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## Marx at the Gold Coast: Reflections on Teaching and the Confrontation with Ideology

Allan Ardill

*Griffith Law School*, [a.ardill@griffith.edu.au](mailto:a.ardill@griffith.edu.au)

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# Marx at the Gold Coast: Reflections on Teaching and the Confrontation with Ideology

## **Abstract**

This article engages with *Marx in Miami* and the strategies and pedagogical experiences of teaching Marx and Marxism. It relates the experience of teaching Marxism in a compulsory law course at the Gold Coast, Australia. Marx rarely makes an appearance in law schools and this poses particular challenges when it is taught to politically conservative students. Therefore the article supplies a case for teaching Marx arguing why it is not just appropriate for lawyers but irresponsible to exclude it.

## **Keywords**

Teaching Marx; Law; Critique; Pedagogy; Marxism; Feminist Standpoint Theory

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## 1. Introduction

This article is intended to be read with *Marx in Miami*<sup>1</sup> though it can be read independently. *Marx in Miami* relates the experience of two Florida academics teaching Marxism in several politics courses. Despite the vast distance between Florida and Australia's Gold Coast their experience resonates with mine. As I read *Marx in Miami* it was interesting to note the similarities between student responses to the teaching of Marxism and the extent to which we shared strategies to pre-empt and manage student ideological barriers. There was good and bad news for me in their article. Good news because I had colleagues who had developed similar strategies for teaching Marx. Bad news because it shows that despite our best endeavours ideology hampers critical thought in institutions meant to not only produce ideas but to test them. Good because there is evidence that students do respond to creative approaches to teaching, but bad because there are still those who do not develop as self-reflexive critical thinkers.

While Marxism is assumed to be relevant to courses in politics, in law it is regarded as irrelevant or at best just one of many theories that might be used to contextualise and critique law.<sup>2</sup> Therefore this article reflects on why Marxism is taught to law students as well as my experience of teaching Marxism in a compulsory property law course over the last 13 years. The article commences by providing the nature of the course and its context. This is followed by my reflections on the institutional imperatives for the course linking this to the relevance and vitality of teaching Marxism to law students. As each institutional imperative is considered I will also reflect on the efficacy of teaching Marxism in terms of student engagement.

On reflection, the more I try to pre-empt ideological barriers, the more hostile a small number of students become. This hostility can be seen as success because these students resent the threat posed by the course. They are not duped by ideology and instead seek to defend their class privilege. This stands in contrast with the vast majority of students who consistently report they are satisfied with the course.

## 2. Context

Like Sculos and Walsh who teach a largely hostile student cohort due to Florida's nexus with Cuba, I teach Marxism at a campus situated within some of the most politically conservative seats in Australia.<sup>3</sup> Here most students have a background ranging from petty bourgeoisie through to the very wealthy. Unlike Sculos and Walsh my experience of teaching Marxism has been limited to a single mandatory law course over the past 13 years whereas they teach it in several courses. This in itself poses particular problems because like most law courses, 3014LAW Property Law 1 has compulsory legal content and this limits the quantity of time that can be devoted to any theory including Marx. Therefore, Marxism comprises about a third of the content of this course with the other two-thirds comprised of compulsory legal doctrine, legal history, and other critical theories. But Marxism is used to link and juxtapose the topics through the indices of class, gender and race as well as a history of ideas.

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<sup>1</sup> Sculos, Bryant W. and Walsh, Sean N. (2015) "Marx in Miami: Reflections on Teaching and the Confrontation with Ideology," *Class, Race and Corporate Power*: Vol. 3: Iss. 2, Article 4.

Available at: <http://digitalcommons.fiu.edu/classracecorporatpower/vol3/iss2/4>

<sup>2</sup> James (2000: 976-8). See also Appleby et al (2013: 350-1).

<sup>3</sup> The Australian Federal electorates of McPherson and Moncrieff.

Also, students are aware that Marxism is rarely taught at other Australian law schools other than briefly in elementary law and society type courses.<sup>4</sup> If it is taught elsewhere it is along with several other cursory sketches of critical thought such as feminisms and critical race theories.<sup>5</sup> Therefore, apart from a few academically inclined law students, most law novices tend to see Marxism and indeed any theory as extraneous to law. With these hurdles and the general western hostility toward Marxism, law students struggle to engage with a vital piece of what I see as an intellectual jigsaw puzzle.

Whether or not Marxism should be taught hinges on its connection with what I call institutional imperatives. Institutional imperatives include legal admission standards, educational quality frameworks, university policies, and other pedagogical expectations. Other pedagogical expectations would include internal and external peer review. For instance the course was peer reviewed in October 2014 by a property law colleague from another university. The reviewer wrote:

Allan's critical pedagogy is clearly articulated in his teaching philosophy. It shines through in the interesting and thoughtful design of Property 1 as a critical and theoretical course. Allan is thoughtful also in his acceptance of student feedback. His approach is empathetic, reflecting his own experiences of engaging with difficult and abstract concepts. This affords him useful insights into understanding the needs of students and in explaining the role of critique within a professional degree.<sup>6</sup>

Institutional imperatives might also include what students perceive to be the benefits of Marxism to their education, what employers might see as benefits, and the extent you the reader agree with the social benefit argument I make here for learning about Marxism. If not for criteria like this, how else are we to evaluate any course?

Early in my career as an academic by chance I crossed paths with the Dean as we both left work late one evening. I was asked 'why do you teach Marxism in Property Law 1?' I had two answers. The first was that it was already being taught by my predecessors when I joined the teaching team. The second reason was that at the time a key University and Law School objective was to teach students skills in critical thought through interdisciplinary teaching.<sup>7</sup> I was asked to elaborate and after an hour of serious but amiable discussion I thought I had made the case why it is appropriate to teach Marxism in a compulsory course on property law. However the Dean ended the conversation: 'You know I was once in a Marxist reading group when I was a student [*at prestigious university*].' At best I took this to mean even if Marx was once relevant, it is now anachronistic? It motivated me to reflect on why I should continue to teach Marxism now that I was the course convenor.

As I said Marxism was already being taught when I joined a team of academics teaching property law in 2002. The amount of teaching time devoted to property was double then what it is today (40 credit points is now two 10 credit point courses). This reduction was largely the result of the privatisation of university funding and the commodification of education and although relevant cannot be pursued here.<sup>8</sup> Back then the course was structured

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<sup>4</sup> Appleby et al (2013: 351).

<sup>5</sup> Keyes and Johnstone (2004: 550).

<sup>6</sup> The course was reviewed by Kate Galloway, Senior Lecturer, James Cook University. The full review is available upon request.

<sup>7</sup> Griffith University, Faculty of Law Strategic Plan 2004-2008, 1.

<sup>8</sup> Just like the USA, see Cox (2013), Australian universities are struggling, see generally Thornton (2012) and Hil (2012).

around the intellectual strengths of the several academics who taught into the course. Each academic would teach the mandatory legal doctrine they were most familiar with and would theorize and critique that doctrine based on their research expertise.

