Legal Institutions and Processes: An Integral Component of Legal Pedagogy

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This post focuses on what I consider to be one of the most integral components of a legal education in the early stages of law school, and that is gaining an appreciation of the historical and contemporary legal institutions and processes that have contributed to the development of the Australian legal system. Without this knowledge, the study of law lacks context and meaning, not only for the substantive law units that are studied throughout the degree, but also much later when the students become legal practitioners.

Furthermore, unless law students are exposed to this inquiry in a critical way, we run the risk of allowing unreflective and perfunctorily driven graduates to enter the legal profession, perpetuating unquestioningly the erroneous ways of the past. I believe that one of the most important pieces of the legal educational "jigsaw" at university must involve a portion of the undergraduate's studies that is dedicated to a critical investigation of the history of our legal system and why we as lawyers do the things we do. To achieve this it is necessary at times to go beyond the "black letter of the law" and to borrow freely and selectively from a range of disciplines at our disposal – such as political science, sociology, cultural (including gender and race) studies, and history, to name a few.

One subject that I have the pleasure of teaching is designed to achieve this early in the undergraduate degree at James Cook University – LA1101 (Legal Institutions and Processes). This subject is one of the foundation subjects that lawyers crucially need in order to understand a number of important elements such as: the intellectual and geographical place from where our system of law is derived; the formation of the Australian parliamentary, legal, judicial and governance systems; the Australian "settlement" story; the treatment of Indigenous Australians; the rationale that underpins Australia's sovereignty and the failed challenges to it; rationale for native title; and the law making process, to name a few.

Any lawyer, no matter if they intend to work as a conveyancing specialist in a country town or whether she or he will enter a top-tier law firm in a capital city practising corporate law, needs to have an appreciation of the formation of the system for which they play a vital part. In terms of the relevance for students, by having an appreciation of these foundational matters early rather than later in the degree, I think it places the study of all other law units in much greater context because so much of the formation of other law depends on what has already transpired in Australia's legal history. In other words the legitimacy of all past, current and future laws is dependent upon what has already transpired.

For instance, an appreciation of time periods is useful. If students are made aware of the context, fears, aspirations, and other pressure points of the constitutional drafters at the time when Australia's Constitution was drafted, it might inform us of the way our leaders saw law, morality, race, gender, and rights at the time. We can compare that period with now and ask whether there needs to be any changes due to changes in attitudes. Likewise, when students are asked whether contemporary Australia continues to subjugate the rights of Indigenous Australians, most will answer in the negative, only to rethink this response when it is pointed out that all Australians who own property are the beneficiaries of the infamous *terra nullius* doctrine that was used to justify the denial of Indigenous sovereignty since settlement.

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