

## **THE CLASSROOM ‘IN COUNTRY’: EXPERIENTIAL LEARNING OF INDIGENOUS LEGAL STUDIES**

*No one should make the claim of being educated until he or she has learned to live in harmony with people who are different.*<sup>1</sup>

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### **Introduction**

The teaching of Indigenous legal issues has gradually been introduced into Bachelor of Laws programs across Australian law schools over the past thirty years. Even those universities that do not offer a stand-alone unit in Indigenous legal studies have relevant topics integrated into their core law units. For example the Deakin University Law School offers a number of units that include the discussion of relevant Indigenous legal issues. In the unit of study, ‘MLL110 Law, Society and Civil Rights’, relevant Indigenous topics include the so-called ‘settlement’ of Australia and *terra nullius*. In ‘MLL323 Constitutional Law’ the students briefly study the legal framework for the Northern Territory Intervention<sup>2</sup> in the context of s 122 of the Federal Constitution and the limited constitutional human rights protections provided under the *Australian Constitution*. A significant portion of ‘MLL325 Property Law’ relates to native title. In ‘MLL405 Equity and Trusts’ the students study the Stolen Generations in the context of duties of fiduciaries. Leading Indigenous cases on the recognition of international law by the domestic courts are considered in ‘MLL377 International Law’.

The author proposed to offer a new unit as part of the Deakin University law program, which would bring these topics together in a stand-alone *Indigenous Legal Issues* unit. This is of course no longer unique. What is unique about this proposed unit, and the initial pilot project(s), is that part of the teaching will be conducted ‘on country’ through a study tour. The development of the unit was supported by a Faculty of Business and Law teaching grant (\$13,243) that funded travel in South Australia, Northern Territory and Victoria to meet with Elders and Indigenous tourist providers, to gauge what is logistically possible and offer the greatest educational outcomes. As is indicative from this successful grant application, both the Dean and Associate Dean (Teaching and

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<sup>1</sup> Angene Wilson, ‘Cross-Cultural Experiential Learning for Teachers’ (1982) 21(3) *Theory into Practice* 184, 191.

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<sup>2</sup> *Northern Territory National Emergency Response Act 2007* (Cth) (‘NTNERA’); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth) (‘FCSIAA’); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) (‘WPRA’).

Learning) are very supportive of the project. The only opposition came from the Associate Heads of School (Teaching and Learning) who preferred the funds be utilised for a different purpose within the School. Despite such opposition I was ultimately successful in obtaining the seeding funding for the 2010 pilot project, discussed in more detail below. Nevertheless, a change in funding practice saw the 2011 Faculty Teaching and Learning funds directly devolve to the Schools. Such funds were applied to another purpose within the School of Law and meant that the further 2011 pilot project could not proceed. The Head of School has subsequently expressed great enthusiasm for the new unit and in light of this supportive environment it is hoped that the project can proceed.

The proposal is known as the “The Classroom ‘In Country’ project” as it involves developing *curricula* that will allow Indigenous legal issues to be taught ‘on country’ in relevant Aboriginal communities. As discussed in detail below, the project will thereby develop an innovative experiential learning opportunity for students. Specifically, the key idea is to make Indigenous legal issues ‘real’ for the students through experiential learning. When ‘on country’ the significance of traditional lands and cultural sites to Aboriginal traditional owners becomes ‘real’ and enhances student learning. Similarly, students gain a more personal perspective of the legal issues relating to the forcible removal of Aboriginal children from their families when they discuss these issues with members of the Stolen Generations.

While the study tour has as its teaching focus relevant Indigenous legal issues, a further goal is to instil in students a broader appreciation of Australian Indigenous history and contemporary Indigenous issues. To this end, the study tour aims to ensure that certain ‘myths’ about Indigenous Australians are dispelled. For example, the study tour will dispel the perception that all Aboriginal communities were nomadic hunter-gatherers who had primitive ‘unsophisticated’ socio-political systems and who were ‘peacefully dispossessed’. Moreover, it will show that in contemporary Australia Indigenous peoples do not all live in the outback and that Indigenous peoples living in capital cities maintain a strong connection with their traditional lands.

An interrelated additional goal relates to cultural and racial attitudes. While the unit will be open to the Law School’s Indigenous students, the majority of the student cohort will be non-Indigenous. During my many years of teaching I have found through discussions with my students that many have never had contact with an Indigenous person. These students’ perceptions of Indigenous peoples and Indigenous issues are, therefore, not based on personal experience, but rather second-hand information whether written or verbal. Media, friends and family are strong forces that can shape student perceptions, often reinforcing stereotypes in a very negative way. As discussed below, contact with Indigenous persons in the course of the study tour provides the benefit of allowing students to form their own views and previous studies indicate this

can have a very positive impact on students' cultural and racial attitudes.<sup>3</sup> This was certainly borne out in terms of student self-development outcomes from the 2010 pilot project.

The instigation of this project was not informed by relevant educational theory. It was prompted by a 'gut feeling' as a teacher and personal experiences as to the benefit of experiential learning, detailed below. Since completing what might be called the logistical exploratory stage of the project and the subsequent 2010 pilot project, the author has considered the work of relevant educational theorists to see if their research supports the expected outcomes of the project. This study is incorporated in the first part of the article and places the project in its educationalist context. The review of educational literature begins by discussing the benefits of experiential learning and then moves to the more specific discussion of cross-cultural experiential learning. While the "Classroom 'In Country' project" was not actually informed by relevant educationalist theory, it is interesting to reflect on the synergies between the author's uneducated aspirations for the students and the theories developed by the educational experts. The article then considers the components of the study tour and explains how they are designed to meet the above goals of the "The Classroom 'In Country' project".

## **Cross-Cultural Experiential Learning**

### *Experiential learning*

There is a wealth of literature on experiential learning<sup>4</sup> that builds on the pioneering work of John Dewey.<sup>5</sup> Later writings tend to add to the theorisation

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<sup>3</sup> See especially the study undertaken of University of North Florida students in Peter Kranz, Nick Lund and Richard Steele, 'Significance of an Experiential Class in Racial Understanding: Voices of Students' (2003) 54(3) *Negro Educational Review* 103. See also Kenneth Cushner, *Beyond Tourism* (2004), 52; Janet Bennett, 'On Becoming a Global Soul' in Victor Savicki (ed), *Developing Intercultural Competence and Transformation: Theory, Research, and Application in International Education* (2008) 19.