Property was thoughtfully contextualised, critiqued, problematized and theorised by my colleagues but it was not themed in any particular way. Marxism was about 10% of the course content and no original Marxist texts were prescribed as readings. Teaching the course this way did not seem to provoke hostility and the only reactions were the Dean’s query and the occasional student who might balk at the topic on Marx. When I assumed leadership of the course in 2004 the Student Evaluation of the Course (‘SEC’)<sup>9</sup> reported:

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Overall I was satisfied with the quality of the course.	30 %	61 %	7 %	0 %	2 %

Importantly only 2% of students strongly objected to the course. On the flip side the course was not a coherent systemic critique of law. The topics were not linked by a theme and did not equip students with an understanding of how the legal system had been shaped and how it shapes the lives of people. Virtually no students progressed to write honours theses or research higher degrees based on the content.

Over time I saw Marxism as a way of linking together the course topics according to a history of the changing ways in which property has been conceived by both western thought and the changes to the mode of production. Marxism also provided a means of connecting the usual indices of critique according to class, race, and gender rather than treating them as isolated aspects of property.<sup>10</sup> Students could critically assess property law to reflect on who was excluded and who benefitted most from particular conceptions of property over time and why. Today students are invited from the beginning of the course to contemplate the justifications for why the wealthiest 9% of people own 85% of the world’s wealth, why women own just 1% of world wealth, and why First Nations Peoples are poorer than their colonisers.<sup>11</sup> To do this the course was organised so that compulsory doctrine was grouped according to class, gender, and race and these three categories were layered with an evolution of western thought from Hobbes to Locke, to Hegel, to Marx, and to radical critiques (feminisms and critical race theories). Marx provides a basis for linking the evolution of western thought because of his contribution to enlightenment and his simultaneous rejection of its bourgeois basis.

After several iterations the sequencing of topics since 2008 has been as follows:

**Property as an Historical Construct:** Justifications and Boundaries; From Feudalism to Capitalism; Doctrine of Tenure and estates

**Justifications for Property:** Property in ideas; The literary property debate and *Millar v Taylor*

<sup>9</sup> On file with the author.

<sup>10</sup> Das (2013: 8) condemns the opposite view explaining: ‘Identity politics in academia is based on the idea that it is legitimate to discuss women and similar issues outside of - and in abstraction from - the framework that assigns primacy to class and exploitation of labor.’

<sup>11</sup> For class see Stierli et al (2014: 23-5); for gender see Dau-Schmidt (1996: 53); for First Nations Peoples see Department of Economic and Social Affairs (2009: 21-22).

<b>Justifications for Property:</b> Hobbes, Locke and the social contract; Property as a natural phenomenon or positive law; Labour Theory
<b>Hegel and Property:</b> Philosophy of knowledge, idealism, dialectics, property and social relations, property as a social construct
<b>Marxism and Property:</b> Historical materialism, commodity fetishism, ideology, and property
<b>Neo-Marxism, Post-modernism and Property:</b> The fragmentation of western thought; The end of history, and property as ideology; The collapse of the public private divide; Feminist Standpoint Theory
<b>Women and Property:</b> Social construction; Property as identity and identity as property; Women as proprietors and possessions; Equality
<b>Colonialism, Sovereignty, and Dispossession:</b> Sovereignty and property; Knowledge construction and perspectives of land; contrasts between the colonisation of the USA and Australia
<b>Mabo and Native Title:</b> Native Title before and after <i>Mabo</i>

Marxism is by no means the majority of the course content, though it is used as a benchmark and pivot in the history of western thought. It is used to urge students to recognise their role in the reproduction of society and to reflect on their privilege relative to those they may exercise power over in the course of their careers. In a nutshell students learn that property is concentrated in the hands of a few on the basis of class, gender and race (among other categories) and this is not explained by merit. Therefore students are invited to critically assess the justifications given for these circumstances and to consider whether it is inevitable and/or desirable. They are expected to be capable of making arguments about the role of law in maintaining and reproducing these circumstances as opposed to other factors. This overall theme is anchored in legal doctrine and contextualised by debates in the history of western thought. Hardly radical! Whether this is appropriate or not warrants reflection on the institutional imperatives and student engagement.

### 3. Institutional Imperatives

Broadly speaking there are four institutional imperatives governing what I teach in addition to my research expertise as an academic lawyer. They are the expectations of society in terms of a liberal education, educational quality standards, legal professional admission requirements, and university strategic imperatives. Collectively, I interpret these imperatives to value law graduates who are self-reflexive professionals; knowledgeable about law, capable of engaging with and critiquing debates about law and the world we share, and committed to justice. Marxism has a strong nexus with these attributes though I will not argue that it is necessary to them. Instead I make the case why it is irresponsible to exclude Marxism from the law curriculum and at the same time reflect on student engagement.

### Liberal Education

General standards across international jurisdictions have since the 1980s and 1990s expected law graduates to have a liberal university education.<sup>12</sup> By ‘liberal’ I do not mean taking a political stance, rather:

[a] liberal legal education is one which does not focus on education for a particular purpose other than education itself. It is not aimed at preparing students for a particular job or profession and is not concerned with notions such as employability. It is, however, concerned with pursuing knowledge for knowledge’s sake and developing skills of knowledge acquisition through research, critical thought and debate.<sup>13</sup>

This expectation stems from recognition that people choose to study law for reasons other than private practice, as well as the need for legal practitioners to understand the legal system itself and not just excel in specific areas of doctrine.<sup>14</sup> It is a normal expectation of law schools in common law countries.<sup>15</sup>

In the Australian context the expectation was made clear in a 1987 national inquiry into legal education known as the Pearce Report. That Report recommended amongst other things:

That all law schools examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other forces.<sup>16</sup>

It goes without saying that to adequately understand, critique, and work with our Anglo-American-Australian legal system, lawyers ought to know about some material events that have shaped the legal system. Things like the antecedents of democracy, the shift from feudalism to capitalism, colonisation, the two World Wars and the emergence of the United Nations, the Cold War, the civil rights movements, the post-modern turn, and more recently, the rise of China and the Western legal response to terrorism and refugees. These factors have all shaped Western legal systems just as Marxism has shaped the way people see most of these issues.<sup>17</sup>

I am not suggesting that most people are Marxists. I am simply stating the fact that Marxism has impacted on the history of thought and production of knowledge to such an extent that we no longer believe, for example, that thoughts are shaped purely by ideas/reason and instead recognise that beliefs are also shaped by our experience of the world - a thoroughly Marxist as opposed to Hegelian proposition,<sup>18</sup> and just one example of many.<sup>19</sup> My point is that it is irresponsible not to teach Marxism,<sup>20</sup> and not just because bourgeois students need to know their real enemy as opposed to a bogeyman constructed through

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<sup>12</sup> In Australia see Pearce et al (1987), (*Pearce Report*); in England see The Lord Chancellor's Advisory Committee on Legal Education and Conduct (1996), (*ACLEC First Report*); in the United States see American Bar Association (1992), (*MacCrate Report*).

