LAW AND RELIGION: TOWARDS A MORE INCLUSIVE LEGAL EDUCATION

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Abstract

In mid-1999 Law School at the University of Western Australia commenced its Incorporating Issues of Law and Religious Diversity into Legal Education project. With the aid of financial grants from the Australian Commonwealth Department of Immigration and Multicultural Affairs’ Living in Harmony initiative and from the University of Western Australia’s Achieving Diversity & Inclusivity in Teaching & Learning project, the law school project set out to: research of issues of law and religion; identify and consider any similar courses taught overseas; identify, consult and involve other faculties, the legal and judicial professions and interested community organisations; and set up communication channels and a forum for ongoing interaction and dialogue between the university, religious communities, the legal profession and the courts. The project’s focal point is Law and Religion, an elective unit offered for the first time in semester one, 2000.

This paper deals with a number of issues flowing from the project’s implementation and the introduction of the unit. It focuses on the challenges and benefits of interdisciplinary and community partnerships. It also discusses the selection of the most appropriate methods of
teaching, assessment, student feedback and evaluation techniques. The placement of students with legal, religious, public and other community organisations is also discussed. Finally, this paper presents an interim evaluation of the project in terms of it meeting its stated objectives to: address issues of law and religious diversity in an inter-disciplinary setting, challenge and begin to redress the manner in which issues of religion have traditionally been addressed in law schools, promote inclusivity and diversity and accommodate religious minority students, promote a more aware and representative legal profession and judiciary, facilitate community input, and make legal institutions aware of legal issues confronting religious communities.

Introduction
In mid-1999 the University of Western Australia’s Law School embarked on a project to incorporate issues of religious diversity and inclusivity into its LLB teaching programme. The project aimed to introduce students to issues of religious diversity and the tensions between those issues and the law. It also sought to establish a forum for the discussion of issues of religious diversity and channels of communication between students, academics and local communities. The pursuit of these rather lofty aims was made possible by funding grants from the Department of Immigration and Multicultural Affairs (DIMA) (as part of its Living in Harmony initiative) and from UWA’s own *Achieving Diversity & Inclusivity in Teaching & Learning* project. The focus of the project was a semester unit called ‘Law and Religion’ which Daniel Stepniak proposed and added to the Law School’s elective offerings in 1998 and for the development of which he successfully sought the above
mentioned funding. The ‘Law and Religion’ unit was offered to undergraduate, as well as graduate law students, for the first time in first semester, 2000.

The funding facilitated the appointment of Megan Warner, a former law lecturer and postgraduate theology student, as project officer and researcher and enabled the project team to investigate some unconventional approaches to the development, delivery and evaluation of the unit. Central to these investigations was our goal to actively involve academics from a wide range of disciplines, and members of local religious and legal communities, at all stages of the project. For this reason a committee consisting of a dozen representatives of these groups was set up to oversee the planning and development of the unit. Similarly all classes involved guest presenters, virtually none of whom, were legal academics. Students were also presented with opportunities to complete their assessment tasks through placements with relevant community organisations, and to meet and chat informally with guest presenters at social occasions away from the classroom.

This paper outlines, discusses and evaluates the methods and strategies employed in this project. The model described here is not an easy one to emulate without access to significant resources and, in all probability, nobody would wish to try and replicate the UWA project in its entirety. Certainly, we would do some things a little differently were we to embark on this project again. Nevertheless, the significant degree of excitement which the project and the unit generated within the Law School, the University, and in certain parts of the local community, and the findings of our evaluation lead us to conclude that it
was a most valuable and worthwhile undertaking.

**Why ‘Law and Religion’?**

This project began its life as an inclination to do something a little new in the teaching of diversity issues. While the teaching of diversity issues within the law curriculum is of itself, of course, nothing new (Dannin, 1999; Mertz, Njogu, & Gooding, 1998; Davies, 1995; Dominguez, 1994), we were unable to find a unit of study in any Australian law school focusing exclusively on issues of law and religion. As race and gender are the most common focal points of Law School units dealing with diversity, courses which touch on the law’s treatment of religious diversity tend to do so in the context of a more general survey. In our view, issues of religious belief and practice not only relate to a fundamental human right, but are capable of causing just as much division and discrimination as either race or gender, and thus seems to be equally deserving of independent treatment.

