

Week 1 - Introduction to Law and Contemporary Society.

Readings

- Databases (socio-legal) - AUSTLII, LexisNexis w case base
- BOCSAR stats
- UOW referencing

Assessments:

- Formal examination (50%): 2 hours plus 10 minutes reading time – to be held during the exam period. Consists of **multi-choice, short answers and essay.**

Content

- Interdisciplinary approach to law
- Goes beyond the black letter law / doctrinal analysis
- Law in the context of society
- Does society stop at the end of national borders?
- Understanding the operation of power

Notion of justice

- Fair & reasonable
- Administration - Court cases run correctly, evidence meets standards
- Legal outcome not always a just outcome

Basis of justice:

1. **Divine command** - religious basis
2. **Natural law** - universal and absolute concepts of law (Human Rights)
3. **Positive law** - justice is what law deems it to be - break a law and be punished (black letter approach)
4. Justice as a **mutual agreement** - punishment for a behaviour has been agreed upon by a community (relativism - cultural relativism and ethnocentrism)
5. Just as **consequentialism**- best consequence for the whole community - punishment must be carried out as a means to deter others from causing harm which benefits entire community
 - What is a community & to what extent does that community go?
 - Cultural practices (relativism) - can they practice those if that territory have other laws in place

3 types of justice:

- **Distributive:** fair and proper distribution between members
 - **Retributive:** proper response to breaking of a rule - punishment
 - **Procedural:** fairness in the legal system.
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- Notions of justice are contentious, who gains/loses, where is power concentrated.
 - Access to justice is an issue- costs, legal aid, pro bono, community law centres.
 - Alternatives to Court- community justice systems
 - Study of law in its social contexts

The “socio” in socio-legal studies

‘Socio’ usually refers broadly to the social sciences. This involves:

- **Sociology**
 - Marxism
 - Functionalism
 - Feminism

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- Etc.
- History
- Philosophy
- Jurisprudence
- Social psychology
- Economics
- Political Science
- Anthropology
- Government
- Social Policy
- An interest in human society and relationships

The socio involves all of these as law is of interest as it contains/reflects/shapes law and its relationship to culture:

- **Beliefs** – ideas on how the world operates (both tangible – observable/empirical and intangible – ‘what is the meaning of life’)
- **Values** – normative standards on good and bad
- **Norms** – rules effecting action that is a component of a value or belief
- **Symbols** – concrete physical signs that ‘stand for’ something
- **Technology** – knowledge and techniques to create material objects
- **Language** – repository of information about culture
 - (Walsh and Hemmens, 2011, pp. 3-9)

- A concise definition of socio-legal studies is difficult to achieve as there are many perspectives that can be utilised.
- Encourages an *interdisciplinary approach* to the study of law.
- Goes beyond pure doctrinal analysis or black letter law.
- Study of *law in the context* of society: law as a social, cultural and political phenomenon / institution.
- Central to this is endeavour are the fields of social and legal theory, and jurisprudence (see below).
- Usually law (legislation and/or cases) is included in socio-legal study.
- We will engage with the law and we will interpret the law.
- We will analyse the *effects* of the law. We will look at the law as a social, cultural and political phenomenon / institution. We will also examine the law as a product of politicians who purport to represent ‘us’.
- However, this semester, you will be taught how to use perspectives in the social sciences to look at the operation of LAW *in* contemporary society: the stress on *contemporary society* means we will be looking largely at legal and related issues that are **happening now or have happened in the recent past**.
- The matters covered in this unit also reflect, to an extent, the research interests and expertise of socio-legal members of staff (see ‘Weekly schedule’ in UOS outline) and senior Units of Study.
 - We will again engage with the substantive content of the law. Indeed, in your essays you will need to draw on case law and legislation to make your arguments.
 - However, you won’t be writing a standard “Arts essay”; you will be writing a socio-legal essay in which you will engage with the social sciences to understand the law.

