
The future is
MOSAIC

ACKNOWLEDGEMENTS

Many thanks to everyone who made the production and publication of the 2020 Sydney University Law Society *MOSAIC* Journal possible. In particular, we would like to thank the Sydney Law School and the University of Sydney Union for their continued support of SULS and its publications.

We acknowledge the traditional Aboriginal owners of the land that the University of Sydney is built upon, the Gadigal People of the Eora Nation. We acknowledge that this was and always will be Aboriginal Land and are proud to be on the lands of one of the oldest surviving cultures in existence. We respect the knowledge that traditional elders and Aboriginal people hold and pass on from generation to generation, and acknowledge the continuous fight for constitutional reform and treaty recognition to this day. We regret that white supremacy has been used to justify Indigenous dispossession, colonial rule and violence in the past, in particular, a legal and political system that still to this date doesn't provide Aboriginal people with justice.

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EDITOR IN CHIEF'S FOREWORD

Mahmoud Al Rifai

It was William Sloane Coffin Jr who opined that 'diversity may be the hardest thing for a society to live with, and perhaps the most dangerous thing for a society to be without.' I cannot think of a more pertinent comment to encapsulate the year 2020. COVID-19 instigated an onslaught of vicious xenophobia. The Black Lives Matter movement exposed a policing architecture marred by structural racism. Protests against Indigenous deaths in custody and incarceration rates expose a political veil that casts the image of a multicultural, tolerant Australia that has moved past its settler colonial birth.

Discourse surrounding race, diversity and the law has become more than fashionable. In legal spheres, it is fundamental. Diversity may be reflective of a beautiful mosaic symbolising Australia's multiculturalism, but there are cracks and legal inadequacies that need to be addressed. A celebration of a mosaic's beauty is typical, but Sydney University Law Society (SULS), much like Sydney Law School, is atypical in the most positive sense. This journal aims to go beyond celebration; it aims to invite critique, promote reform and dexterously represent the lived experiences of diverse individuals in ways that can only be described as ingenious creativity.

After all, the legal world is shaped by different people, different beliefs, different philosophies, different yearnings, different hopes and different dreams. MOSAIC represents a radical renewal of the law society's ethnocultural journal and its aim of promoting such heterogeneity. It is broad in scope. It affords contributors the opportunity to be limitless in their evaluation of an imperfect legal system. It celebrates the capacity of students, who will undoubtedly become Australia's next generation of lawyers, policy makers and lawmakers, to engage in innovative discussions about law reform. In doing so, MOSAIC ultimately invites questions about discrimination, law, critical theory, diversity intelligence and power relations.

Yet MOSAIC aims to be more than just a vessel of academic and legal writing. It possesses a storytelling and creative appeal not possessed by other journals. It harbours art, poetry and beautiful prose. The students of Sydney Law School have far more to offer than scholastic contributions. They are, much like this journal, colourful, vibrant, diverse and constantly aiming to break through the confines of narrow, limiting themes and assumptions. MOSAIC brings much hope and excitement to those who possess an ingenuity and imaginativeness often unrecognised by legal study.

It is my belief that the inaugural launch of MOSAIC symbolises this perfect blend of academia and creativity. This is by virtue of the incredible editorial team who I cannot thank enough. The effort, skill and dedication displayed by the accomplished Aisha, the stunning Samantha, the radiant Robert and the jovial Joshua was inspirational. Their strategic direction and leadership not only kept my fruitless ambitions at bay but ensured MOSAIC would be a journal that invited pride and admiration. I am honoured to have been able to work with a team of such skilled editors.

I would also like to extend my thanks to the amazing Alison Chen, the SULS Publication director, and the incredible Ibrahim Taha, the SULS Ethnocultural Officer. Their patience, willingness to help and passion for MOSAIC's thematic qualities cannot go unmentioned. Thanks must also go to Daniel Lee Aniceto, the SULS Design Director, and the sensational design team who possessed a jaw-dropping creative flair that brought the journal to life.

Finally, on behalf of the MOSAIC editorial team, I would like to extend my enormous gratitude to the contributors who deserve the utmost praise and recognition. The contributions of Professor Simon Rice, Professor Gail Mason and Sara Saleh epitomised all that is good about MOSAIC and for that, I am eternally grateful. I also cannot forget the students whose contributions not only exceeded expectations but were characterised by originality and immense quality. MOSAIC is indebted to those who gave up their valuable time to contribute to its meaningful cause.

With that, I present to you MOSAIC. May its inaugural edition inspire generations of diverse law students to come.

शुभकामना

Suma Agastya, JD I


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Thoughts on race, discrimination, law, and justice

Professor Simon Rice

Introduction

For many years I was deciding the merits of racial discrimination claims, as a judicial member of what was then the New South Wales Administrative Decisions Tribunal (ADT), now the New South Wales Civil and Administrative Tribunal (NCAT).[1]

The ADT had – as NCAT now has – jurisdiction to decide applications made under the New South Wales *Anti-Discrimination Act*.[2] People complain to the Anti-Discrimination Board (ADB) about …

… and that's the point of this essay. Fundamentally, what people were complaining to the ADB about was not what I was deciding in the ADT. People complained about the way they were treated, while I decided how, if at all, the *Anti-Discrimination Act* responded to the way they were treated. The story the person wanted to tell was rarely the story I needed to hear.

In this essay I reflect on my experience of the gap between people's actual experience of racial discrimination, and the law that is supposed to protect them.[3] I look back on my experience as a decision-maker, when I giving effect to the law as a response to what people had experienced. This is not a technical critique

of anti-discrimination laws; there's no shortage of commentary on the problems with the way they work.[4] Rather, I'm looking at the laws and the decisions I made from a critical perspective that I became aware of only after I made these and other decisions.

Briefly, anti-discrimination laws prohibit prejudiced conduct, 'direct' discrimination: one person's treatment of another must not be on the basis of a protected attribute, such as race. This is an expression of formal equality: everyone should be treated the same, without regard to an attribute such as a person's race, sex, disability or age.[5]

The way our discrimination laws determine if direct discrimination has happened is to make a comparison: how was someone not of that race (or sex or disability or age) treated in the same circumstances? If they were or would have been treated in the same way: no discrimination; if they were or would have been treated less favourably: unlawful discrimination.

Mr Quach's case

In *Quach v J Robins (Chippendale) Pty Ltd*,[6] Mr Quach was a factory worker in Sydney, and in his duties he used a 'tack' knife to stick soles onto shoes. He had been born in Vietnam, and migrated to Australia when he was 19; for purposes of the *Anti-Discrimination Act*,[7] his 'race' was Vietnamese. In an argument with a fellow worker, Mr Quach pulled out his tack knife. He was dismissed from employment – ostensibly because he had produced the tack knife during the argument – and he complained that the dismissal was racial discrimination.

Mr Quach had to show that a reason for his dismissal was that he was Vietnamese, but he couldn't point to any conduct by his employer that explicitly referred to his race. Instead, he argued that his race put him in a position where he acted in a way that caused him to be dismissed. The *Anti-Discrimination Act* allows for 'race' to extend to 'characteristics that appertain generally' to that race, and Mr Quach argued that a characteristic of Vietnamese people is that they are short. He argued that he pulled a knife because he was frightened, he was frightened because he was short, and he was short because he was Vietnamese.

We decided that a short, *non*-Vietnamese man who pulled a knife in the same circumstances would have been dismissed, so it was Mr Quach's pulling the knife, not his race, that was the reason for his dismissal. He lost his case.

Ms Riley's case

In *Riley v Western College of Adult Education*,[8] Ms Riley was an Aboriginal woman employed by the Western College of Adult Education (WCAE) as the Aboriginal Programs Manager. She complained to the Anti-Discrimination Board that way she treated was racial discrimination in employment.[9]

This is only some of evidence, that was accepted, about the racially-charged nature of Ms Riley's employment; she was told that money was 'chucked' at her when seeking funds for Aboriginal courses; that her partner 'looks like he comes from a good Aboriginal family'; that it was 'trendy' to identify as Aboriginal; that 'there is no such thing as discrimination, racial or otherwise'; that Aboriginal people only do courses in order to be paid to do so, rather than to improve themselves; that Aboriginal programs for which she had responsibility were too problematic and are unmanageable; that historical context for the offensiveness of comments regarding

Aboriginal people was all history; that Aboriginal people should be treated the same as everybody else; that she was 'over-sensitive' or had misinterpreted race-related comments.[10]

We had a very specific task; the 'direct discrimination' question the *Anti-Discrimination Act* asks whether these things were said to Ms Riley because she was Aboriginal: 'were the same things said – or would they have been said – to a person who was not Aboriginal, in the same circumstances?'.[11] If the answer is 'yes', then there was no racial discrimination, because the comparison shows that race was not the reason for the conduct. And that's just what we decided:[12]

> We cannot be satisfied that a person who was not Aboriginal would have been treated differently in the same circumstances from the way Ms Riley was treated. [What was said] could in our view equally have been directed to a person who was not Aboriginal who was in the same circumstances.

Ms Riley lost her case.

A critical lens

As a judicial member of the ADT I understood the *Anti-Discrimination Act* very well, as a complex written test for when discrimination has occurred. In these two cases, I was a technician; I navigated the complexity of the Act, deciding facts, applying law to the facts, and making a decision: unlawful discrimination or not.

I look back at those decisions through a critical lens that I was unaware of the time, a lens that exposes embedded assumptions in the design of the *Anti-Discrimination Act*.

The comparator against which I assessed the treatment of Mr Quach and Ms Riley was not – could not have been – some neutral, disembodied idea; the comparator stood for something. As Margaret Thornton explains it, 'Anti-discrimination legislation accords a right of action to individuals who allege less favourable treatment by virtue of class membership [eg race, sex, age, disability etc] vis-à-vis a real or hypothetical *member of a benchmark class*'.[13] That 'benchmark' is 'a white, Anglo-Celtic, heterosexual male … of physical and intellectual normalcy ... mainstream Christian beliefs, and … within the middle-to-the-right of the political spectrum';[14] that is, after all, a fair description of the people who conceived and designed the comparative test for direct discrimination. Against a member of the benchmark class, anyone else is Other.[15]

To adapt Thornton's analysis of a sex discrimination complaint to a complaint of racial discrimination, a person with a racial identity needs to be imagined as a white person in order to prove unlawful discrimination.[17] When the comparative exercise makes us ask how would a person who was not of their

race have been treated in the same circumstances, we are asking how a white person would have been treated; only if a white person would have been treated in the same way can the person succeed in their complaint. Because the white comparator is the benchmark, the person with a racial identity is rendered absent, and their own story becomes 'ineffable within the legal system'.[18]

I now see that when we took Mr Quach's race out of the equation, we did not leave him without a race, we gave him ours. We imagined how someone like us would have been treated in the same circumstances. But by removing Mr Quach's being Vietnamese, we were fundamentally altering the circumstances in which the conduct occurred. His being Vietnamese was part of the circumstances in which the conduct occurred, but we effaced that reality when we substituted the non-Vietnamese comparator.

What Mr Quach wanted to be heard saying was not only, 'I was frightened because I was a short man and he was a big man', but that 'I was short *Vietnamese* man and he was a big *white* man'. Mr Quach's being Vietnamese mattered as much or more in the circumstances than his not being tall. If we'd asked, we might have learnt what being Vietnamese actually meant to Mr Quach. For the first 20 years of his life he survived the US-Vietnam War and its aftermath. We don't know what he saw, what he suffered, what he lost. We don't know how he came to Australia, or what he went through to establish himself here. We don't know how – in light of all that – he presented in the work place, how he was seen and understood. Being Vietnamese can manifest in dress, language, accent, stature, behaviours, attitudes, size and even, perhaps, responses to big white men.

There is much that might have explained why, in that moment of being confronted by a big white man, Mr Quach, *as a Vietnamese man*, reached for his knife. But there is no room in the *Anti-Discrimination Act* to explore that. It is hidden, lost, legally irrelevant, when race is treated as simply a fact that can be removed from the equation.

In Ms Riley's case, when we asked how a person who was not Aboriginal would have been treated 'in the same circumstances', there was – differently from Mr Quach's case – evidence of what Ms Riley's race contributed to the circumstances. We knew that Ms Riley was the Aboriginal

Programs Manager; she 'challenged the attitudes, assumptions and in some cases the established patterns of the workplace', and she 'was a strong advocate for Aboriginal people … articulate, passionate, and politically aware'. The circumstances of her treatment included that Ms Riley's approach to her work was confronting for her co-workers, and they reacted defensively to her manner and the heightened awareness of Aboriginal issues which she introduced to the workplace.[19]

Despite this, we decided that what was said to Ms Riley was as likely to have been said to a non-Aboriginal person in the s*ame circumstances.*[20] How could we so simply separate a person's Aboriginality from their passionate

advocacy for Aboriginal rights and respect? How could we so confidently assert that a white person would, even could, be in the same circumstances, as an articulate, forceful, provocative and discomforting Aboriginal Programs Manager or, that if they were, they would be treated in the same way as an Aboriginal person?

We did so because direct discrimination laws, reinforced by High Court authority,[21] do not protect a person against decisions based on *manifestations* of their race; the laws protect a person's race, but not their own experience of being of that race.[22] We quite simply did not incorporate into our reasoning any regard for a necessary connection between Ms Riley's race and the circumstances she was in. We separated her race from the circumstances.

In the decision is a sort of apologia, an acknowledgement of the unreality of that reasoning. The written decision recognises that in the absence of an unlikely explicit causal statement (such as 'I'm saying this because you're Aboriginal') a person will 'invoke their own perception, their own sense of what the ground was for that conduct'.[23] The written decision goes as far as to describe the reality, for the person, of the racial conduct:[24]

> When a complainant was present, and participated in the dynamics of a dealing or a relationship, they have an understanding of those dynamics which may, quite reasonably give them a sense of the ground for the conduct. This might come from tone of voice or inflection, body language, eye movement - indeed any combination of the senses with which humans read, assess and interpret their environment.

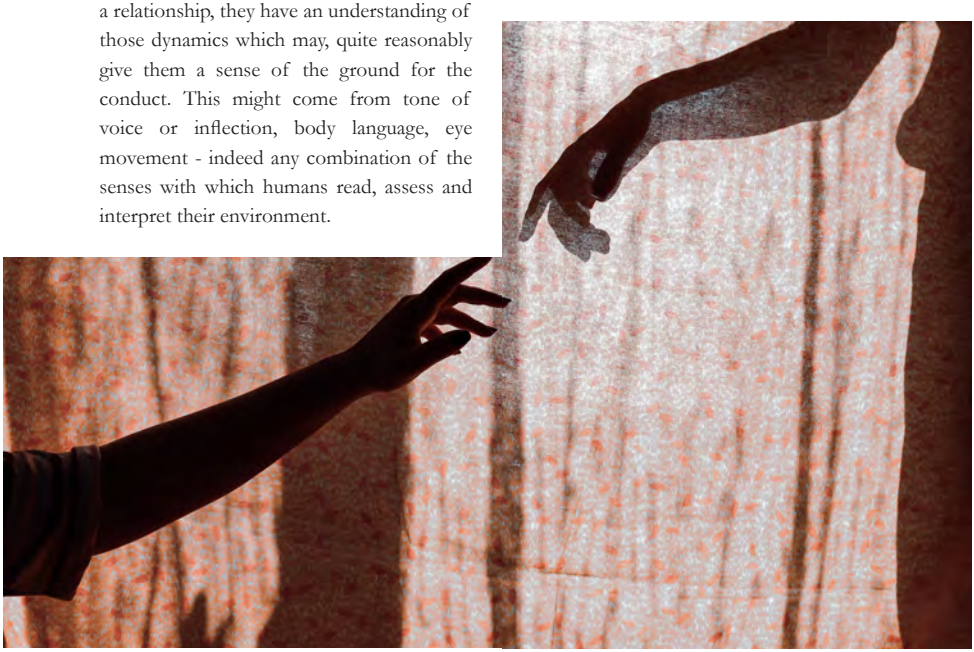
We had before us evidence of Ms Riley's 'strong sense that the conduct occurred because she is Aboriginal, and that a person who was not Aboriginal would not have been treated in the same way'; indeed, the written decision acknowledged that[25]

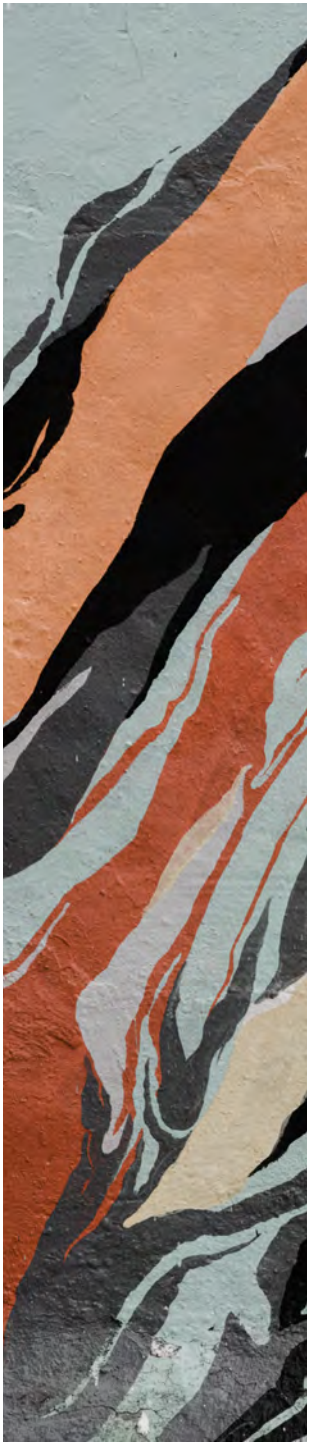
> [t]hat feeling, or sense, of why someone acts is a valid one and should not be disregarded. Often it is all that a person is able to rely on when claiming that conduct was on the ground of race.

But Ms Riley's reality came up against the rationality of the legal proceedings:[26]

> The issue for a complainant is whether their belief, based on such an experience, can be conveyed in the *formal setting of a Tribunal hearing*, in terms which satisfy rules of procedural fairness if not evidence, and *so as to satisfy the technical requirements of the legislation*.

We disregarded Ms Riley's feeling, her sense, of what happened, at the same time that we acknowledged it was 'valid and not to be disregarded'.





Legal form and personal reality

Both Mr Quach and Ms Riley came to the ADT convinced that they had been treated unfavourably because of their race, and they lost. Clearly there was a gap between what they knew to be true, and what they had to prove to get a remedy. Only weeks before the decision in Ms Riley's case I had written in another racial discrimination decision:

> …what is clear to a participant in events is not necessarily what can be established on the evidence, or even on inferences based on the evidence, and what is reasonable for a person affected by conduct to assume to be the ground for conduct is not necessarily what the evidence establishes.[27]

I invoked Margaret Thornton's observation that 'if the manifold requirements of legal form have not been satisfied, discrimination will be found not to have occurred'.[28] Giving effect to the design and terms of the *Anti-Discrimination Act*, the decisions in *Quach* and *Riley* accepted that legal form can preclude consideration of a person's actual experience.

I wonder now whether I could have approached these cases differently. Could I have had regard to the valid subjective perceptions of a non-white person? Could I have applied the *Anti-Discrimination Act* in a way that accommodated the full story of a person's race, of what it means to them, and of how it affected and perhaps even defined the situation they found themselves in?

In Ms Riley's case, it was a highly artificial exercise to compare the treatment of an articulate, forceful, provocative Aboriginal female manager with the likely treatment, in the same circumstances, of a hypothetical articulate, forceful, provocative *non*-Aboriginal female manager. Removing Ms Riley's Aboriginality should have been seen to change fundamentally the circumstances of the comparison. Ms Riley's story told us that her Aboriginality was not simply a physical attribute to be subtracted from the scenario; her Aboriginality carried with it a 'challenge to attitudes, assumptions and established patterns of the workplace, and articulate, passionate, and politically aware advocacy for Aboriginal people'. It should not have been possible to remove her 'Aboriginality' and pretend that the circumstances could be the same for a white person; her 'Aboriginality' was integral to the circumstances in which she was treated.

