Becoming Peter Fitzpatrick (1941-2020)

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Abstract

Peter Fitzpatrick (1941-2020) was a much-loved and inspirational scholar, friend and mentor. He contributed significantly to the intellectual, organisational, and cultural life of postcolonial legal studies, critical legal studies and law and the humanities – fields he helped to consolidate. This paper examines the reciprocal interplay between Peter's life and work, between significant people, events, ideas and values, and the ways he made and re-made himself. It assesses and clarifies his key ideas and their intersection with his ethics and lived experiences. It illuminates his struggle, especially from the 1990's onwards, to place ethics centre-stage in both life and law. Drawing on archival and secondary research, including interviews with his family, former colleagues and students, this contribution to legal life writing adds to what we already knew about his personal and professional biography. It is hoped that the paper will encourage those who are less familiar with Peter's work, or who find his writing daunting, to tackle it anew and appreciate its significance.

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Keywords

legal biography; legal life writing; intellectual history; postcolonialism; socio-legal studies; law and society; critical legal studies; legal education; legal history; history of ideas; jurisprudence; law and racism; law and colonialism; law and postcolonialism; Papua New Guinea; Marxism and law; anthropology; legal anthropology; women and the law; law reform; law and development; law and postmodernism; modernisation theory; first world-third world relations; imperialism; law and imperialism; Foucault; Derrida; HLA Hart; legal positivism; law and mythology; "white mythology"; nationalism; law and religion; legal theology; law and modernity; law and the sacred.

Becoming Peter Fitzpatrick (1941-2020)

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I

Peter Fitzpatrick was a lovely man. Not only was he one of the greats in the world of "law and society" and "critical legal studies", but his kindness and support towards so many are the stuff of legend. With no time for pretensions of status, he offered friendship to people from all walks of life. He provided a remarkable role model of what an academic life might be (Ramshaw, in this issue).

This essay examines the reciprocal interplay between Peter's life and work, between significant people, events, ideas and values, and the ways he made and re-made himself. It assesses and clarifies his key ideas and their intersection with his ethics and lived experiences. Because of its importance for understanding Peter's scholarly endeavours, the paper focuses mainly on the earlier-middle part of his life. Hopefully, this contribution to legal life writing (Sugarman, 2015) adds to what we already knew about Peter's personal and professional biography. It is also hoped that the paper will encourage those who are less familiar with Peter's work, or who find his writing daunting, to tackle it anew and appreciate its significance.

II

Born in 1941 in Queensland, Peter's childhood home was the rural town of Oakey. Whilst many of Australia's foremost academics of his generation followed an Australian undergraduate degree with studies in Oxbridge or the US, Peter attended a different trajectory. He was expected to fulfil his place on the land and help at home. His father was,

allegedly, a heavy drinking womaniser, and Peter found himself supporting his mother against a tyrannical father from whom he felt increasingly alienated. Looking back in later life on his traumatic childhood, Peter suggested that his subsequent concern with justice was rooted in this experience (Fitzpatrick, 2017 interview one).

Catholicism loomed large in his early life, fostering a sense of difference and a sensitivity to the ways that larger society discriminated against Catholics. Initially attending a local Catholic Primary School in Oakey, Peter's world widened enormously when, in 1956, he won a scholarship to Downlands College, a Catholic boarding school, conducted by the Missionaries of the Sacred Heart (Mooney, 1981). According to one of his contemporaries:

> "The…Priests, who were our teachers, instilled in us a sense of 'social justice'… We were always told about people who were less well off than us, be prepared to share and always be prepared to help those less fortunate than ourselves. Many 'Old boys' became involved in their local communities after school..." (Duggan 2020).[1]

Whilst home often felt like a prison, Downlands was Peter's way through the wire. He took to writing, with some of his compositions, including a commentary on William Blake's 'The Tyger', being published in the annual college yearbooks. He also developed a serious interest in politics and was active in the school debating society.

Peter identified two priests as "strong father figures" (Fitzpatrick, 2017 interview one). Fr. Timothy Kelly (Obituary, 2010) was an important influence on Peter's life, fostering his love of reading and of English literature. Of his former tutors, it was Kelly that Peter most wanted to see when he returned to Australia. Peter's other paterfamilias was Fr. Brendan Sykes

[1] Brendan Ward was less flattering (Ward, 2013 pp.7-8).

(Littleton, 2007), who instilled in him a love of music. When Peter needed extra tuition in French, Sykes came to his rescue.

Peter loved Downlands. He wanted to be like Kelly and Sykes and thought that he had found his vocation from them. Thus, knowing little of what was involved, he left Downlands in 1958 and spent 1959 at Apostolic preparatory school at Douglas Park, near Sydney. This he enjoyed, but not the next step in preparing for the priesthood, attending the Novitiate next door, where the strict regime involved long hours meditating on the works of Ignatius of Loyola. He did subsequently think that this probably gave him his grounding and orientation towards intellectual and textual analysis (Fitzpatrick, 2017 interview one).

But Peter's negative experience of authority at home was replicated at the Novitiate. He found the Novice Master a bully. Novices would read to the gathered assembly at mealtimes, being publicly, and sometimes quite rudely, corrected. Whilst Peter was reading aloud from a biography of Konrad Adenauer, the Novice Master corrected his pronunciation. Expected to humbly respond "Thank you, father", instead Peter replied, "you're wrong" in front of the whole community. He abandoned his dreams of the priesthood, returned home and spent a year compacting gravel and tarmac with his uncle's road roller. He was literally going backwards as the road roller only worked in reverse gear.

