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UNDERSTANDING SOCIAL *and* LEGAL JUSTICE ISSUES *for* ABORIGINAL WOMEN *within the* CONTEXT *of an* INDIGENOUS AUSTRALIAN STUDIES CLASSROOM: *a* PROBLEM-BASED LEARNING APPROACH

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■ Abstract

Problem-based learning (PBL) is a pedagogical approach in which students encounter a problem and systematically set about finding ways to understand the problem through dialogue and research. PBL is an active process where students take responsibility for their learning by asking their own questions about the problem and in this paper we explore the potential of PBL as a "location of possibility" (hooks, 1994, p. 207) for an engaged, dialogic, reflective and critical classroom. Our discussion centres on a course called ABTS2010 Aboriginal Women, taught by the Aboriginal and Torres Strait Islander Studies Unit at the University of Queensland where PBL is used frequently, and a specific PBL package entitled *Kina v R* aimed at exploring social and legal justice issues for Indigenous Australian women. From both a historical and contemporary perspective, we consider the types of understandings made possible about justice for Aboriginal and Torres Strait Islander women for students in the course through the use of a PBL approach.

■ Introduction

What is social and legal justice? What does it mean for Indigenous Australian peoples and, more specifically, Aboriginal women? How can we effectively teach and learn about social and legal justice issues in the context of Australian higher education? In this paper we discuss the understandings made possible of social and legal justice for Aboriginal women through a problem-based learning (PBL) analysis of *Kina v R* (Kina in Robson, 1994, p. 41) in an Indigenous Australian studies classroom at the University of Queensland. These are framed within our reflections on what Kina's case can teach us about definitions of justice, the marginalised position of Indigenous women within the Australian legal system, the dominance of Western constructions of justice and Indigeneity, and the continued silencing and exclusion of Indigenous Australian voices from processes of legal and social justice for themselves and their communities.

■ The educational context

The educational context is a course called ABTS2010 *Aboriginal Women* taught through the Aboriginal and Torres Strait Islander Studies Unit at the University of Queensland. Developed in 1995 as an interdisciplinary course, the aim of this subject is to promote, through academic research and discussion, recognition and understanding of the social, political and cultural roles of Aboriginal women in contemporary Aboriginal and mainstream societies. The course is offered through the Bachelor of Arts program; can be credited towards majors in Aboriginal and Torres Strait Islander studies, Anthropology and Women's studies; and is taken as an elective course by students enrolled in other degree programs.

This course actively addresses the literal absence of Aboriginal women from much mainstream teaching, research and discourse and aims to provide a space to allow a diversity of Indigenous women's voices to make the journey into, within, and at times against the

academy. Through lectures and tutorials both students and lecturers explore historical and contemporary issues identified as relevant by Aboriginal women. A major theme running through this course is to compare, contrast and critically analyse mainstream representations of Aboriginal women with the words and knowledges of Aboriginal women themselves. In this way a space is created for Aboriginal women's voices to be heard, have authority and enter into a dialogue with our own, and where possible and appropriate, guest lectures are presented by Aboriginal women.

Hence the learning objectives of this course are to:

- recognise and understand the social, historical, political and cultural roles of Aboriginal women in contemporary Aboriginal and mainstream societies;
- understand the similarities and differences between the perspectives and life experiences of Aboriginal women and others;
- understand the impact of colonialism on the experiences of Aboriginal women historically and in contemporary contexts, and consider your own positioning in relation to this; and,
- interpret, critically analyse and reflect upon discourses about and by Aboriginal women with reference to social, historical, political and cultural contexts.

■ What is, what role and why PBL?

A large component of the course content is facilitated through the use of PBL. In its broadest sense, PBL can be defined as a "method of learning in which the learners first encounter a problem, followed by a systematic, student-centred enquiry process" (Schwartz et al., 2001, p. 2). Often linked to the work of social constructionist pioneer John Dewey (Margetson, 1997, p. 39; Savin-Baden, 2000, pp. 88-89), PBL as we know it today was first implemented in health science and medical education curricula in Canada in the late 1960s (Schwartz et al., 2001, p. 2). Commonly adapted and used in the course content of natural sciences (e.g., engineering, mathematics) and professional degrees (e.g., business, law, social work, education), PBL courses and curricula are now reportedly found all over the world, including Australia (Schwartz et al., 2001, p. 2). Developed out of research that demonstrates that adult learners understand material better and retain it for longer if they engage with it actively, the popular appeal of problem-based learning is not surprising.

