DEVELOPING AND TEACHING AN INTRODUCTION TO LAW IN CONTEXT: SURROGACY AND *BABY M*

BY NAN SEUFFERT, STEPHANIE MILROY AND KURA BOYD*

The opening of Te Piringa,[1] the first law school founded in New Zealand in ninety years, was celebrated in 1991. Te Piringa was founded explicitly to develop a legal education that approaches law and the legal system in the context of the society in which the laws are made and applied. The opening celebrations for the School included a week-long introductory programme to the study of law in context for students that focused on the issue of surrogacy. The first two parts of this article present the perspectives of two law lecturers on the development and teaching of the introductory programme, the first from a feminist standpoint and the second from a bicultural viewpoint. The final part of the article presents the perspective of a student who participated in the programme.

I. A FEMINIST PERSPECTIVE ON TEACHING LAW IN CONTEXT[2]

The opening of any new law school is an exciting event, not only for students and staff, but also for the wider professional, university and local residential communities. To those interested in social equity and approaches to justice from a contextual perspective, the opening of a law school established "to contribute to the development of a New Zealand jurisprudence that supports the principles of justice, democracy, equality and a sustainable environment, and that respects and reflects the rights and responsibilities of all peoples and cultures"[3] was a truly significant occasion. The principles guiding the foundation of the School were summarised as "the creation of an environment of participation, of challenge, debate and justice in which a legal education programme would be developed that is based on a commitment to biculturalism and the analysis of the law and the legal system within the society in which laws are made and applied".[4]

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* Nan Seuffert, BA (Virginia), JD (Boston), Lecturer in Law, University of Waikato; Stephanie Milroy, LLB (Auckland), Lecturer in Law, University of Waikato; Kura Boyd, former law student, University of Waikato.

1 The Maori name for the School of Law was described at the Law School naming ceremony as "holding together", and expresses a sense of coming together and holding together to a firm purpose. See "Te Piringa: Holding Together", *On Campus* (4 March 1991) 1.

2 Part I was written by Nan Seuffert.

3 *University of Waikato School of Law Handbook* (1991) 7.

4 Ibid. The new school was founded on a set of principles that explicitly recognised and focused on biculturalism and a study of the law in context. This focus is in stark contrast to more traditional law schools, which have a narrow focus on "black letter law". See, Frug, "A Critical Theory of Law" (1989) 1 Legal Education Review 43 ("[m]any law professors consider their primary job to be teaching legal doctrine and

I arrived in New Zealand in December of 1990 to prepare for the opening of Te Piringa in March 1991.[5] Part I of this article presents my experience as a member of the committee developing the Law School's introductory programme to law in context in a manner consistent with, and designed to facilitate the goals of the School. It then explores my experience as a staff member attempting to teach the programme from a feminist perspective, incorporating feminist pedagogies.

1. Developing the Programme

In celebration of the opening of the Law School, the staff organised a one-week introduction to the study of law in context which concentrated on the issue of surrogacy, with a specific focus on *In the Matter of Baby M.*[6] A committee was formed to organise the programme. One of the committee's first tasks was to decide on the basic structure of the programme. This section presents a brief outline of the basic structure of the programme and

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legal skills"); and Gordon, "Critical Legal Studies as a Teaching Method, Against a Background of the Intellectual Politics of Modern Legal Education in the United States" (1989) 1 Legal Education Review 59.

5 Prior to arrival in New Zealand I practised law in a large commercial law firm in Boston. An avowed feminist, I co-founded a *pro bono* programme to represent survivors of domestic violence. Further, I served as a member of the Massachusetts Governor's Anti-Crime Commission, Battered Women's Group, and as a founding member of a Domestic Violence Advisory Council which was intended to coordinate services offered to survivors of domestic violence in the Boston area.

6 *In the Matter of Baby M* 537 A 2d 1227 (NJ 1988); 525 A 2d 1128 (NJ Sup Ct 1987). On 6 February 1985 the Sterns and the Whiteheads signed a surrogacy contract in which Mary Beth Whitehead agreed to be artificially inseminated with the sperm of William Stern, to bear a child, to surrender physical custody of the child to the Sterns and to terminate all of her parental rights to the child. Mary Beth Whitehead gave birth to a baby girl on 27 March 1986. On 5 May 1986 the Sterns filed for an order to show cause why the trial court should not grant summary judgement to enforce the contract, and require Mary Beth Whitehead to surrender custody of her child to the Sterns. The trial court granted the order *ex parte*; the child was eventually forcibly removed from her grandparents' home and Mary Beth Whitehead's care, and surrendered to the Sterns (537 A 2d at 1238). On 31 March 1987 the trial court issued a decision enforcing the surrogacy contract, terminating Mary Beth Whitehead's parental rights, and allowing adoption of the child by Mrs Stern (525 A 2d at 1128). Mary Beth Whitehead appealed and the New Jersey Supreme Court granted direct certification (*In the Matter of Baby M* 107 NJ 140, 526 A 2d 203 (1987)). The New Jersey Supreme Court invalidated the surrogacy contract because it conflicted with the law and public policy of the state. It found "the payment of money to a 'surrogate' mother illegal, perhaps criminal, and potentially degrading to women" (537 A 2d at 1234). It granted custody to William Stern, voided both the termination of Mary Beth Whitehead's parental rights and the adoption by Elizabeth Stern, and remanded the case for a determination of visitation rights for Mary Beth Whitehead. The Court also stated: "[w]e find no offence to our present laws where a women voluntarily and without payment agrees to act as a 'surrogate' mother, provided that she is not subject to a binding agreement to surrender her child" (537 A 2d at 1235).

then explores the ways in which the design of the programme reflected the goals of the school.

We decided to teach the programme in streams of twenty-five students meeting for five discussion sessions, one each day of the week. A two-hour plenary panel presentation of six members of the University community was scheduled for the middle of the week. All staff were involved in teaching the programme. The students' regular law classes were suspended for the week. First and second year law students were mixed in all classes.

