



Law, Knowledge, Culture

The Production of
Indigenous Knowledge in
Intellectual Property Law

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Conclusion

This book began with the premise that in all the writing dedicated to discussing indigenous knowledge and intellectual property law, none had looked at the production of this category in law, and what the effects of this position were. Curiously little investigation in this area has been directed to the way in which law grants property rights in intangibles, nor how this has been justified through particular categories and forms of classification.

This work has provided an account of the complicated emergence of indigenous knowledge, as a discrete category, in intellectual property law. Whilst the work has primarily been restricted to an Australian context, similar examination could be extended into other national sites. This would further illuminate the multiple ways in which indigenous knowledge has been produced within legal discourse, and the regimes of truth about its inclusion and properties that have subsequently been generated. Significantly this work has looked to the internal mechanisms of the law to explain problems of accommodating indigenous difference. This investigation has revealed that the hidden dilemma of providing protection for indigenous knowledge resonate with tensions that characterise intellectual property as a whole: namely how it is possible to justify property rights in *any* intangible subject matter.

Intellectual property is always being presented with ‘new’ knowledges as subject matter and thus it is always in a position of managing difference. Owing to its adaptability in the face of new developments, and we may consider digital technology and biotechnology as two examples that demonstrate the range and variability of new kinds of subject matter, questions remain as to why indigenous knowledge generates particular contests about its inclusion and what form these take. Much critical literature has focused on the incommensurability between indigenous knowledge systems and western intellectual property frameworks. Such analyses provide wide-ranging critiques of the culturally contingent nature of the law. Yet even within these positions, there remains little examination of the complex ways in which knowledge is understood as property in both indigenous and non-indigenous contexts, and how the law is deeply imbued with managing this process of identification.

The term ‘indigenous intellectual property’ invites a misplaced perception that this subject is a naturally occurring body of law. Rather than assume

the naturalness, this work has examined the politics of its construction precisely as a 'special' category. In examining its production, I have sought to highlight the manifold ways in which the category has been produced by social, political, governmental, legal and individual agents and influences. Through the interplay of such diverse elements, the extent of legal power becomes more transparent and this helps in understanding both the production of the category and also the capacity for future directions.

It was the copyright cases in the 1980s involving Aboriginal art that provided the first solid catalyst for the inclusion of indigenous knowledge in intellectual property law in Australia. Prior to this, indigenous knowledge was predominately translated through anthropological and ethnographic discourses. The copyright cases are important because they were indicative of various fluctuations in the utility and interpretation of a body of knowledge termed 'indigenous knowledge'. This was in regards to the increased value that was attached to the knowledge, in research, scientific, indigenous and artistic domains. In various forms, an international and national industry circulating around and dependent upon indigenous knowledges, has been generated. In Australia at least, the industry has fostered and supported valuable infrastructure within indigenous communities. Significantly with this industry has come an inevitable push for ways of compensating for the value of the knowledge and measures to restrict and control the circulation in certain circumstances. In many ways a corollary can be drawn between the indigenous knowledge industry and new technologies, where the increased circulation means greater access from differing communities, which also correspondingly leads to misuse and inappropriate applications of this knowledge. What constitutes inappropriate behaviour changes from context to context, and this challenges the competency of the law: for such struggles inevitably arise from relations of power.

There is little surprise that the indigenous knowledge enterprise has turned to intellectual property law for remedy to readdress issues of control and modes of circulation by the 'owners' and custodians of indigenous knowledge. In a globalising and interconnected world, knowledge itself has been naturalised as generating property rights, even though the historical justification of this remains unclear. The increased circulation of rights in intellectual property provides an interpretative framework that normalises the concept of a property right in information and relies upon narratives of its emergence, logic and rationale. This is helped by the generality of discussions that intellectual property and copyright have produced when detached from specific practical negotiations. 'Copyright law questions can make delightful cocktail party small talk, but copyright law answers tend to make eyes glaze over everywhere.'¹

Competing interests vie for control of the intellectual property language: what is an infringement, what is property, how to determine originality and so forth. Indigenous people also have the power to effect such changes as the term 'indigenous intellectual and cultural property' illustrates. Yet the legal framework remains pivotal and influences how discussions about knowledge use and information exchange are made. Intellectual property is not a neutral form but is also open to influence from a range of interested parties and competing interests, something that can be seen from any considered look at its history. Yet the challenge remains that of exposing contingencies that have (ironically) historically remained hidden.

Jessica Litman has argued, that faced with pressures in terms of what intellectual property can include and whether the copyright statute can adjust, two familiar lines of debate are engaged. One side claims an incommensurability with the current regime and calls into question the 'assumptions upon which our copyright laws are based'.² The other camp insists that copyright is always faced with the issue of change in subject matter and as a consequence continues to manage the orbit of its categories with relative success thus not requiring any substantial change.³ Litman's comments are useful and worth considering in a more complicated matrix. For one argument that points to the problems of assumptions about copyright law can also recognise the relative success in how the categories have been historically employed. With these positions in mind, this work has sought a middle road, arguing that the issues faced here are part of an intellectual property continuum in managing differing sorts of knowledge.

The point is that the success in mediating categories and the difficulties of including new subject matter are part of one and the same concern: how to justify property in something that has no clear boundaries or marks of identification. Any claim to property in knowledge faces this same problematic, whether property rights are argued to be invested in 'culture' and 'heritage' or in some form of 'labour' exerted to compile a telephone book. To avoid sustained challenge on what would otherwise be a destabilising element, the law has come to rely on the tangible product to invest property. But in certain cases, like indigenous knowledge, this reliance is revealed as being culturally contingent on certain standards of identification. A key irony is that in positioning indigenous knowledge within an intellectual property regime, the law produces a subject that is difficult to manage, and this exposes the instability of the law's own metaphysical categories.

A more complicated question remains: given intellectual property is limited and perhaps inappropriate in catering for the diversity of indigenous epistemologies and ontologies, both in its remedy and forms of justification, why hasn't it then been abandoned as a political cause? Whilst there is no clear answer, it is apparent that in the circumstances where the

legal potential resides and involves the market, and law is the carrier of important entitlements, an abandonment of the language and framework of intellectual property could potentially discriminate against indigenous interests that intersect the market. There also needs to be a realistic awareness of the extent that indigenous people use the tools that are available. This also means recognising the moments of agency, both in its possibilities and in its compromises. Further, it is necessary to recognise the diversity of agency across and within indigenous contexts – for clearly not all indigenous people reside in traditional communities and remote communities, or relate directly to notions of community. We cannot afford to continue talking as though all indigenous people are the same, have the same problem with intellectual property, or would want to be part of a unique indigenous *sui generis* system. We need to start arguing in the particular, rather than the general. This is because the general does specific, and at times dangerous work in abstracting and decontextualising indigenous experience in ways that are curiously similar to the critiques levelled at the biases with intellectual property law.

Indigenous needs can and do differ. This helps us understand why the intellectual property framework has not been abandoned: it provides a means of leverage for indigenous self-determination claims in that it allows the exercise of control over uses and circulations of information. These are legitimate claims that engage international and national discourses of human rights and demand recognition of the troubling pasts that inform indigenous circumstance within many nations. But at the same time, we have to be realistic about what can be gained through an intellectual property regime: legal frameworks of themselves cannot ever adequately provide a stand-in-grid for issues that require social and cultural reflection and reconciliation.

The objective of this project has been to highlight the complicated relations of power implicit in producing indigenous knowledge within intellectual property law. It has revealed the concomitant political, social and cultural mechanisms within the struggles for inclusion and recognition, and that it is these intersections that influence legal possibility and direct the potential capabilities for future practical engagement. Yet this work contains within its frame directions for future research: specifically projects focused on understanding the diverse ways in which indigenous people come to and appreciate certain kinds of knowledge as property and the varied ways in which intellectual property can be employed effectively.⁴ Only a sustained examination of the particular can begin to generate some useful and workable strategies. In this sense ‘the particular’ means working *with* indigenous people and indigenous communities on problems that are being experienced now. It is time for critical engagement on problems

that are already manifest – and this means reinterpreting this issue beyond that of a quaint intellectual property problem that can be addressed by academics from their offices.

NOTES

1. J. Litman, *Digital Copyright*, Prometheus Books: New York, 2001 at 13.
2. *Ibid.*, at 35.
3. *Ibid.*, at 35.
4. For example see the following projects: Australian Institute of Aboriginal and Torres Strait Islander Studies and the Intellectual Property Research Institute of Australia, *Intellectual Property and Indigenous Knowledge: Access, Ownership and Control of Cultural Materials*, 2002–2004; Ford Foundation, Social Science Research Council and Lembaga Studi Pers dan Pambangunan (LSPP), *The Propertisation of Traditional Arts in Indonesia*, 2005–2007; Department of Cultural Development, Sport and Tourism, Northern Territory and Jumbunna Indigenous House of Learning, University of Technology, *Evaluation of the Northern Territory's Library and Knowledge Centre Models*, 2005.

