

✓ The United States legal system exists for maintaining order, upholding rights, and resolving disputes; in short, it seeks to promote justice. However, in many cases it fails in that pursuit, in part because of the nature of justice, and in part because of flaws in the system.

Thesis

Justice, or the best, fairest outcome for one or more people, is an ideal that is impossible to attain in all cases, but should be strived for nonetheless. There are different forms of justice: procedural, societal, and personal (see 1.). Procedural justice is ensuring that all individuals receive a fair trial or sentence, that their interests are adequately represented, and that there is not extensive partiality on the part of persons deciding their fate. Societal justice means achieving the most desirable outcome for society as a whole. Most subjective is personal justice, which is fulfilled when an individual, whether a victim or perpetrator, receives what is due to them.

These three varieties of justice can overlap, but they often conflict. For example, if a suspected murderer is acquitted because the police did not read her Miranda rights, procedural justice has been fulfilled, since the defendant was not being dealt with fairly. However, the victim's family would feel that personal justice had been denied to them; additionally, societal justice might have been denied, if the suspect was indeed a murderer. This example illustrates the complexity of the notion of justice, and why it is impossible to achieve on behalf of everyone.

✓ The legal system is not fundamentally about determining the truth. Judge Jerome Frank argues that the adversarial nature of American law, specifically in civil cases, prevents the discovery of the truth (Frank, 351-55). Both parties to a lawsuit will seek only the evidence that buttresses their case, meaning that important information may be ignored (Frank, 352). Harry Subin discusses a criminal case where the truth may be different from what both parties claim: a woman claims rape, while the suspect declares he was elsewhere (Subin, 356). The reality may have been that a consensual sexual encounter occurred, but the woman alleged rape, angry that her

watch had been left in the man's apartment, and he might have denied the affair to try to preserve relations with his partner (Subin, 357). The legal system does not probe beyond what these parties say, and therefore the truth of the matter is not uncovered; indeed, for lawyers the truth is often ancillary to their purpose. ✓

The mission of the defense lawyer in the American justice system is to protect the defendant to the best of his abilities - "getting everything he can for his client" ✓ (Mills, 361). When Subin's client admitted guilt, Subin was still obligated to protect him, thus promoting the client's procedural justice over society's desires, or those of his victim (358-59). In his profile of defense lawyer Martin Erdmann, James Mills declares that "justice is a luxury enjoyed by the district attorney," and that criminal justice in large cities effectively penalizes the innocent and frees the guilty (Mills, 361). ✓
Because of the strain enormous numbers of cases put on the legal system, prosecutors and judges endeavor to "clear the calendar" by making plea bargains with defendants, preventing trials (Mills, 372). This benefits the guilty, reducing sentences as extreme as murder to a year or less; for example, Erdmann convinces a man to admit to homicide for a term of five months (Mills, 371). However, clients who maintain they are innocent or otherwise disdain plea bargaining, such as Henderson, must wait in prison for months to gain a trial, and their trial may result in a much longer sentence (Mills, 371).

The criminal justice system, at least in large cities or places where the caseload outstrips the bureaucracy to handle it, functions in an unjust manner. By promoting plea bargaining to avoid trials, the process of determining guilt or innocence is taken out of the hands of juries; moreover, those who declare guilt are rewarded, while those who profess innocence are punished. This arguably violates societal justice, since guilty individuals serve shorter sentences and can return to society quickly; however, this limited legal bureaucracy also allows for lower taxes than what would be required to accommodate jury trials for all felons. It violates procedural justice for those who profess innocence, since their right to a speedy trial is abridged due to the backlog of cases; meanwhile, individuals who plead guilty are handled quickly. Personal justice may be satisfied for perpetrators that are released quickly, but victims might feel

betrayed at the light sentences offered to those who injured them.

A salient example of the failure of the justice system was the occurrence and aftermath of the Greensboro Massacre, in which 5 members of the Communist Workers Party (CWP) were killed by Nazi and Klan gunmen (Bermanzohn, 265). The Klan had been monitored by the Greensboro police, who did nothing to protect the protesters, and who in fact had been ordered to go to lunch before the shooting began (Bermanzohn, 267). Furthermore, the prosecution was halfhearted, with the prosecutor declaring that the victims were his enemies, and only the gunmen being tried, not the Klan leader or members of the police department (Bermanzohn, 265-67). Many individuals allowed through jury selection showed obvious bias against the victims or in favor of the defendants, including the eventual foreman who declared the Nazis and Klan were patriotic (Bermanzohn, 273). Ultimately, the state murder trial, and subsequent federal trial, both resulted in acquittals (Bermanzohn, 284, 296). A civil case found the Greensboro police and Nazis and Klan liable for \$351,500, all of which was paid by the city government (Bermanzohn, 309-10).

