

Justice and the Law

and ne'er the twain shall meet

Friday July 7, 2017

Presenter: Greg Cudmore

The background of the slide is a solid blue color. In the lower half, there are several faint, concentric circular ripples that resemble water droplets or raindrops, scattered across the bottom of the slide.

➤ <https://youtu.be/sQzYNoLANrg>



Pledges of Allegiance

- "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty
- **and justice for all.**"
- "From this time forward I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I will uphold and obey."
- **Australian Citizenship Pledge**



Whether one is a prince or pauper, justice and the rule of law implies that we are all equal under the law.

Case Study: Alan Bond

- In 2000 Alan Bond was released after serving only 3.5 years - i.e. one day in prison for every \$1 million defrauded from Bell shareholders.
- Days before, a young aboriginal man was sentenced to 12 months jail for stealing \$23 worth of biscuits and cordial. If Bond had been sentenced according to the same formula, he would have had to spend _____ years in jail.
- “If the bankrupt be convicted he shall be set upon the pillory in some public place for the space of two hours, and have one of his ____ cut off” Bankruptcy Act 1623
- Aside: The over-representation of Indigenous people in the justice system costs Australia \$7.9bn a year and those costs are projected to increase to \$19.8bn by 2040

My Thesis

- A legal system should be judged not on the basis of its laws or legal institutions but by the extent it promotes justice for all.

➤ Justice ←————→ Law

The law must always be viewed through the prism of justice. The law must be the servant of justice.



The purpose of all law is justice

~ Franz Rudolf von Weiss ~



LE MAJOR WEISS.

Tout dans ton Livre, Weiss, me paraît réuni ;
J'y trouve le force, l'esprit et la sagesse ;
La bonté, le courage, et la délicatesse ;
Puis-je encore delivrer ton l'Autour pour ami
Paris, chez le Citoyen de Chénier.

there is ~~no~~
law without
~~justice.~~

Law Quotes: There is no law... by greatshirtsquotes

Zazzle



At his best, man is the noblest of all animals; separated from law and justice he is the worst.

quotespedia.info

Aristotel



**THE MORE LAWS,
THE LESS
JUSTICE.**

Marcus Tullius Cicero

PICTUREQUOTES.COM

**“JUSTICE? YOU GET JUSTICE IN THE NEXT
WORLD, IN THIS WORLD YOU HAVE THE LAW.”**

WILLIAM GADDIS

@Lifehack Quotes

Practicing law is not about winning. It's about justice. Simple, naked justice. It's about finding the truth. - Judge Sarah L. Hart.

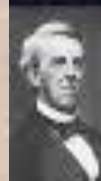
William Bernhardt

meetville.com

**THIS IS A COURT OF
LAW, YOUNG MAN,
NOT A COURT OF
JUSTICE.**

The function of the law is not to provide justice or to preserve freedom. The function of the law is to keep those who hold power, in power.

- Garry Spence



Oliver Wendell Holmes
American physician

1809-1894

QuoteHD.com

“The criminal justice system, like any system designed by human beings, clearly has its flaws.”

Ben Whishaw

“Law and justice are not always the same. When they aren't, destroying the law may be the first step toward changing it.”

Gloria Steinem

“The law isn't justice. It's a very imperfect mechanism. If you press exactly the right buttons and are also lucky, justice may show up in the answer. A mechanism is all the law was ever intended to be.”

Raymond Chandler (1888-1959) *U.S. writer of detective fiction.*

“An unjust law is no law at all.”

Martin Luther

“Justice based purely on laws is about as accurate as a portrait created out of large low-resolution color pixels. If you stand back far enough it looks good. Come any closer and the glaring approximations overtake all semblance of the original. Justice should be viewable under the microscope, not from a telescope. And for that it needs to be based not on law, but on truth.”

Vera Nazarian, The Perpetual Calendar of Inspiration

Peter Davis (US Professor) questions why we have **Law schools** and not **Justice schools**. He argues that justice needs to become **central** to law school curricula and consideration of fairness and justice issues needs to be explicit.


