

What is Justice?

By Marta-Ann Schnabel

In the ancient world, the concept of “justice” described the natural order of things rather than a legal, moral or societal imperative. The Roman incarnation of *iustitia*, which forms the derivation of the modern word “justice,” over time grew to mean righteousness and equity within judicial systems. *Iustitia* was personified by the blindfolded young goddess in flowing robes bearing a sword and balancing scales. “Lady Justice” has survived to the modern age and still adorns courthouses, law firm letterheads and far too many websites.

Liberte, Egalite, Fraternite remains the motto of the French, just as Patrick Henry’s “Give me liberty or give me death!” is still taught in American classrooms. The connection between freedom and justice in the history and culture of Western Democracies is a strong one. In 1788, James Madison wrote, in *The Federalist Papers, No. 51*, that “it is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of society against the injustice of another part.” He went on to describe the purpose (“end”) of government and society:

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.

In short, the Founders of our nation so believed in justice that they developed

our form of government to ensure it and built our society with it as the premise.

Fast forward 200 years, and our nation continues the struggle to understand and preserve the parameters of justice and the rights of our citizens to access it. The balance of the rule of law against modern populist sentiment is uneasy at best, perhaps even in a fashion that would be recognizable to James Madison. It is that struggle that gives purpose to what we, as lawyers, do.

Lawrence M. Friedman, the renowned Stanford Law professor and legal historian, has eloquently acknowledged the struggle:

Improving access to justice can be, in short, a procedural or an institutional issue; and, at the same time, a substantive issue. It is also very much a matter of economics. Justice can be expensive. If justice is too expensive, it has to be subsidized. . . . [T]he ideal system of justice would be cheap and convenient, open to the claims of the underdogs, and would give participants, within reason, what they want — provided what they want is what society agrees they ought to have. *Cheapness and convenience, while obviously important, are hollow and meaningless without a working system of relevant rights.*

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In the history of legal systems,

cheap and convenient courts have not been rare. In fact, it is the modern, formal, slow and expensive systems that are exceptional. Tribal justice is quick and cheap.¹

Lawyers are the “gatekeepers” of the justice system. In that role, as is noted in the preamble to the American Bar Association Model Rules of Professional Conduct, we recognize that “a lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen *having a special responsibility for the quality of justice.*”² In Louisiana, that “special responsibility” translates into a commitment to civil legal justice even for the poor or those of limited or modest means. A large cross section of lawyers and the judiciary devote countless hours of their time supporting these sorts of civil legal services.

Alan G. Brackett, a member of Mouldoux, Bland, Legrand & Brackett, L.L.C., in New Orleans, is a former member of the Louisiana Bar Foundation board of directors and a newly elected member of the board of the Louisiana Civil Justice Center. In describing what he views as his obligation to participate in efforts which support and grow civil legal access programs for those of limited means, he observes:

It’s a sad truth that those who can afford competent counsel can make the legal system work for their benefit (or, at the very least,

can protect themselves within it), but people who cannot afford counsel are at the mercy of that same system and usually get lost in a labyrinth they rarely escape from unscathed. If this is truly a “noble profession” we’re in, we need to be committed to making it work for those who cannot afford us on the same footing as those who can.

Louisiana State Bar Association (LSBA) President Darrel J. Papillion of Baton Rouge sees the Access to Justice Commission as evidence of the profession’s commitment to justice:

One of the great promises of life in the United States is the concept of Equal Justice Under Law. It is emblazoned on buildings and monuments, but it is meaningless if our citizens cannot have fair and adequate access to our courtrooms and the full protection of our legal system. Justice is not justice if it is not available to all, and this is why the work of the LSBA Access to Justice Commission is so critically important to our citizens.

Similarly, in rallying the members of Louisiana’s civil justice community at its conference in 2014, Judge C. Wendell Manning of the 4th Judicial District Court in Monroe, then also the president of the Louisiana Bar Foundation, quoted Chief Justice Warren Burger in reminding the pro bono, legal aid and public interest lawyers present that “concepts of justice have hands and feet” and that “you are the hands and feet in this critical pursuit of access to justice for all. Let us not grow weary in this most important task. Let us join together to meet the civil legal aid needs of our fellow citizens.”