Peter's interest in politics now came to the fore. Apparently, he stood unsuccessfully as a candidate for the Australian Labor Party (ALP) against a popular local Member of the Legislative Assembly, also failing to secure the necessary endorsement from the ALP to stand as a candidate in a Senate election around the same time (Duggan, 2020).

But he did obtain an articled clerkship with a small firm of solicitors, concurrently studying part-time for a law degree by correspondence course at the University of Queensland. One of the tutors, Dr Paul Gerber, a European émigré recognised Peter's potential. He became

another father figure, writing lengthy comments on Peter's course work and meeting to discuss them. Peter relished his visits to the Gerber family home in Brisbane, being part of the Gerber family, savouring its cosmopolitan and progressive atmosphere, and the Gerbers' wonderful collection of art.

After six years of spending most evenings reading (connecting law and society through studying Stone's, *Province and Function of Law* (Stone, 1947)) and writing essays, Peter was admitted to practice in 1967. Having excelled in his undergraduate examinations and been placed first on the Roll as Solicitor, Queensland, the law school offered him a tutorship. Whilst having never set foot in a university, Peter felt this was his true vocation. He was going to accept, but Gerber persuaded him to join the law firm, Baker and McKenzie, then the largest law firm in the world, and move to London.

It was in London that Peter met Shelby Ferris. Her background, in contrast to Peter's was middle-class, relatively affluent and progressive. She had developed a strong interest in anthropology during her undergraduate studies at Tulane, subsequently moving to London to study the Egyptian collection at the British Museum. After their marriage (in December 1968) she and Peter regularly visited the ethnography section of the Museum, notably its collection of African and oceanic art (Fitzpatrick SF, 2020). It is likely that this triggered Peter's interest in anthropology and the Pacific. Shelby provided Peter with support, encouragement, love, stability, and a sense of adventure. As he said, she was "the most important thing to happen to me" (Fitzpatrick, 2017 interview one).

Although working at Baker and McKenzie was enjoyable, Peter's duties largely involved commercial and corporate law and were not what he wanted to do long term. He retained the notion that his vocation lay in academia and found time to study part-time for an LLM at University College, London University, graduating with a distinction in 1969 and writing his

first academic publications: two decidedly doctrinal papers for the *Journal of Business Law* (Fitzpatrick, 1968, 1969). He applied successfully for a lectureship in corporate law at Queens University, Belfast, and he and Shelby moved to Belfast in 1969 (Twining, in this issue).

Peter entered full-time academia at a propitious moment. Seismic changes had been under way in the UK and elsewhere in the English-speaking world. While legal scholars had long been interested in non-legal methodologies and insights, university legal education and scholarship sustained a dominant tradition that distanced it from easy communication with other disciplines addressing shared questions, concentrating, instead, on the exposition and analysis of legal doctrine (Sugarman, 1986 and 1991). The period c.1965-1985 marked a sort of turning point, when the interest of legal scholars in non-legal methodologies and insights, and the treatment of law and legal institutions in their social, historical and political contexts, and in interdisciplinary terms, developed on an unprecedented scale (Twining, 1994; Cownie, 2004; Sugarman, 2009 and 2011). Peter was an heir of this key moment.

Peter was fortunate that, unbeknown to him**,** the Law Faculty at Queens University was at the cutting-edge of these struggles to broaden law schools and legal thought. William Twining, whose trailblazing contribution to this opening up of legal education and scholarship would prove pivotal, was Peter's mentor, developing strategies whereby Peter could catch-up on academic reading and writing after his extended period in legal practice. Twining enabled Peter to develop his interest in jurisprudence. Furthermore, Peter read and commented on drafts of Twining's work on Karl Llewelyn (Twining, 1973), thereby deepening his concern with law and society.

Peter was also fortunate to co-teach company law with Tom Hadden, who, more than anyone at the time, argued that the subject should be considered in the context of the social, political

and economic environments of business associations (Hadden, 1972). Peter enthusiastically joined the cause.[2]

After the Troubles erupted, Hadden provided an important link to Belfast's voluntary sector and political scene. Despite the intense violence, there was some limited space through activism and allied voluntary work, for a deeper engagement with civil society, and the development of notions of social justice. Peter and Shelby threw themselves into this work. Peter wrote for *Fortnight* (Fitzpatrick, 1970, 1971), a left-of-centre magazine founded and edited by Hadden. Peter also offered advice and representation to various Belfast communities on legal and social issues.

Peter's connection with the School of Anthropology at Queens deepened his interest in anthropology. His friendships with Abdul Paliwala (another recent recruit to the Queens Law School) and Loraine Blaxter, an anthropologist, also date from this period. It was not for naught that Peter recalled his Belfast years as "a most amazing experience" (Fitzpatrick, 2007 interview one). Had they stayed, Peter might have become a fully-fledged legal activist and an "alternative" corporate lawyer, with a side-line in legal anthropology and jurisprudence. But in 1971, Peter and Shelby left Belfast, and spent most of the 1970's in Papua New Guinea (PNG). It was a move that powerfully affected Peter, his work and his family.

[2] Tom acknowledged Peter's enthusiasm in the preface to the first edition of Hadden, 1972 p. v.

III

In 1970 Sir John Patrick Minogue was appointed Chief Justice of the Supreme Court of the then Australian Territory of PNG.[3] Minogue was a law reformer with a strong sense of *noblesse oblige*, who was sympathetic to the plight of indigenous peoples:[4]

> "[He]…was heedless of danger and discomfort in travelling on circuit to the remotest areas. The court might convene under a roof of rough thatching, but …Minogue was always robed in red beneath a full-bottomed wig" (Ryan, 2012).