Active engagement usually entails the student taking on the responsibility to work through some real-life problem or near to real-life situation. The student has to decide what the situation is, what they need to know to understand and work through this situation to the stated goal, and then take on the responsibility of doing what is necessary to reach that goal. Described by Savin-Baden as a "student centred" approach to pedagogy, she explains that PBL offers students opportunities to "explore a wide

range of information, to link the learning with their own needs as learners and to develop independence in enquiry" (2000, p. 3). An essential feature of the PBL approach is that students work in small groups with a lecturer or a tutor who acts as a facilitator of discussions and learning (Schwartz et al., 2001, p. 2). In many ways PBL group work enables the class to build a "community" of learners, joined by a shared commitment and desire to know, which hooks maintains is essential to create a climate where openness, intellectual rigor and personal transformation can happen (hooks, 1994, p. 40).

PBL then does not allow students to remain passive participants in a classroom and in practical terms what this means for many ABTS2010 students is a way of working that they may not have encountered at university before. For example, the course typically begins with a PBL package focusing on the "Hindmarsh Island Bridge Affair", exploring a claim to land of sacred significance by a group of Ngarrindjeri women (see Bell, 1998) whose beliefs were declared by the media (see Kenny, 1996; Muir, 1996), anthropology (see Fergie, 1996), and a Royal Commission (see Langton, 1996; Ryan, 1996) to be a "fabrication". This package raises big issues about representation and discourse, whose knowledge is valued and has power, and how the dominant system controls and constructs only certain aspects of Aboriginal knowledges, experiences and culture as legitimate according to its own social, political and cultural agenda for maintaining power and authority. For many students both the topic and the teaching approach are unknown territory and it is not unusual for them to initially experience enormous resentment, conflict and resistance to the shift in emphasis and responsibility from the lecturer or faculty member as expert to a classroom which "acknowledges both teachers *and* students as creators and holders of knowledge" (Ross & Hurlbert, 2004, p. 81, my emphasis). After all, as hooks reminds us, we should expect that "students who have had a more conventional education would be threatened by and even resist teaching practices which insist that students participate in education and not be passive consumers" (1994, p. 144). At the conclusion of the first PBL, most if not all students agree that this approach is inherently more enjoyable, rewarding and empowering - the banking system of education for many learners in our classrooms is unchallenging and boring.

There are no "right" answers in PBL, rather this approach seeks to raise questions in order to allow students to deeply explore, discuss and reflect. In this way PBL can "help students learn with complexity, to see that there are no straightforward answers to problem scenarios, but that learning and life takes place in contexts, contexts which affect the kinds of solutions that are available and possible" (Savin-Baden, 2000, p. 5). In the ABTS2010 classroom there are occasions where students generate questions that the lecturer cannot answer - this in turn begins another cycle of reflection-action-reflection as both student and teacher enter into a

dialogue together to find what it is that needs to be learnt and to better understand what is problematic about a situation. The real-world focus of PBL combined with the self-directed learning approach assists students to learn how to learn, to link learning with their own interests and motivations, and to focus the explorations they undertake (Savin-Baden, 2000, p. 5).

As mentioned above, ABTS2010 actively seeks to deconstruct Black and White relationships, histories and discourses as they relate to Aboriginal women's lives and experiences. Discussion in and around these issues necessarily involves talking about the violence of colonialism, the racism inherent within White imaginings of Indigenous people, and the continued oppression against Indigenous people today. This is, as hooks (1994, p. 154) describes, "difficult material", which moves away from that "cozy, good feeling" into the realms of awkward memory and knowing (McConaghy, 2003, p. 11). Both Indigenous and non-Indigenous students can find themselves "exploring, experiencing and processing emotions, memories, and other aspects of themselves that were previously unknown" (Butterwick & Selman, 2003, p. 14). Savin-Baden aptly comments that "learning is about engaging different dimensions of ourselves in the learning process. Emotions and feelings are often the ones that are most neglected in learning" (2000, p. 55) and hooks too notes that the "restrictive, repressive classroom ritual insists that emotional responses have no place" (1994, p. 155). Most, if not all of the issues covered in ABTS2010 link the personal with the academic – new engaged ways to teach and learn which move beyond a disembodied didactic lecture format are needed. PBL is an approach which privileges open-minded, reflective, critical and active learning. It pays due respect to both student and teacher as people with knowledge, understanding, feelings and interests who come together in a shared space. Further, it acknowledges that knowledge is complex and changes as a result the way that people respond and perceive their worlds (Margetson, 1997, p. 39). PBL therefore has the potential to safely and sensitively create a space which allows these strong reactions, difficult emotions and uncomfortable dialogues to be negotiated.

