

Civil Justice Versus The Criminal Justice System

How has the American justice system transformed so amazingly over the last few decades? The answer could be a very complex problem to identify.

Are these changes due to an increasingly larger number of attorneys that have entered the marketplace? Is it because the burden of proof is so undeniably different in the two courts of the law? Or could it be because the capitalistic system that we live in is so dependent upon money that we as a society have to determine blame and assign a dollar amount to it?

Reading fiction books as well as watching network and cable television contributed to my thinking process. The American public including the media has a fixation with murder and death. If you and the vast majority of Americans are like me, then you probably haven't come across murder and shootouts and street killings unless you are on the front line of law enforcement and need to work those crime scenes on a daily basis.

A couple of trials over the last ten to twelve years that garnered nationwide attention also started my mind thinking in overdrive. Both occurred in the Southern California area. They were the trials of O. J. Simpson and Robert Blake.

In each case the aforementioned parties were acquitted of the criminal charges that had been brought against them. Each escaped prosecution from murder on the criminal side of the law. However, on the civil side of the law each was held responsible for actions that contributed to the deaths of the victims. An arbitrary monetary amount was determined in civil court for those two people to pay to the relatives of the victims. When you stop and think about it, how bizarre can that be?

That came about because the burden of proof is so remarkably different in the two courts of law. On the criminal side the burden of proof is so extraordinarily difficult to prove without a shadow of a doubt. Because of that we have lawless individuals walking the streets of our society because they have attorneys that are adept at putting a seed of doubt in the minds of jurors. Only one juror and in some instances two, can hang a jury or force acquittal. On the civil side only a simple majority or in some instance two-thirds of the jurors can determine the monetary damages that the accused should pay.

Let's take a second and examine the two sides of law and put the differences in layman's terms. There has been a crime or action committed. In a criminal court of law the government brings the case against the accused. In a civil court of law the parties are two private individuals. In a criminal case the court must decide if the accused has violated a statute against society as a whole. In a civil case the court must determine if one person has caused harm against another.

To take this example further, the penalty in a criminal court of law is punishment or some sort of rehabilitation. In a civil court of law the remedy is monetary compensation for the loss that was sustained. To accomplish all of this the prosecutor in a criminal court must prove without a reasonable doubt that the accused has committed the crime. In a civil court the plaintiff merely has to prove that the preponderance of evidence supports the claim.

That offers some sort of explanation as to why the outcome in both the O. J. Simpson case and the Robert Blake case caused two glaringly different conclusions. In both cases the criminal prosecutors for the government could not prove without a reasonable doubt that the accused committed the crimes. However, in a civil court the attorneys for the plaintiffs were able to prove through a preponderance of evidence that the defendants were responsible for the deaths of the victims. Hence the court awarded monetary damages to be paid by the defendant to the relatives of the victims.

The crime of murder and the fixation on that crime by our society is one example of how the two courts operate differently. But let's look at a different crime that occurs in our society. Let's look at a case of fraud. This could also be explained as a subtle crime, commonly referred to as white-collar crime. It is so different from a murder or a bank robbery.

In a criminal court a crime such as fraud is also extremely difficult for prosecutors to prove. Plus the crime would have needed to be against the government before any charges were filed anyway. And even though the preponderance of evidence in theory works in a civil court, it is so difficult for a defrauded individual to come up with the resources to prove that a fraudulent action occurred.

Under that scenario the defrauded party, who more than likely was cleaned out financially must come up with the money to afford a legal team. In all likelihood they must also fund a team of private investigators. In the meantime, the person that committed the fraudulent act has the financial gains from the fraudulent act to successfully deter any efforts to collect damages. In that set of circumstances the deck of cards is stacked against the plaintiff that is filing suit against a defendant.

Take it one step further. Pick up an entertaining book titled "Lifetime Loser" by James Ross pertaining to this concept and see how it is applied to the game of golf ... specifically nicknamed the "gentleman's game." It deals with the two separate courts of law and the crime of fraud.

The book might also serve as a notice that there are other crimes in our society that should have as much if not more attention given to them than just the act of murder. Fraud and white-collar crime can ruin lives just as easily. An aspect of the story examines one characters journey through the civil court system and the hurdles that it presents. See how the preponderance of evidence collected by a plaintiff can be difficult to bring forth. In many ways it can be as complex in civil court as the burden of proof is for a prosecutor in criminal court.

About the Author

James Ross, a University of Missouri-Columbia graduate, went to a keyboard and let the words flow through his fingertips. Lifetime Loser is his first novel. Consumed by the writing bug, he is working on more books. Visit [James Ross](#).

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