

## BOOK REVIEWS

### **Tabitha Pearman**

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### ***Native Title Corporations: a legal and anthropological perspective***

by **Christos Mantziaris** and **David Martin**

The Federation Press, 2000.

ISBN 1 86287 372 0

Since the decision in *Mabo v Queensland (No2)* (1992) 175 CLR 1, and the passing by the Federal Parliament of the *Native Title Act 1993* (Cth) (NTA), a considerable body of literature has attempted to develop a coherent theory of native title in Australia. One area previously neglected by the literature is the question of the legal framework for native title management following a determination of native title in favour of a particular indigenous group. In their book, Mantziaris, a barrister, and Martin, an anthropologist, seek to redress this neglected area.

Part I of the book provides a valuable analysis on how native title may be distinguished from other legal mechanisms for recognising indigenous relations with land. The problem of

translating indigenous relations with land into legal rights and interests enforceable within the Australian legal system is also investigated. The current legal framework for native title management is identified in Part II of the book, through an analysis of the formal legislative mechanism created under the NTA. The limitations of the NTA are also identified. Having investigated and criticised the legislative regime, the authors in Part III develop comprehensive process for designing indigenous institutions to manage native title. They go beyond the limitations of the NTA and seek in their analysis to answer the question 'how native title institutions might be better designed?'

This book provides a comprehensive analysis of an important aspect of native title that had previously been neglected in the literature. It is required reading for legal practitioners and others charged with the responsibility of designing indigenous institutions to manage native title, and for law reformers and policy makers with responsibility for the legislation underpinning these institutions.

### **Malcolm O'Dell**

Solicitor – Dwyer Durack, Perth

***Broken Circles: Fragmenting Indigenous Families 1800–2000***

By **Anna Haebich**

Fremantle Arts Centre Press, 2000

ISBN 1 86368 305 4 \$35.00

For legal researchers with an interest in Indigenous Peoples and the law this work is a valuable resource. It covers much of the same ground as *Bringing Them Home*, the 1997 report of the Human Rights and Equal Opportunity Commission Inquiry. Haebich attended many of the hearings. However, she has undertaken extensive research of her own, travelling throughout Australia to conduct interviews and to access the resources of state and national archives and government departments. The result is a work that is a comprehensive overview of events from the arrival of Europeans in Australia to the devastating effects of 20<sup>th</sup> century assimilation policies in the 1990s.

The term 'broken circles' refers to the overlapping relationship of extended families in Aboriginal life and culture and the damage caused by disruption to these patterns. Haebich indicates how this relates not only to family relationships (stolen children) but also relationships to the land (Native Title) and traditional laws (Aboriginal customary law).

The appendices include a series of outline maps of each state which pinpoint key

locations. These maps are similar to those in *Bringing Them Home* although the locations depicted vary. A chronology from 1814/15 to 2000 includes legislation, establishment of government institutions, and appointment of some of the key government officers. The chronology is not annotated as is the list of legislation appended to the *Bringing Them Home* report but nonetheless is a useful tabulation.

The main value in this work for legal researchers, apart from background reading, is the extensive referencing of resources and the bibliography of books, reports and theses, government records, private papers, newspapers, journals and magazines.

**Helen Wallace**

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***Sheila***

By **Lloyd Davies**

Desert Pea Press, 2000.

ISBN 1876861010 \$30.00

In her introduction to this biography of Sheila McClemons, Moira Raynor calls her a hero and states that it is because of the trailblazers

like Sheila, 'those women who got laughed at, belittled, overlooked and joked about', that the women of today have less to prove. It is important for the stories of these women to be told and to be read to gain a better understanding of our profession today.

Sheila McClemans was a pioneer female legal practitioner in Western Australia. She was the first woman to appear as counsel in the Western Australian Supreme Court and with Molly Kingston established the first all-female legal practice in WA. She was secretary of the Law Society for a number of years and was instrumental in the establishment of the Law Society's Legal Aid Scheme. Furthermore, she served as the wartime Director of the Women's Royal Australian Naval Service and was President of the Australian Federation of University Women.