Bibliography

- Aboriginal and Torres Strait Islander Social Justice Commissioner (1994), *First Report*, Canberra: Australian Government Publishing Service: Canberra.
- Aboriginal and Torres Strait Islander Social Justice Commissioner (1997), *Fifth Report*, Sydney: Human Rights and Equal Opportunity Commission.
- Aboriginal and Torres Strait Islander Social Justice Commissioner (2000), *Social Justice Report*, Sydney: Superfine Printing.
- Aboriginal and Torres Strait Islander Social Justice Commissioner (2001), *Social Justice Report*, Sydney: J.S. McMillan Publishing.
- Aboriginal and Torres Strait Islander Social Justice Commissioner (2002), *Social Justice Report*, Sydney: J.S. McMillan Publishing.
- Adler, Christine (1999), 'The Aboriginal Art Market: Challenges to Authenticity' *Aboriginal Art Online* at www.aboriginalartonline.com/forum/articles6.php (last accessed 17 September 2007).
- Agrawal, Arun (1995), 'Dismantling the Divide Between Indigenous and Scientific Knowledge', *Development and Change*, 26, 413–439.
- Agrawal, Arun and Clark C. Gibson (2000), 'The Role of Community in Natural Resource Conservation' in Arun Agrawal and Clark C. Gibson (eds), *Communities and Nature*, Piscataway, NJ: Rutgers University Press, pp. 1–31.
- Agrawal, Arun (2001), 'The Regulatory Community: Decentralisation and the Environment in the Van Panchayats (Forest Councils) of Kumaon, India', *Mountain Research and Development*, 21 (3), 208–211.
- Agrawal, Arun (2002), 'Indigenous Knowledge and the Politics of Classification', *International Social Science Journal*, 54 (173), 287–297.
- Almog, Shulamit (2002), 'From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative and Law', *Fordham Intellectual Property, Media and Entertainment Law Journal*, 13 (1), 1–34.
- Anderson, Benedict (1983), *Imagined Communities: Reflections on the Origins and Spread of Nationalism*, London UK: Verso Publishing.
- Anderson, Jane (2003) 'Chapter Nine – Globalising Indigenous Rights in Intellectual Property' in *The Production of Indigenous Knowledge in Intellectual Property Law*, PhD Dissertation, Law Faculty, University of New South Wales.
- Anderson, Jane (2004), 'The Politics of Indigenous Knowledge: Australia's Proposed Communal Moral Rights Bill', *University of New South Wales Law Journal*, 23 (4), 585–604.
- Anderson, Jane (2005), 'Access and Control of Indigenous Knowledge in Libraries and Archives: Ownership and Future Use', American Library Association and The MacArthur Foundation, Columbia University, New York, May 5–7.
- Anderson Jane and Kathy Bowrey (2006), 'The Imaginary Politics of Access to Knowledge: Whose Cultural Agendas are Being Advanced?', *Con/Texts of Invention Conference*, Case Western Reserve University, 20–22 April.

- Anderson, Jane (2007), *Intellectual Property and Indigenous Knowledge: Access, Ownership and Control of Cultural Materials – Final Report*, AIATSIS, Australia.
- Anderson, Jane, Lorraine Aragon, Ignatius Haryanto, Peter Jaszi, Abdon Nababan, Hınca Panjiatan, Agus Sardjono, Rizaldi Siagian, R. Suryasaladin, (forthcoming), *Traditional Arts: A Move Towards Protection in Indonesia*.
- Annas, Marianna (1997), 'The Label of Authenticity: A Certification Trade Mark for Goods and Services of Indigenous Origin', *Aboriginal Law Bulletin*, 3 (90), 4–8.
- Aoki, Keith (1998), 'Neocolonialism, Anticommons Property and Biopiracy in the (Not-So-Brave) New World Order of International Intellectual Property Protection', *Indiana Journal of Global Legal Studies*, 6 (1), 11–58.
- Aoki, Keith (1998), 'Considering Multiple and Overlapping Sovereignties: Liberalism, Libertarianism, National Sovereignty, "Global" Intellectual Property and the Internet', *Indiana Journal of Global Legal Studies*, 5 (2), 443–474.
- Appadurai, Arjun (2000), 'Disjuncture and Difference in the Global Cultural Economy' in David Held and Anthony McGrew (eds), *The Global Transformations Reader: An Introduction to the Globalisation Debate*, Cambridge UK: Polity Press, pp. 230–238.
- Arendt, Hannah (1958), *The Human Condition*, Chicago USA and London UK: University of Chicago Press.
- Arnold, Matthew (1868) *Culture and Anarchy: An Essay in Social and Political Criticism*, reprinted in J. Dover Wilson (ed) (1960) Cambridge UK: Cambridge University Press.
- Arup, Christopher (2000), *The New World Trade Agreements: Globalizing Law Through Services and Intellectual Property*, Cambridge UK: Cambridge University Press.
- Ashcraft, Richard (1991), *John Locke: Critical Assessments*, London UK: Routledge.
- Attwood, Bain and Andrew Markus (1998), 'Representation Matters: The 1967 Referendum and Citizenship' in Nicolas Peterson and Will Sanders (eds), *Citizenship and Indigenous Australians: Changing Conceptions and Possibilities*, Cambridge UK: Cambridge University Press, pp. 118–140.
- Austin, John (1832), *The Province of Jurisprudence Determined*, reprinted in Wilfrid E. Rumble (ed) (1995), Cambridge UK: Cambridge University Press.
- Australian Broadcasting Commission (2002), *Cultural Protocol*.
- Australian Copyright Council (1989), *The Art of Resale Royalty and its Implications for Australia*.
- Australian Copyright Council (1998), *Protecting Indigenous Intellectual Property: A Discussion Paper*.
- Australian Copyright Council (1999), *Indigenous Arts and Copyright*.
- Australian Federal Government (2001), *Arts for All*, Canberra: Australian Government Publishing Services.
- Australian Institute of Aboriginal and Torres Strait Islander Studies (2002), *Guidelines for Ethical Research in Indigenous Studies*, Canberra: Aboriginal Studies Press.
- Barcham, Manuhua (2000), '(De)Constructing the Politics of Indigeneity' in Duncan Ivison, Paul Patton and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples*, Cambridge UK: Cambridge University Press, pp. 137–151.

- Barron, Anne (1998), 'No Other Law? Author-ity, Property and Aboriginal Art' in Lionel Bently and Spyros Maniatis (eds), *Perspectives on Intellectual Property Volume 4: Intellectual Property and Ethics*, London UK: Sweet and Maxwell, pp. 37–88.
- Barsh, Russell L. (1988), 'Indigenous Peoples and the Right to Self-determination in International Law' in Barbara Hocking (ed) *International Law and Aboriginal Human Rights*, Sydney: The Law Book Company, pp. 68–82.
- Barsh, Russell L. (1986), 'Indigenous Peoples: An Emerging Object of International Law', *The American Journal of International Law*, 80 (2), 369–385.
- Bartlett, Richard (2003), 'The Obsession with Traditional Laws and Customs Creates Difficulties Establishing Native Title Claims in the South', *The University of Western Australia Law Review*, 31 (1), 35–46.
- Batty, Philip (2005), 'Private Politics, Public Strategies: White Advisors and their Aboriginal Subjects', *Oceania*, 75 (33), 209–221.
- Baxter, Jane (2003), 'Commentary on "Fear, Hope and Longing for the Future of Authorship and Revitalized Public Domain in Global Regimes of Intellectual Property"', *DePaul Law Review*, 52 (4), 1235–1240.
- Beckett, Jeremy (ed) (1988), *Past and Present: The Construction of Aboriginality*, Canberra: Aboriginal Studies Press.
- Behrendt, Larissa (1998), 'In Your Dreams: Cultural Appropriation, Popular Culture and Colonialism', *Law/Text/Culture*, 4 (1), 257–279.
- Bell, Diane (1998), *Ngarrindjeri Wurrurarrin: A World that Is, Was and Will Be*, Melbourne: Spinifex Press.
- Bell, Robin (1985), 'Protection of Aboriginal Folklore: or Do they Dust Reports', *Aboriginal Law Bulletin*, 17 (5), 17–19.
- Benhabib, Seyla (2002), *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton USA: Princeton University Press.
- Bengwayan, Michael (2003), *Intellectual and Cultural Property Rights of Indigenous and Tribal Peoples in Asia*, London UK: Minority Rights Group International.
- Bennett, David (1996), 'Native Title and Intellectual Property', *Land, Rights, Laws: Issues of Native Title*, 10, 2–11.
- Bennett, Gordon (1996), 'The Manifest Toe' in Ian McLean and Gordon Bennett (eds), *The Art of Gordon Bennett*, Sydney: Craftsman House, pp. 9–62.
- Bennett, Tony (1998), *Culture: A Reformer's Science*, Sydney: Allen and Unwin.
- Bennett, Tony (2004), *Pasts Beyond Memory: Evolution, Museums, Colonialism*, London UK and New York USA: Routledge University Press.
- Bennett, Tony (2006), 'Exhibition, Difference and the Logic of Culture' in Ivan Karp and Corrine Kratz (eds), *Museum Frictions: Public Cultures/Global Transformations*, Durham, North Carolina: Duke University Press, pp. 46–69.
- Bentham, Jeremy (1789), *The Theory of Legislation*, reprinted in C.K. Ogden (ed) (1931), London UK: Keagan Paul Publishers.
- Bentham, Jeremy (1789) (1978), 'Chapter VIII – Of Property' reprinted in Crawford Brough Macpherson (ed), *Property: Mainstream and Critical Positions*, Toronto: University of Toronto Press, pp. 51–52.
- Bently, Lionel and Brad Sherman (2001), 'Great Britain and the Signing of the Berne Convention in 1886', *Journal of the Copyright Society of the USA*, 48 (3), 311–340.
- Bently, Lionel, (2004), 'Copyright and the Victorian Internet: Telegraphic Property Laws in Colonial Australia', *Loyola Los Angeles Law Review*, 38, 71–176.

