaret Attwood). Public opposition from the writing community had occasioned some amelioration of the State Library's intentions (Juers 2014).¹⁴ But John was right. On my visit, the place felt lifeless, reduced. This was disorientation of a different kind than I had experience at the Women's Library in London, a sense of loss, but community, as opposed to a sense of lack of invitation, and unfamiliarity.¹⁵

On my visit, while waiting in the Reading Room, I contemplated what it nevertheless meant to have access to the Mitchell Library collections. (And I was waiting because the stuff you imagine you want to read is never actually *there* of course, as Steedman delineates in *Dust* (2002: 17-37)). It resides far away in warehouses, a long walk from train stations, and you must request it well in advance if you want to enjoy the pleasures of reading in an actual Reading Room). I thought in particular about the differences between John's project and mine. I have of course learned from John as much as Ann (who wrote *Is History Fiction?* (2006), together, as well as conduct a life together) that source and experience are related, but take on different forms for different projects. I mean project here in Beauvoir's sense. In volume 2 of her autobiography, *Force of Circumstance* (1977), Beauvoir writes about going to the *Bibliothèque Nationale de France* to write the *Second Sex* (1949).¹⁶ Although Beauvoir wrote four memoirs that expressly explored her life (Beauvoir 1963; Beauvoir 1965; Beauvoir 1977; Beauvoir 1993)

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the purpose of *The Second Sex* was different. Beauvoir (2011: 11) said *The Second Sex* was, as already noted, an 'essay', an 'attempt at lucidity... to take stock of the current state', and therefore required reading of books and laws and histories and novels (about France, but not only that), to give a longer history of how the situation of woman in Paris in 1949 came to be one thing and not another, and how women could live in and with their situation to know how it could be changed. It is useful to remember that she in fact wrote *The Second Sex* first, as a preparation for *Memoirs of Dutiful Daughter* (1963). As Beauvoir noted, in interview: 'Wanting to talk about myself I became aware that to do so I should first have to describe the condition of woman in general (Vintges 1996: 119).¹⁷ This perhaps is the difference between the memoirs, which can be read as *ego-histoire*, and *The Second Sex*, which is inherited by me as training in how to write a history (or jurisography) of the present. This is something I have written about elsewhere (Genovese 2013; Genovese 2014).¹⁸ But the point I want to reiterate here is that the mode of becoming that is addressed as woman, as much as writer, is not divisible from the activity and forms of writing, and the experience of writing in and of particular places.

I also thought, while I was waiting in the Mitchell Library Reading Room, about the style and sensibility of jurisography, the practice I have been imagining with Shaun McVeigh and Peter Rush. In my case, and as part of my contribution, this of course is not only part of a Sydney feminist tradition but a particular address to writing as an Australian scholar, that I learned from John Docker. In *Australian Cultural Elites* (1974), in naming a mediated, and not unified, literary and critical tradition in Australian arts and letters, John did not merely assert an Australainness, a nationalistic inheritance bequeathed from Lawson, and rethought and remodeled by Slessor, Brennan, the Palmers, and those that followed. He also examined what was written in Sydney and Melbourne as distinctive to the political and cultural experience of those places (Docker 1974).¹⁹ And in doing so, he made a claim, for the first time, that there was such a thing as an Australian tradition, and that this did not include the contributions or experiences of women or Indigenous peoples, despite the fact they were both there

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to be included.²⁰ From *Australian Cultural Elites* (1974) onwards, by self-consciously writing about Australian literary traditions and their inheritances and omissions, John invented his own persona, and his own form of cultural and literary historiography, that both celebrates and excoriates how ideas come to reside and are acted upon in Australia. This has included an address to Australia as the lawful South (for one example, in *The Origins of Violence* (2008: 161-86), where John explores the transmissions of ideas from and between Vittoria, Raphael Lemkin, the UN Genocide Convention, and Australian refusals to see genocide at home). Such consideration of what it is to live with law does not however look like juristic writing because John does not have the same duties to explain or publicise law, that is not his tradition or office. He has chosen a life as a writer, usually outside of institutions. But he does take jurists' writing, and shows ways it can relate to humanities traditions (Docker 2001a: 171-88). This is important to show how experience of law is embedded, and is part of life, and is about technique. As a writer, and trained literary critic, John does not separate content and form. He shows that a careful reading of texts from all kinds of traditions (by Arendt and James Joyce, as much as Patrick White and Baz Luhrmann) enables ways of seeing differently how those texts are received in our own place, and that this diversity of reception creates constant but uneasy interrelationships between writers and their writing. In doing so, in his own writing, he uses multiple forms: notes and mosaics, essay and argument, book and article (Docker 2001a; Docker 1984a; Docker 2001b: 9-12; Docker 1984b: 77-80). He seeks to take up Bhaktin's trickster figure (Docker 2009: 04.1-04.13), in order to disrupt and assert an attitude as much as place into conversation the expected and the not-so expected, the high and the low. His writing is irreverent, often satirical, always theatrical. He shows how part of an Australian intellectual sensibility is to write your own genealogies without apology; to take up observer positions, to write stage directions from the wings, to announce conversations and digressions and moves in genres. These techniques, allegories of what we write, are what John (and I, who has benefitted from his training and conversation) have tried to perform in in these papers.

