



GRIFFITH JOURNAL OF  
**LAW & HUMAN DIGNITY**



# GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY

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# THE REVOLUTIONARY POTENTIAL OF LAW SCHOOL

BEN WARDLE\*

*This paper highlights the experiences at law school that transformed a self-interested consumerist with dreams of becoming a corporate lawyer into a critical legal theorist concerned with social justice, sustainability, and Indigenous sovereignty. Tracing the author's personal experiences at law school, this paper highlights the common barriers to critical thought presented by conventional legal education. More importantly, this paper offers broader insights into the teaching methods and course content changes that could bring about radical shifts in consciousness for the next generation of law students.*

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## I INTRODUCTION

The spark for this article came from a brief conversation I had with an academic at the National Workshop on Indigenous Cultural Competency in Law held in the Monash Law Chambers. Many of the speakers at the workshop were Indigenous law academics who shared similarly shameful stories of the alienation and racism they experienced during law school at the hands of both academics and students supposedly studying a degree concerned with justice. As the Melbourne wind whipped down Lonsdale Street, an Indigenous academic and I chatted about our experiences at law school. I told her about how I began studying wanting to be a wealthy corporate lawyer, and left law school a critical legal theorist with the desire to do all I can to understand the relationships between law and inequality and, hopefully, contribute to the latter's demise. The academic listened intently as I explained the key moments that led to this metamorphosis. After telling me how her studies lacked deep critique, the academic said that I should write a paper to tell my story. This is that paper. To fully appreciate the dramatic impact law school had on me, I think it necessary to first outline what my values were at the time I enrolled in a double degree of law and business at Griffith University in 2004, and where I believe these values stemmed from.<sup>1</sup>

## II MY FORMATIVE YEARS

I grew up in the sprawling suburbs of Logan, South of Brisbane. In my teens the highlights on my cultural calendar included aimless walks through the local cathedral to capitalism – the Hyperdome Shopping Centre; seeing the latest Hollywood blockbuster; listening to scratched Silverchair CDs on my discman and attending house parties where copious amounts of alcohol entered and then often exited the same orifice of anxious teenage bodies. No one spoke of politics or art or ideas; we spoke only of people, and only of people we knew. I attended the local Catholic primary and secondary schools. For reasons I still don't quite understand my mother, who is a public-school teacher and raised my sister and I on her own, thought we would be better off in a private school. Looking back, I think she was probably wrong. The gross concentration of resources privy to many inner-city

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<sup>1</sup> I have made every attempt to ensure the accuracy of my memories, but, as they have likely been moulded and distorted over time, I make no claim to absolute objectivity. Moreover, it must be noted that memories have been selected to tell a specific story and so what follows should not be viewed as a total encapsulation of my experiences.

private schools had not found their way to the Catholic schools of the suburbs of Logan that had only recently been cut out of the bush. While the school had new buildings, it had no new ideas. But for a couple of diamonds, my teachers seemed to rarely draw on experience or passion or expertise in designing their lessons; they drew overwhelmingly on the single stuffy textbook upon which entire subjects rested. Countless lessons involved no more than silently reading the text book or working through its exercises. We were tested not on our understanding, or our creativity, or our compassion — we were tested on our memory. Critical thinking was completely absent from the curriculum. Authority was not something to question and critique; it was to be observed and obeyed. Above all else, we were taught to sit still and silent.

Australian history was covered purely through a colonial gaze.<sup>2</sup> I recall learning the minute details of what was aboard each of the ships of the First Fleet; having to sing ‘We’re heading for Botany Bay’; being taught to admire the early explorers who boldly ‘discovered’ new lands; and how we owe our current lifestyles to the pastoralists who built Australia’s economic wealth on the backs of sheep. Being Australian was something to be proud of. We were, in the words ritualistically sung at each school assembly, ‘young and free’, something quite absurd given the true history of this country. When Aboriginal culture did enter the school’s brick buildings, it was tokenistic and regulated. Occasionally, Aboriginal people would perform ceremonial dances at assembly, though they never spoke. We once painted a rainbow serpent, though never learnt what it meant. We knew that Aboriginal people were here before ‘settlement’, though we never learnt what happened to them.

I cannot recall a single lesson in my 12 years of schooling that addressed inequality, though it was all around us. The school bus took me home past the upper middle-class gated estates near my school; snaked around the bottom of the only mountain in town and the handful of mansions perched around its peak; then rambled through the mass of run down houses of the lower-middle and working classes around the public school. Some of the parties I went to were relatively regulated affairs hosted by private school kids

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<sup>2</sup> For an overview of how the frontier wars and Indigenous dispossession became left out of books on Australian history in the nineteenth century, and the debates around the ‘black arm band version’ of history that occurred in Australia in the 1990s, see Henry Reynolds, *Why Weren’t We Told?* (Penguin Books, 2000) chs 10-12.

whose parents were away for the weekend. Others held closer to the public school were rank and raucous, and often descended into violence. Sometimes cars were stolen, sometimes they were trashed, one time a Holden VN was set on fire. I'm not saying that private school teenagers weren't capable of destruction and violence — on my first day at high school I saw a kid pummelled into the lockers outside my PC room. But violence seemed to stalk working class people in a way foreign to those without the grit of drug addiction and poverty, a major difference being that our violence and destruction was overwhelmingly invisible to police and so we were rarely tangled up in the law. While on the surface these wild nights brought together teenagers from differing social backgrounds; social groups rarely mixed just like in the Hollywood films we watched. We largely stood together in self-organised rings ranked first by class, then by culture, then by appearance.<sup>3</sup>

Hierarchy was everywhere at school. The staff were ranked (principal, deputy principal, heads of departments, senior teachers, and just 'teachers'), the students ranked themselves largely by popularity and appearance, and the staff ranked the students using a grossly narrow definition of intelligence. Each year an awards night would walk so-called achievers one after another with certificates in hand for hours on end in front of those who did not demonstrate the requisite 'intelligence'. It seems to me now that the students forced to sit still and watch their friends getting certificates were being taught that they do not deserve the salaries of university graduates. They were being taught that their lower academic status justifies their place in a lower economic class. There are few more dishonest and destructive lessons that could be taught to such impressionable minds. In this and a myriad of other ways, social hierarchy became viewed by most as natural, inevitable, and justifiable.

More than anything, I found school boring. Before my father unexpectedly died of a heart attack in our backyard when I was five, I was raised by two teachers and so was equipped with all the skills necessary to be an academic achiever. Although it's something the teenage me would have scoffed at, it is clear to me now that any academic success I have had stems from these first five years of my life. While I remember very little before my

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<sup>3</sup> For an overview of everyday experiences of inequality like this and how they reinforce oppressive class relations, see Michael Kraus, Jun Won Park and Jacinth Tan, 'Signs of Social Class: The Experience of Economic Inequality in Everyday Life' (2017) 12(3) *Perspectives on Psychological Science* 422.

father's death, I know my mother resigned from her job to have me and did not go back to work until his death forced it upon her. For my first five years, I therefore had a privilege not many children get — an attentive and affectionate mother who was an expert in teaching children, and a professional father who was also an excellent teacher.

