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What the ? Reflections on Decolonising Nomophilitis with the Discourse of Love

In June this year the first Forum for Indigenous Research Excellence (FIRE) event was held at Macquarie University with special guest speaker Professor Biko Agozino. My invitation to attend the roundtable discussion was unexpected and I wasn't entirely sure what to make of a paper with the title 'Fuck the Law: Decolonizing Nomophilitis with the Discourse of Love'. To be honest, at first, I found the use of the phrase 'Fuck the Law' confronting, which probably says a lot about me personally and what I consider to be appropriate academic discourse. Reflecting on this afterwards I couldn't help but laugh at myself, thinking that Freud would probably have something to say about how I first reacted. It was during Biko's discussion that the significance of 'Fuck the Law' became clearer, specifically, as a slogan used by those opposed to drug criminalisation as a mechanism for oppressing the poor. I am not a criminologist, but I am a law academic and I know there would be many contexts where the declaration 'Fuck the Law' would be apt: fuck the law which doesn't protect women and children from violence; fuck the law that doesn't protect Indigenous peoples' rights to their land. The list could go on. At the same time, expanding the list could also run into serious problems. I am reminded of the conservative reactions to the High Court's decision in *Mabo* which, while not expressed in terms of 'fuck the High Court' or 'fuck native title', amounted to such an attack. Power being what it is, we live in a world where those who voice opposition to the law are not heard equally. For example, in Australia, despite decades of opposition, we

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still have laws which allow Indigenous women, men and children to be incarcerated at alarming and disproportionate rates. This can be starkly contrasted to a native title legislative system which, after only a few years it was enacted to give effect to the *Mabo* decision, was swiftly changed to appease conservative interests and undermine the rights of the Indigenous native title claimants that had been enshrined in the original legislation. 2018 marks the 20-year anniversary of these changes.

Biko seemed cognizant of such contradictions, but I wasn't so sure about his approach to overcome them. His talk brought together themes centred on the concepts of law, love and decolonisation all of which resonate with my personal and academic interests relating to the legal treatment of families and Indigenous peoples more specifically. He spoke of nomophilia which, from what he said, I took to mean the love of the law to the point where it is given priority above all other relationships, including relationships with others.² I can understand why this is deeply problematic. All too often we see politicians and judges make decisions which have the effect of further entrenching social hierarchies. Nevertheless, despite the social costs of such decisions they are accepted and justified through appeals to the argument 'it is the law'. In this way the law can be treated as paramount and beyond question. From what I could hear Biko saying, if we are to overcome the hierarchies that exist in society – if we are to decolonise – we need to consider the role that love could have in such an enterprise – not the love of the law – but love for each other. Indeed, in Biko's words, the emphasis would not be on 'love thy neighbour' but 'love thy enemy'. The distinction is important as it alludes to the divisions that exist in society between groups based on identity (whether, for example, between poor whites and black Americans) which help to obscure common experiences despite

² Biko's argument builds on Maria Giannacopoulos, 'Nomophilia and Bia: The Love of Law and the Question of Violence', 2011. 10(1) *Borderlands e-journal*.
<http://www.borderlands.net.au/vol10no1_2011/giannacopoulos_nomophilia.pdf>.

the differences between them. I agree that achieving greater solidarity among oppressed peoples is a worthwhile cause, especially considering the oppressive divide and rule mentalities we find in law and policy. Nevertheless, I question the power of love to unify disparate groups while social hierarchies continue to exist, and the sense of privilege and entitlement of some groups – their self-love – continues to depend on the oppression of others. Nor is love entirely innocent in the perpetuation of oppression. Love is complex and difficult to define. It is also a cultural construct and has its own oppressive history. While it is nice to think of the unifying power of love, the family, which is most commonly associated with love, reveals that love does not necessarily lead to fair or just outcomes. In his talk Biko demonstrated sensitivity towards the existing inequalities between men and women but to what extent? Feminists have long exposed the gendered inequalities arising from the labour of love – that is, the sexual division of labour. More recent ‘love studies’ (Grossi 2014) have shown that love could be emancipatory for those, like same-sex couples, seeking to defy dominant hegemonies, but within these hegemonies inequalities exist, evident for instance in contemporary heterosexual relationships where men have more freedom in love than women. The centrality of love in our personal lives has been brought into serious question in these theories, and we similarly need to be wary of advocating love as the key to social change lest, in the name of love, we further obfuscate its conflicting and oppressive dimensions.

In his talk, Biko presented his take on nomophilia as a truism. It would be true for the lovers of law, but I doubt it would be true for those who fear or are critical of the law. In my own work on law I am very conscious (and critical) of the dominant paradigm that views law as objective and neutral – and thus beyond question. The issue for me is that this view erases the role of lawmakers in ‘making the law’ and allows them to shirk from their responsibility for the law they make. In declaring ‘this is the law’ they are implying ‘it is not our fault’. However,

if we accept, as I do, that knowledge is not objective, but is constructed from different frames of reference – perspectives – this approach, applied to law, reveals it is not pre-determined, but is shaped by certain perspectives informing what it should be. Repeatedly, it is apparent that law is not constructed from the perspectives of disadvantaged peoples. This says much about the choices (and responsibility) of lawmakers in maintaining privilege. However, the fact that there are other knowledges and ways of being in the world point to ways the law could be different. The same could be said about all the various disciplines – not just law. Once we accept that through our choices we validate certain perspectives and not others, we can begin to accept responsibility for what we say, do and write. This is not a criticism of Biko or anyone else at the talk. Apart from finding the discussion very engaging and entertaining, I found Biko acutely aware of his responsibility to critique the law and consider how the world could be a better place. However, if we accept that what we say is not objective, but constructed, partial knowledge, then the authority of what we say – as with what lawmakers say – can be brought into question. Thus, for me, the roundtable provided an opportunity for us to express our own perspectives, knowing that none of us could have the final word, and reaffirming my sense of responsibility for the choices I make as an academic – and hoping they won't further contribute to oppressive practices.

References

Grossi, R. 2014. Romantic Love: Our "Cultural Core", "General Ideology" and "Undeclared Religion"? 43(5) *Contemporary Sociology*, 43(5), pp. 637-639.