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7 A Feminist Jurisographer's Notes

The files of the UAW, when they finally were delivered to me at a table in the Mitchell Library, revealed a sense of these women's irony, and forbearance. A relief that after many years of politely trying to gain traction and alert male scholars and politicians to the problems of women's legal status and the effects on their situation, the SSRC had decided to do so, and as such they should be cooperate with Mr MacKenzie. Yet there is a sense of indignation in the material that I read that it was Mr. MacKenzie who researched women's lives, and that although he was content to speak about Australian women empirically, as objects of his survey, they were not his collaborators. There is revealing correspondence, for example, between the UAW and their British sister organisation, the Six Point Group. The Secretary of the Six Point Group, the Hon Hazel Hunkins Halliman,²¹ wrote to the UAW, c/- Market Street Sydney, on 14 April 1959:

I am a little bit surprised that your Social and Economy Research Council [sic.] has appointed Norman Mackenzie as an investigator into the role of women. I know Mr. Mackenzie slightly in person, and I know very well indeed his work on the *New Statesman*. I have personally never found him in any way interested in women's affairs and he never writes on women's affairs. I feel sure that any job he attempted to do, he would do very well. On the other hand, I would say that this subject is entirely out of his field.

Almost any of us in the feminist movement could name half a dozen outstanding women who would do such a job as he has been given with a great deal more knowledge and imagination...' (Union of Australian Women Papers 1967).²²

Even more telling, perhaps, the Editors of the Newsletter of the NSW League of Women Voters, reporting on support for the project but their reservations on Mr MacKenzie's appointment, noted they had expressed their concerns directly to him, and had received this reply: 'The study' [Mr MacKenzie wrote] 'needed someone who was neither a woman nor an Australian for it to be a fair analysis' (Union of Australian Women Papers 1959b).

From this sample of *stuff* in the Mitchell Library what is important to underscore is why Mr MacKenzie is a central subject of my account of the histories of feminisms and jurisprudence. The fact remains that in 1957 it was Norman MacKenzie that Australian male jurists (and scholars) invited to consider the status of women's lives in Australia. He then performed in his own writing and research the reinvestment of woman as objects of legal imagination, and despite his book's success, and historiographical significance²³ in the process of his practice he denied Australian women their subjecthood and experience. Although gesturing toward Beauvoir's project in his Introduction to *Women in Australia* in 1962 (as noted in the epigraph to this essay, and showing perhaps the orientations of his time) he does not consider what collaborating in such a project might mean as a matter of his own disciplinary practice. It is necessary to show that this, his own paradox, is odd, and has implications. Drawing juristic and social science together, but denying the experiences of some subjects of law in the process, has had calculable, and observable, consequences.²⁴ Mr MacKenzie's book, when read with the letters and reports of how women experienced the book's production, destabilise the ordinary assumptions that law's overt gesture to the social and political was uncomplicatedly progressive, or could only be written in book length form (by those given access to do so), or in journals known and acceptable to academic culture.²⁵ Making assumptions of thought and practice visible is of course a well-established feminist activity.²⁶ What is at stake is to show the diffuse forms of how conducts of law as lived came to be an Australian jurisprudence. Both Mr MacKenzie's book and the letters and newsletters of groups like the UAW, when joined together, remind that in 1959, before Women's Liberation, and before women joined the institutions of law as insiders and as feminists, that an Australian experience of living with law could be addressed in different ways. Our jurisprudence (as Indigenous jurists and historians also patiently ask us to witness) has longer and more diffuse traditions than the expected narratives of Realist hagiography or (feminist) legal teleology might suggest. The diversity of, and relationships between, these traditions requires attention, and forms the centre of our duties

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as Australian jurists (Genovese and McVeigh 2015).

