

Monday 7 July 11.30am to 1.00pm

Torres Strait Islanders - A Case for Teaching Legal Pluralism in Law and Practice

Heron Loban

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Abstract

Teaching Indigenous customary law in a conventional law degree in Queensland is rare. There is the obvious exception in property law with native title and at times in criminal law in relation to defences and punishment. For Torres Strait Island people, parts of the customary law have been recognised within the legal system and with some effect. The example of *Mabo v State of Queensland [No 2]* (1992) 175 CLR 1 relates to the legal recognition of customary laws related to land and sea – ‘property’ law. Until recently the Family Court of Australia had a set of Practice Directions relating to the traditional adoption of Torres Strait Island children and sat as a Court in the Torres Strait to make consent orders to give effect to an agreement made according to customary law – ‘family’ law. The former example illustrates the scope of the law for clear legal recognition of customary law, while the latter example illustrates the scope for recognition of customary law in the legal system in a ‘practical’ way.

This paper will examine the concept of plurality of laws in theory and in practice in relation to Torres Strait Island customary law and seek to evaluate the legal scope and practical benefits of teaching customary law in a conventional law degree.

Teaching Law Students Indigenous Legal Issues as an Elective from an Indigenous Perspective

Kevin Williams

Newcastle University

Abstract

I am an Indigenous lawyer and academic who teaches an elective “Indigenous People, Issues and the Law”. The elective allows non-Indigenous law students to understand how the British common law has affected Indigenous people from the acquisition of sovereignty through to the present day. How the law has been an instrument to dispossess Indigenous people of their rights.

The course covers a number of topics over a twelve-week period. It is not strictly a legal course as it encapsulates present day issues such as the Northern Territory intervention and the impact of the 11 years of the Howard Liberal government. Also the course is grounded in race theory from the commencement of the first lecture and gives an Indigenous perspective on legal issues and the effect colonization has had on Indigenous peoples. The course covers primarily the colonization of Australia, the various policies that impacted on Indigenous people, protection, assimilation integration etc. The impact of the stolen generations is canvassed in detail.

Criminal justice issues are covered especially in relation to the stolen generations. Native title and land rights are part of the course as is cultural heritage and Intellectual Property rights. International law as a means to ameliorate Indigenous people in their quest for recognition is also covered along with more contemporary issues such as Reconciliation, the Howard years and the Northern Territory intervention.