Similarly, in Mr Quach's case, it was a highly artificial exercise to compare the response of a small Vietnamese man to the aggression of a tall white man with the likely response, in the same circumstances, of a hypothetical small *non*-Vietnamese man. To remove Mr Quach's being Vietnamese may have fundamentally affected the circumstances of the comparison. Mr Quach might have told a story – he didn't have the opportunity – that being Vietnamese was not simply a physical attribute to be subtracted from the scenario. Had he been able to tell his story it may have been apparent that his

being Vietnamese was integral to the circumstances and that, absent his race, the circumstances simply could not have been the same.

Conclusion

Racial identity is coming out in Australia. Most strongly, recently, there has been a surge in Indigenous pride, and a growing confidence that the Other is staking a visible and legitimate claim against the benchmark. This seems to demand that we are open and honest about what Minow calls the 'unstated points of comparison necessary to the idea of difference'[29] that are embedded in the *Anti-Discrimination Act*. If we do, Minow says,[30]

> … we will then examine the relationships between people who have and people who lack the power to assign the label of difference. If we explore the environmental context that makes some trait stand out and some people seem not to fit in, we will have the opportunity to reconsider how and for what ends we construct and manage the environment. Then difference will no longer seem empirically discoverable, consisting of traits inherent in the 'different person'. Instead, perceptions of difference can become clues to broader problems of social policy and human responsibility.

But we deny our selves this opportunity for as long as the 'benchmark' points of comparison in the *Anti-Discrimination Act* remain unstated. The Act is based on the benchmark idea that 'race' is something that Other people have, and that it is rational to remove it from a scenario to see if things would have been different. In that design – in that world view – a person's race does not *add* to an understanding of what happened; its hypothetical *absence* is used to explain what happened; in other words, how would we have been treated? The story of people such as Mr Quach and Ms Riley become, as Thornton said, 'ineffable within the legal system'.

Lost in Translation

Naz Sharifi, BA/LLB III

"Where are you from?"
they ask,

How do I tell them?
that it is the wind that brings the fragrance of home
now foreign to my mind
that the ocean breeze in its chaos
delivers memories, confusion enshrined.

How do I tell them?
that the ocean swallows waves
like it does my kin,
that the most welcoming place for us
was once our graves.
As if our very existence, was made a sin.

How do I tell them?
that I am the daughter of a man
who travelled the seven seas,
planted seeds for us on every land,
went far and near.

How do I tell them?
that spring arrived and the seeds blossomed
became gardens thriving with life,
but then the tides had changed,
and they were uprooted
left in plight.

How do I tell them?
that I live in fragments,
melodies collected from here, and there
neither complete nor stagnant,

How do I tell them?
that the memories I dream in
are stitched and weaved with my mother's thread,
seeing, how easily in your language
my dreams are misread.

How do I tell them?
I've simplified my name
so much that it fits the colonial tongue,
I've washed away the stories
the lullabies and songs my ancestors had sung.

How do I tell them?
that we have had revolutions
in honour of our identity,
& now I sit and witness as institutions
begin to rewrite our legacy.
As if who we once were
has become tales of the untold.

They realign their constitutions
debating our legality,
"do they belong here, can 'they' become 'us"
& they start to measure ,
our worth in silver and gold.

& once we clear the air
and calm the brewing storms,
I narrate to them our story
the story of home that's not of here,
my loyalties seem fractured
caught between the dishevelled winds
neither truly settled here or there.

& I say
I am from my mother's lullabies,
about forgotten lands
histories drawn painfully, invaded with lies.

So how can I tell you where I'm from,
when I am from nowhere,
never claimed by a single nation,

how can I tell you where I'm from?
when everything I say
is *lost in translation.*

In Conversation With Professor Gail Mason

Interview conducted by Robert Anstee and Mahmoud Al Rifai.

Transcribed by Soo Choi, Rithysak Yous and Jackie Yuen.

Mahmoud: Could you introduce yourself to the student body and elaborate on the research you undertake at the University of Sydney?

Professor Mason: My name is Gail Mason. I am a professor of Criminology at Sydney Law School. I teach Criminology in the Masters Program and Criminal Law in the JD and the LLB program as well. In terms of research, I engage in two main areas of research. One is around hate crime. That involves looking at crimes that are motivated, aggravated or somehow triggered by hatred, disrespect or intolerance towards people on the basis of their differences. When we are talking about hate crimes, we are talking about crimes that are committed against people because of their perceived race, religion, ethnicity, sexuality, disability. That is my main area of research. I have been researching that area for a long time. My other area of research is sexual assault. At the moment, I am conducting a project which explores sexual assault, law and community education. You may be aware that the New South Wales Law Reform Commission is looking at potentially changing the law of sexual assault again. I am particularly interested in studying the changing of the law particularly in terms of public standards, shifting problematic sexual assumptions and sexual conduct. My project investigates whether there is a need to inform the public about changes to the law. The change may benefit people within the criminal justice system. That is important. But what about the wider public? How does the public learn about these changes? Does the public in New South Wales know what the law about sexual assault is? My current research revolves around such questions.

Robert: Given your research focuses on social justice and exclusion, do you see a growing need for more diverse representation in the creation, enforcement and reform of various legal mechanisms affecting minorities and the Australian community more broadly?

Professor Mason: I certainly think that underrepresentation of some groups in Australia is a significant problem in the legal profession and in many other professions as well. Mr Chin Tan, who is the Race Discrimination Commissioner for the Australian Human Right Commission, recently talked about the underrepresentation of the Asian Australian community as partners in law firms, barristers and also as members of the judiciary. That is just one community. We need all sectors of the legal profession to achieve a diversity of representation. Our law, dare I say, is largely and historically, although not totally, dominated by white middle-class middle-age men. As a result, the law continues to reflect certain values. I think we are in a

constant struggle to diversify these values. We surely have made a lot of progress but we need to make a lot more progress. We need to find ways to encourage people from diverse racial, cultural and sexual backgrounds to engage with and progress through the legal profession.

Mahmoud: Migrants and students from diverse backgrounds are no stranger to hate crime and racist violence. Could you elaborate on the underlying causes of such violence and the importance of gaining a thorough understanding of such causes to improve preventative measures?

Professor Mason: I think the fundamental cause of hate crime and hate speech lies in power relations. This involves constructing one particular group of people as less worthy than another. These power relations are often understood in quite oppositional or binary terms – white versus black, heterosexual versus homosexual, able versus disabled, men versus women, masculine versus feminine, Christian versus Muslim, Christians versus Jewish. This binary thinking suggests, for example, that a white person is better than a black person, or a heterosexual is better than a homosexual or someone who identifies as transgender. These power relations often have a very long history that shapes our perspectives on others. If you're looking at the world through a lens that says "white is better than black", then what you're doing is buying into a whole range of stereotypes.

Difference then becomes a sign of one person's inferiority and another person's superiority. As soon as people come up against someone who is different in that way, the stereotypes kick in. I think hate crime happens because people have stereotypes in their minds that come largely from this social framework. It is not an individual problem but a wide social problem. They might be feeling fearful. They might be feeling resentful. They might be feeling that something they really value is under threat by groups of people who are different and therefore they lash out. They lash out maybe through violence or maybe through words. Social media is a prime environment for spitting out intolerance and disrespect towards people who are different. I think that we can trace that back to the stereotypes that come from those power relations and the need people sometimes feel to reinforce their sense of security.

These things vacillate as well, as new stereotypes and scapegoats come and go according to local and global shifts. A good example of this is the current antagonism being expressed towards the Asian Australian community or anyone who is of Asian appearance. This includes a lot of international students. Disrespect, discrimination, hatred and violence towards the Asian community in Australia has historical roots. It goes back to the goldfields and was also very widespread in the 1980s. However, hate crime against Asian Australians appeared to diminish for a period of time, especially as hostility switched to a new scapegoat - the Muslim community. It is concerning, however, that with Covid-19 now, we see the re-emergence of anti-Asian hostility. It is clear that some prejudices lie just below the surface and their return can be triggered by external factors.

Robert: What long term measures might be a reform of law and enforcement, in terms of social media and people's expectations and cultural friendliness? What is the best way to soften the tension in the future?

Professor Mason:. One key approach is to demand change from the top and from our nation's leaders. Leaders and politicians need to set an example in terms of cultural respect, which is different from "tolerance". "Tolerance" is a minimum but not a sufficient standard. We need our politicians to set that example and to be leaders by demonstrating respect for cultural difference rather than disrespecting others and creating a climax of fear and anxiety among the population.

We also need our leaders and politicians to establish desirable cultural standards that reach far beyond the law, standards which help create social harmony. It is essential for change to come from the top. This requires political will. For example, it requires political and financial support for organizations such as the Australian Human Right Commission to hold successful and impactful campaigns that challenge everyone of us to be confident to intervene and support people who are targeted by racism in our daily life. I am not saying that all responsibilities rest on the government but I think the government is the place to start. We need to see the change from the country's leaders who pull the strings.

We also want leaders of private industries and institutions to step up and set standards against racism as well. We want global corporations to establish and act upon policies and expectations for their staff and

customers. It is about leaders in different domains creating cultural expectations.

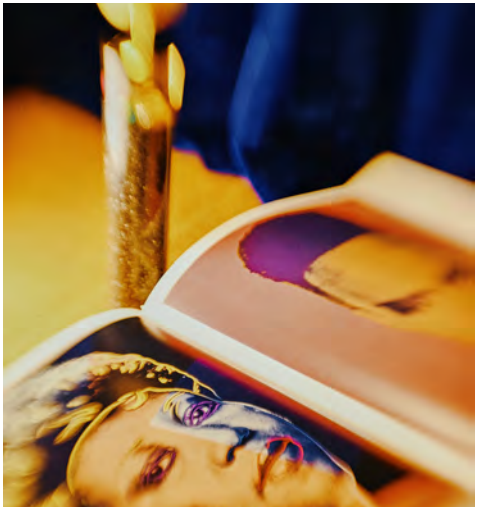
Mahmoud: What are the hard and soft measures that are in place to prevent hate crime? Are there any problems associated with the current architecture? Are such measures in need of reform?

Professor Mason: We have a hotchpotch of laws in Australia. In New South Wales, we have a provision in the Crimes Act, that is section 93Z, which makes it an offence to publicly threaten or incite violence on the grounds of race, religious belief or affiliation, sexual orientation, gender identity, intersex status or HIV/AIDS status. The section is an important provision and it provides an avenue for prosecution of certain types of hate crime. However, the provision is also quite narrow because the offence has to publicly threaten or incite violence on the grounds of race etc. Its narrowness is reflected in the fact that although it was enacted two years ago, there have been no prosecutions. There was a previous law before s93Z and despite it being in operation for over 20 years, there never was a prosecution. This gives us a sense that the laws we have in New South Wales to deal with hate crime are very restricted.

I think we are at a real pivotal moment and in some ways the vitriol, hatred, and disrespect that's been directed towards the Asian Australian community has brought this to the surface. We are at a point where we cannot deny that this is a serious problem. I think what we need, and this is not just New South Wales but across the country, is to seriously map what laws we have in Australia and to look at where the gaps are and once we have done that, we need to consult with the community and find out what they want. They need to feel safe against verbal abuse, violence, online abuse, etc. We have laws in other parts of Australia but largely they are like New South Wales, underutilised. We need to seriously take notice of what those laws don't cover, what's left out. And there's a lot left out. We can look internationally for best practice and the place we probably should look to is the UK, which is generally seen as a global leader in policing and legislating against hate crimes.

Robert: As coordinator of the Australian Hate Crime Network and Chief Investigator on the ARC-funded Hate Crime Law and Justice Project, has there been any significant trends in the occurrence of hate crimes? Could you explain the potential reasons that explain these trends?

Professor Mason: Before discussing trends, it is very important to say that our knowledge about trends in this area is very restricted in terms of having hard quantitative data. That is because most police forces in Australia do not collect data on hate crime. That again is because of the shortage of laws. If we have hate crime laws and the police are required to enforce those laws and collect data, they will. But without those laws, police generally do not collect data on hate crime. They do in some states, and they do here in New South Wales. Unfortunately though, the research that I have conducted shows that whilst significant attempts have been made to collect quality data, it's been very difficult in New South Wales to get good data because of underreporting and the fact that police officers are not sufficiently trained to record and identify hate crimes. So what that means is that the



data does not paint a reliable picture of the problem, I'm sorry to say. Particularly if you compare that to a country like the UK or even the US that has much better data collection methods than we do.

This makes it very difficult to draw any firm conclusion about trends but having said that, we do have a wealth of data and evidence produced by community organisations or agencies like the Australian Human Rights Commission and by academics. Surveys and other forms of data collection strategies have been conducted. These studies have shown that some communities have

experienced increasing hate crimes in recent years. The Muslim community in Australia is a prime example. Back in 1990, the Australian Human Rights Commission held a national inquiry into racist violence and they identified that for example, Asian Australians, Aboriginal Australiasn, and Australians from a Middle-Eastern background were some of the main targets of racist violence at that point in time. But since then or of course, since 2001, we can see that the Muslim community are targeted much more now than they were 20 or 30 years ago. In my opinion, that's the prime example of a community that is experiencing an escalation in hatred, hate crimes, and hate speech. I mentioned the Asian Australian community before, and both communities have experienced waves of discrimination, disrespect, and hatred. We can see that waves are re-occurring at the moment, but then there are other problems such as antisemitism. It is influenced by responses to events in the Middle East or events here but it is pretty much a consistent phenomenon. So what I'm trying to say is that whilst those power relations and those stereotypes of minority groups that I mentioned earlier can erupt at a particular point in time in response to something that is happening globally or locally, the underlying prejudices continue to bubble away.

Robert: There has always been an inertia when it comes to meaningful progress. What do you attribute that to?

Professor Mason: I'm going to bring that back to a cultural issue because I will say that the inertia is stronger in Australia than it is for example in the UK or the US. I think part of this is that in Australia, there is a tendency for us to see ourselves not just as multicultural, but to see ourselves as tolerant and easy-going within that multiculturalism. You often hear people say that we don't have the kind of racism here that you see in America. I don't know, do we? We don't have the data, we don't know. I suspect we probably do. We certainly see enough incidents of it. So, I think we have this perception that Australia is a country of greater equality.

I saw an example of it. I think it's probably 10 years ago now, there was a huge concern about violence against international students from India. In 2009, there were massive protests, particularly in Melbourne, because Victoria has the largest concentration of international students from India, but also here in Sydney. The public protest was about the violence that Indian students were experiencing. Our politicians just went into denial mode and they said "oh well, yes, Indian students, you know, might be experiencing crimes but it's because they carry ipods. It's because they carry technology. It's because they work late at night. It's because they are on public transport." Sure, these factors feed into making them vulnerable but it was also clear that some of the

perpetrators were just racist and targeted them simply because they were from India. So the public discourse around that, again back to our political leaders, was a total denial. At the time, I analysed what was said in Parliament by John Howard, Malcolm Turnbull and other politicians and it was just "this is just a small aboration. In fact, we are a great laissez-faire multicultural and fabulous society! We wouldn't do anything like this." That is disappointing because you are not tackling the problem head-on. The violence against Indian students crisis is another example of how things erupt at a particular point in time against a particular group of people. I think there's a lot of denial in Australia about racism and a lot of political inertia. I don't know why we deny it. It's a question I don't have the answer to.

Mahmoud: Are legal measures in Australia more effective in not only combating hate crime but understanding the underlying causes of such crimes than other measures around the world? Are there any legal frameworks adopted elsewhere in the world that you find are rather effective and successful?

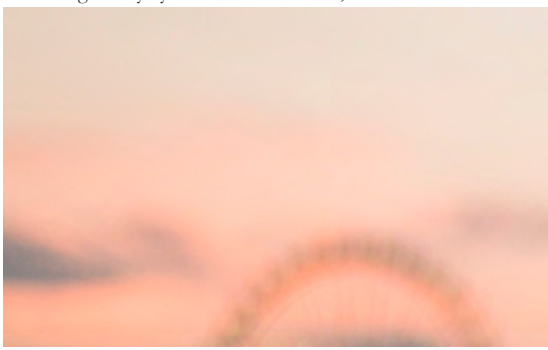
Professor Mason: Certainly, the legal measures that we have here are not more effective than than models that exist elsewhere. I would say that in tackling hate crimes, and mainly I'm talking about hate crimes because hate

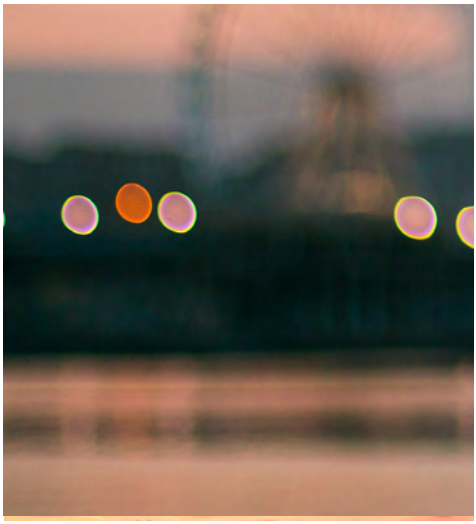
speech falls into the civil law domain, Australia is generally and effectively decades behind the UK, many EU nations and the US. Now, I'm not saying that the law is the only answer because part of the question is effectiveness of that law. Take criminal laws for example, can criminal law deter individual offenders from committing a hate crime? I'm not sure it actually can. The research tends to show that just because you impose a harsher penalty on an offence, it doesn't necessarily have a deterrence effect. What has a deterrence effect is certainty in punishment but that is a different matter. So, I'm not necessarily claiming that more hate crimes law would deter individual offenders in the short term, but I do think that in the long term, having a coherent or broad body of laws is important because of the message that it sends. And people will say this about hate crimes law generally, they are not just about punishing an individual offender, for example, who has targeted the victim because they were Jewish, etc, they are also about sending a symbolic message that the state and the population that the state represents see this as unacceptable. We are not just going to punish it, but we are going to name it. You can say what you like about the concept of hate crime but the law can name the problem. So that is one role the law can play through naming, labeling, and identifying a problem. It is about the attitudes that lie behind the criminal act, naming that it is wrong and it is harmful, saying that it breaches our social values and social expectations. That's where I think that some other countries are doing better than us because they are saying that these are the laws that set the cultural social standards. I don't see that happening very much here, only a little bit.

Mahmoud: Cyber-racism and online hate speech are becoming increasingly well-known problems. Is such speech online being policed, and if so, how are they balancing competing legal and fundamental imperatives, such as the freedom of expression?

Professor Mason: This is a complicated area, particularly when it comes to regulation, but it really is a new frontier of hatred. Many of the complaints collected by organisations about Islamophobia or antisemitism are about what's happening on the internet and we need to find a way of regulating that space. We've moved beyond the idea that "the internet is a totally free and unregulated space" that was popular 20 years ago. We need people to feel safe when they are online and we need to invest significant time, energy and resources into establishing minimum standards and expectations for engagement on social media platforms. Organisations like the Australian Federal Police monitor extremists online, but that's only a part of the problem. What's happening to the average person on Facebook does not concern the small number of regulatory bodies who do monitor online activity. While there are platform-based appeal mechanisms, these leave all of the responsibility up to the harmed individual. It shouldn't just be up to them to make the complaint, we need a system and structure behind those complaints that can support and respond effectively.

The Federal Government is currently looking at a new Online Safety Act. What we need is a regulatory system that pressures and encourages social media platforms and internet providers to take responsibility for what is happening on these sites. They should be responsible for acting on complaints, but we need to back that up with a regulatory system that is efficient, has take-down





powers, and that can fine platforms and service providers if they're not stepping up to the mark. There's no easy way of doing this, but we need industry and government to work together to settle those standards. And it's not just about punishment, it can be about finding ways to encourage and reward social media platforms that do set and monitor those standards. You can read more about that in the submission by the Australian Hate Crime Network to the Online Safety Act Review.

Robert: Do you find it increasingly important for law students to engage in literary and philosophical frameworks that are often neglected by the focus on black-letter law that dominates traditional law subjects?