Displaying great foresight and ingenuity, he secured a substantial grant from the Commonwealth Foundation to support research into communal economic organisations to facilitate their legal recognition in their own (communal) terms, and Peter was invited to lead the research. Combining Peter's corporate law know-how and his interest in anthropology and praxis, it was a remarkable offer, and an opportunity for adventure, that he could not refuse.

But it was also a risky venture. There was little empirical research on PNG or, more generally, on the limitations and difficulties of using law to promote significant redistributions of power in favour of disadvantaged peoples. And whilst Belfast had afforded Peter with some experience of the realities of effecting change through law, it was patchy at best. Aware of his limitations, Peter read widely to boost his confidence and deepen his expertise – finding the work of anthropologists and economists to be particularly instructive.

[3] PNG became self-governing on 1 December 1973 and achieved independence on 16 September 1975.

[4] His will benefited many charities including the Victorian Aboriginal Health Service, which received $200 000 (Ryan, 2012).

His self-doubt was partially tempered by the heady days pre- and immediately post-independence. This was a period of great optimism, with foreign experts recruited to help PNGans fulfil their aspirations, and when it appeared that the government was favourably disposed to radical change (Walsh 1983: 414; Fitzpatrick 1985).

Peter threw himself into his work, travelling extensively within PNG, talking to people (he got deeply engaged with ordinary PNGans and with Iambakey Okuk, known as PNG's most controversial politician), trying to get a grip on the subject, and formulating proposals. He was seconded to the Office of the Prime Minister working on general economic policies and legal and economic reforms (1972-74). He persuaded the Public Defender to fly him to the site of copper mines and forests that were being exploited by overseas mining and plantation giants to gather evidence of the damage to the environment and human health in the area.

During Tom Hadden's visit to PNG in 1972, he and Peter worked on a draft company code for the indigenous population to replace the hugely inappropriate Australian companies' legislation (Hadden, 2020). Peter enlisted other friends to the cause, most importantly, Abdul Paliwala and Loraine Blaxter, who both arrived in PNG in 1973.[5]

Peter's wide reading of anthropology singled-out cultural relativists who looked at other cultures from a position of curiosity and respect rather than the assumption of superiority (King, 2019). He found Marilyn Strathern, the British anthropologist, who was working in Papua New Guinea, "terrific" to talk to (Fitzpatrick, 2017 interview one). Her work on women and gender equality had a lasting impact on his thinking (Strathern, 1972),

[5] Abdul joined the law department of the University of Papua New Guinea, and Loraine first worked with Peter from a position in the Ministry of Business Development, subsequently taking up a Sociology lectureship at the university.

reinforcing his belief that legal scholarship excluded the perspectives of women and others who are at the margins of power.

His most important working relationship was with Blaxter. In over ten reports and allied publications, many published as discussion documents by the Department of the Prime Minister, they detailed the operation of specific economic activities within the informal sector and proposed the removal of a raft of regulatory impediments. The goal was to ground law and business organisation in the life and culture of PNGans (Fitzpatrick and Blaxter, 1973 and 1974).

Peter's experience of the *realpolitik* of economic-political-legal reform was chastening. State officials, bureaucracy and state laws blocked popular development; the gulf between what should and did happen continued to grow, with indifferent enforcement, opposition to reform and a lack of popular demand for political change (Fitzpatrick, 1985). Disillusion increasingly pervaded his work. Despite government commitments, and much talk surrounding them, there was little action. None of Peter and Loraine's 38 specific proposals for the development of the informal sector were implemented (Walsh, 1983), nor were the reforms proposed by Tom and Peter. Meanwhile, first world exploitation of PNG was ever increasing. As Shelby recalled:

> "…[Big] companies were coming in and convincing [PNGans] to sign agreements that [sanctioned the]…exploitation of…natural resources… [These] …companies were… taking the minerals…[and] polluting the rivers. It was really awful… Forestry was … being sold off right, left and centre" (Fitzpatrick SF, 2020).

Peter and Shelby loved the locale and the people. Peter subsequently took up a Senior Lectureship in the Law Faculty of the University of Papua New Guinea (1974-76), where

faculty-student relations were warm and close. He conducted his Jurisprudence classes sitting under a tree. But his experience of PNG was bitter-sweet. Although Peter and Loraine's campaign seemed realistic in the heady days around independence, it has been argued that they did not fully appreciate the hurdles to be overcome (Walsh, 1983; Conroy, 2015). Whatever their merits, these and allied criticisms inevitably stung. Praxis had proved even harder than anticipated, and Peter became more cynical and critical in his approach to law and society. In 1977, after six years, Peter secured a lectureship at the University of Kent and the family returned to England. Peter's project of understanding and framing academically the PNG experience and its wider applicability began in PNG but developed in earnest at Kent.

IV

The UK to which Peter and family returned was markedly different from that which they had left at the height of the swinging '60's. Margaret Thatcher would be premier during much of Peter's nineteen-year tenure at Kent (1977-96). Meanwhile, the changes in the ecology of left-radical politics and scholarship, and in legal education and scholarship had continued apace. Interest in left-radical ideas remained, including the efflorescence of Marxist and neo-Marxist scholarship, coupled with growing disillusion with the official Communist and Labour movements. New political alignments and movements were forged to reflect and sustain these trends. There was a greater openness to the vocabulary of rights and liberties and to "taking law seriously". University legal education was booming. The pluralisation of law schools, law faculty and students, periodicals, publishers and audiences created greater space for experimentation, diversity and contextualist and critical thinking.

