THINKING "CULTURE" IN LEGAL EDUCATION

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INTRODUCTION

Australia is a polyethnic society formed by the processes of colonisation and imrnigration.[1] It has become a commonplace to say that we live in a "multicultural society", yet contemporary Australia could more properly be characterised as "a society with a multicultural population, regulated and governed by a monocultural power structure".[2]

One aspect of that power structure is the legal system, and the gap between a monocultural legal system and a diverse population has been the subject of commentary for over thirty years.[3] This commentary has highlighted issues of access and equity, especially the linguistic barriers to access and general issues of cross cultural communication, with some regard to those areas where the cultural underpinnings of law acquire most saliency: family law, criminal law and, to a lesser extent, contract law.[4] It has been recognised that law schools and the traditional law curriculum must bear part of the blame for the ongoing failure of the legal system to respond to issues of cultural diversity.[5] One response has been to advocate cross cultural awareness education which focusses on intercultural communicative competence, ethnographic thumbnail sketches or "case studies" of migrant "communities", and an examination of the law's tolerance of diversity through, say, formal anti-discrimination or equality provisions.[6]

Useful and necessary as these approaches are, I want to suggest in this article ways to move beyond them. That is, the full value of cross cultural perspectives on the law may be realised when they contribute to a broader pedagogy "in which relations of power and racial identity become paramount as part of a language of critique and possibility".[7]

Let me suggest a few of the propositions that I feel should inform such a project. First, it is necessary to approach the academic study of law as a serious endeavour in itself, rather than seeing it merely a training ground for future lawyers. Such an approach is supported by the Pearce report on Australian law schools, where it was observed that:

> a good undergraduate law course should provide an intellectual base for life-long critical reflectiveness about legal institutions, the profession and one's own work, in the actual and changing conditions of social life and legal practice … [L]aw courses should expose students to an understanding of the processes and functions in society of law and legal institutions, to the variety of the modes of social control, to the moral and political outlooks embedded in law and conceptions of professional roles, to questions of justice, to the relevance of social, political and moral theories and forces to law, legal institutions and their change and development, and to the information and understanding to be drawn from the social sciences and social science research for the purpose of evaluating law.[8]

The inadequacy of the professional training model of legal education becomes more marked as fewer graduates are actually employed in private practice or government lawyering.[9] The trend for law students to enrol in joint-degree programs, it has been suggested, springs from both a reappraisal of employment prospects and the distinct lack of intellectual appeal of professionally-based law curricula.[10]

Despite this renewed attention to the law school curriculum, I cannot help noticing that the field of legal scholarship remains relatively impervious to trends elsewhere in the academy. A United States commentator has observed that "law schools are behind the times in confronting the issues posed by the debate over the canon. Our basic core curriculum stands astonishingly unchanged and unexamined compared to that of the rest of the academy".[11] An Australian academic has echoed these concerns in the local context: "[I]t seems clear that law as an area of study has not kept pace with the innovation and

theoretical heterogeneity witnessed of late within the humanities. Scholars in law have remained disturbingly content with regimes of truth, designed within agencies of the state, which often naturalise or elide questions of oppression and inequality".[12]

Second, I suggest that cross cultural perspectives must be integrated throughout the curriculum to avoid a perceived marginalisation of cross cultural issues as disassociated from the remainder of students' studies. Again, segregated courses can result in cross cultural issues being perceived as an area of specialisation, implying that the content of cross cultural practice is for experts and best left to them, rather than cultural diversity being one dimension of social reality that cuts across all fields of practice.[13]

In particular, the challenge is to examine precisely those most "opaque" areas of the curriculum, where we confront the accumulated, taken-for-granted and common sense assumptions the law uses to understand the complex social world.[14] As Paul Rabinow has observed:

> We do not need … a new epistemology of the other.… We need to anthropologize the West: show how exotic its constitution of reality has been; emphasize those domains most taken for granted as universal … make them seem as historically peculiar as possible; show how their claims to truth are linked to social practices and have hence become effective forces in the social world.[15]

Finally, approaches to cross cultural issues must be interdisciplinary. That is, the knowledge and data that can inform cross cultural perspectives will come from the social sciences, historical studies, the narratives and resources of community activism. Also, the questions that will continually surface in teaching materials that take cross cultural issues seriously are being discussed and theorised outside law in the disciplines of sociology, history, feminist studies, political science, cultural studies, anthropology and literary studies. What is culture? How is difference constituted? How can we represent it? How does a "multicultural" Australia deal with difference? What counts as justice in a culturally diverse society?