The relative lack of interest in addressing religion and religious diversity within Australian law schools may reflect the secular nature of our general community. It also reflects the perception of the relationship between law and religion, which dominates our law schools, and the backgrounds of most law students and faculty members.

The body of students studying law at the University of Western Australia and at other Australia universities appears to be dominated by those of mainstream Christian
backgrounds (Weisbrot, 1990-1). This is significant in that for a great majority of our law students, law and its relationship with religion is considered (either consciously or subconsciously) from a mainstream Christian vantage-point.

On those rare occasions when issues of religion are addressed in law schools, the law as presented to law students, and as practised, purports to be neutral and not to prefer or favour one religion over another. Thus, while the law’s ‘objectivity’ has been challenged with respect to issues such as race and gender, the law’s ostensible secularity and section116 of the Australian constitution tends to reinforce a perception that all religions are equal before our law.

Law students from religious minority backgrounds find themselves under great pressure to assimilate and to adopt the values of the dominant sector in order to succeed. This pressure to conform is underpinned by the largely unrepresentative composition of the legal and judicial professions, the law’s reliance on precedent and law schools’ own portrayal of the relationship between law and religion.

We felt, and remain convinced, that the law school curriculum needs to promote awareness and understanding of religious diversity, if it is to: accommodate students of diverse religious backgrounds (Mertz et al., 1998), enable such students to resist pressures to assimilate, promote a legal tradition better able to respond to a religiously-diverse society, and promote the attainment of a legal profession and judiciary suited to, and reflective of,
multicultural and multi-faith Australian society.

For these reasons, our implicit objectives were to raise law students’ awareness of religious diversity, and to create an inclusive learning environment in which all students, regardless of religious or cultural background, could feel confident in their ability to contribute to a dialogue about law and its treatment of religious diversity. The principle way in which these implicit objectives were addressed was through the involvement of people of diverse religious backgrounds, and with expertise in a range of academic fields.

**Development of the Unit**

We began the project by assembling a project Steering Committee to contribute to and oversee the planning and development of the unit of study and the broader project. Having invited numerous organisations to participate, the final composition of the Steering Committee determined itself, on the basis of responses to our invitations to participate. Some mainstream churches and organisations either failed to respond, showed little enthusiasm for participation, or in the case of one church group withdrew after ascertaining that the involvement sought was other than an invitation to proselytise. Nevertheless, the resulting composition was, we felt, sufficiently diverse and representative to ensure that the content of the unit dealt with issues of relevance to a wide sector of society.

Le Brun and Scull (2000) are of the opinion that the benefits of involving students and non-
legal academics in the conceptualisation and development of learning projects have yet to be tapped in Australian law schools. We found the development of a new unit by our interdisciplinary group to be a valuable, yet somewhat challenging, exercise. We are certain that both the direction and content of the unit were significantly enriched by the process. The challenges of seeking to develop an interdisciplinary unit surfaced through philosophical differences and rivalries between disciplines. Thus for example, it proved challenging to incorporate both indigenous and anthropological perspectives. Early meetings, at which steering committee members’ views were sought as to the most appropriate structure and order of topics, not surprisingly also revealed competing and incompatible views as to the relative importance of various perspectives. Resigned to not being able to agree, the steering committee invited Daniel Stepniak as project co-ordinator to make the final decisions. Having gained the input from other disciplines that we had sought, we were pleased to have the steering committee recognise that the course structure could not please all concerned. Endeavouring to retain the enthusiasm and interest of everyone also called for some sensitive negotiations and led to the course structure being finalised only days before the start of the semester. Even after the course commenced, one of the more prominent academics involved withdrew from the project when he declared himself unwilling to adapt his presentation to fit in with the adopted structure.

**Delivery of the Unit**

*Guest Presenters – the Theory*
In keeping with the project’s objectives to promote awareness of religious diversity and to create an inclusive learning environment, we made an early decision that ‘Law and Religion’ should revolve around the presentations of invited guests. We did so, both to avoid the dangers inherent in presuming to speak on behalf of religious groups of which we were not members, and to expose students to the rich diversity of authoritative voices (Rhodes-Little, 2000). The unit staff’s input in the classes themselves was limited to brief introductions to themes and speakers, votes of thanks and ‘housekeeping’ (of which there was a fair amount). We also decided, in agreement with the Steering Committee, to avoid an organisational structure in which classes would focus on a different religion or faith tradition. Rather, the unit was structured around a number of sequential themes. Guest speakers were invited to address themes of law and religion of significance within their own faith tradition, or field of expertise.