With this foundation, I found the tasks set for me by teachers to be largely pedestrian and uninspiring. I could read, remember and regurgitate like a well-oiled machine, and as that was really all that was asked of me, I achieved high grades. Frequently I would want to know more about something than that covered in our textbooks, and frequently my questions went unanswered. Over time I realised, perhaps only implicitly, that most of my teachers often didn't know what they were talking about, and so slowly but surely, I developed a distain for authority. This was also fuelled by the fact that those students who most clearly saw through the charade and so made fun of it with exquisitely sharp humour, felt all the force a teacher could muster. The students who provided the only colour in our grey classrooms found themselves in detention, then suspension, and then expulsion. Looking back now, it seems to me that it was often the students who showed the most individuality, creativity, and critical thinking who spent their lunchtimes writing lines, while hair-flicking sheep like myself excelled.

Outside of school and social life, my understanding of the world was shaped largely by popular culture. Under the spell of films like *American Pie*, I saw women as incomprehensible creatures whose value was purely physical. Sex was not a means to connect, but to conquer. This was an age pre-*Queer Eye for the Straight Guy*,<sup>4</sup> and while *Will & Grace* was carving into hetero-normativity, it was a show I never watched and so television for me only reinforced that to be 'normal' was to be 'straight'. In film and on TV it was always men who drove the stories and saved the day while women provided emotional support, or romance, or were the ones being saved. Apart from Ernie Dingo and Cathy Freeman, I can't recall seeing an Indigenous face on my television. In short, it was very rare to see a film or a TV show that told stories from any other perspective than that of a white, privileged, heterosexual, able-bodied male.

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<sup>4</sup> I'm not implying that *Queer Eye* was a beacon of progressive thinking, but it certainly brought being gay into the mainstream, even if it did permeate problematic gay stereotypes.

When I was in year 10 I had the task of selecting what subjects to take in my final years of high school. At a year-level meeting a hundred or so nervous 15-year-olds were told that this decision was one of the most important they would ever make. It was explained to us in a serious and forceful tone that many university degrees would not accept students without certain marks in certain subjects, and that this should be the primary consideration in making our decisions. We were not told to choose subjects we were interested in, or even subjects we excelled at. Our education was purely a means to a job.

During my final years of school I took subjects that should have opened my eyes to the rich culture of Aboriginal and Torres Strait Islander peoples, yet this remained strangely absent. In ancient history we looked to Greece and Rome, but not in our own backyards. I recall learning about the diverse types of Egyptian pottery, yet the local bora rings that were likely older than the pyramids, never got a mention. We studied the genocide of Jewish people, but not a single massacre of the First Australians was spoken of. In the subject called *Study of Religion* we learnt about Buddhism and Islam, but never discussed Indigenous spirituality. I could say 'hello' in Japanese and German, but could not speak a word of a local Indigenous language.

If I could summarise my values entering law school, I would say I adopted many of the dominant social norms of suburban Australia. I believed that Australia was the lucky country and had no serious problems concerning poverty, sexism, or racism. I thought that an individual's economic status stemmed only from their individual abilities, and that therefore those who were wealthy deserved to be so. I had no understanding of the prevalence and causes of systemic inequality. All my heroes were male, and my definition of what constituted a 'hero' relied entirely on stories told from a male perspective that emphasised male characteristics.<sup>5</sup> If my education had ceased at this point, there was every chance that none of these values would have altered much in the subsequent 15 years. It was these beliefs that led me to enrol in a law/business double degree, majoring in finance at Griffith University. My aim was to be a wealthy, corporate lawyer who could manage his own lucrative share portfolio. This decision was clearly motivated by self-interest, individualism, and the belief that there was no pressing reason to study

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<sup>5</sup> By this, I mean characteristics that are taught to children as 'masculine', e.g. individualism, autonomy, aggression, risk-taking etc., as opposed to 'feminine' values such as empathy, putting others ahead of yourself, kindness, gentleness, etc. I make no claim that values are gendered, in fact I doubt that is true.

something that could assist in correcting serious flaws in Australia's political, economic or education systems, or even culture. Little did I know that my beliefs were about to be seriously shook.

### III GRIFFITH LAW SCHOOL

The academics at Griffith Law School did not wait long to expose students to the political nature of law and the ways by which Indigenous Australians have been systemically oppressed by law.<sup>6</sup> I remember like it was yesterday; the panic that ran through my bones, when an hour before my first *Law and the Modern State* tutorial I discovered that there were questions I was supposed to have prepared for, realised there was a required reading for the tutorial, and then saw it was a judgement from the *Yorta Yorta* decision.<sup>7</sup> Frantically, I read my first High Court decision. While little made sense, this was the first time I had read anything about how 'colonisation' impacted Indigenous communities. The case outlined how the Yorta Yorta community suffered due to disease, violent conflict, the loss of food sources, the forcible removal of children from their families and country, policies of segregation, and how Indigenous customs and the speaking of Indigenous languages were illegal for a significant period. Looking back now, I still find it disconcerting how this history was largely new information to my 19 year old self. The ability of Australia's education system and culture to deny this truth was quite extraordinary, though I am aware from my younger law students that things are changing for the better. I'd like to say that learning this history broke my racist shackles and launched me into social activism, but I had a well-oiled system that repressed anything that threatened my identity as a member of the 'lucky country' where 'everyone gets a fair go'. However, my cultural armour shielding me from the truth took its first serious knock in my first law tutorial.

On top of the in-class tutorials, *Law and the Modern State* required students to submit an online response to some of the tutorial questions and attached 10% of our grades to this task. We were assigned small groups of about five students who could see each other's responses and, if we wanted, engage in discussions. As luck had it, my small group

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<sup>6</sup> In this paper, I use the word 'political' in the legal realist sense, meaning not neutral or objective but an instrument of power.

<sup>7</sup> *Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422.

included a highly engaged critical thinker who frequently challenged my submissions and the cultural hegemony which underpinned them. While the other three members of our group would usually make their single required submission and be done with it, my learned colleague and I would often engage in long debates about the merits of liberalism, contentious Howard government policies, or the nature of inequality in Australia. This was quite a formative experience for me for several reasons: it gave me a chance to formulate my own views on given political/legal topics in a non-assessable, informal environment with no time pressures; have those views subject to criticism by a peer in a non-threatening way; and gave me a chance to respond after some thought. This process allowed me to realise how many of my political and social views could not stand the test of proper scrutiny and, while I might not have completely realised this at the time, how many of my views were simply regurgitations of what I had heard on television or read in the newspaper. Importantly, this scrutiny came not from an academic but from someone just like me who had read more broadly and formed her views drawing on experience and experts rather than opinion and adverts. That was inspirational.