TOWARDS A CRITICAL MULTICULTURALISM

Because "multiculturalism" provides the inescapable context for much public discussion of cross cultural training and law, it is necessary to critically examine the concept for the pitfalls and dangers, as well as for the guidance and direction, it may provide to teachers wishing to develop cross cultural teaching materials.

At the outset it is worth noting that the "multicultural" model of diversity tends to emphasise the diversity of migrant collectivities in Australia, rather than the confrontation of indigenous people with invaders and settlers which is emphasised by a "colonisation" model.[16] Partly this is the result of a clear administrative division between "Aboriginal Affairs" and "Multicultural Affairs", and of a scholarly division between "race relations" and "ethnic studies". Partly it is also respectful of the wishes of Aborigines themselves not to be seen as "another ethnic minority" but as the original inhabitants of the land which provides the territory of the Australian nation-state.[17] Yet it also represents a problem inherent in official ideologies of multiculturalism itself: "it is impossible to include Aborigines in the image of a consensual unity-in-diversity without erasing the memory of colonial dispossession, genocide and cultural loss and its continued impact on Aboriginal life".[18] Nevertheless, adopted as official state policy, multiculturalism now provides the "narrative space" for explorations of difference in Australia.[19] That is, Australia has always been a polyethnic nation, but for the last twenty years multiculturalism has offered a particular, legitimate account of this experience.[20]

Both the history of migration to Australia and of government policy responses to it have been well-documented.[21] Observes Jackson, "As a policy, multiculturalism enjoys the distinction of being vilified by both the left and the right.[22] The policy of multiculturalism arose in response to what were seen as the problems and failures of assimilation. Assimilation was a policy of benign indifference, of "doing as little as possible in the hope that immigrants would eventually become 'Australian'".[23] The category "Australian" was defined with reference to various national myths and stereotypes that themselves glossed over class and gender cleavages amongst Anglo-Australians. Various moral or rights-based critiques of assimilation arose on the grounds that the policy required non-Anglo Australians to deny their cultural heritage. More alarming for policymakers was the increasing realisation of structures of disadvantage resulting from government indifference to the specific welfare needs of migrants. Studies such as the Henderson inquiry

into Australians in poverty[24] showed that immigrants suffered socio-economic disadvantage, exacerbated by cultural, linguistic and geographic barriers to participation, and that such disadvantage was reproduced through generations. Such a result was not surprising, given that "assimilation implied non-Anglo Australians had to compete for social goods on the terms of the existing political and economic structures which clearly favoured the Anglo-Australians".[25] same time, spokespeople from ethnic communities themselves challenged assimilationist policies. The supersession of assimilation by "multiculturalism" can be seen then as an outcome of a policy bargaining process whereby political parties used the new policy rhetoric as a way of gaining the ethnic vote, while in turn benefits flowed to a new "ethnic petty bourgeoisie".[26]

By the time the Fraser government institutionalised multiculturalism with the Galbally Report in 1978,[27] ethnic disadvantage was being explained largely in terms of language problems and notions of cultural difference *cum* cultural deficit.[28]

This leads to essentially conservative understandings of ethnicity whereby both culture and ethnicity are perceived as static. Yet the social sciences have had little success in developing an uncontentious definition of ethnicity.[29] Rather, "social categories such as race, ethnicity and culture depend for their significance in each society in their relation to prevailing structures of incorporation, and … alignment of groups in society".[30] Thus "ethnicity" as a concept is relational and ethnic designations and their meanings will vary between different societies and historically within a given society.[31] For example, in the United States prior to the Civil War, Southern Europeans, Jews and Irish were classed as "non-white" in the hierarchy of races.[32] The instability of ethnic categories is particularly marked in migration contexts where ethnic traditions come into contact with other traditions in settler societies, or, in the case of Australia, where there are high rates of intermarriage amongst second generation migrants. To argue for the socially constructed nature of difference is not, however, to dissolve the reality of difference or of the oppressions of difference. What is argued, however, is that instead of being preoccupied with static "ethnic traditions" we should be attuned to changing significations of ethnicity and race within the political and historical reality of Australia, and our concern should be as much with cultural location as cultural background; that is, the relationship between dominant and minority cultures, recognising that the dominant culture has the greatest power to ascribe value, determine the allocation of resources and control decision-making.[33]

A view of culture and ethnicity that sees them as static and unchanging will also tend to attribute a homogeneity to cultures that obscures important differences of class and gender within recognised "ethnic communities", or commonalities of interest across communities:

