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EVERYTHING YOU NEED TO KNOW ABOUT THE ULURU STATEMENT FROM THE HEART

Megan Davis and George Williams; UNSW Press, 2021; 240 pages; \$27.99 (paperback)

Everything You Need to Know About the Uluru Statement from the Heart is a comprehensive account of the events leading up to the development of the *Uluru Statement*. The authors skilfully link together the pivotal moments in Australia's political and legal history demonstrating the logical position of the *Uluru Statement from the Heart* within the Australian story. The reader is given insight on the impacts of the foundational narratives of the *Constitution* related to Indigenous exclusion, the political and public motivations and realities of the 1967 referendum, the rise and fall of Hawke's treaty proposal, the push and pull of the land rights movement, native title, ATSIC, and the reconciliation agenda.

With the knowledge gathered in the first section of the book, the reader is well prepared to reflect on the authors' account of the Indigenous community consultation processes leading up to and following the *Uluru Statement*. This assessment, which focuses on the steps taken by the consultative group in response to Indigenous communities' discontent with earlier government consultations, is an important commentary for the general public. The book weaves the threads together, advocating for the opportunity that the *Uluru Statement* represents for the greater Australian community.

The book is a valuable resource for the entire Australian population. It contextualises the full story that led to the formation of the *Uluru Statement*. Delving into the constitutional underpinnings of Indigenous dispossession that have plagued Australia since its inception, and the various attempts undertaken to reconcile this past, the authors bring to light successes and failures of political attempts for

greater inclusion. The analysis also sheds light on the agency of Indigenous peoples who are confronted with the realities of the Australian nation's convoluted efforts to facilitate Indigenous peoples' recognition. The authors' description of the juxtaposition of community impressions vs political realities of the 1967 referendums outcome appears eerily similar to the divide between community and government opinions of the *Uluru Statement*.

The book also emphasises the necessity of 'community consultation' approaches that are genuinely community consultation, as well as community-led procedures. This discussion gives readers who are unfamiliar with these phenomena a better understanding of Indigenous peoples' frustration with the misinformation that pervades Indigenous policy narratives. The authors challenge the reader to investigate why it is necessary to listen to Indigenous voices, recognise Indigenous agency, and acknowledge the past in order for everyone to benefit from a better future.

Matthew Walsh (Anēwan) is a Lecturer in the Faculty of Law and PhD Candidate at the University of Technology Sydney.

LIVING ON STOLEN LAND

Ambelin Kwaymullina; Magabala Books, 2020; 64 pages; \$22.99 (flexibound)

A review usually involves description or analysis.

Living on Stolen Land is not a book to summarise. It is not a book to be explained or analysed.

It stands for itself.

The author defies us *not* to take her voice and re-configure it.

This is a book written to defy review. I probably should stop now.

Living on Stolen Land is deceptively thin. It is about the colonial impacts of occupation on this country and it is not about 'us'. Kwaymullina insistently reminds us, we – the colonisers – are actually not the centre of the universe. The text stings. Our understanding of the country and First Nations is not just thin and shabby, it has also been a 'long con'.

Messages include: remember this – we are on stolen land; sovereignty has not been ceded; linear time is not an appropriate measuring tool, and that First Nations' ways of thinking about time differently is a gift as well as a responsibility. As the inheritors of the colonial 'project' we

need to step out of the spotlight and make way for people to be themselves without analysis or description.

If there is a recipe for what we should be doing, it is both simple and extremely difficult for those accustomed to being the powerful.

We are told not to be a 'modern discoverer'. Do not ask 'how' to do stuff but rather what can we actually do. To be a genuine ally (if that is what we want to be), we have to make change. We have to be active listeners to words, pauses, silences. We have to inform ourselves. We need to look for bias and, when we find it, we have to assume the responsibility of acting.

If there is an essential response to *Living on Stolen Land* it is to not be a 'do nothing person'.

So, finishing now, I hope I have not 'done a review'.

I hope that people get this book and read it for themselves.

