INDIGENOUS PROPERTY MATTERS
IN REAL PROPERTY COURSES AT
AUSTRALIAN UNIVERSITIES

NICOLE GRAHAM*

I INTRODUCTION

The approach to the teaching of property law varies significantly across and within Australian universities.¹ This may be attributed to the ‘challenging’, ‘problematic’ and ‘difficult’ nature of legal education in general, which attempts to ‘satisfy simultaneously the immediate demands of legal practice and the traditional values associated with the university’.² The disparity of purpose apparent in this dual commitment accounts for a degree of contrast between approaches to teaching Indigenous-Australian land laws; Indigenous perspectives on Anglo-Australian property laws; and the law of native title. A minority of real property courses include any or all of these topics to a significant degree in their content, materials and assessment. However, many real property courses adopt a conventional model of legal education that emphasises the immediate practical function of doctrinal knowledge to, and for, a predominantly non-Indigenous property market.³ This paper contends that the use of the conventional model of legal education in teaching real property often coincides with an exclusion of Indigenous-Australian land laws and perspectives on Anglo-Australian property law and sometimes even an exclusion of the Anglo-Australian law of native title. Where Indigenous laws and perspectives are presented in real property courses, they are often referred to via abstract technical or ‘substantive’ aspects of native

* Senior Lecturer, Faculty of Law, University of Technology, Sydney.
2 Margaret Thornton, ‘Poria Lost in the Groves of Academe Wandering What to do about Legal Education’ (Inaugural Lecture, Department of Legal Studies, La Trobe University, 1991) 1.
3 The information on real property course curricula is based on research that appears in ch 5, pt 4 ‘Dephysicalised Property in Pedagogic Practice’ in Nicole Graham, Landscape: Paradigm and Place in Australian Property Law (PhD Thesis, University of Sydney, 2003); on the content and structure of several current leading texts on real property law in Australia and NSW, around which many courses in NSW law schools are structured, and on informal discussions with property teachers.
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The approach to the teaching of property law varies significantly across the Australian universities. This may be attributed to the "challenging", "problematic" and "difficult" nature of legal education in general, which attempts to "satisfy simultaneously the immediate demands of legal practice and the traditional values associated with the university." The disparity of purpose apparent in this dual commitment accounts for a degree of centralised approaches to teaching Indigenous-Australian land laws. Indigenous perspectives on Anglo-Australian property law, and the law of native title. A majority of real property courses include one or all of these topics to a significant degree in their content, materials and assessment. However, many real property courses adopt a conventional model of legal education that emphasises the immediate practical function of doctrinal knowledge, and for, a predominantly non-Indigenous property market. This paper contends that the use of the conventional model of legal education is unsuited to property studies with an exclusion of Indigenous-Australian land laws and perspectives on Anglo-Australian property law and sometimes even an exclusion of the Anglo-Australian law of native title. Where Indigenous laws and perspectives are presented in real property courses, they are often referred to via abstract technical or "academic" aspects of native

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We legislature and case law. Teaching law students that indigenous land laws and perspectives are simply another part of, or even a "new face" of traditional property law categories — rather than different and challenging to these categories — inhibits the development of Australian law and lawyers. Why? Because Indigenous-Australian land laws and perspectives on Anglo-Australian property law are not the same thing as native title. To confine these topics (or to exclude them completely) fails to recognize their intellectual and practical difference. Further, it misses the opportunity that Indigenous-Australian land laws offer to the development of a distinctively Australian property law — one that has sufficiently departed from its colonial origins and is well-adapted and responsive to the real reality of real property, the country itself.

This article explores the patterns and possibilities of presenting Indigenous property matters in real property courses in Australia through three key teaching strategies: coursework, information, and language. Part I, on coursework, considers the selection and sequence of topics in the structure of the course. It suggests methods of integrating Indigenous content into topics conventionally considered separate from Indigenous matters. Part II, on information, briefly addresses the significance of the choice of materials in the real property course. Part IV, on language, considers the significance of both translation and terminology in teaching Indigenous-Australian law and the law of native title. It asks whether, as inhabitants of a colonial nation, we can, first, develop an awareness of the cultural specificity of language; and second, move beyond the use of the word 'estates' when referring to Indigenous-Australian land laws.

