

1997

All for one and one for all: Multiculturalism and the law

Follow this and additional works at: <http://epublications.bond.edu.au/nle>

Recommended Citation

(1997) "All for one and one for all: Multiculturalism and the law," *The National Legal Eagle*: Vol. 3: Iss. 2, Article 1.
Available at: <http://epublications.bond.edu.au/nle/vol3/iss2/1>

This Journal Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in The National Legal Eagle by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

ALL FOR ONE AND ONE FOR ALL

MULTICULTURALISM AND THE LAW

EQUALITY BEFORE THE LAW

Australia is a multicultural society consisting of people from different cultural backgrounds and from ethnically diverse communities. The present Australian population is made up of close to 200 different ethnic groups.

This poses a challenge to our legal system's fundamental principle of equality before the law.

In a multicultural society there is a number of barriers to overcome in order to achieve this.

THE KNOWLEDGE BARRIER

The principle of access and equity requires that all Australians know their legal rights, duties and responsibilities, the role of the state, the basis on which it will intervene and how the courts and legal system operate.

It also requires that services and support provided by the government are accessible to all who are entitled to use them, without discrimination or hidden barriers.

There is a general lack of knowledge about the legal system among Australians. This denies many people the opportunity to participate in the process or to understand why the legal system affects them in particular ways.

This problem is compounded by the fact that as a multicultural society there are many people who come from different countries and whose knowledge is of a different legal system.

DISCUSSION QUESTIONS

1. Outline what you see as some serious consequences of a lack of

knowledge of our legal system?

2. Suggest ways in which this could be remedied.

THE LANGUAGE BARRIER

Most Australians speak only English. However, about two million Australians over the age of five speak a language other than English at home, more than 60,000 Australians are reported as not speaking English at all and more than 32,000 others say they cannot speak English well.

Barriers to accessing information about our legal system are greater for people whose language is not English or whose English is not fluent.

Furthermore, as the language of the courts and legal system is English, access to justice for those who do not speak English well or at all, can therefore depend on their access to competent interpreters.

INTERNATIONAL OBLIGATIONS

Australia is a party to the International Convention on Civil and Political Rights (ICCPR). The ICCPR provides in Article 26 that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law".

Article 14, more specifically, provides that "all persons shall be equal before the courts and tribunals".

Therefore, where language is a barrier to equality at law, Australia has an obligation to take reasonable steps to remove such a barrier.

CLASS RESEARCH

1. What is the general situation at law regarding the right to use an interpreter?

2. What recent changes have been made in criminal law regarding the use of interpreters?

3. What reasonable steps has Australia taken to meet its international obligations under Articles 14 and 26 of the ICCPR in terms of the language barrier?

THE CULTURAL BARRIER

At times, because of cultural, or religious/cultural reasons, there are people who face a barrier to accessing the law.

An example of this is that in some cultures within our society, it is completely taboo for women to speak to anyone outside their immediate family about issues such as their experience of domestic violence. This then is a barrier which stops them from turning to our legal system to protect themselves.

Another example is when people come to Australia from backgrounds where the rule of law has completely broken down. As a consequence, they often come to mistrust legal systems and aspects of it, such as the police force. Such people are less likely than others therefore, to access our legal system to enforce their rights.

Religious/cultural norms can also come into play. For example, under Jewish law, a divorce can be accomplished only by the parties. It is effected by the formal delivery by the husband and the acceptance by the wife of a Bill of Divorcement (a 'gett') under the supervision of a Rabbinical Court, the Beth Din.

In this situation, the parties are only free to divorce and marry again after the gett has been delivered and accepted. This cultural/religious law is quite different from the law under our Family Law Act and may act as a barrier to a party from accessing our law to enact a divorce.

RESEARCH ASSIGNMENT

There are many examples of cultural or religious barriers to people accessing our legal system in an equitable manner.

Choose one example and describe the type of barrier and the difficulties which may be experienced in trying to overcome it.

Suggest possible legal remedies to this situation.

'BUILT-IN' CULTURAL PROBLEMS

The law reinforces cultural values by defining what conduct is to be accepted and what conduct is to be prohibited or punished.

In a homogeneous society there is little distinction between the law and cultural values.

In a multicultural society, the values protected by the legal system are those of the dominant group.

Although Australia has always been a diverse society, the dominant cultural group has been of Anglo-Celtic origin. Therefore, Anglo-Celtic cultural values have been reinforced through our legal institutions.

THE JUDICIARY

The common law principles on which our legal system depends were developed by the judiciary. Also, the judiciary continues to take part in the reform and development of our law.

While ideally our judiciary is neutral and impartial, in reality, judges are not necessarily representative of our whole community, or responsive to the needs and values of all sections of our multicultural community.

Judges are drawn from the legal profession which in itself has tended to be largely an Anglo-Saxon group. As a result, they are subject to social prejudices and biases, of which they may be unaware.

These may affect, consciously or unconsciously, their approach to people whose backgrounds, lifestyles and beliefs are unfamiliar.

THE LEGISLATURE

Legislators may be more broadly representative of our multicultural community than judges as they are answerable to the community as a whole for their laws and policies.

However, legislative policy is often arrived at after political compromise and trade-offs. Dominant groups can usually ensure that their own interests are taken care of in this process, because of their numerical superiority and/or because they are familiar with the system.

ESSAY QUESTION.

"Ethnic and cultural minorities have had little opportunity to participate in the development of law. How might this be remedied?"

In your answer, give reference to specific examples and strategies.