- Bettig, Ronald (1997), *Copyrighting Culture: The Political Economy of Intellectual Property*, Boulder, Colorado: Westview Press.
- Bhabha, Homi (1994), *The Location of Culture*, London UK, New York USA: Routledge.
- Bird, Greta (1987), 'The Civilising Mission: Race and the Construction of Crime', *Contemporary Legal Issues No.4*, Monash University.
- Bird, Greta (1996), 'Koori Cultural Heritage: Reclaiming the Past?' in Greta Bird, Gary Martin and Jennifer Nielsen (eds), *Majah: Indigenous Peoples and the Law*, Sydney: The Federation Press.
- Bird, Greta and Gary Martin and Jennifer Nielson (eds) (1996), *Majah: Indigenous Peoples and the Law*, Sydney: The Federation Press.
- Blackstone, William (1765–1769), *Commentaries on the Laws of England*, facsimile of the first edition (1979), Chicago: University Press.
- Blakeney, Michael (1995), 'Milpururru & Ors v Indofurn Pty Ltd & Ors – Protecting Expressions of Aboriginal Folklore Under Copyright Law', *elaw: Murdoch Electronic Law Journal* at www.murdoch.edu.au/elaw/issues/v2n1/blakeney.txt.
- Blakeney, Michael (1996), *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement*, London UK: Sweet and Maxwell.
- Blakeney, Michael (1997), 'Bioprospecting and the Protection of Traditional Medicinal Knowledge of Indigenous Peoples: An Australian Perspective', *European Intellectual Property Review*, 19 (6), 298–303.
- Blakeney, Michael (1998), 'Communal Intellectual Property Rights of Indigenous Peoples in Cultural Expressions', *Journal of World Intellectual Property*, 1 (6) 985–992.
- Blakeney, Michael (2000), 'Protection of Traditional Knowledge under Intellectual Property Law', *European Intellectual Property Review*, 22 (6), 251–258.
- Blakeney, Michael (2002), 'Protecting the Cultural Expressions of Indigenous Peoples under Intellectual Property Law – the Australian Experience' in F. Willem Grosheide and Johannes J. Brinkhof (eds), *Intellectual Property Law 2002: The Legal Protection of Cultural Expressions and Indigenous Knowledge*, Antwerp, Oxford UK, New York USA: Intersentia Publishers, pp. 151–180.
- Bonham-Carter, Victor (1978), *Authors by Profession, Volume One and Two*, London UK: The Society of Authors.
- Bottomley, Stephen and Stephen Parker (eds) (1997), *Law in Context* (second edition) Sydney: The Federation Press.
- Bowen, John (2000), 'Should we have a Universal Concept of "Indigenous Peoples' Rights"? Ethnicity and Essentialism in the Twenty First Century', *Anthropology Today*, 16 (4), 12–16.
- Bowrey, Kathy (1994), *Don't Fence Me In: The Many Histories of Copyright*, Doctor of Juridical Studies, University of Sydney, Australia.
- Bowrey, Kathy (1995), 'Copyright, Photography and Computer Works: the Fiction of Original Expression', *University of New South Wales Law Journal*, 18 (2), 278–99.
- Bowrey, Kathy (1996), 'Who's Writing Copyright's History?', *European Intellectual Property Review*, 18 (6), 322–329.
- Bowrey, Kathy (2001), 'The Outer Limits of Copyright Law – Where Law meets Philosophy and Culture', *Law and Critique*, 12 (1), 1–24.
- Bowrey, Kathy (2001), 'Originality in Copyright: How Low can you Go?', University of New South Wales Seminar Paper, September 11, 2001.

- Bowrey, Kathy (2004), *Law and Internet Cultures*, London UK: Cambridge University Press.
- Bowrey, Kathy and Matthew Rimmer (2002), 'Rip, Mix, Burn: The Politics of Peer to Peer and Copyright Law', *First Monday*, 7 (8), at http://firstmonday.org/issues/issue7_8/bowrey/index.html.
- Boyd White, James (1985), *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law*, Wisconsin: University of Wisconsin Press.
- Boyle, James (1996), *Shamans, Software and Spleens: Law and the Construction of the Information Society*, Cambridge MA USA: Harvard University Press.
- Brosius, Peter (1999), 'Analyses and Interventions: Anthropological Engagements with Environmentalism', *Current Anthropology*, 40 (3), 277–309.
- Brosius, Peter (1999), 'Green Dots, Pink Hearts: Displacing Politics from the Malaysian Rain Forest', *American Anthropologist*, 101 (1), 36–57.
- Brown, Michael (1998), 'Can Culture be Copyrighted?', *Current Anthropology*, 39 (2), 193.
- Brown, Michael (2004), *Who Owns Native Culture?*, Cambridge MA USA: Harvard University Press.
- Brush, Stephen (1996), 'Whose Knowledge, Whose Genes, Whose Rights?' in Stephen Brush and Doreen Stabinsky (eds), *Valuing Local Knowledge: Indigenous Peoples and Intellectual Property Rights*, Washington DC: Island Press, pp. 1–24.
- Bryan, Bradley (2000), 'Property as Ontology: On Aboriginal and English Understandings of Ownership', *Canadian Journal of Law and Jurisprudence*, 13, 3–32.
- Bunting, Susan (2000), 'Limitations of Australian Copyright Law in the Protection of Indigenous Music and Culture', *Context: Journal of Music Research*, 18, 15–23.
- Butler, Judith (1990), *Gender Trouble: Feminism and the Subversion of Identity*, New York USA: Routledge.
- Cane, Scott (2002), *Pila Nguru: The Spinifex People*, Fremantle: Fremantle Arts Centre Press.
- Caruana, Wally (1993), *Aboriginal Art*, Singapore: Thames and Hudson.
- Caygill, Howard (1997), 'The Shared World: Philosophy, Violence, Freedom' in Darren Sheppard, Simon Sparks and Colin Thomas (eds), *On Jean-Luc Nancy: The Sense of Philosophy*, London and New York: Routledge, pp. 19–31.
- Chambers David Wade and Richard Gillespie (2000), 'Locality in the History of Science: Colonial Science, Technoscience and Indigenous Knowledge', *Osiris*, 15, 221–240.
- Chander, Anupam and Madhavi Sunder (2004), 'The Romance of the Public Domain', *California Law Review*, 92, 1331–1374.
- Christie, Jean (1998), 'Enclosing the Biodiversity Commons: Bioprospecting or Biopiracy?' in Richard Hindmarsh, Geoffrey Lawrence, Janet Norton (eds), *Altered Genes: Reconstructing Nature – the Debate*, Sydney: Allen and Unwin.
- Clarke, Jennifer (1997), 'Law and Race: The Position of Indigenous people' in Stephen Bottomley and Stephen Parker (eds), *Law and Context* (second edition), Sydney: The Federation Press.
- Clifford, James (1988), *The Predicament of Culture: Twentieth Century Ethnography, Literature and Art*, Cambridge MA USA: Harvard University Press.
- Cohn, Bernard (1996), *Colonialism and its Forms of Knowledge: The British in India*, New Jersey: Princeton University.
- Coleman, Elizabeth (2001), 'Aboriginal Painting: Identity and Authenticity', *The Journal of Aesthetics and Art Criticism*, 59 (4), 385–402.

- Coleman, Elizabeth Burns (2005), *Aboriginal Art, Identity and Appropriation*, Aldershot UK: Ashgate Publishing.
- Commission on Intellectual Property Rights (2002), *Integrating Intellectual Property Rights and Development Policy*, London UK.
- Coombe, Rosemary (1993), 'The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy', *Canadian Journal of Law and Jurisprudence*, 6 (2), 249–285.
- Coombe, Rosemary (1997), 'The Properties of Culture and the Possession of Identity: Postcolonial Struggle and the Legal Imagination' in Bruce Ziff and Pratima V. Rao (eds), *Borrowed Power: Essays on Cultural Appropriation*, New Jersey USA: Rutgers University Press, pp. 74–96.
- Coombe, Rosemary (1998), *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law*, Durham USA: Duke University Press.
- Coombe, Rosemary (1998), 'Intellectual Property, Human Rights and Sovereignty: New Dilemmas in International Law Posed by the Recognition of Indigenous Knowledge and the Conservation of Biodiversity', *Indiana Journal of Global Legal Studies*, 6, 59–115.
- Coombe, Rosemary (2001), 'The Recognition of Indigenous People's and Community Traditional Knowledge in International Law', *St Thomas Law Review*, 14, 275–285.
- Coombe, Rosemary (2003), 'Fear, Hope and Longing for the Future of Authorship and a Revitalized Public Domain in Global Regimes of Intellectual Property', *De Paul Law Review*, 52, 1171–1191.
- Cope, Malcolm (1992), *Constructive Trusts*, Sydney: The Law Book Company.
- Cornell, Drusilla (1991), *The Philosophy of the Limit*, New York USA: Routledge.
- Correa, Carlos (1997), 'Harmonisation of Intellectual Property Rights in Latin America: Is there still room for differentiation?', *New York University Journal of Law and Policy*, 109–134.
- Cotterrell, Roger (1989), *The Politics of Jurisprudence*, London UK: Butterworths.
- Cotterrell, Roger (1995), *Law's Community: Legal Theory in Sociological Perspective*, Oxford UK: Clarendon Press.
- Cramer, Sue (ed) (1989), *Postmodernism: A Consideration of the Appropriation of Aboriginal Imagery*, Brisbane: Institute of Modern Art.
- Croft, Brenda (2002), 'Roundtable Discussion' at *Intellectual Property and Indigenous Knowledge: Access and Ownership of Indigenous Cultural Material*, (AIATSIS Seminar Series). Paper on file with author.
- Cuneen, Chris (1992), 'Judicial Racism', *Aboriginal Law Bulletin*, 2 (58), 9–11.
- Cuneen, Chris (2001), *Conflicts, Politics and Crime*, Sydney: Allen and Unwin.
- Cuneen, Chris and Terri Libesman (1995), *Indigenous People and the Law in Australia*, Sydney: Butterworths.
- Cuneen, Chris and Julia Grix (2004), 'The Limitations of Litigation in Stolen Generation Cases', *Australian Institute of Aboriginal and Torres Strait Islander Studies Research Discussion Paper*, 15.
- Curthoys, Ann (1994), 'Citizenship, Race and Gender: the Debates in Australia over Equal Rights and Special Rights for Women and Indigenous People', in Melanie Nolan (ed), *Suffrage and Beyond*, Sydney: Pluto Press, pp. 89–106.
- Daes, Erica Irene (1993), *Discrimination against Indigenous Peoples: Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, E/CN.4/Sub.2/1993/28, July 28.

