

Dissents and Dispositions: Reflections on the Conference of the Law, Literature and Humanities Association of Australasia

Sean Mulcahy

Monash University, Australia/University of Warwick, UK
Correspondence: sean.mulcahy@warwick.ac.uk

Abstract

This article provides critical reflections on the Conference of the Law, Literature and Humanities Association of Australasia, held on 12-14 December 2017 at La Trobe University and the University of Melbourne, Australia. The conference theme of dissents and dispositions ‘invited consideration of the arrangements and rearrangements of the conduct of law and life; of the dispositions of law and jurisprudence, and how these relate to dissents, resistance and transformation.’ Speakers discussed law, literature, public art, visibility, media, gender and sexuality. The various papers collectively raised questions of how the law is, through art and other mediums, arranged and subsequently – sometimes violently and sometimes politely – rearranged, constantly in a process of developing, evolving, never finishing, and always applying its words and touch to new circumstances.

Keywords: law; justice; literature; humanities; public art; visibility

Article Text

Tom Nicholson’s *Towards a Monument to Batman’s Treaty* was the artwork for the Conference of the Law, Literature and Humanities Association of Australasia held in Melbourne in December 2017, if a conference can have an artwork. The installation, which comprised strewn chimney bricks collected from citizens in and around the town of Healesville some 50 kilometres north-east from Melbourne surrounded by possible memorial plaques, seemed (strangely, perhaps) fitting. It recalled the conference’s situation on the land of the Wurundjeri peoples exploited by but not ceded to colonisers. The as-yet-unrealised nature of the artwork/monument, with its strewn materials and multiple possible plaques, seemed too to reflect the theme of law, literature and the humanities as constantly in a process of developing, never finishing. All are disciplines open to differing creative interpretations; all are inherently creative. To quote, as one of the speakers did, from the West

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Australian *Interpretation Act 1984*, 'a written law shall be considered as always speaking' (s 8), always applying its words and touch to new circumstances, constantly evolving. Similarly, the papers at the conference flowed into discussions and conversations that tested disciplinary boundaries and reshaped the original work in different ways.

Perhaps fittingly, Marianne Constable (*California Berkeley*) started the conference with a keynote address on repetition in legal speech and action and how it produces and interrupts rhythms. Constable argued that repetition leads to a certain kind of senselessness in that it can desensitise or disorientate, allowing one to not think or decide how or what to do next to such an extent that something becomes second nature or habit. She posed precedent as a system of repetition, and that the repetitive nature of precedent does not allow space for questioning except in interruption; it is only interruption that breaks habit. The discussion that followed introduced the idea of the law as automaton. However, against this thesis, Constable suggested that repetition could actually sensitise us. In this respect, there are phases of response to repetition. It may emphasise at first, but then desensitise; possibly, we tune in and out. She concluded with a discussion of what the difference is between repetition and interruption that (de)sensitises and (de)emphasises.

In a panel on 'Crossings', Olivia Barr and Laura Peterson (*Melbourne*) explored public art as public law, drawing on the idea of the artist and jurist as crafters or creators. Despite the move to transient or pop-up public art, Barr and Peterson posed the notion of public art as solid versus public law as transient. Drawing on Andreas Philippopoulos-Mihalopoulos' notion of 'lawscape' (2015), the two argued that public art produces legal relations in a city. Public art provides an opportunity to slow, pause, engage and remember and the act of viewing of public art and law draws bodies in space. The paper raised interesting questions of how we interpret public art and the role of commissioning in public art. During the discussion that followed, they suggested that, in the case of certain public art such as Laurel Nannup's *First Contact*, through the commissioning process the state owns up to its mistakes to some extent. The exploration of public art continued in Ross Gibson's (*Canberra*) paper on his artwork, *Bluster Town*. The artwork, which had resonances with Julius Popp's *bit.fall* and the 'word wall' in Melbourne Theatre Company's Sumner Theatre, explored the transience of common words as against the permanence of legal word. Gibson suggested that art always happens in a joint, a turning point; that art causes a turn, impels, jostles and moves. He conceived of public art as a 'conviviality enhancement system' and argued that there is a possibility of relationship and connectivity when people are put together in public art and public law. Finally, Dave

McDonald (*Melbourne*) spoke on the ribbons tied around fences to mark clergy abuse in the town of Ballarat in an artistic-legal phenomenon referred to as 'loud fence'; the term being a reference to both the colourful ribbons and the noise they made when blowing in the wind. McDonald argued that the ribbons were a powerful visual testimony similar to crime scene tape – a closing off or border that draws attention to the space by passers-by. His paper explored the practices, possibilities and limitations of visual memorialisation. To encounter public art is affective, but people can simply walk by.