<sup>4</sup> A number of significant articles have been published in the *Journal of Experiential Education*. See generally, Johnna Haskell, 'Ecological journey: An enactive view of the nature of experience' (1999) 22(3) *Journal of Experiential Education* 154; Anne Lindsay and Alan Ewert, 'Learning at the edge: Can experiential education contribute to educational reform?' (1999) 22(1) *Journal of Experiential Education* 12; David Hutchinson and Sandra Bosacki, 'Over the edge: Can experiential education contribute to educational reform?' (2000) 23(3) *Journal of Experiential Education* 177.

<sup>5</sup> Experiential learning was originally developed by John Dewey, *Democracy and education: an introduction to the philosophy of education* (1916). In terms of contemporary theorists, the work of David Kolb is arguably the most influential in this area of educational theory. See David Kolb, *Experiential Learning: Experience as the source of learning and development* (1984).

of experiential learning<sup>6</sup> or, as Mok notes,<sup>7</sup> provide case studies or narratives of experiential learning. What remains consistent throughout the literature is the identified benefits of experiential learning. While Mok<sup>8</sup> may be correct in asserting that such case studies, for example, may not specifically identify the 'functional attributes of experiential learning', the literature consistently refers to experiential learning as a particular teaching methodology that provides additional learning outcomes that are not achieved by traditional forms of classroom teaching.

Experiential learning has been defined as 'a philosophy and methodology in which educators purposefully engage with learners in direct experience and focused reflection in order to increase knowledge, develop skills, and clarify values.'<sup>9</sup> While experiential learning shares the general common goals of all education,<sup>10</sup> the methodology and learning outcomes are very different from learning through, for example, the reading of a textbook. The student learns from experience, whether that be through in-class role-playing, a simulated experiential learning tool<sup>11</sup> or, in the subject case, off-site experiential learning. As Gochenour notes, this learning from experience ensures that experiential learning is very different from traditional classroom education.<sup>12</sup> In fact, Savicki asserts that the 'differences are the *raison d'être* for promoting' experiential learning.<sup>13</sup>

Through experiential learning the student 'experiences' and in turn develops responsive 'feelings'.<sup>14</sup> A number of writers have highlighted this 'affective'

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<sup>6</sup> See, eg, John Quay, 'Experience and Participation: Relating Theories of Learning' (2003) 26(2) *The Journal of Experiential Education* 105 where the author compares and contrasts experiential learning with other holistic theories of education.

<sup>7</sup> Yan Fung Mok, 'Experiential Learning: Functional Attributes and Effectiveness' (1999) 21(1) *Studies in Continuing Education* 57, 57. Mok's article identifies numerous experiential learning case studies and narratives. For a recent example see Tracy Rone, 'Culture from the outside in and the inside out' (2008) 56(4) *College Teaching* 237. Further examples are detailed below in the context of cross-cultural experiential learning.

<sup>8</sup> *Ibid.*

<sup>9</sup> Victor Savicki, 'Experiential and Affective Education for International Educators', above n 3, 75, quoting the Association for Experiential Education. See also Margaret Pusch and Martha Merrill, 'Reflection, Reciprocity, Responsibility, and Committed Relativism' in Savicki above n 3.

<sup>10</sup> Wilson, above n 1, 185.

<sup>11</sup> This can occur through, for example, e-simulations. For a discussion of the use of e-simulations in legal education see the author's recent article: Julie Cassidy, 'ClientView' (2009) 4(1) *Journal of the Australasian Tax Teachers Association* 55.

<sup>12</sup> Theodore Gochenour, 'Is experiential learning something fundamentally different' in Donald Batchelder and Elizabeth Warner (eds), *Beyond Experience. The experiential approach to cross-cultural education* (1977), 34.

<sup>13</sup> Savicki, above n 3, xv.

<sup>14</sup> *Ibid.*, 58 and 60-61.

nature of experiential learning.<sup>15</sup> Gochenour, for example, notes that experiential learning engages the whole person and focuses on the affective nature of experience.<sup>16</sup> Thus as Wilson asserts, experiential learning ‘more often affects the heart as well as the mind and elicits a personal response.’<sup>17</sup> As Savicki explains, an assumption underpinning experiential learning is that the student will react cognitively and emotionally to the experience and such reactions become part of the learning experience.<sup>18</sup> A further interrelated functional attribute of experiential learning identified by commentators is ‘reflection’.<sup>19</sup> Again, as the student learns from the experience and reflects upon inter-personal communications, the outcome tends to be more personal.<sup>20</sup> The literature consistently provides that it is this personal self-reflection that truly sets experiential learning apart from other learning modes.<sup>21</sup> Moreover, it is stated that this self-reflection is what differentiates a mere experience from experiential learning.<sup>22</sup>

One personal example illustrates the difference in the learning modes and outcomes of experiential learning. Two further examples are detailed below in regard to the Northern Territory component of the study tour. I will revert to the first person prose as this more clearly describes the experiential learning experience. Through the reading of books and articles I have learned of the devastating impact of mining on traditional lands. Through a visit to a mine site near Leigh Creek in South Australia in 2008 I learned from an Arabunna Elder how mining overburden prevents the traditional owners being able to see other persons approaching their lands.<sup>23</sup> I learnt through experience, not only the physical devastation of mining, but also its impact on traditional ways and hence the importance of rehabilitating sites post-mining. The experiences of my 2008 visit to Arabunna country and 2009 visit to Mparntwe and Angkerle

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<sup>15</sup> See further Daniel Goleman, *Emotional intelligence: Why it can matter more than IQ* (1995); David Krathwohl, Benjamin Bloom and Masia Bertram, *Taxonomy of educational objectives, the classification of educational goals. Handbook II: Affective domain* (1973).

<sup>16</sup> Theodore Gochenour, ‘Is experiential learning something fundamentally different’ in Batchelder et al, above n 12, 34. See also Savicki *ibid*, xv, 76, 80-88.

<sup>17</sup> Wilson, above n 1, 185. See also Bennett, above n 3.

<sup>18</sup> Savicki, above n 8, 75.