Not only does this book trace the life of a remarkable woman but it also gives us a glimpse of various aspects of life in Perth during the 20<sup>th</sup> century. Lloyd Davies begins his biography of Sheila McClemans with a brief history of women and the law in Western Australia. The early years of the law school at the University of Western Australia and numerous anecdotes about the practice of law in WA over the past 80 odd years provide the current law student or practitioner with a useful insight into the development of the legal profession.

The author knew Sheila personally and clearly held her in high regard. This results in an unmistakable bias in the biography with any adverse material being dealt with in a defensive manner.

Regardless of these shortcomings and its obvious focus on Western Australia, this is an interesting and informative resource not only for those interested in women in the law but also those interested in a broader social history of the legal profession.

### **Clare Ozich**

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### ***Disrupted Families: the Law***

By **Stephanie Charlesworth, J. Neville Turner and Lynne Foreman**

Federation Press, 2000.

ISBN 1862873615 \$45 00

In his foreword the Chief Justice of the Family Court of Australia, Alastair Nicholson, notes that the book 'recognises the diversity of family disputes, the variety of means by which they may be resolved and the importance of interdisciplinary skills in that process'. The Chief Justice also notes that family law can be a particularly blunt instrument if regarded only as black letter law. In their preface the authors state that their aim is to 'give an accurate

picture of the interdisciplinary context in which modern family law practice must take place'. The authors provide a fresh perspective on the subject matter of family law in Australia.

Issues relating to law and social work are explored in Part I of the book (chapters 1–4). Law and social work issues are discussed generally in chapter 1. The authors encourage lawyers and social workers to understand more about the perspective and objectives which they each have when assisting clients. Teamwork between professionals assisting families is encouraged.

Professional responsibility and accountability is explored in chapter 2. Ethical and legal obligations of social workers and lawyers are discussed, together with an exploration of the consequences of breaches of those obligations. Several miscellaneous issues are discussed in chapter 3, under the somewhat cryptic heading 'Family Law and its Implementation'. The issues discussed include the scope of federal and state jurisdictions, the jurisdiction of the Family Court of Australia, primary dispute resolution, the Family Court mediation service, arbitration, legal and counselling professionals in the Family Court, the future of the Family Court and the law of marriage.

A brief summary of the major relief available under federal legislation is discussed in

chapter 4. The issues discussed include divorce, property settlement, spousal maintenance, child support, parental responsibility, parenting orders and child abduction.

Significant issues not always at the forefront of family law discussion are helpfully ventilated. In particular the authors explore family law matters under State jurisdiction in Part II of the book (chapters 5–8). Issues relating to exnuptial children, artificial reproduction, adoption, foster care, de facto partners and family testamentary dispositions are discussed in chapter 5. Family violence and child welfare are explored in chapter 6. Mediation is discussed in chapter 7. Professional training and roles are discussed in chapter 8.

The voluminous endnotes following each chapter are an advantage for the studious reader who wishes to be taken to primary sources and given more details than found in the text.

The book could have been set out in a much more user-friendly way. Although the text in each chapter is broken by frequent heading and subheadings, no indication is given about these in the contents at the front of the book where only bald chapter headings are stated. A suggestion for future editions may be to provide the contents with more detail which

would assist the reader looking for discussion of a particular issue. While the index at the back of the book provides a starting point in this regard, a detailed table of contents would give the reader a helpful snapshot of the structure imposed by the authors over the quite diverse material contained in the book.

This book will be of interest and assistance to a wide audience: to students wanting to place black letter family law in a wider perspective; to the layperson who wants a contemporary discussion of family law in Australia; and to the legal practitioner who is interested in broadening his or her perspective of the discipline of family law.

**Michael Berry**

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