The article acknowledges the importance of providing property courses that satisfy the Uniform Admission Requirements and offers the following observations and suggestions mindful of the timing concerns of property courses that are often offered in a single university semester. Each part of the article suggests alternative to conventional teaching practice that do not necessarily demand additional time or effort. Rather, they offer alternative emphases, alternative course structures, alternative use of language, and alternative perspectives that may be offered in written material, as part of required or assignment-based teaching, or to the real content delivered in lectures and tutorials by teachers in the same way that case law is offered and employed. It is important that Indigenous-Australian land laws and Indigenous perspectives on Anglo-Australian property law are not structured in separate, stand alone and alien parts of a property course. Rather, these laws and perspectives can be embedded throughout the already-established topics of the course to achieve both intellectual integrity and avoid the need to substantially extend

8. Gregg and Steel, above n. 1, 201.
already tightly-drawn course content. Arguably there are tensions between the comparative approach magnified and conventional approaches to legal education; however, it is possible to overcome these and, as a result, simply exclude consideration of innovative and alternative approaches. This is regrettable, given the intellectual and professional advantages to students of property if Indigenous laws and perspectives were included in property courses, and the relevance case with which this could be achieved given the wealth of legal scholarship available on these matters. Indigenous property matters—and students of Australian law will learn this only through the pedagogical influence of their property teachers.

II CURRICULUM

Courses of real property courses design their course structure in a variety of ways to suit the particular learning needs of students and the particular learning objectives they have set for the course. In courses which set an understanding of "law in context" as a learning objective, the introduction of Indigenous Australians and the introduction of native title as a category of Anglo-Australian property law are often taught together. The links between Indigenous matters and theories of property are clearly easier to teach (and learn) once these topics are completed. Some of these courses, particularly those with a "critical legal education" approach, teach these two topics together as part of an historical introduction to Anglo-Australian property law and/or as part of an economic analysis of property law in Australia.

Of course, a property course is about economics and wealth... the fact that Indigenous people in Australia are the poorest, richest, and most neglected to violence on and within their communities, but everything to do with the fact that their law and their property rights were not recognized for centuries.

When real property courses include economic analyses of property, students will often also develop an awareness of the significance of political science to the study of law. Indeed, real property law is an inherently suitable subject for examining the social consequences of indigenous and intercultural, legal education. Other approaches to real property courses, particularly non-conventional courses with an emphasis on colonial knowledge, can emphasize Indigenous laws and perspectives on Anglo-Australian property law complexity and some also continue to exclude the law of native title. The norm, however, is increasingly to include rather than exclude native title and to position the topic earlier in the beginning.

5 Valerie Sharp, Property and Equity (Supervised sponsors, School of Law, Macquarie University, 1995).
or the end of the course structure? This is perhaps a convenient approach to course structure. Nevertheless, the "bookending" approach establishes an unnecessary and arguably, Indigenous classification aggregation and reductions that obscure the complexity of approaching proprietary interests. For example, how does native title arise to a substantial and structural roots and so in the definition of property itself? Separating Indigenous property matters from the rest of the course content is not the only way to teach these matters. It is possible to weave Indigenous property matters throughout the course structure.

A comparative law approach can assist students' ability to identify and distinguish between the particular features of multiple systems. Comparing and contrasting Indigenous-Canadian land laws with Anglo-Australian property law can be done independently of the topic of native title. For example, if the course begins with an introduction to the concept of property then it will perhaps refer to Kenneth Vandevoorde's theory of "dual-criteria" property or to Kevin Gray's theory of "property asbundle" and "bundle." Clearly, those theories are helpful in structuring and analyzing the notion of property as a "bundle of rights." Australian case law supports this notion when they define property interests as something which essential attributes the fixation of property within the Anglo-Australian economy. Facilitating the fixing of capital requires the transfer of property to a more flexible. The discussion of rights will be taught in its own terms but it can also be taught by contrast to the discussion of responsibilities and obligations that characterize Indigenous-Australian land laws.