- Daes, Erica Irene (1994), *Discrimination against Indigenous Peoples: Protection of the Heritage of Indigenous Peoples*, E/CN.4/Sub.2/1995/26.
- Daes, Erica Irene (1995), *Note on the Concept of Indigenous People*, E/CN.4/Sub.2/AC.4/1995/3, July.
- Daes, Erica Irene (2000), 'Striving for Self-determination for Indigenous People' in Y.N. Kly, and D. Kly (eds), *In Pursuit of the Right to Self-determination*, Collected Papers and Proceedings of the First International Conference in the Right to Self-determination as the United Nations, Geneva: Clarity Press.
- Dahl, Tove Stang (1987), *Women's Law: An Introduction to Feminist Jurisprudence*, Oxford UK: Oxford University Press.
- Davies, Margaret (1996), *Delimiting the Law: Postmodernism and the Politics of Law*, London UK and Chicago USA: Pluto Press.
- Davies, Tony (1996), 'Aboriginal Cultural Property?', *Law in Context*, 14 (2), 1–23.
- Davila, Juan (1987), 'Aboriginality: A Lugubrious Game?', *Art and Text*, 23 (4), 53–59.
- Davis, Michael (1996–7), 'Indigenous Peoples and Intellectual Property Rights', *Parliamentary Library Research Paper*, 20, 1–45.
- Davis, Michael (1997), 'Indigenous Intellectual Property Protection Consultations with Aboriginal and Torres Strait Islander Peoples', *Aboriginal Law Bulletin*, 3 (90), 22–23.
- Dawson, Freya (1996), 'The Importance of Property Rights for Biodiversity Conservation in the Northern Territory', *The Australian Journal of Natural Resources Law and Policy*, 3 (2), 179–195.
- Dean, Mitchell (1999), *Governmentality: Power and Rule in Modern Society*, London UK: Sage Publications.
- Deazley, Ronan (2003), 'Re-reading Donaldson (1774) in the Twenty First Century and Why It Matters', *European Intellectual Property Review*, 25 (6), 270–279.
- Deazley, Ronan (2004), *On the Origin of the Right to Copy: Charting the Movement of Copyright Law in Eighteenth Century Britain (1695–1775)*, Oxford UK and Portland USA: Hart Publishing.
- de Certeau, Michel (1984), *The Practice of Everyday Life*, Los Angeles: University of California Press.
- Delueze, Gilles (1994), *Difference and Repetition*, New York USA: Columbia University Press.
- Department of Home Affairs and the Environment (1981), *Report of the Working Party on the Protection of Aboriginal Folklore*, Canberra: Australian Government Printing Service.
- Derrida, Jacques (1990), 'Force of Law: The Mystical Foundation of Authority', *Cardozo Law Review*, 11, 919–1047.
- Derrida, Jacques (1993), *Writing and Difference*, London UK: Routledge.
- Dirks, Nicholas (2001), *Castes of Mind: Colonialism and the Making of Modern India*, Princeton NJ: Princeton University Press.
- Dirks, Nicholas, Geoffrey Eley and Sherry Ortner (eds) (1994), *Culture/Power/History: a Reader in Contemporary Social Theory*, Princeton NJ: Princeton University Press.
- Dodds, John (1988), 'The New Constructive Trust: An Analysis of its Nature and Scope', *Melbourne University Law Review*, 16, 482–502.
- Dodson, Michael (1994), 'The End in the Beginning: Re(de)finding Aboriginality', *Australian Aboriginal Studies*, 1, 2–13.

- Dodson, Michael (1996), 'Indigenous Peoples and Intellectual Property Rights' in *Ecopolitics IX: Conference Papers and Resolutions*, Casuarina: Northern Land Council, pp. 30–36.
- Dodson, Patrick (1991), *Royal Commission into Aboriginal Deaths in Custody: Regional Report of the Inquiry into Underlying Issues in Western Australia*, Canberra: Australian Government Printing Service.
- Dodson, Patrick (2000), *The Wentworth Lecture 2000 – Beyond the Mourning Gate: Dealing with Unfinished Business*, Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Drahos, Peter (1996), *A Philosophy of Intellectual Property*, Sydney: Dartmouth Press.
- Drahos, Peter (2000), 'Indigenous Knowledge, Intellectual Property and Biopiracy: Is a Global Collecting Society the Answer?', *European Intellectual Property Review*, 6, 245–250.
- Drahos, Peter (2001), 'BITs and BIPs: Bilateralisms in Intellectual Property', *The Journal of World Intellectual Property*, 4 (6), 791–808.
- Drahos, Peter (2003), 'Capitalism, Efficiency and Self-Ownership', *Australian Journal of Legal Philosophy*, 28, 215–220.
- Drahos, Peter with John Braithwaite (2002), *Information Feudalism: Who Owns the Knowledge Economy?*, London UK: Earthscan Publications.
- Drahos, Peter and Ruth Mayne (eds) (2002), *Global Intellectual Property Rights: Knowledge, Access and Development*, Hampshire UK: Palgrave Macmillan.
- Drayton, Richard (2000), *Nature's Government: Science, Imperial Britain and the Improvement of the World*, New Haven USA and London UK: Yale University Press.
- Dunn, John (1969), *The Political Thought of John Locke*, Cambridge UK: Cambridge University Press.
- Dworkin, Ronald, *Law's Empire*, London UK: Fontana Press.
- Eagles, Ian (2002), 'New Zealand Moral Rights Law: Did Something Get Lost in Translation?', *New Zealand Business Law Quarterly*, 8, 26–74.
- Eatock, Cathy and Kim Mordaunt (1997), *Copyrites*, Australian Film Finance Corporation Limited.
- Edelman, Bernard (1979), *Ownership of the Image: Elements for a Marxist Theory of Law*, London UK: Routledge and Keegan Paul.
- Edmond, Gary (2004), 'Thick Decisions: Expertise, Advocacy and Reasonableness in the Federal Court of Australia', *Oceania*, 74 (3), 190–230.
- Eisenstein, Elizabeth (1983), *The Printing Revolution in Early Modern Europe*, Cambridge UK: Cambridge University Press.
- Ellinson, Dean (1994), 'Unauthorised Reproduction of Traditional Aboriginal Art', *University of New South Wales Law Journal*, 17 (2), 327–344.
- Elyachar, Julia (2005), *Markets of Dispossession: NGOs, Economic Development and the State in Cairo*, Durham: Duke University Press.
- Feather, John (1985), *The Provincial Book Trade in Eighteenth Century England*, Cambridge UK: Cambridge University Press.
- Fitzpatrick, Peter (1991), 'Racism and the Innocence of Law' in Peter Fitzpatrick and Alan Hunt (eds), *Critical Legal Studies*, Basil Blackwell: Oxford.
- Fitzpatrick, Peter (1992), *The Mythology of Modern Law*, London UK and New York USA: Routledge Press.
- Fitzpatrick, Peter (2001), *Modernism and the Grounds of Law*, Cambridge UK: Cambridge University Press.

- Flessas, Tatiana (2005), 'Aphorisms, Objects and Culture' in Peter Goodrich and Mariana Valverde (eds), *Nietzsche and Legal Theory: Half-Written Laws*, New York USA: Routledge Press, pp. 105–124.
- Folds, Ralph (2001), *Crossed Purposes: The Pintupi and Australia's Indigenous Policy*, Sydney: University of New South Wales Press.
- Foucault, Michel (1980), 'Truth and Power' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, New York USA: Pantheon Press, pp. 109–133.
- Foucault, Michel (1980), 'Two Lectures' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, New York USA: Pantheon Press, pp. 78–108.
- Foucault, Michel (1983), 'The Subject and Power' in Hubert Dreyfus and Paul Rabinow (eds), *Michel Foucault: Between Structuralism and Hermeneutics*, Brighton: Harvester Press, pp. 208–228.
- Foucault, Michel (1984), 'What is an Author?' in Paul Rabinow (ed), *The Foucault Reader: an Introduction to Foucault's Thought*, London UK: Penguin Books, pp. 101–120.
- Foucault, Michel (1989), 'Clarifications on the Question of Power' in Sylvère Lotringer (ed), *Foucault Live: Collected Interviews, 1961–1984*, New York: Semiotext(e).
- Foucault, Michel (1991), 'Governmentality' in Graeme Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality*, Chicago: The University of Chicago Press, pp. 87–104.
- Fourmile, Henrietta (1989), 'Some Background to Issues Concerning the Appropriation of Aboriginal Imagery' in Sue Cramer (ed), *Postmodernism: a Consideration of the Appropriation of Aboriginal Imagery: Forum Papers*, Brisbane: Institute of Modern Art.
- Fourmile, Henrietta (1989), 'The Aboriginal Art Market and the Repatriation of Aboriginal Cultural Property', *Social Alternatives*, 8 (1), 19–22.
- Fourmile, Henrietta (1993), 'Cultural Survival v Cultural Prostitution' in *Cultural Tourism Awareness Workshop*, Cairns, Queensland, pp. 46–52.
- Fourmile, Henrietta (1996), 'Protecting Indigenous Intellectual Property Rights in Biodiversity' in *Ecopolitics IX: Conference Papers and Resolutions*, Casuarina: Northern Land Council, pp. 37–42.
- Fox, Christopher (1988), *Locke and the Scribblers: Identity and Consciousness in Early Eighteenth Century Britain*, Berkeley: University of California Press.
- Gaines, Jane (1991), *Contested Culture: The Image, the Voice and the Law*, Chapel Hill: The University of North Carolina Press.
- Gana, Ruth (1995), 'Has Creativity Died in the Third World? Some Implications of the Internationalization of Intellectual Property', *Denver Journal of International Law & Policy*, 24 (1), 109–144.
- Garnett, Kevin (2000), 'Copyright in Photographs', *European Intellectual Property Review*, 5, 229–231.
- 'Global Intellectual Property Rights: Boundaries of Access and Enforcement. Panel II: The Law and Policy of Protecting Folklore, Traditional Knowledge and Genetic Resources' (2002), *Fordham Intellectual Property, Media and Entertainment Law Journal*, 11 (3), 753–803.
- Geismar, Haidy (2005), 'Copyright in Context: Carvings, Carvers and Commodities in Vanuatu', *American Ethnologist*, 32 (3), 437–459.