> While the Greek-Australian shop-owner, for example, may have some cultural characteristics in common with other Greek-Australian workers, the differences between them, in respect of economic relations, are also extremely important. Similarly, the differences between Turkish-Australian males and Turkish-Australian females may be more significant than their similarities. Also, it is possible that the similarities between Greek-Australian women and Chinese- Australian women may be more important in particular contexts than the differences that are attributable to their ethnicity. Thus, the emphasis on cultural differences may obscure the facts of commonality across ethnic divisions.[34]

In a further critique of many mainstream intercultural training programs Michael Morrissey asks quite bluntly: "Who defines what 'culture' is? Who defines what is the content of a particular culture? Whose prerogative is it to distinguish between behaviour which emanates from a person's 'culture' and that which is a response to a specifically Australian situation?"[35] Rattansi has pinpointed the challenge for educators:

> [T]he focus on ethnicity as part of the discourse of cultural pluralism and diversity pays scant attention to the highly complex, contextually variable and economically and politically influenced drawing and redrawing of boundaries that takes place in encounters within the minority communities and in relation to white groups…This implies, in turn, that the foundations of the whole project of teaching about "other cultures" need to be rethought. The shape and character of ethnic cultural formations is too complex to be reduced to formulas around festivals, religions, world-views and lifestyles. These fail to grapple with the shifting and kaleidoscopic nature of ethnic differentiations and identities and their relation to internal divisions of class and gender.[36]

A pessimistic reading of multiculturalism, then, will see it as a strategy of containment. I return to my opening observation, that Australia remains a "multicultural" nation governed by a monocultural power structure, here reiterated by Stratton and Ang with an eye to how that power structure uses multiculturalism to maintain itself:

> It is not coincidental that "Anglo-Celtic" Australians are not viewed as an ethnic community, while the government and senior echelons of the public service are still made up of a predominance of people, mostly male, from this dominant demographic group.… In short, official multiculturalism suppresses the continued hegemony of Anglo-Celtic Australian culture by making it invisible.[37]

Ghassan Hage goes further, observing that:

> [I]n the Anglo-Celtic version of it, while multiculturalism requires a number of cultures, Anglo-Celtic culture is not merely one among those cultures, it is precisely the culture which provides the collection with this "peaceful coexistence". That is, multiculturalism as a phenomenon is one of many cultures, but the essence of the whole phenomenon, the spirit that moves it and gives coherence, is primarily Anglo-Celtic. There is a common and widespread belief that left to themselves "ethnic" cultures cannot possibly co-exist. It is only the Anglo-Celtic effort to inject "peaceful co-existence" into them which allows them to do so.[38]

Ien Ang has alerted us to a similar danger in simplistic ideologies of tolerance, whereby "the dominant majority is structurally placed in a position of power inasmuch as it is granted the active power to tolerate".[39] The temptation is to use multiculturalism to celebrate the law's ability — or potential ability given a few well-judged reforms — to ensure that Australia is a tolerant, egalitarian place to live, rather than allowing the reality of diversity to unsettle our ideas of legal regulation and to reveal hitherto unseen complexities.

MULTICULTURALISM AND THE LAW

I have already noted the enduring debate concerning ethnicity and the law.[40] Lois Foster and David Stockley[41] have itemised the principal themes of this debate:

- access to justice (including provision of legal aid and the availability of interpreters);
- anti-discrimination and human rights obligations;
- the education of ethnic communities regarding their rights under Australian law;
- legal pluralism in the field of family law and criminal law;
- insensitivity, prejudice and lack of awareness on the part of police, courts and the legal profession;
- the need for educating justice personnel in intercultural awareness.

In looking over this list, I sense a danger that the dominant tone of these approaches remains what the African American activist WEB DuBois labelled the "unasked question" that constitutes the barrier between dominant and minority experience: "How does it feel to be a problem?"[42] Much cross cultural material speaks of the need to "sensitise" service providers to the "special needs" of immigrants. Observes Jamrozik, "In such 'welfare' perspectives, immigrant communities came to be seen as 'disadvantaged' or as 'dependent' populations, similar to other 'dependent' populations, or 'problem' populations, such as the unemployed, pensioners or 'the poor"'.[43]

The challenge, argues Paul Gilroy, is how to represent a marginalised presence outside the alternating categories of "problem" and "victim".[44] The easy partitioning of non- English speaking background migrants and Aboriginal and Islander peoples into the "problem" category means the impact of cross cultural perspectives on our way of understanding the world can always be minimised. Foster and Stockley suggest that "the fact of the matter is that lawyers, for example, can conduct a successful business with little acknowledgement of the multicultural society so the inducement to change is not strong".[45]

