

# Passages: law, aesthetics, politics

## Abstracts of Papers

Author	Abstract
<p>Maria Aristodemou</p> <p>Birkbeck Law School, University of London</p> <p>Keynote</p>	<p><b>The Trouble with the Double: Expressions of Disquiet in and Around Law and Literature</b></p> <p>Here I use Fernando Pessoa's meditations in 'The Book of Disquiet' as a springboard from which to examine the subject's (in our case, Law &amp; Literature's) search for identity. My claim is that the concept of identity is a metaphor we spend our whole life constructing and that the searched-for anagnorisis in and by another subject holds only one promise, the promise of humiliation. My suggestion is that in some encounters between law and literature, literature becomes law's symptom and my hope is that law should resist construing literature as the other that will complete it. That the more radical way of addressing the encounter between law and literature is not between a subject and an object, but as that between a subject and its double. Since the unconscious, as we know, knows no negation, this, I claim, is the way to take the unconscious seriously. So another title for my talk could be: The distinction between law and literature doesn't concern the unconscious.</p>
<p>Katherine Biber</p> <p>Law Division, Macquarie University</p> <p>Keynote</p>	<p><b>Captive Images: Dark Places</b></p> <p>This paper explores the relationship between law and photographs in the production of fantasies about race and transgression. Law has repeatedly encountered photographic images, and each encounter is haunted by fear and desire. Looking at surveillance images, archival photographs and artworks, I explore how law undertakes corporeal examinations and conflates the experiences of seeing and believing. I also discuss how, when examining the transgressive image, notions of property, security and nation are implicated. This paper argues for a jurisprudence of the visual, exercising caution before we try to learn about the world from photographs.</p>
<p>Kelley Burton</p> <p>School of Law, Queensland University of Technology</p> <p>Panel 5C</p>	<p><b>Zooming in on the Right to Privacy: Journalists making and publishing photographs and video clips</b></p> <p>Journalists face a conflict between freedom of expression and privacy when taking photographs or video clips to support the text of their articles and television stories.</p> <p>This conference paper asserts that a journalist making a non-consensual photograph or video clip of another person and publishing it in a newspaper or magazine, or on a website or television program impacts more heavily upon privacy rights than a journalist who simply observes another person without their consent with the naked eye or binoculars. One of the arguments supporting this assertion is that a photograph is a permanent record that may be distributed to a world wide audience in a different context. This conference paper also asserts that privacy rights exist in public places and are not restricted to private places. It advocates the legal regulation of observation and making a visual recording (for example, a photograph or video clip) in public and private places as well as distributing (for example, publishing in a magazine) a visual recording to protect privacy interests.</p> <p>This conference paper considers how the criminal law and tort law regulate journalists who observe, make and distribute non-consensual photographs and video clips of other people. In terms of criminal law, a comparative analysis is made between Queensland, New South Wales and New Zealand as these jurisdictions have introduced offences or proposed offences that specifically target the non-consensual visual recording of other people. In terms of tort law, the developments of the tort of privacy in Australia and New Zealand are briefly considered. This conference paper reflects on how the criminal law and tort law strikes a balance between privacy rights and freedom of expression in this context.</p>

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<p>David Caudill</p> <p>Villanova University School of Law</p> <p>Panel 4C</p>	<p><b>Law as a Space Between Science and the Humanities: Arguments and Images</b></p> <p>In light of C.P. Snow's famous divide between the two cultures, law seems to use knowledge from the humanities and from science without ever becoming part of either. While the law and literature movement emphasizes the literary aspects of law, recent U.S. legal decisions and scholarly opinion regarding expertise in the courtroom seek an alliance with science to stabilize the cultural and rhetorical aspects of law. The call for empirical studies in the legal academy reflects this trend. I argue that many judges and scholars have an idealized image of science that does not take account of its social, institutional, and rhetorical features. To explore this argument, I consider the images of experts in several recent trial movies--while the images of scientists in film have long been a subject of science studies, and while the images of lawyers in film has garnered interest in law and literature studies, the study of the images of scientific experts in trial movies is somewhat new.</p>
<p>Gary Cazalet</p> <p>Melbourne Law School, University of Melbourne</p> <p>Panel 1B</p>	<p><b>The Killing of Joe Cinque: Exploring Ethical Complexity</b></p> <p>The study of cases, text books and legislation in a typical law course '... sharpens the mind by narrowing it' – a phrase attributed to Edmund Burke. Ethical consideration, the appreciation of multiple points of view, client empathy and critical independent thought are essential skills for lawyers. Law school teaching should include materials that provide students with an understanding of the social context of the legal process. The use of fiction and non-fiction stories in teaching counteracts the 'narrowing of the mind', by requiring students to engage with the human condition and wrestle with competing ethical positions. Through a classroom case study, the author examines the use of different media to explore responses to a killing. The teaching is built through reading Helen Garner's Joe Cinque's Consolation, considering judgments, listening to radio interviews and participating in a presentation by Helen Garner. The author considers the pedagogical advantages of using a range of media in teaching, and discusses the use of story telling in developing students' critical independent thought and reflection. The author argues that the inclusion of literature in law teaching is essential to developing students' appreciation of ethical complexity.</p>
<p>Janet Chan</p> <p>School of Social Science and Policy, University of New South Wales</p> <p>Panel 3A</p>	<p><b>Dangerous Objects: Surveillance and the Constitution of 'Suspicious Packages'</b></p> <p>The act of imputing suspicion on someone or something under surveillance is theory-driven: it has to do with incongruence. For example, Ericson notes the tendency for police patrol officers to develop indicators of abnormality: these include '1) individuals out of place, 2) individuals in particular places, 3) individuals of particular types regardless of place, and 4) unusual circumstances regarding property' (1982:86). The production of suspicion is thus based initially on surveillance, which provides certain indicators of incongruence, which are in turn interpreted as evidence for suspicion. This paper explores the production of suspicion through surveillance by examining the phenomenon of 'suspicious packages'. Using images and materials from events and governmental reactions to terrorist attacks as sources, the paper discusses the constitution of 'suspicious' mail packages as 'dangerous' objects and the legal and aesthetic issues of making art on this topic.</p>

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<p>Richard Coates</p> <p>Aboriginal Land Rights Movement</p> <p>Panel 4A</p>	<p><b>Performance and Indigenous identity in criminal law</b></p> <p>This paper utilizes postmodernism, law and literature and critical race theories to examine how indigenous identity is constructed by and for the criminal law in Australia.</p> <p>The argument will be advanced that the construction of Aboriginal identity by the criminal courts is used in a colonial fashion to deny the evolution of Aboriginal identity and serves more as window dressing than proper recognition. Criminal courts construct identities for Aboriginal people that continue to trivialize the history of Aboriginal people and avoid any proper reconciliation of Aboriginal history.</p> <p>Who constructs what it means to be Aboriginal and how is constructed identity used by the criminal law?</p> <p>Who gets to tell the stories, and are those stories concerned with the reality of Aboriginal identity?</p> <p>Do storytellers have to invent or construct an artificial Aboriginality to fit with what the criminal courts expect or demand?</p> <p>The challenges and hurdles Indigenous oral storytelling faces is explored. The role of the lawyer as storyteller is considered. The concept of aesthetic experience is used to explore how stories are told in the criminal courts and the nature and role of performance is examined.</p> <p>Do processes such as Aboriginal sentencing conferences and the Nunga and Koori courts really impact upon how the courts construct Aboriginal identity?</p> <p>Strategies are discussed as to how storytellers for Indigenous people might challenge and combat perceived and constructed Aboriginal identities in the criminal courts but the paper asks whether indigenous stories might continue to be marginalized due to the manner in which criminal courts construct (criminal) identities and what use the court will make of that identity.</p>
<p>Penny Crofts</p> <p>Faculty of Law, University of Technology, Sydney</p> <p>Panel 5B</p>	<p><b>Visual Contamination: Disgust and the regulation of brothels</b></p> <p>Brothels have been able to operate as legitimate commercial businesses in NSW for over a decade. Despite this, brothels continue to be treated differently from other commercial businesses with similar amenity impacts. The 'planning principles' enunciated by the Land and Environment Court in <i>Martyn v Hornsby Shire Council</i> [2004] have been highly influential in the differential treatment of brothels. These planning principles are highly restrictive and go beyond traditional planning concerns. This paper argues that these principles are animated by an aesthetic of disgust. William Miller's text <i>Anatomy of Disgust</i>, provides insight into why brothels may trigger disgust, due to their association with sex and immorality. The planning principles reflect disgust reactions, particularly in terms of the desire to remove the polluting and contaminating objects from the visual field. Finally, this paper considers strategies for reform in light of the association of brothels with disgust.</p>
<p>Derek Dalton</p> <p>Law School, Flinders University</p> <p>Panel 4C</p>	<p><b>Brokeback Mountain: A requiem for thwarted love and a discussion of cinema's treatment of gay desire</b></p> <p>This paper foregrounds Ang Lee's critically acclaimed and commercially successful film <i>Brokeback Mountain</i> in a discussion about the depiction of gay love and desire in contemporary cinema. Amongst other things, the paper seeks to examine how cinema acts as a form of testimony which, in telling a particular story of thwarted love, speaks to universal themes of proscriptions of silence and visibility in relation to gay desire. By exploring the notion of testimony, the paper seeks to challenge the simplistic notion that <i>Brokeback Mountain</i> is a 'universal love story'. Since the failure of the so-called 'new queer cinema' Hollywood cinema has begun to engage with gay themes in ways that are both commercially and artistically 'safe'. The irony of such an engagement resides in the fact that <i>Brokeback Mountain</i> ultimately fails to fully document the true nature of closeted love. The paper examines this failure and questions the extent to which homosexual desire can fully be assimilated in commercially viable cinema. The paper ponders the imaginative limitations of contemporary cinema to imagine gay desire in an era where the artistic gains made by directors like Pasolini, Jarman and Fassbinder seems to have been surrendered. Finally, the paper asks: what needs to be surmounted for a truthful engagement with gay male desire in contemporary cinema?</p>

