

# The Relationship between Law and Justice

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**Abstract.** Law and justice have been talked about since ancient times, but even today, there are still cases of law violating justice. Theoretically, law can be divided into natural law and statute law, justice into substantive justice and procedural justice. Then their definitions are proposed. Natural law derives from reason and morality in the human heart, and statute law is regarded as irrelevant to justice. Substantive justice refers to the value standard that people should follow, and procedural justice refers to the fairness of the judgment process. The relationship between the four is also analyzed. The theories of illegality of evil law, procedural natural law, irrelevance of statute law and substantive justice, and procedural justice derived from statute law are mentioned in this paper. This article also points out that an important reason of current law failing to deliver justice is the imbalance between substantive justice and procedural justice. Finally, two solutions are proposed, which are to test the judgment by natural law, and to combine procedural justice with substantive justice.

**Keywords:** Natural Law, Statute Law, Substantive Justice, Procedural Justice.

## 1. Introduction

The relationship between law and justice has always been an enduring issue, which has been discussing by jurists and philosophers from ancient Greece to the modern period. However, despite the countless contributions that has been made on this issue, there is no agreement on the relationship between law and justice. What's more, there seem to be cases where current law fails to deliver justice all over the world.

In China, there was a man called Ting Xu, who took advantage of a malfunctioning automatic teller machine and withdrew 175,000 China Yuan successively. His actions broke the criminal law and he was soon arrested and charged. In the first instance, he was convicted to life imprisonment because of theft, and was convicted to deprivation of political rights for life, confiscation of all personal property, and recovery of illegal gains as well. The punishment imposed on Ting Xu was deemed excessive and unjust, and thus it provoked a public outcry and dissatisfaction with the judicial authorities. The reason that the court of first instance gave is that the crime committed by Ting Xu constituted "the theft of financial institutions and the theft of a particularly large amount". Therefore, there was no problem in sentencing him to life imprisonment. However, the public thought that this sentence did not comply with the principle of adapting punishment to crime in China's criminal procedure law. This showed that the verdict did not follow procedural justice. So people claimed that this case should be reconsidered [1].

In America, there was also a well-known case called O.J.Simpson case. O.J. Simpson was charged with two counts of first-degree murder for killing his ex-wife and restaurant waiter Ron Goldman with a knife. However, because of several major mistakes made by the police, some important evidence became invalid. Finally, Simpson was only sentenced to civil damages because he was found liable for the deaths of two people. Many Americans felt the judgment was unjust, and some jurists believed it had something to do with racism. The court acquitted Simpson because of procedural justice, but most people believed he was guilty substantively. Therefore, people claimed that the verdict did not follow substantive justice [2].

As a consequence, the question of why law deviates from justice is raised. This article will start with the classification and definition of law and justice, and then discuss the relationship between law and justice, and finally explain the reasons of current law failing to deliver justice and the solution.

## 2. The Definition of Law and Justice

The definition of law and justice is abstract, and thus it has triggered the discussion of many philosophers and jurists since ancient times. The theories of law and justice are divided into many schools, which also leads to the classification of law and justice.

### 2.1. The Definition of the Natural Law

Since ancient times, many philosophers and jurists have put forward their own views on the definition of natural law, but they have not reached a unanimous conclusion.

In ancient period, Cicero argued that natural law was a universal moral order, rooted in nature and reason, and that it provided a foundation for human laws. In medieval period, natural law was deeply influenced by Christianity, and was thought to derive from the law of God. In the period of renaissance, the social contract was considered to be the foundation of society, where the theory of natural law developed. In modern period, natural law theory faced challenges from legal positivism, which argued that laws were defined by their sources instead of their moral content. However, natural law continues to influence contemporary debates on human rights, justice, and the morality of laws. Some jurists realized that positivism ideas could not solve the problems rising because of the quick social change, and that the theory of natural law seemed to make society more peaceful [3].

The point that most of today's advocates of natural law agree on is that certain rights and moral values are inherent in human nature and can be identified through reason. Natural law suggests that laws should follow these universal principles of justice and morality, which are considered to be fundamental and unchanging, regardless of human-made laws. Morality is an essential part of law as it is. What's more, this morality should be equal to all people in the world and no one should be treated differently, and thus natural law should protect all people equally. In other words, true legal systems should reflect these internal moral standards to be valid and just, and thus the common good of the society could be promoted through the legal systems [4].