A study of justice should be **essential** rather than an after-thought.

Consequently the legal profession generally tends to be ultra conservative and **resistant to law reform**



What is justice?

Introductory propositions:

1. Justice = everyone, regardless of rank or status, be treated equally
 2. Justice = must take into account individual differences.
- 
- A decorative graphic consisting of several sets of concentric circles in a lighter shade of blue, scattered across the bottom right portion of the slide.

What is justice?

The Runaway Trolley: “To push or not to push!”

Afghanistan Goatherds Dilemma

➤ “It was the stupidest, most southern-fried, lame brained decision I ever made in my life. I must have been out of my mind. I had actually cast a vote which I knew could sign our death warrant. . . . At least, that’s how I look back on those moments now. . . . The deciding vote was mine, and it will haunt me till they rest me in an East Texas grave.”

➤ *Marcus Luttrell, Navy SEAL*



R v Dudley and Stephens (1884)

- Sailors floating in a lifeboat on the open sea
- Exhausted rations of food and water
- All doomed to death
- Pact to kill the ailing cabin boy
- Ate his flesh and drank his blood
- Rescued soon after
- Tried for murder
- Pleaded the defence of necessity
- Crown convinced the court otherwise
- Death sentence
- Later commuted



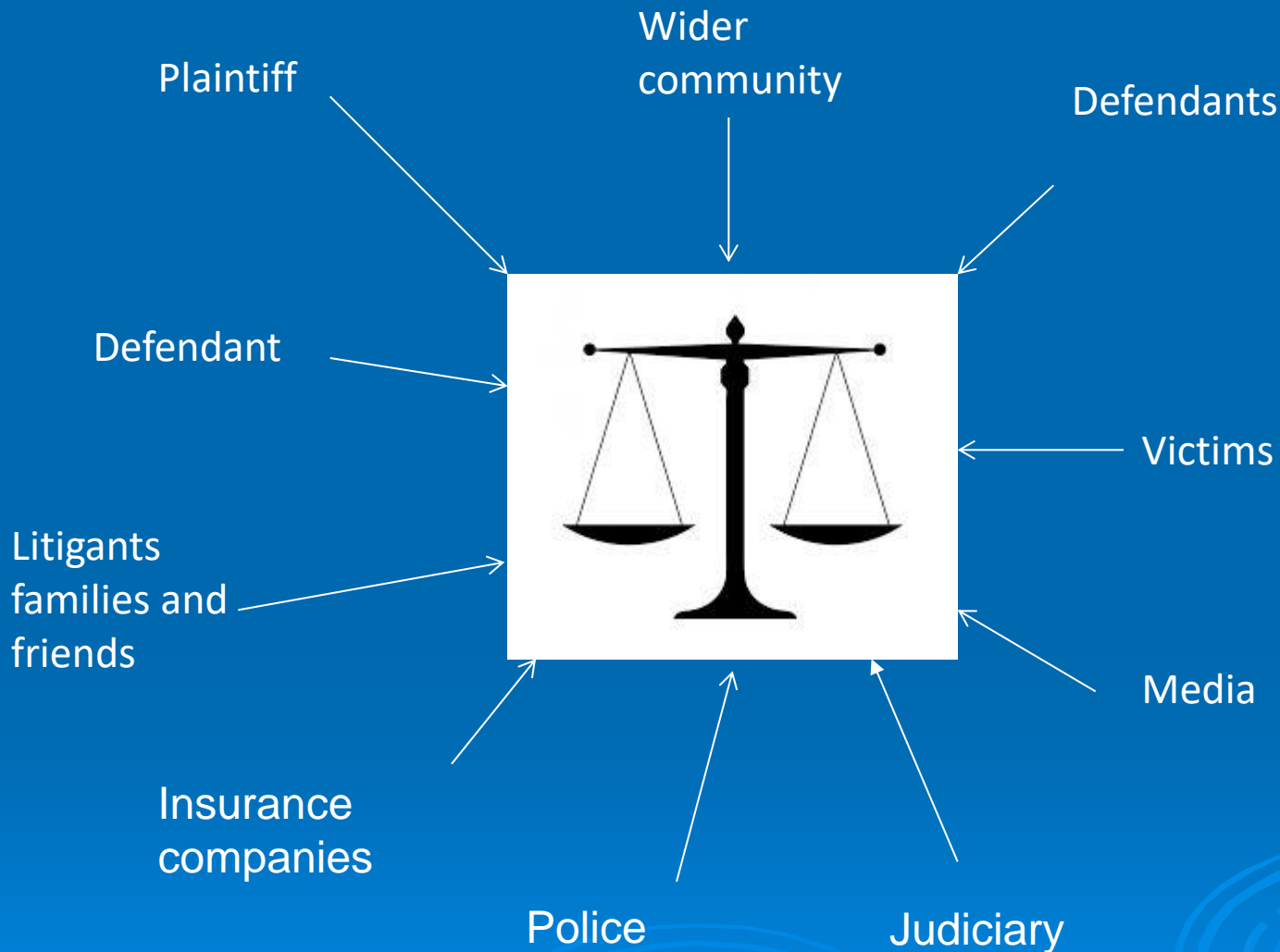
These two ways of thinking about the lifeboat case illustrate two traditional rival approaches to justice.