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<p>Ian Duncanson</p> <p>Griffith Law School, Griffith University</p> <p>Panel 1A</p>	<p><b>Civilization and Englishness: The construction of the proper subject</b></p> <p>Jeremy Bentham began his writing career in 1776, and although much of his work remained unpublished until recently, his influence among social reformers and social engineers was enormous. The paradigm within which social engineering projects were established and justified was that laws derived their unique status from their belonging to the category of Law, and that the Law of a particular state obtained its obligatory power from its origin in the will of the sovereign, itself unbound by law. Two consequences followed, one necessary, one merely predictable. The only opposition to the sovereign will was opinion and discussion, neither of which could be guaranteed apart from the sovereign will, since natural rights were 'nonsense on stilts'. Second, the major focus of legal pedagogy was confirmed in its preoccupations with forms and techniques. The human and the humane were simply secondary and precarious dependencies on this 'barbarous, ill-informed jurisprudence'. Considering the laborious transformation of 'England' from geographical expression to cultural artefact, I consider the cultural underpinnings that common law and the 'matchless constitution' depended upon, their plasticity and openness to compromise and negotiation, and argue, not for a return to a lost world, but to a lost vision and way of thinking, one obscured and, indeed, perverted, by what Leavis once called 'technologico-Benthamism'.</p>
<p>Kirsty Duncanson</p> <p>Department of Criminology, University of Melbourne</p> <p>Panel 6A</p>	<p><b>The Very Englishness of Charles and the Otherness of Woman: The imaginative configuration of (Prince) Charles as the authentic constitutional Crown in Parliament, against and through the body of women</b></p> <p>In this paper I demonstrate the way in which two of the most widely consumed romantic texts of English 1990's popular culture, <i>Four Weddings and a Funeral</i> (Newell; 1994) and <i>The Funeral of Diana, Princess of Wales</i> (BBC; 1997), proffer an imaginary national constitution – the structure of the body politic - as the figure of (Prince) Charles. This takes place in the textual configuration of two romantic heroines, and their bodies, as 'other' to Charles. These bodies of women provide the opposition against which Charles' English constitutionality is confirmed. Additionally, in the trajectory of the romance narratives, these othered bodies are subsumed back into the rightful body politic. Thus, through these texts, the Crown in Parliament is naturalised through the generic fulfilment of desire; substantiated through the submission of the other; and reinvigorated through the colonial absorption of that other.</p>
<p>Catriona Elder</p> <p>Department of Sociology and Social Policy, University of Sydney</p> <p>Panel 6A</p>	<p><b>Crossing places: representations of feminine bodies at the national border</b></p> <p>This paper explores some of the raced and gendered aspects of border crossing in the (post)colonial nation of Australia. In particular it focuses on issues of violence and desire in the representation of feminine bodies crossing borders. Drawing on media representations, but also government narratives, the paper analyses the meanings ascribed to feminine bodies being expelled as well as feminine bodies entering the Australian nation/state. Examples include Mrs Petrov, the Red Bikini girl, the Cougar Bourbon model and Vivian Alvarez. Focusing on what Teresa Goddu has called the dream world of national myth disrupted by the nightmares of history (1997:10) the paper will explore the history of the ambivalence that is built into the drive to regulate the Australian border, analysing the way understandings of legal or illegal crossings have been and continue to be (re)produced in terms of gendered understandings of pleasure and danger. In doing this the paper will challenge the idea that fear of invasion is premised on an unambiguous xenophobia, arguing instead that an ambivalence underpins relationships with outsiders; an ambivalence that encompasses both pleasure and loathing.</p>

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<p>Michael FitzGerald</p> <p>Monash University</p> <p>Panel 4B</p>	<p><b><i>Leges Ludi: Law, Seriousness and the Self in Early Modernity</i></b></p> <p>In this paper, I turn to the work of the Spanish humanist Juan Luis Vives in order to examine a structure which mediates between 'the two cardinal moods of life' (Huizinga) - earnest and jest, seriousness and play - in the early modern relation to the self. The appeal to the figure of the Law, and to the legislative dimension of private conscience, marks out a distinct moment in the experience of a subject called on to take up an attitude towards that experience, to parse it according to the ideological syntagms of the age: <i>dignitas</i> or <i>vanitas</i>, tears of Heraclitus or laughter of Democritus. I argue that the approach to the problem of play in Vives' pedagogical theory reflects the 'permanence' of a solution established by Aristotle, and restored by Aquinas to accommodate a repressive tradition of apostolic and patristic severity. Aristotle's analysis – by way of a distinction between urbanity and buffoonery – places a premium on the freedom and autonomy of the subject; the lengths to which a joke may go, the limits beyond which one can no longer regard the world <i>sub specie ludi</i>, all such borders are to be 'legislated' by the individual conscience. I trace out the legacy of this analysis in Vives' attempt to institute six 'laws of play,' his most focussed statement of the relation between earnest and jest that is an axis of the humanist project in particular, and of early modern subjectivity more generally.</p>
<p>Maria Giannacopoulos</p> <p>Macquarie University</p> <p>Panel 2A</p>	<p><b>Impasse: The Non-Justiciability of Sovereignty and its Relation to Passage</b></p> <p>The type of sovereignty that is in operation in Australia is one that denies its relation to passage. This is because when sovereignty operates as though it is one, unitary, as though it is without a clear beginning and as though it has no need to justify its operations it denies its origins as being tied to the violence of colonial passage. This violent denial functions to create the space of indistinction between sovereignty/law/violence in the sense that it invisibly brings into being the 'proper' point of origin from which all Australian law can then be passed. All Australian law that emanates from this sovereignty is inextricably linked to a project of whiteness. For the purpose of this paper I am interested in select passages drawn from Australian law insofar as they relate to the production of sovereignty in and through law even as this relation is denied. I will draw on passages from Mabo, Tampa and recent Anti-Terror laws to make my argument about the inextricability of sovereignty/law/violence.</p>
<p>Richard Hale</p> <p>Stockland</p> <p>Panel 5C</p>	<p><b>Across Paris, The Cyber Highway and Self-Censorship Without Borders</b></p> <p>A look at the failures of censorship. Is self-censorship a better answer? Censorship was used for centuries by authorities to dictate the reading and viewing habits of the masses.</p> <p>The paper starts with an extract from the DVD of Claude Lelouch's 1976 film 'C'Etait Un Rendezvous' in which he drives his Ferrari at illegal speeds across Paris in about 8.5 minutes with numerous traffic violations. Luckily this extremely dangerous escapade results in no injuries – and has a mere 'PG' classification. Fast cars, murder and mayhem do not faze the censors in the way sex does.</p> <p>Next a few chicaneries on the cyber highways with a pit stop at 'Ken Park' – where the Australian censors became entangled with the depiction of consensual teen sex between characters over sixteen but under their 18 year definition of adults, resulting in the notorious banning of its art house screening at the 2003 Sydney Film Festival and the anecdotal (unintended) result that school children were downloading copies from the internet to sell at school.</p> <p>The borderless internet makes a mockery of censorship – if you can watch 'Ken Park' in Christchurch, is there any real harm in buying 'Baise Moi' or 'Ken Park' over the internet (safely navigating the e-jungle of amazon.com).</p> <p>Last destination is the 'C' word – to which a whole chapter is dedicated in Ruth Wajnryb's book 'Language Most Foul'. A documentary to be shown on the self censoring SBS is running into time slot difficulties as to when the word can be used – even on newsreel footage of T-shirts at a demonstration.</p> <p>40 years on from the Oz trials, the internet has blurred the lines of government censorship to voluntary self-censorship, making us ask why anyone ever bothered to try to ban books like 'Lady Chatterley's Lover' and 'Lolita'?</p>