Initially, Peter had a joint appointment at Kent in Interdisciplinary Studies (IDS) and Law. He reluctantly moved to Law full-time when IDS was abolished. The fractious tendency and

politically divided nature of the Law Board (subsequently the Law School) for much of his tenure accentuated his misgivings. Peter identified with the leftist "young Turks", but also kept them, and most other colleagues, at arms-length. He was, as he subsequently put it, "a bit of a loner" (Fitzpatrick, 2017 interview one). Whilst few colleagues shared his interests, Peter was generally well liked and regarded as "his own person" (Wightman, 2020). This was echoed in his colourful attire – the Indiana Jones Fedora and the multicoloured flared trousers.

Nonetheless, the Law School proved supportive. Joint teaching on the Introduction to Law course – which included legal anthropology, elements of Jurisprudence and Marxist approaches to law – was stimulating.[6] Peter particularly valued his links with the feminist lawyers, believing that law must explicitly take gender into account. In comparison with many other law schools of the time there was probably greater space for leftist thinking, teaching and institutional support, such as conference funding.

Beyond Law, it was the development of a pioneering M.A. in Women's Studies that enthused Peter, despite his lack of any specific involvement. His warm and enthusiastic support, which was not shared by everyone, facilitated the programme's initiation (Evans, 2020). Peter made the most of the opportunity Kent provided to pursue his own scholarly interests, with research and writing remaining his principal focus for the rest of his life.

Completing a book that brought to bear his extensive first-hand knowledge of PNG was paramount. Angry that various ills had been visited on PNG and its peoples, Peter also felt

[6] Alan Thomson, who played a seminal role in introducing the critical ethos for which Kent Law School became known, was perhaps the person with the most intellectual overlap with Peter in his early days at Kent, stemming especially from Thomson's interest in social anthropology. Peter acknowledged the importance of Thomson's scholarship: Fitzpatrick, 1984: p.166 n. 32.

used by the powers that be and wished to demonstrate that what was often portrayed as a great success was in fact an unhappy story. Hence, in a 1980 article he argued that the situation of labour in PNG is "really rather like slavery" (Fitzpatrick, 1980a: 77). He wished to do more than expose the chief villains, resolving to write a scholarly book analysing the processes at work that provided an alternative framework for understanding both PNG and imperialism more generally.

Two sets of ideas proved significant. Firstly, the work of the French anthropologist, George Baladier challenged the rhetoric of modernisation as occluding the colonial and ignoring race, emphasising power and power relations, rather than decision-making, in defining and formalising politics (Baladier, 1951/1966; Fitzpatrick, 1980b).

Secondly, Peter was galvanized by Marxist thinking about capitalism and imperialism, notably, theories of underdevelopment. One influential version, elaborated by Andre Gundar Frank, argued that the problems of the 'developing' countries are the result of a process of incorporation of these societies into a world social structure, so that the poverty of the former is structurally related to the wealth of the latter (Frank, 1967). Frank's approach was enthusiastically embraced by a group of UPNG teachers. Together, they authored the first systematic application of Frank's thesis to PNG (Amarshi, Good and Mortimer, 1979), with Peter contributing a jointly authored chapter (Fitzpatrick and Good, 1979).

Peter's first book, *Law and State in PNG* (LSPNG), published the following year emerged from this intellectual context (Fitzpatrick, 1980a). LSPNG drew on a related, but more abstract, approach to Third World underdevelopment, namely, "articulation theory". It maintains that economic systems involve more than one mode of production, and this 'articulation' of modes is particularly pronounced in "peripheral" social formations, as in the Third World. LSPNG argued that imperialism subordinated and transformed the diverse pre-

colonial means of production yet conserved the pre-existing modes of production and forms of law "in articulation" with the capitalistic. While the state's championship of "PNG goals and ways" (largely through law reforms which embody or refer to indigenous law concepts) had been "ostensibly dramatic", Peter's conclusion was pessimistic:

> "Where the changes are basically neo-colonial, they are successful…Fundamental changes, especially those countering the metropolitan bourgeoisie, are either not enacted or assume an anaemic existence at the level of enforcement" (Fitzpatrick, 1980a: 254).

Most reviewers acknowledged the importance of LSPNG, but took issue with articulation theory, arguing that it failed to avoid economic and class reductionism, that LSPNG gave short shrift to agency, resistance and the dynamic autonomy of traditional modes of production and forms of law and was too pessimistic. Hence the conundrum remained: how to replace the reductionism that failed to work with an alternative that addresses the ways in which social relations constitute unities that instantiate relations of domination and subordination? The struggle to do so remained a central predicament for Peter and was one to which he would return.

LSPNG is interesting for what it did not do. Unlike his previous work, it was not prescriptive. There was no list of recommendations. He instead adopted a more theoretical and abstract style. Another absence is LSPNG's lack of engagement with the burgeoning field of law and society, possibly due in part to Peter's then limited familiarity with this body of knowledge. I also suspect that the need to complete LSPNG prevented him from undertaking the more wide-ranging work his findings suggest. LSPNG's importance and influence stems from its

powerful illumination of the process by which decolonisation reconfigured peoples and nations. It challenged the Eurocentrism of much first world scholarship and demonstrated the centrality of Third World-First World relations and imperialism for the field of law and society scholarship at a time when this was rare.

With impressive speed and determination Peter moved on. He became widely read in socio-legal scholarship. His progression from being a fringe figure in a fringe field to a major figure in critical legal studies was under way, aided and abetted by his growing association with circles of engaged political intelligentsia beyond Kent University, who absorbed, argued about and disseminated each other's work.

