GlobalResearch
Center for Research on Globalization

"Legalized Injustice": The US Judicial System "Legalizes" Political Corruption and Financial Fraud

By John Kozy
Global Research, April 16, 2013
Region: USA
Theme: Law and Justice

The problems that afflict America, and perhaps all of Western civilization, are more profound than the very great and obvious evil in the hearts of people. Bankers revel in the dishonesty of greed, but do bankers make banking dishonest or does the dishonesty of banking defile bankers? Does the corruption of politicians sully the political system or does a befouled political system force politicians to be corrupt? More importantly, do iniquitous judges make the law unjust or does an insidious legal system deprave judges?

The American colonists were principally Northern Europeans, and in the Northern European nations, those that became Protestant during the Reformation, sin is always individual. So in those nations, if the legal system is unjust, it is thought that the judges are bad; reforming the system requires that they be replaced. But if the system forces the judges to be bad, replacing them won't be an effective reform. The replacing judges will become just as base as those replaced.

Justice is a word often heard but rarely defined precisely. The families of victims often want "justice" but mean, I suspect, revenge. A trial is just if it conforms to the rules laid down to insure fairness, but everyone knows that justice is a rare result of actions taken in American courts. The innocent are routinely found guilty and the injured are rarely adequately compensated. The wealthy are treated differently than the poor, whites are treated differently than blacks and people of other races, businesses are treated differently than consumers or injured people. In America, this most fundamental civilizing institution fails over and over again to produce civilized results. How can that be? When did it begin? How extensive is the failure?

Philosophical and even common sense definitions of justice are rather simple: "the set and constant purpose which gives to every man his due" (Justinian I). The definition is simple; determining one's due is not. It can be anything from an eye for an eye to forgiveness. But when what one is due has been decided, not giving it is clearly unjust. Justice cannot be dispensed if a person's due is denied. By this standard alone, American jurisprudence and its legal system are not only unjust, they promote and institutionalize injustice.

Lets look at the Supreme Court in 1803 when the USA was an adolescent nation, merely 15 years old.

As I wrote in a previous piece, The Court's willingness to deny plaintiffs justice was demonstrated in Marbury *vs* Madison in which the Court held that Marbury was entitled to his commission as a Justice of the Peace in the District of Columbia but was refused it on the basis of a legalistic claim that the Court lacked jurisdiction even though the Court had issued such writs of mandamus previously. No doubt, Justice Marshall wrote this opinion to keep

the Court out of a rancorous political dispute between Republicans and Federalists going on at the time, but not only does the Constitution nowhere instruct the Court to act in that way, it clearly states that "We the People of the United States, in Order to . . . establish Justice . . . do ordain and establish this Constitution for the United States of America." The date of the Court's opinion is *February 24, 1803.*

Marbury *vs* Madison is a seminal opinion; it established precedents that have continued to be exercised to this day, and the Court's refusal to mete out justice is one of them. For two hundred years, the Supreme Court has been an unconstitutional institution if judged by what the Constitution says.

So now, on March 27, 2013, the Supreme Court rejected a proposed class-action antitrust lawsuit against Comcast Corporation in which more than two million current and former subscribers sought to prove that the company had overcharged them after unfairly eliminating competition. The rejection was not based on the merits of the case but on a "technicality," which held that the proposed class of Comcast subscribers failed to meet formal legal guidelines for how to certify that evidence of wrongdoing was common to the group. Did it matter to the Court that more that two million people were dealt with unfairly by Comcast? Not in the least! Justice for more than two million people is not the Court's concern. Marbury in 1803 and more than two million Comcast subscribers in 2013. Always the same! The Justices of the Court are not concerned with justice. The Court has its procedures that trump giving every man his due.

Not giving everyman his due is a common occurrence in America. Some federal programs labeled "entitlements" are under attack. Republicans want them eliminated or at least reduced. But 'entitlement' means having a right to something; something to which a person has a right is an entitlement. No entitlement can be justly denied. But that simple linguistic fact seems to be lost on the people who comprise the American legal system.

The courts have also allowed a plethora of unjust business practices to flourish by merely doing nothing to stop them. Although they are manifestly unjust, they are so common that hardly anyone considers them objectionable. Take, for instance, the common claim of businesses that honest customers pay more than they would if shoplifting didn't occur. The implication is that prices are higher than required in order to compensate vendors for losses incurred by theft. But if that's what's going on, it's entirely unjust; it makes the innocent, honest customers, pay for the actions of criminals. Penalizing the innocent for the actions of the guilty is never just, never has been, never will be. Yet it is condoned in American jurisprudence.

Another similar but not identical legalized injustice displays how legalized injustice affects government as a whole.