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<p>Samantha Hardy</p> <p>Faculty of Law, University of Tasmania</p> <p>Panel 2B</p>	<p><b>The Text of Muteness in Personal Injury Litigation</b></p> <p>This paper identifies a characteristic of the genre of melodrama that is found in personal injury litigation: the text of muteness. The paper explores the manifestation of the text of muteness in three different aspects of the narrative: mute gesture, the mute role, and the relationship between muteness and suffering. It does not suggest that there is a causal relationship between melodrama and litigation, but rather argues that there are striking similarities in the narratives, and that examining the text of muteness in personal injury litigation draws attention to a number of characteristics of the process that are often overlooked. In particular, the importance of gesture, both before and during the trial, and the particular tensions faced by a personal injury litigant in relation to verbalising their claim and their suffering. Considering the role of the plaintiff as analogous to the mute role in melodrama also focuses attention on a number of power structures often ignored in examinations of personal injury litigation. In particular, it reveals the way in which the narrative effectively renders the plaintiff mute, thus restricting the plaintiff's ability to introduce complicating factors which have the potential to undermine the legitimacy of the legal narrative. The plaintiff's muteness also reinforces the control of other characters in the legal narrative who are empowered to speak authoritatively.</p>
<p>Veronica Hendrick</p> <p>Jay Jay College of Criminal Justice, City University of New York</p> <p>Panel 5A</p>	<p><b>Legislated Inhumanity: The Expanding separation of European Indentured Servants and African Slaves</b></p> <p><u>Beloved</u>, Toni Morrison's Pulitzer Prize winning novel, portrays the ramifications of US legal policies that codified people as either human, therefore entitled to rights, or animal, thereby allotted to the category of slave. It is this categorization that sets the main action of the novel into gear. Sethe does not run because of the harsh treatment she receives as a slave; instead, she runs from the list that <i>Schoolteacher</i> makes in which her animal and 'humanish' characteristics are lined up on opposing sides of the page. This, and the knowledge that her children will be assessed as animals, inspires her flight from the Sweethome plantation. Like the historical case of Margaret Garner, Sethe chooses infanticide rather than allow her children to return to slavery.</p> <p><u>Beloved</u> spans from ten years before to twenty years after the US Civil War. Therefore, it is the Kentucky Codes of slavery of the 1860's which define the legal status of the Sweethome slaves. Although every slave state had its own slave code and body of court discussions, all states 'made slavery a permanent condition, inherited through the mother, and defined slaves as property.' This dehumanizing aspect of slavery is accentuated in <u>Beloved</u>. Importantly, even the white character of Amy Denver, herself a runaway indentured servant, refers to Sethe time and time again as an animal. This indicates that the line between indentured servant and slave has been firmly delineated. Prior to 1682 there were no laws distinguishing a slave from a servant. However, the slave codes became more entrenched in racial distinctions: 'anti-amalgamation' and 'manumission' laws became common and Christian baptism 'would no longer affect the bondage of blacks or Indians.' These codes distinguish Amy from Sethe based upon race and birth right and establish Amy on the lowest rung of white supremacy. Amy is granted human status and Sethe remains chattel.</p>
<p>Marc Hiatt</p> <p>University of Melbourne</p> <p>Panel 4B</p>	<p><b>Legal narratives of Freedom Trace a Kantian Pattern</b></p> <p>When can a doer of an act be made legally responsible for that act? The common law's attempts to resolve the problems this question raises shares the same structure as Immanuel Kant's attempt to resolve the dialectic of freedom and natural necessity that he identifies in the Critique of Pure Reason. Law and Kantian philosophy are related not merely externally: in their respective discursive registers both attempt to narrate a felicitous relation between individuals and the (social) universal. This paper locates that structure and shows how an understanding of it can illuminate the relation of judicial discretion to the refinement of categories in the case-law history, of the open-endedness of the common law to the objectivity of its judgments, and of law's morality to its amorality.</p>

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<p>Rebecca Hiscock</p> <p>Department of Criminology, University of Melbourne</p> <p>Panel 5B</p>	<p><b>'I needed the money': Negotiating the identity and performance of street prostitution in the Magistrates' Court</b></p> <p>Historically conceptualized as diseased, unclean and socially contagious, the body of the street prostitute has been constructed as both offending and offensive, a social threat that must be controlled. The public performance and display of the prostitute's body not only transgresses the law, but is a performance that serves to shame the body through the conflation of a sexual act with a deviant identity. Despite its illegal status under the Prostitution Control Act 1994, street prostitution occurs frequently in the St. Kilda area. By defining the physical parameters in which prostitution can and cannot occur, the Prostitution Control Act defines the space in which the practice is considered most deviant – namely, the street. Recent State and Local Government attempts to reform street prostitution policy have largely failed, however despite this failure, the Magistrates' Court has successfully instigated a monthly list – or informal community court – of street prostitution-related charges. Recent observations of the Magistrates' Court Street Prostitution Session reveals a disjunction between police practice, the sentence of the Court and official Government policy. This paper argues that this disjunction between policing, policy and practice has important implications in the negotiation of identity by street sex workers themselves. Drawing on the work of Foucault this paper will explore the negotiation, enactment and performance of identities of street prostitution in these official policy responses and legal discourses.</p>
<p>Andrew Hurley</p> <p>School of Languages, University of Melbourne</p> <p>Panel 4A</p>	<p><b>Re-imagining <i>Milirrpum v Nabalco</i> in Werner Herzog's <i>Where the Green Ants Dream</i></b></p> <p>In 1983, the German filmmaker Werner Herzog realised a decade-long ambition to create a film thematizing the struggles of Aboriginal groups against mining companies operating in northern Australia. <i>Where the Green Ants Dream</i> (WGAD), was reviled by Australian pundits and also disappointed international critics. However, it raises important issues, not only about the creative appropriation of Aboriginal mythology, but also about the representation of Aboriginality and the struggle for Aboriginal land rights. This article reveals how Herzog relied heavily upon <i>Milirrpum v Nabalco</i> [1971] 17 FLR 141 in writing his filmscript. In doing so, he came up with a hybrid tenuously situated between documentary and feature film. What complicated this strategy was the fact that Herzog—whose unorthodox style often involves casting non-professional actors in important roles—also cast Wandjuk and Roy Marika, who had both been witnesses in <i>Milirrpum v Nabalco</i>, in lead roles. They were ultimately uncomfortable with re-performing a court-room sequence in which they had once participated in earnest. This article analyses Herzog's mix of documentary and fiction, examines the reception of WGAD—both by white Australian critics and by Aboriginal Australians involved with the film—and argues that, while the film may be flawed, it is valuable because it threw (and continues to throw) disquieting yet important issues into perspective.</p>
<p>Marett Leiboff</p> <p>Law School, Queensland University of Technology</p> <p>Panel 3B</p>	<p><b>Tristram Shandy and the limits of copyright law; Or, is a blank page an idea?</b></p> <p>Australian copyright law is unable to provide copyright protection to ideas. However, creative outputs can be conceived of as ideas, rather than the protectable expressions that are given the status of a copyright work. Denial of the status of work will affect the economic right of the creator, but also the creator's moral rights. This paper explores copyright law's adoption of a Lockean conception of ideas to the 18<sup>th</sup> century literary property debates, but shows that in the 18<sup>th</sup> century, the concept of ideas had not hardened into the forms used now. Instead, the law acknowledged books (in their conceptual sense) and compositions that, it is argued, can provide a means to include creative outputs that may now be classed as ideas. Through the agency of Lawrence Sterne's digressive comic masterpiece, <i>Tristram Shandy</i>, a nine volume novel published at the height of the 18<sup>th</sup> century literary property debates, the notion of Lockean ideas, textual sparcity and the concept of the creative process is juxtaposed against the oppositional categories of idea and expression now used in copyright law. It is suggested that the adoption of a concept like 'book' or 'composition' for particular types of textually sparse creative outputs could provide an alternative legal recognition based on the framing of textual elements now refused copyright protection.</p>