On the first day class discussion focused on the presentations of the facts of the case in the judgments. The second and third discussions focused on the law in the cases and the relevant New Zealand law. The plenary panel presentation occurred on the third day. The discussion on the fourth day was a consideration of the contextual issues raised by the panel presentations. Finally, on the fifth day, students met in small groups to draft Law Commission recommendations on the issue of surrogacy.[7]

The programme was specifically designed to reflect the goals and principles of the new School, namely, professionalism, law in context (incorporating a commitment to the recognition of feminist legal thought), and biculturalism. The committee distilled these goals and principles from the language of the foundation documents of the school. The "law in context" aspect of the foundation principles is consistent with approaching the law in the context of societal power differentials based on gender.[8]

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7 Reading materials were distributed to the students prior to the first day of the programme. The materials included the cases at the trial and the appellate levels, and the Status of Children Amendment Act 1987, the New Zealand statute that deals with the issue. The cases were edited: the styles of the factual approaches of the courts were maintained, as were the custody discussions and a representative sampling of the contract issues. The surrogacy contract was included in the materials. Panellists were asked to contribute a written piece for inclusion in the students' reading materials for the week, in recognition that the contextual material and the approaches of the lay people were an integral part of the programme. Students were given a summary of recommendations to the Law Commission to facilitate their own recommendations. The materials also included a piece by John Rangihau explaining the Maori Whaangai (raising of kin children) System to the High Court judges.

8 For one definition of feminism in a legal context see MacKinnon, "Feminism in Legal Education" (1989) 1 Legal Education Review 85-86: "feminism is an approach to society from the standpoint of women, a standpoint defined by concrete reality in which all participate to one degree or another. This is not to say that all women are the same or that all women in all cultures and across history have been in an identical position. Rather, it is to say that the experience of women is concrete, not abstract, and socially defines women as such and distinguishes them from men... This experience includes segregation into forms of work which are paid little and valued less and the devaluation of women's contributions. It includes the demeaning of women's secondary sex characteristics. It includes domestic servitude and wife

The goal of professionalism, training the students to be capable of participating as professionals in the legal community, was addressed in the programme in at least three ways.[9] First, *In the Matter of Baby M* illustrated the interrelationship between different areas of the law, specifically contract and family law. Many students graduate from traditional legal educations with little understanding of the connections among the seemingly discrete subject areas of their study, much to the detriment of their practice. Highlighting these connections at the outset of the law programme seemed an appropriate manner in which to introduce a law programme that would explicitly recognise, in both form and content, such connections. Secondly, students were asked to analyse the case at the trial and appellate levels in the form adopted by the Law I Legal Method course. Thirdly, introduction to the form and content of a contract occurred through a close look at the surrogacy contract involved in the case. Traditional legal education has spent little energy in introducing students to legal documents that they encounter in the profession or in the interpretation of contracts as a whole. Looking at the contract involved in the case provided students with a basic understanding of the origins of the case.

The goal of presenting the law in context in the programme was addressed on three levels. First, the issue of surrogacy was placed in the context of the broader legal system: at the conclusion of the programme the students were required to draft recommendations to the Law Commission on laws to deal with the issue of surrogacy. Secondly, the issue of surrogacy was considered in the wider context of the University community, including the Maori community. The plenary panel presentation of six members of the University community exposed students to a variety of community views on surrogacy. Each member of the panel presented his or her perspective on surrogacy and specifically on the *Baby M* case, as "testimony" for the students' consideration in drafting their recommendations to the Law Commission.[10] Thirdly, some staff chose to address the issue of surrogacy

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battering....Women are made a sex through these experiences which deprive them of respect, personal security, human dignity, access to resources, and access to speech and self-expression....To describe who is doing what to whom..., men are doing this to women....Whether men enjoy it or not, they surely benefit from not being those to whom it is done, and from being in the position to choose to do it or not. This is what it means to say that men have power - male power - and women do not".

9 It is artificial to identify only these aspects of the programme with the goal of professionalism. An understanding of the law in all of the contexts in which it occurs, as well an understanding of the development of bicultural jurisprudence, are crucial to the training of competent professionals.

10 See Wildman, S "The Question of Silence: Techniques to Ensure Full Class Participation" (1988) 38 Journal of Legal Education 147, 153. In describing classroom techniques that help to generate lively class discussion as well as to assist

from a feminist perspective in the context of a society that structures gender as a man/woman dichotomy that is also a hierarchy of power.[11]

The programme demonstrated a recognition of feminist legal thought in a number of ways. Surrogacy contracts are a relatively recent development and are directly relevant to women's lives, and so the issue is of particular current interest to feminists. In addition, a wide range of feminist perspectives on this issue exist, highlighting the diversity of feminist thought. The decision to teach the programme in streams of twenty-five students facilitated the implementation of feminist teaching methodologies, and the recommendations to the Law Commission, to be developed by groups of three to five students and presented to the stream, built some aspects of a feminist teaching methodology into the structure of the programme.[12]

The programme committee's tentative understanding of possible roles of biculturalism in legal education led it to address this goal in a somewhat limited manner. The two Maori women on the panel related their personal experiences of the Maori practice of placing children. In addition, the reading materials included John Rangihau's address to the High Court Judges on the issue of adoption.[13]

2. Teaching the Programme

The programme provided an opportunity to implement feminist teaching methods,[14] which attempt to facilitate empowerment, promote community[15] and problematise authority in the classroom setting.[16] This section begins

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students to participate who might otherwise remain silent, Wildman describes "[c]onvening as a legislative body to decide whether to adopt a certain law... divide the entire class into groups, each representing a different special interest lobby that will offer 'testimony' to the legislature about the proposed legislation". Our technique presented "testimony" about the issue of surrogacy from each of the panellists and then asked the students to formulate recommendations for legislation based on what they had heard.

11 See MacKinnon, supra note 8.

12 This was also a way to get the students involved, and to allow them to work in small groups, providing the seeds for the student community.

13 Rangihau, J *The Whangai (Raising of Kin Children) System* (unpublished address, 3 April 1987).

14 See Morrison, "Teaching Law in a Feminist Manner: A Commentary From Experience" (1990) 13 Harvard Women's Law Journal 87, 90.

15 Idem. See also Menkel-Meadow, "Feminist Legal Theory, Critical Legal Studies and Legal Education or 'The Fem-Crits Go to Law School'" (1988) 38 Journal of Legal Education 61, 81.

16 Gore, J *The Struggle for Pedagogies* (1993) 67.

with a brief description of the methods that I used in the programme. It then covers my teaching of the programme.

Feminist teaching methods can be said to promote community in the classroom by explicitly addressing issues of authority and attempting to facilitate empowerment. For example, to the extent that society constructs authority and nurturance as opposites and men as authoritative and therefore capable of teaching law and women as nurturers and care-givers, feminist teachers become a paradox whose existence represents the contradictions of authority and nurturance. This paradox is addressed by some feminist teachers by challenging the dominant methods of teaching as partriarchal enterprises that occur in patriarchal institutions. Teaching methods therefore begin by avoiding patriarchal models of authority based on power over students, with emphasis on hierarchy, competition and control:

> Building trust, collaboration, engagement and empowerment would be pedagogical goals, rather than reinforcing the competition, individual achievement, alienation, passivity and lack of confidence that now so pervade the classroom.[17]

Feminists also challenge patriarchal conceptions of authority by reclaiming the authority of women in the classroom as a method of empowerment - the authority of our experiences, emotions and perspectives. This reclaiming is done by both students and teachers and often involves telling stories of experiences. Storytelling in law can work to disrupt the legal categories created by the dominant groups in society by presenting moving stories of experiences that do not correspond to established legal categories.[18] Not surprisingly, the creation of this method of teaching is attributable to women of colour, lesbians and other so-called minority groups or outsiders.[19] The stories of outsiders create bonds between those who share the experiences that the stories represent, and they challenge the dominant characterisation of the experiences of these groups. They may also serve to open up space within the dominant groups and the legal categories for the recognition of these experiences.