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Calls for cross cultural education of professionals have been an enduring theme of official reports from the 1978 Review of Post Arrival Programs and Services for Migrants onwards.[46] Yet apart from specific recommendations concerning education in the use of interpreters or community languages, the actual content of "cultural awareness" education "is usually described only in the vaguest of terms".[47] The programs that have responded to this call are usually discrete, stand-alone training programs designed for specific target groups.[48] In the context of legal education, such training has been incorporated through practical training or through the introduction of discrete, optional, specialist courses to the undergraduate curriculum, such as "Aborigines and the Law" or "Law and Cultural Diversity". While all these are valuable and necessary initiatives, those seeking models for integrating cross cultural content into the core undergraduate curriculum have relatively few on which to draw.[50]

From the preceding discussion of multiculturalism, it should be clear that there is a link between our understanding of "multiculturalism" and the type of educational program we might develop. In particular, certain assumptions underpinning "mainstream" multiculturalism present particular hazards for cross cultural legal education:

- that ethnicity or culture is primarily a matter of "lifestyle";
- that culture is what other, non-Anglo-Saxon people have;
- that culture is static, homogenous, and hence can be "known".

Multiculturalism has predominantly been seen as a way of preserving forms of cultural identity, such as religion and language, food and folklore, clothing and dance. The preservation of such plural forms, however, takes place insulated from a public arena constituted by one set of political, legal and economic institutions. Mary Kalantzis, Bill Cope and Chris Hughes argue:[51]

> What is not cultural about the structures and norms of the law, the nature of citizenship and political participation, the nature of work and welfare? What is not cultural about the very division of the public domain and the private, the division of folk-culture as spare-time or entertainment activity from everyday life with its shared legal-political/economic arrangements? What is not cultural about the structures which facilitate upward, downward and lateral social mobility and the values of motivation to success or values which reject conventional success?

If we look to include "things that escape the tourist's eye for culture or the multiculturalist's eye for ethnicity"[52] we see the limited structural impact that multiculturalism has made. There remains in Australia "a single culture of everyday life", a form of advanced capitalism, in relation to which, "much of the diversity that there is, is relatively superficial and trivial".[53]

If we perceive culture as contained within the private sphere, we will tend to view culture conflict as conflict over difference in understandings. From this perspective, the problem becomes merely the "exotic" nature of other cultures, a problem that can presumably be resolved through education, exposure and celebration through "positive" images. However, "racism is not caused by 'difference' but by conflict over material and ideological resources. Racism is not prejudice, but rather it is a relationship of dominance and subordination: that is a relationship of power. Cultural awareness training, to the extent that it operates within a framework of totalised and antithetical cultural difference, is largely incapable of describing, let alone combating, such institutional racism".[54] A more fruitful approach, then, is to investigate how the dominant Australian socio-cultural and economic system impacts on the life chances, not the lifestyles,[55] of non-English speaking background, Aboriginal and Islander Australians.[56]

An approach which suggests we can "know" another person's culture by learning the "facts" about it can result in — often pejorative — stereotyping.[57] One form this can take, for example, is the "cultural defence". While not a recognised defence, it is a legal strategy to mitigate culpability for criminal behaviour on the grounds that a defendant, an immigrant, acted according to the dictates of his or her culture. Thus a non-Anglo man might seek to use the cultural defence to plea for leniency in the case of his violence toward a woman from the same culture. Alternatively, a non- Anglo woman might seek to admit cultural factors to explain her mental state when attempting a parent-child suicide.[58] 'In responding to the real fact of cultural diversity, legal regulation must negotiate the balance between resorting to generalizations and concretely addressing an individual's location in her community, her location in the diaspora and her history.[59] The conundrum is an acute one and should be situated in a tendency in the law to view culture as a deficit which must be compensated for: reformers confronted with the difference presented by a non-Anglo-Saxon culture demand a *lower* standard of care, a *lesser* degree of reasonableness, we talk about special *disadvantage*. Partly we are again confronting the problem of seeing Anglo-Saxon ethnicity as the invisible *norm* which need never be directly addressed.[60] Partly also the practices of the law construct the problematic in this way: the adversarial system is built around special pleading for our clients.

