

## Statues Stand, Statues Topple

In Melbourne's parks and gardens we find them in bronze: James Cook, Redmond Barry, Matthew Flinders, Robert O'Hara Burke and William Wills. All male, all white, and all occupying public land. Statues elsewhere topple: a slave trader in Bristol, England; a slave-owning Confederate General in Richmond, Virginia. Should Melbourne's statues remain standing?

**Black Lives Matter. Australia has seen hundreds of Indigenous deaths in custody since the 1987 Royal Commission. Perhaps it's time to re-examine the values being commemorated in our parkland monuments.**

Why does Captain Cook overlook St Kilda Beach? The closest he came to Melbourne was Point Hicks in East Gippsland. As for Flinders, he sailed past Port Phillip heads without entering. They each had confrontations with Indigenous people, but should they be grouped with slave traders and slave owners?

Burke and Wills commenced their trans-continental trek from Royal Park, but their various memorials belittle or ignore Gray (who also perished) and King (who survived, thanks to the Yuntruwunta people). It's a class thing: Burke and Wills were officers, Gray and King mere enlisted foot-sloggers.



Redmond Barry occupies a [questionable place](#) in history. He laid the foundations of the State Library and Melbourne University, from which he was adamantly determined to exclude women.

As a lawyer, Barry unsuccessfully defended two Tasmanian Aborigines accused of murder, questioning British authority over Indigenous peoples. As a judge, he condemned Ned Kelly, but acquitted the Eureka Stockade rebels. And, as his private diaries reveal, he was a serial adulterer.



We must travel to Optus Oval in Perth to see a statue commemorating an Indigenous Australian – Nicky Winmar lifting his footy jumper to confront the racists. Perhaps it belongs at Victoria Park Collingwood, the scene of the event it commemorates.

**The statues with which we are most familiar are, of course, war memorials. Every country town has its bronze digger with his slouch hat and 303; his granite plinth engraved with a disturbing list of local lads who never came home.**

We find a [different type of war memorial](#) at Lakes Entrance. The material is not bronze, but timber, hewn from the trunks of Cypress trees planted in the aftermath of WW1. Yes, trees become senescent; memories fade, and we rethink what it is we wish to celebrate. The most haunting amongst the Lakes Entrance sculptures is that of a digger's family, waiting, waiting.

Finally, back in Melbourne, let's visit the statue of Nurse [Edith Cavell](#) alongside Linlithgow Avenue in King's Domain. The plinth records her last words as she faced the firing squad: "*Patriotism is not enough. I must have no hatred or bitterness to anyone.*"

**So, should statues stand or fall? One thing's for sure: managers of public parks and gardens must address bigger issues than the flower beds. ■**

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Our calendar of forthcoming on-line professional development courses



All the places we visit in Terra Publica are in the country of First Nations peoples.

## Places are Named, Places are Re-named

Now and then we drive along Linlithgow Avenue in Melbourne's King's Domain.

On such occasions we don't (frankly) spare much time remembering Victor Alexander John Hope, 2nd Marquess of [Linlithgow](#), KG, KT, GCSI, GCIE, OBE, TD, PC, FRSE, an Eton lad who became Viceroy of India.

Sorry, your Excellency, we suspect the time has come to give you the flick. Or at the very least, to ask ourselves why on earth we should remember you.

### Lake Linlithgow

A good place to commence that line of thinking might be Lake Linlithgow, in the country of the Gunditjmarra and Eastern Maar peoples. We would be surprised if it was visited by or even known to His Excellency the Marquess,

Value systems evolve – as demonstrated in recent times at the said Lake. Here, the value-balance is shifting, slowly but surely, from gun-toting duck shooters to conservationists. The Hamilton Field Naturalists Club and the Nature Glenelg Trust are working to protect vulnerable native vegetation and threatened birdlife.

So, what alternative name might we advance for Lake Linlithgow? Well, the Parish Plan, drawn up in the 1870s, offers us *Jennawarra*. What does it mean? Guess we should ask the Gunditjmarra and Eastern Maar.

### Batman Park

Back in Melbourne, the name *Batman* fuels controversy. Sure, he chose the site of Melbourne, but according to his neighbor in Van Dieman's Land, Batman was 'a murderer of blacks and the vilest man I have ever known.'

There are a couple of Batman Parks: one a narrow strip along the north bank of the Yarra, the other in Northcote.