Professor Mason: I would certainly encourage all law students to take courses that involve theoretical and

conceptual material that allows them to critique legal practices and wider economic and social practices or power relations. The reason I think theory is important is because I see theory as a lens. You can look at a social issue or legal issue through the lens of theory. It's a bit like you are looking through a kaleidoscope and the theory illuminates things, it brings things to the surface that you might otherwise have missed. So in that sense, I think theory assists you to make connections between the broader social relationships and power structures that you might otherwise have missed. This is why theory is really important because we can apply it to practical problems as well.

Mahmoud: 2020 has been a very interesting and challenging period. The events in Minneapolis to the rise in racist attacks brought about by the COVID-19 pandemic have fuelled greater discussions pertaining to the law, racism, social justice and marginalisation. What advice do you have to law students wishing to engage in academic and legal discourses that aim to grapple with these issues?

Professor Mason: Get involved! The Black Lives Matter movement, COVID-related discrimination and violence are issues that many students are concerned about, especially as I have been informed that there have been some incidents on campus as well. I would encourage students to get involved in what they are passionate about - whether that is through campus organisations, like societies or groups, or through choosing carefully when you are able to choose optional units in your law degree. Look carefully at the units that will fulfil your interests in social equality, social justice, and other things that concern you. There are many options on offer that address those issues, so take the opportunity to learn about these topics through your degree – and get involved on the side. Time is limited but you can always participate in some extra-curricular activities – join a (legal) protest!

Robert: Given that this is what could be described as an unprecedented set of circumstances given the quality of the revolution in Minneapolis, do you think that this is a turning point in the way the discourse is framed and also in terms of that political inertia I mentioned earlier?

Professor Mason: I'd like to think so, especially as we have seen similar incidents here in Australia, such as deaths in custody and that viral clip of that young Indigenous man in Sydney being knocked down by a police officer, seemingly using excessive and unnecessary force. These are local issues and I'd like to think that even if immediate change isn't occurring, the public awareness of these problems has shifted. Surely nobody who is aware of George Floyd's death is not affected, astounded and appalled. I think that the degree of people's preparedness to acknowledge the problem has shifted. It's difficult to deny institutional racism in the police force when you see clips like that, when you're talking about what's happening in detention centres, deaths in custody, whether that's in Sydney or in Minneapolis. Those visual images are very powerful and they make it really hard to deny. While I don't know whether this is a tipping point for action beyond protest, I would like to think so. What do you think? Do you think this is a tipping point?

Robert: I sense a bit of inevitability, as I see the generational shift as a huge factor. This way of viewing the world is widespread amongst my generation and I think it will have a flow-on effect into politics in the future.

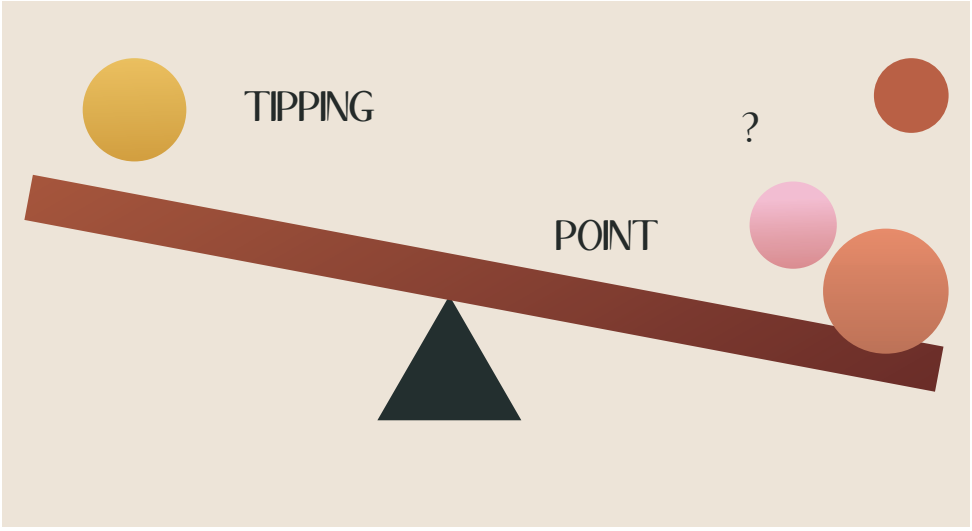
Mahmoud: I do feel that we need a shock to change the way that we discuss these issues, and language is a very powerful thing. Sometimes language is weaponized, it hides problems, especially in politics. I don't think the defensive rhetoric, at times baseless, rhetoric of 'multiculturalism, tolerance' will be accepted by the general populace, especially our generation, like it once was.

Professor Mason: Yes, that's what was so concerning to me when Australian politicians responded to violence against Indian students in 2009. They used their language to recast the problem, using the rhetoric of equality, fairness and multiculturalism to deny the problem. So I agree that language is crucial.

Sometimes, it's crucial because we don't have the right words. I remember being in America a few years ago and seeing BLM protests everywhere, and here in Australia it was just something that happened "over there". But the last few months have seen a shift in that thinking as well – seeing the protests here about the treatment of Indigenous people, in a sense, gives people a language to express their concerns.

Hate crime is another example of that – you will find that people are getting a greater understanding of the concept of hate crime in Australia, but 10 years ago, it was not a common term. If you were targeted and someone said something to you on the street because of your race or religion you would not know if you could act on it as there was no language to identify it. Now, you think "I can report this to the police, this is a hate crime, they record data on hate crime". Language gives you a framework through which to understand what your rights are.

Language allows you to name something for what it is, and name it as wrong. That's why the language of the law is important as well. If someone can be convicted for an assault, that's just an assault. But what if it was a racially motivated assault? Currently, the conviction only names the public wrong of the assault, not the racism. Even though there is no perfect language, that's why laws are powerful in that they can specifically name the bias, hatred or prejudice of a person.



A Technological 'Lingua Franca': The Future of Legal Communication with People with Disability

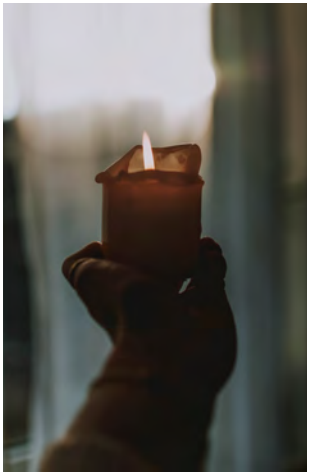
George Stribling,
BIGS/LLB (V)[1]

"The justice system is not designed to allow people with disability to participate in it" – Alistair McEwin AM[2]

"The typewriter was designed to aid the blind but ended up reversing the gender of writing, and the telephone was designed to aid the deaf but ended up at the heart of 20th century signal processing" – Amit Pinchevski and John Durham Peters[3]

"We must ensure that the technologies we design and implement take into account the abilities of all individuals. Otherwise we will construct the online equivalent of the long, stately steps to the courthouse" – David Allen Larson[4]

I Introduction



For decades, Australians with disability have been systemically denied access to justice and excluded from the law's diverse mosaic of participants.[5] Beyond their exclusion from participation as judges, lawyers, witnesses and jurors,[6] people with disability have been deprived of the basic right to claim and protect their interests in the civil and criminal courts.[7] Unsurprisingly, the legal profession, alongside law enforcement,[8] custodial detention and administrative staff,[9] has played a central role in denying access to justice for people with disability.[10] While this denial is manifested in a variety of unjust practices, this article seeks to focus on just one aspect of the professions' failure: ineffective and exclusionary communication.

Effective communication is not only a hallmark of good legal practice, but also an ethical obligation owed by lawyers to their clients.[11] Compliance with this obligation, however, is particularly strained

in relation to clients with disability. An oft-overlooked area of communication rights discourse,[12] disability poses an array of challenges to legal practitioners in the giving and receipt of advice and instructions. A lack of functional communication might, for example, deprive a person with disability of effective legal representation which, in turn, furthers the systemic denial of access to justice for people with disability in Australia.[13]

How, then, should the legal profession respond to these challenges? The solution, some posit, lies with technology.[14] While the communicative utility of technology is well established,[15] its particular application to people with disability and access to legal services is yet to be explored in any great depth. This article imagines the future of legal communication with people with disability and the development of a technological 'lingua franca' that enables universal communication between lawyers and clients.

II Barriers to Communication and Ethical Pitfalls

i. Variety

Disability has been, and continues to be, largely invisible in the history of communications rights discourse. Similarly, people with disability have been mostly overlooked by the legal profession's active attempts to improve relations and communication between practitioners and marginalised groups. This is perhaps attributable to the sheer complexity and variety of issues presented by disability – communicative issues are not caused solely by a language barrier (although this might also be the case), but by the many and varied obstacles that accompany physical, intellectual and psychosocial disabilities.[18]

While research suggests, for example, that 80% of people with severe intellectual disability will never develop effective speech,[19] it is not the case that people with such disabilities cannot communicate. Rather, it is the sheer variety of methods by which people with disability communicate that present challenges for legal practitioners.[20] For example, a person diagnosed with an autism spectrum disorder may never develop language skills,[21] or, alternatively, they may experience higher-level language difficulties, such as issues with drawing inferences.[22] Otherwise, people with disability who are d/Deaf, hard of hearing or non-verbal may communicate using Australian sign language, or 'Auslan'. Despite being the nationally recognised language for the Deaf community,[23] Auslan is only spoken by around 10,000 people,[24] rendering its utility in a legal context minimal. Similarly, in a clear illustration of compounded disadvantage, indigenous sign languages are not widely used and only add further complexity to the communicative issues facing legal practitioners.[25] In short, each characteristic of an individual's disability poses a unique communicative challenge for legal practitioners.

ii. Incapacity

These barriers to communication are particularly problematic in relation to the inherently discriminatory requirement of legal capacity. The effect of a finding of incapacity can be significant: a client that fails to demonstrate competence may be denied legal representation or even the opportunity to have their matter heard before a court.

a. Retaining Legal Representation

Under rule 8 of the *Legal Profession Uniform Law Australian Solicitor's Conduct Rules 2015* (NSW), a solicitor is required to follow their client's lawful, proper and *competent* instructions.[26] Where a client with disability is mentally

competent but unable to effectively communicate that competence (rendering them legally incompetent),[27] they may be barred from retaining a legal practitioner. Save for appearing as a self-represented litigant, that person with disability will be denied a fair trial and access to justice. While some regulatory bodies, such as the Law Society of South Australia, have sought to provide guidance on assessing client capacity,[28] it is still possible that a client's ability to communicate is so inhibited that a practitioner could not effectively or fairly assess their capacity.[29] Further, the utility of guardianship arrangements in redressing this injustice, at least insofar as they operate to *substitute* rather than *support* the decision-making of a person with disability, is minimal.[30]

b. Fitness to Plead

In a number of Australian jurisdictions, a declaration of unfitness to plead in a criminal trial can lead to an unconvicted person with disability being detained for an indefinite period.[31] Shockingly, a number of people with disability who have been deemed unfit to plead have been incarcerated for a term far greater than that which they would have received had they been tried and convicted.[32] By way of example, some terms of indefinite detention have been more than double that of the potential custodial sentence,[33] with one man, Marlon Noble, detained for more than ten years under charges that would have attracted a two-year sentence.[34]

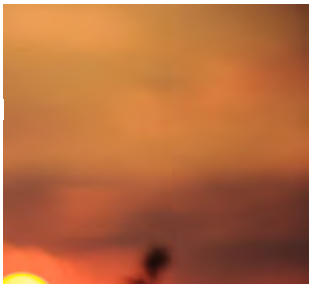
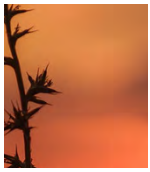
The continued existence of indefinite detention practices in Australia has been criticised by the Australian Law Reform Commission,[35] the Senate Community Affairs References Committee,[36] the Council of Attorneys-General,[37] and the UN Convention on the Rights of Persons with Disability (CRPD) Committee.[38]

Despite this criticism, even where a client with disability is able to retain legal representation, a finding of unfitness to plead may simultaneously result in their imprisonment without conviction and deny their right to have their matter heard before a court. Accordingly, where a client with disability is unable to communicate their competence, they may be exposed to a risk of indefinite detention.

iii. Influence

Ineffective and exclusionary communication may also jeopardise a lawyer's ethical practice. A practitioner may, for example, be unable to ascertain whether a client with disability has given consent to breach confidentiality.[39] Equally, a practitioner may be more easily adjudged to be exercising undue influence over a client with disability,[40] or accused of compromising the integrity of the evidence of a witness with disability.[41] Each of the above would ordinarily not arise, or would be easily overcome, as a result of clear and effective communication with the client. That luxury is, unfortunately, rarely afforded to clients with disability.

III A Technological 'Lingua Franca'

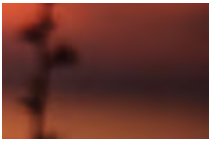
i. Technology in Contemporary Legal Practice

While some have described technology as a herald of death for the legal profession,[42] it has nevertheless emerged as a critical element of contemporary legal practice in Australia. A wide array of technologies are used by practitioners and courts, from cloud-based practice management software to digital document storage,[43] eLodgement services and Electronic Court Files.[44] As a result, a great deal of technological infrastructure and literacy exists throughout the legal profession, to the advantage of practitioners and clients alike.[45] The use of technology within the profession has been credited with increasing the public availability of legal information,[46] making justice more accessible for consumers,[47] allowing lawyers to operate with greater flexibility and efficiency,[48] and contributing to the greater affordability of legal services.[49]

ii. Technology and People with Disability

Similarly, technology plays a central role in the day-to-day lives of many people with disability,[50] most obviously in the form of mobility aids and other visually apparent forms of assistive technology. In the particular context of communication, however, many people with disability use speech-generating or augmentative and alternative communication (AAC) devices.[51] While, historically, AAC technology was highly specialised and costly,[52] the emergence of mobile tablet computing has revolutionised its availability, functionality and social acceptance.[53] AAC technology may be necessary for people with a number of common developmental, acquired and degenerative disabilities.[54]

Another common assistive communication technology, particularly for people with visual impairment, is screen reading and magnifying software.[55] While people with visual impairment have used computer systems to communicate since the late 1950s,[56] modern screen reading software can enable a person to access and control complex graphical user interface (GUI) based operating systems.[57] Given the extent to which the legal profession now operates in a digital space, screen reading and magnifying software has become all the more valuable to visually impaired clients and practitioners alike.



iii. 'Universal' Legal Practice and a Technological 'Lingua Franca'

How, then, might these two technology-rich sectors better interact?[58] This article imagines two models for reform: the 'duality' model and the 'universal' model.

a. The 'Duality' Model

The 'duality' model recognises that existing technologies in each sector tend to be user-specific: that is, there are certain technologies that are designed for use by people with disability ('disability technology') and other technologies that are designed for use by legal professionals ('legal technology'). Conscious of that distinction, any practical solution to the communicative difficulties between practitioners and clients with disability would require both sets of technologies to change so as to accommodate the other.

Take 'Easy English' formatting, for example. 'Easy English' or 'Simple English' formatting is a technique used to enable people with disability and low literacy to better understand documents and other sources of information.[59] There is a parallel concept in the law: the notion of 'plain-language law', which asserts that modern, standard English can, and should, be used effectively in a legal context.[60] While 'Easy English' documents are produced for a number of quasi-legal purposes,[61] the complexity and specificity of legal language can pose a challenge for 'Easy English' translators. Therefore, in order for 'Easy English' formatting to effectively facilitate better legal communication, both the disability technology and the legal technology will have to adapt:

the former to include legal language and the latter to produce appropriately formatted information.

b. The 'Universal' Model

Unlike the 'duality' model, the 'universal' model looks to new technologies as well as pre-existing technologies that are common across both the disability and legal sectors.

The effectiveness of new technology as a means of improving legal communication is heavily dependent upon the implementation of 'universal design' principles in the development and production of technology.[62] The concept of 'universal design', which has not escaped criticism,[63] is a practical design strategy focused on usability which may be applied across products, environments, programmes and services.[64] By its very nature, such technology should have equal utility for clients with disability and practitioners alike. In theory, therefore, universally designed technology will facilitate more effective legal communication with clients with disability.

Some pre-existing technologies, such as tablet computing, could also bridge the communicative chasm between lawyers and clients with disability. Mobile tablet technology is widely used across both disability and professional sectors,[65] but remains vastly underutilised in the circumstances where they intersect. For example, of the many AAC applications available on the Apple App Store, none are designed specifically for communication in a legal or professional context.[66] Accordingly, people with disability who rely upon AAC software to communicate may be unable to do so in conversation with a legal practitioner. It is important, then, that shared forms of technology accommodate both sets of users.

c. A Technological 'Lingua Franca'

Regardless of which model is embraced, the end result ought to be some form of technological 'lingua franca' between legal practitioners and clients with disability. A 'lingua franca' is a language used for communication between groups who do not share a common language,[67] like Latin in the Roman Empire,[68] Swahili in colonised Africa,[69] and the attempted global language of Esperanto.[70] While English is widely considered to be the 'lingua franca' of technology,[71] academia is yet to thoroughly explore the possibility that the use of technology itself, regardless of the language used, could be a common method of communication between disparate groups. Admittedly, this is a rather abstract conception of a 'lingua franca', but it is not without merit. While the use of technology is not explicitly included in the dictionary definition of a 'language', it is not explicitly excluded either – to take the broadest definition from the Oxford English Dictionary, the use of technology could very well amount to a "system of communication".[72] By bringing the use of technology within the definition of a 'language', the idea that it could operate as a method of communication independent of traditional languages becomes far more realistic. This alternative conception of communication could be incredibly significant for people with disability, whose technological literacy can be far stronger than their traditional literacy.

In the specific context of legal communication, a technological 'lingua franca' need not take the form of a single program or device; rather, it would be a set of practices that enable existing and future technologies to function more effectively as means of legal communication. While, particularly in the courts, the profession will need to engage with speech pathologists and experts in technology in order to ensure the reliability and accuracy of alternative modes of communication, this does not significantly restrict the capacity for a wide variety of communicative methods to be used in legal practice. Crucially, these inclusive practices will require the profession to gain a degree of competence in using,

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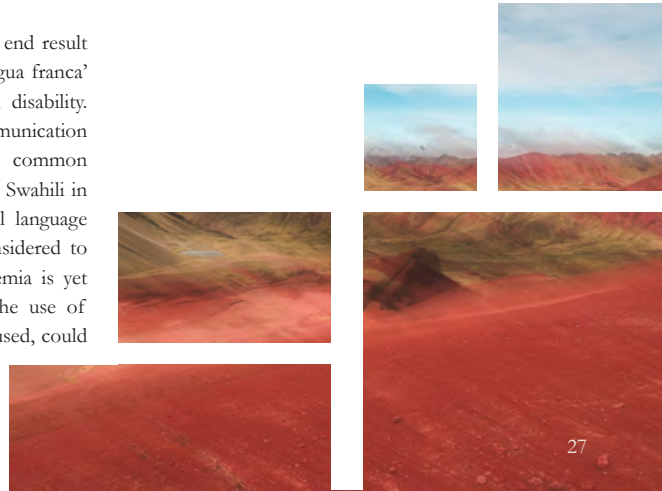


IV Conclusion

The systemic denial of access to justice for people with disability has hindered the advancement of disability rights for decades.[73] Amongst a number of unjust practices, the legal profession has continually failed to facilitate effective communication between lawyers and their clients with disability,[74] ultimately excluding disability from the mosaic of diversity in the law and denying access to legal representation and the right to a fair trial.[75] While people with disability are notably absent within the legal profession,[76] both groups share common ground in terms of their reliance on technology in their everyday lives.[77]

It is perhaps unsurprising, then, that technology may hold the key to improving access to justice for people with disability in Australia.[78] Whether the legal profession embraces the duality of pre-existing technology or strives for the adoption of universally designed software, the ultimate outcome ought to be the development of a common language, a technological 'lingua franca' between legal practitioners and clients with disability. Then, and perhaps only then, will the legal profession truly be able to hold itself to its self-imposed standards of effective communication.