Our affluence will lie in the land is like the breeding of a parent and a child. You have responsibilities and obligations to look after and care for a child. You can speak for a child, you don't own a child.2

Contrasting the concept of property at the foundation of the Indigenous and Anglo-Australian legal systems and economics is important because it helps make sense of and develop literary in both. Further, the discussion of rights is complicated by Australian case law that not only to describe Anglo-Australian property interests but also to describe native title interests. This creates the problem of attempting but failing to "render" Indigenous peoples' historical and economic relationships to the land into a form of property rights recognizable by...
the common law? It is a problem recognised by the High Court in native title proceedings.

The difficulty of expressing a relationship between a community or group of Aboriginal people and the land in terms of rights and interests is evident. The law is regulated by the NTA. The spiritual or religious is often not considered.

It can be confusing for students to grasp the diverse and complex understanding of both Anglo-Australian and Indigenous- Australian property laws and the evidence of native title claims where the contract between them is not drawn because the language of rights remains the same.

Apart from teaching Indigenous property matters via the law of native title and/or property theory, there are several ways a consensus might integrae Indigenous-Australian and Anglo-Australian property laws into the desired topics. Most real property courses deal with topics and concepts whose rationale pre-dates the common law. For example, tenancy and property issues are embedded in the history of major events in the formation of modern English law. Even a brief and passing reference to the conduct of the common law in England, Wales and Scotland allows students to understand that property laws are not simply influenced by cultural difference but also of economic and environmental differences. Understanding, for example, the common property systems in both Anglo-Australian and Indigenous Australia makes the laws of ownership and tenure management, highlights the fact that modern property regimes belong in a legal system that determines these boundaries. This allows students to assimilate the need for a separate body of law in the Anglo-Australian legal systems environmental law. The overarching goal of this structure is Anglo-Australian law becomes accessible to students as they begin to be able to relate the various components or subjects of both law degree.

The law of native title is an excellent way of introducing the topics of the doctrines of remission and cessation of leases. The RJA case provides a counter argument on the doctrines of remission and cessation and their relevance to contemporary Australian property law. Gunn (No. 2)’s judgment in particular contains closely to that
of Brennan J in Mabo1 (with which law students are often well-acquainted). Not only does this contrast in views allow students to appreciate the divergence of judicial opinion, opening up a space for them to develop their own position, the seminar also highlights the relationship between property law and colonisation. Specifically, it indicates the centrality of the role of the Crown in creating interests in land both in feudal England and modern Australia. The use of the Mabo case in teaching this law not only allows students to develop insight into the political as well as legal significance of this case but also gives the substantial detail to the issues of the most powerful lobby groups in Australian politics. It allows them to question the place of property within the seeming real and relatively exclusive categories of private law and public law. Students’ notions of property as a private law concept are challenged by the case in several respects, namely in terms of the Crown as owner of land and the regulation of relationships between states, communities and particular places. The case points to the specificity of issues in Australian law, particularly the continuing role of the Crown in the direct creation and management of Australian land use and ownership. By considering carefully the fundamental nature and difference between common law and statutory issues, the case provides students with an analytical tool of the values, values and objectives of these notions but also their relationship with other interests. Developing students’ capacity to translate a substantial interest to other interests is helpful in a nation where half the landmass is held as leasehold.

Almost all real property courses include a module on the history of property and an introduction to Australian law. Students’ appreciation of the centrality of private law to the fundamental logic of the Anglo-Australian legal system, the nature of private property as the dominant and most significant category of property, and the regulation of relationships between states, communities and particular places.

Has the number of Indigenous Australians increased in recent years?

process of solving priorities between competing interests enables them to grasp the otherwise individualistic structure of private property law and, further, allows them to contrast these interests with the communal structure of property interests in Indigenous Australian laws.