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17 Supra note 15, at 81. Feminist teaching methods "depend on teaching for empowerment (building up by conversations and sharing experiences, rather than by attack/defence) and foster a more open and flexible understanding of the many ways problems can be solved".

18 See Abrams, "Hearing the Call of Stories" (1991) 79 California Law Review 971, 975-976; and Goldfarb, "A Theory Practice Spiral: The Ethics of Feminism and Legal Education" (1991) 75 Minnesota Law Review 1599, 1630-31.

19 See generally Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative" (1989) 87 Michegan Law Review 2411, 2412.

In New Zealand issues of authority and empowerment have been addressed by Elisabeth McDonald in her feminist legal theory course.[20] First, she notes that the best way for women to learn about feminist legal theory is by talking to each other, recognising the authority of class participants and the importance of storytelling. This method is a response to the recognition that women's experiences often do not fit into established legal categories. It de-centres the teacher as an authority figure: she becomes a facilitator of class discussion. Secondly, she points out the importance of how students talk to each other, and of how students take responsibility for what happens in the class, for their authority. The traditional patriarchal power relations in the classroom are deconstructed and replaced with empowerment of the students.

I now turn to my teaching of the introductory programme. In my stream, students sat in a circle, facing other students. As much as possible, I was simply another participant in the class, rather than the focus of attention and a centre of authority.[21] This arrangement reflects the recognition that empowerment occurs through sharing information, rather than existing as a recipient of information parcelled out from an authority figure. This arrangement also acknowledges that each participant has valuable information to exchange which is as important as the information received from the instructor and that all participants are responsible for the quality of the discussion.[22] When we had a full group discussion, I asked the students to introduce the next speaker themselves, in an attempt to give them a sense of both control over and responsibility for the discussion.[23]

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20 McDonald, "The law of contract and the taking of risks: feminist legal theory and the way it is" (1993) 23 VUWLR 113.

21 This style contrasts with both the classic "Socratic" method and the "Socratic dialogue *cum* lecture" which continue at most law schools. See supra note 15, at 70 ("In actual practice many law school classes now consist of brief lectures with a 'Socratic' tag question occasionally punctuating a paragraph of lecture"). Both the "Socratic" method and the "Socratic dialogue cum lecture" can be seen as what the Brazilian educator Paulo Freire has termed the "banking" model of education. Jennifer Gore summarises Freire's explication of the banking model: the teacher teaches and the students are taught; the teacher knows everything and the students know nothing; the teacher thinks and the students are thought about; the teacher talks and the students listen meekly; the teacher disciplines and the students are disciplined; the teacher chooses and enforces his [*sic*] choice and the students comply; the teacher acts and the students have the illusion of acting through the action of the teacher; the teacher chooses the programme content, and the students (who were not consulted) adapt to it; the teacher confuses the authority of knowledge with his own professional authority, which he sets in opposition to the freedom of the students; the teacher is the subject of the learning process, while the pupils are mere objects. See also supra note 16, at 41.

22 On the first day I also asked the students to create name placards, in order to facilitate the learning of names as quickly as possible.

23 Supra note 14, at 94 ("to achieve shared leadership, anyone could speak without being called upon; if more than one person wanted to speak, the last speaker would designate

The programme began with students introducing themselves and identifying their areas of interest. I then introduced myself, and identified staff members who shared interests that the students had expressed. Another introductory exercise was held on the fourth day of the programme. In addition, students were asked to record each day in a journal their thoughts on the issues of surrogacy, *In the Matter of Baby M*, and the programme. Journal entries were discussed at the end of the fourth day.

On the first day, after introductions, we discussed the goals of the School and how the programme we had developed was intended to meet the goals, as well as the general goals of the programme. As the week progressed, we identified aspects of the programme that reflected goals of the School. For example, the students' recommendations to the Law Commission were identified as placing the issue in the context of law-making. The panel was identified as placing the issue in the context of the University community and reflecting the perspectives of that community.

On the first day we also looked at the language used by the trial and appellate courts in presenting the facts of the case, the facts emphasised, and the underlying assumptions contained in the language. This focus was important for three reasons. First, the power of men to name and define is integral to their ability to create and maintain male hegemony. Men impose their world view at least in part through their control of the meaning of language.[24] This was particularly apparent in the language of the trial court opinion in the *Baby M* case. At an early stage, the trial judge described Mary Beth Whitehead as the "surrogate" and William Stern as the "natural father", foreshadowing the outcome of the case.[25] The question I posed was: why is Mary Beth Whitehead a "surrogate" as opposed to a "real" mother? By identifying the characteristics of a mother, as opposed to those of the "surrogate" contemplated by the contract, it became clear that, at least until the time of birth, there is nothing that a "real" mother does that a "surrogate" mother does not do. Both contribute the egg to the child's genetic make-up, both carry the child to term and both give birth to the child. If Mary Beth Whitehead was not the mother at the time of the birth of the child, when the dispute arose, who was the mother? By identifying Mary Beth Whitehead as the "surrogate" at the beginning of the opinion, the trial court judge defined her as not the mother, both commodifying her as a

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the next"). Unfortunately, this was not completely successful. I attribute this to it being a method that the students were not familiar with and which, in a one-week programme, we did not have sufficient time to develop fully.

24 Supra note 14, at 97.

25 525 A 2d, at 1137.

"surrogate" and foreshadowing the outcome of the case. A judicial decision taking a child away from her mother may be more controversial than a decision that awards the child to her "natural father" rather than a "surrogate."

Secondly, focusing on the judge's language highlighted the importance of the characterisation of facts in litigation, a point that is often overlooked in legal education. Understanding the importance of the characterisation of facts is essential to any practising litigator. Looking closely at the use of the word "surrogate" enabled students to understand that winning a case at the trial level is often tied to convincing the judge to adopt one's characterisation of the facts.