The Law Needs A Language Of Endearment

Misbah Ansari,
BA/LLB I

The future, the about to come, the inquisitive gut feeling of imagining what is next, in my opinion, provides an amoebic, shapeless countenance to our senses. The tendency to talk in biological deformities when penning down something creative is natural to me. There are the analogies of the sun and the moon, here-the-nectar-slurped-by-bees comparison, and the future being an un-uniformed movement of the body. Likewise, the language one chooses to use shapes the future; and much like the fluidity of choice, the narratives our words create are structureless and constantly in motion.

My mother always mentions how quickly I pick up words of endearment from different languages and change my voice as I utter them. "I can't wait to talk to you, my *habibi*," I sent along with two sunflower emojis to my best friend. Habibi, an Arabic term used for a dear one, sounds quite out of conversation for me because I seldom speak Arabic. The sporadic talking comes from the practice of reading the Quran with my family, with everyone placing two fingers on my Adam's apple to ensure I enunciate the guttural Q/K sounds. As if performing the loosening motion on my throat will change the way my vocal chords are adapted to my monotony of other languages that I speak! That being said, I hardly talk of sciences and the bodily intricacies in biological terms. However, the metaphor of bodily deformities and the melting of phlegm while pronouncing other words is intriguing. Such interest in bodily deformities fuels a strong interest in how our language and its sounds emanate certain narratives.

The future is a mosaic, and I envision it being the time to invent a language sheerly made of sounds, words and expressions of affection from different languages that challenge the emotionless pit that is black letter law. The objectivity of law is expressed in a myriad of ways and I always wonder how inquisitive things like identities, culture, pain, danger, and anything remotely human are put in such forced, concrete ways. Concrete is the analogy I can think of at this juncture - to consider something as "free from doubt and dispute" sets a stagnant image in my mind. The prowess of language is undermined when it comes to professional careers within legal spaces, however, we must not forget the impact of the words. In the conversations about intersectionality, we need to understand the potential of words and the various ways in which ideas are put forward.

"*Mija*, let me read you a poem," offered an Argentine woman at a Poetry Slam. *Mija* means a loved one in Spanish, but to me, it sounded like a blurred pronunciation of my name. Misbah, but in a hurry, the submergence of the S-B and I gladly took it. On days I think about this awkward and rarely revered activity of making sounds through my name, but affection, which appears to be a rarity in spaces of law, is, without a doubt, my favourite thing. The vagueness of languages and the myriad of ways we address those we love is quite like an analogy of orchards full of peaches and plums and apples, colourful and vibrant, but a lot more unruly. I say *Jaan* to my people, which means life in Urdu and Hindi and there is a specific exaggeration of the A-A in this word. It seems like a yawn, a new voice, my face muscles spread aggressively to utter words of love and I take it. Such appreciation of sounds, letters and the pushes of air are not appreciated enough by a body of professionals willing to litigate on the basis of a string of words Consider this,

A care application must specify the particular care order sought and the grounds on which it is sought, taken straight out of *Children and Young Persons (Care and Protection) Act 1998* (NSW).

The idea of care being framed so objectively and not immersed in the idea of poetry prevents that warm, physical jutter *Jaan* and *Mija* emanate. Early in my legal studies, I often wonder if black letter law has a space for this. To forget the emotive vividness, the power of sounds and overlapping of things is to lose our empathetic ability, which may separate us from our main aim to maintain justice.

I caught someone say 'everyone becomes your own if you make them, they become your *Jaan, Parivaar (family)*, and *Yaar (friend)* if you call them so with words and sounds.' When people pronounce my name differently and focus on different alphabets just how their language permits, I count it as a language of endearment, a language that has a space in the law. My lingual monotony never let me emphasise the A-H in Misbah that a lot of my Arabic-Speaking comrades focus on. I want to build a language that holds the sound of love too, the love found in the elongated *aiyoooo* that so many of us from India express to either show a disappointed surprise or an expression of awe. May there be a language with the squeaky kiss sounds, flying kisses, and holding both hands at once to greet. Aristotle once opined 'the law is the reason free from passion.' I see that statement as an observatory, not a declaration. Passion, love and affection that stems from the words we use have an immense role to play in construing and communicating the law.

If the future is going to be a list of legal and jurisprudential inventions, why not amalgamate a language, hold it, curate it, blend it and embrace it?

Language, Culture And Professional Obligations: Refining The Relationship Between Legal Practitioners and Indigenous Clients In the Criminal Justice System

Zachary O'Meara, JD III[1]

I Abstract

This paper engages with the complex and unique issues that may arise for legal practitioners in performing advisory and advocacy work on behalf of Aboriginal and Torres Strait Islander ('ATSI') people. It specifically examines the miscommunication and lack of cultural competency that legal practitioners display in providing professional services to ATSI clients. In doing so, the paper highlights the inadequacies of cross-cultural communication, educational programs, and cultural awareness in the legal profession. For ATSI clients in the criminal justice system, these shortcomings pose a significant barrier to fair representation and due process. The paper concludes by calling for law and policy reforms in these relevant areas.

II Introduction

In Australia, ATSI people have experienced a longstanding problematic relationship with the criminal justice system. The findings of the reports, *Bringing Them Home* and the *1988 Royal Commission into Aboriginal Deaths in Custody,* demonstrated a culture of institutionalised racism at every level of the criminal justice system.[2] Consequently, ATSI people are typically more vulnerable and disadvantaged in their engagement with state institutions. To date, these systemic issues continue to cause high levels of incarceration and over-representation of ATSI people, as both defendants and victims, in the criminal justice system.

Among Australians, the ATSI population is most significantly impacted by the criminal justice system.[3] With the highest rates of incarceration, ATSI people are grossly over-represented in the criminal justice system.[4] Indigenous adults are more likely to be incarcerated than non-indigenous adults: 12.5 times for men and 34 times for women.[5] Indigenous men make up 28.6 per cent of all male inmates, and indigenous women account for 35 per cent of all female inmates.[6] According to the 2016 Australian Bureau of Statistics ('ABS') estimate, only 3.3 per cent of the Australian population identified as ATSI.[7] However, with indigenous inmates making up roughly a quarter of the total male and a third of the total female Australian inmates, this highlights the systemic issues within the criminal justice system. To address these societal

problems, institutions that serve indigenous clients when they are most vulnerable, such as the legal profession, must rise to meet the challenge.

In light of these findings, the Australian legal profession must reform. At the core of the profession, there is a professional responsibility to make the legal system more accessible and fairer for people irrespective of their cultural background or first language.[8] At the grassroot-level, legal practitioners must integrate culturally competent practices to serve better the needs of ATSI clients in their engagement with the criminal justice system. In order to achieve this legal and policy reform, the legal profession must implement practices and education programs focusing on precise cross-cultural communication and greater cultural awareness for their members. This model provides legal practitioners with a more appropriate skill set to execute professional obligations to their ATSI clients and respective communities.

III Language Barriers and Cross Cultural Communication

Language barriers and miscommunication are significant obstacles for legal practitioners in providing services to their ATSI client. Effective, efficient, and comprehensible communication between clients and lawyers is necessary to deliver accurate and high-quality legal services. In recent years, the legal profession has strived to bridge this gap. It has pushed for reform that focuses on more precise communication, leading to improved rates of productivity, performance, client recruitment and retention for solicitors.[10] The use of easily comprehensible language has improved the client-lawyer relationship, and in turn, increased public trust and respect for the profession.[11]

A. Diversity of ATSI Languages and the need for Translators

The language used by Australian ethnic minorities vary significantly. A comparison of ATSI and Anglo-Saxon people demonstrates the disparity in languages spoken.[12] Among Anglo-Saxon Australians, English is the uniform language. However, there are 145 different Aboriginal languages spoken by ATSI people. The Northern Territory ("NT") proves to be the most challenging for legal practitioners with more than 100 Aboriginal languages and dialects used.[13] For clients who speak English as a second language ("ESL"), this can immediately disadvantage them, particularly in their engagement with law enforcement or questioning in court.[14] For ESL defendants, there are legal requirements for translators to assist them throughout the criminal trial.[15] This requirement ensures due process, and the failure to meet it may constitute a "substantial injustice to individuals."[16] Common law obligations stipulate that the accused must be able to hear and understand the evidence.[17] One example is the New South Wales Office of Public Prosecutions ("NSW ODPP") guidelines that afford all witnesses, and victims access to free interpreter services.[18] Accordingly, practice guidelines and common law obligations ensure ATSI defendants, witnesses, and victims are all afforded translators during court proceedings.[19]

Between indigenous and non-indigenous practices, ATSI people are still presently disadvantaged by the ongoing clash of cultures. An example of this conflict is the difference between legal systems. The English common law system and the various Aboriginal Australian punishment systems are starkly different from one another. For instance, the Aboriginal punishment systems do not have cultural equivalents for a majority of English common law legal concepts, such as appeal, bail, charge, guilty, and non-guilty.[20] Therefore, it is challenging for ATSI people to comprehend these terminologies and rationalise their engagement with the criminal justice system. One recommended solution to these issues is the integration of an Aboriginal language interpreter to assist with client-lawyer communications.[21] A linguistic expert may be necessary to accurately determine whether ATSI defendants fully comprehend their charged offences and trial procedure. These interpreters can act as touchstones and intermediaries for their clients, ensuring fair representation and due process for ATSI participants.

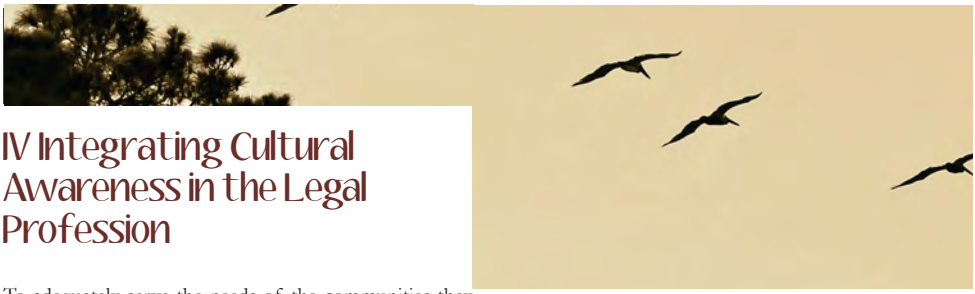
The NT government has a State-funded Aboriginal interpreter service, which is available twenty-four hours, seven days a week.[22] This service endorses various linguistic strategies when communicating with ATSI clients. In particular, they recommend using plain language and active voice when communicating with clients,[23] defining unfamiliar words, placing questions in chronological order and avoiding abstract nouns, negative questions, hypotheticals, and figurative language.[24] For

example, ATSI clients may appear to answer yes to a question, or no to a negative question, regardless of actual agreement or comprehension of the question.[25] This example highlights the importance of accurate cross-cultural communication, particularly in criminal proceedings. This interpreter service provides more efficient and effective client-lawyer communications and improves the legal advice rendered to ATSI clients. Simple communication is crucial for legal advice to ethnic minorities who may otherwise struggle with understanding their engagement in the justice system.

B. Verbal and Conduct Miscommunication

Understanding different cultural norms of communication are vital to legal advice for ATSI clients. Historically, the failure to take into account both verbal and conduct miscommunication has been devastating for ATSI defendants.[26] For many ATSI people, they communicate using 'Aboriginal English'.[27] Recognised as a distinct dialect from standard English, 'Aboriginal English' has significant grammatical and semantic differences.[28] Certain words in 'Aboriginal English' may carry entirely different meanings to the standard English definitions.[29] If the legal practitioner does not recognise these differences, it may constitute a breach of due process and professional obligations to the client. Similarly, body language is to be understood within its cultural context too.

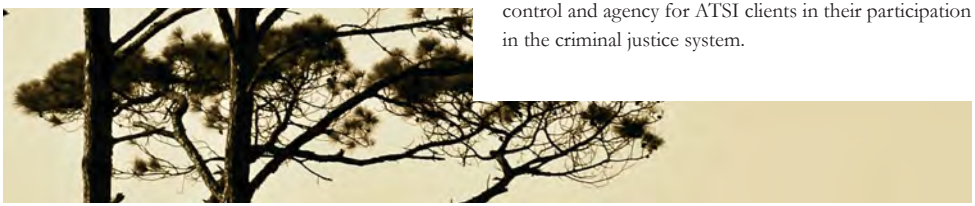
Cultural differences often cause legal practitioners to misperceive the body language of their clients. One such example is silence. In ATSI communication, silence is a positive and ordinary aspect of a conversation.[30] In criminal court proceedings, unfavourable inferences from silence are admissible.[31] Accordingly, misinterpretation of ATSI cultural norms may unfairly encourage incrimination. Other examples of cultural differences are eye contact, direct questions and nodding. Avoiding eye contact is perceived as rude, disrespectful, and dishonest in the Anglo-Saxon culture. For ATSI people, a diversion of eyes is a sign of respect.[32] Repeated direct questions are not an effective means of eliciting information from ATSI people. Accordingly, many practitioners prefer adopting a narrative-style of communication when relying on or attaining information from ATSI clients. For some ATSI clients, when seeking instructions about an event or fact, they may not be able to plan according to a date in the calendar.[33] Instead, they may be able to refer to what was happening at the time it occurred.[34] In Anglo-Saxon culture, nodding represents an agreement.[35] However, ATSI people use this action as a sign for hearing and listening to the speaker.[36] Ultimately, clear and concise communication is part of the legal practitioner's fiduciary duty to his/her client and failure to meet this duty may constitute professional misconduct.[37] As listed above, these examples of miscommunication demonstrate the complexities with the ATSI client-lawyer relationships and the vital need for higher levels of cultural awareness for legal practitioners.



IV Integrating Cultural Awareness in the Legal Profession

To adequately serve the needs of the communities they represent, legal practitioners must have a fundamental awareness of the cultural and socioeconomic factors of their client.[38] Inexperienced legal practitioners often do not appreciate these differences and clients are the ones who suffer.[39] In order to increase cultural awareness, there needs to be more education, training, and specialised support available to legal practitioners. The legal profession faces a challenge of inclusion, which at times, has been insensitive to the needs of ATSI people and ethnic minorities. The legal profession needs to make services and support more accessible to these sections of society. The NSW ODPP recognises these unique needs and has created a culturally appropriate service, known as the Witness Assistance Service, to afford every respect and specialised support to ATSI witnesses and victims.[40]

Within the legal profession, cultural awareness varies significantly based on the location of the practitioner. In comparing metropolitan and rural areas, there are differences in the level of cultural awareness and competency. In recent years, Legal Aid NSW has incorporated and conducted cultural awareness training for their legal practitioners, primarily occurring in rural locations.[41] From 2016 ABS estimates, the geographical distribution of the ATSI population is diverse with over 60 per cent residing outside of the major cities.[42] Accordingly, rural, regional, and remote areas are where the relevant training is needed the most. Therefore, legal practitioners in these areas need specialised support and training services to improve legal services rendered to their ATSI clients.

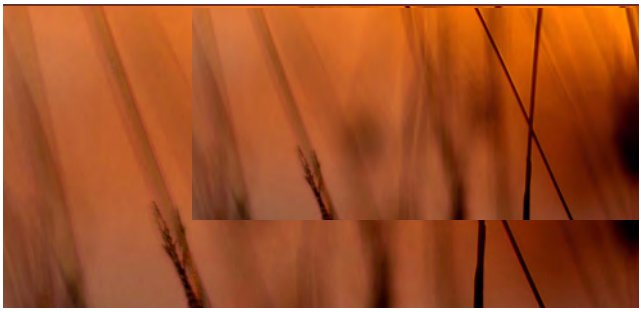


A. Education, Training and Support for Practioners

Available education, training, and specialised support for legal practitioners in serving ATSI clients is a significant shortcoming in the Australian legal profession. In order to improve the level of cultural competency, one suggestion is for the creation of an independent body that regulates accountability of legal practitioners. In doing so, this body promoting ATSI values and priorities can increase awareness of how cultural practices and customs are acknowledged within the law and by the legal profession.[43] In doing so, it can also monitor and evaluate the legal services being provided and hold legal practitioners accountable with state-wide professional conduct standards.

In meeting the growing needs and demands for ATSI clients, there needs to be more widespread availability of training programs for legal practitioners. For them, information about the criminal justice system must be culturally competent, recognising the specific and unique circumstances of remote and culturally diverse ATSI people. It is essential to acknowledge the diversity of ATSI cultures, and any information requires tailoring to the specific cultural context of the client.[44] In practice, the legal practitioner must empower those communities to participate in the policy and advocacy of the criminal justice process, to engage better and shape the experience.[45] Through collaboration and distribution of vital information, legal practitioners can enable greater control and agency for ATSI clients in their participation in the criminal justice system.

Regarding training programs, one example is community-engagement education about criminal law and legal rights in the criminal justice system. In the NT, the North Australian Aboriginal Justice Agency ('NAAJA') implements a community legal education ('CLE') program to address the low level of understanding of the law and legal rights.[46] By encouraging input from legal practitioners specialising in the relevant subject area, this practice serves the needs of ATSI people in both the public and criminal justice system.[47] Through legal education and community engagement, ATSI people, including clients, are empowered with vital information of their fundamental legal rights, and the ability to navigate the mainstream legal system.[48] These programs also allow for two-way learning. In practice, it allows legal practitioners to engage with ATSI perspective and critiques to understand the nature and impact the law has had upon their way of life.[49]



CLE programs also focus on trauma-informed practices. This particular type of legal services acknowledges the individual and intergenerational life experiences of ATSI clients that may arise from, *inter alia*, discrimination, racism, separation from the country, forced removal from family, destruction of culture, and personal experiences of violence.[50] These traumatic experiences may manifest in mistrust of authority and institutions, such as in the client-lawyer relationship.[51] However, they should not be interpreted as unwillingness, untrustworthiness, and hostility towards the legal practitioner.[52] Acknowledgement provides a vital bridge between improving the client-lawyer relationship and community engagement.[53] Another example of cultural competency training is 'recognising privilege' education.

B. Recognising 'Race-Based Privilege'

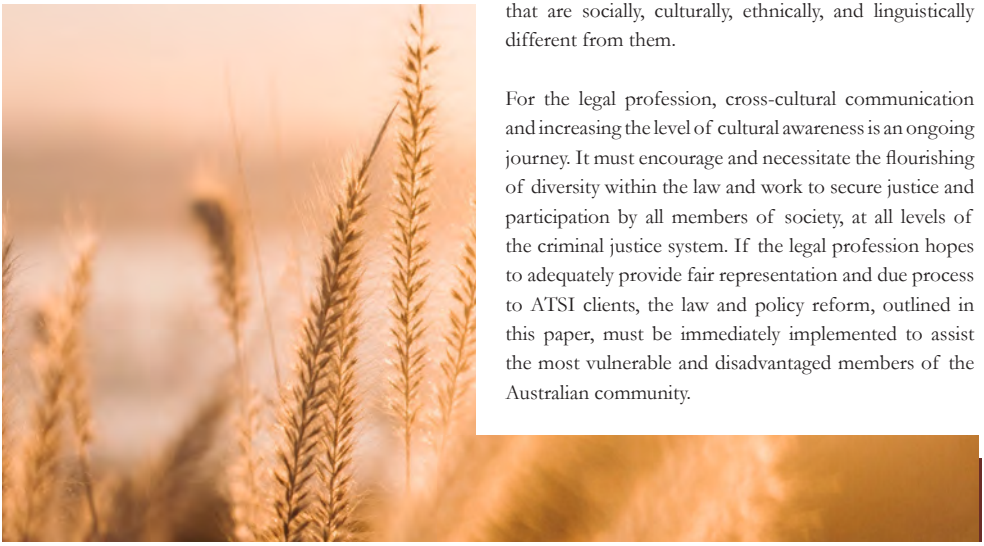
In Australia, Caucasian or Anglo-Saxon legal practitioners hold a race-based privilege.[54] Within traditional socially-constructed categories of Australian society, there is a perception that lawyers are 'powerful and elite'.[55] In juxtaposing this stereotype with the historical and socioeconomic circumstances of many ATSI communities, there is a stark disparity in power relations and privilege. Examples of these distinctions include the subtle and non-subtle differences in speech, conduct, body language, and presentation. This race-based privilege has a real and practical impact on the interaction between ATSI people and the broader Australian society. In practice, legal practitioners must be socially conscious of their contemporary impacts. In doing so, they must appreciate how privilege is both socially and culturally entrenched in the legal profession and the criminal justice system. In identifying and appreciating these differences, this initiative of 'recognising privilege', and acknowledging cultural and historical experiences of ATSI people, creates a more balanced power dynamic in the client-lawyer relationship.[56] In effect, ATSI clients are more inclined to participate, respond positively, and increase levels of trust and rapport between the two parties.[57]

C. Time Scheduling

In organising legal consultations, legal practitioners must recognise that ATSI clients may have a different concept of 'time'. The ATSI polychronic culture of time scheduling is fundamentally contrary to the traditional English notion of timetabled appointments.[58] As such,

the polychronic nature of traditional Aboriginal culture and time management is problematic for a majority of legal practitioners. For some ATSI clients, family and community commitments may have priority over punctual attendance at appointments, meetings, and even court hearings.[59] Due to the nature of the Aboriginal kinship system, cultural family obligations may be paramount for the clients.[60] For those who work with billable hours and appointments, any delays or rescheduling is costly. Therefore, it is in the interests of both parties to develop new arrangements to accommodate the ATSI polychronic culture of time schedules.