The decision to structure the delivery of the course around guest presentations raised a number of issues. The first was the need to reach some balance between the number of speakers available, the amount of ‘material to be covered’, and the class time available. We made a conscious decision to involve a large number of guests and to present a wider spectrum of views at the expense of classroom discussion. Consequently, the teaching methods employed were largely lectures with varying levels of student interaction, followed by less formal discussion and one or two smaller group workshops.

The second issue was that, even with the best preparation, it was not possible to know
beforehand exactly what a guest was likely to say and whether it would be strictly relevant to the topic under discussion. There were one or two occasions on which the presentation actually given did not seem to correspond with what had been foreshadowed, and may not have been ideally suited to the particular class. However, we were far more often pleasantly rather than unpleasantly surprised. The lack of strict control over class content was more than adequately compensated for, we believe, by the richness of the views and experiences recounted, by the enthusiasm generated by the sometimes exotic array of speakers, and by the inclusivity thereby promoted. The inclusion of representatives of minorities in the classroom, we believe, contributed to a visible increased willingness of students to openly discuss their belief systems within and outside of the classroom. We seriously doubt whether ‘neutral’ academic presentations would be as capable of promoting such inclusivity.

Thirdly, the appropriateness and value of guest speakers drawn from the community was questioned by at least one participating academic who considered such presentations unscholarly. The perceived value of allowing our students to hear the voices of different perspectives caused us not to be dissuaded from our plan to use ‘non academic’ speakers. The reservations merely made us more aware of the need to ensure that required reading supplemented any shortcomings in scholarly analysis. The academic who questioned this approach was speaking within a strong and current debate. On the one hand, there have been warnings against tokenism and against attempts to give visibility to forms of difference through “a simplistic parade of different ‘voices’”, on the grounds that this
reinforces reified concepts of culture and fails to recognise diversity within communities (O’Donnell, 1996). On the other, it is argued that exposure to a diversity of voices is central to education practice:

Since we know that no one has a “purchase” on reality – that our world is made up of a cacophony of voices – we believe that we as law teachers must ensure that our students understand that the knowledge, skills, attitudes and beliefs that are transmitted in law schools are only perspectives on social life and law. As a result, in our opinion, our job as teachers of law is to expose our students to various theories so that they are better placed to select and adapt what they learn to construct their own legal world view. (Le Brun & Johnstone, 1994, p. 394)

Rhodes-Little (2000) tackles the more difficult aspects of this debate. She suggests that as diverse voices come to be more commonly heard in classrooms, scholars and professionals, used to seeing themselves as “the best and most caring and unbiased representers of what happens, what law ‘is’ and who the underprivileged ‘are’” begin to panic. As different representations begin to take up the class time previously occupied by ‘experts’, allegations of trickery and bias arise. Rhodes-Little exhorts us to remain undeterred, privilege the edge-knowledge and resist the temptation to succumb to a black letter law approach:

…if occasionally a student hearing an ‘unofficial’ account of what happens, asks the question: ‘What about the other side of the story?’, her question, although suggesting multiple sides, remains a variation of the colonial and
patriarchal assertion found in modern libraries – there is only one true story
or representation and only one kind of person fit to produce it. (p. 286)

