

system alters individuals' behaviour. One of the primary factors determining economic growth is technological innovation. To the degree that technological innovation is inhibited by the tort system ... economic growth suffers. Stephen Magee, professor of finance at the University of Texas at Austin, estimates that the excess supply of lawyers in the USA reduces economic output by [US]\$300 billion to [US]\$600 billion.

Also, higher costs will be more than offset by a reduction in public legal bills and tax evasion. In the end, a truth-seeking system will deliver more justice at less cost.

As an interim step, lawyers can be made judges and, along with existing judges, given control of evidence. Both can then try to put rules for concealing evidence out of their heads. It will be a novel experience, and they may get to like it.

Academics will have to be retrained to teach techniques of searching for the truth, but they should be happy to be able to burn all those impenetrable tomes on how to hide evidence.

The cartel can then be abolished by training new judges separately from lawyers. Professor Benjamin Barton ended his paper, *Do Judges Systematically Favor the Interests of the Legal Profession?* (December 2007), with a suggestion that would effectively abolish the cartel:

Given the general public distrust and dislike of lawyers, there may be many other objections to their dominant role in the judiciary aside from any bias towards lawyers in general. I do not think it is obvious that all judges should

*The remedy*

be lawyers. To the contrary, it may be right that no lawyers should be judges. In many civil law countries [those which use the investigative system] judges are trained and educated separately from lawyers. Perhaps it is a better model.

It is encouraging to learn that Professor Barton has not been run out of the cartel on a rail. I asked him in March 2008 how his paper was received by judges, trial lawyers and fellow academics. He replied:

So far I have received a very favorable response. I received a lovely note from the Honorable Dennis Jacobs, a Federal Appeals Judge here ... Interestingly, for a law review article it's drawn some non-lawyer attention, and I've gotten multiple emails, letters, and calls from folks who have their own stories to tell about the phenomenon I noted.

Professor Barton expanded his hypothesis to a book called *The Lawyer-Judge Bias*. It was being peer-reviewed for Cambridge University Press as this was written.

The public knows that justice means truth. Politicians with the courage to determine to change to a truth-seeking system will find that, for the first and last time in their careers, they have the support of more than 90% of the voters.

If there is resistance, reforming politicians might be tempted to hint at a reference to the local anti-cartel authority but, thanks to law schools, lawyers appear to lack the necessary guilty mind, and the parrot-house can be safely ignored: lawyers

are still only 0.2% of the voters, and the public are still 99.8%.

*Definitions***Definitions**

**Abuse of process.** *Butterworths*: 'The misuse or unjust or unfair use of court process and procedure ... generally any process that gives rise to unfairness ... Criminal contempt of court through abuse of the court's process ... includes serious misconduct such as ... intentionally deceiving the court ...' The definitions imply that the adversary system itself is an abuse of process.

**Accusatorial system.** A accuses B; B says: 'Prove it'. It was used in Europe and England from the Dark Ages until early in the 13<sup>th</sup> century. Since then, it has been used only in England and its colonies.

**Adversary system.** An accusatorial system in which lawyers control the evidence, the process, and the money, and untrained judges control the court. English judges began to let lawyers take control of the civil process in the 15<sup>th</sup> century and of the criminal process in the 18<sup>th</sup> century.

**Bagman.** A collector/distributor of bribes/extortions.

**Blackmail.** Theft by extortion.

**Cartel, The.** A syndicate of common lawyers and judges first formed about 1180 to maximize their profits.

**Civil Law.** (The law of the people). Codified criminal and civil law deriving from Roman law. Used in European countries, their former colonies, and other countries.

**Common law.** Judge-made law used in England and its former colonies, including the USA, Canada, India, New Zealand and Australia.

**Conversion rate.** Historian Roy Porter said that multiplying 18<sup>th</sup> century English pounds by 100 gives a rough equivalent of their value today.

**Criminal enterprise.** The vehicle through which organised crimes are committed.

**Dickens Principle.** ‘The one great principle of the English law is to make business for itself’, i.e. trial lawyers.

**Ethics.** ‘A system of moral principles, by which human actions and proposals may be judged good or bad or right or wrong.’ – Macquarie Dictionary. In the adversary system, legal ethics are client-based rather than morality-based.

**Investigative System.** A truth-seeking system in which trained judges control the court and the process. Used by civil law countries since early in the 13<sup>th</sup> century.

**Justice.** This book accepts former Justice Russell Fox’s definition: justice means fairness, fairness means truth, truth means reality, and the search for truth gives a justice system its moral face.

**Kleptocracy.** Rule by thieves.

**Law Lords.** Lords of Appeal in Ordinary; life peers who were members of England’s highest appeal court, the Judicial Committee of the House of Lords.

**Legal Fiction.** A convenient lie. Australia was deemed to be uninhabited when British took control in 1788.

*Definitions*

**Legal positivism.** 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.

**Lord Chancellor.** A politician who was head of the UK judiciary until 2003.

**Magnates.** The 'great men of the realm'; originally 300 mercenaries who received a large part of England from William the Conqueror after 1066.

**Manuel Test.** 'A fair go all round'. From a 1971 statement by NSW Conciliation Commissioner Gilbert Manuel.

**Master of the Rolls.** Head of England's second-highest court, the Court of Appeal.

**Organised crime.** Systematic criminal activity for money or power.

**Organised Criminals.** People who engage in systematic criminal activity for money or power. RICO defines an organised criminal as one who exhibits a pattern (over 10 years) of two or more chargeable offences (not necessarily convictions) which carry penalties of at least a year in prison.

**Parties.** Clients in civil litigation. It is a legal fiction that clients control the process.

**Probative.** Tending to prove guilt.

**RICO.** An exception to the rule against evidence of a pattern of criminal behaviour. Racketeer-Influenced and Corrupt Organizations is Title IX of the US Organized Crime Control Act of 1970. RICO applies to all organised criminals, including businessmen, judges and lawyers, and members of the Mafia.

**Rule of Law.** A legal fiction. It holds that all persons and organisations, including governments, are subject to the same laws.

**Saxophones.** Expert witnesses on whom lawyers play tunes.

**Trial/Litigation/Plaintiff Lawyers.** Lawyers who do court work, some 40% of the total, i.e. most barristers and about 30% of solicitors. In this book 'lawyers' usually refers to trial lawyers.

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Errors are mine alone.

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