As an alternative to 'time scheduling', legal practitioners can organise a 'getting to know you' session.[61] This meeting is a flexible appointment in an informal and relaxed setting. However, it must also be meaningful without being tokenistic or rushed.[62] Extra time may also be required to build the necessary trust to provide optimum professional services to ATSI clients.[63] This alternative can build positive rapport and higher levels of trust between the client and the legal practitioner.[64] The investment in rapport building, early in the professional relationship, may pay dividends by enabling the practitioner to outline suitable and realistic commitments for the client.[65] This approach is pragmatic, appreciates the unique circumstances of a client, and time-saving in the long-run. Building rapport, trust, and realistic commitments promote more effective and efficient engagement with ATSI clients in the future.



V Conclusion

Developing a higher level of cultural and linguistic capacity for Australian legal practitioners is no easy feat. However, there is a growing need to incorporate culturally-competent policies in the legal profession that seek to integrate this diversity within a framework to protect ATSI clients. This paper provided vital suggestions in crucial areas of law and policy reform for the Australian legal profession, attempting to bridge the schism between ATSI people and the legal profession. For Australian legal practitioners, there is a professional responsibility to provide respectful, responsible and appropriate legal services to ATSI clients. The advice and representation must be culturally-matched and assessed on a case-by-case basis throughout the criminal justice system.

Throughout this process, recognition of ATSI customs, culture and traditions is fundamental to the mutual respect and trust for the client-lawyer relationship. Educating legal professionals about cultural awareness and linguistic barriers, as well as the use of translators, enables more appropriate methods to be employed in providing legal advice. More broadly, it improves the legal services provided to ATSI clients and empowers them through the delivery of culturally appropriate, tailored, and collaborative services, such as community legal education. Overall, more educational programs, face-to-face training, and specialised support must be given to legal practitioners to serve the needs of the community that are socially, culturally, ethnically, and linguistically different from them.

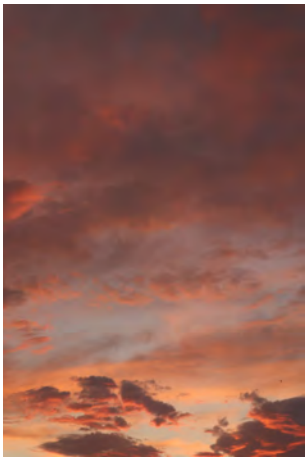
For the legal profession, cross-cultural communication and increasing the level of cultural awareness is an ongoing journey. It must encourage and necessitate the flourishing of diversity within the law and work to secure justice and participation by all members of society, at all levels of the criminal justice system. If the legal profession hopes to adequately provide fair representation and due process to ATSI clients, the law and policy reform, outlined in this paper, must be immediately implemented to assist the most vulnerable and disadvantaged members of the Australian community.

A month on the land of the Larrakia People

Deaundre Espejo,
BA/LLB IV

As I sat on the lawns of Civic Park in Darwin, built on the traditional land of the Larrakia, Aunty June Mills gave the Welcome to Country. She spoke about the importance of acknowledging and protecting our land and water, and then invited everyone in attendance to participate in a Smoking Ceremony, which cleansed the area so the occupiers and traditional custodians could come together and live in harmony. This was the afternoon of January 26th, at one of many rallies held across the country to protest the celebration of Australia Day. I was in Darwin for placement with NT Legal Aid, and was encouraged to attend the rally by one of my colleagues.

The Kenbi Dancers performed a traditional welcome dance, accompanied by musicians playing clapsticks and didgeridoo. They invited audience members to join in as the rest of the crowd clapped along. We heard poetry from Djapu writer Melanie Mununggurr, and a moving speech about supporting remote communities from Member of Parliament Ngaree Ah Kit. Perhaps the most surprising part of the afternoon was a stand-up comedy routine by traditional owner Richard Snr Fejo, who found humour and light in First Nations people's endeavour to break the cycle.



Having attended quite a few rallies in the past, I expected the day to bring an air of familiarity. But it had an entirely different atmosphere to what I was used to. There were no chants echoing across the city, there were no crowds marching down the streets as mounted police stood their ground, no signs that read "change the date". Instead, January 26th was a day to reaffirm the connection between First Nations people and occupiers; a day where the Larrakia people welcomed everyone to participate in their culture and celebrate their continued resilience. Of course, there was still a pervasive sense of anger and mourning. But what stood out to me was the resounding air of togetherness.

Very rarely have I seen these kinds of interactions with our local First Nations people, the Gadigal People of the Eora Nation. Of course, many people are fighting for Indigenous justice each and every day, speaking out, standing in solidarity and rallying for change. At protests, we platform Indigenous voices and march behind the families who have experienced racial injustice. But seldom do I see such a personal connection to Indigenous culture, despite the richness of Gadigal Country. These sorts of relationships were refreshing to see at that rally in Civic Park; people casually conversing with Elders and black and white children dancing side-by-side. And it wasn't just the rally, I saw this bond across the entire month that I spent in Darwin.

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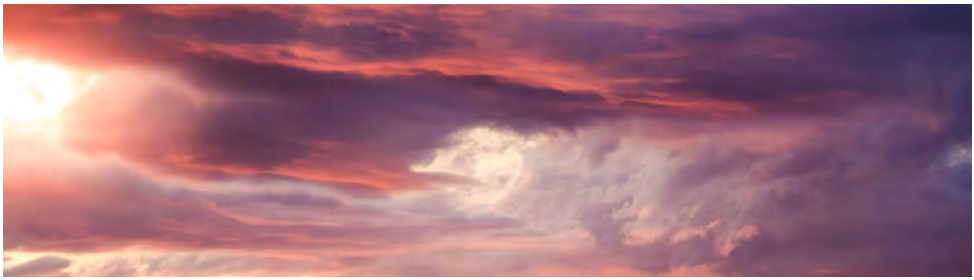

When the opportunity came up for a legal intern in NT Legal Aid's family law department, it was a no brainer. After almost a year of working at a commercial law firm, trawling through 150-page insurance contracts and filling in my billable hours, I had come to the epiphany that private law was not my calling. As someone who was raised in a household of twelve immigrants, who is the second in my family to receive a tertiary education, and who had to navigate what was quite a homophobic environment as a teenager, I had always intended to use my legal degree to help those most vulnerable in the community. And when I found myself facilitating large commercial transactions, I knew that something had gone awry. Additionally, I've always preferred the charm of small, intimate spaces over the grandeur of corporate Australia.

Needing a drastic change in scenery, I jumped on that plane to Darwin. And indeed, it was a stark contrast to my previous job. The Legal Aid office was much more intimate, consisting of eleven women in a modest building near the coast. The computers ran on an outdated operating system and the filtered water tap barely ran, but the passion within the team made the office a vibrant space. Admittedly, family law was my second preference, but in hindsight, I am incredibly glad that I was placed there.

One of my most prolific memories was visiting the Children's Court for the first time. Legal Aid performs what is known as 'duty lawyer services', where solicitors attend court and take on any unrepresented clients waiting outside the courtroom. On that day, I was assisting Emma, the duty lawyer at the time. The first thing I noticed was that almost all of the families were Indigenous, and as Emma spoke to the clients she was about to represent, they shared similar stories. They faced problems such as alcohol abuse, unemployment and lack of housing; the child protection agency intervened and placed their children in out of home care; and finally, they were awaiting court orders to determine appropriate parenting arrangements. These were no small matters. Those families were awaiting a decision on whether they were allowed to maintain a relationship with their children.

As I sat and watched the matters being heard, I struggled to follow what was happening. The judge was going through the court list at lightning speed. He called the parties to the bench, invited each of them to speak for what felt like 15 seconds, and then expediently moved on to the next matter. While the lawyers were quite capable of navigating this process, I felt the anxiety of the families as they tried to keep up with the meticulous procedure. The fact that there were duty lawyers at the court guiding them through the process and giving them a voice was reassuring. But even then, they had little to no time to prepare or to negotiate with the child protection agency's representatives. And because there is only so much that duty lawyers can do, some remained unrepresented. Watching everything unfold made me realise an important truth: the Australian legal system in its current state is not built to provide just outcomes for First Nations people.

On the surface level lies the language and cultural barriers. Many Indigenous people struggle to communicate in the language of the justice system, and this goes beyond the ability to speak English or understand legal jargon. It relates to how differently they may express ideas and respond to questions; differences in how they may understand concepts such as time and place; and in a lot of cases, a lack of willingness to trust people given the long history of oppression. This impedes their ability to deal with police, child support agencies, legal representatives, and judicial officers. On a deeper level, there are core assumptions within our legal system that don't account for the complexities of Aboriginal and Torres Strait Islander cultures. The family law and child protection system, for example, still implicitly values

family structures where childcare is the responsibility of the immediate parents. For many Indigenous families however, child care is shared by the community, which in the eyes of the courts and welfare agencies, may not be considered adequate parenting. Even where the law allows for cultural considerations, it irks me that the courts get to decide what is best for Indigenous children.

And on a broader level, the failures of our socio-economic institutions to support First Nations people create conditions where law enforcement and child protection systems are more likely to intervene. Issues such as inadequate access to education and employment, discrimination in the rental market, and racist policing practices all interplay to create unstable environments. But state intervention often does more harm than good. The removal of children is particularly devastating, as these relationships are sacred to the entire community, and are important for the transfer of knowledge and oral culture between generations. I felt paralysed. For the years I've been law school, I've simply learned what the law is and how to apply it. I've learned how the law develops in accordance with principles such as the rule of law. But what do we do when the legal system in itself is fundamentally broken?

We take it upon ourselves to change it.

****

Working in Darwin changed my perspectives on the role that lawyers, and members of the wider community more broadly, should play within our society. In my short time there, I met a lot of people who were actively playing a part in achieving social change. Polly, an eccentric woman I met during one of my commutes, was a manager for the local council, and decided to head up projects to improve the city's carbon footprint at local events. Her husband was a medical officer, routinely volunteering to go into remote areas such as Katherine to provide assistance. Bess, the manager of the gym that I attended, started up a fund for a bushfire appeal and ran a charity functional training session. And at the January 26 rally, I saw many familiar faces attend in solidarity — a cashier who worked at the local grocery store, the owner of the hostel I was staying at, and even the reserved bus driver that took me to Casuarina on the weekends.

Admittedly, this isn't the best sample size to represent Darwin's social and political attitudes. But being surrounded by so many people doing admirable work regardless of their profession taught me a valuable lesson. I've always perceived there to be a distinct line between my own work in activism, my journey to become a lawyer, my personal relationships and so forth. In my previous job, I had gotten quite used to switching off my 'activist' mentality when I entered the office. One afternoon in September of 2019, I distinctly remember attending the Global Climate Strike during my lunch break, and then going back to work on a case defending a corporation that had polluted one of Australia's major water systems. This attitude carried on to other aspects of my life; I would deliberately refrain from talking about social issues

at the dinner table, in the classroom, or with my friends.

But the people I met in Darwin helped me realise that social justice shouldn't be something to be switched off. Conversely, not everyone needs to dedicate their entire lives to activism, or embrace the identity of a 'full time activist' to play their part. Instead, social justice can be embedded in our everyday lives, in cultural spaces, in workplaces, in other spaces which are traditionally perceived as non-activist spheres. We can constantly be educating ourselves about Indigenous cultures even in our idle time. Indeed, many of the people I met were not only working in the social justice space, running community projects or attending local events, they were also listening to music from Indigenous artists, recommending books from Indigenous authors, and regularly engaging in conversations about how the NT can improve its policies for reconciliation.

This holistic attitude was also embodied in Legal Aid. One person that particularly comes to mind is Beth, who was a social worker that was hired in Legal Aid's family law practice. She worked incredibly hard to ensure that clients were receiving more than legal support — she helped them in the process of obtaining housing, gaining employment, and accessing counselling and psychological services in between their court appearances. She was acutely aware that legal problems were inextricably linked with other social issues, and grilled lawyers who adopted an overly legalistic approach to their practice.

When you have a community full of people who are in tune with the social movements around them, who actively seek relationships with those most marginalised, it results in an impressively social justice-oriented culture. This is reflected in Darwin's legal industry. Commercial law firms such as Clayton Utz were relegated to the outskirts of the city in grotesque buildings, while community legal centres are front and centre in the heart of the city. A strong relationship is maintained between private and public firms, where private firms often take on clients that Legal Aid or other centres don't have the capacity to represent. And what was particularly intriguing was the attitudes amongst law students. I had a random encounter with three students from Charles Darwin University one day, and we had lunch at a local burger joint. They were each doing internships at the Department of Justice and the North Aboriginal Justice Agency, supported by the university. This was the antithesis of my experiences in legal education, where the default pathway for law students is to do a clerkship at a major commercial law firm.

While a social justice-oriented culture is by no means enough to solve systemic issues, what it does do is provide hope. After I returned home, I was inspired to write an article for my student newspaper, titled 'We need more law student activists'. In 800 words, I argued that our legal system and social movements have a symbiotic relationship. The legal system in its current form is the product of many social movements before, from the Aboriginal land rights movement in the 60s to the labour union movements in the 80s, and where we see cracks in our legal system today, there is a need for us to participate in the current efforts to rebuild that system. Lawyers can do more than sit idly as they witness a revolving door of people that have little hope in our system; they can proactively fight for transformation in our society so that those people are adequately supported.

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Writing this today, I realise how much I miss my time on Larrakia land. It was the first moment in my life that I have felt hope that our society could be better. Of course, Darwin is not perfect. Their family court system is broken, and this is only the beginning of a long list of institutional problems. But seeing an entire community that was so connected, so unified towards closing the gap and giving First Nations people a fighting chance, restored some optimism that I have lost over the years that things will be able to change. I'm not sure what gives Darwin its strong sense of solidarity. Perhaps it's the fact that the city is so small. When you see the same people on the bus and at the supermarkets, when you see Indigenous children playing soccer on small patches of grass, and families eating meals in the carpark, it creates a deep sense of reciprocity and understanding. And for most people there, prospects of success, money, or luxury don't matter. They just want to see their community flourish.

I will do my small part to spread that hope here, amongst the land of the Gadigal People where I stand. I will seek out relationships that I haven't made for years, and I will share their stories. I have hope that one day, I will be able to see that same sense of harmony and community at home.

Is Legislative Reform Essential to Promote Cultural Competency in Allied Health Workers? A Focus on Psychologists

Suma Agastya, JD I

I Introduction

The Australian community – aptly described as a 'mosaic' – is an amalgamation of culturally and linguistically diverse (CALD) communities. As this globalised community continues to grow, healthcare services must continuously adapt to changing circumstances. However, through the experiences of family and friends, I have noticed that there has been a blatant disregard for improving cultural competence in allied healthcare fields, including psychology. This gap in healthcare delivery has been found to have negative impacts including access to services, willingness to access services, misdiagnoses, and numerous other effects. In order to adapt to the changing circumstances, allied healthcare fields must develop a cultural competence framework for practitioners to adhere to.

Cultural competence refers to a framework of behaviour which can be incorporated into practice to improve practitioner's sensitivity in a globalised community.[1] The importance of cultural competence lies in its ability to bridge the gap within healthcare delivery.[2] The focus of this article is on how cultural competence can be promoted in allied health (more specifically, in the field of psychology) and whether there is a requirement for legislative reform to promote this change. As a former student of psychology, I have experienced first-hand that the current practices in promoting cultural sensitivity are inadequate. Coming from a diverse ethnic background as both my parents were first-generation immigrants from India, I had personally noticed through interactions with psychologists and through my undergraduate degree that the training focuses on Western methods, which do not necessarily recognise the stigmas preventing individuals from more collectivist cultures from seeking help. In this manner, there is further scope of misdiagnosis, mistreatment, and barriers to obtaining assistance when required. These mishaps have led to several lawsuits which highlight the importance of maintaining a culturally sensitive workforce.[3] Australian practitioners have, as mentioned previously, adapted to utilising a single approach regardless of the patient's cultural background which,[4] given the aforementioned concerns, should be disintegrated to develop cultural competence.

Thus far, strategies to develop cultural competence in Australia have focused on Indigenous communities. The Australian healthcare practitioner regulation agency (APHRA) has released a statement of intent, as well as its strategy on how it intends to promote Indigenous cultural sensitivity by 2031.[5] These strategies, which focus primarily on improving education and training, can be utilised with other cultural communities.[6] The focus of this article is to provide an overview on the current status of cultural competence in the field of psychology, and to identify different methods of improvement. This article aims to discuss education and training, standards of practice, and the possibility of legislative reform. In my humble opinion, I believe that education and training plays the most significant role in promoting cultural change in the community and should be utilised effectively.

II Education and Training

Education and training are vital in promoting cultural competence in a thriving workforce. Through personal experiences during my undergraduate degree, I noticed a severe lack of focus on how the phenomenon being studied translates across different cultures. For example, many of the core prescribed units such as personality psychology, social psychology, developmental psychology (among others) did not incorporate any references on how the theories taught were reflected

in other cultures. Concepts including Piaget's stages of cognitive development or the bystander effect were all demonstrated in Western cultures, and continue to be prominent in Western communities. However, through my limited knowledge on the topic, it is unclear whether a concept such as the bystander effect – which stipulates that a bystander of an emergency situation is unlikely to intervene unless directly appealed to for relief[7] – would apply in collectivistic cultures (such as South Asian) where the community thrives on helping those around them. While there has since been extensive research on this topic, the research was purely to provide an example of a distinct difference between cultures. Further, even though I had a strong interest in cross-cultural psychology, there were little to no opportunities for me to pursue any formal education in that direction.

A significant aspect of improving cultural competence relies on education and training as further policy changes would necessarily rely upon this first step, as this article explores further. In this regard, there are multiple ways education can facilitate a positive change. These involve different mechanisms of delivery at higher education, continuing professional development, and curriculum changes to facilitate continuous learning. As research has demonstrated that continuous learning leads to more positive healthcare outcomes, this must be the primary focus of education objectives.[8] Further, studies have shown that education into cultural competence should focus fundamentally on developing strategies to enhance cultural sensitivity.[9] An additional bonus is that any inherent racial biases which clinicians harbour are dealt with in a systematic and discrete manner, allowing them to develop their skills as an individual and as a healthcare practitioner.[10]

A. Delivery

There are two methods of delivery: the first of which is where an independent unit is offered once, and the second is where there is continuous reference during the course of the practitioner's education. Although training has been found to improve cultural competency outcomes overall, research has shown that continuous education is more likely to develop cultural sensitivity skills required in practice.[11] The benefit of continuous education is that culturally sensitive approaches can be incorporated into the current educational framework throughout higher education and later during the practitioner's career. Skills learnt through this form of continuous education are more likely to be converted into long-standing skills utilised in practice.[12]

Each healthcare regulation board, including the Australian Psychology Society (APS) as well as the Australian Healthcare Practitioner Regulation Agency (APHRA), has individual requirements for clinicians to undergo a set number of continuing professional development (CPD) hours. For example, the APS has a requirement of 30 hours of CPD to be completed in a year.[13] A potential method to improve cultural sensitivity training is to ensure that a percentage of these hours are dedicated to this aim. Practitioners would then be able to gain the continuous education which is direly needed to improve their cultural awareness, recognise the stigma which surrounds mental health adversities in many cultures, and find innovative methods to help their patients.