This very question was asked, forcefully and eloquently, by a student in one of our later
classes. Indeed, questions about the people who had been invited to make presentations,
and whether their voices had been appropriately ‘balanced’ or ‘countered’, were never far
from the surface. This particular student was expressing concern in a class in which four
presenters had been invited to speak. The class was dealing with the impact of religious
belief and practice, and attendant legal provisions, on the interests of children (particularly
in relation to medical treatment). Two of the speakers were Jehovah’s Witnesses, prominent
legal and medical practitioners respectively, the third was a member of the UWA Law
Faculty and the fourth was an ethicist from the UWA Department of Social Work and
Social Policy. The latter two, although asked to speak to specific subjects within their own
fields, had been invited to reply to the paper presented by the first two speakers, which had
dealt largely with the issues of blood transfusions and bloodless surgery. Both of them
expressed their admiration for the paper’s comprehensiveness and even-handed
scholarship. The student’s question made it clear that she considered that we ought to have
invited a speaker who would ‘balance’ the representations of the Jehovah’s Witnesses
speakers and ‘give the other side’. She suggested that the absence of such a balancing point
of view was un-academic and deprived her of the opportunity to be critical of the paper in
an informed way. On one view, this student’s complaint was valid. She had been presented
with only one ‘side’ of a story. (Although, to be fair, the ‘other side’ was expressed fairly
clearly in newspaper cuttings which the two Jehovah’s Witnesses speakers referred to and
distributed.) On the other hand, her complaint implied that the whole story would not
emerge unless some academic had responded to the paper in a way which matched her own
pre-conceptions and which corresponded to the type of suspicion, or even ridicule, that she
was used to seeing directed at Jehovah’s Witnesses and their beliefs in the media. As
Rhodes-Little (2000) suggests, the student’s question implied that there was only one
authoritative voice and that it had not been heard.

*Guest Speakers – the Practice*

Consistent feedback from students suggested that in their view the use of guest presenters
was one of the best, if not the best, aspects of the unit. However student opinion was
divided on the question of balance between speakers, content and class-time. Some felt that
the unit would have been diminished by the loss of any of the speakers. Others felt that
there had been too many speakers and that this had resulted in inadequate depth of coverage
of material and inadequate opportunity for class discussion. Critical students offered a
range of solutions. Some recommended fewer speakers and reduced content while others
favoured increasing class time (from two to three or four hours per week) to allow for
greater opportunity for discussion. Several students suggested that the value of the guests
available and the sheer volume of relevant issues meant that the class should be taught over
a year rather than a semester.

Ideally we would like to retain the participation of a large number of guests in future years,
but to increase the class time to allow for discussion and to ensure that each speaker is offered adequate time to make his or her presentation. On a number of occasions the shortness of class time became an issue – sometimes embarrassingly so. One student commented that the constant watching of the clock became stressful. Doubling the class time to four hours a week may have been beneficial in enabling topics to be introduced and dealt with broadly prior to the involvement of guest presenters, and may also have permitted a fuller exploration of some of the issues raised.

A number of students commented on what they perceived to be an unevenness in the quality and relevance of the guest presentations. However, none seemed to see this as a major problem. One student sagely commented in this context that as the unit was new it would be interesting to watch how it matured.

None of the students interviewed indicated that they felt that the involvement of guest presenters who were not lawyers had compromised the academic standing of the unit. Most indicated that they had found the range of voices helpful and instrumental in altering their perceptions:

I think it [the guest lectures] is a very refreshing change. Law studies tend to centre around a few lecturers who talk about the law alone. These are authentic people out there with no knowledge of the law, just knowledge of their own religion. To try and bring that into the legal aspect, the legal realm, it was really a great change.

(student)
…it is not a lecturer saying about what a group thinks but a representative coming to try and present their perspective. It is more credible to me to listen to that than to someone speaking about someone else. … (student)

It has opened my eyes. (2 students)

Extra-Curricular Activities – the Theory

Another feature of the unit was the number of activities conducted outside the classroom. The last class was held in the ceremonial courtroom of the Supreme Court where students were the guests of a Supreme Court Justice. One of the students was invited by the judge to stand in the dock and take the oath. The student’s face clearly showed that the experience had had a far greater impact upon him than any learned article could have achieved!

Students were also invited to attend film screenings, workshops, the project launch and a final celebratory dinner. At many of these events students had the opportunity to talk informally with guest presenters from earlier classes. In future years we will try to retain these ‘extra-curricular’ events and regret not being able to implement some of our other plans and ideas for class ‘excursions’.

Extra-Curricular Activities – the Practice

No students commented directly on these extra activities, although two specifically mentioned the insight they had gained into problems encountered by the judiciary in relation
to religious diversity. Among the many issues covered, it was perhaps the experience of being in court that led to this issue having had such a strong impact upon the students.