<sup>19</sup> Mok, above n 7, 58-60.

<sup>20</sup> See further Gordon Murray, ‘Views on cross-cultural learning’ in Batchelder and Warner, above n 12, 37; Wilson, above n 1, 185; Donald Schon, *The Reflective Practitioner* (1983); Mok, above n 7.

<sup>21</sup> Wilson *ibid*; John Wallace, ‘The educational values of experiential education’ in Batchelder and Warner, *ibid*, 27; Savicki *ibid*, 2, 6, 20, 45, 76, 98-99. See also Janet Bennett, Milton Bennett and Kathryn Stillings, *Description, interpretation, and evaluation: Facilitators’ guidelines* (1977); Jennifer Moon, *A handbook of reflective and experiential learning* (2004); John Quay, ‘Experience and Participation: Relating Theories of Learning’ (2003) 26(2) *The Journal of Experiential Education* 105, 109.

<sup>22</sup> Wilson *ibid*; Savicki, above n 8, 76.

<sup>23</sup> See similar personal examples in Gordon Murray, ‘Views on cross-cultural learning’ in Batchelder and Warner, above n 12, 37; Wilson, above n 1, 185; Robert Selby, ‘Designing Transformation in International Education’ in Savicki, above n 3, 4-6.

Arrenge, discussed below, brought together in my mind and heart years of research into Indigenous legal issues in a manner that no amount of case reading or legislative analysis could have achieved. This is the core of experiential learning.

As stated above, and explored more fully below, the goal of the Indigenous study tour is to make Indigenous legal studies more 'real'<sup>24</sup> and personal through the experience of interacting with Aboriginal culture and 'cultural mentors'. In the context of experiential learning, the formal teacher continues to be part of the 'community of practice' as he/she shares the teaching role with the cultural mentors, guiding the student through the experiential learning process.<sup>25</sup> However, the teacher's role changes as he/she takes a 'back seat' to the cultural mentor who provides the cultural context for the learning. By way of example, the cultural mentors for the 2010 pilot project in South Australia, described below, were traditional owners of the two primary areas that the students visit during the study tour, namely Adelaide and the Flinders and Vulkathunha-Gammon Ranges. The cultural mentors for first part of the tour were two Kurna men, both experienced in offering Indigenous cultural education programs at the Warraparinga Living Cultural Centre in Marion, Adelaide. Through these cultural mentors the students learnt about the history of the Indigenous peoples of the region, the impact of past government policies such as the assimilation policy and contemporary issues such as Native title. The cultural mentor for the second part of the tour was Mr Haydyn Bromley, an Adnyamathanha man. Haydyn has received many awards for his cultural tours, including the South Australian Indigenous Tourism award for the past three consecutive years. During this part of the tour the students learnt about the impact of European invasion on the traditional people, Aboriginal land rights, co-management of national parks located on Aboriginal lands and stolen generations. The experiential learning provided by the cultural mentors in turn enhanced the students' use of traditional course materials by making these Indigenous legal issues 'real' and 'personal'.

### *Cross-cultural experiential learning*

A subcategory of experiential learning is 'cross-cultural experiential learning'. Wilson uses this term 'cross-cultural experiential learning' to distinguish mere 'cross-cultural experiences' as the former, but not the latter, necessarily involves that the experience will be reflected upon.<sup>26</sup> Cross-cultural experiential learning shares the general common characteristics of experiential

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<sup>24</sup> See further Susan Weil and Ian McGill, 'A framework for making sense of experiential learning' in Susan Weil and Ian McGill (eds), *Making sense of Experiential Learning* (1989), 3. The real nature of the experience of study tour in turn distinguishes it from simulated experiential learning: Savicki, above n 8, 74.

<sup>25</sup> Quay, above n 22, 109.

<sup>26</sup> Wilson, above n 1, 185.

education.<sup>27</sup> Thus once again the personal nature of the experience is crucial. As Saïd notes, truly learning about another culture requires the opportunity to have uncoercive contact with the other culture through a real interpersonal exchange.<sup>28</sup> However, cross-cultural experiential learning has the specific added feature of immersion in another culture.<sup>29</sup> While such a notion automatically conjures up images of an international experience, and most literature on the topic deals with international study tours, in multicultural nations<sup>30</sup> such as Australia, the experience can be closer to home. Specifically, the survival of Indigenous cultures in Australia allows the experience to occur within Australia.

There are many facets to the rationale for cross-cultural experiential learning for law students. Obviously from that detailed above, the major concern is to promote the personal educational benefits that such experiential learning will provide the students. By placing the legal issues the students study during the semester in a relevant Indigenous factual context, such issues should become more ‘real’ and the learning outcome more meaningful. Cross-cultural experiential learning has also been seen as important to self-development generally.<sup>31</sup> Participants often comment that such experiences are life changing.<sup>32</sup> Again this was borne out by the student outcomes from the 2010 pilot project.

Wilson<sup>33</sup> summarises the studies that have sought to measure the self-developmental benefits of cross-cultural learning experiences and identifies relevant benefits as including the development of the individual person, ‘worldliness’, self-perception and growth in tolerance.<sup>34</sup> Inter-relatedly, studies have shown that cross-cultural experiential learning has made participants more inter-culturally effective.<sup>35</sup> The skills that are developed are known as ‘inter-

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<sup>27</sup> Ibid.

<sup>28</sup> Edward Saïd, *Covering Islam* (1981), 154.

<sup>29</sup> Wilson, above n 1, 185.

<sup>30</sup> Ibid.

<sup>31</sup> Cushner, above n 3, 114.

<sup>32</sup> Kranz et al, above n 3, 103; Savicki, above n 3, xv. In recent years this has led to a body of work on what is known as ‘transformative learning theory’. See for example Savicki, above n 3, chapters 1, 6, 11.

<sup>33</sup> Wilson, above n 1, 189.

<sup>34</sup> See also Grant Cornwell and Eve Stoddard, *Globalizing knowledge: Connecting international and intercultural studies* (1999); Kranz et al, above n 3, 105; Cushner, above n 3, 113; Alan Bird and Joyce Osland, ‘Global competencies: An Introduction’ in Henry Lane, Martha Maznevski, Mark Mendenhall and Jeanne McNett (eds), *Blackwell handbook of global management: A guide to managing complexity* (2004); Kevin Hovland, *Shared futures: Global learning and liberal education* (2006); Savicki, above n 3, chapters 2-3.