Thirdly, a close reading of the facts contributed to our deconstruction of the text, allowing us to repaint pictures of each party from different perspectives than those presented by the court. The court focused and elaborated on the psychologists' and psychiatrists' negative findings with respect to the Whiteheads, and emphasised the positive aspects of the findings with respect to the Sterns. For example, in assessing the emotional stability of the Whitehead household the trial court stated that, although it was currently stable, it had earlier been "plagued with separations, domestic violence and severe financial difficulties requiring numerous house moves". In contrast, the Sterns were said to "have a close, loving and very supportive relationship with each other".[26] The focus on the Sterns was on the present and dealt exclusively with emotional stability, while the court expanded the focus on the Whiteheads to encompass past periods of trouble and financial aspects, thus making the comparison problematic. If the court had limited the focus on the Whiteheads to the present, it would have simply stated that the Whiteheads' marriage was currently stable.[27]

Throughout the judgment, the Whiteheads' socio-economic status and financial problems were cast in a negative light.[28] The court did not give Richard Whitehead credit for serving in and receiving an honourable discharge from the Vietnam War, during the same period that William Stern was a student at medical school and thereby exempt from the draft.[29]

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26 Ibid, at 1148.

27 Ibid, at 1154.

28 Ibid, at 1140-41, 1147. The Court questioned "Mary Beth Whitehead's emphasis about the importance of education in light of her ... own limited high school experience".

29 Ibid, at 1138, 1140.

Focusing on the positive aspects of the experts' reports of the Whiteheads, and the negative aspects in the reports of the Sterns, revealed that the Whiteheads could have been portrayed as good parents and the Sterns as cold and limited in their ability to express emotions. Mary Beth Whitehead had "done a good job parenting her son and daughter" and was "a fit mother", and the Whitehead marriage was stable.[30] Further, Mary Beth Whitehead was able to recognise that her husband's alcohol abuse was his own problem.[31] Richard Whitehead was described as a benign force in the Whitehead household who permitted Mary Beth Whitehead to make decisions. He was also described as "articulate though not loquacious and there is a direct, 'down to earth' quality about him".[32] The Whiteheads were described as having made a mutual decision that he have a vasectomy, which demonstrated mature cooperation and understanding between the couple.[33] In addition, one expert found that much of the other expert testimony, emphasising negative aspects of Mary Beth Whitehead's personality, was flawed because it was based on her behaviour during a severe life crisis.[34]

Elizabeth Stern was described as "having an adjustment disorder with depressive features".[35] William Stern was described as an introverted person who contained his feelings,[36] and the court noted that while Mary Beth Whitehead was willing to share custody of the child, he was not.[37] Further, William Stern had no surviving relatives: the child's extended family was therefore necessarily limited.[38]

This repainting of the parties in the case emphasised the crucial nature of the portrayal of the facts in legal decisions and highlighted for the students the bias in favour of the "natural father" in the trial court's opinion.

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30 Ibid, at 1150, 1154.

31 Ibid, at 1141. One of the first steps to curing alcoholism is the recognition by the alcoholic that he or she is responsible for his or her own problem. The recognition of those close to the alcoholic that the drinking is the alcoholic's problem is crucial to this process.

32 Ibid, at 1155.

33 Ibid, at 1140.

34 Ibid, at 1150.

35 Ibid, at 1153.

36 Idem.

37 Ibid, at 1150. A feminist critique of the experts' reports begins here, see Chesler, P *Sacred Bond: The Legacy of Baby M* (1989) 43 ("Why didn't the mental health experts ever pause, just once, to wonder: What kind of man would use both contract and penal law to make sure that 'his' daughter would never again see, smell, breast-feed from, play with - even come to know her birth mother?").

38 Ibid, at 1138, 1139.

On the second day we looked closely at the surrogacy contract between the Sterns and the Whiteheads and the obligations assumed in each of its paragraphs. This "hard law" analysis was what the students thought law school was all about. It was also identified as a part of the programme that corresponded to the school's goal of professionalism.

Reading the contract introduced students to the form and content of a standard contract. As we focused on who assumed obligations in each paragraph, it became clear that the contract was drafted by the Infertility Center[39] with the interests of the infertile couple in mind.[40] This opened the enquiry into the context surrounding the signing of the contract. The New Jersey Supreme Court stated:

> the only legal advice Mary Beth Whitehead received was provided in connection with the contract that she previously entered into with another couple. Mrs. Whitehead's lawyer was referred to her by the Infertility Center, with which he had an agreement to act as counsel for surrogate candidates. His services consisted of spending one hour going through the contract with the Whiteheads, section by section, and answering their questions. Mrs. Whitehead received no further legal advice prior to signing the contract with the Sterns.[41]

The situation was fraught with ethical concerns. The trial court judgment revealed that William Stern paid for the lawyer under the contract provision

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39 Infertility Center of New York (hereafter referred to as the "Infertility Center").

40 See 537 A 2d at 1248 (Mary Beth Whitehead's "interests are of little concern to those who controlled this transaction"). See also 537 A 2d at 1265-68. The only obligations placed on William Stern by the contract were that he pay Mary Beth Whitehead $10,000 upon surrender of custody of the child and that he pay medical expenses incurred as a result of her pregnancy which were not covered by her medical insurance. This obligation ceased six months after termination of the pregnancy, and did not apply to latent medical expenses occurring subsequent to six weeks after the birth of the child. Further, even the obligation that William Stern pay $10,000 was qualified in several respects: Mary Beth Whitehead received no compensation if the child was miscarried prior to the fifth month of pregnancy, and, if the child was miscarried, died or was stillborn subsequent to the fourth month of pregnancy, she received only $1,000, and the contract was terminated. Further, William Stern might terminate the contract if, in his opinion, pregnancy had not occurred within a reasonable time, and might demand that she abort the foetus if it was genetically or congenitally abnormal, in which case the fees to be paid were as set forth above. In the event that the child was born with genetic or congenital abnormalities, William Stern assumed only the paternal obligations imposed by existing statutory law. Mary Beth Whitehead assumed all risks incidental to pregnancy, including death and *postpartus* complications; she agreed to surrender the child to William Stern, not to form any parent-child relationship with the child, and to terminate her parental rights to the child; she agreed not to abort the child unless necessary for her physical health or if the child has been determined to be physiologically abnormal; and she agreed that if William Stern died the child was to be placed in the custody of his wife.

41 537 A 2d at 1247 (emphasis added).

requiring that he pay ancillary expenses of the Whiteheads.[42] The contract, of course, was drafted by the Infertility Center: to what extent was the lawyer connected with the Infertility Center? Was he acting as counsel for the Whiteheads? If he was acting as counsel for the Whiteheads why did he only answer their questions, without offering legal advice on the advisability of their entering into the contract and the rights and duties that they were assuming?

