

volume twenty

Lives Lived with Law

edited by

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This issue may be cited as

(2016) 20 LTC

It should be catalogued as Law Text Culture with no punctuation.

ISSN 1332-9060

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Front cover image: © Peter D Rush

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Printed by Print & Distribution Services University of Wollongong

Law Text Culture is an interdisciplinary peer reviewed journal published by the Legal Intersections Research Centre at the University of Wollongong in Australia.

Law Text Culture aims to produce fresh insights and knowledges along three axes of inquiry:

Politics: engaging the relationship of force and resistance;

Aesthetics: eliciting the relationship of judgment and expression;

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For information on submission of manuscripts, and calls for proposals for special editions, including style guide, go to: www.uow.edu.au/law/LIRC/LTC

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In North America, subscription enquiries should be directed to:

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3011 Gulf Drive

Holmes Beach

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All back issues of **Law Text Culture** from volume 1 (1994) to date are now available in pdf online at <http://ro.uow.edu.au/ltc>



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Lives Lived with Law: An Introduction

**Ann Genovese, Shaun McVeigh
and Peter D Rush***

1 bio-graphy with law and humanities

This collection of essays for *Law Text Culture* is a collaboration and meditation on methods and genres of life writing, and how they might be adequate to the task of taking responsibility for legal thought and lawful relations as lived in Australia today. In many ways, these essays, and what they represent together, could be described as Legal Biographies. For a very long time, Legal Biographies have been written to animate the study of the common law and its institutions through lives of jurists and judges.

In our own time, writers and scholars have reanimated the genre of legal biography in several different ways. For example: to record the public engagements of legal lives (AJ Brown (2011) on Justice Kirby, Michael Pelly (2014) on Justice Gleeson); to explore and complicate the role and purpose of legal institutions (Roberts 2014; Wheeler 2011); to understand the development and performance of legal thought (Goodrich 2013; Lacey 2004; Rundle 2009); and to draw institutions into relationships and recognition of the way legal lives speak official and marginal histories (Mulcahy & Sugarman 2015).¹ What we would like to emphasise as editors of this special issue – as well as collaborators on the articulation of a set of activities we call *jurisography* – is how Legal Biographies projects might also be thought of as projects of

jurisprudence writing, about lives lived with law that belong to other traditions of contemporary scholarship, and disciplinary inheritance (Hadot 1995; Genovese 2014; Genovese & McVeigh 2015).

Since the nineteen eighties, law and humanities scholarship and its various institutions have developed a number of distinct modes of investigating forms of law and the ways in which we might conduct lawful relations or belong to law (Rush & Kenyon 2007; Kenyon & Rush 2004; McVeigh 2017). One way centres on the question of how might a life be lived and lived well. This question, which has links to the Greeks, and since, sits at the centre of particular traditions of philosophy, history, and jurisprudence. We call this the conduct of life tradition, and following the historian Pierre Hadot, we are interested in how these disciplines - especially philosophy - treat their daily tasks as 'spiritual exercises' or forms of training in how to live and meet the obligations of their disciplinary, or later institutional, office (Genovese & McVeigh 2015, Genovese 2014). At least in part, jurisprudence, we argue, can be treated as a training in *persona* and office. For us, jurisography is a way to train ourselves, as a form of discipline or exercise, to explain how we think and act with the writing of jurisprudence. It is not so much conceptually programmatic as a studied acknowledgement of the relational duties of the writer and the jurispudent, and of the experiences of a 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 the material expression and styles of *jurisprudence* that the jurisographer inherits, and, to be clear, that they are not only inherited from jurists, judges and jurispudents. It is also to understand how the fragmentary sources and forms of jurisprudence that people live with everyday (the official, and the unofficial) condition and contour the conduct of their lawful relations in our own time (Genovese & McVeigh 2015, McVeigh 2017, Genovese 2017).

