

**PROPERTY, LAW AND GOVERNANCE
IN RURAL AUSTRALIA : INHERITANCE
AND DIVORCE ON THE FARM**

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INDEX TO CHAPTERS

Chapter 1	Introduction
Chapter 2	Popular Notions of Work, Economics and Sexuality
Chapter 3	Australia as a Transplant of Europe and the Culture of Liberalism
Chapter 4	Property and Governance in Rural Australia
Chapter 5	Governing at a Distance: The Role of Trusts in Structuring Family Life in Rural Australia
Chapter 6	The Changing Nature of Social Welfare in Australia: From Social Entitlement to the "Personal Supervisory State"
Chapter 7	The Social Construction of Rural Inheritance
Chapter 8	The State and Inheritance : Testators' Family Maintenance Legislation
Chapter 9	Divorce and the Division of Farming Property
Chapter 10	Conclusion

DETAILED INDEX TO CHAPTERS

Chapter 1 : Introduction	1
1.1 Organisation of the Thesis	7
1.2 Some Terminology	10
Chapter 2 : Popular Notions of Work, Economics and Sexuality	14
2.1 Introduction	14
2.2 To Reward Industry and Incentive and to Punish Idleness: Ideas of Work in Australia	15
2.2.1 Changes in the Eighteenth Century	15
2.2.2 Liberalism and Moral Citizenship	16
2.2.3 Moral Citizenship in Australia	17
2.3 Popular Notions of Economics	20
2.4 Sexuality and Domesticity	21
2.5 Conclusion	29
Chapter 3 : Australia as a Transplant of Europe and the Culture of Liberalism	30
3.1 Introduction	30
3.2 My Background	30
3.3 Immigration to Australia	32
3.4 Australia as a Transplant of Europe	34
3.5 Australia as a Culture of Liberalism	40
3.5.1 The Main Features of Liberalism	42
3.5.2 The Question of Power and Liberty and The "Illiberal" Side of Liberalism: Coercion, Paternalism Despotism or Moral Education?	45
3.5.3 The Move towards Neoliberalism	49
3.6 Conclusion	50

Chapter 4 : Property and Governance in Rural Australia	52
4.1 Introduction	52
4.2 The Legal Notion of Property in Australia	52
4.3 Property within a Culture of Liberalism	54
4.4 The Historical Process of Land Settlement in Australia	56
4.5 Early Visions of Australian Landscape and its Modern Equivalents	58
4.6 John Locke and Colonial Discourse	61
4.6.1 Expansionist Discourses in the Nineteenth Century	62
4.6.2 Locke's Justification for Property	63
4.6.3 Property in a Civilisation of Commerce and Improvement	63
4.6.4 Locke, Conduct and Productive Labour	66
4.7 The Colonial "Cartographical Eye" and Space	68
4.7.1 The Academic Development of Notions of Space	69
4.7.2 European Notions of Space and Identity	69
4.7.3 Aboriginal Space	71
4.7.4 "Settler Space" and Australian Settlement	72
4.7.5 Property Space and the Allocation of Autonomy	73
4.7.6 The Allocation of Space as a Practice of Liberalism	74
4.8 Conclusion	75
Chapter 5 : Governing At a Distance: The Role of Trusts in Structuring Family Life	78
5.1 Introduction	78
5.2 Trusts and the Development of Settler Capitalism in Australia	82
5.2.1 The Development of Analytical Divisions in Land Law	82
5.2.2 Strict Settlements	84
5.2.3 Recent Usages of Trusts	87
5.3 The Role of Life Estates	88

5.3.1	Introduction	88
5.3.2	The Implications of Life Estates	89
5.3.3	The Legal Problems of Life Estate in Detail	89
5.3.4	The Rights and Responsibilities of Co-Owners	90
5.3.5	The Duties of Co-Owners as regards Life Estates	91
5.3.6	The Capital Income Problem	92
5.3.7	The Background to the Capital Income Problem	93
5.3.8	Rural Accounting Practice in Relation to Estates	95
5.3.9	Evidence of Early Accounting Practices	96
5.3.10	The Case Law Treatment of Station Properties	99
5.3.11	The Early Cases	100
5.3.12	McBride v Hudson	102
5.4	After-thoughts on Ruling at a Distance: Liberalism and Freedom	104
5.5	Conclusion	106
Chapter 6 : The Changing Nature of Social Welfare in Australia: From Social Entitlement to the "Personal Supervisory State"		109
6.1	Introduction	109
6.2	The Context of Family Farming within the Framework of the Transition from Liberalism to Neoliberalism	110
6.3	The Social Security System	111
6.4	The Background to Social Welfare in Australia	114
6.5	The Practices of the State in Rural Australia	117
6.5.1	Some Traditional Discourses on the State	117
6.5.2	Alternative Conceptions of the State	120
6.5.3	The State in Action: From the Administrative State to the Personal Supervisory State	122
6.6	Legal Aspects of Social Security and Rural Retirement	125
6.6.1	The Hardship Test and its Exceptions	125

