ELIZABETH EGGLESTON

1934–1976

Elizabeth Eggleston was acknowledged as Australia's foremost expert on Aborigines and the law. When she died in March her book *Fear, Favour or Affection* had just been published. In the tragically short time between its appearance and her death the book attracted a great deal of attention in the press and on radio, and won high praise for its contents, its style, its ideas, and its insights.

But the book was only, in a sense, the merest tip of the iceberg. Elizabeth Eggleston spent the last decade of her life learning about Australia's Aborigines and the ways in which the law touched, or did not touch, them. How did she come to embark on this work? We were fellow students in the University of Melbourne Law School in the early fifties. I can't remember that she showed any hint or glimpse of interest in Aborigines then. (They were, of course, hardly visible in the terms of public interest or concern then. There were a few to be seen in Fitzroy, and one, with some sad dignity still, who played a gumleaf in Bourke Street on Friday afternoons.) Elizabeth completed a very good LL.B., served articles, and then went to Berkeley, in California, to do an LL.M. She finished that successfully in 1958, and came to England on her way, by slow stages, home to Melbourne. We talked in London several times about our experiences and studies since we had both left Melbourne. I remember Elizabeth telling me about a visit to an Indian reservation she and some friends made. It had

made a deep impression on her. She had become interested in the land rights some American Indian tribes had. She talked with enthusiasm of the work of Felix Cohen (whom I knew only as a legal philosopher who had illuminated the concept of property) in the field of Indian affairs. And she talked of how she could not avoid comparing the Indians with the Aborigines, and of how little she knew about them.

We lost touch for several years. In 1963, I heard that Elizabeth was completing a B.A. at Melbourne. We met by chance in the University and she said that she had been working as a solicitor. It was obvious to me that professional life did not give her the satisfactions and stimuli she had expected. But she did not speak of any other plans. In June, 1965, I returned from study leave to join the infant Monash Law School, and learned that Elizabeth was its first Ph.D. scholar, doing research on Aborigines and the administration of justice. Colin Tatz, the first Director of the newly created Centre for Research into Aboriginal Affairs, was her mentor and supporter. David Derham, the Dean of Law, was her supervisor and guide. I was excited to learn that Elizabeth was going to do more than read traditional materials and newspapers for her thesis. She proposed to take a year to study the actual workings of the law in places where Aborigines lived, in Victoria, South Australia and Western Australia. It would be the first study of such breadth and such purpose in Australia.

Elizabeth was reading steadily, planning her field work trip (which included buying such lawyerly equipment as a good tape-recorder, a camera, and a sleeping bag), and collecting all the material on Aborigines and the law which she could find. But even with all that, she was actively concerned about what was happening every day to Aborigines. There was a young Aborigine who had been convicted of rape and sentenced to 12 years' imprisonment. Elizabeth said that plans were in train for an appeal. A solicitor who often did free legal work for Aborigines agreed to act. By some mischance, the solicitor was not notified of the appeal, and the Full Court disposed of it on the basis that the appellant wasn't represented. The Court reduced his sentence. Elizabeth, Colin Tatz and I talked of what could be done. She was adamant that something had to be done. The Solicitor-General, Mr B. L. Murray, Q.C., agreed to advise that a Petition of Mercy be referred to the Full Court. In effect, a second appeal would be permitted. For that appeal, a table setting out sentences imposed on men convicted of rape in Victoria over the past few years was prepared, and exhibited to an affidavit which Colin Tatz swore. The Court reduced the sentence and the minimum term. There were other instances, not as difficult or as dramatic, where Elizabeth took time and trouble to seek representation for Aborigines charged with offences, to find witnesses, to listen to their stories.

Her field work was spread over nearly 15 months. For two months in 1965, Elizabeth examined records kept by the Victoria Police. From

March 1966 to March 1967 she travelled through South Australia and Western Australia, observing and talking to police, lawyers, magistrates, welfare officers, judges, and everywhere to Aborigines. The story of that journey deserves its own book. It is only briefly mentioned by Elizabeth; of course, its results are the heart of her book. It is another tragic consequence of her untimely death that her account of that journey can never appear now.

On her return to Monash, Elizabeth began to assemble her findings. She learned to deal with computers, and to cope with statistics. It was clear to some of us that she was moving—that she had moved—firmly into her chosen field of scholarship. At the end of 1967, we talked of the future. By then she had held a Graduate Scholarship for three years and she knew that university teaching and research was the work she wanted to do for the rest of her life.