The failure to teach these perspectives and relationships by including the law of native title as an "add-on" rather than as a significant topic in Australian property law hampers or prevents a perception by students that these topics will exist (and arguably should) remain central to their legal professional practice. This outcome coincides with a pedagogical choice to emphasise the commercial practicability of claimed knowledge in learning outcomes. The choice is contrary to the competent significance of material included in the native title claims and proceeding.

A further consequence of a conventional approach to the real property curriculum is that (without explicit indication otherwise) students may form the impression that Indigenous property matters begin and end with the law of native title. This may be a reasonable mistake to make if the only reference to Indigenous land laws is through native title case law and legislation. The exclusion of Indigenous land laws and Indigenous perspectives on native Australian property law with the law of native title; however, obscures the fact that native title is a category of Anglo-Australian property law. The law of native title in Australia does not operate independently of, or even in parallel with, Anglo-Australian law. Australia is not a legally pluralistic nation.

Instead, Indigenous and non-Indigenous legal scholars and Indigenous communrierists alike have argued that, since its institution in Australian law, the law of native title is increasingly inconsistent with the distinctive and core features of Indigenous Australian land laws because it replaces the legality of these laws with a fragmentation or "particularisation" of them.

We find with the native title and the land and everything that exists on the land. Everyone is afraid of everything. Ownership for the white man is a property right, whereas for the Aboriginal person it is a subsistence system. You can't move off it and then off the ship.

It has been argued that the law of native title has become less about a broad recognition of Indigenous-Australians and now that it is about their occupation — in favour of providing the certainty of non-Indigenous property interests.12

12 See Karen Young, The Problem with Indigenous Native Title and Cultural Change (2006) 19M.

13 Richard A Bird, Native Title in Australia (2nd ed, 1994), 87.

14 Yeldomb, supra n 8.

The power of the state to extend its reach as firms and institutions today are increasingly operative in daily shaping of community. Larger groups, now, are empowered to assert and plunder the remaining internal spaces of non-violence.26

If real property assets conversion also, for various reasons, exclude Indigenous land laws and Indigenous perspectives on Anglo-Australian property law and much only the law of native title, students should be at the very least, alerted to the distinction between them.

III INSTRUCTION

The choice of materials is teaching any subject goes beyond the provision of information. The choice of materials reflects and indicates what information has been regarded as relevant and by implication, therefore, what has been regarded as less relevant or as irrelevant. Whether one selects a single or series of textbooks or alternatively prepares one’s own course materials the outcome is to the same from the perspective of the student, an indication of information that they are expected to engage with and understand.

There are numerous books on property law in Australia. From comprehensive general and summary texts to advanced commentaries and reports of case law and legislation to concise outlines of key doctrines, courses can draw from a variety of possible sources of information. Most, but not all texts on property law in Australia address the law of native title. Few, however, deals with Indigenous land laws and perspectives Anglo-Australian laws. It is incomparable gap in Australian legal education literature. The consequence for students is that they do learn the law of native title, they learn it often without an awareness of its difference to Indigenous land laws.

An important aspect of information on the law of native title in property texts is the approach taken by authors to the topic. Some texts focus on the substantive rules or ‘machinery’ of native title legislation 27. Such inclusion of native title in property law texts is desirable and important. However, without information also on the relevant contexts which gave rise to that ‘machinery’ and without information on relevant Indigenous laws, there is a risk that students will be limited in their capacity to practice in the area. The historical and political contexts of the legislation (and of the same law) would allow students to develop proficiency not only in the doctrinal aspects of the law but also with the evaluative skills necessary to undertake independent legal reasoning regarding the viability and logic of the law itself. This is necessary to respond intelligently to questions raised by scholars, practitioners and entire communities.