- Geller, Paul Edward (1994), 'Must Copyright Be For Ever Caught between Marketplace and Authorship Norms?' in Brad Sherman and Alain Strowel (eds), *Of Authors and Origins: Essays on Copyright Law*, London UK: Clarendon Press, pp. 159–184.
- Geller, Paul Edward (2000), 'Copyright History and the Future: What's Culture Got to Do With It?', *Journal of the Copyright Society of the U.S.A.*, 48 (1), 209–264.
- Gellner, Ernest (1987), *Culture, Identity and Politics*, Cambridge UK: Cambridge University Press.
- Gibson, Johanna (2001), 'Justice of Precedent, Justness of Equity: Equitable Protection and Remedies for Indigenous Intellectual Property', *Australian Indigenous Law Reporter*, 6 (1), 1–21.
- Gibson, Johanna (2005), *Community Resources: Intellectual Property, International Trade and the Protection of Traditional Knowledge*, Aldershot UK: Ashgate Publishing.
- Ginsburg, Jane (1990), 'Creation and Commercial Value: Copyright Protection of Works of Information', *Columbia Law Review*, 90, 1865–1938.
- Golvan, Colin (1989), 'Aboriginal Art and Copyright: The Case for Johnny Bulun Bulun', *European Intellectual Property Review*, 10, 346–351.
- Golvan, Colin (1992), 'Aboriginal Art and the Protection of Indigenous Cultural Rights', *European Intellectual Property Review*, 7, 227–232.
- Golvan, Colin (1995), 'Court Provides Strong Protection for Aboriginal Artwork', *Australian Intellectual Property Law Bulletin*, 8 (1), 6–15.
- Golvan, Colin (1996), 'Aboriginal art and copyright infringement' in Luke Taylor and Jon Altman (eds), *Marketing Aboriginal Art in the 1990s*, Canberra: Aboriginal Studies Press, pp. 73–75.
- Golvan, Colin (2001), 'Copyright in Aboriginal Art: An Overview', Paper delivered at the Australasian Intellectual Property Teachers Conference, University of Melbourne.
- Golvan, Colin (2002), interview by author, 19 June, Owen Dixon Chambers, Melbourne.
- Gordon, Colin (1991), 'Governmental rationality: an introduction' in Graeme Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality*, Chicago: The University of Chicago Press, pp. 1–52.
- Grad, Rachel (2003), 'Indigenous Rights and Intellectual Property Law: A Comparison of the United States and Australia', *Duke Journal of Comparative and International Law*, 13, 203–222.
- Graeber, David (2001), *Toward an Anthropological Theory of Value: The False Coin of Our Own Dreams*, New York USA: Palgrave Press.
- Gray, Kevin (1991), 'Property in Thin Air', *Cambridge Law Journal*, 50, 252–307.
- Gray, Stephen (1993), 'Wheeling, Dealing and Deconstruction: Aboriginal Art and the Land', *Aboriginal Law Bulletin*, 3 (63), 10–12.
- Gray, Stephen (1996), 'Squatting in the Red Dust: Non-Aboriginal Law's Construction of the "Traditional" Aboriginal Artist', *Law in Context*, 14 (2), 29–41.
- Gray, Stephen (1997), 'Vampires around the Campfire', *Alternative Law Journal*, 22 (2), 60–63.
- Gray, Stephen (2000), 'Peeking into Pandora's Box: Common Law Recognition of Native Title to Aboriginal Art', *Griffith Law Review*, 9 (2), 227–247.

- Gray, Stephen (2001), 'Black, White or Beyond the Pale: The Authenticity Debate and Protection for Aboriginal Culture', *The Australian Feminist Law Journal*, 15, 105–116.
- Gray, Stephen (2003), 'Going Native: Disguise, Forgery, Imagination and the European Aboriginal', *Overland*, 170, 34–42.
- Greene, Shane (2004), 'Indigenous People Incorporated? Culture as Politics, Culture as Property in Pharmaceutical Bio-prospecting', *Cultural Anthropology*, 45 (2), 211–237.
- Grosheide, F. Willem (2002), 'General Introduction' in Willem F. Grosheide, and Johannes. J. Brinkoff (eds), *Intellectual Property Law 2002: The Legal Protection of Cultural Expressions and Indigenous Knowledge*, Antwerp, Oxford UK, New York USA: Intersentia Publishers, 1–24.
- Grosheide, F. Willem (1994), 'When Ideas Take the Stage', *European Intellectual Property Review*, 6, 219–222.
- Guha, Ranajit (1988), 'The Prose of Counter Insurgency' in Ranajit Guha and Gayatri Spivak (eds), *Selected Subaltern Studies*, New York: Oxford University Press, pp. 45–86.
- Haebich, Anna (2000), *Broken Circles: Fragmenting Indigenous Families 1800–2000*, Fremantle: Fremantle Arts Centre Press.
- Hanks, Peter and Bryan Keon-Cohen (1984), *Aborigines and the Law*, Sydney: Allen and Unwin.
- Hardt, Michael and Antonio Negri (2000), *Empire*, Massachusetts USA: Harvard University Press.
- Harris, Cheryl (1993), 'Whiteness as Property', *Harvard Law Review*, 106 (8), 1707–1791.
- Harrison, Simon (1992), 'Ritual as Intellectual Property', *Man*, 27, 225–244.
- Harrison, Simon (2002), 'The Politics of Resemblance: Ethnicity, Trademarks: Head-Hunting', *Journal of the Royal Anthropological Institute*, 8, 211–232.
- Hart, Herbert L.A. (1961), *The Concept of Law*, Oxford UK: Clarendon Press.
- Hayden, Cori (2003), *When Nature Goes Public: The Making and Unmaking of Bioprospecting in Mexico*, Princeton: Princeton University Press.
- Havemann, Paul (2001), 'The Participation Deficit: Globalisation, Governance and Indigenous Peoples', *Balayi: Culture: Law and Colonialism*, 3, 9–17.
- Hawkins, Catherine (1995), 'Stopping the Rip-offs: Protecting Aboriginal and Torres Strait Islander Cultural Expression', *Alternative Law Bulletin*, 20 (1), 7–9.
- Heidegger, Martin (1962), *Being and Time*, Oxford UK: Basil Blackwell.
- Helliwell, Christine and Barry Hindess (1999), "'Culture", "Society" and the Figure of Man', *History of the Human Sciences*, 12 (4), 1–20.
- Helliwell, Christine and Barry Hindess (2002), 'The "Empire of Uniformity" and the Government of Subject Peoples', 6 (1&2) *Cultural Values*, 139–152.
- Hesse, Carla (1990), 'Enlightenment Epistemology and the Laws of Authorship in Revolutionary France, 1777–1793', *Representations*, 30, 109–137.
- Hesse, Carla (1991), *Publishing and Cultural Politics in Revolutionary Paris, 1789–1810*, Berkeley USA: University of California Press.
- Hettinger, Edwin (1989), 'Justifying Intellectual Property', *Philosophy and Public Affairs*, 18 (1), 31–52.
- Hirsch, Eric (2002), 'Malinowski's Intellectual Property', *Anthropology Today*, 18 (2), 1–2.
- Hirst, Paul and Graham Thompson (2000), 'The Limits to Economic Globalisation' in David Held and Andrew McGrew (eds), *The Global Transformations Reader*:

- An Introduction to the Globalisation Debate*, Cambridge UK: Polity Press, pp. 335–348.
- Hobsbawm Eric and Terence Ranger (eds) (1992), *The Invention of Tradition*, Cambridge UK: Cambridge University Press.
- Hohfeld, Wesley (1913), 'Some Fundamental Legal Conceptions as Applied in Juridical Reasoning', *Yale Law Journal*, 23, 16–59.
- Howden, Kristen (2001), 'Indigenous Traditional Knowledge and Native Title', *University of New South Wales Law Journal*, 24 (1), 60–84.
- Hughes, Justin (1988), 'The Philosophy of Intellectual Property', *The Georgetown Law Journal*, 77, 28–330.
- Hunter, Ian (1992), 'Aesthetics and Cultural Studies' in Larry Grossberg, Carla Nelson, Paul Treichler (eds), *Cultural Studies*, New York and London: Routledge, pp. 347–372.
- International Labor Organisation (1957), *Convention 107 concerning Indigenous and Tribal Populations*.
- International Labor Organisation (1989), *Convention 169 concerning Indigenous and Tribal peoples in Independent Countries*.
- Isaacs, Jennifer (1999), *Spirit Country: Contemporary Australian Aboriginal Art*, Australia: Hardie Grant Books.
- Isaacs, Jennifer (1999), *Arts of the Dreaming: Australia's Living Heritage*, Sydney: Lansdowne Press.
- Ivson, Duncan, Paul Patton and Will Sanders (eds) (2000), *Political Theory and the Rights of Indigenous Peoples*, Cambridge UK: Cambridge University Press.
- Janke, Terri (1995), 'Copyright: the Carpets Case', *Aboriginal Law Bulletin/Alternative Law Journal*, (Joint Issue) 3 (72), 36–39.
- Janke, Terri (1998), *Our Culture: Our Future. Report on Australian Indigenous Cultural and Intellectual Property Rights* (produced for Australian Institute of Aboriginal and Torres Strait Islander Studies [AIATSIS] and the Aboriginal and Torres Strait Islander Commission [ATSIC]), Sydney: Michael Frankel and Company Solicitors.
- Johnson, Elliot, Martin Hinton and Daryl Rigney (eds) (1997), *Indigenous Australians and the Law*, Sydney: Cavendish Publishing.
- Johnson, Vivian (1988), 'A Whiter Shade of Paleolithic: Aboriginal Art and Appropriation', *Aboriginal Law Bulletin*, 34, 8–11.
- Johnson, Vivian (1996), *Copyrites: Aboriginal Art in the Age of Reproductive Technologies*, Sydney: National Indigenous Arts Advocacy Association and Macquarie University.
- Kaplan, Benjamin (1967), *An Unhurried View of Copyright*, New York: Columbia University Press.
- Kerriush, Valerie and Colin Perrin (1999), 'Awash in Colonialism', *Alternative Law Journal*, 24 (1), 3–8.
- Kerriush, Valerie (2001), 'Reconciliation, Property and Rights' in Christodoulidis, Emlios and Stuart Veitch (eds), *Lethé's Law: Justice Law and Ethics in Reconciliation*, Oxford University: Hart Publishing, pp. 191–205.
- Kinnane, Stephen (2004), *Shadow Lines*, Fremantle: Fremantle Press.
- Kirsch, Stuart (2001), 'Environmental Disaster, "Culture Loss" and the Law', *Current Anthropology*, 42 (2), 167–198.
- Langton, Marcia (1991), *Too Much Sorry Business: the Report of the Aboriginal Issues Unit of the Northern Territory*, Canberra: Australian Government Printing Services.