<sup>35</sup> See for example Mitchell Hammer et al, ‘Dimensions of Intercultural effectiveness: An exploratory study’ (1978) 2 *International Journal of Intercultural Relations* 382; Frank Hawes and Daniel Kealey, *Canadians in development: an empirical study of adaptation and effectiveness on overseas assignment* (1979); Robbins Hopkins, *Defining and predicting*

cultural competencies'.<sup>36</sup> The inter-cultural skills identified in relevant studies include cross-cultural adaptability, interpersonal communication skills and the ability to establish cross-cultural relationships.<sup>37</sup> Relevantly, the Deakin University graduate attributes include an understanding of cultural context and an awareness of cultural diversity.<sup>38</sup> Such graduate attributes could clearly be promoted through cross-cultural experiential learning.

However, while personal growth is obviously beneficial for students, it has been suggested that it alone cannot provide the rationale for cross-cultural experiential learning.<sup>39</sup> What is crucial in the context of the "The Classroom 'On Country' project" is the nature of the self-development and its impact on students' future role as lawyers. By appreciating that the laws studied as part of their law degrees impact on real people, the students developed an empathy for Indigenous persons and communities. Studies have shown that participants in cross-cultural experiential learning have a greater respect for, and ability to empathise with, the views of persons from other cultures and a greater concern for inequities.<sup>40</sup> Thus cross-cultural experiential learning has been found to have a very positive impact on participants' cultural and racial attitudes.<sup>41</sup> Through self perception and reflection students become more aware of their own culture and how it differs from, in our case, Indigenous culture(s).

Returning to the specific context of the Indigenous study tour, lawyers need to be able to work with clients (and co-workers for that matter) from cultures other than their own, including Indigenous persons and organisations. To do this they need to have the ability to relate to persons of another culture and this is best facilitated by personally experiencing that other culture. Similar conclusions have been drawn in the context of teachers' ability to teach students from other cultures<sup>42</sup> and the consequent benefit of programs in

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*overseas effectiveness for adolescent exchange students* (1981); Batchelder and Warner, above n 12; Darla Deardorff, 'Intercultural Competence' in Savicki, above n 3.

<sup>36</sup> See Darla Deardorff, 'Identification and assessment of intercultural competence as a student outcome of internationalization' (2006) 10(3) *Journal of Studies in International Education* 241; Janet Bennett, 'Transformative training: Designing program for cultural learning' in Michael Moodian (ed), *Contemporary leadership and intercultural competence: Understanding and utilizing cultural diversity to build successful organizations* (2008). See also Cushner, above n 3, 52.

<sup>37</sup> See the reviews undertaken in Wilson, above n 1, 187-189; Bird and Osland, above n 35; Savicki, above n 3, chapters 3-4.

<sup>38</sup> See Deakin University website

<<http://www.deakin.edu.au/current-students/handbooks/2009/introduction/attributes-deakin-graduate.php>>.

<sup>39</sup> Wilson, above n 1, 187.

<sup>40</sup> Kranz et al, above n 3, 104-106; Cushner, above n 3, 52; Bennett, above n 3, 19.

<sup>41</sup> Ibid.

<sup>42</sup> There is a multitude of works on this proposition. See generally, Thomas Landers, 'Cross-cultural experience: A vital component of in-service education' *NASSP Bulletin*, April 1973, 92; Asa Hilliard, 'Restructuring teacher education for multicultural imperatives' in Willim Hunter (ed), *Multicultural education through competency-based teacher education* (1974);



Northern America allowing student teachers to teach in Indian reservations, Latinos and African American communities<sup>43</sup> or overseas (including Australia)<sup>44</sup> or undertake study tours overseas.<sup>45</sup>

## The Study Tour

In working through the educational and logistical issues involved in this project the author was mindful of the potential use of this information for other Australian study tours in the Faculty of Business and Law (and cross-Faculty). To this end, three components of the study tour have been identified that will be combined to comprise the new Indigenous legal issues unit. Each of these components can be offered as a stand-alone study tour. The benefit of such is that one component may be offered as part of the teaching and learning of an existing legal unit. The 2010 pilot project, more fully described below, provided an example of such. Similarly, one component may be included in one of the other existing Australian study tours offered by the Faculty of Business and Law, thereby adding an Indigenous component to such tours.

### *South Australia*

In April 2010 the “The Classroom ‘In Country’ project” was piloted and was confined to the South Australian component. The student numbers were purposely kept small to ensure meaningful interaction with the Indigenous cultural mentors.

Students who undertook the pilot tour were enrolled in ‘MLL327 Property Law’ and/or ‘MLL405 Equity and Trusts’. The six day study tour took place partially during the intra-semester break and part of the following teaching week. During the pilot study tour the students undertook part of their studies for these units ‘on country’. The study tour provided students with an exciting educational opportunity to complement their in-classroom studies while ‘on country’. For ‘MLL327 Property Law’ students the focus was on native title. For ‘MLL327 Property Law’ students, two of the topics suggested for the optional interim assignment related to native title topics addressed in the study

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Steven Arvizu and Margaret Gibson, *Demystifying the concept of culture: Theoretical and Conceptual tools* (1978); Steven Arvizu and Margaret Gibson, *Methodological tools and techniques* (1979); Cushner, above n 3, especially chapters 8-9.

<sup>43</sup> See for example Paul Mohr, *A cross-cultural program for modification of white students on a predominantly black campus* (1975); Harold Harty, *Pre-service teacher’s eye view of pre-student teaching community based experiences in poor minority settings* (1975); James Mahan, *Research and Reflections on immersing mainstream teachers in non-mainstream communities* (1977).

<sup>44</sup> See for example Brad West, *Overseas Student Teaching Programmes* (1980).