I don't think the author wants us to put *Living on Stolen Land* on a book club 'list'. Just read it and then act – purposefully. You could also share it. If in Melbourne, leave it on a tram for the next thoughtful person.

Kate Auty is a Professorial Fellow at The University of Melbourne.

JUSTICE ALTERNATIVES

Pat Carlen and Leandro Ayres França (eds); Routledge, 2019; 412 pages; \$83.99 (paperback)

In the introduction to *Justice Alternatives*, Pat Carlen summarises the political, economic and socio-cultural moment in which much of the world (and certainly the Anglosphere) currently finds itself. Her summary makes for grim reading. The neoliberal turn in the politics of capitalist economies has resulted in the battering of welfare states. Meanwhile, the casualisation of workforces and decimation of the living wage have magnified the wealth disparities upon which capitalist systems depend. As capital accumulation and social relations under capitalism have always produced racialised inequality, Carlen's observation that racialised groups and migrants are intensively surveilled, policed and punished, and that they are accused in nationalist political and public discourses of having caused social, political and economic decline, can be of little surprise.

Noting that this juncture of political and economic conditions has exacerbated social inequality and bred a range of injustices, Carlen and co-editor Leandro Ayres França intend for their collection to explore ways of 'doing justice' differently (p 15). In the short time since *Justice Alternatives* was published, public discussions about political, economic, legal and criminal justice reform, and about police and prison abolition, have been (re)energised in many parts of the world – particularly in line with global Black Lives Matter protests in mid-2020. The questions that the collection poses about 'doing justice' differently therefore have clear contemporary relevance. It is worth noting, though, that in selecting the contributors to *Justice Alternatives*, the editors do not seem to have prioritised the

need to elevate the voices of authors who occupy the social and political margins, or of emerging scholars.

While most contributors to *Justice Alternatives* centre 'criminal justice' in their discussions, the collection nevertheless covers broad topical and temporal terrain. Carlen therefore holds that 'it is not to be expected (or even desired) that all contributors ... operate with the same notions or definitions of justice' (p 3). But, to my mind, it is possible to trace common sentiments about 'doing justice' throughout several contributions; namely, that 'doing justice' requires the fostering of voice, participation and collective organising.

Worthwhile as it may be to work towards these objectives, doing so is not easy. Many of the criminal justice institutions discussed in *Justice Alternatives* are situated in Anglophone jurisdictions, have their lineage in capitalism, imperialism, colonialism and slavery, and reconstitute racist and heteropatriarchal order and violence today. As shown (or at least implied) throughout *Justice Alternatives*, those intending on 'doing justice' differently will likely encounter structural barriers, the characteristic closures and co-opting compulsions of criminal justice institutions, conflict with those institutions, and conflict within organising spaces.

In their contribution, Ian Loader and Richard Sparks concede that there is restricted space for criminal justice deliberation and innovation in the face of cacophonous, xenophobic populism(s) and elected representatives' persistent appeals to 'common sense'. Nevertheless, drawing on pragmatist scholarship, they advocate for democratic and inclusive participation in the politics of criminal justice. They further insist there is a responsibility incumbent on criminal justice 'experts' to maintain and participate in deliberative spaces which are 'democratic' in the sense that they are amenable to input derived from collective learning, wherein *all* affected parties – 'that is to say, everyone' (p 113) – can contemplate possibilities for change and emancipation. However, they say little about what such spaces might look like. At the risk of joining a chorus of commentators who object to Loader and Sparks' stated commitment to optimism, it is difficult to imagine any such space within the auspices of a criminal justice system in a neoliberal, capitalist, (settler) colonial jurisdiction. Moreover, in principle, those who intend to forge any such space should not let their eagerness to incorporate 'everyone' detract from their attentiveness to barriers preventing the inclusion and participation of people most affected by processes of criminalisation and state violence – lest those spaces re-entrench the status quo.