- Langton, Marcia (1993), *'Well I Heard it on the Radio and Saw it on the Television...': An Essay for the Australian Film Commission on the Politics and Aesthetics of Filmmaking By and About Aboriginal People and Things*, Sydney: The Australian Film Commission.
- Langton, Marcia (1994), *Valuing Cultures: Recognising Indigenous Cultures as a Valued Part of Australian Heritage* (prepared for the Council for Aboriginal Reconciliation), Canberra: Australian Government Printing Service.
- Langton, Marcia (2000), 'Dumb Politics Wins the Day', *Land Rights Queensland*, 11.
- Langton, Marcia (2003), 'Introduction: Culture Wars', in Michel Grossman (ed), *Blacklines: Contemporary Critical Writing by Indigenous Australians*, Melbourne: Melbourne University Press, pp. 81–91.
- Langton, Marcia (2003), 'Dreaming Art' in Nikos Paprastergiadis (ed), *Complex Entanglements: Art, Globalization and Cultural Difference*, London UK: Rivers Oram, pp. 42–56.
- Langton, Marcia (2005), 'Aboriginal Art and Film: The Politics of Representation', *Rouge*, 6.
- Leiberman, David (2002), *The Province of Legislature Determined: Legal Theory in Eighteenth Century Britain*, Cambridge UK: Cambridge University Press.
- Lessig, Lawrence (2001), *The Future of Ideas: The Fate of the Commons in an Interconnected World*, New York USA: Random House.
- Li, Tania Murray (2000), 'Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot', *Comparative Studies in Society and History*, 42 (1), 149–79.
- Lippard, Lucy (1990), *Mixed Blessings: New Art in Multicultural America*, New York USA: Pantheon Books.
- Litman, Jessica (1990), 'The Public Domain', *Emory Law Journal*, 39 (4), 965–1023.
- Litman, Jessica (2001), *Digital Copyright*, New York USA: Prometheus Books.
- Locke, John (1689), *Two Treatises of Government*, reprinted in Peter Laslett (ed) (1990), London UK: J.M. Dent & Sons.
- Lofgren, Neil (1995), 'Common Law Aboriginal knowledge', *Aboriginal Law Bulletin*, 3 (77), 10–13.
- Long, Doris Estelle (1998) 'The Impact of Foreign Investment on Indigenous Culture: An Intellectual Property Perspective', *North Carolina Journal of Comparative Law and Competition Regulation*, 23, 229–243.
- Long, Doris Estelle (2002), "'Democratizing Globalisation": Practicing the Policies of Cultural Inclusion', *Cardozo Journal of International and Comparative Law*, 10, 218–268.
- Long, Doris Estelle (2001), "'Globalization": A Future Trend or a Satisfying Mirage?', *Journal of the Copyright Society of the USA*, 49 (1), 313–343.
- Loos, Noel and Edward Koiki Mabo (1996), *Edward Koiki Mabo: his life and struggle for land rights*, St Lucia: Queensland University Press.
- Lury, Celia (1993), *Cultural Rights: Technology, Legality and Personality*, New York USA: Routledge.
- McKenna, Mark (2002), *Looking for Blackfella's Point: An Australian History of Place*, Sydney: University of New South Wales Press.
- MacKinnon, Catharine (1987), *Feminism Unmodified: Discourses on Life and Law*, Massachusetts USA: Harvard University Press.
- Macpherson, Crawford Brough (1962), *The Political Theory of Possessive Individualism: Hobbes to Locke*, Oxford UK: Clarendon Press.

- Maddock, Kenneth (1988), 'Copyright and Traditional Designs: An Aboriginal Dilemma', *Aboriginal Law Bulletin*, 34, 8–10.
- Mansell, Michael (1997), 'Barricading Our Last Frontier – Aboriginal Cultural and Intellectual Property Rights', *Land Rights: Past Present and Future – Conference Papers*, Canberra: Northern and Central Land Councils, pp. 195–209.
- Marcus, George and Fred Myers (1995), *The Traffic in Culture: Refiguring Art and Anthropology*, Berkeley: University of California Press.
- Marden, Emily (1999), 'The Neem Tree Patent: International Conflict over the Commodification of Life' (1999), *Boston College International and Comparative Law Review*, 22, 279–296.
- Marika, Wandjuk (1976), 'Copyright on Aboriginal Art', *Aboriginal News*, 3 (1), 7–8.
- Marika, Wandjuk (1976), 'Aboriginal Copyright', *Art and Australia*, 13 (3), 242–244.
- Martinez Cobo, Jose (1986), *Study of the Problem of Discrimination against Indigenous Populations*, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities E/CN.4/Sub.2/1986/7/Add.4.
- Maskus, Keith (2000), *Intellectual Property Rights in the Global Economy*, Washington DC: Peterson Institute for International Economics.
- May, Christopher (2000), *A Global Political Economy of Intellectual Property Rights: The New Enclosures?*, London UK: Routledge.
- May, Christopher (2003), 'Why IPRs are a Global Political Issue', *European Intellectual Property Review*, 1, 1–6.
- May, Christopher and Susan Sell (2005), *Intellectual Property Rights: A Critical History*, London UK: Lynne Rienner Publishers.
- McDonald, Ian (2003), 'Indigenous Communal Moral Rights Back on the Agenda', *Australian Intellectual Property Law Bulletin*, 16 (4), 47–50.
- McGrath, Ann (1993), 'Beneath the Skin: Australian Citizenship, Rights and Aboriginal Women' *Journal of Australian Studies*, 37, 99–122.
- McKeough, Jill and Andrew Stewart (1996), 'Intellectual Property and the Dreaming', in Elliot Johnstone, Martin Hinton and Dary Rigney (eds), *Indigenous Australians and the Law*, Sydney: Cavendish.
- McKeough, Jill, Kathy Bowrey and Philip Griffith (2002), *Intellectual Property: Commentary and Materials* (third edition), Sydney: The Lawbook Company.
- McMahon, Michael (1997), 'Indigenous Cultures, Copyright and the Digital Age', *Aboriginal Law Bulletin*, 3 (90), 14–16.
- McMahon, Michael (1997), 'The Intellectual Property Regime and the Protection of Indigenous Cultures' in *Land Rights: Past Present and Future – Conference Papers*, Canberra: Northern and Central Land Councils.
- Mellor, Doreen and Terri Janke (2001), *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Crafts Sector*, Sydney: National Association for the Visual Arts.
- Merry, Sally Engel (1998), 'Law Culture and Cultural Appropriation', *Yale Journal of Law and the Humanities*, 10, 101–129.
- Mezey, Naomi (2001), 'Approaches to the Cultural Study of Law: Law as Culture', *Yale Journal of Law and the Humanities*, 13, 35–67.
- Michaels, Eric (1988), 'Bad Aboriginal Art', *Art and Text*, 28, 59–73.
- Michaels, Eric (1994), *Bad Aboriginal Art: Tradition, Media and Technological Horizons*, Sydney: Allen and Unwin.
- Miller, Peter and Nikolas Rose (1990), 'Governing Economic Life', *Economy and Society*, 19 (1), 1–31.

- Mitchell, Timothy (1988), *Colonizing Egypt*, Berkeley, USA: University of California Press.
- Mitchell, Timothy (2002), *Rule of Experts: Egypt, Technopolitics, Modernity*, Berkeley, USA: University of California Press.
- Mitchell, Timothy (2004), 'The Properties of Markets: Informal Housing and Capitalism's Mystery', Cultural Political Economy Working Paper Series, Institute for Advanced Studies in Social and Management Sciences, University of Lancaster.
- Mitchell, Timothy (2005), 'The Work of Economics: How a Discipline Makes its World', *European Journal of Sociology*, 45 (2), 297–320.
- Morgan, Marlo (1995), *Mutant Message Down Under*, Harper Collins: New York.
- Morris, Meaghan (1987), 'Tooth and Claw: Tales of Survival, and *Crocodile Dundee*', *Art and Text*, 25, 36–69.
- Mundy, Martha and Alain Pottage (2004), *Law, Anthropology and the Social*, Cambridge UK: Cambridge University Press.
- Munger, Frank (1998), 'Mapping Law and Society' in Austin Sarat, Marianne Constable, David Engel, Valerie Hans and Susan Lawrence (eds), *Crossing Boundaries: Traditions and Transformations in Law and Society Research*, Chicago: Northwestern University Press, pp. 21–88.
- Myers, Fred (2002), *Painting Culture: The Making of an Aboriginal High Art Market*, Durham USA: Duke University Press.
- Nadasdy, Paul (2003), *Hunters and Bureaucrats: Power, Knowledge and Aboriginal State Relations in the Southwest Yukon*, Vancouver and Toronto: University of British Columbia Press.
- Nader, Laura (ed) (1969), *Law in Culture and Society*, Illinois: Aldine Publishing Company.
- Nakata, Martin (ed) (2001), *Indigenous Peoples, Racism and the United Nations*, Sydney: Common Ground.
- Nakata, Martin (2002), 'Indigenous Knowledge and the Cultural Interface: Underlying Issues at the Intersection of Knowledge and Information Systems', *International Federation of Libraries Association Journal*, 28, 281–286.
- Nakata Martin and Marcia Langton (2005), *Australian Indigenous Knowledge and Libraries*, Canberra: Australian Academic and Research Libraries.
- Nancy, Jean-Luc (1993), *The Experience of Freedom*, Stanford USA: Stanford University Press.
- Neville, Kathryn (2000), 'Art and Colonial Consciousness: Deconstructing the Colonial Imagination', *Balayi: Culture, Law and Colonialism*, 1 (2), 39–51.
- Nicholas George and Kelly Bannister (2004), 'Copyrighting the Past?', *Cultural Anthropology*, 45 (4), 327–350.
- Nicholls, Christine (2000), *From Appreciation to Appropriation: Indigenous Influences and Images in Australian Visual Art Exhibition Catalogue*, Sydney.
- O'Connor, Paul (1996), 'Happy Partners or Strange Bedfellows: The Blending of Remedial and Institutional Features in the Evolving Constructive Trust', *Melbourne University Law Review*, 30, 735–759.
- O'Faircheallaigh, Cairan (2000), 'Negotiating Major Agreements: The "Cape York Model"', Australian Institute of Aboriginal and Torres Strait Islander Studies Discussion Research Paper No. 11, Canberra.
- O'Malley, Pat (1983), *Law Capitalism and Democracy*, Sydney: Allen and Unwin.