<sup>45</sup> See for example Michael Gerber, *Attitude change towards India: The effects of a short-term study abroad program* (1975); Eugene Gilliom, ‘Social Studies teachers and world citizenship: Bridging the credibility gap’ (1971) 22 *The Journal of Teachers* 277. See further the discussions of various overseas study tours in Savicki, above n 3, chapters 8, 9, 11-14, 17.

tour. For *MLL405 Equity and Trusts* students the focus was on the Stolen Generations. For these students one of the topics of the compulsory interim assignment was specifically linked to the study tour. Ultimately the discussions during the study tour were considerably broader, including racial discrimination, constitutional protections (or lack thereof) and the role of international law.

It has been suggested that cross-cultural experiential learning programs should build from introductory aspects, to developmental aspects, to the most intensive.<sup>46</sup> The suggestion is that students move from the level of 'dabbler' (ie trying cuisine from the other culture), to 'student' (ie completing a course of studies on a relevant inter-cultural topic), to 'observer' (ie attending a minority group function such as a film or music function), to 'friend' (ie knowing a student from another culture), to 'participant' (through the immersions into another culture).<sup>47</sup> As detailed below in the context of the South Australian component, the first two days of the 2010 pilot project involved an introduction into Indigenous culture, including art, music and bush tucker. However, as the students have previously studied Indigenous issues as part of their law degree and were, therefore, already at what Wilson calls the 'student' stage<sup>48</sup> such graduated contact was possibly not as important.

The tour began in Adelaide, located on the traditional lands of the Kaurna people. The first afternoon the students participated in informally conducted classes that provided an overview of the legal issues covered in the course of the study tour. This included a guest speaker from the University of Adelaide. During this time students were instructed on Indigenous cultural protocols in preparation for their interaction with the cultural mentors. This was also a good opportunity to find out why the students had chosen to participate in the tour and what they hoped in terms of outcomes.

The second day focused on the history and culture of the Kaurna people. They provide not only an example of a historically semi-sedentary Aboriginal community, but also a strong modern urban Indigenous community. In regard to the latter, the Kaurna people evidence the fact that Indigenous Australians do not all live in the outback, but retain strong connections to their traditional lands within capital cities. The students visited the Warraparinga Living Cultural Centre where they had an introductory lesson in the Kaurna language. Particularly given the importance of language to Indigenous law and culture, an appreciation of Kaurna language adds to the cross-cultural competency goal of the study tour. The morning began with a local Kaurna man entertaining us with a lively exploration into Aboriginal music. Later in the morning a Kaurna Elder took us on a bush tucker tour, explaining the use of various plants as

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<sup>46</sup> Wilson, above n 1, 190. See also Harty, above n 44; Angene Wilson, 'Multicultural experiences, global perspective and teacher education' (1979) 15 *The Teacher Educator* 2, 29.

<sup>47</sup> Wilson *ibid.*

<sup>48</sup> *Ibid.*

food, medicine and tools. The Cultural Centre also includes an interesting time line of Indigenous history in South Australia. This in turn provided our framework for the discussion of Indigenous legal issues such as the impact of the government assimilation policy on the Kaurna people and the struggle for the recognition of native title. Speaking to the Elders about their experiences in successfully claiming native title to the site of, *inter alia*, the Warraparinga Living Cultural Centre and their families' experiences regarding Stolen Generations put a 'face' to these important Indigenous legal issues.

Later that day the students visited the National Aboriginal Cultural Centre and Gallery, 'Tandanya'. The centre includes an extensive display of Aboriginal art, media displays on issues such as the Stolen Generations and interactive live cultural performances.

The study tour then moved to the Flinders and Vulkathunha-Gammon Ranges, the traditional lands of the Adnyamathanha people. As noted above, over the next four days our cultural mentor was Mr Haydyn Bromley. During the tour the students learnt of traditional ways of life and the dreamtime stories ('Yura Muda') as we visited important Adnyamathanha cultural sites in both the central and northern Flinders Ranges. These include the Yourambulla Caves where 30,000 year old cave paintings depict native animals, birds and elements of Adnyamathanha traditional ceremony. Rock engravings dating back over 40,000 years at Sacred Canyon also provided students with unique glimpses of Adnyamathanha traditions and culture.

The focus of our discussions were, however, often contemporary Indigenous legal issues, such as native title, co-management of national parks located on traditional Aboriginal lands, stolen wages and the Stolen Generations. Haydyn was very generous with his knowledge and experience. We often kept him up quite late talking about these issues in the context of the Adnyamathanha people. The traditional ownership of this area is recognised *inter alia* through the State declared Nantawarrina Indigenous Protected Area. The Adnyamathanha people also have co-management authority over the Vulkathunha-Gammon Ranges National Park. On the final day we visited a residence where removed Indigenous children were detained. Haydyn's aunt spoke to us of her time at the Aboriginal Institution and the consequent loss of culture, language and contact with her family. There was not a dry eye amongst us. As one student participant commented, "It was really emotional, you could see it and you could feel it. It was a highlight of the trip".

The goal of the study tour was to make Indigenous legal issues 'real' through the interaction with Indigenous cultural mentors in the course of the 'in country' experience. From the student feedback, it seems the goal was achieved. One student participant has commented that "[s]pending time in the traditional lands of the Adnyamathanha people and listening to the effects of legal issues such as native title, the Stolen Generations and stolen wages on

their people was something that I could never have really understood from reading a textbook.” The study tour put a human face to these legal issues. Another student participant has said the tour was “simply inspiring. This was because of the people [we] got to speak to, the sites we got to visit and the context it gave to every other Indigenous issue you may hear about.”

A further positive by-product of this cross-cultural experiential learning was student self-development, in particular the development of the above discussed “inter-cultural competencies.” Through the discussion of the learning content and, in particular, the interaction with the Indigenous Cultural mentors the students developed inter-cultural skills. As one student described, “it [the experience] has given me the tools to engage in discussions on Indigenous issues” rather than relying of second hand media comment.

### *Northern Territory*

The intention is to pilot the Northern Territory component next year. Again the study tour will be offered to ‘MLL327 Property Law’ and/or ‘MLL405 Equity and Trusts’ students.

There are two components to this aspect of the tour. The first is based in Mparntwe (Alice Springs). Towns like Mparntwe provide an obvious site for Indigenous experiential learning. Demographically, Aboriginal people make up approximately 20 per cent of the population of Mparntwe and surrounds. As noted above, many students have never had any contact with Indigenous persons. In Mparntwe the students will have the visual sensation of being amongst a community that has a high proportion of Aboriginal people. While there are many other Indigenous communities in the Northern Territory that have a higher proportion of Aboriginal peoples, logistically Mparntwe is readily accessible and, as discussed below, there are localised matters that are significant to the discussion of broader key Indigenous legal issues.