B. Curriculum

Several researchers claim that incorporating cultural sensitivity training into education has had a positive impact on the clinician's ability to respond to their patients, and can have the effect of diminishing any inherent racial biases which the clinician may have.[14] For these changes to take place, there must be a change in all aspects of education, which include the curriculum. A study conducted with allied health students in Australia found that incorporating different aspects of cultural safety into the entirety of the curriculum rather than independently would improve the effectiveness of such interventions.[15] Currently, the psychology curriculum does not explicitly address cultural competence requirements, meaning that students do not get adequate access to resources and training. There are some disciplines within allied health, for example speech pathology, which have incorporated a unit on Indigenous communities, but even these have their limits. Considering that this minimum requirement has not been translated across to most disciplines, it is evident that there is extensive scope for improvement.

My personal experience of having previously completed an undergraduate degree in psychology brought to my attention that the prospect of incorporating culture into the curriculum is wide, and that currently education has been lacking in this regard. As I mentioned previously regarding the bystander theory in psychology, there were several other similar junctures at which I wondered why

the topic discussed had not evolved further into discussing its applicability across cultures. A study conducted by *Australian Psychologist* supports the view that there is a dire need for academics to interpret western psychology models in light of cultural communities (firstly, Indigenous) to understand their prevalence.[16] Such curriculum changes are closely intertwined with the prevailing standards of practice which practitioners should abide by in order to be considered a licensed healthcare professional. To expand the curriculum in the above described manner, there must be a shift in this direction from a prominent source, such as AHPRA or APS, to drive the change. A move in this direction coupled with legislative reform may change the horizon of allied health.

III Standards of Practice

Altering standard of practice is highly reliant on how to best incorporate education and training in the race to better cultural sensitivity. Standards of practice, as expressed previously, are requirements outlined by the respective regulating body which must be adhered to in order to become a registered healthcare practitioner. Each distinct allied health field will have their own body, much like how psychology is governed by the Australian Psychological Society (APS), Psychology Board of Australia (PBA) and APHRA.

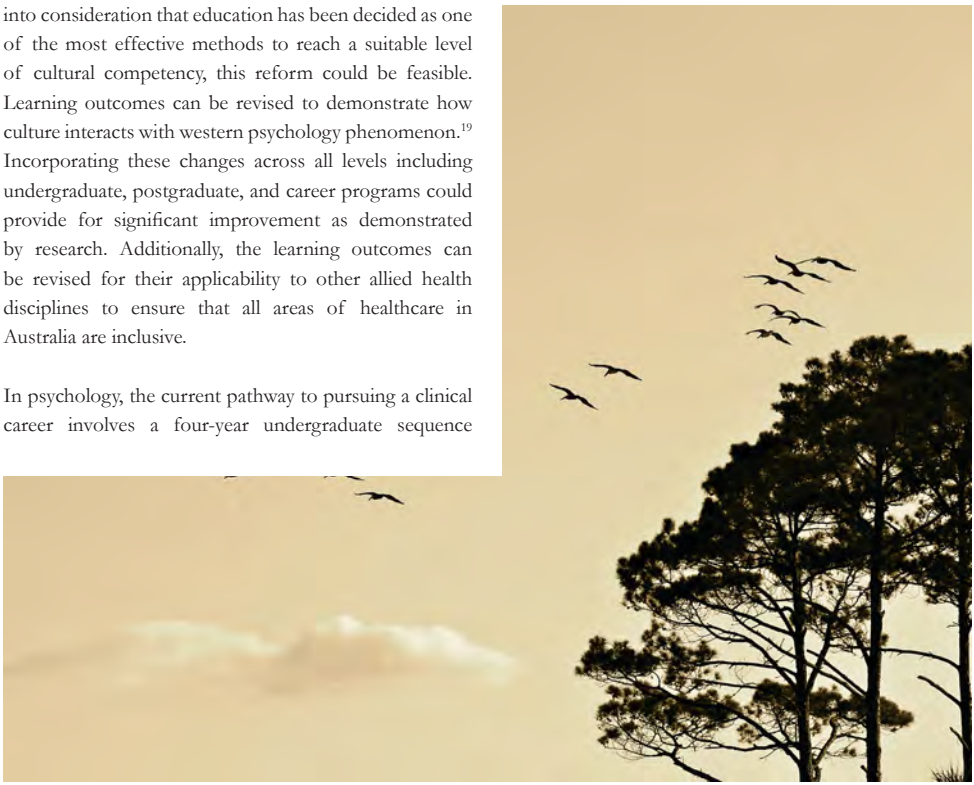
Although APS has taken the initiative to design and offer a program which allows practitioners to undertake cultural competency training,[17] the reliance is on the practitioners to take the initiative to educate themselves. Unfortunately, research has shown that while the majority of healthcare practitioners would believe themselves to be culturally sensitive – an opinion which acts as a barrier to undergo further training – they are not as fluent as they would believe.[18] Additionally, for a field such as psychology where the relevance of cultural stigma plays a large role in accessibility to services and healthcare outcomes, their dedication to cultural competence is devastatingly lacking. Although they have demonstrated an initiative as described above, more needs to be done to help practitioners develop more cultural sensitivity skills with a range of different cultures. For example, South Asian cultures harbour a strong stigma against mental health conditions including anxiety, depression, autism spectrum disorder, and others. These stigma, among others, are only barely being recognised in the South Asian community in Australia now, and even so there are many barriers which a potential patient would have to cross. In making more practitioners aware and able to treat those with such a background would undoubtedly help an individual in this position.

A. Learning Outcomes

Altering the standards of practice to reflect updated learning outcomes which include a cultural competency framework should, in my opinion, be targeted towards two groups: one, for students striving to enter the position and become licensed practitioners, and two, for professionals who have already obtained their license. There is the possibility that such changes to the current standard of practice would require some level of legislative reform. However, taking

into consideration that education has been decided as one of the most effective methods to reach a suitable level of cultural competency, this reform could be feasible. Learning outcomes can be revised to demonstrate how culture interacts with western psychology phenomenon.[19] Incorporating these changes across all levels including undergraduate, postgraduate, and career programs could provide for significant improvement as demonstrated by research. Additionally, the learning outcomes can be revised for their applicability to other allied health disciplines to ensure that all areas of healthcare in Australia are inclusive.

In psychology, the current pathway to pursuing a clinical career involves a four-year undergraduate sequence



followed by a one or two-year masters (postgraduate) program. After a cumulative five to six years of training, the individual is able to apply for registration as a psychologist and will be deemed a licensed practitioner. In altering the learning outcomes to include cultural competency training, the standards of practice would change to make this a requirement. Therefore, it becomes essential that students undergo such training in order to achieve registration. Since this could be translated into a legal requirement, legislative reform which makes cultural competency training essential is greatly intertwined with alterations in the standards of practice.

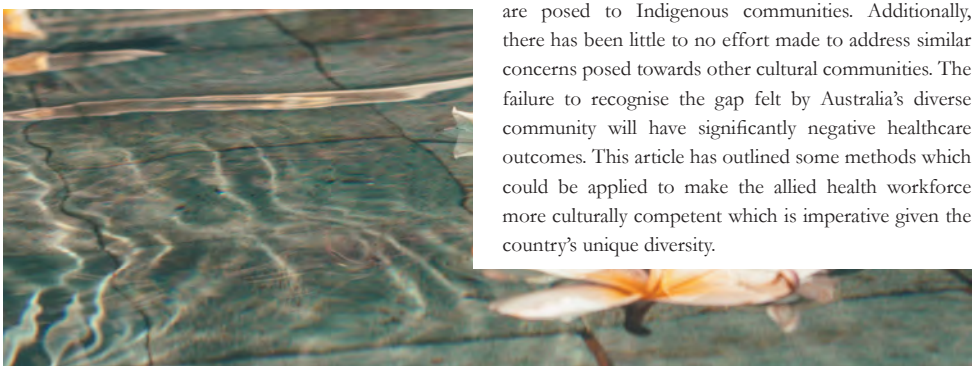
B. Continuing professional development

Continuing professional development (CPD), as described above, is a requirement for practitioners to maintain their licence to practice. Similar to higher level education, it is to ensure that practitioners include cultural competency training during the course of their CPD hours that could be included in registration requirements. If the standards of practice outline a designated number of CPD hours to be utilised for such training, practitioners would have to adhere to maintain their practicing license. It is important to note at this stage that this type of training would be most effective if used in conjunction with the previously stipulated curriculum changes, as this would contribute to the continuity of education which research has demonstrated is most effective in this regard.[20] Practitioners would, in this manner, have an opportunity to refresh their skills learnt during the course of their education, or learn new ones. Moreover, by setting a designation, the regulating board highlights the importance of cultural competency skills and ensures that all practitioners, whether new to the field or not, are prepared to work with a diverse range of clients characteristic of Australia's growing population.

IV Policy Changes

Research into cultural competence training with Indigenous communities has demonstrated that there are three primary divisions where change must occur. These are organisational, systematic, and clinical.[21] The strategy can be applied to other cultural communities in order to produce similar changes which aim to improve cultural sensitivity. Intervention should be designed to target all three levels, outlined above, to achieve maximum effectiveness. An example of such a method would be to include discussion with individuals from the respective cultural background to add an extra dimension to policy-making, allowing for a greater understanding of the nuances which must be reflected in a strategy.[22]

Policy-makers, however, should not rely on other groups to drive such a change. The responsibility lies on all levels of the system including clinicians, educators, and the government itself. A holistic approach which includes legislative reform is likely to signify to the various stakeholders the importance of a cultural competency framework, and that the Australian community is ready to work towards this necessary change. It is only by discussing with various levels of the system, including the community themselves, that these outcomes can be achieved.[23] Legislative reform would make the aforementioned education and standards of practice revisions a legal requirement, as described previously. In this manner, the various stakeholders such as AHPRA, APS and PBA (for psychology) would be liable if they were not to include cultural sensitivity training. The expectation of legal action if the standards were not adhered to would necessarily result in improvements within the field, and would be a required deterrent in continuing healthcare delivery in the manner pursued today.



V Conclusion

As I personally take into consideration the options I have encountered during my research, it would appear that the foundation to drive change relies on education and training. It would be prudent for lawmakers to take the initiative in making cultural competency education a necessity in the field to ensure that inherent racial biases are curtailed. As a law student, I believe it lies upon us to advocate for these issues as we have the enhanced experience of being a part of a top law education institution where a significant number of our students come from different cultural backgrounds. It is only through the opportunities we take as future law-makers to emphasise the importance of this issue through publications, advocacy, and public discussions regarding this topic that there is potential for change. Being a part of a global community within our own law school, there are ample opportunities for us to bring up this discussion with our educators and colleagues alike to create awareness regarding this issue. While some may feel more comfortable through campaigning, publications and advocacy, there are others who are understandably not as vocal, though they may nonetheless promote passive change by opening discussions with their peers. There is no doubt that improving the status of cultural sensitivity will wake the atmosphere more comfortable for patients and practitioners alike, enhancing healthcare delivery.[24]

A holistic approach to this change would no doubt be influential in guiding the workforce in the right direction. Policy-makers in Australia have been attempting to introduce these interventions for cultural competency with Indigenous communities which I believe is a big step in the right direction. Unfortunately, I do not believe enough has been done to address the concerns which are posed to Indigenous communities. Additionally, there has been little to no effort made to address similar concerns posed towards other cultural communities. The failure to recognise the gap felt by Australia's diverse community will have significantly negative healthcare outcomes. This article has outlined some methods which could be applied to make the allied health workforce more culturally competent which is imperative given the country's unique diversity.

Daedalus

I. *Úc*

Down this spoiled pavement,
We speak truths obliquely.

The fading sun washes us,
Relaxes our shoulders;
Today, we are honest.

Three friends laughing.
Coruscates, the candour

Down these marred veins
Lazing palm trees, the quiet of desertion.

Town houses loom
Speechlessly, unclean air lingers;

Yet for this brief, brief time,
You are one again, not another apart.

II. *Lai*

Passing, passing the proud dark aspect
Of another *chú*, uncle; he doesn't recognise you.

He can't see what is a shifting like clouds
Disagreeing on your face.

Down this main street,
Like knife edges you sense
Every unintended glance,
Every word of a tongue you do not own.

Every unsayable hand pulls at you,
Your steps go forward, and lean back.

For them, it is like swimming,
Walking through this place, these faces,

Whistling by.

I wish I could swim; treading this water
Exhausts me.

Robert Anstee, BA/LLB III

I. *Me*

Where was home?
In her steady gaze,
Old, trenchant blade.

She knows more than me.
Her immigrant tongue falters, but
Hesitation cannot mask resolution.

She is greater than me.

She is clear, certain, lithe.
Not even my laughing irony, the
Laughter of the outcast,
Effaces her honesty.

Down another dingy street, we stroll
Past one more cursing racist drunk.

Fuckin' go home. Back to…

Pedestrian imprecations.

Her hand tightens around mine,
Stays my child's fist, my unreasoned fury.

Our steps differentiated, accurate; then
The collapse of a pent-up sigh.

She takes us on through starless pavements,
All the way home.

II.

Grey sky, closing into enigma. Black bird.

Gliding, like Icarus, the nearness of death. Clouds dire, shrieking.

The bird, so high, a pure black sheet; don't catch your death.

Farther distances than I can reach. The wings beat fearlessly into that perpetuity, those grey densities which forbid the eye's egress.

Farther into grey, beyond sound, beyond identity.

The bird vanishes; a fragile wish deserted by its author.

Cultures Collide

Aisha Abdu and Nishta Gupta BA/LLB I

Deception requires two things; yourself and who you think you are. Throughout history, snakes have manifested the different forms of deception. 3300 years ago, Moses was granted the miracle of a staff which could transform into a snake. To ridicule him, the Egyptian Pharaoh ordered his magicians to throw ropes at Moses, which in the cover of shadow and illusion, coiled around him in the shape of serpents. Today, the native Australian Eastern Brown Snake has a deceivingly harmless appearance, despite being the third most venomous snake in the world. Snakes appear as not that which they are. Must we do the same? Shed our layers of skin to be complete? Or are the layers what make us?

Peer pressure pick-pocketed
from
British Empires
Mandates over the soul of
Arabia
An exodus of millenia
Of prayer and brother and sister

Backpacks of history
Sail forward to Oceania
And live in
Heartbeats in woven sajadahs
Of living rooms
In Turkish lanterns next to ABC
News
See a past on the screen
Foreign calamity
Tragedy
Shocked at your own apathy
There's something wretched
about this
Something so special about this,
Reminding you
That the home in homeland
Has no front door.

Mother tongue hamstrung
Choking on what was once sung
A fusion of inflexions
English-Arabic constructions
Tayta* dismisses
Jedo* laughs and kisses
'You tried,' Mama whispers.

Bookshelves shake
Under chandeliers of
Austen and Bronte
Morrison, King
Even John Green
But candlelight rays rebuke me
Dust settles on Rumi*
Al-Ghazali*

The glamour of not knowing
Is easier than knowingly
Being lost.

**Arabic Translations*
Tayta - Grandma in Arabic
Jedo - Grandpa in Arabic
Rumi - Famous Muslim, Persian poet
Al-Ghazali - An influential Muslim, Persian philosoper and theologist.

The clock strikes dinner.
Pursing lips hiss at my hips
But it's no notice
So
Kofta and hummus it is
Too wide to narrow down a man
Too narrow to hold the recipes of Misr*

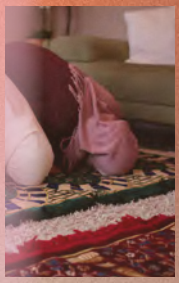
But in a Spring kitchen
I replace baharat with paprika
Warmness all the same
Tips teased out of Woolworths aisles
A fatteh* with the
Sweetness of Australian sun
In saffron rices
And Turkish tea
And TimTams
At sacred Sunday
Barbecues

In Medina*
Desert sand is
Caramel on blistered toes
Pities people who never walk back home.

An untouched city
Protected by divinity
Has never stopped embracing its children

A home for the nomad
For the lost
Wishing to be found
Medina wraps roots around feet
Be still your foolish hearts
Be still and surrender to me.

Shoulder to shoulder
Lines of strangers
Brush against each other
Thousands of times a day
Parisian and Afghani
Millionaire and orphan
Prostrate as one
In the streets of Medina



In an air that closes your eyes
And brings hands to cheeks
Once in every lifetime
We are home.

**Arabic Translations*
Misr - Egypt
Medina - Holy city in Saudi Arabia
Fatteh - A traditional Levantine dish

THE MUSLIM A GAME: ACTIVISM AND AGENCY

Muhammad Yaseen,
BEc/LLB III

Going through law school as a Muslim has been a difficult, enriching, painful and beautiful experience all at once. I have learnt so much about myself and developed many skills and ways of thinking that I wouldn't have otherwise. At the same time, it has been the seat of so many uncertainties, doubts and anxieties for me about what it means to be a Muslim today.

Law was not my first choice at all and not by a long shot. Unlike many of my peers, the Harvey Specter was born in me after I had already been through a semester of University. Like many others, I was sold the idea that 'Law is the space to make a difference'. It is where social justice activism is born. It is where impact is rewarded, and a culture of change is forever present. And it may very well be.

Calling a Muslim a terrorist. Ripping off a Hijab. Vandalising a Mosque.

But my recollection of the past few years is not a recollection about whether or not one can make an impact through law. It's about the various external forces, tugging at my Muslimness that have compelled and pushed me to pursue a certain type of impact. While I wish I'd be able to write about a romanticised story of how I was inspired to do more, or a telling narrative of me going against all odds and making it in life, or something similarly amazing – I simply cannot.

***

My relationship to activism has been a continual re-imagining of what Islamophobia looks and feels like. The basic understanding of Islamophobia – one that dominates much of the media and unfortunately much of the Muslim community – is one that is centred around key images of day-to-day aggressions.

Calling a Muslim a terrorist. Ripping off a Hijab. Vandalising a Mosque.

This was the understanding I also took for granted. To me, it was simple. Some Muslims did terrorism, but not all Muslims did terrorism. People blame all Muslims for terrorism and so people do Islamophobia. The solution? The real Muslims need to speak against terrorism and be exemplar citizens so Islamophobia can decrease.

I don't blame myself for this understanding. It was straight out of the handbook of so many of our community leaders and the role models I, as a Muslim, inherited from the media, sports and beyond. There was a continual drive to show that we were – despite the rumours and misconceptions – well-intentioned people who just wanted to make a difference. And that's what we needed to do – just make a difference.

My aspirations in early law school mirrored this. Initially, I wanted to be a criminal prosecutor. I saw it as a safe way

to do good and uphold justice. If I wasn't defending criminals and I was ensuring criminals were locked up, then surely, I was doing something good for society. Society would most definitely approve. Next, I wanted to be a human rights activist. I didn't know for what, or why, or how. I didn't really care about human rights activism before this, ever. All I really knew was that it was something that sounded justice oriented, something meaningful. And I knew that society would approve. Next, but still related, I wanted to work to combat domestic violence in some way or the other. I had never really researched domestic violence before this, but I felt like, again, society would approve and it was still at least, meaningful.

I remember during these many shifts in my thinking, I developed a real distaste for many activist groups within the Muslim community. Innocent Muslim community establishments that worked towards spreading the message of Islam became the seat of my distrust. Continually, I felt these groups were too impractical. Too backward and stuck in their ways. I felt that they were not working towards anything real and that they instead shunned wider society offhandedly, damaging the standing of the Muslim community.

It is possible that those groups *do indeed* have the wrong approach. It is also possible that the career aspirations I previously had *are indeed* where Muslims need to be.