During my second semester I was given my first taste of philosophy in the course *Introduction to Legal Theory*. The first significant lesson was giving a name to our current political and economic system. I can't recall anyone saying the word 'capitalism' before this course — the word was never mentioned in my entire business degree, nor had I thought that such a thing as a political system existed. That is the power of dominant ideas: they are believed to be all encompassing, natural and eternal so it becomes impossible to imagine an alternative. It was a revelation to learn that the individualism, self-centeredness, and consumerist driven values that I thought of as normal and natural were only necessary for the survival of a particular form of political and economic system, and that there were alternatives. Now I am getting ahead of myself here — I could never have formulated the previous sentence while at law school. But by simply naming 'liberalism' and 'capitalism' it became possible to imagine alternative ways of organising society.

Earlier in the semester, *Introduction to Legal Theory* included Duncan Kennedy's 'Legal Education and the Reproduction of Hierarchy' as a required reading.<sup>8</sup> While much of the

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<sup>8</sup> Duncan Kennedy, 'Legal Education and the Reproduction of Hierarchy' (1982) 32(4) *Journal of Legal Education* 591 ('Hierarchy').

reading was above my intellect, and some of it seemed only relevant to Ivy League law schools in the United States, it was something of a revelation to read such a detailed critique of law school while in my first year at law school. Much of what Kennedy wrote rung true for me, such as the focus in law school on rules and not the values that underpin them or their impact on people; the celebration of the odd judge that attempts to make the rules marginally more humane (e.g. Kirby in dissent<sup>9</sup>); the hierarchy created between student and lecturer and the students themselves fuelled primarily by assessment results; and the emphasis on legalism in discussing cases rather than how the outcome of cases seemed obviously unjust. I had never considered that law school was a means to ensure the continuation of social hierarchy and generate hearts and minds in service of the corporate sector and corporate agendas. Given that I had chosen to study law to be a wealthy corporate lawyer this paper seemed to speak directly to me. It began my understanding of the connections between corporate law and inequality.

*Introduction to Legal Theory* had a lecture and tutorial dedicated to the major strands of critical theory — Marxism, feminism, critical legal theory, critical race theory, and queer theory. As law curriculums are becoming increasingly devoid of theory, this may raise some academic eyebrows. Each theory told a similar story from a different angle: namely, that law reflects and privileges the values of the cultural group that has overwhelmingly created it (white, wealthy, heterosexual men). As such, the application of the same laws to all people does not ensure equality but systemically privileges some, while persecuting others. Moreover, the claims by judges and commentators that law is objective and neutral mask the value judgements, cultural assumptions, and political underpinnings of legal principles, legislation, and the common law. Each theory also highlighted the deep inequality prevalent in contemporary Australia and how law is implicated in this inequality, be it based on class, or gender, or race, or sexual orientation.

Given I would now call myself a critical legal theorist, one might think that all this theory would have been a joy. It wasn't. I really struggled with this course. I was not engaged by the lectures or tutorials, the readings were dense and difficult, and we were required to watch several films that were claimed to reveal some of the theoretical principles

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<sup>9</sup> See Chris Merritt, 'It's Unanimous: Kirby still the Great Dissenter', *The Australian* (online, 15 February 2007) <<https://www.theaustralian.com.au/news/inquirer/its-unanimous-kirby-still-the-great-dissenter/news-story/eee34fa0d8d711bde613a0e783c86a83>>.

discussed in the course, but I struggled to see the connections. I also fell into the trap of thinking that unless I was studying a case or legislation, I was not studying law — a likely hangover from high school where education was viewed only as a means to a job and not for personal development or to benefit the community. Nonetheless, hearing about the role law plays in maintaining systemic inequality from the perspectives of class, gender, race, and sexuality surely had an impact, even if that impact wasn't completely realised until later in life.

Had *Introduction to Legal Theory* been the only subject that drew on theory to highlight the relationships between law and inequality I might be in a large law firm serving corporate clients right now rather than writing a paper on the revolutionary potential of law school. My rose-tinted cultural glasses that prevented me from seeing the obvious inequality all around me and the privileges I obtained from the status quo remaining in place were finally shattered in *Property Law 1*. The course began by outlining some philosophical perspectives that supported private property (Locke and Hegel), and then provided a critique of these perspectives (Marx, Foucault, feminism, critical race theory). This was effective as it presented both sides of the argument as to whether private property ensured individual freedom and autonomy, or created oppression and exploitation. To me, the critique seemed more reasonable and supported by empirical evidence.

Before this course, I never considered whether private property, particularly the ownership of businesses, had positive or negative impacts on society. Private property to me was something as natural and unchallengeable as the spherical shape of the earth. But I could not fault Marx's way of explaining the divide between rich and poor. In short, it was explained to us that most people are forced to sell their labour and are paid an hourly rate of pay or a wage. Those who sell their labour are paid less than the value they produce, and the difference is pocketed by business owners and executives, allowing them to become richer and richer while everyone else remains stuck in a stagnant class position.<sup>10</sup> We looked at graph after graph that showed the level of inequality globally and in Australia, which seemed to line up perfectly with Marx's analysis. It seemed that Marx

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<sup>10</sup> This argument can be explored in more detail in Karl Marx, *Capital: A Critique of Political Economy* (Marxists.org, 2002) ch 7, 23.

had understood the mechanism for vast and unjustified inequality 150 years ago and that little had changed since he put it to paper.

In my first year, I think I rejected Marxism outright due to my cultural biases against it. Communism in my mind was linked to fascism, dictatorships, and tyranny. Even one of my favourite shows growing up, *Get Smart*, called the Americans 'Control' and the Soviets 'Kaos'. Now of course, there is no denying the horrors that occurred under the totalitarian dictatorships that called themselves 'Communist' in places like Russia and China, and I still wonder whether Marx's writings provide a useful blueprint for a way to organise production. However, his explanation of inequality based on class due to the division of labour still rings true to me today. Now in our time, the level of inequality is beyond even Marx's imagination given the growth of multinational corporations that employ and exploit at times tens of thousands of people and siphon surplus value into the coffers of CEOs who often make more than a million dollars a week, all under the protection of law.<sup>11</sup>