The court's statement suggested that, unless Mary Beth Whitehead questioned her contractual obligations with respect to abortion, this issue would not have been discussed by the attorney. The contract provided that Mary Beth Whitehead agreed not to have an abortion unless the inseminating physician determined that it was necessary for her physical health or that the foetus was determined to be abnormal. It also provided that she would abort an abnormal foetus at the request of William Stern.[43] This raised the question: how could any lawyer allow a client to sign away a constitutional right without discussing the implications of such an action?[44] This discussion alerted students to the quality of representation that Mary Beth Whitehead received.

As the discussion of the contract proceeded, the interrelationships between "hard law," context and feminist perspectives began to emerge. What are the implications for women of the convergence of the fact that the Infertility Center drafted the contract in the interests of the infertile couple and then referred the "surrogate" to a lawyer with whom it had an agreement and who played a minimal role as advocate for her? How should these considerations affect, if at all, the court's interpretation of the contract and its response to a breach of the contract? How did these factors affect the outcome in the Baby M case? This discussion created the context for the discussion of the contract claims of illusion, adhesion and unconscionability, which were briefly addressed at an introductory level.[45]

The probable outcome of the issues presented by the *Baby M* case under New Zealand law was also discussed.[46] The Status of Children Amendment

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42 525 A 2d at 1160.

43 537 A 2d at 1268.

44 The trial court found the clause limiting the right to abortion to be unenforceable (525 A 2d at 1159).

45 See Williams, "On Being the Object of Property" in Fineman M and Thomadsen N (eds) *At the Boundaries of Law* (1991) 22, 29 ("within the framework of contract law itself, the agreement between Ms. Whitehead and Mr. Stern was clearly illusory").

46 For a complete discussion of the New Zealand law on the issue of surrogacy see Rotherham, "Surrogate Motherhood in New Zealand: A Survey of Existing Law and an Examination of Options For Reform" [1991] Otago Law Review 426.

Act 1987 (the "1987 Act")[47] provides that where a married woman's husband consents to her artificial insemination he shall be the father.[48] If the woman is not married or her husband does not consent, the man who donated the semen shall not have the rights and liabilities of a father to any child born.[49] Section 16 of the 1987 Act further provides that it shall be effective notwithstanding "any conflicting evidence [under the Status of Children Act 1969 (the "1969 Act")]" or "any other evidence that the man who produced the semen was the father of the child of the pregnancy".[50] The 1969 Act protects sperm donors from the liabilities of parentage. However, it seems clear that its application to the facts in *Baby M* would require the declaration that Mary Beth Whitehead was the mother of the child; William Stern would not have any of the rights or liabilities of a father. Any surrogacy contract would be irrelevant under section 16. This enquiry emphasised the cultural specificity of law and the extent to which it is dependent upon the society in which it is made,[51] challenging any beliefs held by students that the legal answers to difficult moral and social issues are easy,[52] or that there is any one "correct" approach to the issue of surrogacy.

The panel discussion also focused on the context of New Zealand society by presenting perspectives of the wider university community. These perspectives were intended to inform the students' drafting of recommendations to the Law Commission. The speakers included a lecturer from the biology department, the acting director of Women's Studies, a Professor of Economics, the University Chaplain, a lecturer from the Centre for Maori Research, and a lecturer from the Department of Maori Studies. Each speaker presented his or her perspective on surrogacy and *Baby M*. A question and answer session was held, and the panel presentations were further discussed in each stream.

The students were excited about the presentations and eager to share their views. One student commented, "I thought the law would be so rigid and

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47 1987, No 185, amending the Status of Children Act 1969.

48 S 5(1).

49 S 5(2). The Act also provides that the child shall not have the rights and liabilities of a child of the sperm donor.

50 S 16.

51 The Maori perspectives presented in the panel discussion also helped to make this point explicit.

52 One student evaluation of the programme noted that it "made you realise how involved the law is in moral and ethical issues".

closed, but it affects society so much more than I realised". Another stated: "It made me examine my own prejudices".[53]

The presentations of personal experiences by the two Maori women affected the students profoundly. These women spoke from their own experiences about the Maori practice of women bearing children for infertile members of their community. They also spoke of the Maori practice of the grandparents raising the oldest grandchild. Neither of these practices involve cutting the mother off from her child, and the child is always free to return to the mother. One woman spoke eloquently of her experience of refusing to give her child, once born, to an infertile relative. The practice of asking women to share their personal experiences that are related to law has been identified as a feminist teaching method.[54]

The panel presentations and discussion placed the law relating to the issue of surrogacy in a wider societal context. It also highlighted the cultural specificity of law, even within one nation.[55]

At the end of the discussion of the panel, we considered how the contextual material presented to the students following the reading and briefing of the cases had influenced their thinking about the cases and about surrogacy. At the beginning of the programme all of the students in the stream except one indicated that they thought that the Sterns should have custody of the child. After the panel discussion, several students indicated that they had changed their minds and now thought that the Whiteheads should have received custody. The discussion of the contract and the views presented in the panel discussion influenced their opinions.

One of the women students commented that, although she would never have identified herself as a feminist, the feminist perspective presented in the

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53 These statements were part of the student evaluations completed at the end of the introductory week.

54 See Menkel-Meadow, supra note 15, at 80:"[i]t is not uncommon for feminist law teachers to make real the actual human conditions of the parties in the cases".

55 The reading materials included a piece by John Rangihau explaining the Maori Whaangai (raising of kin children) System to the High Court judges (supra note 13). This stated that "[c]hildren were best placed with those in the hapu or community best able to provide, usually older persons relieved from the exigencies of daily demands but related in blood so that contact was not denied. [Cited genealogies] were maintained to affirm birth lines but placements were arranged to secure lasting bonds, commitments amongst relatives, the benefit of children for the childless or those whose children had been weaned from the home, and relief for those under stress. There is no property in children. Maori children know many homes but still one whaanau. 'Adopted' children knew birth parents and adoptive parents alike and had recourse to many in times of need".

panel made perfect sense to her and called into question her own previously unquestioned identification with the Sterns.[56] This comment highlighted the value of considering a specific issue in depth and in context. Presenting students with perspectives not incorporated in the cases broadened their understanding of the ways in which the cases could have been decided.

On the final day of the programme students formed small groups and wrote up recommendations to the Law Commission on large sheets of paper. Each group explained and defended its recommendations. Some of the groups had difficulty in agreeing upon recommendations. This experience helped to illustrate that disagreement within committees is a fact of life, and part of the law-making process. Further, it illustrated one reason why statutes with inconsistencies and vague language are enacted as law, as a result of compromises among lawmakers. The experience of producing recommendations should inform the students' reading of statutes throughout their law school education.