The study tour includes a visit to the Mbantu Aboriginal Art gallery/museum. The ever changing collection in the gallery not only affords students an appreciation of Indigenous art, including that of leading Aboriginal artists such as Emily Kame Kngwarreye, but the art itself includes cultural aspects such as dreamtime stories and bush tucker representations. This is complemented by the museum’s informative explanation of the symbols used in Aboriginal art. The museum also includes Aboriginal artefacts and audio-visual presentations on Indigenous ways of life before and after British occupation. It is hoped to coincide the visit to Mbantu with the gallery’s artists in residence program so that the students can meet and discuss with the artists their artwork and contemporary issues in Indigenous art. The visit will thus provide students with an exposure to a particular expression of Indigenous culture, and hopefully will provide another opportunity to interact with Aboriginal people, whether that be artists or museum guides.

Another benefit that Mparntwe affords students' in terms of the cross-cultural experience lies in the fact that Aboriginal languages are commonly heard. In fact, during the author's visit in 2009 English was rarely heard spoken by Aboriginal people. The author discovered that not only are traditional languages 'alive and well' in central Australia, but most Aboriginal people speak two or three Indigenous languages, even if their English is limited. Mparntwe borders the traditional lands of many different Indigenous language groups. As a consequence historically it has been the location where different groups would meet together, as well as being a place through which Indigenous people would pass coming and going from traditional lands. The survival of Aboriginal language in Mparntwe is promoted by the Larapinta Aboriginal primary school, mentioned below. Here classes are conducted in Indigenous languages as well as English. As part of the study tour the students will visit the Larapinta Aboriginal primary school to further experience Aboriginal languages and assist with the English reading classes.

Hearing Aboriginal languages being spoken and visiting the Larapinta Aboriginal primary school puts in context the potential devastating impact of the former Howard Liberal Coalition government's proposal to ban the teaching of Indigenous languages in schools. When many Aboriginal communities in Victoria have lost their language and some, for example the Gunditjmara people, are seeking to revive such, a plan to ban Indigenous languages certainly smacks of past assimilation policies.

The key aspect of this part of this tour is an overnight stay in swags at an Aboriginal outstation 'Angkerle Arrenge', just outside Mparntwe. The outstation is part of the traditional lands of the Arrernte people and recognised as such under the *Northern Territory (Aboriginal Land Rights) Act 1976* (Cth). Our cultural mentor is an Arrente man of Thakerpente Educational Cultural tours. The focus of the students' discussions is Stolen Generations and the Northern Territory Intervention legislation.

The context of the Northern Territory component of the study tour provides an appropriate opportunity to return to the above-discussed differences in the learning experience afforded by experiential learning. Four further personal examples from my time exploring the logistics of this part of the study tour highlight the difference between traditional learning modes and experiential learning and will possibly echo that shared by the students in 2012. A major focus of my Indigenous research since 2003 has been the Stolen Generations in Australia, Canada and United States. Through government reports, case law, articles and archival work I have studied the underlying assimilation policy and learned of the devastating impact it has had on victims and their families. Jungala is a member of the Stolen Generations. He tells of happy days as a child living in a humpy with his family before being taken at the age of six and placed at the now notorious St Mary's Aboriginal Institution. This is the same

Aboriginal Institution where one of the plaintiffs (Mr Gunner) in *Cubillo and Gunner v Commonwealth*<sup>49</sup> was taken and, as was the case with so many other Aboriginal students, abused by the Anglican missionaries. The students study this case in 'MLL405 Equity and Trusts'. Our mentor's partner is also a member of the Stolen Generations. Through my conversations I learned experientially of the impact of the removal policy. She speaks of the difficulty she has had to endure with not being accepted in 'white' society because she is Aboriginal, while also not being considered Aboriginal by some of her own people. She tells of an occasion when she overheard an Elder talking about her in their Indigenous tongue where she was referred to as the "white fella in the corner that cannot be trusted". The hurt caused by not being accepted by either community is clear from her face. Such experiential learning 'puts a face' to the students' study of the Stolen Generations.

A second personal example of experiential learning during this 'logistics visit' in preparation for the 'On Country' subject is equally telling. As noted above, in 'MLL323 Constitutional Law' the students briefly study the Northern Territory Intervention Laws in the context of s 122 *Constitution*. I have closely analysed the legal framework for the Northern Territory Intervention and quickly noted its racially discriminatory nature, being confined to the Aboriginal occupants of 69 Indigenous communities in the Northern Territory.<sup>50</sup> The Act's express exclusion of the *Racial Discrimination Act 1975* (Cth) in section 132(1)-(2)<sup>51</sup> indicates that the Howard Federal Government knew and intended the Act to operate in a racially discriminatory manner against Aboriginal people. Through this analysis I also formed an appreciation of the degree the legislation imposed restrictions on the lives of Aboriginal peoples, but not non-Indigenous people in the same communities. However, during my 2009 visit I learned experientially the racist nature of the Intervention policy by observing government signs restricting Aboriginal consumption of alcohol and movement in and out of Mparntwe. As our mentor commented, "I don't drink alcohol, but I should have the right to have a beer if I wanted to have one." Again, the students' personal observations and discussions with affected Indigenous cultural mentors will make the students' studies of the Intervention more 'real' and personal.

As Mok notes, 'experiential learning is not entirely about the learning of academic subject content.'<sup>52</sup> To this end the student experiences in Mparntwe will not necessarily be confined to the discussions of specific Indigenous legal issues. Undoubtedly, they will also observe examples of racism in the day-to-day treatment of Aboriginal people when compared with non-Indigenous community members. Reflecting again on the above discussion of cross-cultural experiential studies revealing racial inequities, I observed in banks and

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<sup>49</sup> *Cubillo 1* [1999] FCA 518; *Cubillo 2* [2000] FCA 1084; *Cubillo 3* [2001] FCA 1213.

<sup>50</sup> *NTNERA* Sch 1.

<sup>51</sup> See also *FCSIAA* s4(1)-(2); *WPRA* s4(2)-(3).