The connections between inequality and private property became unavoidable when listening to an Indigenous guest lecturer address the *Property Law 1* cohort. This was the first time in my life I heard an Indigenous person speak at length and it is something I will never forget. With fire in his voice the guest lecturer spoke about the frontier wars, massacres, and the never ceasing resistance to colonisation. He forcefully explained to us how the wealth of Australians is tied primarily to the ownership of land, and that Indigenous Australians have been largely denied this basic right since their forcible removal from country following European invasion.<sup>12</sup> We were told that those of us who are the descendants of wealthy European families, who have owned land and passed title through generations, enjoy the wealth and security that comes with land ownership. As land increases in value so too does the concentration of wealth in the descendants of those responsible for taking land from Indigenous Australians. On the other hand, due to the

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<sup>11</sup> For example, the CEO-average employee salary pay gap in the United States has grown from 42-to-1 in 1980, to 107-to-1 in 1990, to 411-to-1 in 2005: Sarah Anderson and John Cavanagh, *Executive Excess* (Institute for Policy Studies, 2006) 30. In 2018 the CEOs of the top 350 companies in the United States earned on average 312 times more than their average employee salary: Dominic Rushe 'US bosses now earn 312 times the average worker's wage, figures show' *The Guardian* (online, 16 August 2018) <<https://www.theguardian.com/business/2018/aug/16/ceo-versus-worker-wage-american-companies-pay-gap-study-2018>>.

<sup>12</sup> For an overview of the violent dispossession of Indigenous Australians and the role played by the state and law, see Henry Reynolds (n 2).

denial of property rights,<sup>13</sup> slavery and stolen wages,<sup>14</sup> it has been near impossible for Indigenous Australians to obtain the capital to own land until very recently, and so Indigenous Australians are systemically disadvantaged for this reason. It is not that Indigenous Australians don't work as hard as other Australians, or aren't smart enough to obtain professional jobs, or have personality defects preventing them from high paid work that explains the widespread poverty in Indigenous communities — it is the reverberations of a history of dispossession, exploitation, and oppression. Likewise, the wealth and privilege of many Australian families stems directly from this history, meaning much wealth is not derived from individual characteristics and work ethic but from the systemic exploitation of Aboriginal labour and the labour of poorer Australians.<sup>15</sup>

After the lecture many of my peers expressed an outrage and discontent unmatched at any stage of our studies. Small groups of red-faced students accumulated outside the lecture theatre. Likeminded white, young law students exchanged comments reinforcing each other's perceived disconnection from the accusations of the lecture. They used any trick they could to avoid dealing with the substance of what was said and instead focussed on the personal traits of the guest lecturer in vicious attacks. Like me, this was the first time anyone had implicated them in the disadvantages suffered by Indigenous Australians. We were used to thinking that these problems persisted only in the past. This allowed us to pursue power and privilege unabashed. Now we had to face the fact that to do so meant standing on the shoulders of our violent and tyrannising ancestors, and the First Peoples whose land they took and labour they exploited.<sup>16</sup> For many of my peers, this was too much to take and so they took the easy road of attacking the messenger to avoid the message. Given the absence of this type of discourse in any other aspect of my education, or theirs I assume, this is perhaps understandable, albeit wrong. While I also found it difficult to be spoken to so forcefully, I felt that what was said was true, and this lecture still affects me to this day.

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<sup>13</sup> Alexander Reilly, 'From past to present' (2001) 26(3) *Alternative Law Journal* 143; Peter Seidel, 'Native Title: The struggle for justice for the Yorta Yorta Nation' (2004) 29(2) *Alternative Law Journal* 70.

<sup>14</sup> Stephen Gray, 'Holding the Government to Account: The "Stolen Wages" Issue, Fiduciary Duty and Trust Law' (2008) 32(1) *Melbourne University Law Review* 115; Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Unfinished business: Indigenous stolen wages* (7 December 2006).

<sup>15</sup> For an overview of the economic exploitation of Indigenous Australians in Western Australia, see John Host and Jill Milroy, 'Towards an Aboriginal Labour History' (2001) 22 *Studies in Western Australian History* 3.

<sup>16</sup> *Ibid.*

Why I was able to face this history and accept my place in it while many other law students could not is worth reflecting on for a moment. I was quite nationalistic at this time and had even considered getting a southern cross or 'Made in Australia' logo tattooed on my bicep. It would have been very easy for me to dismiss this history as out of my control, making me not responsible for taking any actions to remedy it in the present. As a lecturer who now teaches this material, a very common response is: 'this happened in the past so we should forget about it and move on'. Clearly the nationalistic education in Australian schools with its white-washed history and absence of critique fuels these attitudes. As does popular culture, being almost entirely devoid of Indigenous voices and perspectives. However, my learned colleagues had been in the same tutorials as me on *Yorta Yorta*,<sup>17</sup> *Mabo*,<sup>18</sup> Marx,<sup>19</sup> and Critical Race Theory.<sup>20</sup> Why did so many not see the connections? This is a subject worthy of a PhD rather than a paragraph,<sup>21</sup> but let me give you some of my perspectives.

In my view,<sup>22</sup> the uncertainties and horrors of life are too big a burden to bear and so we create identities to give us a semblance of permanence, predictability, and objectivity. These identities, whether they be nationalistic, or religious, or cultural, or personal, provide us with immense enjoyment. Theorists have used many terms to describe this, such as 'hegemony,' or 'ideology,' or 'fantasy'.<sup>23</sup> Regardless of the term used the outcome is the same — anything that threatens the sense of stability and certainty that our identities generate is viewed with hostility and often repressed to retain the enjoyment we gain from our identities. It seems to me that the enjoyment obtained by many of my peers from their nationalistic identities was too great to take on board the true history of this country. As such, many forms of defence mechanisms were engaged. The most

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<sup>17</sup> Discussed in *Property Law 1; Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422.

<sup>18</sup> Discussed in *Law and the Modern State*, and *Property Law 1; Mabo v Queensland* (1992) 175 CLR 1.

<sup>19</sup> Discussed in *Introduction to Legal Theory* and *Property Law 1*; Karl Marx and Frederick Engels, *The Communist Manifesto and Its Relevance For Today* (Resistance Books, 1998).

<sup>20</sup> Discussed in *Introduction to Legal Theory* and *Property Law 1*; Richard Delgado, *Critical Race Theory: The Cutting Edge*, Richard Delgado (ed) (Temple University Press, 1995).

<sup>21</sup> In a way, this is the subject of my PhD, entitled 'The Four Axes of Legal Ideology' (PhD thesis, Griffith University, 2016). The question I wanted to answer was how can people fail to see the inequality all around them, and what role does law play in this process?

<sup>22</sup> My views are influenced primarily by the following texts: Slavoj Zizek, *The Sublime Object of Ideology* (Verso, 2002); Karl Marx and Friedrich Engels, *The German Ideology* (marxists.org, 2000); Slavoj Zizek, *How to Read Lacan* (Grata Books, 2006); Slavoj Zizek, *The Plague of Fantasies* (Verso, 1997).