But I wasn't really pursuing these possibilities.

This realisation came to me as I picked up a book which I initially thought had very little to offer. I saw the author on numerous Facebook discussion groups and mainly because he fought with people I also disagreed with, he caught my interest. Yassir Morsi's 'Radical Skins, Moderate Masks' was a game changer.

While not the founder of this concept, he opened my eyes to viewing Islamophobia beyond the headlines and day-to-day incidents. Islamophobia is not just about society saying 'no' to Islam – it's not just about society negating the hijabi Muslim woman, or a conservative Muslim man, or a 'backwards uncle', or the 'dangerous doctrine of jihad'. Islamophobia is a productive force as well. It is about telling Muslims what they can be and what a good Muslim looks like. It is about producing convenient and ideal versions of Islam that the West can tolerate, that the West can celebrate.

And since the West can celebrate it, we Muslims can celebrate it too.

For instance, walking through a museum displaying the many scientific achievements of early Muslim civilisations, Yassir reflects "I wondered what the museum ought to look like otherwise. What would it look like if it freed itself from the responsibility of correcting demeaning stereotypes? For was the museum not a result of Islamophobia's productive discourse? Did it not create a convenient version of Islam for Western public consumption? Did it not exterminate its own brutes?"

The book goes on to detail the numerous masks Muslims are compelled to wear leading on from

the War on Terror discourse. He details three masks – each with their own peculiar familiarities – that Muslims switch through in their attempts to pursue their Muslimness in the West.

I realised that many of my aspirations had little to do with my honest pursuit of justice and more to do with my pursuit of an acceptable Whiteness. I was pursuing a 'fabulous mask' - the mask of Waleed Aly. Here, the Muslim accepts negative stereotypes

as a starting point, and tries their utmost to show they are more Western than the West. They love everything about Australian culture – the footy, rock music and Anzac biscuits. Importantly, they consciously distance themselves from the backward and absurd Muslim.

For me, being a criminal prosecutor was less about true justice and more about pursuing an acceptable contribution to society in the context of the inescapable War on Terror discourse. And the same went for everything else. My distaste for certain Islamic groups didn't stem from a genuine disagreement, but from a desire and inclination to something more familiar and something more comfortable - something more Western.

As I reached the end of Yassir's book, I understood what Islamophobia meant for someone living in an otherwise comfortable life in Sydney's suburb. It was not about living an authentic life as a Muslim but pursuing authenticity through an understanding of all that pulled at it. Not celebrating Muslim individuals for their position in White society, but for their standing in the grassroots. Not pursuing an impact that White society could tolerate, but pursuing an impact I genuinely believed in. Activism was, ultimately, about agency, about having the self-determination to move beyond 'mosaic' discourses that were never our own.

Yassir sums it up perfectly in his auto-ethnography – "indeed, if I am honest, proving the existence of racism is not my sole aim. Was it ever? I do not know. I simply hope to destroy its baneful influence on my sense of self. I want to try and seek a freedom from it and voice well beyond it and from the masks it compels me to wear."


Straw Widow
Straw Widow
Straw Widow
Straw Widow
Sara M. Saleh

We a land without a people. We skeletal
olive trees, oranges with sunken
cheeks, we mundane and metal
netting prostrating the streets, we ancestral
deeds and keys welded shut, we car honks when
they pass their tests, for the brides, for
the births, for the funerals. They set 2am
fires for us to lick, and drive away with
blindfolded fathers.

They cannot be fathers anyway.

We biblical, we descendants
of Galil, we mouth full of half-languages
and sumac gaps, we pilgrimage with
more holy than any of us ever wanted.
We nothing but other sides, and truth finds
another way to sterilise us. We wait for hours
in our underwear. They make bets
on who will be the difficult ones.

This is the sidewalk where they
shot her, insides clapped out like hot
coals and our confessions, coaxing us to
watch, to film their Sunday
entertainment, before
we are archived again.

The official story is a shiv crowned
her palm like rosary beads, there will be
no burial rites, our daughters and sons
are often the shape of beasts, we
turpentine and turbulent grief.

The world hails it peace plan.

Today that 21-year-old conscript
brings a different God to each obscenity.
There is a God for obscenities
like this. The occupiers decide
not to convict, they say they are pleased,
"Soldier was doing his job. Your videos
show this, too."

W-Allahi*, the neighbours swear they
heard her cry, "I am growing
a new Arab body."

Let's drag her body through five
decades of colonial scaffolding, they need us
to remember, we spectacle, we quiet
the dead and marinate
the Street of Martyrs
with its namesake. This is how
to keep it ours. What are we
but a eulogy for our children.

I, chequered black and white cloth
cradling my eyelids, they spearlike
spines, angle their guns when
they see me, they hiss
"whore" and spit, we fingers
pulled off and split. On garbage
day, their trash and piss
staccato over us. Mama says,
"This is the only way they
want to know Arabs."

There is no good reason
to end apartheid, to change our laws,
we won't let them in
our buses, our souks, our
schools, our factories, our
theatres, our sermons.

Who else built everything in this country.

Baba is a pulpit of rage
From the state's constant reaping,
soon we will beat them
senseless,
eat at their rind.

We loss and loss.
We metastasizing over this
city like an infection.

Arabic Translation:

***W-Allahi: To "swear by God". Widely used as a cultural and religious expression in the Middle East.**

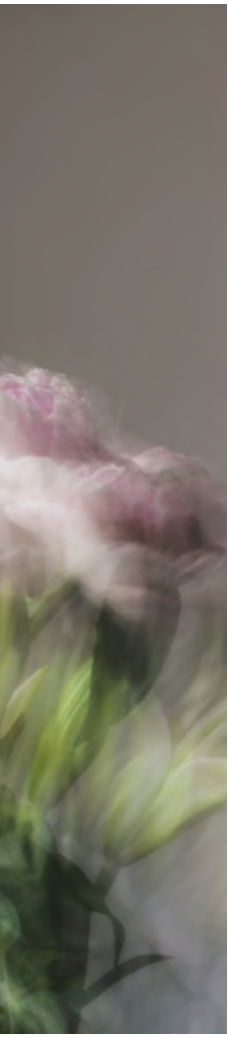
PAINTING A FINER PICTURE

Amir Elsaidy,
BA/LLB IV

Modern Australia is a work of art, a rich mosaic constituted by various groups of all shapes, sizes and colours, that come together to produce a diverse, yet unified whole. Similarly, the legal profession is also a mosaic, albeit, one that is markedly less vibrant and unique. It remains frustratingly homogenous, marred by the systemic underrepresentation of marginalised groups such as women, LGBTQ+ identifying persons, Indigenous Australians and ethnic minorities. Despite the fact that the profession is, at times, committed to reflecting Australia's diversity through one initiative or another, structural weaknesses continue to permeate its very fabric. In lieu of referencing the statistics that support these assertions, it is perhaps more befitting for me to simply speak from my experience as a person of colour in this space.

Discourse surrounding the issues of diversity and inclusion within the legal profession often peaks during the clerkship season that runs from June to September each year. In pursuit of luring the finest talent, Australia's largest and most prestigious firms tout that they are open-minded and tolerant of different perspectives and ideas. Ironically, they often peddle the same message, and rely on basic application forms that mimic questionnaires. As I navigated this protracted hiring process over the past few weeks, I contemplated the ability of recruitment teams to understand the complexities of my identity as I checked boxes requesting my ethnicity, religious background, and sexuality, amongst other personal characteristics.

It begs the question, how can a format that effectively places candidates into restrictive pigeonholes truly grasp the intricacies of the human experience?



I am sceptical of the ability of such a format to understand the intense culture-shock and loneliness that I faced as I transitioned from a sea of students from migrant families at a government school in Western Sydney, to Sydney Law School, a mecca for private school educated, white Australians. Or perhaps the soul-crushing humiliation I felt when one morning at work my supervising solicitor asked if I 'was one of the Muslims laughing because Notre Dame had caught on fire'. Yet still, the sheer helplessness and desperation that laced a friend's voice as she shakingly asked me if she should bother to speak candidly about her challenges because it 'wouldn't make a difference' if she did. As a Lebanese Muslim born and raised in Western Sydney, I have long been attuned to the difficulties experienced by minority groups as they attempt to transcend the limitations imposed upon them, either by chance or by circumstance. Few of the students I attended high school with considered a career in law, and fewer still were fortunate enough to secure a position at the University of Sydney. For many around me, our university has always been too elite, too inaccessible, and too fantastical a notion. Like many immigrants, my parents fled from a place in which they did not feel welcome, and like many of my fellow first-generation Australians, that is a sentiment that I regrettably know all too well.

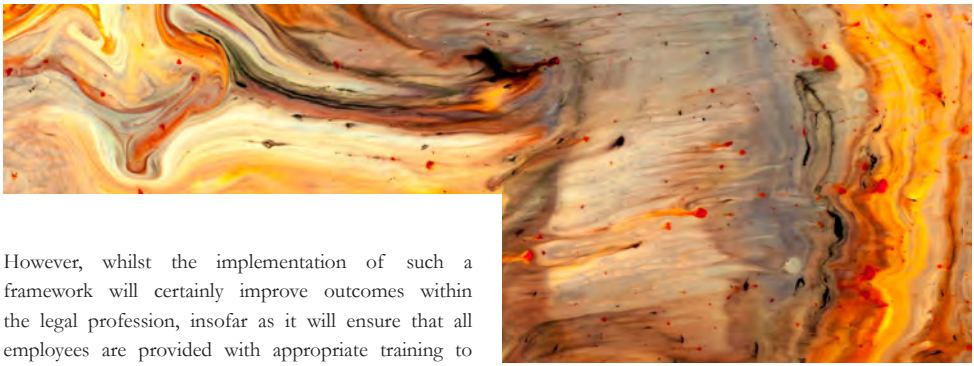
It appears as though minority groups are relegated to exist only in the liminal spaces of the legal profession. We are oversimplified, yet underrepresented. We are framed, yet left out of the picture. We are painted with broad brushes, yet told to champion our finer details. Our artistry is disregarded. The exclusion of minority groups not only hinders the prosperity of the legal profession, but also delegitimises its ability to embody equality and fairness – the fundamental tenets of the Australian legal system. As key pieces continue to be absent from the stunning whole, the future beauty of our shared artwork remains in jeopardy.

So what can be done?

Whilst it is naïve to assert that law firms can become faultless models of inclusion, there are certainly changes that can be made in order to enable the profession to more appropriately interact with, and respond to the needs of minority groups. 'Diversity Intelligence' captures some of these changes, and is a concept developed in 2014 by Claretha Hughes of the University of Arkansas, as she reflected upon some of the discriminatory experiences that she

encountered while working within various organisations as a black female. During this time, Hughes determined that organisation leaders often lacked a refined capacity to 'intelligently' interact with those who were different to themselves. Although this missing competency in and of itself is not inherently problematic in circumstances where the individual makes a genuine effort to upskill, Hughes believes that many do not proactively invest the time to cultivate their existing capabilities. Asserting that 'change begins at the top of an organisation', Hughes' work therefore advocates for the implementation of comprehensive training programs that will equip leaders with the requisite skillset to intelligently navigate workplaces with broad social, cultural, racial and other human diversities, and to appropriately use extensive knowledge of diversity among minority group employees. Such training programs would focus on the development and refinement of key interpersonal and soft skills, such as the ability to demonstrate an active commitment to dismantling prejudice within the workplace, embody fairness, recognise the contributions of others, empower employees to freely express themselves, and support the advancement of the careers of minority group employees. Hughes believes that upon upskilling leaders and other senior employees, such programs can then be integrated into the career development plans and management systems of junior employees to result in four clear outcomes throughout an organisation. Diversity-Intelligent employees should be able to motivate others who are different to themselves, appreciate differences without allowing them to become obstacles to performance, adjust their behaviour and conduct where necessary, and ought to accept that any perceived differences within an organisation are strengths and not weaknesses.

It is axiomatic that many, if not all law firms already maintain policies in respect of diversity and inclusion. However, there remains merit to the implementation of a Diversity Intelligence framework, in the sense that it will provide a greater measure of accountability at all levels of an organisation. In other words, despite firms claiming that they truly appreciate diversity, and that they have developed initiatives to foster greater inclusion, such measures are often centred on the social aspect of diversity, rather than on the pressing need to redress prejudice in a quantifiable way. As such, there is often a disconnect between the principles that organisations publicise, and the behaviours that are manifested by their employees in actuality, with stories of vilification in the legal profession arising often. Diversity Intelligence can be used to bridge this gap, as it will allow management teams to clearly assess if the conduct of employees is consistent with posted key outcomes, and to offer further training to those displaying unsatisfactory conduct. It can also be used to assess the quality of leadership, including the success of diversity-intelligent communication styles and work processes, and whether the skillsets and careers of minority group employees are being appropriately developed by senior staff. In the absence of Diversity Intelligence, law firms may inadvertently create or perpetuate adverse relationships between employees, and therefore reduce the efficiency of their organisations, for want of a structured understanding of how to be intelligent regarding difference. Workplaces that genuinely value diversity and have a culture of inclusion are able to recruit and retain high performing staff, improve productivity and performance, as well as increase organisational competitiveness and growth, galvanising the significance of a Diversity Intelligence scheme.



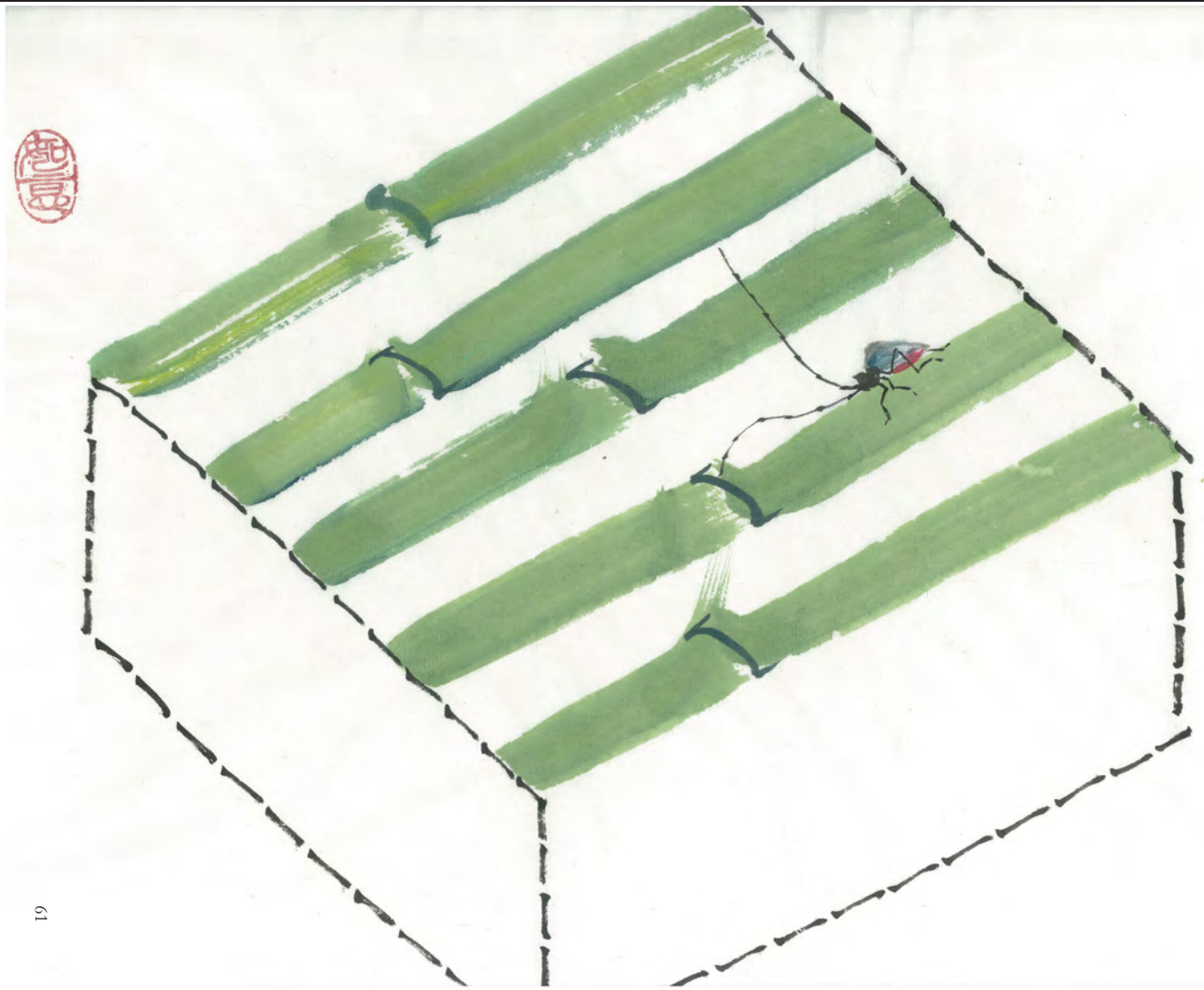
However, whilst the implementation of such a framework will certainly improve outcomes within the legal profession, insofar as it will ensure that all employees are provided with appropriate training to navigate diverse workplace and must embody positive conduct, it is unlikely to directly ameliorate the trepidations experienced by law students seeking to enter the profession. Essentially, although Hughes advocates for a top-down approach to improving diversity and inclusion within the workplace, the capacity of a bottom-up approach to also instigate positive change should not be disregarded. In this vein, some law firms have begun to make apt use of contextual frameworks as part of their recruitment process, which operate as 'screen-in' tools by considering new applicants in the context of their demographic, educational and socioeconomic background. Such frameworks are designed to assist recruitment bodies to become cognizant of some of the challenges experienced by minority groups, and allow a candidate's talent to shine through. However, despite the ability of such systems to identify those with high-potential who may have faced disadvantage, many firms have yet to move beyond their reliance on basic application forms for various reasons, perhaps because of the prohibitive costs of adopting contextual software, or the inherent complexity associated with processing such data. A move towards increasing the use of contextual recruitment systems can be instigated by the Law Society of NSW, which presently regulates the clerkship process, in order to make such systems more accessible and efficient. To this end, whilst law firms cannot be expected to holistically understand and capture the lived experiences of minority groups, particularly during the initial recruitment stage, they can nevertheless adopt a more open frame of mind that is receptive to learning about the stories and skillsets of others through the adoption of a contextual framework. In this way, they can help add colour to the mosaic from the bottom-up.

Conclusion

It is an unfortunate reality that some students may feel compelled to conceal who they truly are for the sake of securing a coveted clerkship at a top-tier firm, or in pursuit of another desired accomplishment. Amongst other factors, the current climate of competition, elitism and exclusivity within the legal profession has regrettably facilitated this state of affairs. A climate in which the people of colour around me confess that they do not reveal the challenges that they have overcome to survive the toils of law school, for fear of being shamed or shunned, and one in which I follow in the footsteps of my immigrant parents, and consider anglicising my name, simply to 'fit in'. Diversity Intelligence, working in conjunction with contextual approaches to recruitment, will set the legal profession on a much-needed course correction from the top, and the bottom of the industry. Such measures will enable minority groups to prosper within the profession, to smash through glass, bamboo or concrete ceilings; to redefine the upper echelons of a previously off-limits domain, and to pull people up alongside them. They will ensure that the voices of marginalised groups break free of the margins, and roam free on the page, with conviction and purpose. They will reshape the mosaic, and help us paint a finer picture.

BAMBOO CEILING

Michelle Chen, BSc/LLB II



竹顶

岁在庚子年蜜雪写


multicultural ism ...?

