

Introduction

Re-imagining Legal History

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Up until 30 or 40 years ago, legal history was an important, and indeed compulsory, part of the curriculum in most Australian law schools. It was then understood as a discipline focusing on the history of English law over eight or nine centuries. Within the discipline, the study of the legal history of Australia was the poor cousin, and attention was largely limited to the introduction of English law into Australia.¹ Today, legal history will be found on very few law syllabi, and at best as an option taken by a few students. Compulsory introductory survey courses will touch on a few of its topics, but at a fairly superficial level. The law graduate, and indeed the practising lawyer, is not expected to have much grasp of the detail.

How did this come about? One could try to pinpoint the precise actions or decisions of individuals or committees which produced the result, but the deeper explanation probably lies in a series of overlapping structural forces impacting on the growth and teaching of Australian law in this period. These forces carried with them perceptions, not necessarily fully reasoned out, but nevertheless perceptions powerfully destructive of the need for the continued attention to legal history. The following is an impressionistic, but hopefully accurate, summary of some of these forces.

First, as the Australian legal system matured and asserted independence from the courts of the United Kingdom, a corollary was drawn that excessive attention to the foundations of English law was less necessary than before.

Secondly, there was such a burgeoning of new Australian law itself – whether in the explosion of statutes at federal and State level, or in the drive to restate fundamental doctrines of equity and the common law to meet the demands of a modern society – that the organised study of the legal past seemed a remote and superfluous exercise.

Thirdly, as the new subjects on the law school curriculum multiplied – in areas fashionable to students and matching employment opportunities developing in

1 One of the classic texts is WJW Windyeyer, *Lectures on Legal History* (Law Book Company, Sydney, first ed 1938; second ed 1949).

This is a preview. Not all pages are shown.