<sup>13</sup> Guth and Ashford (2014: 6).

<sup>14</sup> Stuckey et al (2007: 12-13).

<sup>15</sup> *ACLEC First Report* (England) and *MacCrate Report* (USA).

<sup>16</sup> *Pearce Report*, Suggestion 1, 12 (para 1.149).

<sup>17</sup> See generally the *Marxist Internet Archive* <<https://www.marxists.org/>>.

<sup>18</sup> Hegel (1973: §412).

<sup>19</sup> Marx and Engels (1998a: 42).

<sup>20</sup> Appleby et al (2013: 351) take a different view preferring to make critique less vulnerable to attack.

ideology.<sup>21</sup> Marxism is inextricably part of world history and it continues to influence the reproduction of both knowledge and the world.<sup>22</sup> So it is appropriate and consistent with a liberal education to teach Marxism with law. To do otherwise is akin to teaching children about day and never about night, and from a Marxist perspective it is akin to treating human history (from the stone age to the 21<sup>st</sup> century) as ending with capitalism as it is today with no prospect for future change.<sup>23</sup>

Between 2008 and 2015 the vast majority of my students have reported that they are satisfied with the course.<sup>24</sup> For example, students have reported in their anonymous SEC's:

- It introduced me to content I was previously unaware of. It has definitely opened my mind, and I believe has made me a better person because of it.
- I think this course is valuable, and the content is particularly useful/relevant.
- The greatest part about this course was the content. There are very few courses in law where you actually have to use your brain to do more than recall information. Other courses would benefit greatly by including even a fraction of the type of thinking you have to do for property. It's amazing, I could wax lyrical about it all day. The way I looked at law for the past 2 years has been turned upside down. Usually this would cause me massive amounts of existential dread, but I find I quite like it.
- Application of theories to current-day examples was especially helpful in understanding everything<sup>25</sup>

Still, each year there are resentful views and these are considered later. Now that a cursory argument has been made about the appropriateness of teaching Marxism according to a liberal education it is time to consider the other imperatives.

## **Educational Quality Standards**

Australia followed the international trend adopting quality standards for its universities. According to Australia's Qualifications Framework, the standard for a Bachelor Degree qualification includes a 'coherent body of knowledge with depth in the underlying principles and concepts in one or more disciplines as a basis for independent lifelong learning', and graduates will have 'cognitive skills to review critically, analyse, consolidate and synthesise knowledge', and 'cognitive and creative skills to exercise critical thinking and judgement in identifying and solving problems with intellectual independence'.<sup>26</sup> In 2010 the Australian Learning and Teaching Council issued its Learning and Teaching Academic Standards Statement for the Bachelor of Laws.<sup>27</sup> This Statement provides minimum standards

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<sup>21</sup> See for example Thomas Jones, <https://independentaustralia.net/life/life-display/andrew-bolt-karl-marx-and-the-casualisation-of-australian-universities.6581>

<sup>22</sup> Marx and Engels (1998a: 62): 'It shows that circumstances make men just as much as men make circumstances.'

<sup>23</sup> Marx and Engels (1998a: 61-62).

<sup>24</sup> SEC's on file with the author. Overall satisfaction ranges from as low as 60% in 2014 to a high of 87% in 2010.

<sup>25</sup> Examples from 2012 SEC.

<sup>26</sup> Australian Qualifications Framework Council (January 2013: 48). Website: [www.aqf.edu.au](http://www.aqf.edu.au)

<sup>27</sup> Kift et al (2010).



in the form of Threshold Learning Outcomes. Similar learning outcomes for law apply around the world.<sup>28</sup>

Of the Australian TLOs for law I regard Marxism as relevant to TLO 1(b) & (c), TLO 2 (a), (c) & (d); TLO 3 (c) & (d).<sup>29</sup> Collectively I interpret these TLOs as requiring graduates to have the skills and abilities to critically assess law and policy, to be able to reflect on their role as decision-makers in terms of ethics and justice, and competent to achieve justice whether through law or policy. I see them as interconnected through an epistemology of power. An epistemology concerned with power because lawyers need to reflect on and critique their own power, the power and powerlessness of others, and appreciate the ways this changes according to context. Without this lawyers will inevitably reproduce and maintain existing power relations.

A transformative lesson from Marxism for lawyers is learning about the relationship between vantage/privilege and the way we see the world. Marx and Engels showed that bourgeois knowledge was a product of its white-middle-class producers. Known by Marxists as reification it is not just applicable to class though there it is probably most potent.<sup>30</sup> One of the best examples of its application comes from a feminist critique of zoology:

*When scientists look to nature, they usually bring with them their sociopolitical beliefs about what is natural. This self-reinforcing, internally consistent process, then, creates, reflects, and reinscribes often unquestioned assumptions about our world. Within the ubiquitous paradigm of binary gender and male superiority, scientists have, for example, ... misidentified the largest bee in the hive as the King Bee... Thus, in what is considered scientifically objective biology, the male is clearly held up as the normative sex, with the female as a deviation from the norm. Stereotypic attributes and behaviours (such as aggressive hunting and fighting versus coyness and passivity) are superimposed onto animals often through culturally distorted language (several females with a single male may be called a harem, quite a different connotation from, for example, what is now called the matriarchal organization of elephants).<sup>31</sup>*

Vantage-point has plagued property law cases too. Take for example *South Staffordshire Water Company v Sharman* [1896] 2 Q.B. 44 where class seemed to be an unstated factor against the workmen having better title to possession of unclaimed gold rings found in mud at the bottom of a swimming pool. Prior to this case the rule was that where something is found unattached to public land, the finder has better title to thing than all but the true owner.<sup>32</sup> Lord Russel of Killowen CJ held that here the landowner had better title to the rings because of 'the occupier's general power and intent to exclude unauthorized interference'.<sup>33</sup> The truth was that the local council had recently transferred ownership of the public pool to the Water Company and the workers were engaged to clean out the pool. It is easy to pluck out cases where class was not a factor too.<sup>34</sup> My point is that lawyers must be

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<sup>28</sup> James (2012: 70); and see also Huggins (2015: 281-283).

<sup>29</sup> The full statement can be accessed at <http://www.cald.asn.au/assets/lists/ALSSC%20Resources/KiftetalLTASStandardsStatement2010.pdf>

<sup>30</sup> Lukacs (1971: 93-94, 135).

<sup>31</sup> Spanier (1991: 330), emphasis added.

<sup>32</sup> *Armory v Delamirie* 1722 93 ER 664; and *Bridges v Hawkesworth* 21 L J (QB) 75.

<sup>33</sup> [1896] 2 QB 44, 47.