Maureen Cain, a pioneer in the inter-disciplinary development of radical analyses of law and legal institutions in society, was an important influence. In 1979 Maureen headed up a new and avowedly radical book series for Academic Press, 'Law, State and Society'. Peter was casting around for a publisher of LSPNG and Maureen offered to take it. Sensing what Peter could bring to the enterprise, she persuaded him to join the editorial board. The people he met, reading and commenting on manuscripts, and soliciting book proposals enriched his ideas and his circle of friends.

I first met Peter in 1980 when Maureen suggested that I discuss a book proposal of mine with her and Peter (Sugarman, 2020). This was my first book and I was more than a little anxious. But I need not have worried, Maureen and Peter were so personable, enthusiastic and helpful that I immediately signed up with them. My proposal morphed into *Legality, Ideology and the State* (Sugarman ed, 1983) – a collection of multi-authored essays that sought to convey the distinctive character of critical legal studies in the UK in the early 1980's. Peter

contributed a chapter and, along with Maureen (another contributor), was especially supportive throughout the process of bringing the book to fruition.

Now comrades-in-arms, Peter and I joined Maureen in establishing the European Conference of Critical Legal Studies (ECCLS) as a means of advancing the cause of critical legal studies and fostering dialogue between critical legal studies in the UK and Continental Europe. It was inspired by the American Critical Legal Studies (CLS) movement, but sought to reflect the different experience, politics and society of Europe. Peter served as ECCLS Secretary and Newsletter Editor (1982-86) and helped to organise several meetings in the UK and the Continent. Alan Hunt suggested to Peter that a UK association of critical legal scholars and activists would be desirable. The proposal was immediately adopted, leading to the first Critical Legal Conference (CLC) in 1985.

Peter's close association with CLC continued for the rest of his life. Peter said he loved these conferences. They helped mitigate the isolation he felt at Kent (Fitzpatrick, 2017 interview one). It was in this period that Peter began to receive invitations to deliver special lectures abroad, thereby further enriching his range of friends and colleagues, the exchange of ideas and the refinement and dissemination of his work.

Around the same time (the 1980's) that Marxist and allied critical scholarship came to the fore, it came under attack for its essentialism (Sugarman, 1981; Spitzer, 1983). This put into question both Marxist and structural-functionalist social theory and historical explanation. During the 1990s a major shift in theoretical practice occurred as legal academics, following colleagues elsewhere in the human sciences, discovered postmodernism. Peter's writing developed quickly in this context, absorbing and adapting many of the contemporary debates and literature, and reconfiguring both the subject-matter and the theoretical foundations of his

work (repudiating essentialism and monocausal explanations of law). His engagement with legal pluralism is illustrative.

The idea of legal plurality was of growing importance in the law and society/legal anthropology literature. In a series of papers, Peter sought to develop a radical theory of legal pluralism that harnessed it to articulation theory. He focussed almost all his theoretical attention on this and the relative autonomy of law. Most striking is Peter's early enthusiasm for Foucault from 1983 onwards (Fitzpatrick, 1983a; 1983b: 176)), who Peter referenced copiously - 32 times in one article (Fitzpatrick, 1984). By 1984, Peter had jettisoned articulation theory and flattened base-superstructure theory and begun to engage with other socio-legal issues of the day, including the efficacy of "legal informalism" (Fitzpatrick, 1988) and "popular justice" (Fitzpatrick, 1992b). Importantly, he extended his work on imperialism and counter-imperialism, energized by Said's influential critique of the discursive formation of colonialism, and the development of postcolonial theory (Said, 1978). It was in this context that he began to investigate and theorise the interplay between law and racism, challenging the view that law and racism were incompatible (Fitzpatrick, 1987; Tuitt, in this issue).

A final year undergraduate course on "Discrimination" allowed Peter to develop his ideas and use some of his pre-published work for class discussion. Always theoretically informed, the course was originally devoted entirely to *Discipline and Punish* (Foucault, 1977), but subsequently broadened into a critical examination of issues of race, sex and sexuality discrimination**.**

Kent recognised Peter as a prolific scholar of growing international standing. He was promoted to a Senior Lectureship (1981) and then, in 1985, to a personal Chair in Law and Social Theory.

During the late 1980's and early 1990's Peter was centrally involved in several of the intellectual initiatives at a hoped-for counter-hegemonic breakthrough in conventional British legal wisdom. With Alan Hunt, he edited and contributed to *Critical Legal Studies* (Fitzpatrick and Hunt eds, 1989). He edited, "Law and Social Theory", a new series published by Pluto Press, also editing and contributing to its first instalment, *Dangerous Supplements. Resistance and Renewal in Jurisprudence* (Fitzpatrick ed, 1991a).

Peter increasingly tried to elucidate the resistant and transgressive possibilities of law in society. Thus, in "Supplementing Jurisprudence" he developed Derrida's concept of "dangerous supplements" through a deconstruction of "the supreme text of jurisprudence, H.L.A. Hart's *The Concept of Law*" (Fitzpatrick, 1991b: p.2). Peter's critique of Hart was intended to illustrate the incoherence of liberal thought, while also serving as a response to liberals and neo-positivists who argued that they were not taken seriously by "Crits".

This was shortly followed by the publication of Peter's most influential work, *The Mythology of Modern Law* (MML), a critique of modernism in law (Fitzpatrick, 1992a). Key arguments include:

- Modern law arrogates to itself dimensions of the sacred, while claiming to be rational and myth-free.

- Leading authorities of jurisprudence have constructed a mythology of modern law which requires the presence and construction of an *Other* to confirm itself as its opposite.

