



CSU
College of Law Library

Cleveland State Law Review

Volume 6 | Issue 1

Article

1957

Justice Is Not Just a Word

Oscar Hunsicker

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>



Part of the [Law and Society Commons](#)

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

Oscar Hunsicker, Justice Is Not Just a Word, 6 Clev.-Marshall L. Rev. 154 (1957)

This Article is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

Justice Is Not Just a Word

*Judge Oscar Hunsicker**

“THE INHABITANTS OF SAID TERRITORY shall always be entitled to the benefit of judicial proceedings according to the course of the common law.”

This provision of the second Article of Compact of the Northwest Territory established the first outlines of a legal system designed to develop a social order in the future state of Ohio. Like the other states, Ohio was to be ruled by a government of law, not of men. Courts were to be established and controversies to be settled not by brute force but by the sanction of law. Remember, this was at a time when savages roamed the Territory.

Every civilized society, from the earliest dawn of history, has had some men set apart from the other members of the clan, tribe, province, state or nation, to decide controversies and issues of fact according to the best wisdom they possessed. They were (and are) the wise men of their time and age. They were (and are) *the law men*.

Of course, the early courts in which such men served were crude. Their pronouncements were oftentimes harsh. But it was a great step forward from personal vengeance to acknowledgment of a rule of law.

In a land or time where no tribunal exists to settle, for instance, the problems of boundaries between homes, or of the contracts of merchants, or injuries to workmen, or crimes against individuals or property, there can be only anarchy. Some sort of *institution* must, of necessity, be set up to determine these and a multitude of other controversies.

This institution we call a court. It is here that justice is administered according to law—law which, in our system, is declared by the legislative branch of government, enforced by the executive and interpreted and made a living, growing social organism by the courts of our land.

Blackstone many years ago, in his great Commentary on the law said: “A state law is a rule of civil conduct prescribed

* Judge of the Ohio 9th District Court of Appeals; Dean of The Akron Law School; Past President of the League of Ohio Law Schools.

[*Editor's Note:* This address, prepared for delivery at the 1956 Annual Luncheon Meeting of the Alumni Association of Cleveland-Marshall Law School, at which Judge Hunsicker was the principal guest speaker, merits reading by all members of the legal profession.]

by the supreme power in the state, commanding what is right and prohibiting what is wrong." Granted that this definition may be open to some criticism by the philosopher or the language purist, yet it is indeed by a "rule of civil conduct" that the justice of all our actions is determined. If our conduct is proper, no harm should follow. If, however, our conduct brings injury to our fellow men or to the state, then a *court* shall judge the measure of harm or damage or injury that we in turn must undergo.

I spoke above of the law as a living, growing organism. It is slow to change; it likes its old clothes and hesitates about putting on the new, because it knows that too rapid a change will disrupt and disturb the social order, and seriously affect life and property. It did put on new garments fashioned on the pattern of the old, when the world changed from the ox cart to modern powered transportation, and when society changed from an earthbound to an airborne culture.

New pronouncements there are. But they are fashioned on the old framework. Thus we keep pace with a changing civilization, adding here, casting aside outmoded doctrines there. Our law has never stood still, because it is a reflection of the best concept of man's duty to man.

Sir John Salmond, the great English legal writer, said that the chief advantages of justice according to law are:

- "(1) Uniformity and certainty in the administration of justice.
- "(2) Impartiality and protection against improper motives of those administering justice; and
- "(3) Protection against individual errors of judgment."

If we do not accept these fundamental principles of law and courts, we ought to ask ourselves—Shall justice then be the accident of the judge's will, or shall it be the certain way of a *system* of jurisprudence? For my part, I desire the certainty of system.

Bouvier's Law Dictionary says a court is "A body in the government to which the public administration of justice is delegated." This is a far cry from the concepts of our ancestors, who considered it proper to have a trial not in court, but by ordeal and by battle. They left to "divine" chance or accident, or more often to superior strength, the justice of their day. Some there are who still prefer that way.

Perhaps it will be said that I am too optimistic, or perhaps that my concept of practical things is warped by too great a reliance on the perfection of the law. But I disclaim any such belief. No sound judge or lawyer looks upon the law or his profession as perfect. There are ills in every endeavor, in the administration of justice as well as in business or industry or any human efforts. The lawyer and judge know, however, that without a reasonable system of jurisprudence, chaos and not order would be the rule of life.

In the 1780 Constitution of Massachusetts, we find this statement:

“Every subject of the state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any demise; promptly and without delay; conformably to the laws.”

How does the citizen obtain these fundamental rights under the system we have set up to administer justice under the law?—In our courts. Our courts get their authority from the people, through the legislators who give to us—to those who preside in the courts, who practice in the courts, and who rely on the courts—the rules of human conduct. This is the democracy of justice, and the justice of democracy.

Let us never forget that justice is not just a word. It is the soul of our nation and the hope of our civilization.