It is easy to overlook Elizabeth's life as a law teacher if one focusses only on her work on Aborigines. For several years, however, she not only worked very hard in sifting, evaluating and analysing the material she had collected and then writing and re-writing her thesis. She also carried a full teaching load in the Law School. I became her Ph.D. supervisor in 1968, when David Derham took up his appointment as Vice-Chancellor of the University of Melbourne. So I knew at first hand what Elizabeth was doing. She taught Criminal Law, in which she had a special interest fostered by her own work, which had come to concentrate on Aborigines and the administration of criminal justice. But she also played a leading part in establishing the teaching in Industrial Law at Monash. When she had worked as a solicitor she had practised in this area, and she retained her interests. With our colleague Harry Glasbeek she wrote *Cases and Materials on Australian Industrial Law*, which was published in 1972, and which is used today in many law schools.

Elizabeth devised and established the course in Legal Aid. It was first offered in 1972, as part of the new programme of optional subjects, and is firmly established as a valuable aspect of our curriculum. She fostered the establishment of other courses in the law and social justice—law and social welfare areas, and was the convenor and the first Chairman of the Faculty's Law and Social Sciences Interest Group.

But this account of her important role in the teaching of law at Monash has leapt ahead of the account of her major work on Aborigines. Elizabeth completed her thesis in the latter part of 1970, and was awarded the degree at the end of the year. It was about this time that Colin Tatz was appointed to the Chair of Politics in the University of New England. Elizabeth was appointed to succeed him as Director of the Centre for Research into Aboriginal Affairs. It was an appointment universally welcomed; she was the obvious successor. In the five years she held that position she consolidated, expanded and deepened her own research into many parts of her

chosen subject. In the Centre, Elizabeth developed its residential seminar programme and instituted a Black Studies programme which she hoped would become a course for credit in one or more faculties. In 1972-73, she spent what was her only period of study leave in Canada and the United States, where her interest in Aborigines had first been kindled. She forged firm links in both countries with workers and scholars in the field of Indian affairs. The Centre's 1974 Seminar on Aborigines and the Law was graced by visitors from North America who came at Elizabeth's invitation to pass on their insights and experiences from the Indian and Inuit communities, and to learn of ours in the Aborigine communities.

Elizabeth made the Centre a place which was not confined only to traditional teaching and research. She moved to make it a pool of material and human resources for the Aborigine community and for the white community. She was the chief resource. When a comprehensive view of her work is finally drawn, it may be that it will be Elizabeth's work with people —with Aborigine students in the University, with many Aborigine organisations, with officers in Government, with teachers in schools, with concerned men and women from all parts of Victoria and beyond—which will be seen as her most important achievement. Quiet but determined, sensitive but firm, unobtrusive but deeply committed to what she saw as attainable goals, she listened, talked, gave advice, made suggestions, assembled and inspired others. Elizabeth was a leading figure, for instance, in the establishment in 1972 of the Victorian Aboriginal Legal Service. She *worked* for what she constantly underscored throughout her writing: the removal of those burdens and barriers which clothe Aborigines with a lesser status than other, larger groups in Australian society. As she wrote in the last sentence of her book:

> Only when the social and economic status of Aborigines has been raised to a level comparable with that of the majority of the community will it be possible to abolish all preferential legislation conferring on them a special legal status. Only then it will be possible to say that those who presently suffer inequality have achieved justice.

Elizabeth was much loved and highly respected by her colleagues. It was in the last weeks of her life, however, that we saw the qualities of her mind and her heart most clearly. Early in January she knew that she had a fatal illness. For the next six weeks she calmly and carefully arranged, as far as she could, for the completion, or the competent continuation, of many of her projects. She was deeply concerned about the people whose work she was supervising, about her teaching, about an unpublished article, about several Aborigine law students to whom she had generously given help and counsel, about the Law School, and especially about the Centre. Many people came to visit her in those weeks, at home, then in hospital, and again at home. As one of those visitors I shared with them all a feeling of serenity, not of despair. Elizabeth conveyed a confidence that her work

had been fruitful, and her many friendships had been valuable and happy relationships.

After her death a Memorial Service was held in the University's Religious Centre, which was attended by her friends from the University, the legal profession, and the Aborigine communities. The sounds of the didgeridoo, played by an elder of the Yirrkala Tribe ended it. It was a fitting and unique tribute to a woman who had become a great and respected scholar in what is now seen as a vital area of Australian life and law, but more than that it was for one the Aborigines of Australia knew was *malpa*, their 'soul friend'.

Her memorial is the work she did and the friends in whose minds she remains. It will not perish.

LOUIS WALLER*

I first met Elizabeth Eggleston, I think, in 1964 at the Monash Centre for Research into Aboriginal Affairs. This had just been established (rather shakily, it seemed then). I had recently been appointed by the Social Science Research Council to manage its project on *Aborigines in Australian Society*. Colin Tatz, the first Director of the Centre, had arranged that we meet. I think Elizabeth Eggleston's interest in Aboriginal affairs had begun in discussion with Professor Tatz, but I am not sure of this. The reason for our meeting was that she was about to begin a survey of the impact of British law upon Aborigines, with a Ph.D. in view. I had been making some arrangements, I think with Professor Tatz's help, with the Police Department in Victoria to get statistics of Aboriginal arrests, charges, convictions, etc. along with comparable figures for whites. I had begun to negotiate with Police Departments in other States, so that I was able to assist her with some introductions. I think that this small saving of her time was the main help she received from us.