<sup>34</sup> Indeed *Armory v Delamirie* is a good example. There a chimney sweep was preferred to a jeweller.

mindful of the capacity of their experience of the world to affect their decision-making. This is more likely to be achieved when you reflect on your own privilege in relation to a given conflict and the relative power of the protagonists.<sup>35</sup>

With this in mind it is difficult to reconcile the following two student comments about this aspect of the course:

... If I wanted to be reminded about the stratification of society, I would look at the souls who crowd outside the Centrelink office in Palm Beach on my drive to university; If I wanted to be reminded about how my rich, white forefathers have aided and abetted global capitalism, I would reminisce over the wonderful childhood I enjoyed and the life I currently lead; and if I wanted to be indoctrinated by (surprise surprise) quasi-rich, white Academics who, idiotically, think that by (and I quote Alan Ardill) "Indigenizing" GLS and as many subjects as possible, we will somehow ameliorate the damage done in Australia's history to its first people, I would listen attentively with tear-stained eyes whenever we are forced to 'recognise' their being the traditional owners of the land, every time I receive an award at your blasted ceremonies. But I don't. I chose Griffith to equip me with the legal skills (and legal skills only) I need to be the best lawyer, not to become a test subject in Griffith's ill-fated quest to indoctrinate every student possible. ...<sup>36</sup>

On the other hand:

I feel Property 1 has allowed me to view the world from perspectives I probably would not have considered if it were not for this course. The last part of the course in particular was very insightful, dealing with issues regarding Australia. For the most part, I have really enjoyed engaging and exploring the content of this course, and it's definitely improved my critical thinking. Probably one of the few law courses which will stay with me for a while.<sup>37</sup>

Reflecting on the distance between these sorts of comments tells me that some students are open to new ideas while others are simply immune preferring the sanctuary, security and certainty of their privilege. As to the latter, who can blame them? As I often say to them, they are entitled to defend their privilege provided they do not represent their experience of the world as universal.<sup>38</sup> What I find alarming is the lack of humanity and absence of interest in justice in someone who wants to be a lawyer. Are they really suitable for admission to practice law?<sup>39</sup>

## **Professional Legal Admission**

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<sup>35</sup> Martin et al (2002: 670); and Harding (2006: ix).

<sup>36</sup> SEC 2015.

<sup>37</sup> SEC 2012.

<sup>38</sup> Marx and Engels (1998: 68).

<sup>39</sup> It would seem yes. To be admitted to practice the candidate must be 'suitable' for admission in addition to the academic requirements, *Supreme Court (Admission) Rules 2004* (Qld) ss 14 and 15. And 'fit and proper' according to the *Legal Professions Act 2007* (Qld), ss 21(b), 28(a), 32(2), 35(2)(a)(ii), 39(2)(c), 46, 419, 420.

The strongest opposition to teaching Marxism tends to concern a perceived disconnect between Marxism and professional admission requirements. It is a frequent criticism and one captured by a student who said:

‘...I can recite more of the *Communist Manifesto* than I can the *Property Law Act*. And while this may please you Academics who enjoy bantering over such matters, this will not assist students in their career paths or gaining employment; a problem you cannot appreciate by never leaving university. Good riddance.’<sup>40</sup>

I tend to agree that knowledge of the *Communist Manifesto* is not necessary to practice property law but this misses the point. While it varies year to year and across universities, many graduates do not necessarily go on to private practice and in most cases do not.<sup>41</sup> Still a law degree is not a law degree if it fails to equip graduates with the disciplinary knowledge they need to practice law.<sup>42</sup> To be an accredited law degree specific legal content must be taught including ‘Property’.<sup>43</sup> Prescribed ‘Property’ content includes specific topics such as estates in land, leases, mortgages, statutory schemes of registration, to mention a few, as well as broader topics such as the meaning and purposes of property, and the creation and enforceability of proprietary interests.<sup>44</sup>

At Griffith University these requirements are met by teaching Property across two compulsory courses called 3014LAW Property Law 1 and 3015LAW Property Law 2. For many reasons, too many to canvas here, Property Law 1 is more critical, interdisciplinary, and socio-legal and Property Law 2 tends to be more doctrinal. Still both courses contain doctrine and both are necessarily theoretical because that is what law is at law school. Consequently, the Course Description for 3014LAW Property Law 1 reads:

This course introduces students to fundamental elements of the law of property providing the basis for further study in the core course 3015LAW Property Law 2. This course critically assesses the justifications for property and considers the delineation of property using a variety of examples such as land, chattels and intangibles (intellectual property), illustrating how property is defined and limited through the legal concepts of "ownership", "title" and "possession". A significant focus of this course is a critical assessment of the legal justifications for property and the manner in which particular groups have used conceptual tools to secure their property rights.<sup>45</sup>

This Course Description is buttressed by the following Property Law 1 Course Introduction:

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<sup>40</sup> SEC 2015.

<sup>41</sup> Huggins (2015: 269); and Kift et al (2010: 8): ‘A law degree assists law graduates to enter diverse professional and vocational fields, not only practising as barristers and solicitors, but also working as government officials, corporate counsel, advisers to international organisations, in the business world, in the community legal sector, as academics, in publishing and in many other fields.’

<sup>42</sup> Stuckey et al (2007: 11-13).

<sup>43</sup> *Supreme Court (Admission) Rules 2004* (Qld), s 6(4) does not require the course to lead to a degree in law. But s 6(3) requires, ‘(a) the equivalent of at least 3 years full-time study of law; and (b) a satisfactory level of understanding and competence in the areas of knowledge set out in the admission guidelines for approving academic qualifications.’ According to s 9AA(2) ‘the Chief Justice must have regard to any relevant recommendations of the Law Admissions Consultative Committee.’

<sup>44</sup> *Supreme Court (Admission) Rules 2004* (Qld), Attachment 1.

<sup>45</sup> 3014LAW Property Law 1 Course Profile (2014).

Students can expect to explore the theoretical and liberal origins of the justifications for property as well as critiques of those justifications. The Course considers the ways property rights are created and transferred and does this in a manner drawing on key debates in Western legal and political theory. This Course is important for students because it contains mandatory topics for admission to practice law as well as preparing graduates for key debates about property and its significance in the world today. The Course explores the legal construction of property through the mediums of race, class and gender.<sup>46</sup>

Marxism is no less relevant to the mandatory property topics grouped in Property Law 1 than any other means of thinking about property doctrine. For example, some law schools might emphasise environment and sustainability, while others might emphasise instead international comparative issues. It depends on the expertise of the teaching team and/or institutional imperatives. Professional admission bodies are careful not to fetter academic discretion and prefer diversity in legal education provided core competencies are met.<sup>47</sup>

Marxism has at least two strengths. The first is historic materialism<sup>48</sup>, which makes sense given that students need to learn the origins of land law and why feudal doctrines of tenure and estates remain relevant today. At the same time students learn about the utility of possession, ownership and title, they also study consequences - what this has meant for people today in terms of the concentration of ownership on the basis of class, gender, and race. Therefore students learn about possession, title and ownership in feudal times, who were owners, to what extent, why they owned it, what they owned, and why this structure influenced the shift to capitalism (viz, extremes in poverty and power, privatisation of the commons and the enclosure movement, the emergence of the nation-state, the industrial revolution and colonisation).<sup>49</sup>

Another strength concerns Marx's notion of 'commodity form'. Of the various ways Marx used commodity form,<sup>50</sup> one sense was that preoccupation with the apparent attributes of a commodity obscures the complex social relations that actually produced the commodity (eg price does not reflect the cost of production). Applied broadly to the environment this sense of commodity form would mean the real cost of fossil fuels is not reflected by price because amongst other costs pollution is externalised.<sup>51</sup> Marx's commodity form is a powerful analytical tool and in this sense for lawyers concerned with sustainability. Sure the same lesson can be made using law and economics scholarship but that would deny its Marxist antecedents and assume that capitalism itself is the answer to environmental degradation.<sup>52</sup>

Property is central to capitalism whether it is seen through the lens of Locke, Hegel or Marx. One of the most important of several justifications is Locke's labour theory and his

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<sup>46</sup> Ibid.