8 Concluding Fragments

These library excursion notes are one form of jurisographic writing, noting there can never be only one. They have been intended as a way to perform a sensibility as a feminist jurisographer, about why it was necessary for me to go to libraries in Sydney (via London), as much as about what I found there. To show that experience of official (and unofficial) jurisprudence, the everyday living with law that women wrote about in magazines and letters and that became the object of scholarly texts and doctrine, requires a particular kind of relationship to writing. These library excursion notes have been offered as a way to remind that we choose our sources and their institutional belonging, and that we do so in order to tell decidedly particular stories of how the past and present configure each other. My purpose in these Library notes, however, has also been to explore forms of writing. The notebook, essay, installment, diary (let alone poem or novel) all offer different ways that the relationship between a disciplinary life and the conduct of life might become tangible, and available to others, as a matter of technique.²⁷ The form of the relics, the stuff, of lives lived that I viewed in Libraries requires attention to style and genre: of what is read, as well as what is then written. To make this gesture is to assert that there might be coherence in writing my history of *Intimate Relations* intimately, as I have tried, in a fragment, to do here. There is purpose in performing the relational (between writing and everyday life, women and men, history and jurisprudence) in order to show what conditions for living with law in Australia are, rather than what they should, or shouldn't, be. To address the relational as a matter of practice is of course not only something I have learned from John, who shows that to write in a place is not divisible from the writing traditions of that place. For a feminist jurisographer, as noted, it also means to take up a training of a writing life, offered by certain feminist philosophers, novelists, poets, and historians, who imagine disciplinary practices that bring their personae and their personal experience of the conditions

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of life, and its sources, into express relation (Genovese 2014). With ‘peculiar keenness and ambivalence’, as poet Adrienne Rich has described, these intellectual forebears show how a writing life is a matter of both literal, and literary, genealogy (Rich 1972: 22).²⁸ To be a beneficiary of such a genealogy requires maintenance and adaptability, and a certain defiance of convention in the act of writing. To write of the living of law in a place, then, as a feminist jurisographer, is not only to hide in plain sight how to take up intellectual traditions while going about the institutional business of analysing and describing how law’s doctrine, histories, theories or politics were written and experienced in Australia. It is also to take writing seriously as a conduct of life, in which the daily comportsment of artisanal tasks happens as a matter of location, of affiliation, and of friendship.

Notes

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- 1 In this essay, in addition to Simone de Beauvoir, my interlocutors for an alignment of feminist traditions of writing and experience with traditions of conduct, with particular attention to groundedness in place and disturbance of genre, are: Michelle le Doeuff (2007); Adriana Cavarero (1997); and The Milan Women’s Bookstore Collective (1990).
- 2 For example, as mother, wife, lover, “Independent woman”, etc. as Beauvoir describes in Part 2, Volume 2 “Situation” (Beauvoir 2011: 439-664).
- 3 See, for examples, Halley (2011: 189), Finlay (2005) and Golder and Kirkby (2003).
- 4 For examples of desire and necessity in writing in these forms, in the feminist tradition, see for example, Le Doeuff (2007), Cixous (2004), and, expressly on this point Steinem (1983: 1-28, 20-21).
- 5 Macintyre (2010: 144) also notes the controversy surrounding MacKenzie’s appointment, and that the SSRC was ‘anxious’ to secure ‘female representation’ on the project’s advisory committee. Kathleen Fitzpatrick and Ruth Atkins were both appointed but resigned. Madge Dawson, a tutor at Adult Education at Sydney University, undertook surveys of women graduates and made her findings available to MacKenzie. Enid Campbell,

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the first women appointed to Sydney Law School, as noted below, wrote the appendix on Women's Legal Status in the completed book.

- 6 Ann Curthoys (1998: 40) describes *Women in Australia* (1962) as a 'primary document for Australian feminist history'.
- 7 Patience Thomas writes:

The absence of women on leading roles in the nation's public and professional life has been frequently the comment of distinguished historians, economists, and sociologists visiting Australia. The Council's objective is to examine this PHENOMENA [sic] in Australia...The person chosen to initiate this research is a MAN [sic]- a British scholar, Mr Norman MacKenzie (Papers of Norman MacKenzie, Thomas 1959a).
- 8 I would note here that the chapter is called 'On Conjugal Relations', as it offers a way to discuss the introduction of the first uniform Federal divorce law, *Matrimonial Causes Act* 1959 (Cth), with its continued emphasis on the preservation of marriage between husband and wife, and the complex jurisdictional arrangements as to the status of the wife after divorce. This is in marked difference to the jurisprudential emphasis on men and women that came later, in debates around the introduction of no fault divorce in 1975 (the *Family Law Act* Cth (1975)). Working with Mr and Mrs MacKenzie's visits offers others ways to consider what a husband-wife relation looked like politically during the 1960s, from a particular companionate tradition. Both MacKenzies, for example, were Fabian Socialists, and went on to edit the diaries of Beatrice Webb, and the letters of Beatrice and Sidney Webb (MacKenzie and MacKenzie 1982-1985; MacKenzie 1978). I would also note that the Webbs too had visited Australia, which has a long standing Fabian political tradition (Webb 1965). It would be worth reading their letters and diaries in another iteration of this essay, perhaps, to see how a Fabian socialist ideal of marriage would colour and shape the questions Mr MacKenzie asked in his surveys to Australian women, and their interpretation. It is also interesting to note that the emphasis in Australia at the time, and not disassociated from the debates around Uniform Law, was toward the 'new' practice of Marriage Guidance Counseling (Elkin 1957). Mrs MacKenzie, after visiting Australia, went on to train as a marriage Guidance Counselor (Jean Fleming Arnot Personal and Professional Papers 1890-1995 1963).

