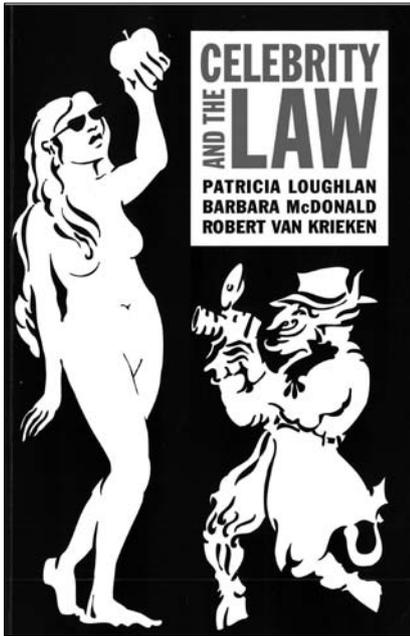


Celebrity and the Law

By Patricia Loughlan, Barbara McDonald and Robert van Krieken | The Federation Press | 2010



What is the difference between fame and celebrity? Fame, its etymology tells us, is being spoken about. Celebrity is this and something more; as the authors say in this excellent overview, celebrity has a degree of *currency* and *activity*.

For those needing a moral compass, observe Matthew Arnold's 'They [Spinoza's successors] had celebrity, Spinoza has fame.'¹ Observe particularly the inverted tense. And for those seeing a distinction without a difference, take comfort in Byron: 'Fame is the thirst of youth'.² (Young Byron would have known that 'fame' is also an obsolete word for hunger, a kind of singular famine, from the Latin *fames*.)

What does the law say? Neither state nor federal interpretation legislation assists. However, statutory criteria for admission to this profession include 'good fame

and character'³; celebrity is not (yet) a prerequisite.

The Tasmanian legislature has prescribed celebrity. For one of the purposes referred to in the *Gaming Control Regulations 2004*, a 'celebrity announcement' is deemed a sporting event.⁴ Semble, this includes an announcement of marriage.

Only Queensland meets the question head on. Section [sic] 2 of the *Instant Casket (TV Scratch-Its Bonus Game) Rule 1992* marks a celebrity as 'a person nominated under section 9(3)...' Section 9(3) provides:

If—

- (a) the Office is unable to contact a contestant; or
- (b) a contestant fails to nominate an eligible proxy; or
- (c) a contestant, or the proxy of a contestant, fails to appear in a game; the Office, or its nominee, is to appoint a celebrity as the proxy of the contestant for the game.

If one sets off the circularity of the definition with the impermanence in the rule's title, the Queensland sublegislature comes closer than the rest of us to the real nature of celebrity; it is a state of default reality. Not for nothing do the authors record the identification by one academic of a 'feedback loop': what consumers view as the norm becomes the norm.

Philosophers and lawyers love to bisect. Descartes' great dichotomy was lapped up by lawyers to become the *mens* and the *actus*.

A fashionable bifurcation of late

Western morality is the purported division between property and rights. Property, it is said, was protected when it needed protecting, and now that we have matured, it is proper to turn our attention to rights.⁵

Leaving aside the possibility that neither is more than a privilege we have eked out from that most fragile of environments, civilisation, there is the question of whether they are separable at all: may they not be merely different ways that different people identify value?

This book records the assertion by Dr Martin Luther King's family that it is entitled to something from the merchandise depicting President Obama with the great man. King's nephew is quoted by the authors as saying 'We're not trying to stop anyone from legitimately supporting themselves but we cannot allow our brand to be abused'. (It has been reported⁶ that Farris also said 'If you make a dollar, we should make a dime', which may show a family predisposition to oratory.)

Rights have had few articulators like King. How odd, then, that the very premise of a right – its (paradoxically personal) universality – should be capable of (an impersonal) alienation.

And if it can be alienated, it can be assigned. Will the Klu-Klux-Klan bring a bold bid to black out bliss in favour of bigotry? And, as the Honourable Murray Gleeson says in a foreword, 'If the Australian law were to recognise such a right of

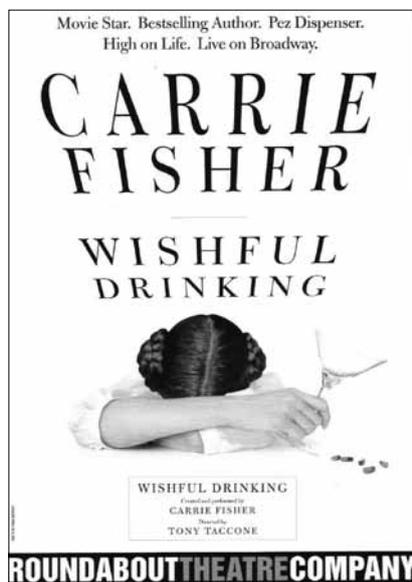
publicity, it would need to address the issue of potential inheritance of the right'. My rights = my property = others' rights to property.

And so the flipside to celebrity. Last night I saw Carrie Fisher give her monologue 'Wishful Drinking'. With approximately half the bar behind my dozen years' admission and with a median age put at 33 to 34 years, I guess about half my readers were merely concepts when Carrie said 'Help me Obi-Wan Kenobe', so eclipsing her parents' combined celebrity.

Fisher deals with manic depression, gay iconicity and celebrity, defining the last as obscurity waiting in the wings. There is a trade-off to keep it at bay: 'George Lucas owns my image; every time I look in the mirror, I owe him money.'

The *Sydney Morning Herald* recently described Gleeson as 'famously taciturn'⁷; least of all for this is he the authors' apt choice to pen the foreword.

Moreover, as an appellate and constitutional judge for over two decades in a common law



country, he is well-suited to assess the worth of a book whose minor premise is the minor premise of any effective commentary on the law, a questioning of the proposition that old law must adapt to new circumstances.

In particular, the authors' deft traverse asks the question that ineffective commentators avoid: are the circumstances we are dealing with forensically 'new' at all, or has the law touched on the problem before?

long gone when barristers were household names – all the frisson went when they reduced the penalty for capital murder to 15 on top with a nine year non-parole period. I expect I could get you off on a bond as long as it only your wife you kill'.

Each of the authors' and Gleeson's comments on *Dow Jones & Co Inc v Gutnick* seem to me to validate the proposition that orthodoxy is not exactly the worst starting place to assess novelty.

In the future, the past may only have been famous for fifteen minutes. If some of those fifteen minutes could have been spent picking through this readable summary, seize the day. As Carrie Fisher has found, it won't be here tomorrow.

Review by David Ash

Endnotes

1. OED online ('celebrity') [accessed 20/10/2010]. See also Stefan Collini, *Absent minds: intellectuals in Britain*, 2006, OUP, page 478.
2. 'Childe Harold's pilgrimage', Canto III verse 112.
3. *Legal Profession Act 2004*, section 9(1)(a).
4. Clause 6(2)(k).
5. Compare Collini: 'my starting-point is that we need to get away from such implicitly binary classifications ('British'/'normal')', page 5.
6. www.foxnews.com/story/0,2933,451804,00.html [accessed 20/10/2010].
7. Gibson, Snow and Sexton, 'Jogging and yoga help curb anxiety', *SMH*, 18 October 2010, page 7.

Bullfry (continued)

settled at all costs!

'Your cynicism is becoming very unattractive – I thought it was the highest calling to compose other mens' quarrels, and to counsel them in time of stress.'

'Well, it still is. But the days have

'So I shouldn't be going to this drinks thing then?'

'Of course, you can go – but only if you promise to get me an invitation too'.