<sup>47</sup> Rule 9AA(1)(a) of the *Supreme Court (Admission) Rules 2004* provides that the Chief Justice may issue guidelines for approving academic qualifications that set out areas of knowledge for courses for rule 6 and these accord with those issued by the Law Admissions Consultative Committee's Prescribed Areas of Knowledge.

<sup>48</sup> Poulantzas (1982: 11).

<sup>49</sup> Marx and Engels (1998a: 67-92).

<sup>50</sup> Collins (1984: 95-100) identifies multiple senses in which Marx used the expression 'commodity fetishism'.

<sup>51</sup> Marx (1990: 184): '... money-form is merely the reflection thrown upon a single commodity by the relations between all other commodities. That money is a commodity is therefore only a discovery for those who proceed from its finished shape in order to analyse it afterwards.'

<sup>52</sup> Medalye (2010). <http://www.eoearth.org/view/article/154812>

justification for the privatisation of common property.<sup>53</sup> From Locke's perspective, property was a private right arising as a law of nature and accruing to men as a result of their labour. For Hegel property was not a private right rather a question of mutual recognition between the labourer claiming possession and the social rules recognising that possession. Marx combined the plausible aspects of both Locke and Hegel to show that while labour should be the source of value in capitalist society the social rules were such that the labourer could never have property in their labour. Instead property in a capitalist system is a measure of the alienation of the labourer from their work. Students benefit from seeing property through the lens of all three thinkers and how this has played out in case law.<sup>54</sup> For this reason it is appropriate to teach all three and not one without the other.

Each of the three theorists mentioned here has changed the way the world sees property today regardless of what people know or do not know about these men. So important are their ideas that they are simply taken for granted. Therefore law students who intend to practice in the area of property law have a right to know the intellectual basis of their discipline and its vulnerabilities. Teaching Marx with mandatory doctrine is not a matter of reducing doctrine to include Marx, it is metaphorically speaking, about walking and chewing gum at the same time.

Like the United Kingdom and the United States, Australian law schools have had a history of grappling the expectations of the legal profession and its concern with legal doctrine and skills, and society's expectation that a university education is a public good contingent on quality academic education.<sup>55</sup> Essentially, after decades of reports and debates this tension is reconciled by legal academics recognising that the two interests need not be mutually exclusive and can and should be reinforcing.<sup>56</sup> Fortunately, this has always been the case at my law school,<sup>57</sup> and is now expected in jurisdictions that have embraced legal learning outcomes with some variation.<sup>58</sup>

## University Strategic Imperatives

From the beginning my university was set up to challenge orthodoxy with the inaugural Vice-Chancellor declaring that Griffith University should not be a 'slavish handmaid of the status quo, a factory fitting out men and women to serve the community within present values and organisations.'<sup>59</sup> Griffith University is renowned for its commitment to social justice and interdisciplinary scholarship.<sup>60</sup> Consistent with this and the quality frameworks above, the *Griffith Graduate* is Griffith University's policy 'on the characteristics that the University seeks to engender in its graduates'.<sup>61</sup> Amongst other qualities it declares that Griffith University graduates are 'Knowledgeable and Skilled in their Disciplines', 'with Critical Judgement', and are 'Socially Responsible'. In addition, the Griffith Law School Strategic Plan is 'committed to providing a dynamic and active learning environment that engages a rich diversity of students to think critically and independently about law's doctrinal, clinical, policy and jurisprudential contexts, thereby enabling them to

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<sup>53</sup> Davies (2007: 91-2 & 95).

<sup>54</sup> For example, *Millar v Taylor* 4 Burr 2357 (1769) (privatising ideas), *Cherokee Nation v Georgia* 30 US 1 (1831) (recognition of First American's as proprietors), or *Barclays Bank v O'Brien* [1994] 1 AC 180 (women and guarantees for credit).

<sup>55</sup> In the USA, the *MacCrane Report*, and in England, *ACLEC First Report*.

<sup>56</sup> Appleby et al (2013: 353-4); Guth and Ashford (2014: 7); Twining (2014: 97-8, 103-4).

<sup>57</sup> See 'Appendix One' (1992) 1(1) *Griffith Law Review* viii; and Dewar (2002).

<sup>58</sup> Huggins (2015: 265 & 281-83).

<sup>59</sup> Quirke (1996:17).

<sup>60</sup> Franks et al (2007).

<sup>61</sup> [http://policies.griffith.edu.au/pdf/The\\_Griffith\\_Graduate.pdf](http://policies.griffith.edu.au/pdf/The_Griffith_Graduate.pdf)

become socially responsible lawyers committed to professional excellence and the highest ethical standards'.<sup>62</sup>

Nothing is more concerned with critique and social justice than Marxism on the basis of class. This goes to the heart of Marx and Engels' body of work and features in concepts my students study such as commodity fetishism, dialectical materialism, dull compulsion, extraction of surplus value, ideology, naturalisation, reification, among other concepts. At the same time students learn that Marx was critiqued for over-emphasising the mode of production. In other words:

It would be a serious mistake to assume, however, that the relation between the classes is the only important instance of domination in capitalist societies. As many authors have rightly emphasised, relations of domination subsist between nation-states, between ethnic groups and between the sexes which cannot be reduced to class domination.<sup>63</sup>

While that criticism is largely correct<sup>64</sup> it does not follow that Marxism is redundant in terms of racism, sexism and other forms of oppression. For instance Marx's accounts of naturalisation and reification illuminate colonialization and racism as much as they do privatising domestic and family roles as women's work and the gender pay gap. In fact, this epistemological vulnerability of Marxism is also one of its greatest contributions to critique as I will explain later.

Another social justice reason for including Marxism concerns the apparent myopia of law students in terms of manifestations of oppression. I have found over the years that law students quickly spot discrimination based on sexuality, then race, then gender, and least likely of all on the basis of class.<sup>65</sup> The question I put to my students is that why is it that some people see only some of the categories of hierarchy and not others? For centuries the common law has seen some identities as worthy of proprietorship and not others. The one consistency has been that the common law has preferred white middle-class (or better) men as proprietors whether the system was feudal or capitalist. It is simply ridiculous to be passionate about gender, race, or sexuality, and to assume that class is not a basis for injustice. Marxism speaks to the problem of class and provides an important link to the other categories of oppression precisely because of the way Marxism was subsequently critiqued using its own methods.