Indeed, in his contribution, David Brown speaks to the need to transform existing power structures to pursue justice. Brown holds that interventions against the colonial logics embedded in Australia's criminal justice systems, and against the broader social and economic marginalisation experienced by Indigenous peoples in Australia, will not flourish if they are imposed by settlers and lack Indigenous consultation and control. Brown further contends that the *Uluru Statement from the Heart's* articulation of the need to transform power relations between Indigenous peoples and settlers can provide a platform for 'Indigenous democracy', which is 'shorthand for issues of Indigenous governance, empowerment, self-determination and nation

building' (p 252). It is dismaying, but perhaps unsurprising, that the Statement's proposals were summarily rejected and misrepresented by then-Prime Minister Turnbull. While *Justice Alternatives* highlights how neoliberal capitalism, authoritarian politics, and socio-economic disparities undermine the potential for 'doing justice' innovatively, in settler colonies like Australia there is the added consideration that governments will likely resist and suppress interventions which are seen (or alleged) to challenge settler-colonial state structures and claims to sovereignty and territory.

Brown's contribution reads well alongside Harry Blagg and Thalia Anthony's, which considers Indigenous 'refusal', wherein Aboriginal and Torres Strait Islander peoples pursue justice by collectively averting the structures (and strictures) of settler institutions. Put differently, refusal 'involves the repudiation of white sovereignty claims and constant assertion of Aboriginal forms of collective agency' (p 152). For Blagg and Anthony, refusal is exemplified by Indigenous night patrols: local mobile patrols which sometimes receive government funding, but which are operated by Indigenous communities and independent of the police. Although patrols are heterogenous, they usually aim to secure the safety of Indigenous peoples by minimising their contact with police. Patrol workers may also foster community empowerment, for example through mentorship (see also Amanda Porter's work on Indigenous patrols). As highlighted by Blagg and Anthony, then, to privilege settler knowledges and institutions when seeking out justice alternatives risks overlooking longstanding, local examples of Indigenous peoples exercising collective agency to re-envision and practice safety by refusing criminal justice institutions and their inherent violence.

Presenting a reading of transformative justice animated by abolitionist thinking, Michelle Brown's US-focused contribution also calls on readers to disentangle criminal justice and punishment from their imaginings of justice and safety. Brown advocates the need to develop collective and community-based capacity for responding to state, systemic, and interpersonal violence without turning to the state's carceral apparatuses, including the police and prisons. And, as Brown reminds us, those who bear the brunt of police and state violence – including racialised groups and migrants, queer and trans people, and people with disabilities – have developed everyday practices and relational capacities for care, support, intervention and accountability over significant periods. Although their practices cannot simply be appropriated or 'scaled up', if we are to build our collective capacities for responding to harm and violence without resorting to police, prisons, and punishment, the perspectives and experiences of those most affected by processes of criminalisation and state violence should be centred in our efforts.

In sum, and to turn an adage on its head, *Justice Alternatives* provides many cues about why we ought to refrain from attempting to fix 'things' that are demonstrably broken (here, the criminal justice system) and instead, 'do justice' differently.

Megan McElhone is a Lecturer in the Department of Criminology at Birkbeck University of London

HUMAN RIGHTS IN TWENTIETH-CENTURY AUSTRALIA

Jon Piccini; Cambridge University Press, 2019; 218 pages; \$136.95 (hardback)

The remarkable thing mapped out in Jon Piccini's new history of human rights in Australia is how recently they have been instrumentalised. Scholars locate the apogee of human rights ascendance to the 1990s. One of the reasons this is surprising is that the language of human rights, as he puts it, permeated the 20th century, variously rising and falling, expanding and contracting. Piccini pinpoints human rights 'invention' in Australia to the 1940s when they were being vernacularised against the backdrop of the Atlantic Charter and the Universal Declaration of Human Rights (UDHR). Catholics, he tells us, were among the first appropriators of the term, at this time, as a means of protecting rights to family and property against authoritarian rule.