26 Inter alia, see Katalin (2000) 13 Law and Policy 279, 284.
Indigenous property matters are a key component of the law curriculum. They are often taught in the context of property law in Australia. The focus on Indigenous property law in the curriculum is often limited to the protection of the interests of Indigenous communities in land and natural resources. However, Indigenous property law is also important in the context of other areas of law, such as family law and commercial law.

Indigenous law and bylaws are important in the context of Indigenous property law. Bylaws are local laws that are developed and enforced by Indigenous communities. They are often used to protect the interests of Indigenous communities in land and natural resources. Indigenous law and bylaws are also important in the context of other areas of law, such as family law and commercial law.

Indigenous property law is often taught in the context of other areas of law, such as property law, family law, and commercial law. This is because Indigenous property law is closely linked to these areas of law. For example, Indigenous property law is often relevant in the context of property disputes and leases. Indigenous property law is also important in the context of family law, as Indigenous communities often have unique patterns of ownership and succession that are different from those found in mainstream law.

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the importance of an integrated approach to land use and ownership. The integrity of people and place is evident in numerous statements by Indigenous people about their lands. Watson notes: Nagasen relationships to now are more complex than owning and controlling a piece of property — we are the named world is a phrase of our own. We are Nagasen, we are the name of our will, our Ngaes, how we can sell our self. We cannot sell our will, for we are one.

Further, Watson points out that the people-place relationship is reciprocal in the limits and capacities of the non-human world and in such is environmentally sustainable. “Our ways generate a sustainable model not only for Nagasen but for all.20 The different epistemics and ontological framework of Indigenous land laws allow Indigenous Australians to perceive the limitations of Anglo-Australian property laws with regards to viable people-place relationships over the long term and, specifically, the ways in which it does not support sustainable land use.

The new Indigenous relationship to land is to take more than is needed, disposing waste and disturbing self. This way is to the land is symmetrical and clean, enabling to understand how it is we communicate with the natural world. We are talking invitations and our family, for we are one.

Without essentialising and ethnographically diverse Indigenous land laws and their contribution to examining people-place relationships in Anglo-Australian property laws, it is possible for graduates to receive for intellectual and strategic insights available even through a cursory exposure to Indigenous land laws and perspectives. From local and domestic journals such as “Women’s” is lengthy scholarly monographs, material exists that is highly important for Australian law graduates and lawyers to access and engage with.

IV. LANGUAGE

Language is an important issue in the logic and process of native title. First, there is the fact that Indigenous Australians are required upon their testimony to be translated into the language of the Anglo-Australians court. Such translation, as with all linguistic translation, is never complete as there are always critical ellipses where no equivalent concepts or elements exist in the receptor language. This relates to the second issue, that what is being translated is native titles is not simply the claimant’s language but the claimant’s knowledge and experience of law and culture that
finds no legal and cultural equivalence. For this reason, the work of anthropologists is almost unanimously rejected as evidence to native title claims and proceedings. While the court has declined to accord the testimony of the claimant, the preparation of the claim and the hearing itself rely heavily on anthropology. It is therefore helpful to students studying real property law to appreciate that the law of native title has been shaped by anthropology. Students who speak more than one language will readily grasp the first issue and may perhaps more easily then grasp the second, in which students are expected to compare their insights, as bilingual or trilingual speakers, into language and translation with their developing understanding of the process of native title works extremely well for all students in a classroom context. Indeed, a good place to begin to teach Indigenous-Australian property law is to ask students to read aloud in class the text of the Yorta Yorta Band Petition from the Yorta people to the Parliament of Australia. Although it is written in both English and Gungariny language, it is worthwhile inviting any student who speaks and reads Gungariny to read the text aloud in the absence of such evidence, critically, reflexively, on the significance of language to the petition itself and more broadly in property law.

