



Teacher Reference Document 5



AUSTRALIAN
CONSTITUTION
CENTRE

Unit 2: How British laws and principles, including the rule of law, were brought to Australia by the First Fleet in 1788 and their impact on Aboriginal and Torres Strait Islander peoples – Year 4 - Civics and Citizenship (C & C) Strand: Laws and Citizens

Topic 4.2: A conflict of laws and perspectives

Indigenous law and lore pre-1788

Aboriginal and Torres Strait Islander peoples occupied Australia for more than 60,000 years before the British arrived. There were hundreds of distinct First Nations, which over millennia developed complex social, cultural, economic and spiritual relationships with their land and each other. They also had their own systems of law, governance and lore (being custom and traditional knowledge).

This was not something the British colonists readily accepted. While there is evidence that some took interest in Indigenous laws and customs, these were not formally recognised. Though some early colonial judges entertained the idea that Indigenous peoples retained rights to self-government, because they had not consented to the imposition of British law, the prevailing legal view was that the Indigenous peoples were subject to the law of the colony.

The Dreaming: the origins of Indigenous law

The purpose of the pre-colonial Indigenous law was to sustain life 'on Country'. This connection to the land meant Indigenous law could vary between regions. However, Indigenous law also shared common underpinning ideas. It was understood as being inherited from ancient Ancestors who created the earth in the Dreamtime, or the Dreaming.

The Dreaming is the period of creation – the time when life began. But it is not confined to the past. The Dreaming continues and shapes the present and the future. Yolgnu elder, Silas Roberts, described his understanding of the Dreaming to an inquiry in 1976, explaining that his people:

"see themselves as part of nature. We see all things natural as part of us. All the things on earth we see as part human. This is told through the idea of the Dreaming. By Dreaming, we mean the belief that long ago, these creatures started human society, they made all natural things and put them down in special places. These Dreaming creatures were connected to special places and special roads or tracks or paths. In many cases, the great creatures changed themselves into sites where their spirits stay.... These creatures... are just as much alive today as they were in the beginning. They were everlasting and will never die. They are always part of the land and nature, as are we."

Anthropologists have identified three elements of the Dreaming. The first is the creation of nature - fire, water, hills and rivers, stars and moon. The second element is about life - how humans and animals came to be and how different language groups and tribes were established. The third element concerns the operation of daily life. This includes traditions and customs relating to marriage, initiation, and other rituals, as well as consequences for breaches of custom. The people of the Dreaming made mistakes and breached traditional laws and customs, just like people in the present day. They committed wrongs and were punished and their stories are passed down from generation to generation.



*Art is one way of conveying Aboriginal and Torres Strait Islander lore.
Source: Istock*

Kinship Systems

Indigenous law and lore involved complex kinship systems and rules for social interaction. These rules entailed authoritative rights, responsibilities and relationships which ordered Aboriginal and Torres Strait Islander societies.

The kinship systems allocated roles for individuals within groups, giving people different jobs with respect to law, education, religion and spiritual development, and land and environmental management. They also determined who should decide on how the law changes over time.

Punishment

Just like the Western law, the Aboriginal and Torres Strait Islander laws included flexible mechanisms for dispute resolution and punishment for breaking the law. A wrongful act might require a response or retaliation by the wronged party.

The appropriate punishments were adaptable, depending on circumstances and community standards, and could be chosen from a range of alternatives and decided through mediation (i.e. negotiation and discussion with the relevant parties). They could include shaming or public ridicule, compensation, education or exclusion from the community. They might also entail violence like spearing, duelling or death – just like breaking the colonial law could lead to floggings, canings or death by hanging.



Connection with Language, Land and Culture

Uluru, Australia
Source: IStock

As one Walpiri man explained to an inquiry into Indigenous languages in 2012:

In the Warlpiri, we have a word called ngurrakurlu, which is a term that speaks of the inter-relatedness of five essential elements: land, law, language, kinship and ceremony. You cannot isolate any of these elements. All of those elements hang together.

Knowledge about Indigenous law is kept alive through Indigenous languages, traditions, songs, ceremonies and relationships to land. In some regions, this heritage still flourishes. However, colonisation reduced the Indigenous population and disrupted their connections to their land, communities and cultures.

Knowledge about Indigenous cultures, languages, traditions and laws was also weakened. For example, before colonisation there were around 250 distinct Indigenous Australian languages. As the National Indigenous Languages Report shows, most are now endangered.

If First Nations cultures and languages continue to be neglected or threatened, knowledge about ancient Indigenous laws and lore may also be forgotten. What would Australia be like if we lost knowledge of our ancient Indigenous heritage?