<sup>52</sup> Above n 7, 60.

shops that Aboriginal people were often treated as second-class citizens. Our mentors were articulate and either employed or conducting their own business, yet experience racism on a day-to-day basis. I invited them to join me for a coffee where I was staying. I was dressed very roughly as we had been out to Angkerle Arrenge looking at the campsite. Yet it was clearly the presence of my two Aboriginal invitees that was frowned upon. In my naivety I had thought that in a community where ‘white’ members would have gone to school with Aboriginal children surely race would be a non-issue. However, I found racism ‘alive and well’ in Mparntwe. This might not be a pleasant outcome of the Indigenous study tour, but as the above-discussed African American study shows,<sup>53</sup> a personal experience of the reality of racism can have a very positive impact on the future racial views and directions of participants.

A third experiential learning experience involves a return to the legal framework for the Northern Territory Intervention. Through my legislative analysis I learned that the ‘Northern Territory Intervention’ included the compulsorily acquisition and management of Indigenous land and communities. My response was to inquire, “if the real reason for the legislation was to ‘protect the children’<sup>54</sup> why did Aboriginal lands have to be compulsorily acquired?” My instinctive response was that this was yet another bid by the former Howard Liberal Coalition government to take Aboriginal land. However, I did not have a factual context for my ‘gut feeling’ until I visited Mparntwe and Angkerle Arrenge. I learned experientially from our mentor why control of Aboriginal lands was included in the intervention legislation. He explained that the existing land boundaries of Mparntwe could not support the increase in the primarily non-Indigenous population of the town. He explained that as the town is built on aqua-ducts, it is not possible from an engineering perspective to build upwards. The only possibility is to build out, through the expansion of the town’s boundaries. The only land that could support that expansion was non-Indigenous pastoral properties or Aboriginal lands. The compulsory acquisition of the former is seen as not being politically viable, so the focus is on the ‘golden mile’ as it is known, the nearby Aboriginal outstations held by their traditional owners pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) or *Native Title Act 1993* (Cth). The discussions gave me a perspective of the legislation that no amount of legal analysis could have provided. It made my understanding of the Act ‘real’. This is the experience the students will share through the study tour.

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<sup>53</sup> See in particular the study undertaken of University of North Florida students in Kranz et al, above n 3. See also Cushner, above n 3,52; Bennett, above n 3, 19.

<sup>54</sup> The Howard government asserted that the legislation was a response to Pat Anderson and Rex Wild, *Ampe Akelyernemane Meke Mekarle “Little Children are Sacred” Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007).

Finally, two further enactments are part of the Northern Territory Intervention package, namely *FCSIAA* and *WPRA*. Through my analysis of the legislation I have appreciated that the general effect of such legislation was to introduce a blanket income management regime that 'quarantined' and restricted the ability of Aboriginal peoples to spend their income/social security payments.<sup>55</sup> However, again I did not have a factual context that would allow me to quantify how paternalistic and restrictive this legislation could truly be before discussing the legislation with our mentor. Our mentor in turn relayed a story of how his sister was invited to represent the Lhere Artepe Aboriginal Corporation in a meeting with the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, in Canberra. Rosie pointed out to the Minister that she hoped the Minister was going to pay for her breakfast as his sister was unable to purchase a meal with the Government issued debit card as the card can only be used in Northern Territory. Again, such stories reveal the real personal impact such legislation has on Aboriginal lives.

Mparntwe and Angkerle Arrenge provide a perfect site for immersion into Indigenous culture, while also providing for experiential learning by putting both past (Stolen Generations) and current (Northern Territory Intervention) government policies into a practical context. The real impact is revealed through interactions with affected Aboriginal people and their families. This will give the students an opportunity to critically assess and form a personal opinion on these issues. Rather than being determined solely by second-hand information, whether that be traditional legal resources or the media, the students will have had at least a limited exposure to the reality of the situation and the people affected by such.

To conclude the Northern Territory component of the study tour the students will travel from Mparntwe to Uluru and Kata Tjuta. The first day includes a visit to the Uluru Cultural Centre. This includes a discussion of issues such as the 1985 granting of the land to the traditional owners under Schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the current joint land management of the National Parks. The students will also undertake a base walk of Uluru, which includes visits to rock art sites and significant dreaming sites. The day is completed with a memorable Uluru sunset. The second day involves an early rise to see the sunrise at Kata Tjuta National Park and a guided walk into Walpa (Olga) Gorge. As these are two very important Aboriginal cultural sites, it is a fitting way to end the experiential learning experience.

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<sup>55</sup> This new scheme replaced the Community Development Employment Scheme ('CDEP').



## Victoria

The final component is the Victorian component and will only be introduced when the new stand-alone 'Indigenous Legal Issues' unit is offered. The reason for the delay in regard to this component is that it is logistically the most difficult part to implement as it would entail the hiring of a mini-bus and driver. This part would largely comprise a loop beginning at Waurn Ponds where Deakin University's Institute of Koori Education is located and ending at either Gariwerd ('Grampians') or Melbourne.

The tour would begin at the Institute of Koori Education where students would meet with local Elders and learn of the Indigenous history of the area. The Geelong region and surrounds are the traditional lands of the Wathaurong peoples. Initially the Institute of Koori Education did not wish to be involved in the project. In essence this was because its focus is teaching Indigenous students, not non-Indigenous students. Subsequent indications have indicated a shift in attitude, now supporting the project.

Upon leaving Waurn Ponds the study tour will travel to Framlingham (near Warrnambool). This Aboriginal community was recognised under land rights legislation (*Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth)) as being the traditional owners of this area. A newly established cultural centre provides a great springboard for the rest of the Victorian study tour as it covers the dreamtime stories and legislative history of not only Framlingham but also all nearby Aboriginal communities. Warrnambool also is a significant historical site in terms of frontier conflicts between traditional peoples and European settlers. Thus it is a key source of information dispelling many myths about Aboriginal people pre-British occupation.