The first approach says the morality of an action depends solely on the **consequences** it brings about; the right and just outcome is whatever will produce the best state of affairs, all things considered.

The second approach says that consequences are not all we should consider: certain **duties and rights are fundamental** and rise above such calculations?

No consensus as to what constitutes a just outcome!

Justice is in the eyes of the beholder



Can the stakeholders ever be reconciled?

System Restraints

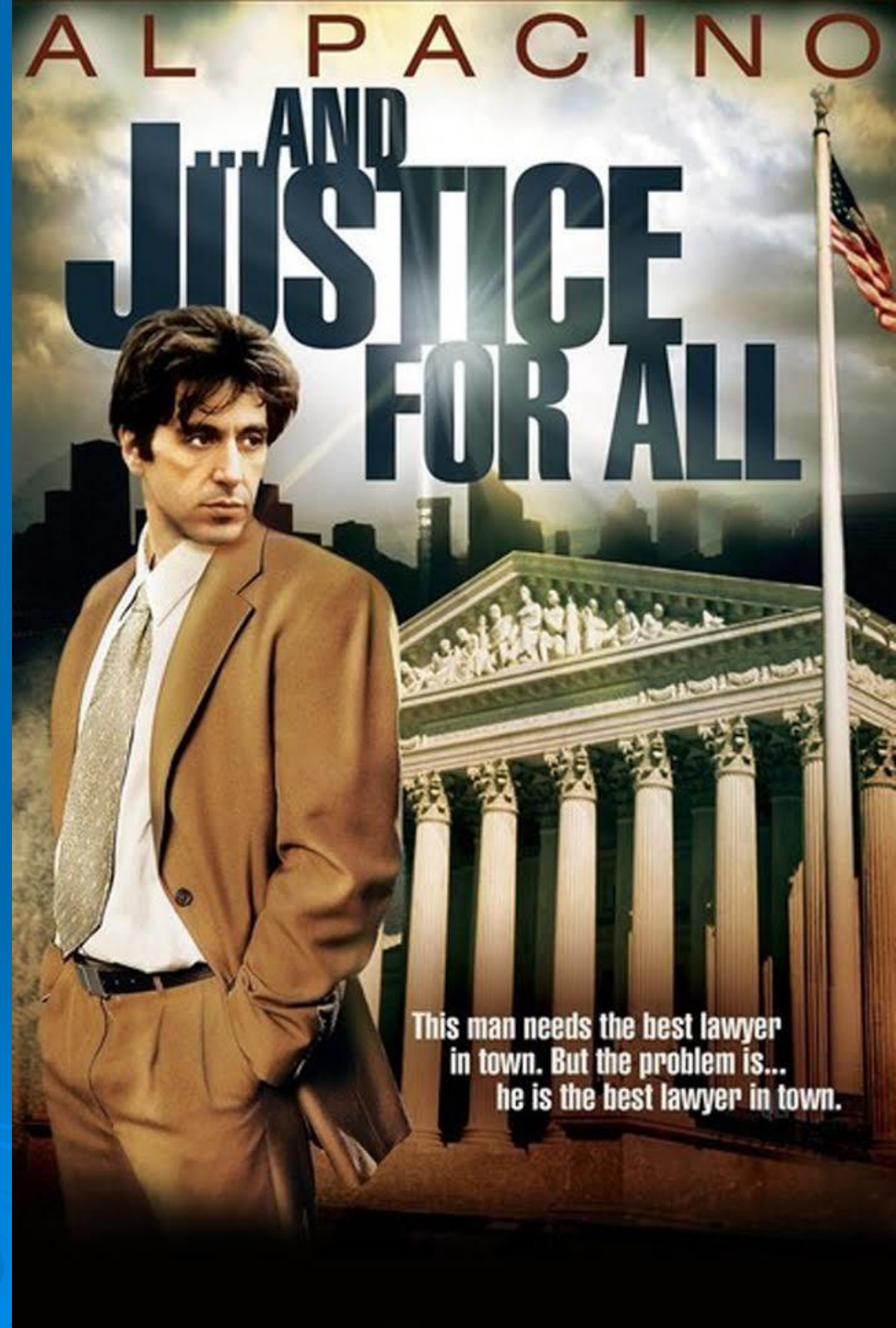
- The Adversary system = our system of trial which is based on the assumption that when two parties vigorously fight their case in court, the truth will be revealed.
- Critics argue instead that truth and justice are sometimes casualties of the adversary system because it assumes:
 - Both parties are equally represented
 - Counsel will not deliberately hide the truth
 - Restrictive rules of evidence
 - Winning will not be more important than justice
 - Juries can return just verdicts in complex cases