The central jurisprudential story – how we might care for the lived experience of lawful relations – is represented in this collection as the conduct of scholarly life in a quite literal way. The contributions of this book pay attention to what people do in their writing (as much as what

they argue) to realise or appreciate that the methodological innovation, invention, and interrogation is not incidental or irrelevant to what is argued. In this way, what in a different kind of project might be described as theoretical influences or arguments (drawn from common law, cultural criticism, historiography, oral history, literary theory, feminist theory, Indigenous jurisprudence, visual ethnography) are in this collection embedded instead in particular techniques in style and structure and form. As such, we have also noted that these activities might not always be identical when taken care of by practitioners holding different offices.

Our other ambition in drawing these particular scholars together is that each of them has been concerned in their long-term work with the laws, histories, jurisprudence, and intellectual traditions of 'Australia'. For many, this is an abiding concern with making central the encounter between Indigenous and non-Indigenous laws and peoples in their writing and other official duties. For all, it is about showing how belonging to a place (presenting as inheritance, invention, arrival and survival) is foundational to practicing duties as scholars. As Peter Rush argues in his essay, what we hope to contribute in this collection is 'a renewal of a jurisprudence of the places of law in contemporary Australia' (Rush 2016: 216). In sum we see 'Lives Lived with Law' as drawing into relation the scholarly experiences of disciplinary technique, and the experimentation over time with style and forms that help to show what the conduct of lawful relations can be between peoples, between everyday and official experience of law, as well as between Indigenous and Anglo Australian laws.

2 with others

The contributors to this collection were invited to address how conducts of life and lawful relations might be made visible as a matter of tradition of laws and genre, as well as a matter of methods and forms. Making clear that practices, and traditions, are formed in collaboration and conversation with others is an integral part of the *jurisographers-as-editors* task in this respect, and many of our long

Ann Genovese, Shaun McVeigh and Peter D Rush

term interlocutors and co-conspirators, join us here to generously present their own experience in practising their different disciplinary duties and arts (Hadot 1995: 131-132; Genovese 2014). While Ann Genovese, Kim Rubenstein, Marett Leiboff, Peter Rush, and Shaun McVeigh teach and research in Law Schools, Julie Evans works in a School of Criminology and John Docker and Christine Black write as public intellectuals and jurists (with university affiliations). Some write in the disciplines of literary and cultural criticism (John Docker, Peter Rush), others in history and oral history (Julie Evans, Ann Genovese, Kim Rubenstein), jurisprudence (Christine Black, Ann Genovese, Marett Leiboff, Shaun McVeigh, Peter Rush), visual ethnography (Peter Rush) and dramaturgy (Marett Leiboff). These writers' collaborations run backwards and forwards over long periods of time (as will become clear when you read the essays, watch their form, and read the acknowledgements and footnotes). The relationships are personal, collegial and scholarly, and run between and in locations (Brisbane, Melbourne, Sydney and elsewhere), as well as inside, alongside and outside of institutions. We note these exchanges to emphasise how the training of the scholarly self is always accomplished in relation with others, those from whom we learn and those with whom we write. It is this aspect of training in the conduct of scholarly office (of amity and complicity as much as obligation) that is integral to what is offered to those who inherit.

How someone might write about a life or about lawful relations has generated a constant discussion and dispute amongst scholars. This concern is common to these papers as well. In each paper, the ways in which the self is represented, or positioned (and also hidden), use methods and techniques that obviously draw upon traditions of biographical and autobiographical writing, and attach those techniques to legal questions and projects. For some of the contributors these techniques are directly biographical. John Docker writes of his own experiences and his family as he studies and lives in Melbourne and Sydney; Julie Evans writes of her grandmother; Kim Rubenstein writes of her cousin Peg Lusink as well as her own experience of the mediations of familial and institutional relationships; Marett Leiboff's grandfather

is a part of her dramaturgical history of a Jewish experience of law in 1930s Brisbane. The point to watch here, however, is that not all the pieces are biographical (or autobiographical) in a straightforward way, or in a way that is faithful to the traditions of that genre itself (Lee 2008).