Not surprisingly, the range of recommendations was broad, from specifically incorporating a Maori approach to surrogacy, to simply stating that surrogacy contracts should be enforced. All of the approaches, however, involved state monitoring of the process and limited or eliminated the amount of money that could change hands. All prohibited the existence of brokering agencies such as the Infertility Center. We discussed reliance on the state in these times of privatisation. The students seemed unanimously to have confidence in state proceedings and saw the state as an appropriate actor on this issue.

3. Conclusion

Developing and teaching the Introduction to Law in Context programme was a challenging and exciting endeavour. It stimulated my consideration of

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56 Hilary Lapsley, the acting Director of Women's Studies, presented a talk at the panel discussion that focused on "Who is My Mother?" This piece considered contractual parenting and feminist principles, a woman's right to control her own body, combating objectification, placing a positive value on diversity, the political aspects of personal experiences and the right to informed consent. She suggested that collaborative parenting contracts that do not protect the mother's control over her own body and pregnancy should be illegal, that any "contract" should be considered a statement of agreement at the time that it is made, and subject to changes of heart by the parties, in which case the birth parents and the "designated nurturing parents" should all be considered to share the rights and responsibilities of parenthood. She stated: "We believe cars are appropriate things to buy and sell. Babies, on the other hand, we have agreed are not. Babies, we have agreed, are not things at all. They are people. But acting as though they could be bought and sold, acting as though they are commodities, reduces them to a state of thingness. This is what commodification means" (Broadsheet, March, 1989).

approaches to law teaching that place law in the many contexts in which it is made, applied and has influence. For me, this stimulation is the challenge and the promise of Te Piringa.

II. BICULTURALISM IN ACTION?[57]

When I came to the Law School in October 1990, I was also the only Maori staff member, although one other came to the School in 1991. In New Zealand there are only three Maori legal academics. These numbers should throw into perspective the magnitude of the task of translating into reality the School's commitments to biculturalism and the teaching of law in context. A major question for me was what the commitment to biculturalism would require of the designers of the induction programme and its participants.

It was clear from the beginning that biculturalism was not a teaching product that could be designed and produced in the same way that one might produce, say, a Contract law course. A commitment to biculturalism means an ongoing challenge requiring one to change one's own ideas, attitudes, and behaviour, and corresponding changes in the institutions which seek to foster biculturalism.

For the induction programme committee there was precious little available in the way of guidance or a "recipe" that would give us the proper ingredients to be mixed together in the right order to produce a "bicultural programme". It is much easier to say what is wrong with the old (why it is not bicultural) than to create the new, because one is stepping into the unknown. The induction programme was the first test of our ability to envision the new and, inevitably, at that stage in our development, our vision would be immature, perhaps naive, certainly imperfect.

Matters to be addressed as part of this development were the choice of topic, materials, teaching methodology, and personnel. There were "givens" which could not be altered. Teaching personnel of the School were already chosen, each with his or her own views on methodology; there were deadlines to meet for putting the course together; and the venue was set at the Law School itself. So to some extent the process of developing biculturalism, even in so small a field as an induction course, was hedged around by and built upon existing structures into which there had been minimal Maori input.

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57 Part II was written by Stephanie Milroy.

Within these limits my vision of biculturalism in the developmental stages of the programme amounted to incorporating Maori content, attempting to develop some sort of bicultural teaching methodology, and creating an atmosphere in which Maori students would hopefully feel less alienated.

My part of this article looks at how we dealt with choice of topic, materials, methodology and personnel in terms of biculturalism and considers some ways in which the programme could be changed in future.

1. Choice of Topic

The idea of an induction course for the students came from the foundation Dean, Margaret Wilson, in the year prior to the first teaching year at the Law School. Not all staff had arrived to take up their positions and the topic was chosen by those staff who were present at the time. A number of possibilities were discussed with the intent that the topic should provide an introduction to law in context, with the focus to be a case of general interest which would have within it a wide range of issues. The case also had to be one that students with no knowledge of the relevant law would be able to debate.

Baby M was chosen as having those characteristics. It is a case that is intrinsically interesting and upon which the students should be able to form an opinion without knowing family law. It is about some of the fundamental concepts of society - the family, motherhood, human identity, the value of human life, and the role of the state in dealing with these matters.

At first glance, the case did not appear immediately open to analysis or treatment from a bicultural perspective. It was set in another country and was between people whose lives and experiences may have had no similarity whatsoever to that of a Maori growing up in New Zealand in the latter half of the twentieth century. The social and cultural context was different.

However, the potential for bicultural analysis was present because concepts such as family, mother and identity are fundamental to any culture. It was possible to relate the *Baby M* situation by analogy to the adoption of children in Maori society. There are significant differences between the two situations but these differences could inform students about the surrogacy issue in Western society by displaying the set of values at work in Maori society.

At the same time, I now wonder whether the choice of topic indicates the unconscious tendency to frame all questions and issues within the bounds of

the familiar dominant reference point of the Western state, law and legal system. Why did we not make more effort to choose a case involving Maori issues, one which would bring biculturalism directly into consideration and which would be set in the context most familiar to the students? What topic might we have chosen if we had taken the Maori worldview as a reference point?

There are difficulties in dealing with a Maori issue. Would staff and students have the knowledge or experience to be able to identify with the case and discuss it with sensitivity and understanding? After all, the majority of staff and students are not Maori and some might consider that the discussion of Maori issues in these circumstances would be likely to be superficial in the extreme.

Nevertheless, we did not even consider these questions. Are we in a cultural straitjacket that, despite our best intentions, unconsciously limits our worldview and therefore our vision of what biculturalism should be? If so, we must become more self-aware, more questioning of our motivations for taking a particular course of action, always measuring that action against the bicultural aim if we are to continue to progress.

2. Materials

In order to relate the *Baby M* situation by analogy to the adoption of children in Maori society, it was necessary to collect information about this concept in Maori society. Immediately we ran into difficulties finding material which was about Maori adoption and which was Maori in origin. It was only by chance that I came across the transcript of a speech given by John Rangihau which dealt with the raising of kin children and questions of identity in Maori society. This speech was ideal because the method of communication and the content were Maori - that is, oral (originally) and, as described by Te Rangihau in the speech, "a circular style of communication, when you feel led by the orator through a maze with little indication of where you are headed or indeed, whether there is light at the end of the tunnel".[58] There are efforts now being made to create a bibliography of Maori materials, some of which are held by government departments and some in universities. A comprehensive bibliography is a necessity; but we also need further research and writing from Maori themselves.