## **My Research Experience**

As an undergraduate law student I learnt a bit about Marxism without being asked to read any original texts. I felt a little cheated when I was a doctoral student because I noticed that virtually all contemporary forms of critique whether post-Marxist (eg post-colonial theory, queer theory, Foucault, etc) or not (eg neo-Marxist such as Althusser, Eagleton, Gramsci, etc) had Marxist antecedents and yet this was rarely mentioned.<sup>66</sup> So I started reading original Marxist literature fascinated by a genealogy of critique. As I alluded to

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<sup>62</sup> Griffith Law School Strategic Plan 2013 – 2017, 3.

<sup>63</sup> Thompson (1985: 130).

<sup>64</sup> It is not entirely correct because there are connections between class, gender and race, and it reduces Marxism to *Capital* excluding so much else. It also narrowly conceives capitalism in much the same way as Marx was criticised for being 'economistic'.

<sup>65</sup> Curiously, this is the inverse of awareness of the older class conscious folk in my own extended family.

<sup>66</sup> Ardill (2008). [https://www.researchgate.net/publication/260165208\\_Sociobiology\\_and\\_Law](https://www.researchgate.net/publication/260165208_Sociobiology_and_Law)

earlier, for me the greatest lesson<sup>67</sup> from Marx concerns epistemology and this is why I identify as a Feminist Standpoint Theorist ('FST'). At its core, FST is a research strategy aimed at changing society by learning how power works from the standpoint(s) of the less powerful.<sup>68</sup> It is more a strategy than an epistemology – a strategy 'crucial for designing effective projects of social transformation'.<sup>69</sup> It is a legacy of Marx's view that knowledge is socially constructed:

Marxist theories ... remind us that the categories and criteria that come most immediately to mind for judging truth are likely to be those of the dominant groups.<sup>70</sup>

Marx and Engels pioneered the space for what has become FST because they 'used the standpoint of the proletariat to produce their account of class relations from the standpoint of workers'.<sup>71</sup> However, this was also a key reason why feminists and others critiqued Marxism and why feminism was subsequently critiqued by intersectional feminisms (eg African American, Indigenous and lesbian women).<sup>72</sup> This fragmentation of radical thought also laid the foundations for what was to become postmodernism.<sup>73</sup> Born from the ashes of postmodernism, FST reclaimed the salience of radical critique based on the voices of the most marginalised/oppressed in a given conflict and rejecting the relativism of postmodernism.<sup>74</sup> FST returned to the interconnectedness identified by Marxism to recognise individual struggles not as singular issues but part of a system that reifies oppression as anomalous while importing 'a descriptive and normative view of a society that reinforces the status quo'.<sup>75</sup>

While I would like students to engage with FST I have no expectation that students must embrace FST and this is made clear to them. It is taught as part of a lecture on Property and Postmodernism and it caps off a journey through western thought about property spanning feudalism (Hobbes then Locke) and its transition to capitalism (Locke and Hegel), and a critique of capitalism (Marx). FST provides a critique of Marx and a logical end to the first half of the course while acting as a bridge to the remaining topics in the course concerned with women and property, and later First Australians and property.

Given these institutional imperatives urging graduates to be critical thinkers, self-reflective and committed to justice I maintain that teaching Marxism is not just appropriate but rather it would be irresponsible not to teach it. Still there is no point teaching Marxism if it falls on deaf ears. So what do the students make of it and what strategies temper ideological barriers?

#### **4. Students and Marxism**

Recall that in 2004 when Marxism was about 10% of the course content 91% of students were satisfied with the quality of the course and only 2% reported being 'strongly dissatisfied' with the course:

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<sup>67</sup> Marxists like Das (2013) would not be surprised by this because they would correctly say a middle-class academic can afford to place less urgency on revolutionary praxis.

<sup>68</sup> Martin et al (2002: 670); and Sprague (2001: 534).

<sup>69</sup> Harding and Norberg (2005: 2011); and Smith (1997:396).

<sup>70</sup> Hartsock (1997: 370–71).

<sup>71</sup> Harding (2001: 516, footnote 9).

<sup>72</sup> Hartsock (1997: 368).

<sup>73</sup> Ibid, 369.

<sup>74</sup> As Mackinnon (2013: 1020) points out practitioners do not identify as postmodernists.

<sup>75</sup> Crenshaw (1989: 166-67).

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Overall I was satisfied with the quality of the course.	30 %	61 %	7 %	0 %	2 %

With the increase in Marxist content since 2008 the extent of quantitative dissatisfaction has increased along with the number of students who are ambivalent. This is clear in the data below despite the change to the scale between 2009 and 2010:

		Excellent	Very Good	Good	Average	Poor	Very Poor	Unacceptable
2008	Overall, how would you rate this course?	37%	25%	38%	0%	0%	0%	0%
2009	Overall, how would you rate this course?	4%	29%	33%	27%	7%	0%	0%

		Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
2010	Overall I was satisfied with the quality of the course.	56.4	30.8	10.3	2.6	0
2011	Overall I was satisfied with the quality of the course	42.6	29.8	14.9	4.3	8.5
2012	Overall I was satisfied with the quality of the course	30.9	41.8	12.7	7.3	7.3
2013	Overall I was satisfied with the quality of the course	46.4	39.3	7.1	0	7.1
2014	Overall I was satisfied with the quality of the course	13.3	46.7	20	6.7	13.3
2015	Overall I was satisfied with the quality of the course	34.1	29.5	15.9	11.4	9.1

The figures show that in 2010 87.2% were either satisfied or strongly satisfied with the course and only 2.6% dissatisfied with the course. By 2015 the satisfaction has dropped to 63.6% and dissatisfaction has grown to 20.5%. It could be argued that it is not the Marxist content that has caused this deterioration given that so many other variables affect student satisfaction. However, the qualitative feedback confirms the hostility is centred on the Marxist emphasis in the course. For example:

- Too much work on Marxism. I found the course very biased in favour of Marxism and did not really reach other theories. The second module assessment (worth 20%!!!!) was based all on Marxism and not property law which is ridiculous! if I wanted to take a course in Marxism etc, I would take a course in philosophy not property law! Especially now that property law 3 is being cut off. I felt like a communist view was being pushed onto us and too much talk of capitalism being horrible and unfair.<sup>76</sup>

<sup>76</sup> SEC 2014.



And:

- If my goal was to only hear why Western Society and Capitalism are the biggest evils of the world, and that Karl Marx was a revolutionary god among men, then this class succeeded. The content of this course did not stray far from the Marxist agenda, and continually attempted to reinforce why the capitalist system will fail in the lecturers opinion. The content failed to provide any alternative viewpoint, and further the lecturer took it upon himself multiple times to criticise the current government despite this having very little relevance to the content. The course failed to provide any genuine critique of Marxism. The only critique provided appeared to only reinforce the Marxist theme of the content. In summary, the course appeared biased, generally unable to provided critique of Marxism or Feminist Legal Theory, and failed to provide any alternative viewpoint to the anti private property ownership agenda.<sup>77</sup>

In *Marx at Miami* Sculos and Walsh Identify three types of ideological hurdles to teaching Marx: (1) not knowing Marx and conflating Marxism with so-called communist nations or the former Soviet Union, and (2) human nature is contrary to Marxism, and (3) Marx's communism could never work in practice.<sup>78</sup> These same hurdles apply at the Gold Coast though I would add another. A fourth hurdle concerns the appropriateness/relevance of Marxism to law ('I'm paying for this so it better be relevant').<sup>79</sup> I have tried to address this appropriateness/relevance hurdle in terms of the institutional imperatives discussed above, and by noting that the vast majority of students are satisfied with the course.