Piccini recognises a rights prehistory to the aftermath of the British invasion. However, he is at pains to separate hard-fought rights associated with Eureka, suffrage, working conditions and the like as those of British rights and duties to which even Indigenous people and Chinese miners resorted in defence of their rights prior to 1940. These state-centric rights of British (white, male) subjects are not to be confused, he argues, with the universal and global rights of mankind associated with the post-war human rights ethic. In the process we see that, if there was a certain stability to the pre 1940s rights framework, afterwards they were mercurial.

The book is presented as a series of case studies, each chapter covering a decade of Australian history from 1940 to 1980 with an epilogue that considers the possibilities for human rights into the 21st century. In the context of what he terms the wartime rights zeitgeist of the 1940s, we see how groups utilised the framework of human rights in diverse ways including the Labor movement and Chinese seamen threatened with deportation. In chapter 5, the Cold War era sees opposing groups such as Communists and conservatives deploy the UDHR to advance distinct claims in the conflicted politics over the banning of the Communist party and the great schism in the Labor movement in the 1950s. The post-war Indigenous rights group, the Council for Aboriginal rights, is the focus of this chapter too and was the first group to expressly deploy the UDHR as a framework for reform.

In the 1960s Piccini focuses on three groups: the Communist Party of Australia, Ex Services Human Rights Association and Amnesty International (AI) established in 1962 expressly to free non-violent political prisoners. The story of AI in Australia and globally demonstrates the difficulty of translating specific versions of human rights into Australia as well as enduring tensions between the local, the domestic and the global. It also demonstrates the difficulty of developing consensus in broad-church organisations evident in responses to the status of Indigenous Australians and conscientious objection.

The chapter on the 1970s examines the apparently contradictory uses of human rights by the women's liberation movement, Indigenous nationalists and anti-abortion evangelicals in a rapidly changing rights landscape. The final

chapter explores how human rights were eventually absorbed into government bureaucracies, such as the Human Rights Commission, at 'startling pace', and UN instruments such as the International Covenant on Civil and Political Rights had domestic application for the first time. Here, the case studies are arguments for a Bill of Rights, Indigenous treaty and decriminalising homosexuality.

As much as it traces individuals, groups and government responses in diverse contexts, Piccini's exploration demonstrates that human rights are played out in the nexus between ideas and aspiration, language/rhetoric and local and global politics. Along the way human rights morph and adapt. What is laudable in one context is anathema in another. And even within the same context, groups' reading and use of human rights demonstrate contradictory impulses. For example, while Indigenous activists saw the turn to economic and social rights in the '70s as important to their self-determination, the Women's Liberationists eschewed the same for the specific issues facing women: dichotomies between work and home, public and private, personal and political.

This sweeping survey of human rights in 20th century Australia is an important and timely intervention in Australian historiography. Piccini makes clear that, despite a long history of engagement with rights discourses, we have a poor and/or ambivalent understanding of this history. He questions whether human rights were a trickle rather than a cascade but the history that he uncovers suggests a deeply political and politicised context, nowhere more so than in the neoliberal present which has seen a significant contraction of rights. I would like to see the book become a launch pad for many more interrogations into this complex history (both pre and post 1940) if only to complicate the characterisation of Australia as the land of the 'fair go'. Understanding that contestation in Australia around rights claiming, making and containing is an important underbelly of Australian democracy, and one that seems more urgent now than ever.

Alison Holland is an Associate Professor in the Department of Modern History, Politics and International Relations at Macquarie University.

***EMPOWERING WOMEN: From murder & misogyny to High Court victory*
Susie Allanson with Lizzie O'Shea;
Wilkinson Publishing, 2021; 400 pages;
\$34.99 (paperback)**

Dr Susie Allanson has had a lifetime career providing professional support for women in need of abortion and other reproductive-related services. A retired clinical psychologist, she has used her considerable skills to counsel and console staff and patients of the East Melbourne Fertility Clinic and to lobby for their rights through activism and research. She has now produced two important books. *Murder on his Mind: The story of Australia's abortion clinic murder*, first published in 2006 and re-released this year, recounted a murderous act of atrocity by a fanatical anti-abortionist. *Empowering Women*, her latest, co-authored

with Lizzie O'Shea of Maurice Blackburn Lawyers, is a more recent account of how an historic victory, generated by that murder, was eventually won for women in the High Court of Australia.

