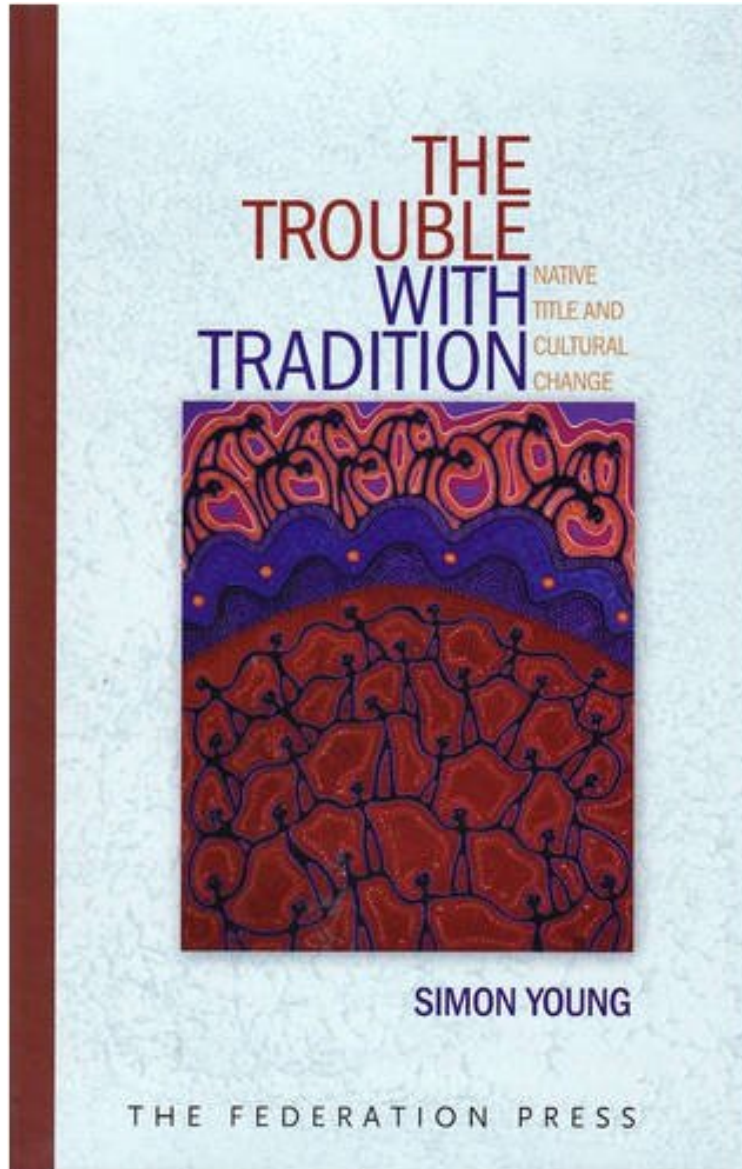


[E-BOOK] The Trouble with Tradition: Native Title and Cultural Change

The Trouble with Tradition: Native Title and Cultural Change

Simon Young Sol

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Simon Young Sol : The Trouble with Tradition: Native Title and Cultural Change before purchasing it in order to gage whether or not it would be worth my time, and all praised The Trouble with Tradition: Native Title and Cultural Change:

The Trouble with Tradition is a broad and detailed examination of the native title jurisprudence across four countries--the US, Canada, New Zealand and Australia--with a specific focus on the handling of Indigenous community change in each country. The book demonstrates that there is a notable receptivity to Indigenous change. It argues that the prevailing Australian methodology, however, suffers from many technical problems and will have grievous consequences for Indigenous Australians. The Australian courts, in their preoccupation with Indigenous tradition, have gradually cultivated two related excesses: over-specificity in the definition of the aboriginal interest and over-particularity in the search for cultural constancy and continuity. These digressions threaten to entrench an unjustifiable attenuation of the native title interest and an inherent intolerance of Indigenous change.