Given the scarcity of suitable written materials it was apparent that in order to attempt to fulfil the objective of bicultural methodology (as it was then

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58 Supra note 13.

conceived) and to obtain further Maori materials we would need to bring in Maori who would speak about the issues from the Maori perspective.

3. Panellists

There was a suggestion made at the beginning of the planning process that, given the context in which we were operating, there be a panel of Maori members who would be able to give their views on the issues without feeling that they were being required to give the definitive Maori view. They would also be able to give support to each other and ensure that all the relevant matters were covered. This was considered desirable because when a Maori stands up to speak on Maori issues, that person feels the weight of being a representative of his or her people and is accountable to those people for what he or she says. In such circumstances the speaker often feels the necessity to make it clear that he or she is expressing his or her own view and that it is not necessarily the "right" Maori view or the only Maori view. Therefore it seemed sensitive and sensible to have more than one Maori panellist. Time and room limitations meant that there could only be one panel session for the programme, and to give the students as wide range of perspectives as possible the panellists were chosen from various academic disciplines. As it happened the Maori panellists were academics and were used to working in an environment which emphasises individual performance, but it was still important to the integrity of the programme that there be more than one Maori.

The two panellists were women, one from a rural background and of an older age group than the other, who was from an urban background. Both women personalised the issues. They looked to their own personal experiences to begin thinking about the issues and they both talked about their own family histories in the panel session, although they also gave some information regarding adoption in classical Maori society.

Had the panellists not been academics or not been used to the university environment then I would have had some concern about bringing them into the programme. However, the academics were able to deliver their information, even where it concerned their personal experiences, in a way similar to that in which the other experts on the panel presented information. Had the panellists spoken in the ambulatory style of traditional Maori oratory I have some doubts that the students, particularly Pakeha students, would have understood and given weight to that speaker's view in the same way that they gave weight to an academic's view who was able to present information in a form that people educated in the European tradition consider is learned. That is only one form of learning but it is the form with which our students are familiar.

There is another danger in that those people who are often used by academics to come along and speak about the Maori perspective can become "burnt out". Once people are found who can be called upon for this purpose it is too easy to continue calling upon them rather than to find other people or to educate ourselves.

4. Venue and Format

The teaching format for the first and second year subjects in the Law School was to be small group teaching, in groups of about twenty-five. It therefore seemed natural to present the *Baby M* programme to the students in small discussion groups of this size in classrooms rather than large lecture theatres. This teaching format gave group members more opportunity to develop confidence and a close working relationship with each other.

I did not know the venue and format in which Maori students would feel most comfortable - it could be on their own marae or home environment learning with other Maori on a collective basis, or it could be in a traditional lecture method in some circumstances, small groups in others. After all, most Maori students have now come through a Pakeha education system and are familiar with it (even if figures show that Maori are doing poorly under that system).[59] It is also dependent on a variety of factors - who the teacher is, what the subject matter is, and the mix of students. A small group format seemed a workable compromise as, at least from my experience of law school as a Maori student, it seemed that other Maori were likely to be more comfortable in a small group working environment than in large lectures. Small groups could be broken down into even smaller discussion groups which could work on problems collectively. In a small group there are fewer inhibitions on class participation.

In my own group I had only one or two students who were Maori. Even so, I felt that to begin to carry out our commitment to biculturalism I would need to greet the students in both English and Maori. I opened with a very brief mihi (greeting) and then invited as many of them as would wish to reply to do so. I received a reply from one of the Maori students in accordance with custom. Apart from greeting the students in Maori at every class I did nothing else that was conspicuously a part of Maori culture. For instance, I could have opened and closed each class with a karakia but did

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59 Spoonley, P *Racism and Ethnicity* (1990) 23.

not do so.[60] I did make great use of small group discussion and encouraged collective work by setting questions for the groups to work on in class. The focus of the programme - having students produce recommendations for law reform - allowed these methods to be used. However, the bulk of the Maori content came in the discussions of concepts of family, motherhood and identity in the presentations from the panellists and the Rangihau article.

While I was teaching I did not feel that small group teaching was necessarily bicultural - it just seemed a good way to teach. In fact I did not feel that what I was doing was bicultural at all. As a first-time teacher I was too busy surviving one class and preparing for the next. With more teaching experience I still do not think that what I did or do in class is bicultural. Inevitably I model my teaching style on the teachers I have known, all of whom taught within a monocultural system.

The panel session had to be held in a very large lecture theatre in order to fit in the whole student body. Such theatres are isolating, intimidating and impersonal. For a person of any culture they are alienating places and, if given a second opportunity, I would try to arrange the panel session to take place elsewhere. For instance, it would have been interesting to have had the panel session take place on a marae, or at least to have had the Maori contributions given there. It may have been more comfortable for the Maori panellists and it would also have put the students in the physical context where the values and the concepts they were hearing about were most relevant.

Once I would have thought that this was part of the vision of what a bicultural law school would do and I still think it is a possibility. However, during the ensuing year comment came from non-Maori students that they would have liked to know more about Maori culture and one of their suggestions was a marae visit. The reaction from Maori students was that if non-Maori students wanted to visit a marae that was fine but Maori students did not want one if it was only for the purpose of informing non-Maori students about their culture. Their point was that it could be part of the function of a bicultural law school to teach non-Maori students something about Maori culture but not at the time, effort or expense of the Maori students. Nor should staff presume to know best what the needs of Maori students were and then deal with them in a way that seems expedient to staff without consulting those students.

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60 A karakia is a prayer to encourage participants in a meeting to focus their thoughts on the matters to be dealt with at the meeting and to provide a spiritual and intellectual marking-off of that time.

5. Possible Paths for Change

If the programme were to be run again in future there are a number of changes that could be made to provide more Maori input, although time, resources and the availability of people and venues meant these were not possibilities this time.

First, there could be more opportunities for those Maori students who speak the language to be able to use it in class and for written work. Ideally this should be provided by way of Maori-speaking teachers, although these are scarce in the area of law. Part of the answer could be use of video or audio cassettes that students could use out of class or in company with other Maori-speaking students. Yet by doing this we could be isolating Maori students and continuing their invisibility in the legal environment.

Secondly, the panel session or other parts of the course could take place in a marae setting, where Maori values are paramount.

Thirdly, more Maori panellists and teachers could be brought into the programme. It is an absolute necessity that more Maori staff be recruited into the Law School to provide input and to do the essential research into Maori issues. This development should occur naturally when more Maori students graduate and move into university positions. Another aspect of this issue is that we may need to redefine and widen our employment criteria so that those Maori who are not qualified in law but have other qualifications, such as deep knowledge of Maori things, could be employed.