The difference between Indigenous-Australian property and Anglo-Australian property law is manifest in the use of the Aboriginal language to express the fact that property law adds distance to ownership of a commodity, something separate to the people living on it, but as being owned by the land. In contrast, the Aboriginal property law evidence depends on the ability of the people to live on the land. This fact that native title is recognized as a project of translation indicates that there is a project, familiar terms of property forussen, and a decolonizing view of Indigenous place relations. It marks the root as one of difference, and Indigenous peoples as ones who are different.
Tracking Indigenous-Australian property law as different from other law that subordinates to Anglo-Australian property law enables students to understand that the language of rights that describes the laws of the latter legal system in particular is, rather than assuming this language is universal and therefore descriptive of the former legal system. The High Court in Hand remarked that mandating Indigenous-Australian property law into the Anglo-Australian law of native title "requires the fragmentation of an integrated view of the ordering of affairs into rights and interests which are considered apart from the duties and obligations which go with them." This indicates the Court's sophisticated understanding of the issues of language, culture and translation in the law of native title. But, as Anker points out, this remark "assumes that rights and interests are actually there in the first place and able to be separated from their context." How can we teach real property in a way that those assumptions are not made? Close attention to the logic of the Anglo-Australian language of property is helpful here.

An obvious and crucial feature of many Australian law exams that refer to Indigenous-Australian laws is the use of the expression "common law." The expression is often used in Anglo-Australian law to refer to non-written legal systems but was also used by common law courts in England with the codification and systematization of English law in the 19th century. The expression arises from a distinction drawn between two supposedly separate and differentiated systems of law and custom. However, as Australian legal scholar and courts have found, "The distinction between law and custom is a post-enactment perspective and is not significant." 24 The meaning of the concept of "custom" has varied over time, but typically refers to a set of moral norms that are contained in the concept of statute at 133 in the Institutes of Eastern Roman Emperor Justinian. 25 The concept, which actually began as a comparison, hinges not on the authority or legitimacy of either law or custom but on the ways through which both were created and observed.

From ancient law courts that have been approved by use. For a long-standing career ordained by the agreement of those who observe it is just like nature. 26

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In Britain, the Roman terminology of law and custom came over with the Conqueror but was not integrated with the Roman definition which distinguished between customs on the basis of whether they were written. For Wilkins, the significance of writing to the distinction between law and custom was important. What mattered to the Norman king and subsequent royal rulers was establishing a recognizable hierarchy of law, with custom laws over the existing locally specific Anglo-Saxon laws. Calling the latter customs enabled William to equip the institutions of the colonisers with "royal, Norman colonial power." Thus, generations of common law judges and scholars attached a Roman terminology, but created their own meanings. 

Felix writes in William's position that the distinction between law and custom was a question of the geographical scale of authority. 

Yet, despite the elevation of general customs to customs law, particular customs were still recognized by common law courts in England well into the 19th century because local customs is understood as part of the common law, and so derive their validity from the same source: practice since time immemorial. 

What remains of an ancient Roman distinction between law and custom in 13th century Normandy and its application is
colonial Australian legal discourse is not a meaningful intellectual and legal significant. Law students today are not taught the meaning of the history and language of the term ‘custom’ because it is simply ignored as an intellectually vague but nonetheless applicable category. What remains of the distinction between law and custom is a hazy and unarticulated hierarchical structure that was used by British and later Anglo-Australian lawmakers to not recognise Indigenous-Australian laws as laws. The use of this word ‘custom’ is, in other words, not simply a legacy but replication of a colonial project and the assertion of the authority of the colonial legal system.

Aboriginal law is not recognised as ‘law’ by the Australian legal system but as custom. Any understandings of custom and modern law, for the majority, still the High Court in Yorke v Yorke be formed in the shadow of the term ‘custom’.

The distinction between law and custom offers contemporary Australian property law little but confusion. Both in the logic and ability of an ancient and bi-cultural distinction between law and custom to replace an intelligent and modern relationship between two different Australian laws.