- The racist foundations of modern law were consolidated into a “white mythology” that became the justification for imperialism, colonialism, nationalism and racism (Pavlich, in this issue).

- This rationality is dependent on the idea of progress and on a social Darwinism which characterises different cultures as savage, uncivilized, backward or impenetrable.

- The exportation of occidental rationality in the form of law serves as a vehicle for colonial imperialism and a model of civilization and identity.

- The mythology of modern law works to create "us" and "them" on the levels of race and nationality within which disciplinary power moulds people to acceptance of a hierarchical domestic order.

- Imperialism is not marginal but central, ordinary and enduring.

In challenging modernity’s denial of the relevance of myth in modern society, Peter echoed both contemporary developments in anthropology and Goodrich’s work on legal history, theory and semiotics (Goodrich, 1990). And in its turn to ethics, its debt to Derrida and Levinas is readily acknowledged.

MML is often considered a difficult book, partly explained by the breadth of reading underpinning it, along with its multidisciplinary and multicultural approach. Then there is the scale of its ambition, seeking to**:**

> "…subvert Western rationalities from within by heightening the contradictions and suppressions involved in their construction. It is an attempt at internal decolonisation" (Fitzpatrick, 1992a: 13).

MML's high level of abstraction renders the book demanding. It is more philosophical, and the language is denser than in Peter's previous work. Nonetheless, even those who disagreed with MML's broader theoretical approach and conclusions agreed it was both impressive and informative, bringing the dehumanising and brutalising features of law and modern society into renewed prominence in original and important ways. As the flagship work of a new book series focusing on feminist work and compatible scholarship, the series editors, Maureen Cain and Carol Smart, underscored in their editorial introduction how the analysis developed in MML "to demonstrate the integral and foundation character of racism in law reveals a space and an opportunity for a sister analysis of women's continuously marginal standing as full legal 'persons'" (Fitzpatrick 1992a: xii).

Colin Perrin, a graduate in anthropology and politics, in 1991 was the first research student to choose Peter to supervise his doctoral thesis. Colin was versed in Foucault, had started to read Derrida and wanted to write about human rights through the lens of post-colonialism. He rapidly became a valued interlocutor. Peter gradually attracted a small band of research students. And no doubt MML was a large part of the reason for that. His research students would become his community and his lifeblood, playing a vital role in the development of his ideas

Peter established a series of lively *ad hoc* reading groups for his research students and curious others. A small number of Masters' students became involved, also a couple of members of the Law Department. Pedagogically innovative, these groups revolved around the slow, immersive reading of a text (Paliwala, 2012; Fitzpatrick, 2012a; Fitzpatrick et al, 2020).

Although the work chosen was not dictated by Peter, the key readings remained largely unchanged, with Derrida's, "Force of Law" (Derrida, 1992) being the leading text. Also, important were Nancy's, *The Inoperative Community* (Nancy, 1991), Schmitt's, *Political Theology (*Schmitt, 1922/2005*)* and postcolonial scholarship.

In the early 1990's, Katharine O'Donovan, one of Peter's closest colleagues at Kent, accepted a chair in Law at Queen Mary and Westfield College (QMW), University of London. Katherine told Roger Cotterrell, then Dean of the Law Faculty at QMW, of Peter's interest in moving there, whereby Roger pushed for his appointment. Peter joined QMW in 1996 but never became fully integrated strongly into the law faculty. When the Birkbeck Law Department wooed him, Peter allowed his name to go forward and was appointed Anniversary Professor of Law in 2000 (Cotterrell, 2020).

In some ways, Birkbeck was a natural home for Peter. Based in the heart of Bloomsbury, with its mission of teaching ordinary working people, Birkbeck naturally attracted left-wing academics. Now employed by the leading UK Law School exponent of law and postmodernism, Peter's scholarship was not merely appreciated and supported, but was sufficiently revered by faculty and students to make him feel valued as never before. Being asked by William Twining whether he liked being at Birkbeck, Peter replied, "Love is the word" (Cotterrell, 2020). With so many PhD students, he had no time for undergraduate teaching. His role as a supervisor and teacher became legendary, as did the intellectual buzz of his reading groups. He was conscientious, constructive, supportive and generous with his time. According to Sally Sheldon, one of his former supervisees:

> "Peter never imposed his own views. I didn't adopt a postmodern approach … and don't remember ever being encouraged to do so. I also remember him as being very

widely read in feminist and socio-legal scholarship, so a great source of wide-ranging reading recommendations" (Sheldon, 2020).

Working in London enabled Peter to develop and enjoy an extensive range of associates, especially those from overseas, and to increase his contacts and visits abroad to Australia, South Africa, South America, the United States and Continental Europe. He especially enjoyed the time he spent at the Institute for the Sociology of Law, Onati, where he was a faculty member and was awarded a Fellowship.

The historian Eric Hobsbawm, another Birkbeck teacher, once called Birkbeck the "poor man's All Souls" because of the pattern of evening teaching, staff could spend their daytime writing books (Evans, 2019 p. 64). Peter took advantage of this, producing an array of publications of remarkable richness and vitality during his seven-year tenure that included 2 books, 3 co-edited collections, 30 book chapters, and 33 articles propelled, in part, by numerous collaborations with his former students and Birkbeck colleagues.[7]

The range of topics that Peter subsequently addressed is so wide that a necessarily crisp and selective overview must suffice. At least six distinct but overlapping strands are evident in his publications from 1999 onwards:

[7] These included Eve Darian Smith, Ben Golder, Fiona Macmillan, Stewart Motha, Sundhya Pahuja, Colin Perrin, Sara Ramshaw and Roshan de Silva. Peter organised and participated in several workshops and allied events at Birkbeck. He also undertook a lot of advisory and editorial work including associate editor of *Social and Legal Studies* and *Law, Culture and the Humanities* and editorial board member of the *Journal of Law and Society* and *Law and Critique*.