<sup>23</sup> For a more detailed overview of this theory, see Ben Wardle, 'You Complete Me: The Lacanian Subject and Three Forms of Ideological Fantasy' (2016) 21(3) *Journal of Political Ideologies* 302.

common I saw then and still see today is attacking the messenger; arguing that it is a waste of time to be learning about Indigenous dispossession in a law degree; accusations of bias at lecturers or course co-ordinators; and relegating dispossession to the past to avoid confronting the privileges non-Indigenous Australians possess in the present which directly stem from this history.

So, why did my defence mechanisms fail me? Well, in my view, identities are never complete and are in a constant state of development. If this were not true we would never change our minds about anything. There was a myriad of forces at work in the shifting of my perspectives and, ultimately, my identity. One force outlined above was my scepticism of the widely held view that academic achievement is a primary measure of success, given its narrowness and inability to encapsulate so many admirable characteristics. Another force leading to me changing my perspective was meeting many uninspiring lawyers at law school events. This made me uncomfortable with the prospect of becoming a lawyer and allowed a critique of Australia's legal system to not necessarily be a critique of my future profession. I also likely obtained enjoyment from seeing through the facades of authority and the myths necessary to maintain it. All of these forces, and likely many more, alongside the critical material embedded throughout my law degree, worked to reshape a new identity. While it took years for me to finally let go of my nationalism and instead form an identity around alternative and radical politics, the seeds were sown. I'm very glad I didn't get that Southern Cross tattoo.

It was only after I studied the major strands of critical theory for the second time in *Property Law 1* that they began to make sense. Legal theory is unnecessarily dense and obscure in my opinion and it takes an excellent teacher to condense and simplify thorny ideas into something palatable that resonates with students. My *Property Law 1* lecturer had that ability in spades and was clearly concerned with social justice by teaching us the skills of being able to identify and understand some sources of systemic inequality. I began to see that many of the traits I was implicitly taught to value through popular culture and my schooling — such as self-interest, individualism, and the valuing of economics over other more important concerns such as community and country — were actually the values necessary to maintain social hierarchies in contemporary capitalist democracies. And these values were central to law. If every Australian saw themselves as connected to everyone else, as part of nature rather than separate from it, and were motivated by

empathy, collectivism, and love rather than individualistic consumerism, then our capitalist, patriarchal system that allows for gross inequities and environmental destruction could not survive. Moreover, if truly egalitarian values were central to our legal system it would prevent such horrors from existing. I learnt that each generation must be taught the values necessary for systemic inequality to persist and remain unchallenged, and the critical legal theorists covered in *Property Law 1* pointed out that law is a primary means by which these values gain authority and the perception of being universal, neutral, and consequently unchangeable.

From what I have outlined so far it may seem that my time at Griffith Law School was filled with life changing critique, but that is not true. Many law subjects only covered doctrine without considering the cultural and social norms that underpin the legal principles, and how these principles affect socio-economic and cultural groups in different ways. In *Criminal Law*, for example, it was noted that Indigenous Australians are highly incarcerated,<sup>24</sup> but we spent no time analysing why this is the case. We learnt nothing about the connections between poverty and crime, or culture and crime, or how policies on crime are frequently used as political tools to gain votes with no consideration of what causes these crimes in the first place (e.g. tough on crime approaches to drug offences). *Evidence* did not consider how strange a concept like hearsay must be to cultures that rely on the oral passing of knowledge and law, or the difficulties Indigenous peoples face in meeting the evidential burden given their cultural preference to oral dialogues over written ones. We also did not learn how the rules of evidence were used to exclude the evidence of Indigenous Australians because of their lack of a requisite religious belief to guarantee the truth of their statements under oath, and that this occurred as late as 1958.<sup>25</sup> *Corporations Law* spent no time critically assessing the dominance corporations

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<sup>24</sup> In 2018, the Law Council of Australia reported that Indigenous Australians are 12.5 times more likely to be imprisoned than non-Indigenous Australians; that Indigenous women are more than 20 times more likely to be imprisoned than non-Indigenous women; and that juvenile Indigenous peoples are 25 times more likely to be detained than non-Indigenous juveniles: Law Council of Australia, *Aboriginal and Torres Strait Islander People*, (Justice Report, 2018) 5.

<sup>25</sup> The Supreme Court of the Northern Territory excluded the evidence of an Aboriginal man due to his lack of Christian belief in *Wadderwarri* [1958] NTSC 516 [548] (Kriewaldt J): 'If the accused had been a white person, and if the deceased had been a white person, it is almost certain that the evidence which Mr. Ryan proposed to tender of what the deceased had said when he was about to die would have been admitted, but because I have to apply the same rule to aborigines and whites I did not admit that evidence on the basis that the reason for admitting the evidence in the case of a white person is that he has a belief that God will punish him if he tells a lie as he is about to die. So far as aborigines are concerned, we know

have over legal resources resulting in so many lawyers pursuing corporate interests over the public interest.<sup>26</sup> We learnt nothing of the law's failure to protect vulnerable and impoverished wage labourers against exploitation by multinational corporations operating in Australia.<sup>27</sup> Nor did we learn about the capacity of well-financed corporations to ensure legislation reflects their interests through lobbying, political advertising, and political donations.<sup>28</sup>

These subjects that only taught doctrine gave the impression that law operated in a vacuum, and that to be an effective lawyer one only had to understand and apply abstract legal principles. Law was implicitly taught as objective and predictable, making it possible for there to always be a correct answer to a given hypothetical question. At times, we spent a few minutes discussing how certain historic cases had been overruled, but we never analysed why this occurred and what this meant about the nature of law.

Even though I am now critical of law courses that concern themselves only with doctrine, I must say that at the time I enjoyed the predictability of these courses. While some legal principles and cases were perplexing and puzzling, one needed only to spend enough time reading and re-reading to eventually get a handle on them. As luck would have it, the hypothetical client in our exams always seemed to have the same problems as the parties of important High Court cases. These courses were at times challenging on an intellectual level, but required no critical self-reflection, posed no threat to my identity or desire to be wealthy, and in effect, reinforced the cultural values of our time. So long as the lecturer was remotely engaged, and the assessment was close enough to what was discussed in tutorials and wasn't marked too harshly, few students had a problem with these courses. These courses were markedly like those I studied in high school, where largely all that

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that they have not that type of belief in the hereafter and therefore, applying the same rule to aborigines as I do to whites, I excluded any statement the deceased might have made shortly before his death.'

<sup>26</sup> For a seminal overview of how capitalism ensures that an unjustified amount of legal resources is utilised to advance corporate interests over the public interest, see Richard Abel, *American Lawyers* (Oxford University Press, 1991).