Many students who enrol in ABTS2010 are searching, looking and hoping for an education that will provide them with the tools to expand and act upon their developing social and political consciousness. They hope that by educating themselves about Indigenous Australian women, peoples and cultures in general they can help forge a more positive future for Aboriginal and Torres Strait Islander peoples through anti-racist practice inside and outside the classroom. They bring with them a diversity of cross-cultural experiences and interactions with Others which on the one hand provide them with the necessary empathy to engage in a meaningful encounter with Indigenous Australian women and yet on the other, expose how their perceptions, expectations and what they can know in this setting are limited by

their social position as White women. They are attracted to the ABTS2010 classroom because of the possibilities it holds for them not just to partake in a passive process of learning, but rather to actively construct their own understanding of Indigenous Australian women via an engaged and dialogic experience with Aboriginal and Torres Strait Islander women. In the context of teaching and learning Indigenous Australian studies then, PBL is an attractive learning approach because of the possibilities it holds for opening up an engaged, dialogic, reflective and critical classroom – when applied to contemporary social issues PBL can provide an educational experience which is socially transforming, emancipatory, and provides students with the skills to "view the world as a place where their actions might make a difference" (Ross & Hurlbert, 2004, p. 82). Framed like this, the goals of problem-based learning and critical pedagogy are not that dissimilar – both intend to engage rather than educate, democratise rather than dictate knowledge, critically question and reflect upon rather than control and censure what we can know, and actively transform instead of passively inform. PBL is an alternative pedagogical approach which can work against the limitations of a classroom to create, as hooks puts it, a "location of possibility" (1994, p. 207).

■ *Kina v R*: A case summary

We now turn to the real-life situation examined in the ABTS2010 PBL package at the focus of this paper – *Kina v R*. In 1988 Robyn Kina, an Aboriginal woman, was convicted and received a life sentence for the murder of her non-Aboriginal de facto husband, Tony Black. The initial case lasted half a day (*R v Robyn Bella Kina*, 1988; *R v Robyn Bella Kina*, 1993; Westwood, 1993, p. 1). In the trial, Kina neither gave nor called any evidence in her defence, a decision made by her defence team based on their assessment of her credibility in the stand and what they said was her total "unwillingness to give evidence before a jury or to be subjected to cross-examination" (Robson, 1994, p. 41). This process silenced Kina's history of sexual, physical, emotional and psychological abuse at the hands of Black. For example, on the day of the killing, Black threatened to unlawfully assault both Kina and her 14-year-old niece (Ghent, 1993). Kina pleaded not guilty on the grounds of provocation and a lack of intent; however, there was initially no evidence to establish these defences due to the absence of direct evidence of what had occurred prior to the stabbing (Robson, 1994, p. 43). Williams J held that there was no proper basis for the establishment of provocation and held Kina guilty of murder and sentenced her to imprisonment for life with hard labour (Williams, 1988). An appeal was lodged and heard in the Court of Criminal Appeal on 23 November 1988 on the grounds that the trial judge erred in failing to permit the jury to consider the defence of provocation. The appeal was dismissed, as there was still no evidence of what occurred in the room prior to the stabbing hence no

conclusion could be drawn as to the existence of provocation. A petition for pardon was presented to the Governor on behalf of Kina on 24 May 1993.

