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“One Law for all: multiculturalism and legal plurality in Australia”

Key Words

Australia, multiculturalism, legal plurality, Islam

Abstract

Australia is the great multicultural experiment. A staggering 26% of the population was born overseas. A great contrast to Japan with a mere 1.7%, most of who were born in Korea. As Japan struggles to solve its declining population problem many point to immigration as the solution, often citing the success of the Australian experience.

However multiculturalism in Australia remains controversial. Whilst some see cultural diversity as an asset and cite the existence of a relatively harmonious society, others point to the existence of ethnic ghettos and inter-racial tension. The occasional race riots, typically centered in the inner suburbs of Sydney, are said to be symptomatic of this unease.

Whatever the true state of affairs, multiculturalism has become an embedded part of the fabric of Australia and there is no turning back for the country and its institutions.

One area where the more pluralistic society has caused a rethink in core values is in the legal system. Whilst the law remains steadfastly rooted in its British Christian common law traditions the influence of other cultures and beliefs is emerging. This has been witnessed in the partial accommodation of indigenous customary law and traditions and the debate over the accommodation of Islamic law principles.

The adoption of “foreign” legal concepts goes to the heart of what it means to be a liberal democratic society: does it mean wholesale legal plurality or are there some “foreign” legal principles that are an anathema to a free and equal society? Putting it in the Australian context: should Australia facilitate the recognition by minorities of their customary and religious laws or is multiculturalism about establishing the one legal framework that applies to all equally and without discrimination?

The paper will explore these developments and seek to identify the future implications for the legal system of an increasingly multicultural Australia. It will be observed that legal plurality does, in fact, exist in Australia but in the shadows of the official legal system. There have been limited attempts to render the official realm more sensitive to indigenous beliefs and customs with the creation in most States of indigenous courts the most significant development. How successful this initiative has been is yet to be determined. Meanwhile the absence of official recognition and

supervision of faith based tribunals, whether Christian, Jewish or Muslim, has resulted in vulnerable people not enjoying the protections afforded in the official realm. It is the author's view that whatever form legal plurality takes first and foremost is the need to protect the vulnerable of society, whether it be women, children, fauna and flora or the environment.

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Justin DABNER is an Associate Professor at the Law School at James Cook University based in Cairns, Australia. He has a PhD (Law) from the University of Tasmania. Dr Dabner teaches in various commercial law subjects his and area of research specialisation is primarily comparative international tax having previously been the National Tax Technical Director for both Deloitte Touche Tohmatsu and Ernst and Young. He has extensively toured South East Asia working on research projects, undertaken research in the Pacific island state of Vanuatu, New Zealand, the United Kingdom and South Africa and has previously been seconded to the Tax Policy Institute at Kansai University in Osaka, Japan. During 2012/13 he was appointed as the visiting professor in Australian studies at Tokyo University. Whilst in Japan his research focused on a comparison of the fiscal policy response to climate change by the Japanese and Australian governments. Recent publications include "The Australian carbon pricing experience: are there any lessons for Japan?" (2013) 13 Pacific and American Studies 63 – 85 and "Japan's new direction on climate change" East Asia Forum (3 July 2013) (with Professor Satoshi Kurokawa, Waseda University) available at <http://www.eastasiaforum.org/2013/07/03/japans-new-direction-on-climate-change/>.