Topic 4.2: Lesson/ Activities One

Indigenous law and lore pre
1788



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Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	<ul style="list-style-type: none">To understand aspects of Indigenous law and lore before 1788 that had been in continuous operation for at least 60,000 years.To understand that Indigenous systems of law, custom and governance were different from the system of government brought by the British colonists, particularly in relation to land occupation and use. The elders passed down the customs and laws and while it was a government of law and not of individuals, Indigenous systems of government were not recognised by the colonists.To gain an appreciation of Indigenous culture that can form the foundation of a sense of national pride and a platform from which students can better understand calls for reconciliation and constitutional reform.
Rationale	Success Criteria
<p>To be able to understand the immensity of the impact of the British colonisation of Australia upon the lives of Aboriginal and Torres Strait Islander peoples, students first need to understand about Indigenous law and life before the arrival of the First Fleet. This lesson should build on prior learning of Aboriginal life and culture pre 1788 taught in other parts of the curriculum.</p> <p>See curriculum: The diversity of Australia's first peoples and the long and continuous connection of Aboriginal and Torres Strait Islander Peoples to Country/Place (land, sea, waterways and skies) (ACHASSK083).</p>	<p>Students <u>understand</u> that Indigenous people, the traditional owners of the land, lived a purposeful lifestyle with social, environmental and cultural norms. There were hundreds of distinct First Nations, which over millennia developed complex social, cultural, economic and spiritual relationships with their land and each other. They also had their own systems of law, customs and governance, including flexible mechanisms for dispute resolution and punishment for breaking the law.</p>
Teaching Reference Document	
<ul style="list-style-type: none">TRD 5: Indigenous law and lore pre 1788 <p>The third element of the Dreaming explained how many of the main institutions of present-day life were already ruling in The Dreaming. These included institutions, traditions and customs relating to marriage, initiation, and other rituals, as well as consequences for breaches of custom. While most of the time family groups would live in harmony, the people of the Dreaming made mistakes and breached traditional laws and customs, just like people in the present day. There were also punishments in place for breaking the rules or laws, as there are today.</p>	
Resources	
<p>School library and internet resources on Indigenous culture, the Dreaming, and relationship with land, nature, water, sky and Country.</p>	

Tuning In

- Study the Teacher Reference Document:
 - TRD 5: Indigenous law and lore pre 1788
- Class discussion on the Dreaming: The origins of Indigenous law, lore, kinship systems, punishment and connection with language, land and culture.

Teacher Instruction

- Explain that before colonisation, Indigenous people lived in family groups linked into larger language groups with distinct territorial boundaries. These groups had complex kinship systems and rules for social interaction; they had roles relating to law, education, spiritual development and resource management; they had language, ceremonies, customs and traditions and extensive knowledge of their environment.
- Tell the students they are going to be transported back 40,000 years to imagine what life may have been like for an Indigenous child in a very beautiful place. Watch The ABC: Back to Nature: Episode 1 (<https://iview.abc.net.au/show/back-to-nature>) Through exploring the Hinterland of Springbrook Mountain the students will understand the physical and spiritual connection of peoples who have lived generation after generation for many thousands of years.
- Visit a reserve, bush, garden, or special place near your school. It could even be your school's own garden. Students might experience times of silence, reflections and respect for the beauty around them. Make a short video of a student's favourite "back to nature" place and reflect on how it might have been 40,000 years ago as a place where Indigenous people may have met (Individual or group exercise).
- Students work in groups to compare lists of different laws that might have been in place for an indigenous child pre 1788 to a list of rules/ laws they have to obey today.

Group Independent Learning

- We normally focus on differences between Indigenous and non-Indigenous laws and governance, but there are also remarkable similarities, especially considering that the different cultures had no knowledge of each other or sharing of experiences that would influence the development of their laws and systems of government. What are the similarities between British and Indigenous systems of law and lore. Why do you think those similarities exist?
- Ask students to prepare a 3 minute speech on the similarities and differences between Indigenous and British laws about governance and punishment.

Differentiation/Enrichment

Music soundscape lesson: Listen to Indigenous meditation music with a soundscape of a day before the arrival of the First Fleet. Students draw and meditate on the landscape they can hear such as sounds of water, birds, breezes in trees and perhaps a didgeridoo/clapping sticks. Students then do a soundscape that they might hear in their local community today (in a city they might draw/write honking horns, sirens, construction work, jack-hammering and rock music). Discuss the difference between the two soundscapes. Does today's soundscape make them feel stressed compared to the meditative soundscape?

- Discuss a comparison of what it was like to live in Australia pre 1788 compared to the first years of the colony and then onto today. The centuries since 1788 have seen many changes to the way we live, the things we need to be happy and content, and the technology we rely on. Our thinking and ideas around fairness, discrimination, equality, freedom and responsibilities, human rights and racism, have also radically changed. For many years now our Prime Ministers and other leaders have been discussing the important issue of reconciliation with Aboriginal and Torres Strait Islander peoples. Have a look at the Reconciliation Australia Narragunnawali Education Resources website. If your class and school have not yet started on a Reconciliation Action Plan (RAP) you might like to discover how this works:

<https://www.narragunnawali.org.au/raps/what-is-a-rap>

Assessment Strategies

Teachers assess students based upon the written work, sound scapes and speeches completed as part of the activities above.

Further Extension

In Aboriginal and Torres Strait Islander cultures, laws and customs are passed down orally from elders, from generation to generation. Ask students to identify rules, traditions or wisdom passed down to them orally from their elders, who might be parents, grandparents, aunts or uncles or great-grandparents.

The Dreaming includes both creation stories and lessons for how we live now. Many other cultures also developed creation stories that were mixed with lessons and rules about behaviour. Compare the Dreaming with the creation stories of other cultures and the way rules and laws are woven into those stories as a way of teaching law to a new generation. Is it easier to learn complex rules through the telling of stories?