It is also intended to include a visit to the Koori courts while in Warrnambool. In the past Elders have sometimes times been involved in the courts' sentencing stages of relatively minor crimes committed by Indigenous offenders.<sup>56</sup> However, this was *ad hoc* and very much dependent upon the discretion of prosecuting authorities and local magistrates. More recently the process this has been formalised in the creation of Indigenous sentencing<sup>57</sup> courts: 'Nunga Court' in South Australia, 'Murri Courts' in Queensland, 'Aboriginal Community Courts' in Western Australia and 'Koori Courts' in

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<sup>56</sup> Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (2008), 127. See further Richard Bradshaw, 'Community Representation in Criminal Proceedings' (1986) 11 *Legal Services Bulletin* 111.

<sup>57</sup> The offender must have pleaded guilty or been found guilty in previous summary proceedings and must agree to participate in a diversionary program. Thus the issue before the court is purely punishment. The requirement of a guilty plea has been criticised. See Harry Blagg, Neil Morgan, Chris Cunneen and Anna Ferrante, *Systematic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (2004).

Victoria.<sup>58</sup> The Victorian Koori Courts scheme is quite innovative and includes the 'Koori Children's Court' and most recently a 'Koori County Court'. Indigenous courts operate within the framework of the mainstream law. They do not apply Indigenous law. However, these courts conduct proceedings in a less formal manner<sup>59</sup> and incorporate Indigenous culture and values into the proceedings in a bid to lessen the alienation Indigenous people feel from the mainstream criminal justice system.<sup>60</sup> The idea is to make the punishment 'culturally relevant'.<sup>61</sup> Specifically, the Koori Courts have the 'objective of ensuring greater participation of the Aboriginal community in the sentencing process ... through the role to be played in that process by the Aboriginal Elder or respected person and others'.<sup>62</sup> While the magistrate or judge retains ultimate decision-making power, input is provided by an Aboriginal Elder and Koori Justice workers, the latter acting as a link between the court and the Aboriginal community. It is one thing to read about Koori courts in a textbook, but to visually experience the conduct of the courts will highlight the cultural differences underpinning the initiative.

The tour then proceeds to Lake Condah, the traditional lands of the Gunditjmara people. This is a historically significant site, which includes the semi-sedentary settlement of the Gunditjmara people, including stone villages and eel and fishing weirs. It is a legislatively protected heritage site and is currently the subject of an UNESCO application to further recognise the significance of the site. As with Framlingham, it also provides an example of a pre-*Mabo* recognition of land rights and the subsequent successful negotiation of a Native Title claim under the *Native Title Act 1993* (Cth). The Gunditjmara cultural mentors will take the students through a tailored cultural program that begins with their dreamtime stories, through to modern day land management issues.

The students then travel to Gariwerd ('Grampians') National Park. These were the traditional lands of the Jarwadjali, but the current Indigenous custodians are the local Native title groups including the Gunditjmara people. The students will visit the caves where Jarwadjali historically lived which again include

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<sup>58</sup> The Northern Territory 'Community Courts' are based on this model but are open to all persons, not just Indigenous persons: Blagg, above n 48, 127.

<sup>59</sup> Parties, including the magistrate/judge, sit at eye-level to each other and physical barriers within the court are minimised by, for example, replacing the normal court layout with a round table seating format.

<sup>60</sup> *Ibid.*, 127-132.

<sup>61</sup> Doug Dick, 'Certain Sentencing of Aboriginal Offenders: Victims Have a Say' (2004) 7 *Judicial Review* 57, 60. See further Mark Harris, 'From Australian Courts to Aboriginal Courts in Australia – Bridging the Gap?' (2004) 16(1) *Current Issues in Criminal Justice* 26; Elena Marchetti and Kathleen Daley, 'Indigenous Courts and Justice Practices in Australia' *Trends and Issues in Criminal Justice* (2004); Elena Marchetti and Kathleen Daley, 'Indigenous Sentencing Courts: Towards a Theoretical Jurisprudential Model' (2007) 29(3) *Sydney Law Review* 415.

<sup>62</sup> *Koori Court Act 2002*, s 1.

heritage protected rock art. The Brambuk Aboriginal Cultural centre provides an excellent cultural program about local Indigenous history and contemporary issues. Brambuk now offers on-site accommodation. The manager's family are members of the Stolen Generations and again he is quite willing to share his family's experiences with students during overnight stays. Again, this brings a 'face' to the students' legal studies.

Melbourne brings to a conclusion to the cultural loop. Melbourne includes the traditional lands of the Wurundjeri peoples. The Wurundjeri Tribe Land Compensation Cultural Heritage Council is legislatively recognised as having responsibility for Indigenous cultural heritage in the area. Wurundjeri Elders conduct a highly informative Aboriginal heritage walk in the Melbourne botanical gardens. This tour will be modified for the law students and thus in addition to an interesting bush tucker tour, the Indigenous cultural mentor will talk about dispossession and stolen generation issues. The Victorian museum also houses an excellent Aboriginal educational centre, the Bunjilaka cultural centre. The museum provides a variety of educational packages that include discussions of both historical and contemporary Indigenous issues. Through the cultural loop students will be immersed in Indigenous history and culture, while again their native title and Stolen Generations studies will be put in a 'real' and personal context.

## Conclusion

As Wilson states, '[i]f the rationale [for cross-cultural experiential learning] is convincing, all that remains is to suggest how [it] can be incorporated into [legal] education, realising that the doing, rather than suggesting, is the really daunting task.'<sup>63</sup> S/he suggests that the 'perceptions, problems, and possible goals are thus laid out. Again, the 'doing' is the difficult task.'<sup>64</sup> While admittedly the 'doing' is both potentially 'difficult' and 'daunting', through the support of the Faculty of Business and Law at Deakin University the author has been given the opportunity to delve into a previously unexplored manner to teach Indigenous legal issues.

It has been an incredibly time consuming project. Ultimately, however, the outcomes for the students justify the effort that has gone into the "The Classroom 'In Country' project". The look on students' faces when it all starts to 'twig' is priceless! Personally, the project has been very rewarding, providing an opportunity to liaise more closely with wonderful Indigenous educators and Elders. Nearly all Indigenous groups that were approached were extremely positive in supporting the project. That some were hesitant is, for course understandable. The project is founded an ongoing relationship with the cultural mentors and their communities and it has been terrific that already it has become a two-way stream of giving.

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<sup>63</sup> Wilson, above n 1, 190.

<sup>64</sup> Ibid.