

INDIVIDUAL SUBJECTS/ AREAS OF LAW

Giving theory 'a life': first year student conceptions of legal theory

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The article presents findings of interviews with first year law students to gauge their conceptions of legal theory. The rationale for the study is the long-standing debate about the nature and purpose of legal theory taught in undergraduate law courses. A United Kingdom study by Barnett, which examined Australian, Canadian and British law school curricula, found that 89% of British courses do not have a first year theory component, whereas 35% of Australian courses contain a compulsory legal theory course and 11% an optional one. On the other hand, McCormack & Twining are of the view that jurisprudential courses work best around the middle of the course program. This article, by reviewing and understanding student conceptions of legal theory, considers the value of an early integration of theoretical perspectives into substantive law study.

At Griffith Law School in Australia students are introduced to a wide range of theoretical and jurisprudential perspectives in a single foundational first year program, titled Law and Legal Obligations. This course attempts to integrate substantive law and higher level notions, such as formalism, liberalism, feminism, law and economics and critical legal studies.

A group of 12 first year law students was selected as a demographic cross-section of the cohort group for interview after they

had completed approximately 20 weeks of the program. Each interview lasted approximately one hour and the key questions concerned the students' perceptions of the purpose of the course and legal theory in general. They were also questioned on what they thought was the relationship between legal theory and law and what they understood by the term legal theory.

In relation to the first question students commented that legal theory forms the basis from which black letter law or other law could be understood. In addition, legal theory enables the construction of critical frameworks, allows advancements in the law and introduces new perspectives and tolerance. It assists in the categorisation of judges and law makers, allowing practitioners to predict trends in the law and judicial decisions.

As to the relationship between legal theory and the law, many students commented that they thought theory and law were inseparable. Theory follows and anticipates the law and also precedes and brings about changes in the law. Law is rules and theory is explanation. Legal theory is the underlying concept behind the law. Many students commented that it was not possible to be a good practitioner without a knowledge of legal theory.

When asked what legal theory is, it was said that it is a framework through which an understanding of the law could be gained, an attempt to find unifying concepts and give coherence to the law. Legal theory is that which asks why and how. Theory is transformative, as ideologies become theories and create agendas which may affect or generate law in the future. Theory is

the opposite to practice and encompasses musing, reflection and observations — an academic past-time.

The student responses mirror the semantic nuances of the definition of theory contained in the Macquarie Dictionary. On the whole students, despite being in the infancy of their legal studies, were found to have a fairly complex understanding of what legal theory is and why it should be learned, thus supporting the conclusion that it should and can be taught at an early stage of undergraduate study.

Teaching tax law: developing analytical skills

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Most law school courses are based on an analysing and synthesising of appellate court decisions. However, basic tax law courses lend themselves to developing an ability to analyse statutes and regulations. The tax attorney's success will depend not on the recollection of the teacher's substantive pronouncements, but upon the ability to start from scratch and do a meticulous analysis of the ever-changing bodies of statutory and regulatory law.

In teaching tax law, teachers should not gloss over the complexity of the statutes and regulations by providing a volume of tax information (passive approach). They should allow students to develop first-hand knowledge of the tax code and regulations and how they interact with each other (active approach). The passive approach shields students from the complexities of tax law. Tax textbooks and tax law teachers often aim to help students to understand