

Networked Knowledge Media Reports

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On 28 October 2013 Evan Whitton reported in the Tasmanian Times:

In *Justinian* dated September 17, 2008, I noted that the Hon Russell Fox's groundbreaking work, *Justice in the 21st Century* (Routledge-Cavendish, 2000), said:

- Justice means fairness.
- Fairness to everyone concerned, including the community, can come only from a search for the truth, i.e. reality.
- The search for reality thus gives a legal system its moral face.
- The common law does not have a moral face because lawyers in the 13th century decided that truth does not matter.

[Judge Fox also said the public knows that “justice marches with the truth”.]

When academics got into the law caper a couple of centuries ago, they thus had three choices, none of them good:



1. They could simply ignore the questions of truth and morality and hope their students did not notice that the system is bereft of both.
2. They could blandly say the system does search for the truth, and hope their students did not mulishly point out that that cannot be true.
3. Or they could say morality doesn't matter either. That desperate line was taken in the 19th century by London University's John Austin and Harvard's Christopher Columbus Langdell, and in the 20th century by the famous Oxford cuckold, Herbert Lionel Augustus Hart, pic (see *Justinian* May 13, 2008).

In the May 13 issue of the organ, I noted that US law professor Darien McWhirter had placed Hart 89th of the 100 people who had most influenced the law, and that he was “the most important legal philosopher of the 20th century” because he argued “throughout his career that law and morality should be separated”. The piece continued:



That false argument was great news for any number of Oxford dons, including Sir Isaiah Berlin (pic). They apparently took the view that cuckolding a goose like Hart was:

(a) Fun.

(b) Almost obligatory: if law and morality should be separated, so should adultery and morality.

Butterworths Concise Australian Legal Dictionary defines positivism thus:

"Laws are considered in the context of the legal system of which they form a part, without drawing any conclusions about their essential justness or merit."

How convenient; positivists don't have to concern themselves with whether the justice system is just. Positivism might also be called ostrichism.

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