INTRODUCTION: PUTTING THE 'BLACK' IN BLACK LETTER LAW SUBJECTS

Teaching and learning in law faculties is shaped by the mainstream values of Anglo-Australia. The normalisation of these values excludes alternative ways of knowing, doing and being. To think about decolonising the law curricula is to think about collapsing its conceptual categories. Merely adorning legal doctrines with a few cultural trimmings not only maintains the status quo, it reinforces it with morality and social justice. Students need to be taught that there are alternate values and interpretations that pre-exist and prevail among Australia's Indigenous peoples. Common law doctrines, legislation and regulations exist alongside Indigenous legal systems. Indigenous world views set in sharp relief the contingent nature of the Anglo-Australian legal system that is often taken for granted by teachers and students alike. It also calls into question the validity of the dominant legal system that exists on a false premise of Indigenous lawlessness.

The articles in this special edition on Indigenous law curricula draw on the authors' teaching experiences and critical research to explore the ways in which Indigenous perspectives and postcolonial approaches can be developed in the core and elective law curricula. They emphasise that teaching Indigenous issues can expose the colonising role of the Anglo-Australia legal system and its laws, both historically and currently. However, they also endeavour to show how various aspects of the law — including Equity, Tort law, International law, Corporations law and Intellectual Property law — may provide remedies for Indigenous people who have been wronged. But the subtext to all these articles is that the law should, and must, go much further in redressing these wrongs. Indeed, a wholly transformative approach may be required for wrongs to be redressed, involving not only the accommodation of Indigenous worldviews and systems of law but incorporation in a framework of legal plurality. Teaching Indigenous issues through this lens helps students realise, as Lee Ann Bell writes, 'that the society in which they live is not set in stone but rather shaped by the policies and people in it and that they have the power to effect change'.[1]

In order for students to comprehend Indigenous laws as a part of alternative legal systems, it is necessary in a foundations subject and then throughout a law degree to unpack the notion that the Anglo-Australian world view is exclusive. Although students need to be cautioned against a simplistic view of Indigenous laws, given the hundreds of manifestations across Australia, it is important to provide

[1] Lee Anne Bell, *Storytelling for Social Justice: Connecting Narrative and the Arts in Antiracist Teaching* (Routledge, 2010) 87.

examples of Indigenous world views to debase Western legal assumptions. By locating the law within alternative paradigms, our teaching displaces the morals and ethics that are embedded in our law — especially in relation to the protection of private property. Exposing students to an Indigenous ontology destabilises commonsense understandings of legal institutions and doctrines as the only basis of authority. The articles in this edition highlight that Anglo-Australian laws are only part of legal storytelling. Furthermore, their remedies and recognition of Indigenous issues are limited because they retain the structure of the dominant legal system.

Teaching Indigenous issues in law is constrained by the Priestley 11 — the core subjects that are required Legal Profession Admission Rules across Australia.[2] However, there are also openings in the contemporary political climate to increase Indigenous content in the curricula. Law faculties are moving towards graduate attributes that include 'cultural awareness' and the Federal government has adopted an educational policy of 'social inclusion'. At their best, these steps provide opportunities to increase Indigenous content in our teaching, which can also be a means of engaging Indigenous law students. Teachers, however, must resist temptation to teach the odd case involving Indigenous people in order to tick the cultural diversity box. It is essential for Indigenous content to be taught critically or run the risk of representing the Anglo-Australian system as the exclusive repository of justice. Articles in this edition show how teaching the Anglo-Australian law's recognition of Indigenous issues must be matched with showing its capacity for misrecognition and non-recognition. For example, native title, compensation for the Stolen Generations or accommodating Indigenous circumstances in sentencing are not panaceas for Indigenous land rights, reparations or overrepresentation in the criminal justice system.

The special edition on Indigenous legal education begins with articles about specific units of study. Stephen Gray's article considers approaches to incorporating Indigenous legal issues in the teaching of Intellectual Property Law. Gray includes fascinating case studies regarding copyright law which could be used as examples in introducing this information in a classroom context.