But we are also touching on the crucial issue of the representation of migrants, Aborigines and Islanders. The question is not merely one of "positive" versus "negative" images, but of asking about the social and political mechanisms that put such images into place, how the images get produced within available discourses, and what other images might be substitutable.[61] Complex, interesting answers to the question of how Australian law deals with difference will be found not necessarily in instances of outright exclusion and intolerance, but in intercultural encounters marked by "tolerance".[62] What happens when the law decides to recognise the "special disadvantage" of non-English speaking migrants? Or when it decides to

grant land rights to "traditional" Aboriginal owners? Or to recognise "loss of cultural fulfillment" as a head of damages? This type of inquiry will differ in many respects from that of the practising lawyer, but must be undertaken for there to be any influence on practice.[63]

SOME STRATEGIES FOR LEGAL EDUCATION

- Rethink the entire syllabus from a critical perspective. This is a necessary first step, as just looking for the "multicultural" issues in an established, doctrinal, positivist syllabus will probably yield precious little in the way of opportunities for the incorporation of new material. Having said that, I should acknowledge the size of this task. The process of rethinking a law subject is one that can take up to five or six years according to many Faculties' experience, and may depend upon a number of quite contingent processes: recruitment of new staff, a critical external evaluation, and so on. Yet such a rethinking can be ongoing, and is an essential foundation to the successful introduction of cross cultural issues into core subjects such as Equity, Torts, or Property. The rethinking can begin from something as simple as the technique of trying to explain yourself and your area of work to a layperson. It takes the form, for instance, of answering the question: what kind of situations are people in when lawyers characterise it as an "Equity" matter? It is only after a couple of years at law school that we start to think doctrinally or in the casebook categories of "tort" and "equity". Given that law teachers have spent at least that long at law school, they in particular need to rediscover the social dimensions of the doctrinal categories. Once subjects are rethought in such social terms, it becomes much easier to see the salience of cross cultural issues.[64]
- Draw case studies, examples, readings, analyses, problems and questions from a variety of social contexts.[65] These illustrations can not only reveal the disparate impact of much legal regulation, but will challenge students' tendency to generalise and prepare them for the possibility of practice in a diverse community. In discussing strategies to counter lesbian invisibility in law teaching, Cynthia Petersen has observed:[66]

  Due to the Heterosexual Presumption, most students assume (unconsciously) that the people involved in reported cases are heterosexual. When they encounter a lesbian in their readings, it is almost always in the context of a "rights" case. I try to disrupt this pattern … For example, in my Property Law course I have created lesbian characters in fact situations about bailments, easements, and adverse possession. I want my students to know that lesbians are not exclusively involved in antidiscrimination cases and equality rights litigation. Most of us lead ordinary and often mundane lives … We discover lost property in department stores. Our shoes are misplaced by the shoemaker to whom we entrusted their care. Our cars are vandalized in parking lots … I also believe, however, that it is equally important to reveal the specificity of our lives. Some of our legal difficulties do arise specifically because we are lesbian.
- Avoid tokenism. It is tempting to give visibility to forms of difference through a simplistic parade of different "voices": the migrant voice, the gay spokesperson, the disabled voice, the female perspective, the "poor" voice, and so on. This reinforces reified concepts of culture and recognises no diversity within communities. Instead, recognise that people can be both disabled and gay, migrant and female, or any combination of "categories". Again, avoid relying on students from minority or marginalised cultures to "testify" so as to provide the class with a minority perspective. As Kimberle Crenshaw has argued, this compartmentalises minority experience as peripheral, anomalous, and reinforces the minority view as one that is necessarily subjective, and biased while not calling into question the supposed objectivity of the dominant perspective.[67] It remains a privilege of being a member of a dominant culture that one is not asked to offer testimony on behalf of that culture.
- Organise guest speakers to enable students to meet with, be taught by, and share experiences with people and clients from a diversity of backgrounds.[68] Similarly, oral histories or autobiographies, political tracts and film and video productions all enable those voices normally excluded from the law classroom to be heard.[69] Such voices, says Bob Connell, are central to educational practice:

  > If you wish to teach about ethnicity and race relations, for instance, a more comprehensive and deeper understanding is possible if you construct your Curriculum from the point of view of the *subordinated* ethnic groups than if you work from the point of view of the dominant one. "Racism" is a qualitatively *better* organizing concept than "natural inferiority" — though each concept has its roots in a particular experience, and embodies a social interest. In general

> the position of those who carry the burdens of social inequality is a better starting point for understanding the totality of the social world than is the position of those who enjoy its advantages.
>
> …
>
> There have long been bodies of information about the family, women's employment, masculinity and femininity. They remained for decades a backwater in social sciences hegemonized by the interests of men. So far as such topics appeared in social theory at all, they did so via concepts like "sex role" and "modernization".
>
> The standpoint of the least advantaged in gender relations, now articulated in feminism, has transformed these fields. Modern feminism has produced a *qualitatively better* analysis of this large domain of social life.
>
> Partly this was done by bringing to the fore experiences that had been little discussed before — such as sex discrimination, sexual harassment, or the experience of mothering. Perhaps more importantly, it was also done by developing new concepts and a new kind of social theory — embodied in terms like "sexual politics", "patriarchy", "sexual division of labour" and "gender relations". These concepts allow a major reconfiguration of the existing domain of knowledge, as well as the addition of experiences not previously included.[70]