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<p>Patrick Lenta</p> <p>Department of Philosophy, University of Kwazulu-Natal, South Africa</p> <p>Panel 6A</p>	<p><b>The Evangelist Judge: <i>The Free Diary of Albie Sachs</i></b></p> <p>Ronald Dworkin recently remarked that 'South Africa has become ... the outstanding example of a successful interplay between constitutional law, law in general, really, and political morality'. Formerly an anti-apartheid freedom fighter and member of the African National Congress and in 1994 appointed as a judge on South Africa's Constitutional Court, Albie Sachs has contributed significantly to the achievement to which Dworkin refers, principally as the author of a succession of judgements in which he has given content to the concept of 'difference'. He is, more so than most other judges, a literary judge: a contributor to debates on how art and literature should be reconceived to respond to the shift from apartheid to post-apartheid society, a judge for a national literary competition, a writer of 'literary' judgements and the author of four volumes of memoirs. This paper focuses on his most recent memoir, <i>The Free Diary of Albie Sachs</i> (2004), in which he interweaves his 'constitutional evangelism' – his lectures to European audiences on the benefits of truth commissions and bills of rights for post-conflict societies – with his impressions of travelling though Europe as a cultural tourist. The paper addresses the theme of 'passages' in two ways: it considers a South African judge's experiences in Europe and it sheds light on an aspect of the transition from apartheid to constitutional democracy by foregrounding the tensions present in Sachs' ideological transformation from communist freedom fighter to liberal judge, from 'radical' to 'legitimiser'.</p>
<p>Bronwen Levy</p> <p>School of English, Media Studies and Art History, University of Queensland</p> <p>Panel 5A</p>	<p><b>Ties That Bind: J. M. Coetzee's Disgrace</b></p> <p>The paper seeks to examine and problematise the literary linking of racial and gender politics in J. M. Coetzee's <i>Disgrace</i>, a novel about masculine sexual transgression in the social context of racial political transition in the new South Africa. The focus of the paper is on what and how David Lurie notices—and doesn't notice—about his daughter, and about black and coloured South Africans. The paper argues that the point of view of David Lurie, a middle-aged and middle-class white South African, is characterised by estimation and underestimation, by attention that is usually inattention. How he takes, or doesn't take, those around him seriously varies, and in a complex relation, according to questions of race and gender. This underlines the issue of space and property rights that structure both the perspectives of David Lurie, the character, and the novel narrated apparently in or from his name.</p>
<p>Claire Loughnan</p> <p>University of Melbourne</p> <p>Panel 2A</p>	<p><b>Detention and the Dwelling: Levinas and the refuge of the asylum seeker</b></p> <p>This paper engages with the work of philosopher Emmanuel Levinas on the dwelling, and on hospitality, as a means of challenging the detention of asylum seekers in Australia.</p> <p>Levinas describes the dwelling as a site enabling the self to seek refuge. It enables the 'recollection' of the self, before going back out into the world. Within detention however, there is no refuge from the interminability of existence, no way of marking my engagement with the world. For detainees, the absence of the homeliness of the dwelling is also the absence of the possibility of the ethical encounter. This denial emerges out the privileging of our own 'dwelling', as a way of countering the request for 'home' by the refugee. According to Levinas:</p> <p style="padding-left: 40px;">'One has to respond to one's right to be, not by referring to some abstract and anonymous law, or judicial entity, but because of one's fear for the Other. My being-in-the-world or my 'place in the sun', my being at home, have these not always also been the usurpation of spaces belonging to the other man whom I have already oppressed or starved, or driven out into a third world ...'</p> <p>The significance of Levinas' work on the self, and on the dwelling, is starkly highlighted when we consider that the writing of his early piece of work, <i>Existence and Existents</i>, was almost entirely prepared whilst Levinas himself was incarcerated. This paper intends to examine parallels between the detention of asylum seekers in Australia, and the work which emerged out of his own incarceration, in order to suggest an-other way of objecting to detention which moves beyond 'some abstract and anonymous law, or judicial entity.'</p>

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<p>William MacNeil</p> <p>Griffith Law School, Griffith University</p> <p>Panel 4C</p>	<p><b>'First rule about fight club—no talking about fight club!': The perverse core of legal positivism</b></p> <p>Fight Club packs quite a punch, both literal and figurative. Literal, in that David Fincher's cinematic adaptation of Chuck Palahniuk's cult novel is one of the most graphic depictions of fisticuffs on film. Figurative, in that, as this paper will argue, Fight Club is shadow-boxing with, and as none other than the concept of law itself. That concept turns out to be the jurisprudence of the rule as defined by Oxford legal philosopher, Herbert Hart, in his mid-century bid for the championship of English legal theory. For Fight Club, so this paper will argue, provides the central metaphor for, and dramatises the pugilistic slugfest that is legal positivism: with Hart, and his rule system, in one corner; and John Austin, and his command theory, in another. The outcome of this juridical boxing match, however, remains highly contested to this day, with neither side taking the championship title. This draw arises because Hart never really solved what might be called the 'scandal of legal positivism'—namely, the violence latent in its 'command theory'. Instead of replacing this violence with rules, he displaces it to the rule system itself, especially to the rule of recognition, rendering it riven by an on-going brawl between law and morals. This displacement, I argue, is allegorised in Fight Club's tale of two fighters—who turn out to be the same, pathologically perverse person. But, oddly enough, this very disclosure of pathology is what delivers Fight Club from its sado-masochistic spiral, enabling it to 'separate' itself, unlike Hart, from what I call, with a nod to Slavoj Žižek, the 'perverse core' of legal positivism. So the stakes are high in the ringside rounds here because Fight Club may provide a solution to the impasse that afflicts an Anglo-American jurisprudence still fighting its way out from under the shadow of Herbert Hart: a cultural legal solution which, ironically, returns legal positivism to its violent origins.</p>
<p>Fiona McAllan</p> <p>Department of Sociology, Macquarie University</p> <p>Panel 1A</p>	<p><b>Rites of Passage?</b></p> <p>The concept of Australian democracy encompasses an assumedly unified culture where every sovereign subject possesses equal rights. Yet an assumed unity covers over the pre-existing indigenous in order to ground this homogenous conception. As a continuing threat to the democratic foundations of Australian sovereignty, the indigenous continue to find themselves on the liminal fringe of a politically contingent space, where they lose the material structures that are privileged by common law. Sovereign legislations continue to uphold a fixed notion of community that relies upon a binary that prioritises identity over difference, which denies the ongoing constitutive relations of shifting subjectivity entailing inter-subjective responsibilities. Difference, as in indigeneity, is foreclosed legislatively, in order to define and maintain the nation's continuity with its British Commonwealth roots and traditions.</p> <p>With a focus on the appearance of representative bodies, while hiding the power relations that materially construct denial and oppression, claims for recognition, in contemporary debates regarding human rights, can problematically reinforce an essentialised concept of oppressed indigenous other. Specificity regarding rights becomes compromised and oppositions emerge when tied to a base of equivalence. Recognition, Kelly Oliver suggests, is a symptom of the pathology of oppression, where a dominant recogniser and oppressed recognisee is maintained. Reliance on rights and reparations emphasizes continuity with the past at the expense of shifting and constituting relations, so that indigenous difference is circulated representatively as an ossified natural identity, maintaining the binary between indigenous and non-indigenous as founded, while also dividing the indigenous communities themselves into traditional and inauthentic. The oppositions hide how identity is continually differentiating, never present, always deferred. Relations between subjects are dynamic and unearth assumedly fixed foundations that foreclose this relatedness. Duncan Ivison states 'The subject of rights is not a juridical subject, rather a subject formed out of specific processes and sites of struggle'. (Ivison, 98) Can legislation consider the shifting power relations that construct subjectivity in its relatedness rather than focus on the representative bodies?</p>

