

The Deliverance of Justice, And Money

Among the services people expect from the law are the deliverances of justice and repayment, and as our institutionalized structure of dispute resolution, the legal system is often the best and only means to meet these expectations. Although law has both the capacity and the moral obligation to provide for these expectations, it may not always—or even often—do so. Nevertheless, the legal arena remains the proper forum for the response to these demands for justice and repayment, and if the law sometimes fails to function correctly, it is the legal system that must change to operate more effectively rather than the petitions of those using the system.

There are many ways to define justice, and many individuals may disagree as to whether a certain event or outcome is truly just. For example, some may consider justice as being defined only by a universal morality; the laws of man would be considered irrelevant. This definition, however, does not reflect the expectations of most people when thinking about or participating in the legal system. For this purpose, justice may more usefully and accurately be defined as the impartial application of codified law legislated in the constitutionally defined manner by the accepted authorities and following procedures similarly laid out by pre-existing law. Delivering this is within the capacity of law as a system.

Repayment is outwardly less complex than justice and can be defined simply as the furnishing of a debt that is owed. In the legal sense, to say that law can provide repayment means

that the legal system can oblige an offending party to provide funds or assets which a victimized party deserves, whether that property or equivalent property was stolen or damaged, or in compensation for other injuries. Also, the debt repaid can be non-tangible, such as the mere placement of blame in an official setting. As with justice, the deliverance of this type of repayment is expected of the law by many and is within law's capacity. Capacity, as defined in relation to the reified concept of a legal system, is the ability of legality to generate legal action and produce results.¹

In the 1979 case *Brown v. Texas*, a man who refused to identify himself to the police eventually had his conviction—which was for a violation of a Texas statute requiring identification to be shown upon lawful request—overturned on the grounds that the application of the statute violated the 4th Amendment of the federal Constitution.² Justice is shown to be within law's capacity by this example because the proper courts conducted the trial process with the correct procedures in place, and the proceedings involved the application of various written statutes, the outcome of which caused a legal action to be taken. In this case, the conclusion was a change in the acceptable application of a law and presumably the cancellation of the appellants' sentences.

One might point to an earlier, superficially opposite U.S. Supreme Court decision involving similar issues as an example of the Judicial Branch's failure to provide justice, namely *Terry v. State of Ohio*, in which suspects were searched for behaving suspiciously.³ However, the appellants in this case received the same recognition of their rights to due process as the

¹ Patricia Ewick, Susan S. Silbey, *The Common Place of Law* (Chicago: The University of Chicago Press, 1998), 91.

² "*Brown v. Texas*, 99 S.Ct. 2637 (1979)" in *Before the Law*, ed. John J. Bonsignore, Ethan Katsh, et al (Boston: The Houghton Mifflin Company, 2002), 279-281.

³ "*Terry v. State of Ohio* 392 U.S. 1 (1968)" in *Before the Law*, ed. John J. Bonsignore, Ethan Katsh, et al (Boston: The Houghton Mifflin Company, 2002), 273-278

appellants in *Brown v. Texas* later would. In addition, the details of the case differed in that the police officer that conducted the searches had specific expertise, enabling him to more logically justify the searches.⁴

There are many notable instances and trends in which the courts have failed to provide justice, but rather than prove that justice is outside the realm of law's capacity, these examples—often tragic—serve to reinforce the idea that justice is expected from law, and there can be disastrous consequences when it is not delivered. For example, both law enforcement and the courts failed the victims of the Greensboro Massacre in 1979, when local police and FBI officials allowed the Ku Klux Klan and Nazis to attack a peaceful demonstration and kill five unarmed people on videotape without receiving any criminal convictions (a civil conviction was procured, however).⁵ This event is outrageous both because of the horrific acts of the killers and because justice failed to be provided so blatantly. People do expect and should expect justice from the law.

Another possible argument against law providing justice may be found in the 1987 U.S. Supreme Court case *McCleskey v. Kemp*, wherein it is argued—essentially—that since the death penalty is racially biased, the conviction of a defendant of the statistically disadvantaged race in unjust.⁶ This indictment of the death penalty calls the social context of crime and law into question, but although it may imply that justice is not delivered in all cases, it does not refute the fact that justice is within the capacity of law to deliver, even if that delivery does not always function.

⁴ “*Terry v. State of Ohio* 392 U.S. 1 (1968)” in *Before the Law*, ed. John J. Bonsignore, Ethan Katsh, et al (Boston: The Houghton Mifflin Company, 2002), 273

⁵ Sally Bermanzohn, *Through Survivors' Eyes: From the Sixties to the Greensboro Massacre* (Nashville: Vanderbilt University Press, 2003), 265.

⁶ Bryan Stevenson. “The Hanging Judges” in *Before the Law*, ed. John J. Bonsignore, Ethan Katsh, et al (Boston: The Houghton Mifflin Company, 2002), 65.

Repayment is often associated with monetary awards in tort cases, and this is certainly an area in which people can, should, and do turn to the law for repayment. However, average tort cases are not commonly known. Rather, as demonstrated in class discussion, there is a common and largely unfounded belief that tort cases are mostly extreme and provide too much money to the party bringing the case.

For example, the 2000 award of \$145 Billion in a Florida class action suit against the giant R.J. Reynolds Tobacco Co.⁷ is one example of the type of very large award that gets publicized. This, however, is far from common. According to personal injury lawyer Philip Corboy, the so-called tort crisis is, “based on a false hypothesis...”⁸ including exaggerated claims of several phenomena, including high liability, increased litigation, plaintiff-biased juries, and negative economic consequences.⁹ While he might appear to have a personal motive, his argument is nonetheless sound.

Civil trials can produce repayment of a sort other than money, or in addition to money. For example, the Greensboro massacre victims did not receive the justice of a criminal trial victory against their attackers, but their civil trial victory resulted in the official blaming of several police, Nazi, and Ku Klux Klan members for the wrongful death of a victim.¹⁰ It was undoubtedly too small a victory and too small a monetary award, but, law, in this instance, at least provided the vital repayment of dignity to those who had suffered an attack by placing blame on the perpetrators. According to one of the survivors, “...it was a victory, because it

⁷ Bob Van Voris, “\$145 Billion to Send a Message” in *Before the Law*, ed. John J. Bonsignore, Ethan Katsh, et al (Boston: The Houghton Mifflin Company, 2002), 455.

⁸ Philip Corboy, “The Not-so-quiet Revolution” in *Before the Law*, ed. John J. Bonsignore, Ethan Katsh, et al (Boston: The Houghton Mifflin Company, 2002), 459.

⁹ Corboy, 459.

¹⁰ Bermanzohn, 309.

exposed all kinds of evidence about the Klan, the FBI, and cops. And I was glad that all came out.”¹¹

Justice, repayment, and many other ideas are not sought in isolation. Rather, what we seek from the law is an amalgam of many things, and these are but two. The Greensboro Massacre issue and the tobacco tort case illustrate the diffusion of justice—or the aforementioned telling lack thereof—throughout all law. Repayment is much the same and is intimately connected with justice if one accepts the broader definition of repayment to include compensation in reputation or peace of mind by the closure of a case. The issues of how to go about changing the flaws in the system that have been exposed, what has caused them, or even the matter of their existence, are complex matters at the heart of much political debate in this country, and they may depend partially on political philosophy.

¹¹ Bermanzohn, 310.