The Darebin Council proposed that the latter be renamed for *Gumbri*, a Wurundjeri woman, but the proposal was rejected by the Office of Geographic Place Names. We don't know why.

The Commonwealth Electoral Commission had no qualms about renaming the Federal electorate of Batman. It has become Cooper – named for the Yorta Yorta activist and leader William Cooper.

### Fawkner Park

Perhaps the most ambiguous amongst our founding fathers was John Pascoe Fawkner. Virtually uncelebrated in sculpture, he is commemorated at Fawkner Park – one of the few parks in the City of Melbourne to bear the name of a commoner.

It's true that Fawkner's contributions to the growing colony were substantial – but there was another side to him: he was an appalling anti-Chinese racist. In parliament, he moved to prevent "*the Gold Fields of Australia Felix from becoming the property of the Emperor of China and of the Mongolian and Tartar hordes of Asia.*"

Should we rename Fawkner Park? The suburb of Fawkner? Fawkner Cemetery?

### The Convincing Ground

Let's move to the ocean foreshore just East of Portland – a place called the Convincing Ground. The name is abhorrent, and we would argue that, for that very reason, it should stay.

Who was convinced here, by whom, and of what? This is where the Gunditjmarra people were *convinced* of white-fellas' rule, by a posse of sealers. How were they convinced? By being shot. This is a massacre site.

The place continues to epitomise conflict. The revisionists of the 'history wars' have long denied its significance: its precise location was not documented to their satisfaction. So it is with the Eureka Stockade: its geographic uncertainty in no way diminishes the significance of the events that occurred there.

**We can regret history. We can abhor history. But we can't deny history. We can, and should, re-examine history, even re-write those chapters we now find defective. But we can't obliterate history.**

*Let's acknowledge the fact that history moves along: memories fade, previously hidden truths emerge, values change, and place-names may need to respond.*

*Let's use these controversies to illuminate history. Write the pamphlets. Erect the signage. Commission the art-works. Conduct the events.*

Above all, enter into the dialogue: in some respects, the dialogue is more important than the end result that might emerge from it.

**As we might have mentioned, managers of public land must sometimes address bigger issues than lawns and flower beds. ■**

# UnCommon Law

***'It is an oblique area of the law, hardly known, hardly traversed,' Mr Pickering told the court.***

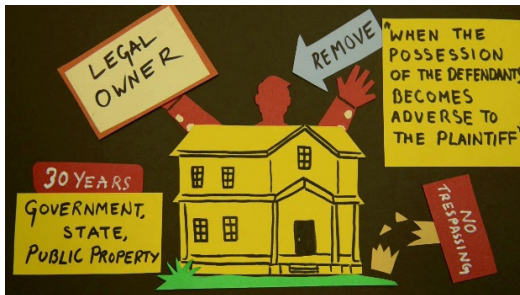
(ABC News, 22 May 2020)

The law shifts hesitantly from *common law* (made by courts) to *statutory law* (made by parliaments). The best known example is Native Title – recognised initially by the High Court, but transferred into statute by the Keating and then the Howard governments.

We think the time has come for a few more 'oblique' areas of law to follow.

## UnCommon Law 1: Adverse possession

Mr Peter Pickering is a prosecutor in the County Court. The 'oblique area of law' to which he referred is the common law doctrine of adverse possession.



Before the Court was a Victorian police officer who had claimed possession of at least five properties. Sergeant Rosa Rossi identified vacant properties, had the locks changed and title documents transferred into her name.

The prosecutor told the Court that Rossi had researched the legalities of 'adverse possession' — otherwise known as squatters' rights — where if a person acts as if the property is theirs for 15 years it becomes theirs.

**We are reasonably confident that the Court did not need this explanation of the law, even if the ABC's viewers did. Whether the body of law is obscure or not, it most certainly cries out for review and reform.**

In Victoria, Parliament has chopped back the reach of adverse possession, but has never attempted to codify it. Neither the legal community nor government agencies have attempted to analyse its utility.

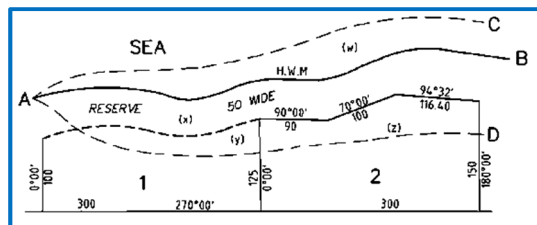
**The prosecutor threw in the phrase 'squatters rights.' Some of the cases we have seen might better be described as 'legalised theft.'**

Whatever you call it, adverse possession is long overdue for a total overhaul.