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<p>Ben McLean</p> <p>Monash University</p> <p>Panel 1A</p>	<p><b>Legal and Cultural Authority in the New World: A postoccidentalist counter history</b></p> <p>Latin American writers, such as Eduardo Galeano and Carlos Fuentes, have acknowledged that the continuing neocolonial subservience of the region stems from the initial contact at the point of Discovery and Conquest. The roles established at that point have ever since been supported by the discourse of Occidental history. However, the postmodern condition and its effects of Globalization and Tribalism permit us the cultural space to reappropriate history, and poststructuralist theoretical innovations, such as Michel Foucault's genealogical approach, give us a method for doing this. The present study attempts this, though on a modest scale. Through genealogical historical reconstruction it presents a counter-history that uses as its focal point the circumstances upon which the very claim to authority over the discovered lands was based. Rather than offering 'new' facts, the counter-history offers a deconstruction: a reorganisation of existing sources with a different emphasis. Denied are the implications of previous historians, and inherent in History itself, that Latin American inferiority necessarily flowed from the circumstances of discovery and colonization by the Spanish, and that the undertaking was fundamentally a pious one and therefore justified on Christian religious grounds. Particular attention is given to highlight the legal problems posed by a desire to profit from the discovery of land that was nonetheless already inhabited, with discussion of the legal grounds for claiming authority over the lands by the Spanish Crown, the status of the lands' inhabitants, and the relationship between the two.</p>
<p>Dirk Meure</p> <p>Faculty of Law, University of New South Wales</p> <p>Panel 6B</p>	<p><b>'homo hermeneutics' a reading of Eribon's <i>Insult and the making of the gay self</i></b></p> <p>My piece is an experimental reading of Eribon's <i>Insult and the making of the gay self</i>. I use his work on gay subjectivity to nuance/modulate some Foucault/Deleuzian thoughts on the subject.</p>
<p>Richard Mohr</p> <p>Faculty of Law, University of Wollongong</p> <p>Panel 4B</p>	<p><b>Identity Crisis: What's missing from the legal subject?</b></p> <p><b>Cards and Crises: Identity and the Inadequacy of the Legal Subject</b></p> <p>Legal identity is founded on the need to attribute blame, responsibility or rights to particular people. This demands continuity over time: the person who signed the contract or wielded the knife then must be the same one who is held accountable now.</p> <p>Legal administration guarantees that continuity through physical records, such as identity cards, which collect data such as height or date of birth, as well as physical traces such as signatures and fingerprints are collected.</p> <p>What's missing from this concept of identity? With the passage of time we change physically and personally while we continue to act and experience life. By essentialising and freezing identity in time, legal personhood suppresses specific elements of what it is to be human.</p> <p>Those elements are explored through four literary characters: Ulysses, Don Quixote, Sancho Panza and David Page (his role in Page 8). Between Ulysses and Page, identity shifts from a physical to a personal attribute, while Quixote and Sancho typify modernity's gap between agency and experience. The legal implications of these shifts and gaps can be seen in identity cards, identity politics and judicial interpretation.</p>

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<p>Owen Morgan</p> <p>School of Business, University of Auckland</p> <p>Panel 3B</p>	<p><b>Graffiti – who owns the images?</b></p> <p>The walls of our cities are covered with graffiti. The images which graffiti artists produce vary from crude tags to sophisticated, graphic imagery. For some observers, the images represent acts of vandalism. For others, they represent 'an important forum for social commentary and free expression' (Manco, 2004). Owners of the property on which the graffiti artists work react in different ways to the use of their property. This paper is concerned with the protection of the rights of graffiti artists who, ironically, disrespect the rights of others. (Graffiti is defined for the purposes of this paper as 'unsanctioned art and images that share the same space and speak to the same audience as official signs' (Manco, 2004)).</p> <p>The question that this paper seeks to answer is: who owns the images of graffiti art works and the associated rights and is therefore in a position to enforce those rights? In answering that question, it will concentrate on copyright and moral rights. It will consider whether copyright can subsist in graffiti; primarily on the basis that, where the authors of graffiti and their works satisfy the criteria set down in the copyright legislation, copyright and moral rights subsist. Enforcement of those rights is another matter and an analogy will therefore be drawn with the rights that subsist in obscene works. Reference will be made to criminal sanctions; however, it will be argued that, by analogy with obscene works, those sanctions are irrelevant to the question at the heart of this paper. (Morgan, 2003).</p>
<p>Grant Morris</p> <p>Faculty of Law, Victoria University of Wellington</p> <p>Panel 1B</p>	<p><b>Legal Fiction in New Zealand Literature: The New Zealand law in literature project</b></p> <p>Despite the popularity of Law and Literature in many jurisdictions, little has been written on this subject in New Zealand. New Zealand has a rich and diverse body of fictional literature including novels, short stories, plays and poetry. In 2004 the New Zealand Law in Literature Project was established in the Faculty of Law at Victoria University of Wellington to provide information on the nature of legal references in New Zealand fiction.</p> <p>This conference presentation will provide an overview of the project by outlining the aims of the endeavour, the process adopted and the format of the findings. The results of the project will then be analysed with comment on key authors, pivotal texts, leading genres and chronological trends. Case studies will be provided highlighting key legal themes that emerge from the literature. The legal references also shed light on important aspects of the New Zealand legal system and provide perspectives on the law from the viewpoint of writers and the public. This paper will also briefly discuss the New Zealand Law in Visual Media database supplement currently being completed.</p> <p>Examples of important texts that will be referred to in this paper include 'Tooth and Claw' by Greg McGee, 'Daughters of Heaven' by Michelanne Forster, 'Once were Warriors' by Alan Duff, 'Season of the Jew' by Maurice Shadbolt and 'Songs to the Judges' by Mervyn Thompson.</p>
<p>Edward Mussawir</p> <p>University of Melbourne</p> <p>Panel 3C</p>	<p><b>Scenes of Ignorance and Jurisdiction</b></p> <p>The doctrine of ignorantia: that ignorance of the law does not excuse, has been commonly represented as both a piece of popular knowledge and a procedural necessity. Thus it also refers us to possibility, neither exclusively doctrinal nor procedural, that the law shall apply. This paper explores the historical dimensions of the ignorantia doctrine, showing that the invocation of ignorance as a problem or scene of jurisdiction was also a problem in the philosophy of doubt and 'simple natures' in Descartes work and of repetition in that of Freud.</p>