Section 672A of the *Criminal Code*, enables a convicted person to petition the Governor for a pardon. Subsection 627A gives the Attorney-General the power to refer the case to the Court of Appeal to be heard, determined as in the case of an appeal of a person convicted. In Kina's case the Attorney-General referred the case to the Court of Appeal on the grounds that Kina had not received a fair trial and a miscarriage of justice occurred through problems, difficulties, misunderstandings and mishaps with communicating instructions to her lawyers. It was argued that this had led to errors so fundamental that Kina did not submit evidence, which, if placed before a jury, would have had a significant possibility of acquitting Kina of the offence of murder. In the alternative, the appellant submitted that if the evidence was not considered fresh evidence then it was of such a nature that a refusal by the Court to receive it would lead to a miscarriage of justice because the evidence would demonstrate that it was unsafe to allow the conviction to stand (Pringle, 1994, pp. 14-15). The Court of Appeal considered that Kina's evidence raised issues of provocation, self-defence and lack of necessary intent. The court heard that Kina's life had been filled with abuse, trauma and hardship and she was a victim of violence and sexual assault. Kina's refusal to have intercourse with Black on the morning of his death led to the killing. Black had also threatened to physically and sexually abuse her niece and it was while Kina was acting under this provocation that she picked up the knife from the kitchen and stabbed him. Evidence was heard to corroborate Kina's relationship with Black and the Court was given the overwhelming impression that he had repeatedly and violently assaulted her. The Court of Appeal agreed – the legal system had failed Kina in not allowing evidence of her brutal treatment at the hands of the deceased to be presented in her defence. The inadequacy of legal representation was highlighted as one of the major factors that contributed to the miscarriage of justice. Although represented by the Aboriginal Legal Service in the committal, Kina was represented by the Public Defenders Office at trial. A statement made by Kina to the Aboriginal Legal Service never made it to the Public defender. Furthermore, her social worker who had prepared a report was told by her lawyers not to interfere and such omissions would have bore upon their advice to Kina to refrain from giving evidence at the trial. A new trial was ordered, at the discretion of the Department of Public Prosecution. After five years in a maximum security prison, the Court of Appeal eventually freed Kina by recognising some of the factors that had contributed to Kina's silence, such as her Aboriginality, the nature of battered women's syndrome and shame (Pringle, 1994, p. 15).

■ *Kina v R*: The PBL

We will now focus on one of the PBL packages completed in semester one 2003 titled "The State v

Kina". This PBL package examines Kina's murder charge and explores issues of White law and justice as they include/exclude Aboriginal women to consider the differences between Aboriginal and non-Aboriginal systems of justice, the way in which these two systems of Law confront each other in the court-room, and the multilayered nature of the disadvantage faced by Aboriginal women under Western law.

In this PBL package students were expected to:

- describe the Kina case;
- examine processes of White and Aboriginal law relevant to this case;
- identify the similarities and differences between Aboriginal and non-Aboriginal approaches and perspectives on justice;
- examine the discourses of family violence, violence against Aboriginal women and women in general and their relevancy to this case;
- consider the relationship, tensions and conflict between gender and race and the impact of these on the delivery of justice to Robyn Kina; and,
- examine the relationship that Aboriginal women have with the criminal justice system and thereby consider the way that Western law works for and against Aboriginal women.

To begin addressing these tasks, students were given a range of learning stimulus material, including:

- the following quote from Kina, "He said you're a gutless slut you wouldn't use that on me. That's when I just sort thrust the knife into his stomach" (in Ghent, 1993);
- this description, "This is Robyn Kina's recollection of the events that took place the night she ended a violent relationship with her de facto husband. Her case was heard, she was convicted of murder, and subsequently jailed for life";
- a short video excerpt from the ABC 4 Corners documentary program *Excuse for Murder* in which the reporter asks "Why couldn't Robbie testify?" (in Ghent, 1993); and,
- various newspaper and journal articles which refer directly to Kina's case (e.g., Westwood, 1993).

Subsequent to watching the video excerpt, students formed small groups to begin to explore the learning issues raised by the learning stimulus material and asked questions about why it might be that Kina was unable to give evidence at her own trial. The following research questions were generated:

- What is "shame" and how does it relate to Kina's case?
- What other options did Robbie have?
- What relationship did Robbie have with her lawyers? Did Robbie have any options for communication with her lawyers?

- Would the results have been different if Robbie had been a White woman, White man or Black man?
- What was her relationship with her Indigenous family?
- How does the Australian legal system work?
- What was Black's history? Was it mentioned in the hearing?
- What was Robbie's state of mind towards Black? Did she kill him out of revenge or self-defence?
- What other support services (e.g., counselling) was Robbie given?
- Did Robbie's lawyers have access to her personal life history as well as her criminal record? Is this why she was unable to testify?
- What was the racial and gender make up of the jury?
- Why is there more family violence within Indigenous families and against Indigenous people? What is battered women's syndrome?
- What are the cultural contexts behind giving evidence, speaking up?
- What are the historical views and treatment of Black women by White men? What relationship do these attitudes have to justice for Aboriginal women?
- What difference did Robbie's case make in terms of law and justice for women who are both victims and offenders of violence?
- What impact did the media have on Robbie's case and her chances to be set free?