I make this argument to my students too. I remind them of the Assumed Background from their Course Profile which reads:

There is no assumed background for this course. Instead students are expected to come to this course with a mind open for inquiry appropriate to study at a university level. Students are expected to engage with scholarly debate about the origin, performance, reform, and critique of western property rights.<sup>80</sup>

Therefore it seems to me that increases in student ambivalence and hostility toward the course are located in my attempts to pre-empt the three ideological hurdles identified by Sculos and Walsh. Like Sculos and Walsh I devote a considerable amount of time to the three ideological hurdles each year learning from previous cohorts of students.

### **(1) Real Marxism**

Hostility to Marxism is generally inversely related to the amount of original Marx and Engels actually read. For this reason I let Marx and Engels speak for themselves by expecting students to read the *Communist Manifesto*, *Letter from Marx to Arnold Ruge*,<sup>81</sup> and three

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<sup>77</sup> SEC 2014.

<sup>78</sup> Sculos and Walsh (2015: 1).

<sup>79</sup> Much like the narcissitic individualist consumer culture at Miami described by Sculos and Walsh (2015: 7).

<sup>80</sup> 3014LAW Property Law 1 Course Profile (2015).

<sup>81</sup> September 1843, [https://www.marxists.org/archive/marx/works/1843/letters/43\\_09-alt.htm](https://www.marxists.org/archive/marx/works/1843/letters/43_09-alt.htm)

chapters from *Capital*.<sup>82</sup> Most students quickly learn the differences between Marxism and the misrepresented mythical Marx. Still, for many it is hard to shake off years of indoctrination and like Sculos and Walsh it is necessary to make the argument that Marx's aim for a society free of class antagonism has as yet never been achieved.<sup>83</sup> It follows that Marx's communism has not yet taken place so it is wrong to stymie Marxism with states that have been communist in name only.<sup>84</sup> Even though this is explained in the *Manifesto* it must be reiterated.<sup>85</sup> I also make the arguments about IS and Al Qaeda appropriating Islam, the KKK appropriating Christianity, etc, to distance Marxism from its false prophets. Still not all are ideologically liberated but most have started to engage.

## (2) Human nature is contrary to Marxism

Like Sculos and Walsh I defend communism against the view that because it has not taken place it is impossible based on human nature<sup>86</sup> or because it is impractical.<sup>87</sup> Contrary to student conspiracies I do this not because communism is a goal of the course but because the goal is to critique the existing system. Fixed conceptions of human nature are excuses for the reproduction of hierarchy on the basis of class, gender and race. Drawing upon my research expertise I attack the history of immutable homo-capitalist based on biological determinism and its antecedents.<sup>88</sup> I reveal the long history of using religion (eg monogenesis and polygenesis) and pseudo-science (phrenology, social Darwinism, eugenics, sociobiology, etc) conceptions of fixed human nature as an ideological basis for colonisation, dispossession, slavery, the subordination and exploitation of women, deserving and undeserving working poor, and so on.<sup>89</sup> Against this students are alerted to the more plausible and sophisticated alternative in social construction while being made aware of its Marxist roots. Social construction differs from cultural construction and regards identity as the result of interaction between biology, culture, individual, place, and history.<sup>90</sup> While all political theories make assumptions about human nature, Marxism leaves scope for human agency to develop as opposed to treating human nature as fixed and immutable given 'circumstances make men just as much as men make circumstances.'<sup>91</sup>

Most students find this liberating. Some are totally baffled by the depth of thought. For even fewer their resolve hardens against Marxism as well as me personally. The personal nature of the criticism is illustrated in two unsolicited emails from a self-described 'conservative student' who said:

27 June 2014, (8:58 AM) 'Just a quick email to say thanks for Prop 1. It's been a great course, perhaps my favourite law course thus far, and despite some of the nonsense going around about the course and your teaching style, I can honestly say I found it to be one of the most engaging and interesting courses. Thanks again.' 27 June 2014, (10:11 AM) 'As a conservative student it's disappointing to see my

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<sup>82</sup> I vary the Chapters from *Capital* year to year. This is supplemented with lots of secondary sources and a link to the Marxists Internet Archive at <https://www.marxists.org/>

<sup>83</sup> Sculos and Walsh (2015: 5).

<sup>84</sup> Sculos and Walsh (2015: 3-6).

<sup>85</sup> Marx and Engels (1998b: 47 & 63).

<sup>86</sup> Sculos and Walsh (2015: 6-12).

<sup>87</sup> Sculos and Walsh (2015: 2-15).

<sup>88</sup> Sculos and Walsh (2015: 10).

<sup>89</sup> Lewontin (2001).

<sup>90</sup> See further Haraway (1991: 133-7); Jagger (2015: 326); Kennelly et al (2001: 600); Vance (1995).

<sup>91</sup> Marx and Engels (1998a: 62).

fellow conservatives being some of the most vocally critical of the course.’

That was a particularly bad year when one student had to be counselled by the Dean for his disrespect. His sense of entitlement gave him away. He repeated verbatim the anger he had expressed anonymously at me and the course in his SEC when he later appealed his grade in writing.

### **(3) Marxism can never work in practice**

To the ideological hurdle that Marxism is impractical I juxtapose this with the idea that liberalism is impractical given the increasing concentration of wealth and the disjunction between formal equality and substantive equality. This is readily accepted by law students but it is unable to address the true fear which is that Marxism will inevitably lead to tyranny and so capitalism is the least worst of the alternatives.<sup>92</sup> The inevitability hypothesis that all societies must be hierarchical and exploitative must be challenged because as Sculos and Walsh have observed ‘our undergraduate students are often convinced of the idea that someone always has to get screwed ... This unfortunate fact, they contend, is not merely an idiosyncrasy of capitalism, but all possible politics.’<sup>93</sup> This cynicism was captured by Zizek who wrote, ‘Communism is thus not the light at the end of the tunnel, that is, the happy final outcome of a long and arduous struggle – if anything, the light at the end of the tunnel is rather that of another train approaching us at full speed.’<sup>94</sup> However, for Zizek rather than turning away from communism to nihilism, he reclaims communism as an endless process of iteration quoting Beckett, ‘Try again. Fail again. Fail Better.’<sup>95</sup>

Still, I am happy if students put aside Marx’s plea for communism for the moment provided they run with his critique. So I point out that for the purposes of Property Law 1, Marxism is much more than a concern with communism and the take-home message should be its array of critical tools.<sup>96</sup> As Marx said in a letter to a friend:

For even though the question "where from?" presents no problems, the question "where to?" is a rich source of confusion. Not only has universal anarchy broken out among the reformers, but also every individual must admit to himself that he has no precise idea about what ought to happen. However, this very defect turns to the advantage of the new movement, for it means that we do not anticipate the world with our dogmas but instead attempt to discover the new world through the critique of the old.<sup>97</sup>

To know the possibility of a very different future it is first necessary to critique the past otherwise our experience colours the vision. So the question is – to what extent are students of this course engaging with critique for a better future?