Fourthly, Maori students might be concentrated in one or two of the *Baby M* classes, instead of being spread in different groups throughout the student body. If this was done it would deprive the non-Maori students of a source of information about Maori concepts. On the other hand it would allow Maori students to work together and to be supported by other Maori instead of being solitary voices. The Maori who were in my group were lost, swamped by the numbers of Pakeha in the group. There can be no doubt that, for Maori students in such an environment, expressing a view that is controversial because it is based on a different cultural perspective takes courage and is a threatening process for all involved. Are we thus insisting on "integration" or silencing Maori, instead of giving Maori students the support and understanding of sufficient numbers of other Maori students in which to form and express their views?

Fifthly, there is some onus on teachers in a law school committed to contributing to the debate on biculturalism to make the effort to identify

sources of information; educate themselves about Maori issues; perhaps to invite others who may have the information to come to class.

Finally, some consideration needs to be given as to the way in which students can participate in the programme. From a Maori point of view it might have been useful to allow the Maori students time to consult their own kaumatua (elder) on the conceptual issues and to give them credit for doing so. There may also be ways in which other groups of students could also consult non-Law School sources and be given time and credit for it.

6. Conclusion

The form which the *Baby M* programme took allowed flexibility and variety in teaching method through which we could try to incorporate elements of the bicultural vision that we had at the beginning of the year. The programme as it was set up did give students the opportunity to consider another cultural perspective. They were given the chance to try to accommodate that perspective and the personalised, ambulatory, allegorical, spiritually-based narrative of the Maori participants within a framework which also included contributions of a traditional professional, legal and academic nature. Moreover, they were forced to consider how insights into another culture could be translated into a form which could then be used as the basis for dealing with the resolution of disputes in a country where there are at least two cultures. This format gave the students the opportunity of being radically imaginative in the way they resolved tensions. Not surprisingly, the students had difficulty in coming up with any specific recommendations which dealt with cultural issues. The best that they could do was to say that these issues should be taken into account. In the circumstances of limited time and knowledge, this was understandable.

With hindsight I am disappointed that I did so little in class towards creating a sense that this was a law school committed to biculturalism. I certainly do not think that it was sufficient to fulfil that objective just to greet the students in Maori, whether from the point of view of the Pakeha students, who would like more information about Maori culture, or the point of view of the Maori students, for whom it would only be a beginning.

The insufficiency of our efforts in the programme at the beginning of the year in terms of a commitment to biculturalism became clear to me during the programme and throughout the rest of the year. I noted the lack of knowledge on the part of the staff, lack of opportunities for Maori students to use the language, lack of thought as to how best to make Maori students feel themselves to be in a supportive environment, and lack of consideration of what biculturalism might mean in terms of the choice of topic for the

programme and how Maori issues might have been used in the programme. These factors all tend to sustain the cultural straitjacket that we must constantly struggle with if the commitment to biculturalism is to be fulfilled.

In offering a bicultural education like this one the ultimate question is: "Who benefits?" Incorporating Maori content and marae visits may benefit Pakeha students but does it benefit Maori students? We need to consult with the students and with the Maori community to find out what it is that they would value. We did not have time for this consultation when putting the *Baby M* programme together, but we must now do so if the Law School's development of biculturalism is to continue.

If such a course is to grow to reflect a fuller, richer vision of biculturalism it will depend on bicultural development in the Law School as a whole and, indeed, the University environment. I think that the experiment with *Baby M* was worthwhile as a microcosm of what we are trying to do. In such an undertaking as ours we must expect and accept the mistakes and failures, as well as the successes, if we are to go forward.

III. STUDENT PERSPECTIVE[61]

He Puta Taua ki te Tane
He Whanau tamaiti ki te Wahine

I share some reflections as a Maori student on the *Baby M* programme.

Before I do so, I want to talk a little about my first impressions of the Law School. It was a joy to see that the Law School was not a concrete structure which was cold, impersonal and detached. Instead, it was a small assemblage of buildings which were compact and personal. The gardens were still to be completed, but I was overjoyed to learn that the plants to be used in the garden would be from Aotearoa. It is time for our garden designs and architecture to reflect our place in the South Pacific, rather than imitate imported ideas.

This week we were to talk about the *Baby M* case. This was a creative and innovative way to start a Law School, with people talking and sharing instead of being alone reading books.

The lecturer who opened our class programme was welcoming and warm. The class was small. The lecturer was skilful at facilitation and was non-threatening in manner.

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61 Part III was written by Kura Boyd.

A mihi in Maori was given by the lecturer. I felt immense pride, I felt I belonged. An affirmation of the Law School's commitment to bi-culturalism was given. I was struggling with tears: tears kept within from years of Pakeha education in this country, denying that knowledge from Maori culture was of value.

Your culture and my culture had embarked on a long journey at this Law School. Our destination was bi-culturalism. We would need resilience, tenacity, patience and sensitivity for this journey.

As a Maori woman, it seemed strange to me that perfect strangers would want to create a child together. They came from separate nuclear families with no kinship ties. Money was involved. Courts and lawyers were involved. It was very different from my culture.

Later in the week a panel of experts provided a wide variety of opinions on surrogacy, and this was stimulating and challenging. My mind wandered to my mother and grand-aunts. We did not have scientific experts to advise us about bringing life into the world or about the ownership of that life. There is a "knowing" amongst our elderly women about these matters. In Western eyes, they would have to be our experts.

I am a member of a whanau (an extended family). It is a secure feeling. If there are people who are childless, this can be attended to by the extended family. If a woman is unable to conceive a child, a female member of the extended family, such as a sister or a cousin, could carry the child for her. When the child is born, the baby will be raised by the adoptive parents. The child belongs to the extended family and to the iwi (tribe). The tribal members will be aware of the biological parentage of the child. Throughout the child's growing-up, the child will know about its biological parentage as well as its adoptive parents. The child is free to move among the households of the entire extended family and the tribe. It is secure. This has happened in my extended family.

There is no fuss, no exchange of money, no courts, no lawyers. It is a tribal system. The extended family are the arbiters of human relations and the conflict resolution managers.

Noho ora mai.
Na kura.

IV. CONCLUSION

This article has presented three perspectives on Te Piringa's programme to introduce students to law in context. Developments in the teaching and learning of law in context are on-going at Te Piringa. The exploration of possibilities for empowerment of all students, reversing the silencing and invisibility of women and Maori, continue. We also continue to experiment with teaching methods that facilitate the connection between empowerment and the goals of the Law School. We hope that this article has contributed to the growing discussion and critique about teaching law with methods that further the aims of social equity generally, and specifically with methods that provide a contextual approach to legal education.