System Restraints

- "The adversarial system ... is another **obstacle** to the marriage of lawyers and justice. It is not directed to the ascertainment of **truth**, despite our pretences to the contrary, especially in criminal law. The attainment of justice becomes **incidental** to the immediate battle ... In war, **the first casualty is truth**. It has become a casualty in the battles of law as well - and with it has gone any commitment to the cause of justice ... As a general proposition, in our system a lawyer with a client works hard to **avoid justice** being done or, even worse, the truth being discovered and orders being made accordingly, unless of course justice or the truth coincides (as it does occasionally) with the selfish interests of the client."
- **Nicholas Cowdery QC NSW DPP**

And Justice For All

➤ Film Clip



Financial Constraints

- **The Golden Rule:** he who has the gold makes the rules! Should access to justice be dependent on one's bank balance?
- “There is no guarantee today that the rich will ever be brought to trial ... Bond made a monkey out of the law and brought the legal system into disrepute. He has shown that if your pockets are deep enough you can tie the system in knots forever, or at least until the most tenacious and bloody minded pursuers give up.” Paul Barry *‘Going For Broke’*
- Supreme Court Costs: \$10,000 per day

Financial Constraints

- Affording legal representation gives the litigant 250% better chance of success
- Legal Aid barely covers the legal costs of the most disadvantaged
- Australia's middle class is largely locked out because legal costs are so high
- "In the 20th century it is justice, the secular equivalent of salvation, that is sold for a fee ... How much justice can you afford?" Professor Jerold Auerbach
- Ultimately in the Watson case (honeymoon killer), the price of justice impacted significantly on the capacity of the legal system to provide justice.

➤ The Verdict

<https://youtu.be/qjYP7J3oP9Q>

➤ Our challenge as informed citizens is to strive for justice in our own lives and to strive to build a more just world. Be vigilant and be willing to expose injustice even when it is legally sanctioned eg Statute of Limitations, same-sex marriage, euthanasia

Frank Galvin Has One Last Chance At A Big Case.

The doctors want to settle,
the Church wants to settle,
their lawyers want to settle,
and even his own clients
are desperate to settle.

But Galvin is determined
to defy them all.
He will try the case.

THE VERDICT

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