*Assessment – the Theory*

The challenge in selecting the most appropriate assessment methods was to ensure that students were able to research areas of specific interest and yet remain motivated to attend and participate in classes dealing with a wide range of issues. The method chosen to encourage attendance and participation was to ask students to write one-page class notes for any 10 of the 13, two-hour classes. Such notes were to contain students’ reflections on the relationship between the week’s readings and the presentations of guest speakers. Students were asked to identify two of the ten notes for additional evaluation, as potential introductions to the publication of lecture transcripts. Attendance rates, classroom participation and informal feedback suggested that the ‘class notes’ form of assessment was well received and successful in achieving its objectives.

Approximately a dozen students took up the opportunity to be placed with a religious or community organisation as part of their assessment for the course. With a little over 20% of students completing a placement, this form of assessment was clearly a popular one. Students who elected to undertake this form of assessment in place of an individual research paper (each worth 80% of the assessment for the unit) worked closely with a placement organisation during the semester; undertaking research or other law and religion related tasks for the organisation. Some of the placement organisations were identified by
staff, while others were approached directly by students. The former included the WA Police Department, Aboriginal Legal Service, Multicultural Access Unit of the WA Health Department, Awareness Cambodia and the Northern Suburbs Migrant Resource Centre, while amongst the latter were the Yamatiji Land and Sea Council, the Catholic Migrant Centre and the Meekatharra Aboriginal Community Legal Centre.

**Assessment – the Practice**

In contrast to informal feedback obtained during the running of the unit, formal student feedback obtained following the completion of the unit was divided as to the value of class-notes as a form of assessment. In response to a questionnaire, some indicated that they had enjoyed the opportunity for reflection on the classes and the set reading that the class-notes offered. While those not in favour of this method of assessment (and none of the twenty students interviewed were strongly in favour) were vocal in their criticisms, the gentlest of which was that the 20% allocated to the notes was far too small to reflect the amount of work involved. Others found the exercise a waste of time – a mere call to “clean up and hand in my lecture notes”. This latter attitude appeared to be verified by many of the notes submitted, which bore little evidence of integrative reflection.

Reconciling the case notes positive contribution to class attendance and participation with its at least partial failure as a vehicle for the promotion of reflection, has led us to consider a number of alternatives, such as: increasing the percentage of assessment devoted to the notes, requiring the submission of fewer notes, changing the name of the notes to
reflection papers’, and requiring the notes to be submitted weekly, rather than at the end of the semester.

In sharp (and welcome) contrast there was no division of student opinion about the value of placements. All those interviewed indicated that their placement experience had been a highlight:

Work-placement: very interesting, surprisingly enough I was working in an area that I thought I would be familiar with, I was working at the Aboriginal Legal Service but understanding the diversity even within my own culture was something like “wow”. (student)

I think it [placement] is a brilliant idea. I really do. I just learnt so much more from working than I did from research. I mean research certainly has its place but you really do a lot of it at university. And you get to this end of your degree and I suppose most of the preparation you do would be in the form of clerkships – to work you know in a commercial law firm. And it is not that you necessarily don’t want to work in alternative areas of work that you haven’t been exposed to. And this is an opportunity where you lose nothing, you still get credit for the unit. It is not like you have to take months off your holiday to volunteer work or something like that. And it really changes your mind about these things. I mean before I started work here I had never really entertained the idea of a career in indigenous law, but now I am sure that is what I want to do. I mean these things have a really big effect.
Even though all students reported having had very positive experiences and some even obtained employment with their placement agencies, we would envisage making some changes before offering this option again. We discovered that proper organisation and supervision of student placements is extremely time-consuming. In allocating time and resources to the various aspects of the project, we acknowledge that we devoted less attention to the placement students and hosts than they deserved. To undertake this exercise well it is clearly important to be able to spend significant and sufficient time monitoring the placements in order to ensure that the experience is valuable and positive for each.

Feedback pointed us to the need to provide placement agencies with clearly defined desired outcomes. Our experience also reinforced the importance of providing some diversity training to students before their placements began, to ensure that students were prepared for the types of issues they could encounter. One placement agency withdrew during the semester, having decided that the research task they had set the student was, on reflection, too politically sensitive. This underlined the fact that additional care needs to be taken to ensure that placement agencies have thought through the ramifications of involving students in research projects.