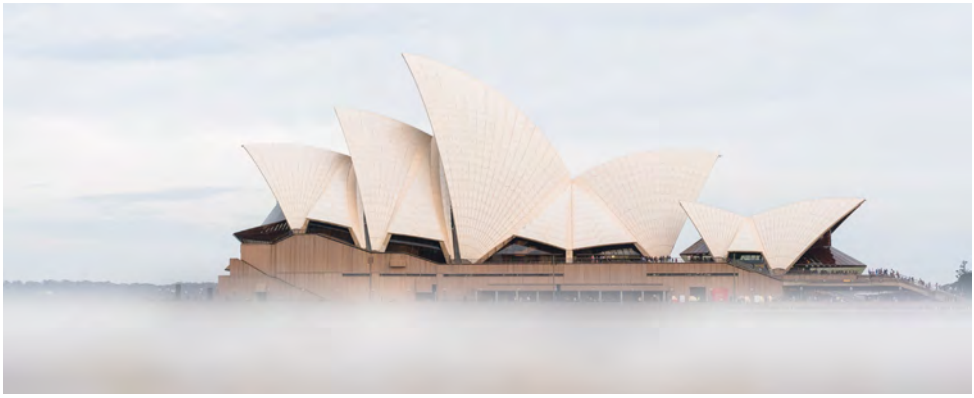
Liberal Nationalism: Academically Speaking, 'Multiculturalism' could be a Misnomer

Grace Hu
BA/LLB I

There are many different levels of culture. There is 'soft' culture which consists of cuisines, cultural dances and language. These are the kinds of things you see tourists attempt to explore when they go to other countries. Then you have things you cannot easily see, things that take a while to grasp, for example, that Chinese people believe in 'warm' and 'cool' foods based on traditional medicine and think that food combinations such as rabbit and celery can cause sickness. These are the things that play an important role in how people of that culture view the world, make decisions and live their lives. Then you have a 'hard' version of culture: politics, the law, and how a particular culture thinks society should be governed.

I intend to ask the question: can diasporic individuals in Australia bring a multicultural perspective to the legal world in a transformative way? I will explore the evolution of Australia's immigration policy and multicultural discourse. This naturally involves an evaluation of the reality of multiculturalism in Australia with special attention given to the diasporic experience of cultural attrition Coupled with a consideration of alternative understandings of cultural pluralism, I reach the answer 'no'. While diasporic individuals may advocate for explicit, visible and mainstream accommodation of their own in society, their influence stops there for two reasons. First, multiculturalism in Australia is fundamentally White multiculturalism. Second, diasporic individuals often lack the 'cultural baggage' multiculturalism claims they can 'offer' to society. Rather, MOSAIC discourse and the idea of culture as a contribution to society is a reification of the diasporic experience and over-simplification of culture. One man's culture cannot fix another's society or law.

Here, as a note, I want to recognise that any discussion about multiculturalism in relation to the Australian state, its government and its people is unavoidably a debate about nationalism, whether we like it or not.



Cultural Theory

In order to understand the nuances of multiculturalism and minority rights on a conceptual level, we must consider the evolution and various frameworks of how multiculturalism should function.

I would argue that there appears to be an emerging consensus that multiculturalism in Australia could best be understood by engaging with what is known as 'liberal nationalism.' According to liberal nationalism, it is a legitimate function of the state to protect and promote the national cultures and languages of the nations within its borders. In practice, this is done by operating public institutions in those languages and providing national groups self-determination in issues concerning their culture. In contrast to illiberal nationalism, liberal nationalism does not force citizens to adopt the common national identity. Liberal nationalism allows individuals to cherish their own national identityIt allows freedom of speech and even political mobilisation that challenges the privileged national identityItdoes not make membership to the national group reliant on race, ethnicity or religion.[1] Therefore, Australia as it currently stands could be said to be an example of a liberal nationalist country: English is the official language and Christian holidays such as Easter Weekend and Christmas Day are national public holidays. Yet Australians are allowed to speak other languages and celebrate other holidays. Advocating for a First Nations Voice to Parliament is not viewed by the state as disloyal or worthy of an attempt to stifle challenge of the status quo. Australian citizenship does not necessitate Anglo-Celtic ancestry or an adherence to Christianity.

However, moving beyond this minimalist permissiveness brings us to liberal multiculturalism. Liberal multiculturalism accepts that non-national cultural groups have a valid claim, not only to tolerance and non-discrimination, but also to explicit accommodation, recognition, and representation within the institutions of the larger society. This can include recognising the holy days of minority religious groups, including the history and culture of minority groups into educational curricula, and creating advisory boards to consult with the members of minority groups.[2] Australia could be said to satisfy broad liberal multicultural requirements. Arguably, it could also be said Australia does not meet the requirements for liberal multiculturalism on a legislative level. For example, there is no First Nations Voice to Parliament or formal recognition of our Aboriginal and Torres Strait Islander peoples in the constitution. This is an important point for one to consider when trying to come to terms with why I believe 'multiculturalism', in its current manifestations, cannot bring about transformative legal change. If indigenous voices are not heard, what hope do other minorities have?

As Will Kymlicka says, both liberal nationalism and liberal multiculturalism can be described as 'liberal culturalism'. This is the view that liberal-democratic states should not only uphold the civil and political rights that they are defined by, but must also adopt various group-specific rights or policies which are intended to recognise and accommodate the distinctive identities and needs of ethnocultural groups. For liberal culturalists, the group-specific measures, which can range from measures such as language rights to constitutional recognition of

indigenous peoples, are requirements for ethnocultural justice.[3]

One of the main alternatives to liberal culturalism is the republican position which argues that common citizenship rights without group-specific rights are inclusive of ethnocultural identities. However, not only does this model treat ethno-cultural identities as a matter of individual choice in the private realm, but this model is heavily weighted in favour of the majority group, as it is their language, culture and history which the state sponsors.[4]

We can see that Australia sits somewhere on the spectrum between pure tolerance, only as presented by liberal nationalism, and the republican model, through the example of language. For example, the Morrison Government dedicated $10 million over 2 years, or a pitiful 0.001% of an average $500 billion budget to its 2019 Community Languages Multicultural Grants.[5] This aims to support ethnic language institutions such as Saturday schools, meaning the government has technically supported community language and thus group-specific language rights.

However, I believe NSW educational structures and policies that disincentive community language learning have resulted in their decline. When I did my HSC, scaling in immigrant background languages such as Chinese, Japanese, Greek, Arabic and Vietnamese were far lower than French, German and Latin. Such similar scaling issues did not affect traditional language subjects meaning I ultimately felt 'punished' for studying my mother tongue. This is because cohorts that take community languages are more likely to have students from lower socio-economic backgrounds who speak English as a second language. This means strong performance in these languages is scaled according to their course's poor performance in mass-candidature subjects, including English. I would argue that this decline is clear from the results: in 1992 in NSW, 42% of students from a Greek background studied their language for the Higher School Certificate. By 2011, only 7% took Greek for the HSC. In the same period, Arabic study has plummeted from 21.7% to 9% of students of Arab background.[6]

Second, NSW language eligibility, Heritage (now 'In Context') classes for HSC study and class groupings disinscentivise continued language development. In NSW, Continuers classes only allow students who do not use the language at home or in community, and heritage speakers are instead put in Heritage classes. These classes do not accommodate for the vast range of language fluency, thus disincentivising students to learn their language on a senior secondary level.[7] For example, as a student put in a Heritage class for speaking Mandarin at home, the second a Year 7 Grace realised that if she had did Chinese for the HSC she would be competing against students who had been doing Saturday school since the age of four, she wisely dropped Chinese for Latin. Each student in my Year 7 Heritage class had a wildly different starting point for their Chinese fluency, however, if we had each taken Chinese for the HSC, we would have been expected to sit the same exam. That is a problem. Policies that claim to do one thing end up doing another. Applying my experience to the law, would policies that aim to celebrate multiculturalism do so, or would they fall short by virtue of a shadow structure that goes unnoticed? I would argue that Australia's faux liberal multiculturalism means that in the same way it cannot accommodate the nuances of language, it will not be able to accomodate genuine cultural perspectives.

Moreover, class groupings in Asian languages also disincentivise language development. For Korean, at a junior secondary level, second language learners who speak Korean at home or in community are not well catered to as they are grouped with background speakers whose proficiency is much higher. However in upper secondary, background learners are then not accommodated due to the presence of first language learners. As a consequence, second language learners and background language learners, both groups who are most likely to have a cultural connection to Korean, are not supported and are thus disincentivised from continuing Korean into senior secondary, resulting in 95% of Korean HSC takers being first language learners.[8] When students are dissuaded from learning their own language formally, they are forced to pick it up informally in an environment dominated by English, making it nearly impossible to fully develop their language understanding. As Dr Ken Cruickshank concedes, "They come to school with fluency in at least two languages. The school system is making them monolingual."[9] This reality not only shows that the treatment of ethnic cultures as a private matter is a fallacy, but that it is a fallacy Australian governments, especially the NSW government, is willing to accept. It appears that they have the kind of tolerance that watches

on as culture atrophies. If this is just the experience of those studying languages in high school, then what about participation in the law more broadly. I would argue that liberal nationalism may in fact challenge an almost utopian assumption that 'multicultural' perspectives would be listened to let alone used to better the law.

Multicultural Discourse

Furthermore, in order to understand multiculturalism as a discourse, I will explore the evolution of Australia's immigration policy, especially in reference to Ghassan Hage's White Nation. The policy of assimilation was used from the end of World War II until the late 1960s as an extension of the White Australia policy. It required non-British migrants to adopt English and Anglo-Celtic culture over their own. This was followed by a period of tolerance, especially associated with the state-sponsored multiculturalism that emerged in the early 1970s. In the 1980s, the discourse of multiculturalism as a beneficial rather than a begrudging state of tolerance began with the governmental policy of 'productive diversity' and multiculturalism being an economically exploitable resource exemplified by the preface quote in the Productive Diversity in Business discussion paper, "Ask not what you can do for them, but what they can do for you."[10]

The remnants of 'productive diversity' and the like plague contemporary discussions about multiculturalism and reduce culture, as well as the people to whom that culture belongs, to resources for exploitation. To say something as common as that Australians can learn from such and such culture's values of (insert some version of an 'Eastern' value such as filial piety or community or hard work) commodifies that culture.

Undertaking a post-colonial reading also reveals that the form of multiculturalism Australia has does not, in fact, conflict with white fantasy or white nationalism. Rather, as Marc Guillaume and Jean Baudrillard argue in Figures de l'Alterite, Western thought thrives on reducing alterity to a tamed otherness and the West normalises and assimilates these cultures until they can no longer be called living cultures. These ethnic cultures are not, as Hage puts it, perceived as having a life and existence of their own, but as dead cultures that only live through the 'peaceful coexistence' of their multicultural menagerie. White multiculturalism can deny the 'subject' status of ethnic culture completely independent of their relation to Western thought and instead treat ethnic culture as an 'ethnic object with no will'.[11] White multiculturalism does not truly believe that your culture is yours to cherish, change or destroy, but theirs to collect and exhibit.

Diasporic Reality

Rooted in notions of multiculturalism, MOSAIC and melting pot discourse is the idea of the coherent cultures and groups that make up these different forms of multiculturalism. But a closer and more nuanced examination shows that the relationships people have with their culture are complex, diverse and not necessarily coherent enough to suit multicultural discourse.

Taking Chinese-Australian people as a case study, we can see that not only is there no unified Chinese 'culture' or way of relating to or interpreting that culture, but that there is no fundamental 'Chineseness' which Chinese-Australians can take the perspective of or contribute to conversations with.

The first major group of Chinese immigrants, mostly from southern China, came to Australia during the Australian Gold Rushes, with some staying to raise families whose descendants became known as ABCs (Australian Born Chinese). During the 1970s, ethnic Chinese refugees from Vietnam and Cambodia were given permission to settle in Australia. In the 1980s and 90s there were economic migrants from Hong Kong and Taiwan. After the Tiananmen Square protests in 1989, the Australian government allowed students from mainland China to stay in the country. Since the 2000s, there has been a wave of immigrants from China as its economy has developed rapidly. Amongst other dialects and languages, immigrants were historically more likely to speak Cantonese while recently, with growing migration from the mainland, more immigrants speak Mandarin. Second generation offspring speak the languages of their family to varying degrees of competence, and people whose families have been in Australia for several generations may not speak any ethnocultural language at all.[12]

When these people speak different languages and trace their different relationships with China and Chinese culture back to different points across more than 150 years, is it fair to call this one ethnic group or culture? What, at all, do these people share, if they do not share a language, or social mores, values or history, and how can you call what is left a 'culture'? What is it that makes me 'Chinese' and thus gives me a supposedly different perspective and valuable role in Australia's multicultural future?

While the public policy of multiculturalism is vital in smoothing out tensions between the 'ethnic' and 'national' by suggesting they can exist harmoniously, thus facilitating migrant integration without forcing white homogeneity onto migrants, it has at the same time spawned an ideology that cements a way of describing people as belonging to distinct ethnic groups. Multiculturalism has not eliminated the groupism that underpins the same construction of 'ethnic groups' as distinct, substantive entities that we saw in the White Australia policy.

The problem of multicultural discourses is what Amartya Sen calls 'plural monoculturalism', which we see in MOSAIC discourse and is a concept that is now widely acknowledged. This 'plural monoculturalism' is not beneficial to people, but rather a different type of pressure Assimilation insists people homogenise but now multiculturalism insists they remain to true their ethnocultural identity.[13] But what is this ethnic identity to which they are meant to remain true?

I do not have what Ang refers to as the necessary "cultural baggage" to endow my Chinese identity with "sufficiently authentic ethnocultural substance".[14] I spent my high school years doing Shakespeare at school, getting my emo vibes from Beat poetry and pretentiously dropping Joyce references into any writing I did. I was not made to learn the idioms of Dream of the Red Chamber or about the strategy and heroic characters of Romance of the Three Kingdoms. I did not endure the struggle of trying to answer comprehension questions about classical Chinese poetry by guessing my way through old characters that even top students probably didn't know in my high school leaving exam. I don't live in a complex culture with a lot of focus on interpersonal connections and a very particular way of talking about people's relationships with their society and their fate. I am used to thinking about individuals and their lives in a very particular Western way. If my dearth of cultural immersion, my lack of learning and lack of connection with a large and complex Chinese community do not disqualify me from being 'Chinese', what is it that makes me 'Chinese'? What

is it that it gives me a multicultural perspective? Are the shadows, fragments and whispers of culture and trauma that make up the patchwork heritage that I have sufficient to be deemed culture?

Even if diasporic individuals had authentic cultural baggage, this could barely help improve Australia's legal, political or social frameworks. To paraphrase Stuart Hall, the signifier 'Chinese' is torn from its historical, cultural and political embedding.[15] Instead, it is lodged into a biologically constituted racial category, a myth of significance in shared ancestry, a myth of consanguinity. I believe this absence of relationship between signifier and signified but for the issue of 'race' makes a useful analogy for Australian multiculturalism. I believe that culture in its deeper sense is our word for societies we do not belong to. Culture is our word for the complex relationships between history, politics, thought, religion, geography, social structure and tradition in places we do not understand. When you attempt to suggest that someone can use their culture to shape, comment or change another society, you reduce this deeper form of society as culture to culture as shallow as merely language or merely cuisine or merely religion while ignoring the inextricable complexity of hundreds of years if not millennia of interactions in space and time and hearts. When we talk of culture in multiculturalism, we talk of such apparent aspects of culture as race or cuisine or values but tear these away from the richness within which they are placed. We essentialise vague qualities we believe to belong to that culture and pair them with observable habits. Multiculturalism talks of 'culture' without talking of culture, tearing the signifier from the signified.

Conclusion

In Australia, 'multiculturalism' is a misnomer for white liberal nationalism that occasionally drifts into plural monoculturalism. Rather than a MOSAIC, it is a menagerie that collects and exhibits ethnocultural diversity while refusing to do any more than tolerate it. It is a discourse shaped by years of policy, immigration, racism and nationalism.

I also believe that there are a few realities one needs to understand before appreciating how ethnoculturally diverse perspectives could conceivably have any improvement on Australian legal, social or political frameworks. The first is the notion that one complex society can fix another complex society. The second is the notion that when you separate the complexities and history of one society and leave only simple values or customs without context, that 'culture' can fix parts of a complex society. Another reality is the recognition that Australia is not, in its current form, a place that respects its ethnoculturally diverse peoples. I propose it is this white liberal nationalism which these people are acutely aware of. Therefore, it is these realities which we need to recognise; the reality in which we need to listen to ethnocultural voices in a way that honours them outside the confines of white liberal nationalism. Perhaps then my answer of no to the question of whether people of multicultural backgrounds can have a substantial impact on the law could be changed.

Thoughts on race, discrimination, law, and justice

Simon Rice

1 The cases were decided by a panel of three, which I chaired as the qualified legal member. Whether in this essay I say 'I decided' or 'we decided', for purposes of the analysis I take responsibility for the decisions; I do not presume to attribute this analysis or my views to my fellow panel members.

2 *Anti-Discrimination Act 1977* (NSW).

3 Although the discussion here is about the NSW *Anti-Discrimination Act*, it could as well be about any of Australia's twelve federal, state and territory anti-discrimination and equal opportunity laws; see Neil Rees, Simon Rice and Dominique Allen, *Australian Anti-Discrimination and Equal Opportunity Law*, Federation Press, 3rd ed, 2018, 42-43, 92-134.

4 See, eg, Rees, Rice and Allen, ibid, 31-39; Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction*, Cambridge University Press, 2016, 175, 200, 279-294; Belinda Smith and Dominique Allen, 'Whose Fault Is It: Asking the Right Question to Address Discrimination', (2012) 31(1) *Alternative Law Journal* 31, 32-36; Therese MacDermott, 'The collective dimension of federal anti-discrimination proceedings in Australia: Shifting the burden from individual litigants' (2018) 18 (1) *International Journal of Discrimination and the Law* 22.

5 To be contrasted with the prohibition of 'indirect' discrimination to achieve substantive equality: see Rees, Rice and Allen, above note 3, 15; Gaze and Smith, above note 4, 18-20.

6 [1999] NSWADT 63.

7 *Anti-Discrimination Act 1977* (NSW) s 4.

8 [2002] NSWADT 210.

9 *Anti-Discrimination Act 1977* (NSW) s 8(2)(a).

10 *Riley v Western College*, above note 8, [11]-[13], [20].

11 *Anti-Discrimination Act 1977* (NSW) s 7(1)(a).

12 *Riley v Western College*, above note 8, [27].

13 Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia*, Oxford University Press, 1990, 1, emphasis added.

14 Ibid.

15 Margaret Thornton, '*Auditing the Sex Discrimination Act*' in Marius Smith (ed.), *Human Rights 2005: The Year in Review*, Monash University, Monash, 2005, 25-56, at https://ssrn.com/abstract=2283985.

16 Ibid.

17 My colleague Belinda Smith drew my attention to Martha Minow's making this point, identifying the 'unstated points of comparison' of various protected attributes, in Martha Minow, *Making All The Difference: Inclusion, Exclusion, and American Law*, Cornell University Press 1990, 22.

18 Thornton, above note 15.

19 *Riley v Western College*, above note 8, [22].

20 Ibid [32].

21 *Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62, 217 CLR 92; see Gaze and Smith, above note 4, 111-113.

22 Belinda Smith expressed the problem this way in her paper "Being' versus 'doing' – what is really protected under anti-discrimination laws?' to the Labour Law Seminar Series at the ANU College of Law, 22 April 2015.

23 *Riley v Western College*, above note 8, [28].

24 Ibid.

25 Ibid [30].

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A Technological 'Lingua Franca': The Future of Legal Communication with People with Disability

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Language, Culture and Professional Obligations: Refining the Relationship Between Legal Practitioners and Indigenous Clients in the Criminal Justice System

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1 Juris Doctor, The University of Sydney. The views expressed in this paper are those of the author. They do not purport to reflect the opinions or views of the Sydney University Law Society. The author appreciates the comments from the Mosaic editor, Robert Anstee, who provided thoughtful feedback and advice on this piece.

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Is Legislative Reform Essential to Promote Cultural Competency in Allied Health Workers? A Focus on Pyschologists

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Cultures Collide

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1 Grandma in Arabic

2 Grandpa in Arabic

3 Famous Muslim, Persian poet

4 An influential Muslim, Persian Philosopher and theologist

5 An ornately designed rug used during prayer

6 Egypt

7 A traditional Levantine dish

8 Holy city in Saudi Arabia

Painting a Finer Picture

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