When I met her she was about to begin a decade of deepening commitment and widening research interest which led, finally, to the publication of *Fear, Favour or Affection* (based on her thesis) and which ended tragically with her death. This book came out as the final volume of the Academy of the Social Sciences' series on *Aborigines in Australian Society*. There was, I think, no formal agreement until we had read her thesis. In the years which passed between the Ph.D. and the completed book she continued her research.

In the meantime the first real hint I had of her real potential came from quite a youthful letter which she wrote to me from Woomera in August, 1966. She had just read a book I had written about New Guinea villagers.

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"I am sure" she wrote "that there must be many parallels in the way Aborigines think about life. I am more and more aware of my lack of understanding of the Aboriginal viewpoint. It is not simply that they reject one or two values of our 'way of life' . . . it seems rather that they look at the world from a totally different standpoint. I suppose this is not surprising but it requires a great effort of imagination, plus I should imagine, years of meeting Aboriginal people, before I could begin to feel that I was seeing things from their angle. I find it very depressing that I've met so few people who are even beginning to attempt this, much less people who've achieved real understanding. Luckily there are a few."

This is the only letter I could find on the file indicating her difficulties, as she was not given, as some others were, to writing about them. It seems to me now to have been a significant indication of a blend of humility and competence which was probably just what the task she had set herself required. It is also indicative of another problem of the time—the then widespread indifference among social scientists to the situation of Aborigines. The note concludes with comments on the difficulty of getting statistics. She had some figures I wanted but, characteristically, she would not let me have them until she had time to check them thoroughly.

I think she must have decided, eventually, that in cross-cultural studies one gets further by looking mainly to the things which all men have in common, rather than to the differences between them. The value judgement on which the work rests and which it emphasises is that all men need justice. The extent to which justice for Aborigines can be promoted by removing legal obstacles and by adapting the law to their special circumstances can then be handled as a series of practical problems. These proved, I think, so numerous and complicated that she decided, properly, to limit her thesis and later the book to those which arise from the present state of the criminal law, from its management and application, from the personnel of its courts, and from its ancilliary officials.

Some time after I read her thesis I had a letter from her from the United States, where she was working on the same problems of inter-ethnic justice in a different context. This period of comparative study of how the British law was being applied to American minorities helps to explain the breadth of view and the mature balance which is so surprising in a first book and at her age. But experience does not account for this combination of radical thinking with the restraint of the trained lawyer, of a wisdom in human affairs with practical commonsense. For instance: "Governments and administrators have accepted the ideal of consultation with Aborigines and it has become a fashionable catch-cry in Aboriginal affairs. But to make it meaningful attention to detailed structures and procedures is necessary. Participation by Aborigines in decision-making is even more important than consultation by whites with Aborigines." One could read this as a direct comment on the current situation of the National Aboriginal

Consultative Committee, still lacking its special standing orders, having no executive staff, and limited to an advisory function.

Her scholarship is well exemplified in the chapter on "Justice and the Role of Law", ranging from Thucydides and Aristotle to Marx and the United States Supreme Court. With Thucydides' dictum in mind ("In this world justice only comes into question between equals . . . the strong do what they can and the weak accept what they must"), she argues the case for a special preference for Aborigines in government services, quoting the relevant United States Supreme Court case—"In my view the ideal society is one in which everyone is regarded as of equal worth despite differences of temperament and talent. Only when the social and economic status of Aborigines has been raised to a level comparable to that of the majority . . . will it be possible to abolish all preferential legislation conferring on them a special status. Only then will it be possible to say that those who presently suffer inequality have achieved justice."

Quietly determined, she supported in practical affairs her argument for preference as a means to equality. Thus she argued to the full meeting of the Australian Institute for Aboriginal Affairs that Aborigines should be represented on its governing body. Towards the end of her life she was the part-time Director of the Monash Centre for Research into Aboriginal Affairs. I was impressed by the meticulous care with which she regarded and respected opinions of young Aborigines likely to be as extreme as those of any minority with a similar history. Her respect for persons less experienced and competent than herself would have made her the ideal choice for the full-time Directorship. I suspect that this quality, combined with competence and determination, constituted one of the main resources of the Centre. Her efforts there illustrated belief in the need to establish new institutions to promote a just balance between Aborigines and whites. As for the long-standing institutions, what more devastating comment on the court systems of three States could there be than the tables published as appendices to her book? The criticism was not an attack on the law itself, which she, obviously, saw as potentially the instrument of creative and humane social change.

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