<sup>27</sup> For example, CEOs of Australia's largest 100 companies in 2017 earned on average \$4.75 million, being 78 times more than the average Australian worker, and CEO earnings rose 46% faster than the average Australian salary between 2016 and 2017: Matt Liddy, Ben Spraggon and Nathan Hoad, 'CEOs Now Earn 78 times More Than Aussie Workers,' *ABC News* (online, 6 December 2017) <<https://www.abc.net.au/news/2017-12-06/ceo-salaries-78-times-average-australian/9216156>>.

<sup>28</sup> Consider, for example, the abandonment of the Super Profits Tax on the mining industry following relentless political advertising, the removal of the price on carbon, and the abandonment of dollar limits on poker machines following political advertisement in key electorates. An article that provides a useful overview of this process in relation to climate policy in Australia is Anna Krien, 'The Long Goodbye: Coal, Coral and Australia's Climate Deadlock' (2017) 66 *Quarterly Essay* 1.

was required to be successful was remembering and regurgitating. There was little room or requirement for critical thought, creativity, or conscience.

#### IV REFLECTION

If I can briefly summarise the content of my courses: on the one hand were the handful of courses that deeply challenged us and covered content outside of formulaic legal analysis, and the other were the majority of courses which contained no critique and treated the practice of law as an objective, predictable, apolitical science. As some courses had no political content while others did, many of my peers thought that the political courses were such due to the personal biases of the course convenor. Moreover, concern with sociology, sustainability, philosophy, equality, and culture was criticised for being irrelevant to the skills needed to be a successful lawyer. Now that I am a course convenor with some expertise in critical theory, I feel I can shed some light on these popular perceptions.

No course is value neutral or objective. Law courses that avoid critique and give no context to law are as political as those that do, only the political nature of these courses is concealed. If a course only concerns itself with legal doctrine, it is implicitly endorsing the cultural values imbued in the doctrines it teaches and makes the injustices stemming from an area of law seem non-existent or unworthy of attention. If, for example, *Corporations Law* says nothing on the unjust and unsustainable practices of many large corporations, then this seems unimportant and not in need of greater regulation.<sup>29</sup> If *Contract Law* is silent on the asymmetrical power between employer and employee that makes employment contracts not the result of 'freedom of contract' but largely forced on employees who are frequently exploited by them, then these practices are stealthily justified. If *Constitutional Law* makes no mention of how the *Constitution* was forged only by white, wealthy, male voices, and how the basis of British/Australian sovereignty depends on the unjustified suppression of Indigenous sovereignty that has never been ceded, the course implicitly devalues these pressing issues and justifies the status quo. If *Equity and Trusts* does not critically evaluate why it is only employees who owe fiduciary duties to their employers, and simply explains that employers are excluded from acting in

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<sup>29</sup> See eg Hannah Aulby and Mark Ogge, *Greasing the Wheel: The Systemic Weaknesses that allow Undue Influence by Mining Companies on Government* (The Australia Institute, 2016).

the interests of their employees, then the unfair distribution of power in favour of employers and the legal support for the financial exploitation of employees is subtly reinforced. In these ways it can be seen that subjects which appear apolitical are never so and can actually provide support for some of the most troublesome cultural and legal values of our time.

As a law student, I had no idea about the inequities present in the subjects I just outlined as I was not taught this. I gained this knowledge through self-education during my PhD research. Without this understanding as a student I had no capacity to see the political nature of the courses that failed to address the obvious injustices perpetuated by the principles of their courses. Instead these courses seemed devoid of political content, making the courses that did engage in critique and their convenors seem like biased outliers. Fuelled by this misconception, many of my peers took to attacking the course convenors who engaged in critique. I think this highlights the importance of embedding critical thinking across the curriculum as without this course convenors can be subject to unjustified and misguided personal attacks.

The final formative moment in my law studies that still shapes how I view the world occurred during my honours thesis. To obtain honours we were required to spend a semester researching a legal issue of our choosing, leading to a 6000 word thesis. My supervisor left the topic completely up to me and gave me the time and space to develop my own ideas. At the time, Dennis Ferguson's face was plastered across the front page of every newspaper and flickered on the advertisements of tabloid TV programs. It was the height of paedophile paranoia that swept across Australia in 2009. Ferguson was convicted of kidnapping and sexually assaulting three children in 1988 and served a 14 year sentence, and in 2005 was arrested again and charged with two counts of indecent dealing with children. The media campaign against Ferguson was so fierce, and the evidence against him so weak, that a permanent stay of proceedings was ordered.<sup>30</sup> He was released in 2008 under 24-hour police watch and was greeted by a concerted media campaign calling for his arrest which whipped up community anger and protests to such an extent that he was forced to move several times.<sup>31</sup> Ferguson looked like a cartoon

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<sup>30</sup> *R v Ferguson* [2008] QDC 136.

<sup>31</sup> For an overview, see Allan Ardill and Ben Wardle, 'Firebombs and Ferguson: A Review of Hate Crime Laws as applied to Child Sex Offenders' (2009) 34(4) *Alternative Law Journal* 257; 'Media Hunt a Monster', *Media Watch* (Australian Broadcasting Corporation, 2008).

villain and the media campaign vilifying him was so fierce that it was unavoidable. I was caught up in the frenzy and the tough on crime sentiment of the coverage and thought that I could help by writing a thesis on how the relevant laws could be strengthened to better protect the community. My thought going into the research project was that mandatory sentencing could offer a solution to deal with paedophiles like Ferguson who preyed on young children in public spaces.

After a month of reading peer-reviewed journal articles on child sex offenders it became apparent that the reality of these crimes and their context was a far cry from the fear mongering in the media. I learnt that paedophilia is a sexual attraction to pre-pubescent children, and was surprised to find out that most child sex offenders do not have paedophilia. It was a shock to learn that the majority of offenders know the children they abuse and are most commonly family members, and the recidivism rate of child sex offenders is far lower than the average recidivism rate of male prisoners.<sup>32</sup> I learnt that only a minority of child sex offenders had been abused themselves as children, that most do not have a diagnosed mental illness, and that sex offender treatment programs are far more effective in the community than those operating in prisons.<sup>33</sup>

My research also led me to the fact that Queensland already had legislation aimed at protecting the community against offenders like Dennis Ferguson, called the *Dangerous Prisoners (Sexual Offenders) Act 2003*. Under the act, if a person convicted of a violent sexual offence or a sexual offence against a child has served their sentence, and is within six months of being released, the attorney-general can apply for an order to prevent their release and, in effect, detain the prisoner indefinitely.<sup>34</sup> A judge must be convinced by two psychiatric reports that the prisoner poses a serious danger to the community.<sup>35</sup> My research on this process led to many articles by criminologists pointing out that the psychiatric reports are very limited in their capacity to predict future behaviour; one expert I interviewed said that 'you'd have just as much chance predicting the future by rolling dice'.<sup>36</sup>

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<sup>32</sup> Interview with Dr Stephen Smallbone (Ben Wardle, Griffith University, 2008).

