



14: peace

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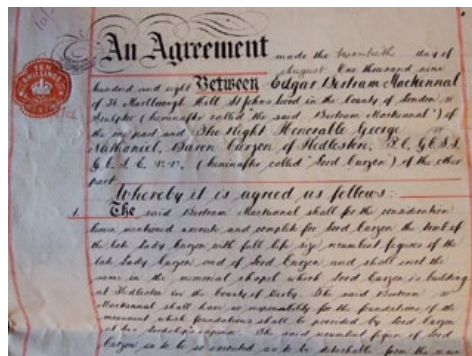
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**Review: Art and Law Symposium, the Dunedin School of Art and the
University of Otago, Faculty of Law, 29 October 2010**

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Following the success of the 2009 Symposium “Illustrating the Unseeable: Reconnecting Art and Science,” the Dunedin School of Art hosted “Art and Law” on 29 October 2010. Its organiser, Peter Stupples, declared that a prime aim of the symposium was to explore the tensions between the freedom of globalised appropriation – particularly via the Internet – and copyright restrictions, imposed to protect the rights and incomes of creators and owners of property. Another recurrent issue was the tension between the artist’s freedom of expression and the right of an institution to show it – or not – as the case may be. Thus the two ‘c-words’, copyright and censorship, monopolised much of the content and certainly the open discussions. The symposium functioned admirably as an arena for an informed and sometimes impassioned exchange of opinions between artists, art educators, curators, historians and theorists, and legal scholars and practitioners. It certainly got me thinking about my own life choices. When I was a student in Britain some thirty years ago, it was very much a case of C. P. Snow’s entrenched “two cultures.”¹ You either studied Art (in my case Art History) or you studied Law. Rarely if ever did the twain meet. And during my eighteen years at the University of Canterbury, I don’t believe that a single Fine Arts student enrolled for Legal Systems, and nor were they encouraged to do so by the Marxist head of school! In a post-modern, interdisciplinary world, this kind of intellectual ring fencing looks increasingly absurd and the symposium made it all the more evident.



The agreement between Lord Curzon and Bertram Mackennal relating to the Curzon monument in All Saints' Church, Kedleston, England (1908).



Curzon Monument, All Saints' Church, Kedleston, England (1908).

Proceedings kicked off with three historically grounded papers, delivered by Mark Stocker, Leoni Schmidt and Olivia Crisp respectively. Each of them brought about fascinating but unplanned synergies with what followed. A theme in Mark Stocker’s paper on Bertram Mackennal’s monumental effigies of Lord and Lady Curzon (1907-13) was later revisited by Oliver Watts when he explored the “efficacy of the image that commands and authorises.” Issues of authenticity in relation to the

infamous Jan Vermeer faker Han van Meegeren, the theme of Leoni Schmidt's paper, were echoed in Mark Williams's exposition of the *R v Liberto* judgement (2008), which had involved the faking of Aboriginal artist Rover Thomas's paintings. In turn, Crisp's overview of the *Republic of Austria v Altmann* (2004) reminded us that the law could be (ab)used by the State as an oppressive tool for the expropriation of Jewish-owned property, in this instance an exquisite Secessionist portrait by Gustav Klimt. Totalitarianism reared its unsightly head again in the Soviet Union in 1929, when the Council of People's Commissars suppressed photography by amateurs in public places. As Erika Wolf later explained, the original intention of such photography had been to celebrate the nobler ideals of the 1917 Revolution, but Stalinism brutally put paid to that.

Jenny Harper's lively paper was the first to raise questions of both copyright and, explored by her in more detail, censorship.² As a public art gallery director, she noted the more conservative and cautious exhibition policies of such institutions over the past twenty years. Since the 1998 *Virgin in a condom furore* (also mentioned by Adam de Hamel), the Museum of New Zealand Te Papa Tongarewa has tellingly not shown a single group contemporary art exhibition. Harper explained how she very recently made an executive decision to exclude from exhibition a video where eroticism shaded into pornography and which she would find hard to convincingly defend as 'art.' Peter Shand's finely nuanced paper then addressed questions of copyright. Is it about Lockean natural law? Or about outputs? While in earlier centuries the materiality of the object under copyright was not in question, today the distinction between thinking and making is not nearly so neat. In a runaway world, legal provision for copyright lags far behind the pace of change. Shand noted, for instance, how the law made no provision for the status of collage until 1988.

Oliver Watts drew on an eclectic iconographic mix – from the All Blacks to Australian coinage designs to Andy Warhol – to explore the sovereign image, in whose name laws are made. As he wittily asked, has Warhol usurped the role of Queen Elizabeth II? In Lucian Freud's portrait of her, the pearls of her crown transmute into majestic, painterly impasto. In the jointly presented paper

of George Petelin and lawyer-turned-artist Lynden Stone, the question of copyright resurfaced. Originally justified by natural rights, the revolution in digital technology means that copyright law today is predicated far more on utilitarian and economic precepts. Stone examined Petelin's digital appropriations of a (perfectly innocuous) Bill Henson photograph in relation to the law and how these might be interpreted in the unlikely event of objections from Henson. Are they in breach of copyright or do they represent Petelin's avant-garde reinvention of Henson's imagery? Do they constitute a parody and a satire or, as I suggested, a tribute?