In another panel on 'Border crossings', Maria Elander (*La Trobe*) explored images as evidence, and suggested that there are other means of ascertaining facts beyond law, including through art. Elander argued that there is a need to treat images critically not as a repository for truth and that images are not facts but rather pose questions of belief; it is questionable whether we are able to draw a 'correct' reading of a photograph. In this sense, images have an evidentiary role and an imaginary role. Victims sometimes testify using images of loved ones; for example, during the Luke Batty coronial inquest, a framed photograph of Luke sat near the coroner's bench. There is thus an affective dimension to images. Images can be, like victim impact statements, a form of therapeutic justice. Law, however, has a tendency to ignore scholarship of the visual, and images seldom find their way into judgments. This idea continued in Sarah Hook's (*Western Sydney*) paper on legal responses to parody. The legal regulation of parody and satire contained in section 41A of the Australian *Copyright Act* is only fairly new, introduced in 2006. Hook questioned the role of the judiciary as artistic interpreters and the idea of judges determining artistic measure, instead suggesting that art practitioners and lawmakers need to talk to each other. Hook argued that parody relies on distance just as much as similarity and that critical distance is essential. There is, in parody, an oscillation between empathy or nearness and distance or opposition. Courts, however, rely too readily on dictionaries to define what parody is, ignoring complex meanings; dictionaries cannot define complex phenomena. A clash seemed to emerge over whether interpretation of parody is dependent on authorial intentionality or whether the work can speak for itself, that is, whether it is defined by the interpretation of its audience. Further interesting questions were raised by Hook over whether one can have parody without humour, whether humour is in the eye of the beholder, what is a 'fair motive' for parody, whether scathing parody is fair, and the literary versus legal takes on these questions.

Another panel on 'Evidence of things seen' opened with Penny Crofts (*Technology Sydney*) who explored corporations personalised through art and film with a focus on the television series, *Stranger Things*. Ashley

Pearson's (*Griffith*) paper that followed examined (legal) persona in video games and other media, describing persona as something of a contest between self and a legal mask that shrouds the self as a reasonable, rational, agentic subject. One particularly interesting element of this paper was the discussion on the experience of the player's body in game-play and its relation to the avatar, which raised interesting questions regarding the role of the player. Is an avatar's selfhood negotiated and defined through the interactivity with the human player that controls and plays with the avatar? What are the impacts of immediacy and the speed of fighting in game-play on the creation of the avatar's self? The discussion recalled the sex surrogate scene in *Her* wherein the lead character attempts to manifest his beloved operating system in human form but ultimately fails.

Finally, for this panel, Carolyn McKay's (*Sydney*) paper on her recent work *Model Prison* explored visual art as a research methodology drawing from the 'visual turn' in humanities and social sciences. McKay's work was a video installation that depicted a 'virtual prison' with an actor inside who paced, bent, stretched and crouched. The work sat next to Lucas Davidson's durational performance, *Black Cell*, wherein the artist was buried under a pile of gravel and, in so doing, created a visceral experience of audience anxiety. McKay's work explored not so much the textual but rather the material and sensorial dimensions of incarceration, decorporealised and dematerialised through video link. Through the medium of video, there was a removal of bodily presence, with the body digitally encased and hermetically sealed, like that of Davidson's. The work was accompanied by a striking audioscape of ambient noise and strange sounds picked up on location at The Lock-Up, an arts space and former police station in Newcastle. The audio in McKay's work became irritating, repetitive and looped, like the movement. The audio, to some degree, created the space. The placement of the screens in the art space that forced the audience to bend down to see created a different experience than if the audience was to view the work on a flat screen and again emulated the contortions of the body in the film. McKay's piece was reminiscent of works of audioscapes installed in padded cells, like Love Without Sound's *Reasons for Admission*. Her work also had resonances with Lawrence Abu Hamdan's *Model Court* and Judy Radul's *World Rehearsal Court*. McKay also spoke of the role of gut instincts in artistic creation and the importance of openness to creative thought and then deploying the artist's critical gaze; all of relevance to practice-led or -based research. For those that want to continue the viewing and exploring these questions in greater depth, McKay's latest project is *justiceINjustice*, a collaborative work at The Lock-Up exploring injustice and marginalisation.

During the discussion that followed into lunch, a question arose as to who the audience was to these television programs, video games and artworks. This in turn raised a problem of art: that it often speaks merely to the converted. Can art transform the viewer if it is not viewed? Can the same question be asked of law or, indeed, the legal academic conference? Are we simply speaking to our peers or ourselves? What was striking about this panel and born out over the conference was the engagement with contemporary popular cultural forms that have resonance beyond the law.