<sup>33</sup> See eg Stephen Smallbone and Richard Wortley, *Child sexual abuse in Queensland: Offender Characteristics and Modus Operandi* (Australian Key Centre for Ethics, Law, Justice & Governance, 2000).

<sup>34</sup> *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) s 5, 8, 13(5).

<sup>35</sup> *Ibid* s 9, s 13.

<sup>36</sup> Interview with Dr Stephen Smallbone (Ben Wardle, Griffith University, 2008).

After months of research my thoughts on child sex offending changed dramatically, and I moved from a desire for tougher laws fuelled by media stereotyping and fearmongering to writing a critique of the *Dangerous Prisoner (Sexual Offenders) Act 2003*. I concluded that the act breaches proportionality in sentencing and double jeopardy. I came to the view that my own outrage regarding paedophilia and that of the community was fuelled by media reporting that perpetuated stereotypes and misinformation regarding the risks of offending. Rather than redressing the causes of offending, or being concerned with the best means of rehabilitating offenders, the concern of the media, politicians and the public was with punishment, and no punishment seemed tough enough. It seemed that the research on child sex offenders had been overwhelmingly ignored by policy makers and the media.

The process of writing my honours paper made me acutely aware of how my beliefs had been shaped by mass media misreporting, and how the road of research can lead one from sheepish opinion to informed knowledge. The process made me deeply sceptical of the media's representation of criminal justice issues and the tough on crime rhetoric of politicians. It showed how our beliefs and legal responses can be shaped by fear rather than fact. There is every reason to be critical of child sex offenders, but demonising and dehumanising will not reduce offences and protect the vulnerable. The honours thesis process gave me the chance to think deeply about these issues, and the time and space to make up my own mind based on peer-reviewed research. This was such a rewarding process that I ended up becoming a researcher and still relish in the opportunity to engage in self-directed, critically reflective, in-depth research.

To summarise, let me draw together what I think can be learnt from my story that may help turn more young minds from the pursuit of profit and power to the desire to redress systemic inequality. Firstly, let me outline the barriers that stood in front of my own capacity to engage in critical thinking that likely face many others. The most significant barrier to me was my attitude towards education. Because I thought university existed to provide me with a piece of paper so I could practice law, legal education in my mind should have only taught legal doctrine and practical skills.<sup>37</sup> Without combatting attitudes

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<sup>37</sup> For an explanation of the prominence and preference of vocationalism in Australian Law Schools, see Nickolas James, 'Why Has Vocationalism Propagated So Successfully within Australian Law Schools?' (2004) 6 *University of Notre Dame Australia Law Review* 41; Margaret Thornton, *Privatising the Public*

like this, course convenors that embed critical thinking and Indigenous perspectives in their courses will face an uphill battle. The first tutorial of a course provides a good opportunity to have students share their reasons for studying law, their expectations as to what studying the course will involve, and encourage critical self-reflection regarding their attitudes towards education.<sup>38</sup>

The second significant barrier for me was my belief that Australia had no substantial problems regarding inequality, racism, or sexism. As many students are likely to reject critique and Indigenous perspectives outright, I think it is essential that this material is embedded across the curriculum.<sup>39</sup> It is very unlikely that a single course dedicated to the task of revealing the relationships between law, inequality, and oppression could win the hearts and minds of those who have enrolled in law for self-interested reasons. I know from my own experience that this would not have worked for me. While some law courses are better suited to deep critique and putting law in context than others, it seems to me that critique must be embodied across multiple, if not all courses, to be effective in turning cold hearts and minds like mine, with a vocational approach to education stemming from pure self-interest, to being concerned with social justice and seeing education as a means to better oneself, one's community, and one's country.

Giving less experienced students the opportunity to learn from those who have perspectives and knowledge that provide them with a more critical outlook is an important pedagogical tool.<sup>40</sup> Critique from a course convenor alone will only go so far,

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*University: The Case of Law* (Routledge, 2012); Margaret Thornton, 'The Law School, the Market and the New Knowledge Economy' (2008) 17 *Legal Education Review* 1.

<sup>38</sup> On the importance of critical self-reflection in law school, see, eg, Kelley Burton and Judith McNamara, 'Assessing Reflection Skills in Law Using Criterion-referenced Assessment' (2009) 19 *Legal Education Review* 171; Alice Thomas, 'Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy' (2000) 6 *Widener Law Review* 49; Kathy Mack et al, 'Developing Student Self-Reflection Skills through Interviewing and Negotiation Exercises in Legal Education' (2002) 13 *Legal Education Review* 221.

<sup>39</sup> I am not alone in this conclusion. See Allan Ardill, 'Critique in Legal Education: Another Journey' (2016) 26(1) *Legal Education Review* 137, 137. Unfortunately, critique is becoming increasingly marginalised in legal education. See, eg, Thornton (n 37) 26; Nickolas James, 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16 *Legal Education Review* 55; Gabrielle Appleby, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey' (2013) 23 *Legal Education Review* 345.

<sup>40</sup> On the importance of peer-to-peer learning, see, eg, Dominic Fitzsimmons, Simon Kozlina and Prue Vines, 'Optimising the First Year Experience in Law: The Law Peer Tutor Program at the University of New South Wales' (2006) 16 *Legal Education Review* 100; Frances McGlone, 'Student Peer Mentors: A Teaching and Learning Strategy Designed to Promote Cooperative Approaches to Learning and the Development of

but if students hear this from other students it is more difficult for them to reject it as bias or irrelevant to themselves or their studies. As such, opportunities for peer-to-peer learning should be looked, for when setting up tutorials, lecture activities and assessments. Guest lecturers can also be effective, especially Indigenous guest lecturers who can speak directly to the myriad of ways that law has and continues to systemically privilege non-Indigenous values and culture, and are powerful additions to any law course. Their presence and poise alone can burst the stereotypes that many law students hold about Indigenous peoples. If law schools take on board these suggestions it is likely that many more impressionable minds will understand some root causes of systemic inequality and be armed with the skills and motivation to make part of their professional lives aimed at eliminating them.

#### V CONCLUSION

I entered law school with the desire to be a rich corporate lawyer with no understanding of how law has and continues to oppress Indigenous peoples, and left a critical legal theorist who advocates for Indigenous sovereignty. Such is the potential of law school. Having taught at three universities across eleven courses, I also know that law school can reinforce stereotypes, whitewash the deep social problems facing this country, and give the perception that law operates in an apolitical vacuum. Law school, as Duncan Kennedy points out, can train minds to serve corporate agendas and ensure the continuation of social hierarchies.<sup>41</sup> However, by reframing the purpose of education from a means to a job to a means to a more egalitarian and inclusive community, by allowing students to learn from each other and from Indigenous people, and by embedding critique and context across the curriculum, law school has the potential to radically alter the perspectives of privileged, self-interested law students like myself. Law school has the potential to be revolutionary.