- Structure learning experiences to address cross cultural communication difficulties, eg the presence of interpreters in simulated clinical or advocacy settings.
- Organising clinical placement, if available, with cross cultural groups or agencies which expose students to experiential learning about intercultural issues.
- Teach openmindedness and tolerance for ambiguity. Professional training — and law training in particular — tends to undervalue the role of these attitudes, producing practitioners likely to be ethnocentric and intolerant of approaching or communicating with clients who are culturally different.[71] In the absence of teaching students a checklist of simplistic cultural stereotypes, we should aim to get them to point where they can with some confidence know what it is they don't know.[72]

The integration of cross cultural materials into the curriculum is not without problems which teachers will have to negotiate within the context of their own institutions. Few academics are operating in an ideal world where entire syllabuses can be rethought from the ground up. Instead, much of the work will be pragmatically oriented toward developing materials that can supplement existing syllabuses, within the constraints of meeting faculty deadlines, recognising a diversity of teaching styles, operating within a context of decreasing funding, and satisfying professional admission requirements,[73] while not adding impossibly large amounts of reading to the often already unwieldy materials confronted by teachers and students alike.

The impetus for attempts to integrate cross cultural perspectives into the law curriculum can come not only from the realisation that those students who go into legal practice will find themselves working with a diverse clientele, but also from the fact that teachers are encountering a much more diverse student body in their classrooms. Thinking of education as not just a product to be delivered or exported but as a social process — perhaps a way of thinking that is becoming increasingly harder to sustain in Australian universities currently — it is not possible to separate the question of the distribution of education from the question of content. If law schools set themselves the democratic task of increasing *access* to education, then they have to ask themselves *what kind of education* is being provided.[74] If access to education is increased for formerly excluded groups, actual retention rates of such groups will depend upon their relationship to the curriculum.[75] Of course, this relation between content and access will work both ways. Those teachers who have been educated in the monocultural tradition of Australian law schools and who have practised in monocultural settings will find it difficult to thoroughly and consistently integrate cross cultural perspectives into their daily teaching. The challenge presented by diverse, interdisciplinary, critical teaching materials is one antidote to this difficulty. But the proper integration of cross cultural perspectives will only proceed hand-in-hand with the collapse of the monocultural law school itself and the advent of a more diverse teaching faculty and a more diverse student body. This goes beyond the issue of curriculum considered here, but is vital to the wider success of the project.

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[10] A Ziegert, Social Structure, Educational Attainment and Admission to Law School (1992) 3 *Legal Educ Rev* 155, 203–204.

[11] F Ansley, Race and the Core Curriculum in Legal Education (1991) 79 *Cal L Rev*, 1511, 1514–15. For a survey of the issues at stake in the "debate over the canon", see the references at page 1512, n 3, of Ansley's article. In contrast to Australia, the term "multicu1turalism" is used in the United States for the purpose of this predominantly scholarly, campus- based debate: see, eg, D Goldberg ed, *Multiculturalism: A Critical Reader* (New York: Blackwell, 1994).

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[15] P Rabinow, Representations Are Social Facts: Modernity and Post- Modernity in Anthropology, in J Clifford, & G Marcus ed, *Writing Culture: The Poetics and Politics of Ethnography* (Berkeley: University of California Press, 1986) 234,241.

[16] J Pettman, Race, Ethnicity and Gender in Australia, in D Stasiulis, & N Yuval-Davis eds, *Unsettling Settler Societies: Articulations of Gender, Ethnicity and Class* (London: Sage, 1995) 65.

[17] J Stratton, & I Ang, Multicultural Imagined Communities: Cultural Difference and National Identity in Australia and the USA (1994) 8(2) *Continuum* 124, 154.

[18] *ld* at 155.

[19] *Id* at 152.

[20] *Id* at 151–52.

[21] F Rizvi, *Migration Ethnicity and Multiculturalism Volume C: Multiculturalism: Making Policy for a Polyethnic Society* (Geelong: Deakin University, 1989); Castles et al, *supra* note 1; Jamrozik et al, *supra* note 2.

[22] A Jackson, Ethnic Organisations: A Policy and Planning Perspective (1991) 12 *J Intercultural Stud* 39, *44.*

[23] Rizvi, *supra* note 21, at 7.

[24] Australian Government Commission of Inquiry into Poverty, *First Main Report* (Canberra: AGPS, 1975); Jakubowicz & Buckley, *supra* note 3.

[25] Rizvi, *supra* note 21, at 9.