6.6.2	Disposals to Relatives	130
6.6.3	New Proposals regarding Disposals	131
6.7	The Unemployment Benefit and "Mutual Obligation"	133
6.8	The Normative State	135
6.9	The Reproductive and Educative State	136
6.10	Agrarian Discourses in Australia	138
6.11	Economic Discourses regarding Farming	140
6.12	Conclusion	142
6.12.1	Social Security and Liberalism	143
6.12.2	Social Welfare, Neoliberalism and Beyond	144
Chapter 7	The Social Construction of Rural Inheritance	146
7.1	Introduction	146
7.2	A Case Study of the Testators' Family Maintenance	148
7.3	How Families View the Farm and Inheritance	150
7.4	The Social Significance of Inheritance: "What is Inheritance in the Rural Context?"	153
7.5	Scholarship on Inheritance	154
7.6	The Growth of Testamentary Freedom	157
7.6.1	The Role of Testamentary Freedom	157
7.6.2	Reflections on English Discourses of Property and Inheritance	160
7.7	The Social Construction of Succession Law	162
7.7.1	Introduction	162
7.7.2	To Reward Industriousness and to Punish Idleness	164
7.7.3	Ideas of Work and Inheritance in Rural Australia	165
7.7.4	Domesticity, Transmission of Property and the Position of Women	168
7.7.5	Primogeniture and the Cultural Composition of the State	169

7.8	The Liberal State and the Governance of the Family in Australia	172
7.8.1	Introduction	172
7.8.2	The Shift to New Liberalism circa 1900	173
7.8.3	The Aspects of New Liberalism	174
7.8.4	Testators' Family Maintenance and Women	178
7.8.5	The Legal Discourses on New Liberalism	180
7.8.6	The Development of Individualistic Notions of Family Property	182
Chapter 8 : The State and Inheritance: Testator's Family Maintenance Legislation		184
8.1	Introduction	184
8.1.1	The Restriction of Testamentary Freedom in Australia and New Zealand	185
8.1.2	An Outline of the General Object of Testator's Family Maintenance Legislation	187
8.1.3	Contrast with Divorce Legislation	189
8.1.4	Circumstances Under which an Award may be Made	189
8.2	The Various Classes of Claimants	190
8.2.1	Widows/Widowers	190
8.2.1.1	Power and its Abolition	190
8.2.1.2	The Claims by Widows	191
8.2.1.3	Life Estates	193
8.2.1.4	Conduct	194
8.2.2	Children	200
8.2.2.1	The Farming Son's Cases	203
8.2.2.2	"Marrying-off the Daughters"	213
8.2.2.3	The Western Australian Cases	215
8.2.2.4	Summary of Effect of Western Australian Cases	219
8.2.2.5	The Claims of Daughters who have Contributed to the Farm	220

8.2.3	The Promise of Testamentary Provision	222
8.2.4	Equal Shares of Land	225
8.2.5	Conclusion as regards the Respective Claimants' Right	227
8.2.6	Conclusion	227
8.2.6.1	General Outline of Claimants' Rights	227
8.2.6.2	TFM as a Reflection of Rural Ideology	228
8.2.6.3	The Historical-Liberal Critique	230
8.2.6.4	Post-Structural Approaches	233
Chapter 9	: Divorce and the Division of Farming Property	235
9.1	Introduction	235
9.1.1	Colonial Women and the Construction of Virtuous and Disorderly Behaviour	235
9.1.2	The Open-textured Role of Family Law and the Structuring of Discretion	236
9.2	The Problematisation of Family Law	237
9.2.1	The Ending of Divorce based on the Notion of Fault	237
9.2.2	From Marriage as the Contract to Marriage as the Sharing of Property	239
9.2.3	From the "Clean Break Self Sufficiency" Model to the "Equitable Sharing" Model in Post Divorce Situations	241
9.2.4	The Changing Conceptions of Property Rights: From Family Property to Individual Property	244
9.3	Family Law as a Coloniser of Ideas on Work, Economics and Sexuality	246
9.3.1	General Assumptions about Family Life and Conduct	247
9.3.2	Background Assumptions about Work	249
9.3.3	The Growth of Market Discourse	250
9.3.4	The Dual Economy Approach	252
9.3.5	The Deployment of Economic Notions by Judges: the Genealogy of Judicial Assumptions	255

