

Introduction

This issue of *Law Text Culture* has its genesis in a research project on Mobile Peoples Under the Eye of the Law which was originally proposed by Associate Professor Cathy Coleborne at the University of Waikato. The project was supported with a grant for a one day symposium, held in December 2010, from the University of Waikato Contrestable Research Trust Fund, for which we are grateful. As guest editors we invited contributions of postcolonial analyses that investigated mobile peoples, in Australia, New Zealand and the Pacific, both historically and in the present. We were especially interested in the ways in which regulation and surveillance in all of its forms — legal, policy, administrative and so forth — produced and constructed mobile peoples, and how categories of gender and sexuality were shaped in relation to mobile peoples in and through these regimes.

Postcolonial theory is a fitting lens through which to view mobility and regulation. While the reference to linear time implied by the term ‘postcolonial’ and the apparent presumption of a period after colonisation have been critiqued elsewhere, we see it as useful for engaging with the imprints and effects of colonisation. Postcolonial theory arises with the fall of grand theory and the destabilisation of history ‘as it actually was’ or chronological ‘facts’, creating space for a dynamic theorisation of colonisation and the construction of nations, peoples, ‘race’, ethnicity, gender and sexuality. An integral part of postcolonial inquiry is writing against the colonial, and making visible the persistence of the colonial in the concrete and material conditions of everyday life. Foregrounding the histories of colonisation highlights shifting geographical centres and margins in the process of mapping, shaping and tracing mobile peoples.

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Interdisciplinarity is a strength in the study of mobility and the regulatory regimes used to define and constrain movement across different times and places. The first part of this special issue reflects this ethos with contributions that explore some of the diverse conceptualisations of mobility, control and modernity from the disciplines of law, history and demography. It begins with Nan Seuffert's article 'Civilisation, Settlers and Wanderers: Law, Politics and Mobility in Nineteenth Century New Zealand and Australia', which provides an important theoretical orientation on mobility as an organising concept in law and policy. Seuffert shows how 19th century conceptions of mobility were embedded in concepts such as civilisation, savage, settler and wanderer, as well as in broader notions of progress and modernity that were fundamental to colonisation in both contexts. She tracks the articulation of mobility in three areas of law and policy — New Zealand's wasteland policy, laws on Chinese immigration, and aspects of Australia's laws related to the Pacific Labour Trade — showing how the dynamics of settler colonialism often transcended simple binaries such as those of settler coloniser and colonised indigene. Seuffert's comprehensive analysis underscores a key feature of this special issue: that different renderings of mobility and the means used to regulate mobile peoples often have unique properties and manifestations, but systematic power inequalities are recurrent throughout time and place.

In 'Regulating "Mobility" and Masculinity through Institutions in Colonial Victoria, 1870s-1890s', Coleborne shows how masculinity was shaped by movement within and between institutional spaces. Mobility was central to settler identities, and movement was an integral part of settled life. Specific class, gender and ethnic characteristics dialogically shaped settler identity and mobility. Coleborne explores the policing of undesirable mobility and mobile people in urban spaces, as well as the dynamics of 'failed' masculinity and mobility in her analysis of the institutionalisation of poor white male immigrants. Her innovative focus on mobility between health and welfare institutions in the context of the regulation of mobility reveals webs of welfarist institutions, policies and policing in colonial states' responses to failed immigration.

John Taylor's adroit discussion of the politics of mobility in demographic analysis implicitly and explicitly draws on colonial conceptions of indigeneity, identity and mobility. In 'Beyond the Pale: Measures of Mobility in Postcolonial Australia', Taylor persuasively argues that 'postcolonial demography' — the applied demographic practices and categories employed in Australia to quantify and respond to Indigenous Australians — is ill-equipped to capture key aspects of Indigenous sociality. This mismatch, he argues, is readily apparent in efforts to quantify Indigenous spatial behaviour. By comparing data from the census and official surveys — instruments routinely used to capture Indigenous mobility — with findings from ethnographic research, Taylor shows that Indigenous people can, and often do, move literally beyond the 'eye of the law'. That Indigenous mobility proceeds largely unrecorded in administrative systems of capture and control, he argues, both reflects the persistence of colonial constructions of mobility and indigeneity, and raises questions about the efficacy and robustness of the resulting statistical 'evidence'. Taylor sees these issues as increasingly important in light of the increasing demand by Indigenous organisations for accurate and relevant statistical information about themselves to support their self-determining and development goals.

The second part of the issue shifts from different disciplinary renderings of mobility and forms of state regulation, to consider indigenous mobility and regulation in specific spatial and historical contexts. In 'Containing Aboriginal Mobility in the Northern Territory: from "Protectionism" to "Interventionism"', Deirdre Howard-Wagner and Ben Kelly offer a postcolonial critique of the legal and disciplinary effects of recent policies of 'interventionism' on Aboriginal homelands and 20th century policies of 'protectionism'. They draw parallels between the different mechanisms used to displace and regulate Aboriginal peoples in the Northern Territory, showing how a pervasive settler colonial rationality — with its presumption of white racial superiority and desire to erase Indigenous deviation from white modernity — operated to refashion mobility. While their analysis emphasises the centrality of the twin logics of 'elimination' and 'progress' in two different eras of federal indigenous law and policy,

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it also calls attention to distinctive features of contemporary settler colonialism, notably the neoliberal demand for Indigenous citizens and their lands to be incorporated into the market economy. Echoing Taylor, they also show how official statistics have provided an important government apparatus for constructing and problematising Indigenous peoples in ways that reinforce mainstream critiques and judgments on matters of culture, norms and what constitutes an acceptable way of life.