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<p>Catherine O'Sullivan</p> <p>Law Department, University College Cork, Ireland</p> <p>Panel 1B</p>	<p><b>The Nun, the Rape Charge, and the Miscarriage of Justice: The Case of Nora Wall</b></p> <p>In 1999, Nora Wall, a former nun, was convicted of the rape and indecent assault of a 10-year old girl. The crimes for which she was convicted were alleged to have occurred when she worked in a child care institution run by the Sisters of Mercy. Ms. Wall was the first woman in the history of the Irish State to be convicted of rape, and the first person ever to be given a life sentence for the crime. Her co-accused, Mr. McCabe, a homeless man, was sentenced to 12 years. It subsequently transpired that the complainant had previously made false allegations, and indeed, during the trial her claims that Ms. Wall and Mr. McCabe raped her again when she was 12 were rejected by the jury because Mr. McCabe was in prison during the time of the alleged second offence. The guilty verdict was overturned when it was revealed that a witness, whose testimony was supposed to be excluded on the grounds of unreliability, had testified at the trial.</p> <p>This case is interesting for a number of reasons. It is interesting not only because Ms. Wall became the female face of paedophilia but also because of the social context in which the case arose. Her trial took place shortly after a media exposé on the extent of sexual and physical abuse within religious-run institutions. I wish to examine the shift in the representation of Ms. Wall from Monster to Martyr drawing from media coverage of her arrest, her trial, and her subsequent exoneration. In particular I wish to examine the various understandings of (in)appropriate femininity that underlie these representations and explore the cultural anxiety that accompanied the apparent exposure of a female sexual abuser.</p>
<p>James Parker</p> <p>McGill University, Canada</p> <p>Panel 2A</p>	<p><b>Refugee Hearing: The Politics 'Of Hospitality'</b></p> <p>In Canada, much like Australia, migration plays an extremely important role in the national mythology. These are host nations: movement, settlement, new beginnings, acceptance are all key cultural motifs. Yet, as always, myth sits somewhat uncomfortably with reality and in reality it is only a small step from host to hostile or hostage.<sup>1</sup> This paper is part of an ongoing piece of research into refugee law in Canada at the level of the specific. I have been reading refugee claimants' files in their entirety: transcripts, Personal Information Forms, documentary evidence, affidavits, judgements, judicial review decisions and everything in-between. What do these fragments of Canada's laws of hospitality have to say for themselves?</p> <p>In particular, I am concerned with what Derrida has to say on the relation between these 'laws of hospitality' and what he calls 'the unconditional Law of Hospitality'<sup>2</sup>: what does Hospitality demand when we move from an infinite ethics to finite decision-making in a country which cannot welcome everybody? In short, what are the politics of Hospitality?</p> <p>In general, I am concerned with the relation between the universal and the specific and the ethical and the political. 'Hospitality – this is a name or an example of deconstruction', Derrida wrote.<sup>3</sup> If that is the case, then my question is also what are the politics of deconstruction?</p> <p>1 The English word 'host' has a fittingly complex etymology, deriving both from the latin hostis, meaning both guest and host, and hospes meaning both stranger and enemy.  2 Jacques Derrida and Anne Dufourmantelle, Of Hospitality p 79.  3 Jacques Derrida, Hostipitality p 364.</p>

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<p>Timothy Peters</p> <p>Griffith Law School, Griffith University</p> <p>Panel 2C</p>	<p><b>Allusions to Theology: I, Robot, Universalism and the limits of the Law</b></p> <p>In today's world of over-legislation and hyper-regulation, of hystericised legal responses to terrorist attacks and legal paranoia about technological development, it should come as no, but also the greatest, surprise that the message proclaimed by Saint Paul is returning. Such a message calls us 'beyond the law', overcoming its limits, and inviting us to step outside the differences its 'letter' institutes. For the Pauline 'good news' is one that announces a universalism, sublating both the law and difference, and, in so doing, enabling true freedom. In this paper I will argue that the film I, Robot, despite being a text as far from the Pauline Epistles in time and space as it is in content, gives rise to questions that have concerned both theology and legal theory for centuries: questions of the place and constitution of law in society, its role in regulating human behaviour, and its ability to institute difference between (and within) people. I will discuss such questions with reference to both Badiou and Zizek's reading of Saint Paul, and of course, Saint Paul himself, arguing that, under the conditions of postmodernity, the concerns of high theory (theology, jurisprudence, psychoanalysis, Marxism) mesh with, intersect in, and are rendered explicable by the representations of popular culture (Asimov, science fiction, I Robot).</p>
<p>Penelope Pether</p> <p>Villanova University School of Law</p> <p>Panel 2B</p>	<p><b>The logic of practice: how the U.S. Courts' 'peculiar institution' of delegating judicial authority structurally subordinates the law's others</b></p> <p>In 'Inequitable Injunctions: The Scandal of Private Judging in the U.S. Courts,' 56 Stan. L. Rev. 1435 (2004) I argued that the explicitly elitist and covertly racist origins of modern institutional unpublication of U.S. judicial opinions, a congeries of institutional discourses and practices that has (largely silently) shaped the modern U.S. doctrine of precedent, had produced systematic inequality and troubling rule of law effects in the development and application of U.S. law and the operation of U.S. courts. One aspect of that study, touched on but undeveloped, addressed the fact that much if not most of the corpus of unpublished opinions that is the vehicle of structural subordination through the material practices of opinion writing and publication is produced by judicial clerks and staff attorneys, frequently with little or no judicial input or oversight. The U.S. courts 'dirty little [open] secret' is that new law graduates are de facto exercising the vast majority of both Article III judicial power and state judicial power.</p> <p>This paper draws together the available data on the sociology, education, selection, training and work practices of judicial clerks and staff attorneys. Using the work of Pierre Bourdieu and Michel Foucault, it seeks to explore how what is 'written on the bodies' of these remarkably powerful yet often paradoxically vulnerable young lawyers at various stages of their subject formation reproduces a reflexive and insistently replicating hierarchy, a culture of disdain for law's 'others,' to the enormous cost both to U.S. common law itself and to those members of structurally subordinated groups who are effectively denied 'access to justice.'</p>

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<p>Antonia Quadara</p> <p>Department of Criminology, University of Melbourne</p> <p>Panel 6B</p>	<p><b>'On it we live': Politics of/and the Limit in Exotic Dancing</b></p> <p>Legislative regulation of the sex industry tends to produce a certain economy or circuit of sexual difference, sexual desire and commercial exchange whereby 'selling sex' is rendered inherently problematic and in need of control. Such regulation (and the discursive techniques it involves) separates this economy from the idealised economy of monogamous, non-commercial hetero-sexuality. This paper explores the thresholds between these two economies by engaging with exotic dance as a liminal form of commercial sex. I argue that the discourse of exotic dancers (as the speech of the object) amplifies the resonances between commercial and non-commercial forms of sex.</p> <p>Specifically, I suggest that women who 'cross over' from this idealised economy to the shadowy world of commercial sex appear, in both popular and academic domains, to have transgressed a limit (of morality, of autonomy, of sexual integrity, of self) from which they cannot return. Thus, the popular fascination with the 'double life', or the sociological concern with the 'deviant lifestyles' of women involved in exotic dance. This fascination amounts to a petrification of the lived woman into 'The Stripper', a static object which obscures the connections between the performance, experience and speech of feminine subjectivity.</p> <p>By contrast, the speech of exotic dancers, precisely as they transgress that limit repeatedly, everyday, constitutes a threshold between these two economies of desire and exchange, such that it cannot be subsumed by the categories of exploitation or empowerment, victim or agent, since it speaks at the very place from which those positions emerge. I argue that this instantiates a far murkier dynamic of counter-claim and counter-agency, involving the very substance of the feminine self. Murky precisely because it eschews lived experience as either liberatory or repressive; counter-claim precisely because it speaks of, and from, the wedge between these qualities, and in this constitutes a techne of the self located along the strata of sexual difference.</p>
<p>Daniel Reeders</p> <p>Melbourne Law School, University of Melbourne</p> <p>Panel 6B</p>	<p><b>Barebacking and bug-chasing: Images in a jurisprudence of desire</b></p> <p>In 2003, twenty-one year old Doug Hitzel, a gay American resident in San Francisco, featured both in Rolling Stone and a feature-length documentary film The Gift, introducing mainstream American to the twin concepts of 'barebacking' – deliberate unprotected anal sex – and 'bugchasing' – deliberately seeking infection with HIV. In the ensuing commentary firestorm, the article's claim – that a quarter of gay American men living with HIV/AIDS sought deliberate infection – was never substantiated, and to this day Hitzel remains the body of the debate.</p> <p>Despite the enormous difference between American and local sexual cultures and epidemiology, these images of gay male sexuality were taken up with enthusiasm by the local mainstream and community media, and entered with remarkable rapidity into popular discourse around HIV prevention and rising local infection rates. This paper examines the strategies underlying their mobilisation and deployment in that debate, and argues these reveal a jurisprudence in formation: condom use is made the Law, and non-compliant sexualities, its Other – the site of enormous anxiety and desire.</p> <p>Barebacking discourse adopts the structures of intention used in criminal law – where bugchasers are knowing, barebacking is reckless – to enable a system of blame and judgment wherein seroconversion is reinscribed as righteous punishment. Yet deliberate unprotected casual sex barely registers in periodic surveillance of local gay male sexual cultures and seroconverter studies, and the paradox of its enduring appeal is best explained by its power to actuate the pleasures of judgment. These pleasures do not come without cost; the paper will conclude by discussing an ongoing effort to relocate the prevention debate in cultural space where a productive relationship can exist between gay men, community organisations and governments, an effort best summarised by social researcher Michael Hurley's invitation to 'trust gay men'.</p>