### 2.2. The Definition of the Statute Law

The statute law is also called the written law, which reflects the will of the law-making power prescribed in writing or printing. There is a close relationship between the statute law and legal positivism. The statute law is considered by legal positivists to be strictly observed, regardless of whether the law conforms to the public perception of justice and morality.

Legal positivism was proposed in Europe in the early nineteenth century, which was conceived as a challenge to traditional natural law. Advocates of legal positivism used empirical, scientific, and postmortem approaches to study law, and claim that natural law theory was ambiguous and vague.

There are three theories of legal positivists about statute law. First, law is the command of someone. Second, there is no necessary connection between morality and law, or between law as it is and law as it should be. Third, the analysis or study of the concept and meaning of law is an important aspect, which differs from historical investigation, sociological investigation, and critical evaluation of law in terms of morality, social purpose, function [5].

### 2.3. The Definition of the Substantive Justice

Substantive justice refers to the value standard that people should follow in determining the rights, obligations and responsibilities of substances. It emphasizes the rationality and morality of the result.

In Aristotle's theory, the concept of justice mainly includes three points: (1) it only applies to human interaction; (2) it gives rise to or involves legal duties and rights; (3) it requires that all people be treated equally (or differently) because they are equal (or different) in their relevant characteristics [6].

H.L.A. Hart claimed that justice is a special part of morality, which can be easily expressed as fairness. However, fairness and morality cannot simply be considered synonyms, and thus the

relationship between law and morality cannot be equated with the relationship between law and justice, but it is possible to clarify the law and justice from the perspective of morality [7].

John Finnis argued that justice consists of three elements, other directedness, duties owed to others, and equality. The first element refers to a kind of communal thinking, rather than individual interests. The second element focus on the basic goods and requirements of practical reasonableness in our relation to others. The last element emphasized that proportionate equality is more important than mere quantitative equality [8].

#### **2.4. The Definition of the Procedural Justice**

Procedural justice refers to the fairness of the judgment process (compared to the outcome of the trial) and the justice of the legal process (compared to the substantive conclusion). This comes from a legal adage in common law countries that justice must not only be done, but must be seen to be done.

The emphasis on procedural justice serves three purposes. First, compliance with procedure can facilitate accurate fact-finding, which can promote substantive justice. It is because accurate facts are essential to the search for truth, and without truth there can be no substantive justice. Secondly, procedural law shows respect for parties by enabling them to participate in the trials which are activities that has a profound impact on their future lives [9]. Thirdly, a procedurally just system can balance the costs and benefits of the judicial system. If a judicial system spends too much time and money in pursuit of benefits, it is not good for society as a whole [10].

### **3. The Relationship between Law and Justice**

As mentioned above, there are different types of law and justice, and their definitions are completely different. Therefore, the relationship between law and justice should also be discussed by distinguishing different categories of law and justice.

#### **3.1. The Relationship between Natural Law and Substantive Justice**

Thinkers who support the theory of natural law believe that unjust law is not genuine law, so there is no need for people to respect and obey it.

As Finnis said, "The life of the law its primary reality, is not in the logic of conceptual; adherence or of understanding what other people have thought or said or stipulated of commanded or enacted nor in the experience of cause and effect and patterns of recurrence. Those are parts of its matrix of necessary preconditions. The primary reality of the law is rather in its claim as itself a moral requirement, on my deliberating about what to decide that is what to judge about the options available to me and what to choose and do once I have made my judgment [11]."

Supporters of the natural law theories affirm that law and justice is inseparably and necessarily related, and the existence of the law depends on the goodness of which it consists and which it carries in itself. As a resort, they evaluate legislation in terms of morality and justice. If the law diverges from justice, it does not exist at all, or there is no need for people to qualify it as a law, and thus the unjust law deserves no respect [12].

#### **3.2. The Relationship between Natural Law and Procedural Justice**

Lon L. Fuller, one of the main representatives of the new natural law school after the Second World War, claimed that the morality of law can be divided into internal morality and external morality. The external morality of law refers to the substantive goal of law. The inherent morality of law refers to the methods of formulation, interpretation and application of law, which is a special and expanded procedural problem. Therefore, Fuller called the inherent morality of law the procedural natural law.

Fuller thought that the procedural natural law makes it possible to govern human behavior by rules, which is the prerequisite for a law to become a law. Procedural natural law has nothing to do with

substantive justice, but it need to be considered by legislators if they want to legislate successfully. In other words, Fuller claimed that a law that violates procedural justice is a unjust law and cannot be called as a law [13].