Each writer shows how they have trained themselves to think with 'the biographical' that is cognisable to, and part of the training of, lives lived in scholarly office, with different duties. What the 'self' looks like, and how it is used or conceptualised, for example, is not necessarily the same for the writer of jurisprudence, as the writer of history, or the literary critic. As such there is no single or simple method of reflection practiced in these essays. For example, John Docker, while writing about himself, does so in order to reflect on an intellectual formation that belongs to a time (the 1960s and early 1970s) and place (not just Sydney or Melbourne but Balmain and Bondi, and Parkville and Albert Park). In doing so, John shows and reminds us how cities form their distinct intellectual traditions and projects, and how a writer and literary critic might respond. Ann Genovese reflects by writing about both the practices involved in the creation of institutional knowledge, and how these practices have become part of an ethos of scholarship that forms the *persona* of a feminist jurisographer. Marett Leiboff, writing as jurisprudential dramaturg, performs her reflection of life lived in the shadow of law, and notes with a historian's eye the different ways in which questions of law were narrated, as well as the intimacy and publicity of going to law. Shaun McVeigh, as jurispudent, observes how a contemporary jurispudent of London might address (from the top of the 68 bus) a meeting of laws between Indigenous and non-Indigenous jurisprudences as they were expressed at the British Museum in London. As an Indigenous jurispudent Christine Black notes the ways in which laws of relationship and the responsibilities that flow from them give shape both to health and law. Peter Rush generates a photographic archive so as to speak of the threshold experiences and places of the legal precinct in Melbourne. He invites you – reader, viewer and listener – to track his observations of law on the move. As observer, Peter talks briefly (and a little apprehensively) to a copper but is otherwise a silent jurisprudential guide to the material commotion of laws.

3 in place

What remains for this introduction is to introduce the essays themselves. The opening pair of essays by John Docker and Ann Genovese are part of a written conversation about lives lived as scholars and researchers. In part they reflect on their scholarly biographies, of how they became scholars and how they study. Their essays collected under the heading 'Places Lived: An Ego-Historiste and Jurisographer Discuss Living with Law in Sydney' set out and narrate two ways of writing about Australia, the lives that are lived in collaboration and in the company of others, and about the responsibilities of the scholar and the university academic. At one level these two pieces stage in public a long-standing personal discussion and are a meditation about how we learn our craft, and the debts we owe to those from whom we learn. At another level, they show some of the ways in which the authors, as literary critic and feminist historian and jurist, shape the personae appropriate to their public duties. John Docker ('Of Pearls and Coral') writes of the intellectual resources of the tradition of *ego-histoire* and Ann Genovese of feminist jurisgraphy shaped through response to the work of Simone de Beauvoir (amongst others). Ann Genovese's account ('About Libraries') emphasises the ways in which the formation of a persona or a public self, as well as a private self, has been at the centre of traditions of feminist thought. She also emphasises the ways in which the living, writing and studying a life is a collaborative exercise.

In 'Alive in the Telling', Kim Rubenstein draws on her work on the *Trailblazing Women and the Law* (2016) project that investigates the diversity of life and experience of trailblazing women lawyers in Australia. Kim Rubenstein's lives of law are lived by the first generations of women to enter the institutions of law, and they are narrated and engaged here through the techniques of oral history and writing, as well as critical reflection on the histories of the legal profession and of the disciplinary practices of oral history itself. Like those of John Docker and Ann Genovese, this is an essay that relates a life through reflecting on relations of life and writing. In Kim's case this is a complex web of family, gender, Jewish ancestry and inheritance, and professional

life lived in Melbourne in the mid-twentieth century. Kim develops her argument by drawing on her interviews with Peg Lusink, the first woman law partner in the commercial law firm Corr and Corr in Victoria, Australia, and the first woman appointed as a judicial officer in Victoria and the second woman appointed to the Family Court in 1975. Peg Lusink was daughter of Joan Rosanove, the first woman member of the Victorian bar in 1923. Both are in turn related to Kim Rubenstein. The interview gives shape to the interlinked themes of the gendered character of legal practice and institutional life, and the ways in which intimate family relations are expressed through law, public life and the conduct of oral histories.