Giovanni di Lieto's paper asked a set of important questions about whether the current ease of copying and distribution requires more or less stringent intellectual property laws. If the former are applied, would this stifle creativity? Is international trade law in danger of becoming a blunt instrument, upsetting the delicate balance between artists, publishers and public? While deploring the video and audio piracy of China, which di Lieto nobly boycotted while he lived there, he raised the almost equally hideous prospect of international trade policy creating a culture of micro-payments not only for our favourite iTunes but for all information. "What constitutes an author?" he asked, "and who is the owner of the rights?"

Ngarino Ellis used a Māori *heitiki* carving as a highly effective title slide image to demand: "Halt! Who goes there?" Her paper examined inter-tribal plunder during the Musket Wars of Aotearoa New Zealand and how, with the process of colonisation, a new set of thieves subsequently entered the field, ranging from the common soldier to the museum curator. That said, the alleged "confiscation" which Ellis mentioned in relation to the famous meetinghouse Te Hau-ki Turanga by this author's ancestor, J. C. Richmond, was qualitatively different from that of Māori lands. Not only was the artefact purchased, but it can be argued that its survival was ensured by its removal to the National Museum in Wellington. The parallel with Lord Elgin, in the short term at least the preserver rather than plunderer of the Parthenon marbles, could not but occur to me. Jane Raffan's densely packed paper examined Australian law and indigenous rights, and how Aboriginal artists from remote communities struggled to have such rights

and interests in traditional communal imagery acknowledged. A picture of two steps forward, one step back, emerged.

Authenticity and value formed the themes of Mark Williams's paper, which cited two Australian landmark judgements, *R v Liberto*, mentioned above, and *Blackman & Dickerson v Gant* (2010). In the latter, the artists Charles Blackman and Robert Dickerson took successful legal action against the gallery owner and proprietor Peter Gant, demanding his removal of fake works 'by' them from circulation. Williams then went on to examine wider issues of connoisseurship applied to two small paintings attributed to George Stubbs, which spectacularly impacted on their resale value, as well as mentioning the importance of provenance. Economy with the truth of provenance has surfaced in a recent auction sale of a historic Maori carving, which had been de-accessioned in shady circumstances from a British collection. This author, and a handful of others, knew about this and sought vainly to halt the sale. At the time of writing, the case is a highly sensitive one, and the *Art Newspaper* has only just been tipped off. The temptation on my part to share the story with the symposium audience was strong, but necessarily had to be resisted!

Artist and advocate Bronwyn Holloway-Smith's paper examined the differences in copyright law between 'fair use' (as applied in New Zealand) and 'fair dealing' (in the United States), with the latter providing greater scope for creative freedom. Her comments were reported in the *Otago Daily Times* on the following day.³ Following the poignant imagery of Erika Wolf's paper on amateur worker photography in the Soviet Union, Dorothee Pauli addressed "The Art of Protest."⁴ In what was probably the least overtly legalistic and most graphically powerful of all the presentations, Pauli focussed on printmakers' imagery of crimes against humanity. Using satire by artists from James Gillray to Oscar Munoz, she reminded us – as if this should be necessary – that we need the rule of law to uphold human rights and in particular freedom of expression. The imagery of contemporary New Zealand printmaker Michael Reed – at once technically clever and politically impassioned – was effectively deployed. Pauli's paper nicely dovetailed with that of Kim and Zoe Economides, who examined duality in the

hegemony of art and law. The latter can be a double-edged sword, a repressive controlling force but also a protective one. Using his daughter's photographs, Kim Economides explored the educative and potentially civilising agency of photography to recast court buildings as centres where the law is out there to help you. Economides may risk accusations of naïve idealism, not to mention obliviousness to the manipulability of photography. Yet as a legal ethics specialist – and the recently appointed Director of the Legal Issues Centre at the University of Otago – it is surely his duty to canvass these possibilities. Adam de Hamel's paper on art and offensive material proved a fittingly entertaining, debating-society conclusion to the formal proceedings, provoking a member of the audience to challenge his interpretation of Robert Mapplethorpe's photographs. An animated discussion on issues of censorship ensued, with Peter Shand wittily mooted a 'yuk' versus 'harm' dichotomy.

The *Art and Law Symposium* crammed an awful lot into a vibrant day. It might not have changed anyone's minds, but I hope that it opened some. It made me wish that I had enjoyed the privilege, available to Australasian students, of studying Art History and Law concurrently.

- 1 C. P. Snow. *The Two Cultures* (Cambridge: University Press, 1960).
- 2 See Jenny Harper, "Art is Not Above the Law" in this issue.
- 3 John Gibb, "Artists Afraid Rights Going" *Otago Daily Times*, 30 October 2009, 7.
- 4 See Dorothee Pauli, "Picturing Peace" in this issue.