The events of the Greensboro massacre show another failure of the justice system, with police and government allying with militants against radical demonstrators. Personal justice was not achieved for the victims of shootings. Procedural justice was not achieved, as the prosecution allowed a biased jury to be seated. Societal justice is more complicated: on the one hand, fear and hatred of Communists was widespread throughout the nation then, so their persecution might be seen as agreeable to society; on the other, the murder of unarmed individuals, whoever they are, is destabilizing to a civil society. On balance, however, the need to protect a minority from assault exceeds the democracy of such persecution, since the US was founded on the principle of majority rule with minority rights.

These are just a few examples of how the US legal system fails to provide justice, whether personal, procedural, or societal. The reasons for these failures are multitude. Endemic plea bargaining results from society's unwillingness to fully fund the court system, and also from the extensive protection defense lawyers can provide.

The Greensboro massacre's judicial aftermath arose from the partiality and conspiracy ✓ of members of the government - the police and the district attorney - against the Communists. However, these problems also involve a conflict between types of justice, and which should be prioritized. The role of the defense lawyer prioritizes procedural justice and the personal justice of the client, at the expense of societal justice as well as truth. The extensive system of plea bargaining trades more convictions for shorter sentences so that society need not expend additional resources on a larger court system; procedural justice for the innocent and personal justice for victims suffer accordingly.

Any legal system, and any legal situation, involves a conflict of these three types of justice. Because our legal system attempts to fulfill all of them, it is doomed to fail in some cases, but the alternative of emphasizing a certain type of justice would be worse. A totalitarian regime that eschewed procedural justice would be able to enforce laws rapidly, but this would afford the government too much power, to society's detriment. A libertarian government that limited its role by emphasizing procedural justice would be unable to protect society or avenge victims adequately. A democratic government without minority protections would tyrannize its minorities, dividing and harming society. A system that emphasizes personal justice for the victim would deny the procedural and personal justice of the perpetrator. Any of these extremes is undesirable. Our system has many flaws and problems, but these result from trying to avoid extremes of justice, and, on balance, a system that tends towards moderation is preferable to one that aims for extremity.

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Works Cited

- Frank, Jerome. "The "Fight" Theory Versus the "Truth" Theory." Bonsignore, etal. *Before the Law*. Boston: Houghton Mifflin, 2002. 351-55.
- Subin, Harry. "The Criminal Lawyer's "Different Mission": Reflections on the "Right" to Present a False Case." Bonsignore, etal. *Before the Law*. Boston: Houghton Mifflin, 2002. 356-60.
- Mills, James. "I Have Nothing to Do with Justice." Bonsignore, etal. *Before the Law*. Boston: Houghton Mifflin, 2002. 361-73.
- Bermanzohn, Sally. *Through Survivors' Eyes*. Nashville: Vanderbilt University Press, 2003. 265-310.

Notes

1. I formulated these three conceptions of justice as a vehicle to analyze our legal system, working from my personal understanding rather than another's work. To the best of my knowledge, no other writers have articulated these three types. Some other enumerations of the types of justice that I have found online after writing this essay include: distributive justice, procedural justice, and interactional justice; and distributive justice, procedural justice, retributive justice, and restorative justice. These conceptions differ from mine, being more exact and specific, although they coincidentally share the notion and wording of procedural justice. This coincidence is attributable to the importance our culture assigns to fairness in the legal system's implementation, and the aptness of the word 'procedural' to describe this value. My model differentiates between a philosophy, procedural justice, and perspectives - societal and personal justice - while the other models focus on philosophies. The other models of the types of justice strike me as superior to my own, so if I had known of them before I began this paper rather than after I had completed it, I would have adopted them.

For more information on these other conceptions of types of justice, the following sources are listed:

- Fraedrich, John. "Business Ethics Library." 2004.
<http://www.businessreality.org/doclib/EthicsLibrary.html>
- Michelle, Maiese. "Types of Justice." 2003.
http://www.beyondintractability.org/m/types_of_justice.jsp