However, let me begin with a caveat. My contact with Allanson began as a professional relationship when I was Health Services Commissioner for Victoria and she was the Clinical Psychologist at the East Melbourne Fertility Clinic. Our contact developed into a friendship. I am also pro-choice, have been a patient at the Clinic, and was involved in some of the events described in *Empowering Women* – which Susie generously acknowledges – so these are both books I was always going to like!

In her Foreword to *Empowering Women*, Natasha Stott Despoja writes, 'Susie has been doing the decent thing for women for decades'. Natasha, at the time a member of the Australian Senate, visited the Fertility Control Clinic in the aftermath of the brutal murder of Steve Rogers, the Clinic's security guard. Steve was murdered by an anti-abortion extremist who was hell bent on killing as many people at the clinic as he could. He was interrupted by some heroic individuals but not before killing Steve Rogers, a father of seven. The terrifying events of that day in 2001, and her powerful commitment to women's reproductive rights, allow Allanson to recount a story that is both compelling and horrifying, of the violent abuse hurled at staff and patients of the clinic by anti-abortionists with the almost laughable title of 'Helpers of God's Precious Infants'. But there is nothing funny in the way these people behaved and their cowardly refusal to accept any responsibility in influencing a murderer for whom extreme violence was justified against people who disagreed with him. This murderer was in the category of people who are the most dangerous of all. They are not people who *believe* they are right; they are people who *know* they are right.

Empowering Women explores why the behaviour of the anti-choice group should not be categorised as protest or free speech but is harassment and abuse unworthy of human rights protection. Even on the day of Steven Rogers' funeral, the harassers were present at the clinic shouting abuse through the windows of the car that would take the shocked and grieving mourners to his final service.

Allanson carefully documents the long battle for reproductive rights for women in Victoria and the struggle to get the responsible authorities to pass legislation to provide buffer zones. Sometimes called safe access zones, they had been successful in controlling situations of harassment and were the preference of those at the front line, the clinic staff, who had endured years of abuse. The zones would exclude the harassers from a defined zone around the clinic to protect staff and patients. Similar zones had been used at other locations in Victoria such as The Royal Women's Hospital but, for reasons Allanson and O'Shea reveal, it took many years before the Melbourne City Council and the Victorian government would finally act to ensure the zones were legislated and brought into force. Even after this was achieved the deliberate breaking of the law by a Catholic mother of 13, Ms Clubb, backed by the Australian Christian Lobby and other far right allies, led to the need for resolution in the High Court of Australia to ensure those seeking and providing fertility services could do so safely.

Clubb was fined \$5000 for breaching the safe access zone and appealed, eventually to the High Court of Australia.

While the core of *Empowering Women* is the story of the murder, its authors skilfully weave it into the bigger tapestry of the history of women's rights in Australia and the world. They include an analysis of the Menhennitt ruling of Victoria's Supreme Court in 1969 (*R v Davidson* [1969] VSC 667) that saw a usually conservative court making a decision that served women well for many years. Justice Menhennitt was certainly not known for activism, but his carefully considered judgment turned out to be more progressive than Parliament was prepared to be in defence of women's rights at that time and is a fine example of judge-made law.

Empowering Women is an important chronicle of social history at its best, however the authors also bring the whole drama to life in vivid, and sometimes even amusing detail. Susie Allanson writes of the High Court proceedings, 'Woo hoo! If I wasn't sitting here in the High Court. I'd be cheering.' The book is scholarly but at the same time very human, presenting facts but not baulking at including personal reflections. A good example is this extract of Reynolds SC appearing for the appellant Ms Clubb, 'we are dealing here not with women – just women looking to have abortions', followed by Dr Allanson's inner monologue,

[My head is exploding. 'We are dealing here not with women *just women looking to have abortions*' – like they were some inferior breed.]