[26] Jackson, *supra* note 22, at 45.

[27] Commonwealth of Australia. Review of Post-Arrival Programs and Services for Migrants, *Migrant Services and Programs* (Canberra: AGPS, 1978).

[28] Pettman, *supra* note 16, at 82.

[29] A Rattansi, Just Framing: Ethnicity and Racisms in a "Postmodern" Framework, in L Nicholson, & S Seidman eds, *Social Postmodernism* (Cambridge: Cambridge University Press, 1995) 250, 252.

[30] L Jayasuriya, Culture and Communication: Some Critical Reflections, in Hedrick & Holton eds, *supra* note 13, at 96, 104.

[31] M Omi, & H Winant, By the Rivers of Babylon: Race in the United States (1983) 71 *Socialist Rev* 31,47.

[32] *Id* at 51. M Omi, & H Winant, *Racial Formation in the United States: From the 1960s to the 1980s*, 2nd ed (New York: Routledge, 1994); I Haney- Lopez, *White* By *Law: The Legal Construction of Race* (New York: New York University Press, 1996); N Ignatiev, *How the Irish Became White* (New York: Routledge, 1995). Note Burton J's comments regarding the status of Aboriginal law in the colony of New South Wales in the case of *R v Murrell* (1836) Legge 2; such law, he said, was "consistent with a state of the greatest darkness and irrational superstition" and so deserved as little respect as the "Laws of the Wild Irish: H Reynolds, *Aboriginal Sovereignty: Reflections of Race, State and Nation* (St Leonards, NSW: Allen & Unwin, 1996).

[33] M Gonzalez, K Gilmore, & D Orlando, *Desperately Seeking Justice: A Resource and Training Manual on Violence Against Women in a Culturally Diverse Community* (Melbourne: CASA House, 1992) 74.

[34] Rizvi, *supra* note 21, at 24.

[35] M Morrissey, Some Considerations on Provision of Welfare Services to Migrants, in A Jamrozik ed, *Provision of Welfare Services to Immigrants: SWRC Reports and Proceedings No. 60* (Sydney: University of New South Wales, 1986).

[36] A Rattansi, Changing the Subject?: Racism, Culture and Education, in J Donald, & A Rattansi eds, *"Race", Culture and Difference* (London: Sage, 1992) 11,39.

[37] Stratton & Ang, *supra* note 17, at 153–54.

[38] G Hage, Republicanism, Multiculturalism, Zoology, in G Hage, & L Johnson eds, *Republicanism/Citizenship/Community* (Nepean: University of Western Sydney, 1993) 113,134.

[39] I Ang, The Curse of the Smile: Ambivalence and the "Asian" Woman in Australian Multiculturalism (1996) 52 *Feminist Rev* 36, 39–40.

[40] See references, *supra* note 3.

[41] L Foster & D Stockley, *Australian Multiculturalism: A Documentary History and Critique* (Clevedon: Multilingual Matters, 1988).

[42] P Gilroy, *There Ain't No Black in the Union Jack: The Cultural Politics of Race and Nation* (London: Hutchinson, 1987) 11.

[43] Jamrozik et al, *supra* note 2, at 219.

44 Gilroy, *supra* note 42, at 12.

[45] Foster & Stockley, *supra* note 41, at 139. *See* also D'Argaville, *supra* note 3, who reports solicitors' perception that for those practitioners who might find themselves in intercultural encounters, "on-the-job" experience is sufficient to develop the necessary cross cultural communication skills and no specific training was required in this area.

[46] *See* references at *supra* note 3.

[47] Cultural Diversity Training Program, Faculty of Education, University of Sydney, *supra* note 6, 61.

[48] See generally B Cope et al, *Local Diversity, Global Connections* (2 vols, Canberra: AGPS, 1994).

[49] A Lamb, The Role of the Lawyer in a Multicultural Society (1987) 5 *J Prof Legal Educ* 31.

[50] A notable exception was a first year subject developed at Monash University in the 1980s: see G Bird, *Re-Defining* a *Law Curriculum from a Multicultural Perspective: The Monash/Vlictorian Law Foundation Joint Project* (Clayton, Victoria: Centre for Migrant and Intercultural Studies, Monash University 1985); the course materials are available as a textbook, now in its second edition: G Bird, *The Process of Law in Australia: lntercultural Perspectives*, 2nd ed (Sydney: Butterworths, 1993).

[51] M Kalantzis, B Cope, & C Hughes, Pluralism and Social Reform: A Review of Multiculturalism in Australian Education (1985) 11 *Thesis Eleven* 195, 207.

[52] *ld* at 212.

[53] *Id* at 207.