- O'Malley, Pat (1998), 'Indigenous governance' in Barry Hindess and Mitchell Dean (eds), *Governing Australia: Studies in contemporary rationalities of government*, Sydney: Cambridge University Press, pp. 156–172.
- O'Malley, Pat (2000), 'Uncertain Subjects: Risks, Liberalism and Contract', *Economy and Society*, 29 (4), 460–484.
- Okediji, Ruth Gana (1995), 'Has Creativity Died in the Third World? Some Implications of the Internationalization of Intellectual Property', *Denver Journal of International Law and Policy*, 24 (1), 109–132.
- Okediji, Ruth Gana (2003), 'The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System', *Singapore Journal of International & Comparative Law*, 7, 315–356.
- Osborne, Thomas (1999), 'The Ordinarity of the Archive', *History of Human Sciences*, 12 (2), 51–64.
- Otto, Dianne (1999), 'Subalterity and International Law: The Problems of Global Community and the Incommensurability of Difference' in Eve Darian-Smith and Peter Fitzpatrick (eds), *Laws of the Postcolonial*, Michigan USA: University of Michigan, pp. 145–180.
- Palmer, David and Denise Groves (2000), 'A Dialogue on Identity, Intersubjectivity and Ambivalence', *Balayi: Culture, Law and Colonialism*, 1 (2), 19–31.
- Pashukanis, Evgeny (1924), *Law and Marxism*, Chris Arthur (ed) (1978), London UK: Ink Links.
- Patterson, Lyman Ray (1968), *Copyright in Historical Perspective*, Nashville USA: Vanderbilt University Press.
- Patton, Paul (2000), 'The Translation of Indigenous Land into Property: the Mere Analogy of English Jurisprudence...', *parallax*, 6 (1), 25–38.
- Pearson, Noel (1994) 'Aboriginal Law and Colonial Law since Mabo' in Christine Fletcher (ed), *Aboriginal Self-determination in Australia*, Canberra: Aboriginal Studies Press, pp. 23–27.
- Penner, James E. (1996), 'The Bundle of Rights Picture of Property', *University of California Los Angeles Law Review*, 43, 711–820.
- Perraton, Jonathon, David Goldblatt, David Held and Anthony McGrew (2000), 'Economic Activity in a Globalising World' in David Held and Anthony McGrew (eds), *The Global Transformations Reader: An Introduction to the Globalisation Debate*, Cambridge: Polity Press, pp. 287–299.
- Perrin, Colin (1999), 'Approaching Anxiety: The Insistence of the Postcolonial in the Declaration of the Rights of Indigenous People' in Eve Darian-Smith and Peter Fitzpatrick (eds), *Laws of the Postcolonial*, Michigan USA: University of Michigan, pp. 19–38.
- Peters-Little, Frances (1998), 'The Community Game: Aboriginal Self Definition at a Local Level', *Australian Institute of Aboriginal and Torres Strait Islander Research Discussion Paper*, 10, 1–34.
- Peterson, Noel and Will Sanders (eds) (1998), *Citizenship and Indigenous Australians: Changing Conceptions and Possibilities*, Cambridge UK: Cambridge University Press.
- Poovey, Mary (1998), *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society*, Chicago USA: Chicago University Press.
- Posey, Darrell (1996), 'Indigenous Peoples and Traditional Resource Rights: A Basis for Equitable Relationships', in *Ecopolitics IX: Conference Papers and Resolutions*, Casuarina: Northern Land Council.

- Posey, Darrell and Graham Dufield (1996), *Beyond Intellectual Property*, Ottawa: International Development Research Centre.
- Posner, Richard (1990), *The Problems of Jurisprudence*, Cambridge, Massachusetts: Harvard University Press.
- Povinelli, Elizabeth (2002), *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*, Durham USA: Duke University Press.
- Pritchard, Sarah (1997), 'The United Nations and the making of a Declaration on Indigenous Rights', *Aboriginal Law Bulletin*, 3 (89), 4–9.
- Pritchard, Sarah (ed) (1997), *Indigenous Peoples, the United Nations and Human Rights*, London UK: Zed Books.
- Purdy, Jeannine (1996), 'British Common Law and Colonised Peoples: Studies in Trinidad and Western Australia' in Greta Bird, Gary Martin and Jennifer Nielson (eds), *Majah: Indigenous Peoples and the Law*, Sydney: The Federation Press, pp. 23–36.
- Purdy, Jeannine (1999), 'Postcolonialism: The Emperor's New Clothes?' in Eve Darian-Smith and Peter Fitzpatrick (eds), *Laws of the Postcolonial*, Michigan USA: University of Michigan, pp. 203–232.
- Puri, Kamal (1993), 'Copyright Protection for Australian Aborigines in the Light of Mabo' in Margaret Ann Stephenson and Suri Ratnapala (eds), *Mabo: A Judicial Revolution*, St Lucia, Queensland: The University of Queensland Press, pp. 132–164.
- Puri, Kamal (1995), 'Cultural Ownership and Intellectual Property Rights Post-Mabo: Putting Ideas into Action', *Intellectual Property Journal*, 9 (3), 293–347.
- Puri, Kamal (2000), 'Is traditional or cultural knowledge a form of intellectual property?', *Oxford Electronic Journal of Intellectual Property Rights* at www.oiprcx.ac.uk/EJWP0100.pdf.
- Radin, Margaret Jane (1993), *Reinterpreting Property*, Chicago USA: University of Chicago Press.
- Rappaport, Joanne (2005), *Intercultural Utopias: Public Intellectuals, Cultural Experimentation, and Ethnic Pluralism in Columbia*, Durham USA: Duke University Press.
- Reich, Charles (1964), 'The New Property', *Yale Law Journal*, 73, 733–787.
- Ricketson, Sam (1987), *The Berne Convention for the Protection of Literary and Artistic Works 1886–1986*, London UK: Centre for Commercial Law Studies, Queen Mary College.
- Ricketson, Sam (1994), *Intellectual Property: Cases, Materials and Commentary*, Sydney: Butterworths.
- Rimmer, Matthew (2000), 'Bangarra Dance Theatre: Copyright Law and Indigenous Culture', *Griffith Law Review*, 9 (2), 275–302.
- Rimmer, Matthew (2001), *The Pirates' Bizarre*, PhD Dissertation, University of New South Wales, Sydney, Australia.
- Rimmer, Matthew (2003), 'Albert Namatjira: Copyright Estates and Traditional Knowledge', *Incite*, 24, 6–8.
- Rose, Mark (1993), *Authors and Owners: The Invention of Copyright*, Cambridge MA USA: Harvard University Press.
- Rose, Mark (1994), 'The Author as Proprietor: *Donaldson v. Becket* and the Genealogy of Modern Authorship' in Brad Sherman and Alain Strowel (eds), *Of Authors and Origins: Essays on Copyright Law*, Oxford UK: Clarendon Press, pp. 23–55.

- Rose, Nikolas (1993), 'Government, Authority and Expertise in Advanced Liberalism', *Economy and Society*, 22 (3), 273–299.
- Rose, Nikolas (1999), *Powers of Freedom: Reframing Political Thought*, London UK: Cambridge University Press.
- Rose, Nikolas and Peter Miller (1992), 'Political Power Beyond the State: Problematics of Government', *British Journal of Sociology*, 43 (2), 173–205.
- Rowse, Tim (1992), 'The Royal Commission, ATSIC and Self-determination: A Review of the Royal Commission into Aboriginal Deaths in Custody', *Australian Journal of Social Issues*, 27 (3), 153–172.
- Rowse, Tim (1992), *Remote Possibilities: The Aboriginal Domain and the Administrative Imagination*, Casuarina NT: Australian National University.
- Rowse, Tim (1998), *White Flour, White Power: From Rations to Citizenship in Central Australia*, Cambridge UK: Cambridge University Press.
- Royal Commission into Aboriginal Deaths in Custody – Interim Report* (1988), Canberra: Australian Government Publishing Service.
- Royal Commission into Aboriginal Deaths in Custody – National Report* (1991), Canberra: Australian Government Publishing Service.
- Ruddock, Phillip (2003), 'The Government's Copyright Policy Agenda' Conference Paper delivered at *The Eleventh Biennial Copyright Law and Practice Symposium*, Darling Harbour, Sydney, November.
- Ryan, Michael (1998), *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property Future*, Washington, DC: Brookings Institution Press.
- Sackville, Ronald (2003), 'Legal Protection of Indigenous Culture in Australia', *Cardozo Journal of International and Comparative Law*, 11, 711–746.
- Said, Edward (1985), *Orientalism*, London UK: Penguin Books.
- Sandel, Michael (ed) (1984), *Liberalism and its Critics*, New York USA: New York University Press.
- Sarat, Austin and Thomas Kearns (eds) (1999), *History, Memory and the Law*, Ann Arbor USA: University of Michigan Press.
- Sarat, Austin and Jonathan Simon (2001), 'Beyond Legal Realism?: Cultural Analysis, Cultural Studies and the Situation of Legal Scholarship', *Yale Journal of Law and the Humanities*, 13 (1), 1–35.
- Sarat, Austin and Jonathon Simon (eds) (2003), *Cultural Analysis, Cultural Studies and the Law: Moving Beyond Legal Realism*, Durham USA: Duke University Press.
- Saunders, David (1992), *Authorship and Copyright*, London UK and New York USA: Routledge.
- Sebastiani, Silvia (2005), "'Race", Women and Progress in the Scottish Enlightenment' in Sarah Knott and Barbara Taylor (eds), *Women, Gender and the Enlightenment*, London UK: Palgrave Macmillan, pp. 75–96.
- Seeger, Anthony (1997), 'Ethnomusicology and Music Law' in Bruce Ziff and Pratima Rao (eds), *Borrowed Power: Essays on Cultural Appropriation*, New Jersey USA: Rutgers University Press, pp. 52–70.
- Sell, Susan (1998), *Power and Ideas: North-South Politics of Intellectual Property and Antitrust*, New York USA: State University of New York Press.
- Sell, Susan (2002), 'Industry Strategy for Intellectual Property and Trade: The Quest for TRIPs and post-TRIPs Strategies', *Cardozo Journal of International and Comparative Law*, 10, 79–108.
- Sherman, Brad (1994), 'From the Non-original to the Ab-original' in Brad Sherman and Alain Strowel (eds), *Of Authors and Origins: Essays on Copyright Law*, Oxford UK: Clarendon Press, pp. 111–131.