Empowering Women covers Allanson's reaction to watching the highest court in the land at work, and the precision of the work of the many lawyers involved. One thing that comes through consistently is the respectful commitment of the staff of the clinic to their patients and to each other.

Beth Wilson AM is a former Health Services Commissioner, Victoria and partner in Webster and Wilson consultancy services.

ENEMIES OF THE PEOPLE? How judges shape society

Joshua Rozenberg; Bristol University Press, 2021; 176 pages; \$34.99 (paperback)

Enemies of the people? How judges shape society is a ravishing read for anyone intrigued by the powers of the judiciary. To a large proportion of the public, the role of the judiciary has often been viewed as incomprehensible. Joshua Rozenberg ends this mystery by exploring the concept of justice and illustrating the core functions of the courts, the challenges faced by the system and its judges, and the complexities involved in administering justice. The book's timely release assists the reader to make sense of the role of courts during the Brexit debacle, while also informing the reader of the extent to which judges have changed laws and shaped society over time. It touches on themes including separation of powers, the impartiality of judges and access to justice. The reader can expect to leave more informed about the nature, scope and limits of judicial power, and with a greater appreciation of the manner in which judges discharge their judicial functions both within the United Kingdom (UK) and beyond.

Rozenberg begins the book by laying the groundwork, by describing the essential features of the UK justice system –

the common law, the principle of legality, judicial review (Ch 1). This sets the scene for the rest of the book to answer the questions 'to what extent is it appropriate for judges to develop the common law in accordance with general principles of law and justice, as they see them, and to what extent should they defer to parliament in the matter of law reform?'. Rozenberg then addresses why the three judges of the UK Supreme Court were accused of being 'Enemies of the People' in the second *Miller* case (Ch 2); the extent to which judges have had an impact in the areas of criminal law (Ch 3), marriage and divorce (Ch 4), suicide and end-of-life (Ch 5), discrimination (Ch 6), gay rights and freedom of religion (Ch 7), and personal privacy (Ch 8). Chapter 9 explores aspects of access to justice. The book ends by exploring the nature of the relationship between the judiciary and the executive by questioning the extent to which the judiciary can question decisions made by the executive. Following are the key takeaways.

The book begins with the events surrounding Brexit, painting judges as 'enemies' in the sense that they were not entirely supportive of democracy by publishing decisions which went against the elected government. Rozenberg describes the dichotomy which faced the Court as making a choice between government and parliament and decided in favour of the former. Following this, Rozenberg, through his depiction of the *Miller* tales, turns our attention to powerfully illustrate how the judiciary shaped society in one of the most challenging times faced by the UK.

This discussion illuminates Rozenberg's view of judges as contemplating and deciding on the pressing issues of the day. Judges, in his view, apply and demonstrate thought and reason. In doing so, Rozenberg contrives the idea that 'judges should interpret and construct statutes as to serve justice in accordance with settled practice and practical common sense'.

Hard cases make a reasoned individual think. What are the implications? What are the consequences of my actions? These questions and a plethora of other questions in the book confront jurists in questions of discrimination and disability, says Rozenberg. We agree. Judges are stepping into the shoes of us all to act in the way that society would want in our best interests. This chapter is eye opening to the product of social attitudes which continue to be worked on. Freedom of the press, climate science, discrimination and the rights of homosexuals are at the forefront of today's society with significant consequences for tomorrow. Urgent or not, the questions raised by this book are important for jurists in the years ahead.

In short, this is a good book that will engage any reader interested in the law – a useful contrast between judicial and academic standpoints. What Rozenberg shows is that, while judicial activism is a proponent to spur change, judges are people after all. Therefore, perhaps, Rozenberg leaves us with his view that judges are friends and not foes of the people, but that's something for you to decide.

Jing Zhi Wong is a JD candidate, **Aarahnan Raguragavan** a recent JD graduate, and **Chansa Kalumba** a JD candidate. All are from The University of Western Australia.