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<p>Juliet Rogers</p> <p>Melbourne Law School &amp; Department of Criminology, University of Melbourne</p> <p>Panel 3C</p>	<p><b>Who's your daddy? The liberal-psychoanalytic subject before the Sovereign-Other</b></p> <p>I have become concerned with the concern about using psychoanalysis to talk about people's of the West. While I share Gayatri Spivak's concerns about using psychoanalysis 'that is so culture specific in its provenance' as a method of understanding the psyche, or, to consider the formation of the subject, the liberal subject that has long been produced through the discourses of psychoanalysis, and has certainly been productive in developing and applying them. This is a psychoanalysis that has precisely responded to – been afforded by – the psychotic, neurotic and perverse of Europe, and later the Americas and beyond. That is, the founding and developing premises of psychoanalysis speak of, and to, a European and English speaking world; a world that has, for the past four centuries, been grappling with the enlightenment. This is a world that has been uncertain about the relations of the people to their freedoms, whether as subjects of law or subjects of reason, or both. And the psychoanalysis of Sigmund Freud, Jacques Lacan and Melanie Klein speak precisely to this uncertainty.</p> <p>In this paper I'll discuss the production of the liberal subject in its relation to the 'sovereign-representative person' articulated by Thomas Hobbes, Carl Schmitt and Jean Jacques Rousseau, and the parallels of this production to the subject of psychoanalysis. This is a subject, I argue, who is struggling with his/her freedom to be sovereign, choose freely in the social contract, and articulate his/her own desires after the death of the 'primal father'. This paper is my response to the concerns of using a culture specific psychoanalysis, as an articulation of both a kind of passage through history of the liberal subject, and a psychoanalytic <i>passage l'act</i> (an acting out) of its relation to the sovereign-Other.</p>
<p>Nicole Rogers</p> <p>School of Law &amp; Justice, Southern Cross University</p> <p>Panel 1C</p>	<p><b>Dramatic moments in the war against terrorism: The theatre of dissent and the spectacle of law</b></p> <p>In recent years, we have seen within the Western nations which comprise the Coalition of the Willing a number of responses to the perceived threat of terrorism. Governments have responded with ill-conceived legislation, a sequence of highly mediatised terrorist trials, and the so-called 'War Against Terrorism' (also paradoxically called the 'War against Terror'). Artists, writers and playwrights have in turn responded to the changing socio-political climate created by the 'War Against Terrorism.'</p> <p>My focus is on the theatre of dissent which has evolved in response to this phenomenon. I shall compare the theatre of dissent with the theatre, or spectacle of State-orchestrated terrorist trials. Terrorism, itself a theatrical phenomenon, is difficult for governments to define, partly because of their own ambiguous approach to violence. A comparison between the very different performances in terrorist trials and in the theatre of dissent highlights the role of terrorist trials in re-affirming and upholding the authority of the State, in isolating and punishing difference, and in singling out for condemnation and punishment specific acts of violence or potential violence. Furthermore, although the theatre of dissent seems quite distinct from the theatre of terrorist trials, the interrelationship has been underscored by the enactment of the 2005 sedition laws in Australia. The interplay between the theatre of dissent and the theatre of law highlights the ubiquity of performance.</p>
<p>Mark Rosenthal</p> <p>Strategic Initiatives Division Department of Education and Training</p> <p>Panel 2C</p>	<p><b>A Different Sort of Time</b></p> <p>In this paper I want to use Alan Moore and Dave Gibbon's seminal graphic novel Watchmen to unpack some of Deleuze's neo-Bergsonian thinking around the philosophy of time. Deleuze argues that we need to unmoor time from its confinement to matter in order to reach the inhuman and superhuman forces that are essential to thinking a freedom not limited by intentional subjectivity.</p>

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<p>Stephen Samuel</p> <p>Melbourne Law School, University of Melbourne</p> <p>Panel 2C</p>	<p><b>Recognisability and Law: The role of aesthetics as law's proper critic</b></p> <p>This presentation examines the theme of recognisability in Gilles Deleuze's complex philosophical works. By elaborating this theme, I will outline why the inability of jurists to ground law's legality is due to the experience of law being made impossible. In employing Deleuze's model of recognition, this impossibility is due to jurists' attempts to recognize the law as separate from both the authors of law and its audience. Though this has afforded the law a facade of authority and legitimacy, for Deleuze, this separation has lead images to be defined in terms of 'representation' and not as 'collective creations'. As such, legal philosophy behaves only to challenge overt representations and fails to find a voice to critic the manner in which images are collectively created. Thus, without the ability to critic the creation of image; jurists are left without the ability to create jurisprudence. For Deleuze, jurisprudence is what ultimately creates law. Here, I will argue that aesthetics must be used by jurists as the means the will determine the rhetorical possibilities of the images contained within the paradigm of law. By such means, the language of aesthetics, law and recognisability; will be also understood as the utterance of experiences in identity, order and thought. In addition, such an analysis presents law as a continual passage that finds its basis not only in recognised customs but also in unrecognized and continually renewed experiences. In this sense, aesthetics provides an answer to how jurists may ground law's legality.</p>
<p>Rebecca Scott Bray</p> <p>School of Philosophical and Historical Inquiry, University of Sydney</p> <p>Keynote</p>	<p><b>En Piel Ajena: The Work of Teresa Margolles</b></p> <p>Teresa Margolles is a founding member of SEMEFO, Servicio Médico Forense (Medical Forensic Service), an artist's collective in Mexico City that created artworks using forensic materials between 1989-1999. Since the late 1990's Margolles has created her own solo encounters around death and the mortuary. I traverse Margolles' distinctive forensic and aesthetic history to arrive at her testimonials to the dead women of Ciudad Juárez on the US/Mexico Border. Known as 'The City of the Dead Girls', Ciudad Juárez has more than a decade-long history thick with the unsolved murders and disappearances of women in this borderland between the US and Mexico; a situation that has received increasing international attention. With an aesthetic imprimatur that senses the law, Margolles' practice convenes the emergence of a crisis: how to manage the remains of crime and death through aesthetics at sites of juridical failure. Moreover, her practices exhibit the trouble that remains with injuries largely unresolved by law, in the city, at the margins. Margolles attaches these injuries to other sites of enunciation and, in so doing, reconstitutes evidence of crime and violence in Mexico. Ultimately, I am thinking of law's relationship to the body of the other, often lived in the shadow of death, imprinted in images. As we are moored to the body, many <i>pass by way</i> of the law; crimes perpetrated <i>en piel ajena, on another skin</i>. Margolles' work offers an alternate route to recognising and responding to events of violence and death, a passage that is complicated by ethical tensions and yet offers a curiously forensic compassion.</p> <p>Please note: this talk will include a number of images that some may find distressing</p>