## UnCommon Law 2: The Doctrine of Accretion

Property boundaries can be disputed, even when they are nice straight, geometrically defined lines, with lengths and bearings. Fortunately, we have a body of people known as licensed surveyors, led by the Surveyor General, who can resolve such disputes. It's essentially a matter of mathematics rather than law.

Less common are boundaries defined by topographic features. The centre of the river; high water mark of the ocean; 'full supply level' of some lake. Over time such features may move and (here's the tricky bit) sometimes the associated property boundary also moves; sometimes it doesn't.



Cases involving the doctrine of accretion very seldom come before the courts, but if they did, we suspect the courts would simply accept rulings from the Surveyor General.

Sorry, we don't think that's good enough. If we are to sort out the mess of boundaries along many Victorian rivers, we need law founded in sound 21<sup>st</sup> Century policy, not mediaeval English courts.

## UnCommon Law 3: Dedication and Acceptance

A *public highway* is land (probably a road) over which anybody is entitled to come and go, as of right. The problem is the somewhat obscure manner in which some roads become public highways: through the common law *doctrine of dedication and acceptance*. This doctrine no longer serves useful public policy ends.

'Public highway' as a common law concept was central to [various recent court cases](#). In *Anderson*, the plaintiffs became so distressed that one was stabbed, and almost lost his life. In *Mayberry*, the judgement meant that the middle strip of a road reserve was owned by the relevant council, but the side strips were owned by somebody else.

In *Calabro* the road was found to be owned by the relevant Council, whether the Council knew it or not. It undermined the notion of indefeasibility of Torrens title. As the Judge remarked '*I do not wish to suggest that this is a satisfactory situation.*'

**Enough of the oblique! Time for some referrals to the Law Reform Commission. ■**

# Our Calendar of On-line Training Courses July-September 2020

	<b>Statutory Approvals on Public Land</b>	Tues 23 June , 10am to 12pm Wed 24 June, 10am to 12pm Thurs 25 June, 10am to 12pm
	<b>Working with Owners Corporations</b>	Tues 30 June, 10am to 12pm Wed 1 July, 10am to 12pm Thurs 2 July, 10am to 12pm
	<b>The Law relating to Works on Roads</b>	Mon 13 July, 10am to 12pm Mon 20 July, 10am to 12pm Mon 27 July, 10am to 12pm
	<b>Land Law and Subdivisions</b>	Tues 14 July, 10am to 12pm Wed 15 July, 10am to 12pm Thurs 16 July, 10am to 12pm
	<b>Property Law for Planners</b>	Wed 29 July, 10am to 12pm Wed 5 August, 10am to 12pm Wed 12 August, 10am to 12pm
	<b>Roads Governance</b>	Tues 11 August, 2pm to 4pm Wed 12 August, 2pm to 4pm Thurs 13 August, 2pm to 4pm
	<b>Referral Authorities and the Victorian Planning System</b>	Tues 18 August, 2pm to 4pm Wed 19 August, 2pm to 4pm Thurs 20 August, 2pm to 4pm
	<b>Restrictions on Title</b>	Mon 24 August, 10am to 12pm Mon 31 August, 10am to 12pm Mon 7 September, 10am to 12pm
	<b>Crown Land Governance</b>	Tues 1 September, 10am to 12pm Wed 2 September, 10am to 12pm Thurs 3 September, 10am to 12pm
	<b>Coastal Land Governance</b>	Tues 8 September, 10am to 12pm Wed 9 September, 10am to 12pm Thurs 10 September, 10am to 12pm
	<b>Leases and Licences of Public Land</b>	Tues 8 September, 10am to 12pm Wed 9 September, 10am to 12pm Thurs 10 September, 10am to 12pm
<p><b>Cost: \$440</b> for a three-module course. Inc GST, course notes, certificate of attendance</p>		<p><b>Enquiries and Registrations:</b> Jacqui Talbot, Training Coordinator (03) 9534 5128 <a href="mailto:jacqui@publicland.com.au">jacqui@publicland.com.au</a></p>

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