- The use of postcolonial discourse to critique legal globalization, international human rights and international law (Fitzpatrick, 1995; Fitzpatrick and Tuitt eds, 2004; Pahuja, in this issue).

- The reinstatement of those marginalised in prevailing accounts of contemporary national/global dynamics: refugees, racial or ethnic minorities, and women in "developing" states (Fitzpatrick and Darian-Smith eds., 1999; Fitzpatrick and Tuitt eds., 2004).

- Law and literature (Fitzpatrick, 2004, 2016).

- A challenging of the conclusion that Foucault relegated law to a position of inferiority in modernity (Golder and Fitzpatrick, 2009; Golder and Fitzpatrick eds., 2010; Golder, in this issue).

- Legal theology and the modernity of law (Fitzpatrick, 2007, 2009; Baxi, in this issue).

- A theory for understanding law and how it works in modernity (Fitzpatrick, 2001, 2020; Golder and Fitzpatrick, 2009; Golder and Fitzpatrick eds., 2010).

Two themes repeatedly recur. First, resistance, or how legal forms might be deployed to confront and disrupt injustice (Fitzpatrick, 2008); second, the grounds of law in modernity as the irresolvable tension between “determination” and “responsiveness.”

At a time when few scholars did so, Peter’s placement of international law and consideration of the “global” in the context of postcolonial discourse was warmly welcomed. So, too, was

the work that he fostered and inspired on nationalism, racism and the rule of law (Fitzpatrick ed., 1995). More generally, his pioneering work on the centrality of colonialism, imperialism and racism in modernity and modern law proved prescient and a real stimulus to others**.**

More contentious was his treatment of the grounds of law in modernity, first elaborated in his last sole authored book, *Modernism and the Grounds of Law* (Fitzpatrick, 2001) (MGL) and reappearing in much of his later work (Fitzpatrick *et al.*, 2020; Golder and Fitzpatrick, 2009; Golder and Fitzpatrick eds., 2010). I would summarise his argument thus:
Whilst law has a determinate content, it must also be responsive to what "for the time being" "transcends" that content - the aspiration of law to meet the Other. Hence, law is ever being and becoming. Modernity seeks but fails to "resolve" this oscillation as law is both these movements. It is a theory of law about possibilities: that law is repeatedly impelled towards a law that "subsist[s] in its ability always to be other than what it is" (Fitzpatrick, 2001 p.86).

Since it is commonplace that law is grounded in an inherent contradiction between the determinate and the responsive, critics were perplexed, a problem compounded by Peter's failure to offer a sustained conceptual elaboration of "responsiveness" and "determinacy", what law is and is not and the aspiration of law to meet the Other. Whether law's openness is unlimited and a suitable vantagepoint for understanding law - rather than, say, law's real structures and dynamics - is questionable. Some found his language "eccentric", "obscure" and "opaque", and, not for the first time, those who might have been expected to embrace his work could find his writing hard to engage with (Brown, 2001; Murphy, 2002). The kind of theory he wanted to employ was often too far removed from readers' theoretical outlook for them to be able to fully appreciate it. They found it difficult to understand both what he was

trying to do, and how they might use the knowledge he was striving to develop about law and modernity.

A consideration of the intellectual challenges that Peter sought to engage with in the aftermath of MML helps us to understand how these difficulties arose. Peter became unhappy with his argument that law was more-or-less constituted through the violence of racial exclusion, acknowledging it to be more paradoxical and nuanced, needing room for resistance, community and the ethical. Peter sought in Derrida a way forward from MML, a more structural, dynamic account of law's constitution of identity in relation to the Other. He concluded that there was an ethical possibility that was the subtle supplement to the story he told in MML, and that law was needed to point out the violence elaborated in MML. And, to some extent, this was what Derrida was saying in "The Force of Law". Peter's emphasis on the oscillation of determinacy and responsiveness enabled him to configure law in relation to community and justice. He saw a necessary limit to determinacy and realised that lack of determinacy, or lack of determined position, always leaves law exposed. Furthermore, exposure to otherness, to difference, and to the ethical moment that presses on law, demands something more of law, and plants or exposes the irresolution at the heart. This is the dynamic Peter aims to describe. His subsequent work strove to refine that framework, resorting to a combination of Derrida and Foucault, underpinned by his orientation towards the ethical (to which I will return) and as a way of addressing an impasse (as he saw it) in liberalism (Golder and Fitzpatrick, 2009; Golder and Fitzpatrick eds, 2010). In this way he hoped to provide a more complex and subtle reading of the relationship between determinacy and responsiveness than in the standard law and society/law reform literature.

This was allied to Peter's now fully-fledged commitment to a poststructuralist perspective – one that was better able to elevate the ethical centre-stage, both intellectually and personally. Consequently, Peter, was not prepared to be constrained by traditional protocols and

restraints associated with exegesis, interpretation and scholarship. Rather, MGL was an experiment in form and in substance. The struggle to produce a polished, finished work is replaced by the notion that all scholarship is work in progress, and cannot comprise a fully elaborated position. He is attesting to the irresolution he discerned in Derrida. The struggle is less to achieve that truth, but 'How far I can get to that truth, and why no further?'. This is my understanding of MGL's trajectory and Peter's repeated efforts to account for the grounds of law in modernity.