Although not always answered, each group was assigned a research question and asked to bring the results of their research the following week to share with the remainder of the class. We now turn to explore the types of understandings generated by students about the facts of Kina's case and how these relate to the provision of legal justice for Indigenous Australian women.

The marginalised position of Indigenous Australian women within the Western legal system

One of the issues arising from the PBL case is that the Western legal system has been complicit in the marginalisation of Aboriginal women. The Kina case has shown that this subordination occurs through alienating court practices, intimidating interview and examination techniques, cultural insensitivity and language barriers. These hostilities Indigenous Australian women face when seeking justice have further flow-on effects whereby the material facts which might provide an adequate defence remain hidden. Coupled with a misreading of what the absence of such facts may mean as well as a misinterpretation of her words and actions, an Aboriginal woman charged with an offence may therefore be unable to present a sufficiently strong case than might otherwise be put forward. This might explain the high incarceration rates (see Behrendt, 2000; MacKay & Smallacombe, 1996; Payne, 1990; Pickering & Alder, 2000) of Aboriginal women. Prison statistics for 1998 reveal that they are significantly over-represented in prison, with for example

200 per 100,000 of the adult Indigenous women's population being imprisoned, compared to 15.3 per 100,000 in the non-Indigenous community (Baldry, in Pickering & Alder, 2000, p. 229). Furthermore, the prison rate for Aboriginal women since 1993 has increased by 97% (Behrendt, in Pickering & Alder, 2000, p. 229). This was also Kina's experience who, whilst in jail, discovered that her story was unfortunately all too common (Robson, 1994, p. 41). Indeed, Carrington remarks:

There is hardly an Aboriginal woman in Australia untouched by the operation of criminal justice in her life, whether directly or through the repeated criminalisation of her children, her kin, her men or through her own victimisation of various crimes (in Pickering & Alder, 2000, p. 229).

These disproportionate rates of incarceration (see for example Lawrie, 2003) indicate that the criminal justice system has been an "external assault on [Aboriginal] society" (Upton, 1992, p. 871) which continues to damage Aboriginal peoples and cultures, particularly Aboriginal women who are continually being defined legally, socially and culturally by people and institutions outside Aboriginal communities, such as the legal system. These constructed, if not imagined, identities and realities of Aboriginal women not only occur within the core legal structure of the courtroom but also within its associated bureaucracies and jurisprudences, including the police. Behrendt explains, "There are so few Aboriginal people graduated in law that the voices of our people in a legal theory context have yet to be articulated" (Behrendt, 1993, p. 43). Standing on the margins of these legal constructions means that Aboriginal women are often excluded from and silenced within the dominant structures and are often without autonomy to determine what is best for their lives (Upton, 1992, p. 867).

The historical legacy of colonialism, racism and sexism

In this analysis of Kina's case, history provided an important vehicle for students to understand the contemporary positioning of Indigenous Australian women in relation to issues of law and justice. When asked why Indigenous women's views are not considered in relation to customary law, Maurice J replied, "It's just because historically no one ever asks them" (in Upton, 1992, p. 873). This comment points to the historical ignorance, trivialisation and misreading of Aboriginal women's distinct and separate social, religious and legal role in Aboriginal society by largely White male observers (Upton, 1992, p. 873). Pre-invasion Indigenous societies were egalitarian with women enjoying equal status with men because of their "separate but equally vital roles" (Whitney, 1997, p. 17). A senior Yanyuwa woman from the remote community of Borroloola in the southwest Gulf region of the Northern Territory

described it, "Men never used to boss over the women. We are bosses ourselves, women ourselves" (McDinny, 1983, p. 70; see "Acknowledgements").

