

A FEW QUOTATIONS

When Jack in *The Importance of Being Earnest* demands to be told the truth pure and simple, Algernon reminds him that the truth is rarely pure and never simple. Life, like the law, is mutable and complex, and it's not possible at any given moment to give a comprehensive account of it. But while law is at least written down and open to analysis, criticism and change, without known facts to apply it to, law is meaningless. You cannot pose a legal problem, however abstract, without introducing at least a few supposed or real facts. And most legal problems involve facts of a complexity comparable to that of the law.

What I want to consider is how the legal system establishes the facts on which it is going to adjudicate. How, in other words, do lawyers and judges set about ascertaining the truth? Are we any good at it? Do we have an adequate understanding of the complexity of experience, or does the law sometimes make things unfairly easy for itself by flattening reality into two dimensions?

Stephen Sedley *Ashes and Sparks – Essays on Law and Justice* Cambridge 2001 pp 213-4

[Comment: how does this compare with how we approach philosophical problems?

...All [of the states who have signed up to the European Convention on Human Rights] require the state to establish the accused's guilt, even though part of the proof may well be what the accused himself has chosen to say. If as a result we have trials that go on for days when they used to be over in an hour or less....and if as a result guilty people sometimes walk free, it is not necessarily an excessive price to pay for trying to ensure that people are not convicted unless a fair trial has made a jury sure of their guilt.

The great unresolved truth in any criminal trial, whatever the procedure, is not whether the state has satisfied the jury of the accused's guilt – the verdict tells us that – but whether the accused really is guilty. It is ineluctable even in a fair system that guilty people will sometimes go free and – worse still – innocent people be convicted. Some are released on appeal; but we do not know, any more than other countries do, how many people are in prison for crimes they did not commit....

Truth as an independent entity does not get lost in such a process because truth in that sense has never been its object. The jury is sent in search of a single verity: has the accusation been proved?

Stephen Sedley *Ashes and Sparks – Essays on Law and Justice* Cambridge 2001 pp 32-3

They [the jurors] put up with the inconvenience of it – the waiting and the hanging about and the interference with the daily round – not only because they assume it as a proper responsibility but because, once they get into the jury-box, they enjoy being there. Even when outside the box and sitting in court awaiting their turn they perform, though perhaps few of them are aware of it, an important service to British justice. They sit there as witnesses of the legal process.

Lord Devlin *Trial by Jury* (Revised Edition, 1971) pp 24-25. [Comment: The hanging about applies mainly to the process of jury selection and bulks much larger for those only selected for a short case or cases (up to two weeks). The interference with daily life is great for long

trials If time is spent (as it was in my case) with a succession of witnesses being taken laboriously through the same or very similar documentation, only a masochist could be said to “enjoy being there”. Yes, jurors serve also as unofficial witnesses of legal processes, but only of justice in England and Wales - not of “British justice” - since there are significant differences in Scotland including Scottish Law's origins in Roman Law, usually having 15 (not 12) jurors who swear a different oath and do so collectively rather than individually; with different practices for coming to less than unanimous verdicts; and with different verdicts and different grounds for dismissing a jury or rejecting an individual juror from serving.]