Current Louisiana Bar Foundation President E. Jane Sherman practices with Phelps Dunbar, L.L.P., in Baton Rouge and speaks of her long-term commitment to access to justice as an “opportunity and call within our profession to strengthen our society. . . . We are judged by how we treat the weakest and the most vulnerable.”

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson speaks eloquently of her commitment to justice,

which underpins the work of the Supreme Court and her advocacy for pro bono and legal aid:

Justice is about fairness and how we treat others. The Golden Rule, “treat others as you would want to be treated,” cannot properly be implemented into the justice system without eliminating the legal barriers of race, ethnicity, national origin, religion, gender, age, sexual orientation and disability. Justice can be defined as simply treating everyone fairly and equally, despite differences in backgrounds, experiences, perspectives, talents and interests. JUSTICE FOR ALL is always foremost in my mind, whether I am acting as Chief Justice of the Louisiana Supreme Court or just as Bernette Joshua Johnson.

Judge W. Ross Foote, who served on the 9th Judicial District Court in Rapides Parish from 1991 until 2004 and currently sits *ad hoc* on occasion on the Shreveport City Court, observes that “if public confidence in a judicial system is necessary for democracy, then the City Court judges are on the front line.” With that in mind, Judge Foote believes that “justice occurs when, regardless of the outcome, the parties, staff and the attending public leave knowing the hearing was fair and the law was properly applied. A right ruling without a feeling of fairness fosters no confidence in a ‘justice system.’ To build trust, the public must see a system that respects the individual.”

Former LSBA President Wayne J. Lee of New Orleans said, “Justice is difficult to explain in one or two sentences because justice or a denial of justice can arise in many contexts. In general, it means that access to the judicial processes is available to all regardless of race, ethnicity, financial status, gender, age, religious beliefs, sexual orientation or physical limitations. It also includes the concept that the rules of law, including the rules that allow one to challenge and seek to change unfair, unjust or what one perceives as ‘bad’ laws, are applied and administered fairly and in a comparable manner for all persons.”

LSBA President-Elect Dona Kay Renegar of Lafayette agrees that justice is a

cornerstone for our system of government, but worries about the Louisiana resources dedicated to it. “Access of all citizens, regardless of their economic means, to our civil judicial system is a critical issue facing our state. Pro bono programs, law school clinics and the Legal Service Corporation can only provide a portion of the time needed to fully address the civil legal needs of our citizens.” Moreover, she notes that the criminal justice system in Louisiana “falls woefully short in meeting its constitutional mandate. Funding sources are largely dependent on fines and court costs are often disproportionately borne by our citizens with little means of paying. Increasing court costs and fines is the ‘path of least resistance’ to increasing funding for the system, but it is a zero sum gain for justice. We, as lawyers, must lead the movement to address this problem and to craft a system that works for our modern society.”

Aristotle is credited with saying that “at his best, man is the noblest of all animals; separated from law and justice, he is the worst.” From this likely derives the view that ours is a noble profession. Today lawyers follow the traditions begun in ancient Greece and Rome and resurrected by our Founders as the cornerstone of our society. Justice may not always be achieved, but it is the “end” or purpose of our toil.

FOOTNOTES

1. *Fordham Law Journal*, Volume 37, Issue 1, 2009, p. 4, “Access to Justice: Some Historical Comments” by Lawrence M. Friedman.
2. ABA Model Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities, Section 1.

Marta-Ann Schnabel, a shareholder in the New Orleans law firm of O’Byron & Schnabel, P.L.C., served as the first woman president of the Louisiana State Bar Association (LSBA) in 2006-07. She also served as the LSBA secretary and Louisiana Bar Journal editor from 2001-03. She co-chairs the Louisiana Access to Justice Commission and heads the board of the nonprofit Louisiana Civil Justice Center. She has served in the American Bar Association’s House of Delegates and as a member of the ABA Standing Committee on Bar Activities and Services. (mas@obryonlaw.com; Ste. 1950, 1010 Common St., New Orleans, LA 70112)