Peter showed no sign of responding to the qualms of reviewers. By the time he completed MGL he was planning a follow-up book developing his idea of law as part of a modernist secular theology. Commissioned by Routledge in around 2008, its various titles included, "Strange Gods: Legal Theology within the Modern Imperium" and "Legal Theology: Law, Modernity and the Sacred". Although this book was never completed, aspects of its proposed content were published. The outline of the goals for his book offer a glimpse of what might have been:

> "1. The immediate aim is to offer a genealogy of modern law as a secular theology.
>
> 2. The major aim is the emplacing of such law at the constituent core of modernity. In so far as this has not been realized, and borrowing an enviable title, "we have never been modern" (Latour, 1993 p.64). This failure of realization entails a creative forgetting of what was once the religious dimension of modern socio-political formation.
>
> 3. The incidental aim is to accommodate, and thence 'explain,' the persistent failures in Jurisprudence and legal theory to tell us what law 'is'" (Perrin, 2020).

Peter's relationship with the Kent Law School continued, and in 2005 he was awarded an Honorary Professorship. He was also the recipient of the James Boyd White Award from the Association for the Study of Law, Culture and the Humanities in 2007, honouring outstanding scholarly achievement in the field.[8]

Peter resigned from Birkbeck in 2017 on a matter of principle concerning the administration's treatment of the then Head of the Law School, but he never formally retired. Latterly his health declined; dealing with cancer ate up his time and his energy. But almost to the end he insisted on taking part in public life - participating in seminars (Paliwala, in this issue), examining PhD's, meeting with friends and colleagues, and holding court at home. Peter died on 20 May 2020.

It is a tribute to Peter that work with a colonial or postcolonial theory dimension or concerned with racism and empire is now to be found in virtually all law departments and legal journals. Legal theory, law and the humanities, and law and society as they relate to the colonial and post-colonial, similarly, owe much to him (Darian-Smith, in this issue). There is less Derridean work going on today than when Peter first embraced it, so this aspect of his work is less influential than it was. It is his more postcolonial work, and the postcolonial dimensions of his work, that are likely to remain especially important.

[8] Peter was a member of the initial organising committee of the Association.

V

Whilst, politically, Peter was clearly of the Left, his main orientation was towards the ethical and the attendant ideas of justice, identity and community. This was the theoretical core of his work, both academically and personally. We see it in his life, with everyone seeming to have a story about how Peter transcended the norm – be it the exceptional level of support given to students and colleagues and in his capacity to treat everyone equally, irrespective of status or role. Perhaps this accounts for Peter's problematic relationship with institutions and his efforts to cut some space for community. Hence, the reading group was an attempt to create an intellectual space that was not entirely contained within the institutional or the tribal (they frequently met off-campus in pubs), and which aspired to introduce something communal and horizontal. Peter saw that whoever you are, you are ultimately compromised by your institutions and tribal allegiances unless you challenge them.

Peter's prioritisation of the ethical seems to have been grounded in his family background, the notion of an ethical vocation inspired by Frs. Kelly and Sykes, his lower class origins, the racism and sectarianism that he encountered from the outset of his life, be it towards Catholics and indigenous peoples, and which he later encountered in Belfast and PNG. He lived on the periphery, the child of a rural "outback" province regarded as peripheral, who cut his teeth in centres regarded as peripheral (Belfast and PNG), who spent most of his university career at a university regarded as peripheral (Kent) and spent most of his life living in a tiny Kent village that was also regarded as peripheral, as distinct from central. This too, perhaps, accounts for his preoccupation with periphery versus centre relations, outsiders-insiders, their distinctive identities and histories and a sympathy towards "outsiders".

During his early days as a legal eagle in London, Peter, then in his mid-20's, attended church every Sunday. It was only when the celebrant described the church as "the church of the

Queen of England", that Peter became aware that the church where he had been worshiping for some time was High Anglican rather than Catholic, a revelation which led him to realise that the spiritual comfort and guidance he had assumed could come only from Catholicism, may also derive from other sources. This challenged his taken-for-granted assumptions, throwing into doubt whether the Catholic Church was supreme, after all. And perhaps he realised that nothing was beyond question. When I asked Shelby whether Peter was religious, she said that she didn't think he was always a Catholic. But that "his Catholic upbringing never left him…Religion was always a key element in what he was thinking" (Fitzpatrick SF, 2020).

Despite his strongly held views and political commitments, Peter was the antithesis of a divisive or factional person. His natural inclination was to pull people together, his relationship with A.W. Brian Simpson being a case in point. When Brian was Chair of the Law Board and Dean of Social Sciences at Kent, he and a group of leftist colleagues in Law were daggers drawn. Peter, by contrast, got on well with almost everyone:

> "Although I worked very much with the 'other side' given my own inclinations, I tended not to take sides (as it were). That was just a congenital abnormality on my part. [Laugh]. I didn't shirk arguments or anything…[else]. It just seems to be my nature. I remember David Miers once tried to entice me to go to Cardiff to a chair because he said, on the basis of his experience at [Queens University] Belfast, I was the sort of person who brought people together…" (Fitzpatrick, 2012b).

Peter reached out regularly to the then isolated Brian, both professionally and personally - inviting him to his home for dinner and keeping him company when Brian became seriously ill. Peter also helped Brian marshal his arguments against Hart's, *The Concept of Law*, in Brian's final book (Sugarman, 2012).

When we last spoke, Peter talked about his lifelong passion for Miles Davis. He said how the music represented for him “the sound of what can be”. What was his own life but the striving to make “what can be” alive personally and in the imagination?

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