- Sherman, Brad and Alain Strowel (eds) (1994), *Of Authors and Origins: Essays on Copyright Law*, Oxford UK: Clarendon Press.
- Sherman, Brad and Lionel Bently (1999), *The Making of Modern Intellectual Property: The British Experience 1760–1911*, Cambridge UK: Cambridge University Press.
- Sherwin, Richard (2000), *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture*, Chicago USA: The University of Chicago Press.
- Shiva, Vandana (1993), *Monocultures of the Mind: Perspective on Biodiversity and Biotechnology*, India: Zed Books.
- Shiva, Vandana (2001), *Protect or Plunder? Understanding Intellectual Property Rights*, India: Zed Books.
- Shulman, Seth (1999), *Owning the Future*, Boulder Colorado: Houghton and Mifflin.
- Singh Nijar, Gurdial, (1998), 'Community Intellectual Rights Protect Indigenous Knowledge', *Biotechnology and Development Monitor*, 36, 11–12.
- Smart, Carol (1989), *Feminism and the Power of Law*, London UK: Routledge.
- Smith, Gordon and Russell Parr (1989), *Valuation of Intellectual Property and Intangible Assets*, New York USA: John Wiley.
- Stacey, Helen (1996), 'Legal Discourse and the Feminist Political Economy: Moving Beyond Sameness/Difference', *The Australian Feminist Law Journal*, 6, 115–129.
- Stevenson, Nina (1985), 'Case Note: Infringement in Copyright in Aboriginal Artworks', *Aboriginal Law Bulletin*, 17, 5–6.
- Stoler, Ann Laura (1995), *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Durham USA: Duke University Press.
- Stoler, Ann Laura (2002), 'Colonial Archives and the Arts of Governance', *Archival Science*, 2(1–2), 87–109.
- Strang, Veronica (2000), 'Not so Black and White: The Effects of Aboriginal Law on Australian Legislation' in Allen Abramson and Dimitrios Theodossopoulos (eds), *Land, Law and Environment: Mythical Land, Legal Boundaries*, London UK: Pluto Press, pp. 93–115.
- Strathern, Marilyn (1996), 'Potential Property: Intellectual Rights and Property in Persons', *Social Anthropology*, 4 (1), 17–32.
- Strathern, Marilyn (1999), *Property, Substance and Effect: Anthropological Essays on Persons and Things*, London UK: Athlone Press.
- Strathern, Marilyn (2005), *Kinship, Law and the Unexpected: Relatives are Always a Surprise*, Cambridge UK: University of Cambridge Press.
- Strelein, Lisa (2003), 'Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 – Comment', *Land, Rights, Laws: Issues of Native Title*, 2 (21), 1–12.
- Strelein, Lisa, Jane Anderson and Stuart Bradfield (2004), *Submission to the Senate Select Committee on the Administration of Indigenous Affairs by the Australian Institute of Aboriginal and Torres Strait Islander Studies*.
- Sullivan, Patrick (2005), 'Searching for the Inter-cultural, Searching for the Culture', *Oceania*, 75 (2), 183–194.
- Sunder, Madhavi (2000), 'Intellectual Property and Identity Politics: Playing with Fire', *Journal of Gender, Race and Justice*, 4 (1), 69–91.
- Sunder, Madhavi (2007), 'The Invention of Traditional Knowledge', *Duke Journal of Law and Contemporary Problems*, 17 (2), 97–124.

- The Attorney General's Department (1994), *Stopping the Rip Offs: Intellectual Property Protection for Indigenous Arts and Cultural Expression*, Canberra: Australian Government Publishing Services.
- The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples* (1993), Written and adopted at the First International Conference on Cultural and Intellectual Property Rights of Indigenous Peoples, Whakatane, New-Zealand, 12–13 June.
- Thomas, Nicholas (1996), 'Cold Fusion', *American Anthropologist*, 98 (1), 9–16.
- Thomas, Nicholas (1999), *Possessions: Indigenous Art/Colonial Culture*, London UK: Thames and Hudson.
- Thornberry, Paul (1991), *International Law and the Rights of Minorities*, Oxford, UK: Clarendon Press.
- Thornton, Margaret (1991), 'Portia Lost in the Grove of Academe Wondering What to Do About Legal Education', Inaugural Lecture, La Trobe University Legal Studies, 3 June.
- Thornton, Margaret (1991), *The Liberal Promise: Anti-Discrimination Legislation in Australia*, Melbourne: Oxford University Press.
- Torgovnick, Marianna (1990), *Gone Primitive: Savage Intellects Modern Lives*, Chicago USA: The University of Chicago Press.
- Trioli, Virginia (1994), 'Record Damages for Illegal Aboriginal Images', *The Age*, Melbourne, Australia, 14 December.
- Tully, James (1980), *A Discourse on Property: John Locke and his adversaries*, Cambridge USA: Cambridge University Press.
- Tushnet, Mark (1991), 'Critical Legal Studies: A Political History', *The Yale Law Journal*, 100, 1515–1544.
- Unger, Roberto (1976), *Law in Modern Society: Toward a Criticism of Social Theory*, London UK and New York USA: The Free Press, McMillan Publishers.
- Unger, Roberto (1986), *The Critical Legal Studies Movement*, Cambridge MA USA: Harvard University Press.
- Vaidhyanathan, Siva (2001), *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity*, New York USA: New York University Press.
- von Lewinski, Silkie (2003), 'The Protection of Folklore', *Cardozo Journal of International and Comparative Law*, 11 (2), 747–768.
- Vandervelde, Kenneth (1980), 'The New Property of the Nineteenth Century: The Development of the Modern Concept of Property', *Buffalo Law Review*, 29, 325–352.
- Walker, John and David McDonald (1995), 'The Over Representation of Indigenous Peoples in Custody in Australia', *Trends and Issues in Crime and Criminal Justice*, 47, 1–6.
- Watson, Irene (1997), "'Indigenous Peoples" Law-Ways: Survival against the Colonial State', *Australian Feminist Law Journal*, 8, 39–58.
- Watson, Irene (2000), 'There is No Possibility of Rights Without Law: So Until Then Don't Thumb Print or Sign Anything!', *Indigenous Law Bulletin*, 5, 4–7.
- Watson, Irene (2002), 'Buried Alive', *Law and Critique*, 13 (3), 253–269.
- Weiner, Annette (1992), *Inalienable Possessions: The Paradox of Keeping While Giving*, California USA: University of California Press.
- Weiner, James (1987) 'Protection of folklore: A political and legal challenge', *International Review of Industrial Property and Copyright Law*, 18 (1), 56–92.

- Weiner, James (1999), 'Culture in a sealed envelope: the concealment of Australian Aboriginal heritage and tradition in the Hindmarsh Island Bridge Affair', *The Journal of the Royal Anthropological Institute*, 5 (2), 193–210.
- Weiner, James (2002), 'Diaspora, Materialism, Tradition: Anthropological Issues in the Recent High Court Appeal of the Yorta Yorta', *Land, Rights, Laws: Issues of Native Title*, 2 (18), 1–12.
- Wells, Kathryn (1995), 'Authenticity – Promotion and Protection of Aboriginal and Torres Strait Islander Art', Paper on Research and Development – Preliminary advice to National Indigenous Arts Advocacy Association Australia, 15 June.
- Wells, Kathryn (1996), *Draft Discussion Paper on the Proposed Authenticity Trade Mark*, National Indigenous Arts Advocacy Association, Australia.
- Wells, Kathryn (1996), 'The Cosmic Irony of Intellectual Property and Indigenous Authenticity', *Culture and Policy*, 7 (3), 45–63.
- White, James Boyd (1990), *Justice as Translation: An Essay in Cultural and Legal Criticism*, Chicago USA and London UK: University of Chicago Press.
- Williams, Brett (ed) (1991), *The Politics of Culture*, Washington DC: The Smithsonian Institution.
- Williams, Patricia (1991), *The Alchemy of Race and Rights*, Cambridge MA USA: Harvard University Press.
- Williams, Raymond (1963), *Culture and Society 1780–1950*, London UK: Penguin Books.
- Williams, Raymond (1965), *The Long Revolution*, London UK: Penguin Books.
- Williams, Raymond (1976), *Keywords: A Vocabulary of Culture and Society*, London UK: Fontana/Croom Helm.
- Williams, Raymond (1979), *Politics and Letters*, London UK: New Left Books.
- Williams, Raymond (1989), *The Politics of Modernism: Against the New Conformists*, London: Verso.
- Windshuttle, Keith (2002), *The Fabrication of Australian History*, Sydney: Macleay Press.
- Wiseman, Leanne (2000), 'The Labels of Authenticity: An Overview', *Media and Culture Review*, 1, 3–8.
- Wiseman, Leanne (2001), 'The Protection of Indigenous Art and Culture in Australia: The Labels of Authenticity', *European Intellectual Property Review*, 23 (1), 14–25.
- Woodmansee, Martha (1984), 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the Author', *Eighteenth Century Studies*, 17, 425–448.
- Woodmansee, Martha and Peter Jaszi (eds) (1994), *The Construction of Authorship: Textual Appropriation in Law and Literature*, Durham USA: Duke University Press.
- Wooten, Hal (1992), 'Deaths in Custody', Paper delivered at the Coronial Inquest Seminar, Sydney University Law School, Australia.
- World Intellectual Property Organisation (2001), *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact Finding Missions on Intellectual Property and Traditional Knowledge (1998–1999)*, Geneva, Switzerland.
- Wright, David (1998) *The Remedial Constructive Trust*, Sydney: Butterworths.
- Wright, Shelley (1996), 'Intellectual Property and the "Imaginary Aboriginal"' in Greta Bird, Gary Martin and Jennifer Neilson (eds), *Majah: Indigenous Peoples and the Law*, Sydney: The Federation Press, pp. 129–151.

- Wright, Shelley (2001), *International Human Rights, Decolonisation and Globalisation: Becoming Human*, London UK: Routledge.
- Young, Alison and Austin Sarat (eds) (1994), *Beyond Criticism: Law Power and Ethics*, London UK: Sage Publishers.
- Young, Iris Marion (1990), *Justice and the Politics of Difference*, Princeton USA: Princeton University Press.
- Young, Simon (2001), 'The Trouble with "Tradition": Native Title and the *Yorta Yorta* Decision', *The University of Western Australia Law Review*, 30 (1), 28–49.
- Yunupingu, Galarrway (1997), 'From the Bark Petition to Native Title' in *Land Rights: Past Present and Future – Conference Papers*, Canberra: Northern and Central Land Councils, 1–17.
- Ziff, Bruce and Pratima Rao (1997), *Borrowed Power: Essays on cultural appropriation*, New Jersey USA: Rutgers University Press.

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