In Adrian Muckle's analysis of colonial New Caledonia, the regulation of indigenous mobility is considered alongside the separate but often overlapping regimes designed to police or control *libérés* (freed convicts) and indentured ('immigrant') labourers. In "Natives", "Immigrants" and "*libérés*": The Colonial Regulation of Mobility in New Caledonia', Muckle refines the dominant histories of the curtailment of indigenous mobility under colonial rule by sketching the forms of mobility and circulation that were sanctioned and regulated by colonial authorities. Highlighting the diverse groups subject to regulation, Muckle provides a way of thinking about these experiences in relational terms, also drawing attention to the gendered dimensions of colonial mobility. He argues that no single institution and no one piece of legislation defined the colonial experience; Kanak experiences of colonial rule are best analysed in relation to these other groups.

Rachel Stanfield's article, "The Vacillating Manners and Sentiments of These People": mobility, civilization and dispossession in the work of William Thomas with the Port Phillip Aboriginal Protectorate', shifts the lens back to colonial Australia. Drawing extensively on the journals of 'protector' William Thomas, Standfield traces how the humanitarian principles that guided the early work of protectorates were gradually eroded by complex tensions arising from settler violence and greed, the complicity of colonial officials whose interests were closely meshed with those of settlers, and the ongoing resistance of Aboriginal communities to increasingly coercive measures to curb their mobility. Like other contributors, Stanfield explores how representations of Aboriginal peoples as erratic wanderers without sovereignty over land were central to the colonial project of conquering

space, and also looks beyond the Port Phillip protectorate to consider the importance of indigenous mobility to imperial and colonial spaces in South Africa and North America.

The final part of this special issue expands on ideas of crossing, transgressing and shaping boundaries often implicit in discourses about mobility. Sally Engle Merry's article, 'Sex Trafficking and Global Governance in the Context of Pacific Mobility', crosses the boundary of the dominant humanitarian interpretation of the movement of sex workers by providing a more nuanced analysis, and places the mobility of sex workers in historical context. Merry contends that legal immigration regimes are central to the formation of both immigrant experience and societies. Her comparison of the mobile populations of migrants to Fiji and Hawaii historically, and the legal statuses shaping their opportunities and lifestyles, provides a revealing frame for her analysis of contemporary travel for sex work. Both the historical migrants and contemporary travellers are motivated by complex matrixes of coercion and desire: coercion of poverty, demands for labour, or capture, and desire for adventure, opportunity and escape.

Today, legal scholars in 'western' democracies often take for granted the idea that jurisdictional boundaries shape regulatory regimes by providing for the application of certain laws within a specified territory. Wayne Rumbles' article 'Spectre of Jurisdiction: Supreme Court of New South Wales and the British Subject in Aotearoa/New Zealand 1823-1841' investigates the extension and shaping of boundaries in the colonial expansion of jurisdiction over British people on the islands known as Aotearoa New Zealand today with the declaration in 1814 that New Zealand was a dependency of New South Wales. The assertion of jurisdiction was sometimes justified on the basis of the need to control the mobile and lawless British; Rumbles argues that it operated to create an imagined community of homogenous British out of the widely dispersed and rag-tag contingent of British moving through the islands during the period prior to the Treaty of Waitangi 1840.

Marett Leiboff concludes the collection with an article that is both story and history — an *histoire* — of immigration from Russia to

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Brisbane. In “‘The Main Thing Is To Shut Them Out’: The Deployment of Law and the Arrival of Russians in Australia, 1913-1925: An histoire’, Leiboff combines an ‘imperfect archive of memory’ with excerpts from her grandfather’s file in the National Archive of Australia. Crossing numerous metaphorical, literal and legal boundaries in his journey to Brisbane, her grandfather, Morris Leiboff’s movement once he reached Queensland was subject to a detailed bureaucratic surveillance regime that produced his National Archive file. Leiboff reads this file against the policies, legal regimes, and context of a political climate that condoned attacks by returned World War I servicemen on Brisbane’s Russian neighbourhood, to reveal a life truly lived ‘under the eye of the law’.

A poem by Alice Te Punga Somerville precedes each of the three parts of this special issue. From ocean-going ancestors to complimentary happy hour on flight NZ449, Somerville draws on her multidisciplinary background in English, Pacific and Indigenous studies to critically explore the nexus of mobility, identity and nation-building.

Finally, we would like to express our thanks to all of the contributors to this special issue who responded to our call for papers so enthusiastically and who have collectively bought to life the kernel of an idea that will continue to grow and take shape through future scholarship. The critical and often extensive comments of those who agreed to review the manuscripts were invaluable for helping authors to sharpen and clarify their articles and we are grateful for their generosity. We would also like to thank artist Brett Graham (Ngāti Koroki Kahukura) whose work ‘Mihaia’, which is described by Graham below, features on the cover and explores several of the key themes that animate this special issue.

‘Mihaia’ is the Maori word for ‘Messiah’, the one who would deliver salvation to the Israelites in the Bible. ‘Mihaia’ itself is an almost life size version of a BRDM-2 Russian scout car that has been used in conflicts all over the world, on both sides of the Middle East conflict and, more recently, was seen on our televisions being used in North Pakistan against Moslem extremists. Although Maori actually possess

no such weapons the tank has been ‘Maorified’ as a reminder of how Maori in the past ‘appropriated’ power symbols from the British Militia to gain some kind of spiritual ascendancy over their invaders, to seek deliverance. ‘Mihaia’ ties Maori to the peoples of the Middle East, the events of last century in Aotearoa to world events today, and suggests how our pasts and futures, coloniser and colonised are inextricably linked.

Nan Seuffert

Tahu Kukutai