A post-lunch panel on 'Visible addresses' commenced with Katherine Biber (*Technology Sydney*) who discussed the cultural response to the infamous Lindy Chamberlain trial and subsequent appeals and acquittal that have spawned a number of artistic responses, including theatre productions and an opera, *Lindy*. The paper focused on the Lindy Chamberlain collection at the National Museum of Australia and raised interesting questions about restoring evidence, evidence as art and how evidence/art is described; for example, to describe an object/artwork as 'cut' has a very different resonance to 'torn'. Les Moran (*Birkbeck*) discussed the idea of performing one's (legal) self through a case study on reality television judge Robert Rinder. The paper described how the impact of digital media has reshaped the idea of audience as consumer. Audience is now a major player in the production of a performance and operates as a quasi-jury with the judge as conductor of the proceedings. This framing of the audience is reminiscent of Jack Tan's work, *Karaoke Court*, wherein the audience were jury to litigation undertaken through the medium of karaoke. Judicial character is created through different media genres. Judge Rinder appeared on *Strictly Come Dancing*, which Moran said was not about his capacity to perform the role of judge, but I wonder whether there is an element of dancing in the production of judgment and judicial character. Judge Rinder lip syncs have also appeared on YouTube. Moran described Judge Rinder as a camp gay figure of authority and raised the question of whether dandyism or camp is compatible with the construction of judicial authority, particularly in an era of bourgeois acceptability of same-sex marriage. Alison Young and Peter Rush (*Melbourne*) concluded the panel with an exploration of lives lived with law in the Japanese criminal justice system. In Japan, police now use street art, small neighbourhood police stations called 'koban', and mascots as a reminder, particularly to young people, that the neighbourhood is under governance.

Karen Crawley's (*Griffith*) powerful keynote address focused on the implausible post-racial politics of the recent television production of *The Handmaid's Tale*. Crawley noted that the production had been lauded for its inclusivity in terms of casting, but had no critical reflection on race,

which she argued highlighted the limits of liberal inclusivity. Perhaps, she suggested, the slow endemic violence experienced by people of colour does not lend itself to visual narrative. In a close reading of one scene in which a black character escaped the Republic of Gilead, an authoritarian regime which took over the United States of America (and ironically the name of a pharmaceutical company that has been accused of preventing access to anti-HIV drugs in Australia due to over-pricing, as was pointed out in the discussion that followed), and was accepted as a refugee in Canada, Crawley noted how the character was depersonalised and cast as an 'empty neutral vessel to receive the help of the state'; the character was never so dehumanised as when they were being treated humanely. Her triumphant escape was recast as a rescue, and she was depicted as an object of humanitarian pity. Her being believed as a refugee is a stark contrast to present-day Australia, yet the creation of Gilead has resonances to early Aboriginal Australia and the homogenous racial formation of the Australian state. The darkened lighting of the scenes broadcast during the paper seemed to exemplify just how colour was seeped out of the production. There was an implication of the (predominantly white) audience in Crawley's critique, which demanded a radical rethinking of this feminist production.

In another panel, Marco Wan (*Hong Kong*) opened with a paper on dispositions of LGBTQ rights in Hong Kong through the prism of the *Gay Lovers* television program that was censored by the decision of *Cho Man Kit v Broadcasting Authority*. Despite small advances, Wan argued that there is a paradoxical nature to queer visibility in Hong Kong in that heterosexuals are desexualised whereas gay and lesbian people tend to be sexualised. For gay people in Hong Kong, talking about themselves is a kind of nudity, and visibility can increase homophobia. In the second paper, Jan Mihal (*Melbourne*) explored notions of loyalty and dissent, observed how the interpretation of laws is akin to that of musical scores and raised questions of whether the judge/player must be loyal to the composer's/legislator's intention. Finally, Henry Kha (*Auckland*) discussed transgender marriage cases in the Asia-Pacific. Whilst the UK case of *Corbett v Corbett* that annulled a transgender marriage still dominates legal conceptions of sex and gender, it has been widely rejected in Asia-Pacific. There is, however, still a focus on surgery in these cases and laws. This provides a sense of clarity in the judicial and legislative mind and a 'bright line' on the recognition of gender. However, it goes against the wishes of transgender people who want to move from the dominance of the state and state instruments (doctors, judges) in determining gender and sex to a system of self-declaration.