One of the side effects of colonisation was the imposition of Western gender inequalities onto Aboriginal societies (Behrendt, 1993, p. 28). Under the White male eyes of the law, women were viewed as the property of men, and a woman's evidence was not accepted without corroboration (Upton, 1992, p. 868). In this Eurocentric and patriarchal framework Aboriginal women were then viewed in the following way: Aborigines = animals; women = domestic property of men; therefore Aboriginal women = domestic property of men who can be treated like animals. Aboriginal women thus served a double purpose for the colonisers as a source of sex and labour (Whitney, 1997, p. 26) and found themselves dually disadvantaged. The colonial objectification of Indigenous Australian women is evident in a purported memo sent by Kina's own defence lawyers, which read, "nothing could be finer than Robyn Bella Kina in the mor-or-or-ning" (Robson, 1994, p. 45). The shockingly direct reference to Kina as sexually available and willing is an example of the perpetuation of the colonial notion of Aboriginal women as inferior and suggests that although, ostensibly, barriers to equality before the law have been removed, it is this lack of status that contributes to Aboriginal women's continual disadvantage in the legal system (Whitney, 1997, p. 26).

The law itself further perpetuates this White male bias, albeit under the guise of objectivity. Stubbs criticises the defence of provocation for failing to recognise experiences of "women who do not conform to a white middle-class standard" (Stubbs, in Criminal Justice Commission, 1996, p. 102). Western law requires the application of an objective test, that is, how an "ordinary" person would have acted in the face of the gravity of provocation (McHugh, 1994, p. 73). This ordinary person does not share the sex, race, culture or any other personal characteristic of the accused except for their age (McHugh, 1994, p. 70). This approach has been criticised by McHugh J, who suggests, "real equality before the law cannot exist when ethnic or cultural minorities are convicted or acquitted of murder according to a standard that reflects the values of the dominant class but does not reflect the values of those minorities" (McHugh, 1994, p. 74). Indeed, evidence of "battered women's syndrome" has only recently been recognised in the defence of provocation, despite it being a well-established excuse for males who murder their spouses for merely leaving the relationship (Ghent, 1993). Thus the law itself prevents substantive equality for Indigenous women by failing to consider issues of race and gender. However, recent criminal cases, specifically in the Northern Territory (*Mungatopi v R*, 1991), have made allowances for gender and culture in applying objective standards. Perhaps then the law is changing so that substantive justice may actually be starting to be achieved.

The exclusion and silencing of Indigenous Australian women

Another issue discussed at length by students was the dominance of Western male ideology in the legal system and the walls it constructs to effectively exclude and silence Indigenous Australian women from processes of legal justice. One of the major barriers that exists relates to the differing concepts of gender and gender relations. This is particularly evident in the Court's disregard for and inadequacy in coping with the traditional division between men and women's business in Aboriginal societies, which often prevents discussion of sensitive issues with members of the opposite sex (Stubbs, in Criminal Justice Commission, 1996, p. 97). The inappropriateness of the prevalence of male police, judges and lawyers in Kina's case has subsequently been acknowledged by the public defender who admitted, "it was probably not a good idea to send a young white male to obtain such instructions ... given the necessary references to their sex life, sexual abuse and related matters" (Criminal Justice Commission, 1996, p. 97).

Kina remarks that she felt she "couldn't talk about [Black's abuse]" (in Ghent, 1993), because she was embarrassed, which is understandable from any cultural perspective but particularly reflects the Indigenous concept of "shame" (see Arthur, 1996). Shame is a central term in Aboriginal Australia and difficult to translate into non-Aboriginal English. Despite the ravages of colonisation, the centrality of kinship and family to Aboriginal peoples and cultures has continued, a value system of mutual aid and cooperation has been preserved - shame is the linchpin that keeps these altogether and perpetuates them. Kina was "shamed" about being a victim of repeated anal rape and sexual assault; her personal history of violence and prostitution; and of "shaming" her family by talking about these issues, especially as they related to her niece. However, sociolinguist Eades (1996, p. 221) argues that her lawyers interpreted Kina's silence according to their Western worldview where, if you are innocent, you are expected to be able to speak about it freely (Stubbs, in Criminal Justice Commission, 1996, p. 96) and silence is viewed as a breakdown in communication (Stubbs, in Criminal Justice Commission, 1996, p. 221). This ideology is reflected in the Crown questioning the validity of Kina's evidence, "which has become more favourable to her cause as time progresses" (Pringle, 1994, p. 14). Fortunately for Kina, the Court of Appeal finally recognised the cultural, psychological and personal obstacles that made it impossible for her to initially talk about the "provocation" (Pringle, 1994, p. 15). As Eades remarks, "the manner in which information has emerged in Kina's story is totally consistent with her Aboriginality" (in Pringle, 1994, p. 14). Questions can still be asked, however, about why it took five years to recognise these seemingly obvious barriers to meaningful communication.