9.4	Apportioning Bricks and Mortar in the Shadow of Economic Discourse	256
9.4.1	Traditional Understandings of the Economy and its Relevance to Property	256
9.4.2	An Evaluation of Productivity: The Contributions Approach as regards the Homemaker's Contribution	258
9.5	The Earning Capacity of the Parties: Section 79(4)(d) and Lee Steere v Lee Steere	262
9.6	The Homemaker's Role and the Contributions to Business Assets	264
9.7	The Recent Farm Cases	268
9.8	Conclusion	273
	Chapter 10 : Conclusion	277
10.1	European Discourses in Australia and the Role of Governmentality	277
10.2	Aspects of Transplanted Culture of Law	279
10.3	Popular Discourses on Inheritance and Divorce	283
10.4	Liberalism and the Role of the State	286
10.4.1	The Decentered State and the Role of Power	286
10.4.2	Liberalism and Civil Society	290
10.4.3	Rural Property and Liberalism	291
10.4.4	The Liberal Governance of the Family	293
10.4.5	Liberation and Social Welfare	295
10.5	Governmentality and the Law	296
10.5.1	Introduction	296
10.5.2	Governmentality and the Law	297
	Bibliography	300

ABSTRACT

This thesis studies family property law in rural Australia in the area of inheritance, divorce and social security. I analyse how legal notions of property are shaped by popular discourses which embody notions of work, sexuality and economics.

This project builds on Foucault's lectures on *governmentality* and on the notion of Australia as a *culture of liberalism*. The notion of *governmentality* enables us to understand the role of government as utilising a complex set of assemblages, techniques and classifications to direct its citizens. My approach to liberalism is to regard it as a form of government which is constantly involved in a critique of excessive government. My approach is that liberalism should be understood as an art of government that seeks to indirectly shape the capacities of free subjects to achieve its purposes and goals.

In detail, I argue three propositions. Firstly, I regard that the laws concerning rural family property are legal discourses which embody notions of work, sexuality and ideas of what I call *popular economics*. I examine how discourses of work operate in inheritance cases through notions of deservedness. For instance, work on farms by sons is seen to justify an inheritance while work by females is not so regarded. Likewise, in divorce cases, work by a husband in building up a property is rewarded in a property dispute while a wife's labour usually tends to be disregarded.

I regard sexuality as a *popular discursive formation* which constructs women as dependants who do not make an economic contribution. Women in inheritance cases are seen as not needing support should they marry; they are regarded as having been provided for by their husband. Moreover, their labour is seen as non-deserving so as to not threaten male continuity of farming property.

As regards economic discourses pertaining to work on farms, I argue (following Hirschman) that legal cases adopt notions of behaviour as "orderly", and "predictable" in assessing outcomes in divorce and inheritance cases.

Secondly, liberalism as an approach to government shapes the activities of farmers, augmenting their own autonomy and independence in several ways. I argue that family property held through a family trust or company enables the family to secure their

financial independence and maintain the long-term continuity of agrarianism. I also argue that the readjustment to liberalism *circa* 1900 readjusted notions of the family to make it more autonomous and independent. Likewise, in the divorce context I argue that recent *Family Law Act* cases viewed from a *neoliberal* perspective demonstrate that the family is being shaped by notions of self-help and financial independence.

Thirdly, I regard law as operating as a disciplinary form of social cohesion in the sense that it incorporates popular and professional discourses and compiles facts in a genealogical manner. Implied in this approach is the argument that law as *governance* creates a form of legal knowledge about the family which excludes other accounts.

I hereby declare that the work presented in this thesis is, to the best of my knowledge and belief, original. The work is my own, except as acknowledged in the text and the material has not been submitted, either in whole or in part, for a degree at this or any other university.

Signed *M. B. Voyce*

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