Young explores native title jurisprudence and politics in Australia, New Zealand, Canada and the US. His primary thesis is that in contrast to these other jurisdictions, in Australia native title is difficult to prove and the courts and legislatures have failed to recognize that the relationship between Indigenous people and their land can, and does, change. Young outlines the means by which Australian jurisprudence could adopt a more broadly conceived right to native title. ... Young is not without answers to the Australian problem. He proposes a 'three point plan' for reform of native title ... [which] would bring Australia into line with international thinking and jurisprudence. No bad thing. - Law Society of Tasmania, Law Letter, Autumn 2010 This book transforms research on Australian native title jurisprudence. It positions the jurisprudence in an international context and within interdisciplinary debates. Young thoughtfully analogises native title developments in the comparative jurisdictions of Australia, the United States, Canada and New Zealand. It is through his comparative approach that Simon Young is able to reveal the distinctly limited approach of the Australian courts in assessing the 'traditional laws and customs'. Young suggests that courts have gone badly awry showing an undue preoccupation with 'tradition' that has prevented proof of Indigenous change. However, the book is much more than a detailed examination of native title jurisprudence internationally. It draws on socio-legal research on Indigenous culture and land relationships to argue that Australia relies on an over-specific, Westernised notion of 'traditional laws and customs'. This reliance limits claimants' proof of continuity in land connection to specific instances and affords successful claimants cultural, rather than also commercial, rights. ... In the final section, Young reconceptualises native title. He provides a Three-Point Plan for doing justice to Indigenous proprietary interests. The first step is to distinguish title from rights (bundles of rights or exclusive specific rights). The second step is to distinguish communal interests from inter se interests for both rights and interests. Communal interests are afforded where there is proof of traditional laws and customs. Where there are contemporary laws and customs, inter se interests are provided. The third step is to establish the proof and content of these interests. This is a wonderful contribution to native title jurisprudence. The Trouble with Tradition maps the native title landscape thoroughly and clearly. Young's signposts for future directions in the growing field of native title case law are food for thought for any Federal or High Court judge adjudicating native title matters. They may also stimulate a rethink of the Native Title Act 1993 by the Federal Labor government. However, the book's impact is broader than Australian native title law. It reveals the potential for comparative law to enlighten policy and case law and provide for informed and critical scholarship. - Australian Journal of International Law , 2008 AT last! A book that cuts to the heart of the problems surrounding native title law and the way Courts deal with them...[it] looks at the way the Australian jurisdiction handles such claims and compares it to other common law jurisdictions, to wit US, Canada and New Zealand. Young covers pre-Mabo (No2) and Privy Council precedent seeking the origins of this restrictive approach, thoroughly and critically examines Mabo (No2) (17 pages) finding ambiguities, inconsistencies and division of the critical issues, and a bias towards a restrictive approach. He looks at the Act, post-Mabo cases following the development and application of this methodology and criticises the Courts' approach and that of the parties involved... Nonetheless, Young sees light at the end of the tunnel...[and] suggests solutions to problems I strongly recommend this book. - Ethos, Law Society of ACT, December 2008 ...Dr Young offers an alternative understanding of tradition and culture for native title law...In offering his alternative view, Dr Young recharts well-explored precedent but with a novel narrow field of inquiry that presents new insights into native title legal scholarship. The Trouble with Tradition is highly academic, extensively footnoted and densely analytical. It is the type of law book that is infrequently produced: one with a simple message on a particular but highly important aspect of a specific area of law...particularly relevant to researchers engaged in critical interpretation and analysis of native title law, students of native title and judges faced with native title claims. - Brad Jessup, Law Institute Journal of Victoria, September 2008 Dr Young has undertaken a comprehensive analysis of the 'traditional laws and customs' focus that dominates the recognition of native title in Australian law - but the importance of his work extends far beyond the legal sphere. In showing how the 'tradition' approach is not supported by the weight of legal principle and is out of step with overseas precedent, he opens the way for a reconsideration of how Indigenous rights to land are, and should be, recognised. - Ambelin Kwaymullina Dr. Young's book fills a huge gap in the legal understanding of Indigenous land rights. As he convincingly shows, muddled thinking and lack of precision in judicial decisions can have devastating effects for Indigenous peoples. [His] detailed comparative analysis ... provides an indispensable resource for deepening understanding. While his focus is on Australia, the book's comparative approach extends its relevance to all common law jurisdictions that are inhabited

by Indigenous peoples. Everyone who is concerned with Indigenous rights - Indigenous leaders, judges, lawyers, land-claims negotiators, policy makers - will benefit enormously from reading it. - Professor Kent McNeil