In their analysis of this case, students concluded that differences in language emerged as one of the major causes of miscommunication. Eades' research highlights the differences between Standard Australian English and Aboriginal English that impede cross-cultural communication (Eades, 1996, p. 215). She found that the interview technique of lawyers with use of direct questions and lack of understanding of silences was more alienating to Indigenous clients (Eades, 1996, p. 217). As Dave Berry, a counsellor who was able to communicate with Kina remarked "[hearing Robbie's evidence] required no particular skills; I just sat there and listened" (in Robson, 1994, p. 42). Miscommunication with lawyers is further complicated by the lack of time devoted to building lawyer-client relationships and the technical legalese spoken by lawyers that most people who have Standard Australian English as their first language find difficult to comprehend (Stubbs, in Criminal Justice Commission, 1996, p. 21). Kina identifies this problem when she states, "Lawyers talk in big words. You think 'I wish they would use ordinary words.' And then you think, 'Maybe they don't know them!' ... There are a lot of people in jail who don't understand lawyers" (in Robson, 1994, p. 41). Despite being employed by the Aboriginal Legal Service, none of Kina's legal practitioners had received any cultural training on how to communicate with Indigenous people (Pringle, 1994, p. 14). This highlights the necessity to continue the education of legal professionals to facilitate appropriate communication with Indigenous people thereby ensuring that the system provides justice and equality for all Australians.

■ Conclusion

Problem-based learning provides a framework for prompting students to deconstruct "taken for granted realities that ultimately enables them to give meaning to the realities of their past, present and future learning; meaning that may not have arisen through more traditional methods of learning" (Savin-Baden, 2000, p. 136). In the context of ABTS2010, PBL provides an engaged, dialogic, reflective and critical approach for students to come to an understanding of the history and contemporary reality of Aboriginal women's lives, the impact of colonialism, self and Other relations, and the power of discourse to represent, silence, or give voice and empower Indigenous Australian women. Upon completion of this PBL package, the class found that Kina's case raised more questions than it answered in relation to the provision of legal justice for Indigenous Australian women. First and foremost, we were left wondering what "justice" is – is it "fairness", the appearance of "fairness", and/or the proper procedure of the law? Is it the result, the process, or both? Students surmised that perhaps an answer to these questions could be found by critiquing and positioning what the legal system views as "justice" in relation to what those

dealt this "justice" believe it should mean. It is arguable that in Kina's case justice was served – she was finally acquitted. However this conclusion places emphasis on the outcome as the determinant of justice. In contrast, by looking at the process that Kina endured – from police questioning, through to her relationship with her lawyers, and her initial trial and appeal – her case hardly appears "fair", and was it even the proper procedure of the law?

Fitzgerald and Davies J note that "The legal system for the most part works well, but we must not shut our minds to the reality that sometimes matters go awry and produce a miscarriage of justice" (in Robson, 1994, p. 45). Indeed, Themis the Ancient Greek goddess of justice is often depicted blindfolded but from the understandings gained from this PBL, we do not believe the legal system should veil its inherent biases with the shroud of objectivity. The information presented in Kina's case highlights that the law functions in a colonial context, as a discourse which officially defines and sanctions political, economic, social and cultural realities for Aboriginal women.

While we recognise that the law does not always appear to be blindly oppressive – Aboriginal women do not always lose their cases – the law operates in a subtler manner to silence and exclude Indigenous Australian women. The PBL analysis of Kina's case revealed that for justice to be achieved, we need to look outside the application of the law per se to the discourses that inform its application – to think and act "outside the legal square". This will necessarily involve recognition that Aboriginal people know the problems that their individuals and communities face. They alone, and at times in conversation with others, have an understanding of how to best solve them and should be included in any discussion about law reform for Indigenous Australian people, particularly women. It is not impossible to include the voices and perspectives of Aboriginal women in the criminal justice system. A dialogic process whereby the Western legal system first recognises the inherently White and patriarchal nature of its legal practice and underpinning framework so that Aboriginal women are then provided with an important opportunity to voice their social, cultural and political ideals within a very powerful institution of Australian society (Westwood, 1993, p. 1) holds much promise.

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