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- 9 There is also a collection of Mr and Mrs MacKenzie's papers at Smith College, Massachusetts (Norman Ian and Jeanne MacKenzie Papers).
- 10 For another perspective and reflection on working on Australian materials in international libraries see Marilyn Lake (2013: 4-18).
- 11 The banners eventually found a home at the National Museum of Australia (National Museum of Australia 'Justice for Violet and Bruce Roberts'; Davis 2012). For a contemporaneous offering from the project: Ann Genovese 'The Battered Body' (1997).
- 12 I would note that for Foucault however that was not always to be exposed in his practices, see for example Foucault (2013).
- 13 And of course John Docker's essay in this volume of *Law Text Culture*.
- 14 Note that a petition organised by writers, including David Malouf, garnered 10,000 signatures and caused the State Library of NSW to modify the extent of its plans (Wyndham 2014).
- 15 The crisis of libraries is not of course isolated to Sydney, and Australia. See the now justifiably well-known essay by Zadie Smith 'The North West London Blues' (2012) and very recently Ali Smith *Public Library and Other Stories* (2015).
- 16 I went to the *Bibliothèque Nationale* to do some reading and what 'I discovered were the myths of femininity' (Beauvoir 1977: 95).
- 17 Le Doeuff takes de Beauvoir's gesture, and training, and expresses it this way in relation to her own work: 'What kind of book would it be that did not speak to its author, as though she were, chronologically speaking, its first reader?' (Le Doeuff 2007: 50-1).
- 18 For guidance on the Australian reception of Beauvoir see Curthoys (2000) and Lawson (2002).
- 19 Docker makes plain that he takes up the gesture and insight of Manning Clark ('his suggestive article on 'Faith' in Coleman's *Australian Civilisation*' (1962: xi)). Docker notes Clark's argument (1962: xi) that Sydney traditions are 'usually ignored' because 'where Melbourne produces historians, Sydney produces poets and philosophers'.
- 20 See for example the discussion of the Palmers, and their consideration of Miles Franklin and Henry Handel Richardson, and their own differences in criticism (Docker 1974: 93-102). See also the criticism of John Docker's

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criticism (of gendered and racial blindness in *Meanjin* and *Southerly*) by AA Phillips (1975).

- 21 For a consideration of Hallinan, and her contributions to twentieth century feminist practice, including other affiliations to Australia beyond MacKenzie's text, see Spender (1983: 11-44) and Greer (1971: 11).

- 22 The letter continues:

However, since the appointment has been made, very little can be done about it, except to ask for progress reports as often as you see fit, and from them, dictate the line of thought and philosophy you want him to follow. I am reminded of the fact that recently one of our big national dailies paid a man 5000 pounds to publish a history of the Suffrage Movement. He spent a year or so going into the records produced a book which every suffragist or feminist with any knowledge of the movement has repudiated in spirit. His facts were not contested, but at no point did the spirits of the movement shine through. This might well happen to even so able a man as Norman MacKenzie.

There was a second edition of the book, through which a different relation between UAW and the text was enabled, but that edition came later, was majorly the work of Sol Encel with Margaret Tebbutt, at the University of New South Wales. That book is perhaps the subject for a different paper. But see Sol Encel, Norman MacKenzie, Margaret Tebbutt (1974) and Union of Australian Women Papers (1967).

- 23 For the historiographical significance see (Curthoys 1998). The book was favourably reviewed at the time, but note in particular Thelma Forshaw (1962) who does, obliquely and laconically, consider Mr MacKenzie's muted consideration of Australian culture in general, rather than only considering women's substandard engagement in public life. In the review she describes MacKenzie as 'landing a cuckoo's egg in our nest: a common practice of visiting sociologists' (The Nation, Forshaw 1962).
- 24 For example, in relation to Native Title jurisprudence, and the often negative consequences of Indigenous litigants. For one account, and there are many, see Sutton (2005).

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- 25 For examples see Kirby (2012) and Irving et al (2010).
- 26 In context of the training and gestures discussed in this paper, see as examples Le Doeuff (2007) or Drakopolou (2013).
- 27 See endnotes 1 and 3.
- 28 And see De Lauretis, who also would note this relation to Rich and the practice, in the Italian as 'collocazione simbolica', Teresa de Lauretis (1990: 1-24).

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