### **A Better Future Through Critique?**

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<sup>92</sup> Zizek (2009: 28).

<sup>93</sup> Sculos and Walsh (2015: 12).

<sup>94</sup> Zizek (2009: 149).

<sup>95</sup> Zizek (2009: 125), Beckett’s *Worstward Ho*.

<sup>96</sup> Zizek (2009: 86-157).

<sup>97</sup> Letter from Marx to Arnold Ruge, [https://www.marxists.org/archive/marx/works/1843/letters/43\\_09-alt.htm](https://www.marxists.org/archive/marx/works/1843/letters/43_09-alt.htm)

In 2004 when just 10 % of the course concerned Marx and any Marxist literature was always a secondary source, only 2 % of students objected to the course content. Since 2008 the course has used original Marxist literature and used Marxism as a means of linking the course topics together, many students now report either ambivalence toward the course or their hostility to learning Marxism. Here there is a paradox. The more I attempt to pre-empt these ideological hurdles, the more the course and I are seen as bias. This is illustrated by the selection of SEC feedback below:

- I don't think that the theories of a lecturer should be examinable as it is clear that if you don't agree with the views presented, you will not get a good mark.<sup>98</sup>
- Different lecturer. More balanced ideas about the theories.<sup>99</sup>
- ... for a course that encourages students to not be bias, the view-point taught throughout the course seems rather one-sided ...<sup>100</sup>
- This course needs a radical overhaul. First, I think Dr Ardill has been teaching this course too long. I believe he uses the course as a forum to push his own personally held views on a group of, largely, young people.<sup>101</sup>
- Perhaps another teacher could teach the workshop just so there is a difference in opinion - might help with the bias that was so prevalent in the course.<sup>102</sup>
- I believe that the course is systematically biased.<sup>103</sup>
- Lecturer's views were pushed heavily on students. Too subjective!<sup>104</sup>

It seems that there is a point where the pre-emption of ideology can be interpreted as dogma. Teaching more Marxism has seen a growing vocal minority of students object to the course. For them it is propaganda, brain-washing, bias, irrelevant etc. At the same time the hostility can also be understood as privilege defending its vantage point. These students are not always lucky to qualify for law school. So it is more likely they are not duped by false consciousness, rather they are well aware of what is at stake for them. Their opposition is motivated by defending their class interests.

What concerns me then is the impact these voices have on the learning environment for other students. This noise effects the learning environment because it hijacks discussion and limits the attention I can allocate to students who may be indifferent to the content. In fact some students are starting to report they feel silenced by this vocal minority and others want me to silence the critics. At times I contemplate ceasing to teach Property Law 1 and just teach the more doctrinal Property Law 2 because it is less intellectually and emotionally demanding. I would not have to endure the personal criticism and it would be better for my career. Against this it is important that at least one of the 18 mandatory courses in an LLB should be dedicated to a thorough critique of the status quo.<sup>105</sup> If I were to vacate the course convenorship of Property Law 1 it would be redesigned by my successor according to their expertise. So I persist because I believe in the importance of a teaching/research nexus, I believe education should liberate student and academic, and if we do not resist hierarchy as educators then we are maintaining it. I am inspired by the vast majority of students who

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<sup>98</sup> SEC 2015.

<sup>99</sup> SEC 2014.

<sup>100</sup> SEC 2014.

<sup>101</sup> SEC 2014.

<sup>102</sup> SEC 2014.

<sup>103</sup> SEC 2012.

<sup>104</sup> SEC 2011.

<sup>105</sup> Griffith law students must complete another 14 elective courses of which ten must be in law and the remaining 4 are 'free electives'.

remain uninfluenced by the noise of class privilege and continue to enjoy the content and grow as a consequence. Perhaps a better future is possible.

## Conclusions

In a world approaching 7 billion people and with women owning 1% of world property and the richest 9% of the world owning 85% of property it is time to start critically assessing western notions of property. Property lawyers have just as much responsibility for teaching students doctrine as teaching them to critique the unsustainable and unjust allocation of property. Marxism is one way to approach this and while it is not necessary to it, it is irresponsible to exclude it.

Marxism is the most relevant means for the critique of property on the basis of class, and it is inextricably connected with other indices such as gender and race. It is an essential piece of the property jigsaw puzzle and the history of thought. Importantly, it teaches law students how to be mindful of their actions in relation to others and many students report that they find this aspect of Marx transformative for them as people. What students choose to take from Marxism beyond this is up to them.

Marxism is urged by educational and legal imperatives. Of the imperatives canvassed here the weakest connection concerned professional admission but even there Marxism was not irrelevant. Marxism teaches the lawyer to see things from other vantage points. As a former student said in an unsolicited email:

Fri, Aug 15, 2014 at 1:26 AM: 'I just wanted to say thank you for the positive influence you had on me through law school. ... As for me, I've taken a position doing plaintiff personal injury. While my advocacy skills are still developing, I appreciate your lessons on understanding an issue from different vantage points – it certainly has helped.'

If anything, it is somewhat tragic that students only do critique to this extent once in their entire law degree. Marxism is a way to give practical effect to what the Australian Law Reform Commission declared in 2000:

In a changing environment, the best preparation that a law school can give its graduates is one which promotes intellectual breadth, agility and curiosity; strong analytical and communication skills; and a deep moral/ethical sense of the role and purpose of lawyers in society.<sup>106</sup>

My students tend to agree and I put the success of the course down to the fact that Marxism is taught not as a panacea to repair the consequences of a concentration of ownership, rather Marxism is necessary to an understanding of the way knowledge is constructed and therefore the way property is constructed. This provides scope for re-thinking property, so that concentration and exploitation are not the result. As a former student said in another unsolicited email:

Fri, Jul 12, 2013 at 5:22 AM: 'I respect you highly not only as a teacher, but as an individual who I saw in my time in Property 1 as

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<sup>106</sup> Quoted in Kift et al (2010: 8).

someone not afraid to challenge the normative ways of thinking (the first time I ever encountered such in an academic environment). You have no idea how much that course has influenced my perception of myself and the world around me. I literally question all information placed before me nowadays. It's because of that class I continue to think outside the square (or try to) on a daily basis in all aspects of my life.'

Ultimately I do not take credit for the success of the course because that belongs to students who approach the course with a spirit of learning and an open mind. Sculos and Walsh must also take credit for encouraging me to share my experience of teaching Marx. Their teaching excellence and their article *Marx in Miami* has validated Marx at the Gold Coast.

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