In a later panel on 'Art, culture and the vivid imagination', Des Manderson (*Australian National*) opened with a discussion on temporalities of law in the visual arts. He discussed the here and now moment of viewing an image and opined that, to quote Georges Didi-Huberman, 'we are before the image as before the law' (2003: 31). Manderson built on this idea of the temporal moment of viewing to argue that 'the power of law is the power over time.' In the second paper, Nikos Papastergiadis (*Melbourne*) considered art as events with particular attention to digital public art. He argued that there is no sociality or aesthetic appreciation or popular culture experience without mediation. It could be said that when we are on a phone, we are therefore alone, but it is really a mediated social interaction. Papastergiadis described how the experience of public artwork and its ambience often creates not focus but dispersal and distraction. Finally, Peter Rush (*Melbourne*) spoke on the audio-visual rhetoric of criminal confessions. He raised concerns with the location of confessions, with the closed and secluded room of a police station where most confessions take place being likened to a confessional. He also raised concerns around what was called in *Arthurs v Western Australia* 'the "atmospherics" of the interview': the tone of the voices, the movement of the body, and the idea of a rapt audience. In the discussion that followed, Rush drew from the idea of bodily confessions and discussed 'the event of the confession' and how to make sense of the audio-visual montage.

In a final panel on 'Dispositions of the other', Julen Etxabe (*Helsinki*) spoke on dialogues, in particular metaphors, and how we become captive to the metaphor or visual image we deploy. He also spoke of how judicial language speaks back, often – as was raised in the discussion that followed – in appeal. In a fascinating paper, Marett Leiboff (*Wollongong*) refigured *Brown v Tasmania*, which concerned former Green Party leader Bob Brown's challenge to Tasmania's anti-protest laws, as an embodied theatrical response to the idea of protest. In a close reading of the case, Leiboff posited that the High Court justices had lived through times of great protest – for example, Justice Virginia Bell was an actor who became a lawyer and represented Mardi Gras protestors who were engaged in a form of agitprop theatre – and an echo or memory of protest sat in the judgments. She suggested that exposure to protests can create an image in the mind's eye and that this image can become a memory embedded in the (judicial) body. It is almost as if judgment is a mode of method acting, where the judge draws from emotional memory to perform the act of judgment. Leiboff's mode of presentation was also striking. She moved about the conference stage as if driven by a Grotowskian impulse and, in so doing, reminded us her audience of the

connection between legal thought and the body. Finally, Laura-Jane Maher (*Deakin*) provided a close reading of the opening of a medical treatment case, *Re Lucas*, as an example of narrative judgment that positions the reader to empathise with the parties by drawing on their own lived experiences. The opening paragraphs of the judgment, which concerned access to hormone treatment for a transgender teenager, described how ‘the tension in the courtroom was palpable’, focussed on the facial and other expressions of the audience in the courtroom such as weeping and hugging, and explored the material impact on bodies in court and how Lucas and his family experienced the courtroom. Maher advanced the idea of judgments as autobiography, with judges using judgments to articulate their experiences as readers. However, this thesis was disputed during the discussion that followed. Perhaps what was happening in the opening lines of *Re Lucas* was not the judge engaging in an autobiography but rather attempting a biography – perhaps even a pointing – of Lucas or even the courtroom itself.

In this sense, what the court in *Re Lucas* was doing was exploring the disposition of the applicant and the courtroom that he (temporarily) inhabited, the character, arrangement and temperament of this young person and their space. The court also issued also a powerful dissent against a decision that it could not overrule, *Re Jamie*, which held that access to hormone treatment required court approval, concluding, in its final sentence that ‘the sooner that children such as Lucas and their families do not have to endure the ordeal of litigation to get on with their lives, the better.’ This decision, like Nicholson’s artwork, recalls the theme of the conference, dissents and dispositions, and how the law is arranged and subsequently – sometimes violently, as at the moment of colonisation, and sometimes through tempered judicial language – rearranged.

Yet, unlike Nicholson’s artwork, the decision was bound to words, performed first in the stage of the courtroom and then transcribed for posterity in printed books or online databases. What it was to be in the courtroom during *Re Lucas* – the tears, the touch, the tension – can now only be felt through words. As Thom Giddens writes, ‘in reducing artistic and creative works into textual accounts, encoding cultural experiences and ontologies into sentences and paragraphs, something is lost’ (2017: 377). Yet most papers in this conference moved beyond the paper to read images, films and art and, in this final panel, to perform. There was a real, sustained and exciting engagement with different cultural and artistic forms; not simply looking at the place of law in society but rather exploring its inseparable connection with culture and, in so doing, collapsing false distinctions between law and culture. Nicholson’s

artwork that reads as a collapsed wall seems especially relevant for this boundary-breaking interdisciplinary conference.

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