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- So, when we say we are studying Law and Contemporary Society, we are in fact studying the **operation of the law in contemporary society using approaches within the social sciences to help us understand this.**
- **Substantive law:**
 - statutory and common (case) law;
 - creates, defines and regulates rights and duties;
 - the body of rules determining the rights and obligations of individuals and the collective (prescribes what should be done and proscribes what should not be done).
- **Procedural law:**
 - refers to the *enforcement* and *defence* of such rights and obligations (includes the rules the state/court/investigator must follow).
- Connected to this is the notion of justice:
- 1 [mass noun] just behaviour or treatment: *a concern for justice, peace, and genuine respect for people*
- the quality of being fair and reasonable: *the justice of his case*
- the administration of the law or authority in maintaining this: *a tragic miscarriage of justice* (Oxford Dictionaries – Online <http://oxforddictionaries.com/definition/english/justice>)

Basis of justice (James & Field, 2013, 407-408)

- **Divine command** – religious basis
- **Natural law** – universal and absolute concepts of law (Human Rights)
- **Positive law** – Justice is what the law deems it to be – break a law and be punished
- Justice as **mutual agreement** – punishment for a behaviour has been agreed upon by a community (relativism – cultural relativism and ethnocentrism)
- Justice as **consequentialism** – best consequence for whole community – punishment must be carried out as a means to deter others from causing harm which benefits entire community (Should Bronwyn ‘Barracuda Bronnie’ Bishop step down from the Speaker position?)
 - Justice is a contested term just as equality is a contested term.
 - Access to justice is an issue – costs, legal aid, pro bono, community law centres
 - While it is important to consider and examine substantive and procedural law as socio-legal scholars we go beyond this to explore law as something that is *socially significant*.
 - Thus, we study the law as something that is ‘worth studying for its intrinsic philosophical or **social interest and importance**’ (Cotterrell 1992: 1).

We will also engage theory to explain the workings of law in contemporary society:

- *Social theory* (drawn from philosophy, political science, economics, history and sociology);
- *Legal theory* (drawn from philosophy, political science, economics, history and sociology);
- *Jurisprudence* – theory and philosophy of law, such as theories of justice.

An inconclusive definition of what is socio-legal studies:

- ‘There is no agreed definition of socio-legal studies: some use the term broadly to cover the **study of law in its social context ... from the perspective of the social science**’ (Harris, 1983 in Thomas, 1997: 2)
- **Socio-legal studies as an adjunct to law? But it provides added value by placing the law in a wider societal context!**
- Socio-legal studies as a social science (positivism to phenomenology/ quantitative and qualitative influenced approaches – SLSS3601 Doing Socio-Legal Studies).

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- “Socio-legal” as an umbrella used to include, e.g. sociology of law, criminology, law and society, human rights.
- “Community” of socio-legal scholars.
- **Society** might be defined as ‘a group of people who live in a particular territory, are subject to a common system of political authority, and are aware of having a distinct identity from other groups around them’ (Giddens 1993: 746).
- **Sociology** has been defined as ‘the study of human groups and societies, giving particular emphasis to the analysis of the industrialised world’ (Giddens 1993: 746).
- In *Adventures in Law and Justice*, Horrigan (2003: 16) notes his own interactions with the law, and points out that we often don’t think of the law until we are in a situation where we collide with it (getting an operation, airplane liability, ‘not for resuscitation’ policy, use of mobile phone while operating a vehicle).
- American sociologist C. Wright Mills coined the term sociological imagination as ‘being able to “think ourselves away” from the familiar routines of our daily lives in order to look at them anew’ (Giddens 1993: 18).
- The ‘socio-legal imagination’
- **Structure** – the underlying organisation of society (economic, gender, religion, politics, etc.) that **constrains human behaviour**:
 - **Institutions** – patterns of behaviour that are relatively stable over time, e.g. ‘the law’;
 - **Norms** (rules of conduct) and values (ideas on what is good, right, bad, etc.) are part of structure and institutions.
- **Culture** – transmission of knowledge:
 - Norms and values.
- **History** – how society has changed over time (even though this Unit has a focus on contemporary society, one must understand the past to understand the present (traditional quote?)).
- **Agency** – the **extent to which individuals and collectivities might be agents of their own destiny**; how they might change and transform themselves and their wider environment, including transformation of established institutions / structural constraints, e.g. via changes in the law. Can you think of examples ...?
- **Critical** – questioning and constructing how things could be (including comparative analysis), including the search for “alternatives” and policy recommendations.

For those students who did not enrol in SLSS1001 Introduction to Socio-legal Studies

- Socio-legal data bases - <http://www.library.usyd.edu.au/databases/sociolegal.html>
- Learn to use AustLII - <http://www.austlii.edu.au/>
- Textbook *Connecting with Law* or any other first year law textbook that is Australian.
- Learn how laws are created (common law system, judges and politicians)
- SLSS1003 week 1 suggested reading, Miller.
- Watch the DVD in the second part of today’s lecture, *Law, Justice and Society: The Changing Nature of the Law*