Firms can legally avoid paying taxes on money made in America by shifting profits offshore to countries with minimal or no taxes. This "Tax dodging is not a victimless offense," says U.S. Public Interest Research Group analyst Dan Smith. "When companies use accounting gimmicks to move their profits to tax haven shell companies, the rest of us have to pick up the tab." Again the wrong group is legally required to pay the bill for the loss the government incurs from the legalization of this unjust practice.

To understand how all this came about requires a little history. American jurisprudence did

not come into being with the ratification of the Constitution on June 21, 1788. American jurisprudence landed on the shores of North America with the Pilgrims on November 21, 1620. They brought the law with them; it was English Common Law.

In the twelfth century, judges bought their jobs from the king and in turn extorted bribes from litigants. Common law judges never sought to mete out justice, but their decisions did constitute a body of law that became "common," that is, that became commonly and uniformly practiced. William Blackstone, an English legal scholar known for his legal commentaries, described the Common Law as "the general customary law of the realm as interpreted by the royal judges."

This common law was adopted as the basis of the legal systems in the colonial constitutions and was the only law in America between the founding of the colonies and the revolution, so it naturally became part of American law when the nation was founded. But that turned the Constitution into a contradictory document.

The Constitution makes the Congress the legislating institution of the nation. But common law judges legislate from the bench. So when Marshall in Marbury assumed that it was the function of judges to say what the law (including the Constitution) is, America's purity as a representative democracy was sullied. Conflicts could now arise between what the people want as understood by their representatives and what the judiciary wants. These conflicts have created and exacerbated social conflicts in America ever since. The courts became representatives of America's merchant class and pitted that class against the common people. As the representatives of merchants, the courts have rigged the system so that the protection of property became more important than the welfare of people. No common man can ever receive his due in such a system. The merchant is always protected at the expense of the consumer. If the merchant experiences losses, those losses will always be transferred to the merchant's clients. The system reeks from the basic injustice that came about when English Common Law was absorbed without mention into American law. The Constitution never mentions it, and Article III does not grant the judiciary any legislating authority whatsoever. Yet the courts do legislate.

Judge Richard Posner has said that judges and lawyers have always been a cartel. Academics joined the cartel when law schools were created late in the 18th century. Yale law professor Fred Rodell said the legal trade is "a high class racket." American jurisprudence exists to benefit the purveyors of an economy that too is never mentioned in the Constitution. (Any reader who believes that my description of the judiciary in America is exaggerated needs only to read Justice Lewis Powell's Manifesto.)

In addition, common law actions are always adversarial. Actions consist of two lawyers who represent their clients before a supposedly impartial person or group that attempts to determine the truth by evaluating the evidence presented. A verdict is reached when the most effective adversary is able to convince the judge or jury that his or her perspective on the case is the correct one. For justice to ensue, the skills of counsels on both sides must be fairly equivalent. Of course, in practice, the skills are often vastly different, and cleverness often rules. Neither truth nor justice have an essential place in the action. A trial at law becomes a contest between opposing lawyers whose prize is the body of the accused or plaintiff. Justice in America is nothing but a lawyer's game, and when lawyers predominate in legislatures, the game is extended to legislating. Legislatures become two party contests. In America, it is a contest between Democrats and Republicans, but those names are meaningless place holders. Better names would be For and Against. One party offers and

the other rejects, which means, of course, that little if anything ever gets done. In America, legislatures, especially the Congress, govern by paralasis.

America is a failed state. Americans have not formed a more perfect union, established justice, insured domestic tranquility, provided for the common defense, promoted the general welfare, or secured the blessings of liberty to ourselves and our posterity. Domestically, by every measure, American institutions are effete. Social problems fester for decades without resolution. Social discord abounds. Violence is endemic. Food supplies are often contaminated. Healthcare is inadequate. Public education is in disarray. The physical infrastructure is in tatters. Internationally, American policy consists of merely bribery and threats of violence, and neither has worked effectively for more than half a century. What has brought America to its knees? The answer is English Common Law. It has eliminated justice from society, the kind of justice that people, even children, all understand. A just society requires fairness not favoritism.

As it now stands, America is incorrigible. It cannot be fixed. Nothing but a complete repudiation of all law that favors one group or person over others will suffice. But such a repudiation will leave little that Americans would recognize. If justice is a light to nations, injustice is their darkness.

John Kozy is a retired professor of philosophy and logic who writes on social, political, and economic issues. After serving in the U.S. Army during the Korean War, he spent 20 years as a university professor and another 20 years working as a writer. He has published a textbook in formal logic commercially, in academic journals and a small number of commercial magazines, and has written a number of guest editorials for newspapers. His on-line pieces can be found on http://www.jkozy.com/ and he can be emailed from that site's homepage.

The original source of this article is Global Research
Copyright © John Kozy, Global Research, 2013

Comment on Global Research Articles on our Facebook page

Become a Member of Global Research

Articles by: John Kozy

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca

www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.