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Lifelong Learning Skills' (1996) 12 *Queensland University of Technology Law Journal* 201; Stephen Brookfield, *Discussion as a Way of Teaching* (Jossey-Bass, 2005); Appleby, Burdon and Reilly (n 39).

<sup>41</sup> 'Hierarchy' (n 8).

## REFERENCE LIST

*A Articles/Books/Reports*

- Abel, Richard, *American Lawyers* (Oxford University Press, 1991)
- Anderson, Sarah and John Cavanagh, *Executive Excess* (Institute for Policy Studies, 2006)
- Appleby, Gabrielle, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey' (2013) 23 *Legal Education Review* 345
- Ardill, Allan, 'Critique in Legal Education: Another Journey' (2016) 26(1) *Legal Education Review* 137
- Ardill, Allan and Ben Wardle, 'Firebombs and Ferguson: A Review of Hate Crime Laws as applied to Child Sex Offenders' (2009) 34(4) *Alternative Law Journal* 257
- Aulby, Hannah and Mark Ogge, *Greasing the Wheel: The Systemic Weaknesses that allow Undue Influence by Mining Companies on Government* (The Australia Institute, 2016)
- Brookfield, Stephen, *Discussion as a Way of Teaching* (Jossey-Bass, 2005)
- Burton, Kelley and Judith McNamara, 'Assessing Reflection Skills in Law Using Criterion-referenced Assessment' (2009) 19 *Legal Education Review* 171
- Delgado, Richard, *Critical Race Theory: The Cutting Edge*, Richard Delgado (ed) (Temple University Press, 1995).
- Fitzsimmons, Dominic, Simon Kozlina and Prue Vines, 'Optimising the First Year Experience in Law: The Law Peer Tutor Program at the University of New South Wales' (2006) 16 *Legal Education Review* 100
- Gray, Stephen, 'Holding the Government to Account: The "Stolen Wages" Issue, Fiduciary Duty and Trust Law' (2008) 32(1) *Melbourne University Law Review* 115
- Host, John and Jill Milroy, 'Towards an Aboriginal Labour History' (2001) 22 *Studies in Western Australian History* 3

- James, Nickolas, 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16 *Legal Education Review* 55
- James, Nickolas, 'Why Has Vocationalism Propagated So Successfully within Australian Law Schools?' (2004) 6 *University of Notre Dame Australia Law Review* 41
- Kennedy, Duncan, 'Legal Education and the Reproduction of Hierarchy' (1982) 32(4) *Journal of Legal Education* 591
- Kraus, Michael, Jun Won Park and Jacinth Tan, 'Signs of Social Class: The Experience of Economic Inequality in Everyday Life' (2017) 12(3) *Perspectives on Psychological Science* 422.
- Krien, Anna, 'The Long Goodbye: Coal, Coral and Australia's Climate Deadlock' (2017) 66 *Quarterly Essay* 1
- Law Council of Australia, *Aboriginal and Torres Strait Islander People*, (Justice Report, 2018)
- Liddy, Matt, Ben Spraggon and Nathan Hoad, 'CEOs now earn 78 times more than Aussie Workers,' *ABC News* (online, 6 December 2017) <<https://www.abc.net.au/news/2017-12-06/ceo-salaries-78-times-average-australian/9216156>>
- Mack, Kathy et al, 'Developing Student Self-Reflection Skills through Interviewing and Negotiation Exercises in Legal Education' (2002) 13 *Legal Education Review* 221
- Marx, Karl, *Capital* (Marxists.org, 2002)
- Marx, Karl and Friedrich Engels, *The German Ideology* (Marxists.org, 2000)
- Karl Marx and Frederick Engels, *The Communist Manifesto and Its Relevance For Today* (Resistance Books, 1998)
- McGlone, Frances, 'Student Peer Mentors: A Teaching and Learning Strategy Designed to Promote Cooperative Approaches to Learning and the Development of Lifelong Learning Skills' (1996) 12 *Queensland University of Technology Law Journal* 201

Merritt, Chris, 'It's unanimous: Kirby still the great dissenter' *The Australian* (online, 15 February 2007) <<https://www.theaustralian.com.au/news/inquirer/its-unanimous-kirby-still-the-great-dissenter/news-story/eee34fa0d8d711bde613a0e783c86a83>>

Reilly, Alexander, 'From past to present' (2001) 26(3) *Alternative Law Journal* 143

Reynolds, Henry, *Why Weren't We Told?* (Penguin Books, 2000)

Rushe, Dominic, 'US bosses now earn 312 times the average worker's wage, figures show', *The Guardian* (online, 16 August 2018)

<<https://www.theguardian.com/business/2018/aug/16/ceo-versus-worker-wage-american-companies-pay-gap-study-2018>>

Seidel, Peter, 'Native Title: The struggle for justice for the Yorta Yorta Nation' (2004) 29(2) *Alternative Law Journal* 70

Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Unfinished business: Indigenous stolen wages* (7 December 2006)

Smallbone, Stephen and Richard Wortley, *Child sexual abuse in Queensland: Offender Characteristics and Modus Operandi* (Australian Key Centre for Ethics, Law, Justice & Governance, 2000)

Thomas, Alice, 'Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy' (2000) 6 *Widener Law Review* 49

Thornton, Margaret, *Privatising the Public University: The Case of Law* (Routledge, 2012)

Thornton, Margaret, 'The Law School, the Market and the New Knowledge Economy' (2008) 17 *Legal Education Review* 1

Wardle, Ben, *The Four Axes of Legal Ideology* (PhD thesis, Griffith University, 2016)

Wardle, Ben, 'You Complete Me: The Lacanian Subject and Three Forms of Ideological Fantasy' (2016) 21(3) *Journal of Political Ideologies* 302

Zizek, Slavoj, *How to Read Lacan* (Grata Books, 2006)

Zizek, Slavoj, *The Plague of Fantasies* (Verso, 1997)

Zizek, Slavoj, *The Sublime Object of Ideology* (Verso, 2002)

#### B Cases

*Mabo v Queensland* (1992) 175 CLR 1

*R v Ferguson* [2008] QDC 136

*Wadderwarri* [1958] NTSC 516

*Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422

#### C Legislation

*Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)

#### E Other

'Media Hunt a Monster', *Media Watch* (Australian Broadcasting Corporation, 2008)

Stephen Smallbone (Ben Wardle, Interview at Griffith University, 2008)