[54] D Hollinsworth, Cultural Awareness Training, Racism Awareness Training or Antiracism?: Strategies for Combating Institutional Racism (1992) 13 *J Intercultural Stud* 37, 44.

[55] The distinction is Laksiri Jayasuriya's: see Multiculturalism: Fact, Policy and Rhetoric, in M Poole et a1 eds, *Australia in Transition: Culture and Life Possibilities* (Sydney: Harcourt Brace Jovanovich, 1985) 33.

[56] See, eg, Jamrozik et al, *supra* note 2, esp ch 6; J Collins, The Changing Political Economy of Australian Racism, in Vasta & Castles eds, *supra* note 14; Council for Aboriginal Reconciliation, *Addressing Disadvantage: A Greater Awareness of the Causes of Indigenous Australians' Disadvantage* (Canberra: AGPS, 1994).

[57] Morrissey, *supra* note 35.

[58] Both scenarios are discussed in L Volpp, (Mis)Identifying Culture: Asian Women and the "Cultural Defense" (1994) 17 *Ham Women's L]* 57.

[59] *Id* at 100. *See* also D Chiu, The Cultural Defense: Beyond Exclusion, Assimilation and Guilty Liberalism (1994) 82 *Cal L Rev* 1053.

[60] S Gunew, PostModern Tensions: Reading for Multicultural Difference, in S Gunew & K O'Langley eds, *Striking Chords: Multicultural Literary Interpretations* (North Sydney: Allen & Unwin, 1992) 28.

[61] S Muecke, *Textual Spaces: Aboriginal Cultural Studies* (Sydney: University of New South Wales Press, 1992) 15.

[62] Ang, *supra* note 39, at 41.

[63] Duncanson, *supra* note 12, at 1079–80.

[64] It is not just doctrinal blinkers that can hamper this rethinking or this rediscovery of the social. Appellate reports tend to radically *undertell* case stories. For example, see Lisa Sarmas on the disjunction between the story told in the majority judgments and the story revealed by an examination of trial transcripts in the recent High Court case on unconscionability: Storytelling and the Law: A Case Study of *Louth* v *Diprose* (1994) *Melbourne UL* Rev 701.

[65] B Davis, *Tools* for *Teaching* (San Francisco: Jossey-Bass, 1993) 41.

[66] C Petersen, Living Dangerously: Speaking Lesbian, Teaching Law (1994) 7 *Canadian* Women *& L* 318, 325.

[67] K Crenshaw, Toward a Race-Conscious Pedagogy in Legal Education (1989) 11 *Nat'l Black LJ* 1.

[68] L Salomans, Cross Cultural Education in Nursing Curricula, in C Hedrick ed, *National Conference: Professional Cross-Cultural Staff Development Inside and Outside Universities* (Bedford Park: National Centre for Cross Cultural Curriculum and Staff Development, Flinders University of South Australia, 1991) 73, 79.

[69] J Pettman, *Living in the Margins: Racism, Sexism and Feminism in Australia* (St Leonards, NSW: Allen & Unwin, 1992) 141.

[70] RW Connell, *Schools and Social Justice* (Toronto: Our Schools/Ourselves Education Foundation, 1993) 39–41; note, however, that

modern feminism has not produced a *single* analysis of gender relations but a range of analyses.

[71] Salomans, *supra* note 68, at 79. Ien Ang, citing psychoanalytic theorist Jane Flax, argues that ambivalence is not necessarily a symptom of weakness or confusion but "a strength to resist collapsing complex and contradictory material into an orderly whole": *supra* note 39, at 44.

[72] T Eagleton, *Heathcliff and the Great Hunger: Studies in Irish Culture* (London: Verso, 1995) xi.

[73] "The argument that an LLB degree should or might lose professional recognition if it becomes too deviant or short on 'hard law' is advanced at times by legal academics themselves": M Chesterman, & D Weisbrot, Legal scholarship in Australia (1987) 50 *Mod L Rev* 709,719. The authors cite the Pearce Report, *supra* note 8, Vol I, para 5.11, as recommending consultation with the "admitting authorities in New South Wales on the issue whether the Macquarie [University Law] course meets admission requirements".

[74] Connell, *supra* note 70, at 15–19.

[75] See the discussions in D Lavery, The Participation of Indigenous Australians in Legal Education (1995) 4 *Legal Educ Rev* 177, 181–182 (on the gap between access and success for indigenous law students); the Pearce Report, *supra* note 8, Vol 2, para 12.18 (on the need for "special assistance" above and beyond access schemes); C Penfold, "Indigenous Students' Perception of Factors Contributing to Successful Law Studies", this issue.