We have little doubt that despite the work involved, student placements provide students with a unique education experience and opportunities to make a positive contribution in their community (Coss, 1992-3; Maher, 1990; Brayne, 2000). They also offer community
organisations an opportunity to become involved in education. All of those placement agencies surveyed indicated that participation in the project had enabled them to raise issues of concern.

**Evaluation of the Unit**

The availability of funds enabled this project to be evaluated objectively and professionally, with Dr Elizabeth Santhanam, a Research Fellow at the University’s Evaluation of Teaching Unit, advising on forms of evaluation and conducting a formal evaluation of the unit. Questionnaires were distributed to each of the guest presenters, to the placement agencies and to the students. In addition, Dr Santhanam attended the final Celebration Dinner where she spoke informally with students, presenters, placement hosts and other guests from Perth's religious and legal communities about their experiences of the unit and interviewed volunteers. Ten female and ten male students were interviewed. The feedback gained in these ways was subsequently compiled and incorporated in a report. The report detailing results of the student interviews was particularly helpful as the responses were of greater length and depth than likely to be elicited in response to a questionnaire.

The responses were generally positive, some glowingly so. It was most rewarding to receive notes of thanks and appreciation from some students, presenters and placement supervisors. Responses received suggest that:

The unit had achieved most of its stated objectives;

Most students had chosen to enrol in the unit because of interest;
Although they enjoyed the unit, not all students were of the opinion that what they had learned in this unit would be of use in their future careers; and that Some students felt the unit should be made compulsory for all law students, while others thought it should remain optional.

Other noteworthy responses from guest presenters and placement hosts included the following:

The project has the potential to foster a better understanding and respect amongst the legal fraternity for the ever increasing multi-cultural and multi-faith population within the community. This is to be applauded.

I found it enormously lively and enjoyable …

An excellent idea to bring together a multidisciplinary forum.

A fantastic project which has had an enormous impact on the quality of teaching and learning at UWA.

The course should be compulsory for all students in preparing them to work both locally and globally in a culturally diverse world.

The most prevalent concern of the presenters and placement agencies which responded to
questionnaires was that the project’s value may be short-lived. For example, when asked whether the project was likely to lead to law reform more than half the respondents either answered ‘no’ or gave highly qualified answers. Despite the involvement of members of the judiciary and other members of the legal profession, it was generally felt that a one-off unit of study would be unlikely to influence law making in a practical sense. The suggestion which came through from the responses most strongly was that the project, and particularly the unit, be repeated. Only with a sustained program of academic and community co-operation in this area, it was felt, was there any chance of significant change.

It is certainly our intention and hope that the unit will become a regular offering at UWA. Without renewed funding sources, however, presentation of the unit in a manner which makes as much use of teaching partnerships as we enjoyed first time around will become more difficult. It may be, for example, that our ability to make contact with new partners will be compromised. However, we remain confident that many, if not most of those involved with the project to date, will retain the enthusiasm to be involved in future years.

**Conclusion**

Much of the feedback we received married well with our own perceptions of the unit and project. We felt that we had succeeded in raising students’ awareness of issues of religious diversity and in creating an inclusive teaching environment. We could see that we had raised the profile of religion, per se, within the Law School, as religious faith and practice appeared to become an accepted and frequent subject of conversation in the law school’s
courtyard. It was also encouraging to hear several of the guest presenters note in the unit report that some of their own views had changed as a result of participating in the unit.

The project continues on several fronts. We hope to publish the presentations made during the unit as a collection of essays. The Steering Committee has been expanded and has become a public discussion group, meeting informally every couple of months to discuss issues of law and religion. In these ways we hope to continue community involvement in the project and to keep new channels of dialogue open.

This paper has focused on one teaching experience at one law school. We do hope, however, that it will prompt some interest in law and religion as a field of cross-discipline academic inquiry in Australia and that the success of some of our innovations will give others the confidence to attempt their own experiments in seeking a more diverse and inclusive legal education through learning endeavours shared with those from outside their own discipline. In closing, we would like to express our sincere gratitude to the wonderfully generous and inspiring people who participated in this learning endeavour with us.

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