In tracing Indigenous-Australian property matters, it is important to note that the ongoing and unexplained use of the distinction between law and custom, and/or the use of the phrase “customary law”, placed the primary focus on observable behaviour rather than culture. Indigenous-Australian land laws were and are ignored by Indigenous-Australian communities, as laws. The difference between Indigenous laws and non-Indigenous laws in Australia is in most cases described by the language of hierarchy, in which law and custom belong, Indigenous-Australian laws are not inherently inferior or lower than Anglo-Australian laws either in institutional or moral terms. Indigenous-Australian land laws have been too closely linked and obscured that Anglo-Australian property laws. It is not because British colonials and later Anglo-Australian legal systems repeatedly failed to recognize Indigenous Australian laws as laws that the term should remain unexplained. Without informing students of the origins and function of the law, custom will be in the cultural narratives and political expediency of colonialism, students could reasonably, but nonetheless mistakenly, believe that Indigenous-Australian laws are not law or are inherently inferior to law. This matter because legal education is the genesis of the legal thinking and practice that informs Indigenous Australian

41 Ibid.
42 Jean Fook and Bernadette Corry, ‘Indigenous- and custom and law and authority in the High Court of Australia in Byrne v Byrne (2001) 170 CLR 463.
43 Ibid, pages 31-36.
policies, legislation and case law — it is the how and why of the use of the law-content terminology in the Native Title Act 1993 (Cth). The link between legal education and legal practice is circular. Students are taught what the law is — and the law is what lawyers (former students) do. It is important to acknowledge the authority, knowledge and use of evidence. What information hasn’t been, or what can’t be? The implications given in texts are not from an academic but business training. There is no way of learning the paradigm in the basis of common practice. To refer to Indigenous laws as custom fails to distinguish between Indigenous and non-Indigenous laws in terms of their difference. Further, it fails to acknowledge that Indigenous Australian land laws continue to be known, understood and practiced as laws, regardless of whether they are recognized as laws by Anglo-Australian property law. To teach students of Australian property law that Indigenous law is anything other than law prevents an accurate understanding of Indigenous-Australian land laws and their potential as a basis for a critique of the Anglo-Australian system of property law. To track Indigenous-Australian land laws as anything other than law forgets the words of Justice Blackburn in Mabil v. Nabalco: 1

1 The evidence shows a viable and stable system highly advanced to the country to which the people had their laws, which provided a stable order of society and was remarkably free from the vagaries of personal whim and influence. If a system could be called a government of laws, and not of men,” it is that shown in evidence before the

Indigenous-Australian land laws should be correctly understood as different to the Anglo-Australian law of native title. The law of native title should be correctly taught as both a recognition and ownership of Australian Indigenous peoples. Appropriately, it must be remembered that the law of native title is the creation of the Anglo-Australian legal system, as stated by Justice Kirby in Mabil. The theory asserted by this Court is that native title or recognition of foreign law. It was that such title was enforceable in Australian courts because the common law of Australia said so. This point allows students to use the law of native title as the basis of critiques of the operation of Anglo-Australian property law and the role of narrative and power in the distribution and protection

52 See Cullen, R, op. cit. at 174.
54 “Hannah Kitchen, The Discovery of the Scientific Revolution” (PhD, 1985) 88.
of land in this country. Just as in, said he, the law and the country are sometimes seen as a function that is more than administrate and far from reconciliatory. As Kerrisk said of Ness and others, the law of native title in Australia is “untenanted and indigenous in its function.”

V CONCLUSION

Indigenous land laws, Indigenous perspectives on Anglo-Australian property law, and native title are often taught in a traditional or even reformative or even reactive manner in Australian law schools. Conventional pedagogical choices in many property law courses maintain this perspective through a reactive curriculum of limited, specific, and often fragmented approaches to the law. In doing so, many property law courses diminish the radical and radicalizing potential of Indigenous law and its ability to the Australian legal system to work with and understand the perspectives of the law, which in turn will continue to do so. It is through the possibility of altering or understanding our legal education that we could bring another way of knowing the world and its legal systems, and thereby introduce students to other ways of coming to know the law.

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94 Valerio Caruso, “In the Court of the Strange Case” (2012) 31 Law and Prejudice 271, 283.