Marett Leiboff tells stories of lives lived with law in a different way. Taking up the role of ‘dramaturg’, Marett relates both the performance of a theatrical jurisprudence and the telling of a family relation through encounters of law, present and past. In attending to the encounter, Marett invites you to accept a ‘lucid disorientation’ of your expectations. She invites you, the reader, to notice what was noticed then, and what is noticed now, about law and the lives of Jewish people before the law in Australia and Germany. It is also an essay that is concerned with creation and disruption of family and legal relations. Taking up accounts of lawful (and lawless) relations in Brisbane, Australia, it retells the stories of Mr Justice Stumm and Mr Justice Henchman and of their deaths in office. Juxtaposed with this account is another of our contemporary understanding of law, history and jurisprudence. This account dramatises what Marett Leiboff sees as a certain blindness that contemporary legal thought has in relation to its lived and living past and present. The linking stories, those of Morris Leiboff (Marett Leiboff’s grandfather) and of the research of Marett herself challenge our own accounts of lives lived with law by asking – ‘what could I know in law through the life of someone in law other than me?’

Julie Evans’ essay, ‘Ethos of the Historian’, is also engaged with the theatre of law. It draws out the sorts of commitments that a scholar, here historian, makes to the conduct of lawful relations in contemporary Australia, and to the conduct of public and collaborative research. The

centrepiece of this essay is Julie Evans' work in relation to the 'Minutes of Evidence' project that investigated the Parliamentary Inquiry into the running of the Aboriginal reserve at Coranderrk, Victoria. The subject matter of this essay is not so much the Inquiry itself, but the conduct of the 'Minutes of Evidence' project, and the different obligations and commitments of the research team of Indigenous and non-Indigenous academics, educators, performers, administrators and members of the community who were engaged in both the work of scholarship and theatre performance. Julie addresses the responsibilities of office and discipline that give form to the ways in which the participants acknowledge, account for, and engage with the historical injustices that continue to shape the conditions of life in Australia. The 1881 Inquiry provides a way of keeping the obligations of just and lawful relationship at the centre of a broad web of scholarly, theatrical and community practice.

Kombumerri/ Munaljahlai jurispudent Christine Black's essay 'Land as Healer' continues her investigation into the understanding of land as the source of law. For Christine jurisprudence is concerned with the law of relationships and the patterning, of land/law/life into lawful (rather than lawless) existence. In the essay this concern is followed through two contrasting jurisprudences. In one jurisprudence, it is the carelessness of contemporary colonial mentalities where human life is valued above all else. In this account, lawful conduct is understood in terms of the manipulation of intelligence. In the other account, one drawn from an Indigenous jurisprudence, lawfulness is expressed through relationships of reciprocity shaped by land. Christine draws out the ways in which laws of relationship are engaged as much by placing people as by people finding their place. The essay addresses the new ways that life might be experienced through the advent of developments in artificial intelligence; the ways in which Indigenous healers (the *ngangkari* from central Australia) conduct their lives and engage in lawful behaviour; and the ways in which hallucinogenic plants are bearers of law. The challenge, as ever, is to find ways of maintaining the lawfulness of relations – a jurisprudential concern that animates two films that Christine discusses: *Renegade* (2004) and *While We're Young* (2014).

