

**Wednesday 9 July 11.30am to 1.00pm**

***Moral Intuitionist Cognitive Theory – a Challenge for Trials, Judges and Advocates?***

**Ken Parish**

**Charles Darwin University**

**Abstract**

Common law juries are often conceptualized as a group of reasonable men and women expected to apply their minds to the evidence presented at trial and reach a decision in a commonsense but rational manner, and as the arbiters of community moral standards as applied to the trial evidence, though constrained by the applicable law. The first of these conceptualizations is very much a rationalist one consistent with the work of cognitive theorists such as Piaget and Kohlberg.

However, more recent empirical research in moral psychology suggests a rather more intuitive basis for human moral decision-making. Theorists including Jonathan Haidt and Fredrik Bjorklund have developed new theoretical approaches based on this research. They claim that human moral behaviour emanates from a set of moral intuitions hard-wired into the brain and therefore identifiable across all human cultures, albeit that their precise shape is strongly influenced and moulded by social and cultural factors during childhood development.

They argue that the initial moral flash of intuition that precedes every individual moral "decision" may be modified by social factors at the time. However, that social influence is anything but a process of intellectual reasoning in the vast majority of cases. The process is little more than the outworking of our desire to fit our moral decision-making into a consensus of the community or peer group of which we see ourselves as part: the morality of the herd. Most of what passes for moral "reasoning" is in reality mere *post hoc* justification of decisions actually already reached on an intuitive basis.

This paper examines the possible implications of Social Intuitionist models for the role and functioning of juries, appointment and training of judges, and the organisation of the criminal trial (especially whether counsel should be permitted to "frame" the evidence through opening addresses which may potentially trigger intuitive responses in some jurors that may distort trial outcomes).

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***Reflexive Professionals or Technicians? The Political Economy of the University***

**Lynda Crowley-Cyr**

**James Cook University**

**Abstract**

This paper examines the contest between two ideologies that underpin 21st century tertiary education. The currently hegemonic ideology reflects neo-liberal construct of the university as a market place where students are consumers. The process of learning stresses ease of assimilation of the 'product'. The role of academics must be to be customer focused service providers. A counter hegemonic ideology reflects the presumption that students are reflexive citizens. Such learners are engaged in the reflexive project of the self. They seek self-determination and empowerment to actualise their own potential and lecturers guide, facilitate and evaluate. These two ideologies exist simultaneously in Australian universities creating contradictory and conflicting expectations on the part of both learners and teachers.

The paper offers a case study of a trial in a professional legal ethics subject to use assessment as a vehicle for student empowerment in order to enhance and promote reflexive professionalism. What the teaching /learning experience disclosed was the hegemonic place of the passive consumer model amongst a group of final year law students and hence their disempowerment. The paper argues that the former federal government's underfunding of legal education and the correlated underdevelopment of students' reflexive capacities is the present order of the day, at least in regional schools.

Casualised black letter law teaching and examination based assessment are the chief processes whereby this outcome has arisen. Far from producing the clever people to manage late modernity, the neo-liberal university is dulling and narrowing student self-constructs and has become an assembly line for unreflexive technicians.

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***Introducing Conceptual and Contextual Literacy to First Year LLB Students***  
**Professor Paul Havemann and Rachel Bradshaw**  
**James Cook University**

**Abstract**

This paper argues that the analytical tools for conceptual and contextual literacy need to be made explicit in the first year curriculum especially for non graduate entry LLB programs. The paper explains rationale for the subject, the evolution of the syllabus and evaluates the experience of facilitating student learning in the subject so far.

At JCU Legal Concepts subject introduces students to a broad overview of the concepts applicable to basic areas of the law. Thus the subject offers a preparatory foundation for further three years of study. Legal Concepts is one of six subjects in the foundational JCU First Year Experience program. Other subjects are Legal Research, Writing and Analysis, Legal Institutions and Processes, Law, Society and Change and Contract 1 and 2.

Law, Society and Change and Legal Concepts complement each other. Law, Society and Change introduces students to social science concepts such as: ideology, discourse, social construction, power, the state, the market, kinship and family, identity, class, race, ethnicity, caste, gender, sex, sexuality, colonialism, globalization. The subject enables students to view the law through the prism of society not vice versa. They are able to critique the law in terms of the social context in which it is made and in which it operates. For instance, to ask how relevant, given the large variety of forms that intimate relationships take, are marriage laws in Australia? Or to explore how hierarchies of esteem such as race or sexuality are constructed by law as an expression of dominant ideologies?

The Legal Concepts subject, the focus of this presentation, introduces the core jurisprudential concepts of a common law legal system, namely the concepts of:

- Personality,
- Liability,
- Property,
- Contract,
- Fiduciary obligations,
- Rights,
- Sovereignty and good process such as natural justice, constitutionalism and the Rule of Law.

These concepts are selected because of the importance and breadth of areas of law they underpin.

The 'law jobs' that the areas of law reflecting the concept are contextualized so that each concept is critiqued in terms of its relevance and possible obsolescence in the face a dimension of technological, political, cultural, economic or ecological change. This contextualized critique exposes areas of mismatch between, for instance, western liberal notions of property and Indigenous normative schemes, classical contract law and e-commerce, the concept of Westphalian sovereignty and the new challenges to global governance posed say by climate change, and so on. The two subjects are designed to complement each other by providing a foundation jurisprudential and social science conceptual vocabulary.

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