Bede Harris addresses the challenges involved in the embedding of Indigenous perspectives in the teaching of Corporations Law. As the author states, 'corporations law is not usually thought of as a setting in which Indigenous issues can be ventilated'. Yet Harris' article includes innovative pedagogical tools for

[2] To be eligible for legal practice, students have to have completed 11 subjects: Criminal Law and Procedure, Torts, Contracts, Property, Equity, Company Law, Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence and Professional Conduct. Each subject area stipulates sub-topics.

incorporating Indigenous legal issues, for example by using the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) as a vehicle for teaching Indigenous governance mechanisms as well as structuring assessment to critically assess the social context in which Indigenous corporations operate.

I look at how Stolen Generations cases can be taught to illustrate the requirements of negligence, calculation of damages, false imprisonment and other intentional torts. The article on Tort Law emphasises that teaching Stolen Generations cases requires the teaching of the Aboriginal Protection Acts and an understanding of their assimilation objectives. I finally address how Stolen Generations compensation schemes can be taught in classes on alternatives to tort litigation.

Prue Vines outlines a range of areas of Equity in which Indigenous issues can be taught, including in relation to fiduciary duties as they are owed to the Stolen Generations and in relation to cultural knowledge; breach of confidence; trusts and whether customary law knowledge is sufficient to be the subject of a trust, and the construction of wills. Finally, Vines discusses how Indigenous death and the body can relate to teaching succession law.

Although not a Priestley 11 subject, International Law is compulsory at a number of universities and Ben Saul provides good reasons as to why it should be, including how it can demonstrate important Indigenous issues of self-determination and territorial sovereignty. Saul first considers teaching Indigenous issues in private international law and how the recognition of Indigenous customary law can be characterised as a classic conflict of laws issue concerning the choice of substantive law applicable to a particular dispute. Saul then turns to public international law where he suggests that Indigenous peoples are central to the historical development of foundational concepts such as acquisition of title to territory, sovereignty, Statehood, legal personality, and treaty-making.

If we are to make a case for teaching Indigenous issues within the contemporary skill-based approach in law faculties, there a multitude of skills that are fostered ranging from critical thinking and historical perspective to engaging with clients from a range of backgrounds and cross-cultural empathy. An exciting approach on how all these skills can be developed comes alive in Julie Cassidy's article on her outreach subject that involves going 'on country' and learning about native title and other subject areas from Indigenous perspectives. It reveals the significance of place and community in understanding Indigenous laws.

The capstone article in this edition by William Fogarty and Robert Schwab reflects on differences in Indigenous worldviews to the extent that it shapes Indigenous students' educational experiences. The authors query some current policy approaches to these issues and seek to provide a practical perspective on education

programs operating in the 'bush', and 'question the weight current policy agendas are ascribing to literacy and numeracy attainment through direct and classroom based instruction'.

Teaching Indigenous legal issues serves the ends of social justice and is vital for Indigenous rights and reconciliation. This was recognised by the 1991 Report of the Royal Commission into Aboriginal Deaths in Custody.[3] Its Recommendation 295 stated that students should be taught 'to understand that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters' should be included in curricula. But to do justice requires deconstructing injustice, which involves analysing the impact of colonisation and discrimination in post-colonial societies.

Teaching about Indigenous legal issues in critical contexts is not simply teaching social justice but it is the doing of justice. Essential to this process must be recruiting Indigenous teachers and appointing Indigenous people to associate dean of teaching positions, as well as recruiting and retaining Indigenous students. However, all teachers need to grapple with how Indigenous issues may be incorporated into their subjects if we are to overcome the 'national disgrace'[4] of teaching law as though Indigenous people and Indigenous laws never existed.

While the papers in this edition are cutting edge, they offer practical ways of introducing Indigenous issues into key areas of a Law degree. They reveal possibilities for exploring Indigenous issues which do not compromise teaching core Law requirements, but in fact enhance the understanding of how legal rules and institutions operate. Teaching Indigenous issues also improves students' understanding of social justice issues broadly. However, the unique quality of teaching Indigenous issues in Law is that it provides a context for understanding Australia's legal system and provokes an enquiry into future remedies and justice. This special edition is part of that enquiry. We hope you enjoy this special edition of *Ngiya*.

Thalia Anthony.[5]

---

[3] Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991).
[4] Rhonda Craven, 1997, 'Teaching the Teachers Indigenous Australian Studies: A National Priority', in *Australian Association for Research in Education: Papers 1997.*
[5] Dr Thalia Anthony is a Senior Lecturer, Faculty of Law, University of Technology, Sydney.