The responsibility of jurists for the conduct of lawful relations is also addressed in Shaun McVeigh's 'Arts of Association', although this time it is a jurisprudence that passes through London, UK. The relationships between Indigenous and non-Indigenous jurisprudence relate to the exhibition of the artefacts and materials of the Indigenous peoples of Australia held at the British Museum in 2015. The artefacts established the presence of an Indigenous jurisprudence at what was a centre of the British Empire and London. It also marked the movement of that relationship backwards and forwards to Australia in the mounting of a parallel exhibition, albeit for a short time, in Canberra. The essay imagines an encounter of jurisprudence where jurists of London find forms of ceremony to take responsibility for the relations of law that the two exhibitions have established. Suspending, for the moment, the obligation to ensure the repatriation of objects to their country and proper jurisdiction, this essay examines some of the forms of training and conduct available to jurists.

In 'The Forensic Precinct', Peter Rush considers again the places of law in contemporary Australia, and the kinds of jurisprudence that made be needed to live in them. Focusing on the emergence of a newly marked legal precinct in Melbourne, Victoria, the essay follows, rather than maps, the visual and juridical drama of legal precincts. In doing so it addresses some of the ways in which lives lived with law are given shape and themselves shape legal places in the formation of a habitus, enfolding the courts and the city, *urbs* and *civitas*. As jurist and visual ethnographer, Peter tracks back and forth across the precinct noting the infrastructure of the precinct, patterning legal forms into the laneways, noting the passage of the people of law (lawyers and administrators but also people from the country brought before the law). The patterns that he notes could well be shaped around the entrance of the new Commonwealth Law Court, but they need not. Under Peter Rush's careful watch, the thresholds of the court, the city and lives lived with law turn out to be held in the details of the passage.

4 writing records responsibilities

We want to conclude here by highlighting three interrelated things from our examples, about source, institution and writing to continue a conversation about the conduct of jurisprudence as an aspect of legal bio-graphy. First, through our examples of sources from Canberra and Sydney, Melbourne and London, Brisbane and Bondi, libraries and museums, and buses, precincts and laneways we wanted to remind that everyday living with law is recorded in diverse ways. It is officially recorded as the object of scholarly texts and doctrine, and unofficially recorded in all sorts of texts and fragments that are not always considered as belonging to the expected canon or archive of the common law tradition. We suggest that all these records are required to consider the form and formation of jurisprudence as a conduct of relationships with law, as much as to tell stories of law. This includes giving scholarly attention to the conduct of laws in any one place, as well as to how it translates and is translocated between places. Second, that to draw out these diverse experiences of jurisprudence involves paying attention to the fact that particular duties arise for jurists and legal scholars. These duties involve taking responsibility for the protocols of use, and ceremonies of access, when engaging proper relationships between institutions of law (including universities) and other institutions (such as libraries and museums). It also means being clear that we have obligations to address how all institutions curate, display or make accessible the materials that can show the diversity of lives lived with law (noting also that histories and locations of institutions reveal a great deal about the attitudes, ethics and responsibilities to lives lived with law in different times, and places).

Our last point is directly about writing. This collection of essays offer examples of how we all choose our sources, and their institutional belonging, but that we also choose the style and genre of their representation in order to tell decidedly particular stories of how the past and present configure each other. As the essays presented here demonstrate, the personal note, letter, diary, travel journal, object, newspaper report, play, catalogue, photograph, artwork and plant as

much as the judgment, article, or monograph, all offer different ways that conducts of life might become tangible, and available to others, as a matter of technique and form. There is a relationship, in other words, between how and in what tradition we write, and the subject and content of what we might need as jurists to be responsible for when we write about our law. This also means taking our own writing of jurisprudence seriously as a conduct of life, and re-joining particular traditions of humanist scholarship to the projects of legal life writing, in order to show how our practices are a matter of affiliation, inheritance and location.

Notes

*Melbourne Law School, University of Melbourne. The editors would like to thank the Law Research Service at Melbourne Law Library, especially Robin Gardner for ensuring it worked and Matthew Harper and Luke Chircop for doing much of the copyediting.

- 1 For example the Australian Dictionary of Biography website (2016), the Legal Biographies project website at London School of Economics (2016) and The Trailblazing Women and Law Project (2016).

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