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<p>Richard Sherwin</p> <p>New York Law School</p> <p>Keynote</p>	<p><b>Law, Metaphysics, and the New Iconoclasm</b></p> <p>Is seeing believing, or does the image deceive us? Must we look ‘through’ the image to get at unadulterated truth, or have we no choice but to make do with endless simulacra?</p> <p>Bruno Latour describes this uncertainty as ‘iconoclash.’ We need the image, yet we fear it. We accept truth’s dependence upon mediation, yet we yearn to leap out of the frame, to escape the medium’s falsifications. This yearning, fueled by uncertainty, portends the twin dangers of nihilism, on the one hand (<i>‘It’s all constructed’</i>), and fundamentalism on the other (<i>‘Let transcendent truth shine through’</i>). In short, the iconoclastic impulse is fraught with metaphysical significance.</p> <p>The current iconoclash is, at least in part, the offshoot of new digital communication technologies. These visual, multi-modal technologies have led to an unprecedented proliferation of images coupled with an equally unprecedented capacity to control the simulation of reality. Political and legal discourse has embraced these technologies together with the visual rhetorical strategies that they allow (such as computer-generated images, 2D and 3D animations, day-in-the-life videos, litigation public relations, and orchestrated media events). As a result, law and politics have also inherited the same metaphysical anxieties that pervade society as a whole, for now they too must cope with concerns about our collective ability to distinguish truth and fiction, reality and fantasy, reason and desire.</p> <p>In this talk, I compare the new iconoclasm in the current digital era with its historical antecedent during the Protestant Reformation. I suggest that we are now witnessing the emergence of a new baroque culture with new baroque forms of politics and law. Properly viewed, this neo-baroque moment, like those that have come before, expresses an urgent need to confront simmering metaphysical concerns such as: what is the nature of (and how do we know and make known) truth, reason, reality?</p> <p>Positivism, instrumentalism, and the ideology of the marketplace have failed to acknowledge, much less affirmatively respond to the challenges of iconoclash and the metaphysical impulses that underlie it. Confronting the new iconoclasm opens a path for renewed metaphysical thinking which, in turn, invites alternatives to familiar deontological and utilitarian theories of value. Such normative alternatives are needed if we are to effectively respond to the growing uneasiness regarding the Liberal state’s capacity to fulfill its own conventional standards for legitimacy.</p>
<p>Claire Spivakovsky</p> <p>University of Melbourne</p> <p>Panel 4A</p>	<p><b>Theoretical Passages and Boundaries: The Indigenous subject, colonialism, and governmentality</b></p> <p>Theoretical paternalism and the convenience of working within ‘accepted’ theoretical frameworks have appropriated the Indigenous subject within the boundaries of colonial relations. The establishment of post-colonial theory as one of the only ‘acceptable’ frameworks for exploring the Indigenous subject has limited the subject’s theoretical development within the binary of coloniser/colonised. Breaking from this tradition, the Foucauldian concepts of governmentality, ethics and care-of-the-self will be used as a template for expansion. This paper will explore the passages of the Indigenous subject in theoretical development. It will examine the significance of post-colonial and settler colonial theories in the conceptualisation of the subject, and consider the transformations that occur when the borders established by these theories are crossed. The paper will therefore be comprised of four sections. The first will address the value and limitations of post-colonial and settler colonial theory. The second will posit reasons and implications for why theoretical neglect has occurred. The third will present and critique the Foucauldian concepts of governmentality, ethics and care-of-the-self. Applying Foucault’s concepts to examples of Indigenous offenders in the settler societies of Australia and New Zealand, the final section will examine the impact of the Indigenous subject in Western thought and institutional practice.</p>

# Passages: law, aesthetics, politics

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<p>Sarah Steele</p> <p>School of Law, Flinders University</p> <p>Panel 1C</p>	<p><b>Memorialisation and the Land of the Eternal Spring: Performative practices of memory on the Rwandan genocide</b></p> <p>In 1994, Rwanda became the site of a three month brutal campaign of genocide. Since the cessation of this campaign, a number of memory projects have been undertaken, assuming various forms, including public and private spectacles (including trials and ceremonies); the preservation of sites; the erection of structures and museums; the writing of various types of literature; the production and re-production of art and images; and the undertaking of various cinematic projects. It is this practice of memorialisation that will be the focus of the paper.</p> <p>In particular, the paper seeks to examine the process of memorialisation in post-genocide Rwanda so as to elucidate an explanation of its interrelationship with international law and politics. Before engaging with the process in Rwanda, this article will firstly undertake an examination of the various theoretical discussions of memorialisation, explicating the complex ways that trauma, memory, law and politics interact in the process of commemorating genocide. Having set out the material on the process, this article will then detail the process as undertaken in Rwanda, with two case studies being provided to highlight the particularities of the practice in this state: the Kigali Memorial Centre and the literary project of Fest’Africa 2000.</p> <p>Whilst detailing the practice with regard to Rwanda will be the central enterprise herein, this article will also endeavour to highlight that memorialisation has attained such a privileged position in the post-genocide international community that it has moved beyond merely being a rite and ritual for the victim/witness and their community, becoming a compulsively practiced politicised rite and ritual for ‘international society’. It argues that Euro-Western projects of memory and international criminal law have permeated projects in non-Western locales, shaping both their form and content to reflect the view of genocide as a grave crime against humanity. In this way, memorialisation has evolved beyond being an extra-legal, nation-state building process, to an aesthetic extension of international law and politics.</p>
<p>Danielle Tyson</p> <p>Department of Criminology, University of Melbourne</p> <p>Panel 2B</p>	<p><b>The Death of a Defence: Reflections on provocation’s afterlife</b></p> <p>This article argues for the importance of a critical legal method that can account for the forms of argument used in provocation cases to address the question of what is at stake in the quest for context to resolve doctrinal problems in law. Drawing on key findings of my PhD research, it is argued that the formulaic structure in legal narrations of gendered subjectivity in provocation cases resembles much of the current elaboration of the relationship between ‘masculinity/ies’ and ‘crime’. This means that the two discourses of law and criminology share a common structure. I further claim that similar tropes of subjectivity underscored a recent book by Karen Kissane who was assigned by editors of <i>The Age</i> to do a follow up article about the controversial decision reached in the Ramage case. What is noteworthy about this text is its claim to have ‘discovered’ an alternative to law’s ‘truth’, one that lies beyond the (legal) frame of the event. Yet, as Culler reminds us, framing is something we all do it hints of the ‘frame up’ (1988, p. ix). This insight has implications for a feminist legal strategy modelled on a treatment of context as reflecting, rather than producing, a given state of affairs. Better viewed as an act of framing, a context is not given, but produced, and is just as much in need of elucidation as are events. I conclude by asking whether a critical legal strategy of rereading might be one capable of saving the text – and the contemporary juridical narrative of insult – from repetition across discursive sites. This involves imagining an audience that although inscribed and acted upon, starts reading (and seeing) otherwise. As Barthes reminds us, ‘those who fail to reread are obliged to read the same story everywhere’ (cited in Felman 1981, p. 19)</p>

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<p>Oliver Watts</p> <p>Department of Art History and Theory, University of Sydney</p> <p>Panel 3A</p>	<p><b>Burning Effigies: Treason and sedition in visual culture</b></p> <p>The laws of sedition and treason, newly 'reinvigorated' for the modern Australian context by the Anti-terrorism Act (No2) 2005 (the Act), are decidedly pre-modern. This paper looks at the terms of these provisions in regard to their ideological use; terms such as Sovereign, Government or Constitution are used as rallying points for ideology and become markers against which to define the Other, the terrorist. In a modern society where power is shared by and through society the pre-modern notion of an individual representing the authority of the law is surprisingly anachronistic.</p> <p>This paper looks at another pre-modern anachronism still prevalent in our society, the effigy. The effigy becomes a physical manifestation of the sublime object of ideology. Looking at Zizek and Althusser's notions of the object of ideology, the effigy is used as a starting point to discuss how the terms Sovereign, Government, Constitution are received in society. The effigy, represents a visual system, that is irreducible to 'language' and seems to 'embody' these terms in a more direct way than words in the Act.</p> <p>The effigy, through the work of Kantorowicz, Freedberg and Agamben, is shown to be historically and juridically linked to the Sovereign and outlaw nexus. If the Government legislators feel that treason and sedition laws are an important way in which to reinvoke the nation's signifiers, then they should probably look more seriously at effigies; the two systems of enunciation of the Sovereign have so much in common that not to control the effigy may put the symbolic system of treason and sedition at risk. Burning an effigy is not an action of merely 'political communication' but is the actual killing of the Sovereign's symbolic body and it is this symbolic body, not the natural body, to which treason and sedition refers.</p>
<p>Alison Young</p> <p>Department of Criminology, University of Melbourne</p> <p>Panel 1C</p>	<p><b>Narrating September 11<sup>th</sup>: Documentation, Trauma and Ethics</b></p> <p>This paper will investigate the relation between the authority of authorship (the question of who is speaking) and the authenticity of experience (the question of how they are speaking). It will do so in the context of certain responses to the events of September 11<sup>th</sup> 2001, namely the attacks on the World Trade Center in New York. These are: first, the short film by Alejandro González Iñárritu (part of the collection of short films known as 11'09'01), which uses 'found sound' taken from media recordings on the day to recreate cinematically the experiences of those present during the attacks. The second example is the book, In the Shadow of Two Towers, by Art Spiegelman, in which the graphic art of the comic strip is deployed to capture Spiegelman's experiences as a witness to the attacks and their aftermath. The final example is taken from The 9/11 Commission Report, in which a commission of inquiry provided a narration of the attacks as a prelude to their inquiry into official actions taken on the day. These three examples, taken from cinema, graphic art, and official/ legal discourse, allow an interrogation of the notion of documentation, its relationship to authenticity, and its potentialities and limitations in the representation of trauma and disaster.</p>