### **3.3. The Relationship between Statute Law and Substantive Justice**

Statute law, according to the legal positivists, there is no necessary connection between statute law and substantive justice.

Jurists who support legal positivism believe that there is a distinction between statute law and other social standards, including propriety, morality, and substantive justice. Statute law and substantive justice may overlap and influence each other, but they are not equivalent. It is not necessary for a statute law to satisfy any of the conditions of substantive justice. Even if a statute law does not comply with substantive justice, it should be obeyed.

John Austin, the father of the study of analytical positivism, claimed that the statute law was laws properly so called, while the natural law was laws improperly so called (which lack for or sanction by the state). This means that Austin completely separated law and morality, without considering the importance and connection of morality in law. Bentham, who was also a representative of legal positivism, derived some moral content in his utilitarian theory, but he still believed that law mainly reflected the will of the sovereign [14].

### **3.4. The Relationship between Statute Law and Procedural Justice**

Unlike substantive justice, procedural justice does not originate from morality of people, but must be clearly defined by statute law. Compliance with the procedure prescribed by the procedural law is an act that conforms to procedural justice, and vice versa.

Procedural justice is the value goal to be realized in the concrete operation of legal procedure. Procedural justice has the attribute of justice of procedural norms of law. First, the formation and implementation process of statute law is regulated according to the provisions of procedural law. Therefore, procedural justice is formed in the formation and implementation process of statute law. Second, the procedure embodies its inherent quality in the operation, and procedural justice is the value goal to be realized through the legal procedure itself rather than the result to be produced. Therefore, procedural justice is the justice standard that should be met in the distribution of rights and obligations in procedural law [15].

## **4. The Reasons of Current Law Failing to Deliver Justice and the Solutions**

In the introduction, two defiant judgments are given as examples to show that current law failing to deliver justice is common throughout the whole world. In order to maintain social stability and judicial justice, it is necessary to explore the reasons and solutions of this situation.

The deviation of current law from justice is caused by many reasons. However, in this article, only the key reason of the imbalance between substantive justice and procedural justice will be mainly analyzed.

### **4.1. The Reasons of Current Law Failing to Deliver Justice**

Before diving into this topic, there are a few definitions that need to be raised. Nowadays, the law adopted in the world is generally statute law rather than natural law. The justice in the title refers to both substantive justice and procedural justice.

One of the main reasons of current law failing to deliver justice is that procedural justice and substantive justice produce imbalance in judicial practice.

If too much emphasis is placed on substantive justice and procedural justice is ignored, on the one hand, the defendant may be given too severe punishment, just like the Ting Xu case. On the other hand, judges may fall into the trap of believing that they will not be held accountable for improper procedures as long as the decision is correct. This discouragements judges from exercising self-

restraint, which may lead to more decisions with procedural problems. What's more, failure to strictly follow procedure leads judges to decide cases based on their own experience. But judges, as human beings, have limited cognitive abilities, and the circumstances of each case are different. So, it easily leads to the emergence of unjust, false and wrong cases, which just deviates from the substantive justice.

If too much emphasis is placed on procedural justice and substantive justice is ignored, on the one hand, the murderer will go unpunished, and the victims' grievances will not be resolved. On the other hand, procedural justice separated from substantive justice is not only difficult to obtain the recognition of the people, but also causes panic among the people. What's more, procedural justice is defined by procedural law, while law is made by the sovereign. Due to the limitations of human cognition, the law is likely to be unable to adapt to the ever-changing reality. As a result, not all cases can be included in the scope of procedural justice [16].

In addition, the reasons why the law failing to deliver justice also include the unclear provisions of the law on specific cases, the abuse or disregard of the legal provisions by judges and so on.

#### **4.2. The Solutions of Current Law Failing to Deliver Justice**

One of the solutions of current law failing to deliver justice is to test judgments by natural law. As mentioned before, the natural law reflect the internal moral standards, which makes it become just. Since natural law is the recognized reason in people's hearts, then a judgment that conforms to natural law will conform to reason, and thus it is just.

Another solution is that to theoretically combine procedural justice and substantive justice, rather than treat them completely separately. Procedural justice can be regarded as the means and ways to realize substantive justice, and substantive justice can be regarded as the ideal result of procedural justice. In this way, the imbalance between procedural justice and substantive justice will be reduced, and so will the cases of law violating justice.

There may be some other solutions, such as the establishment of better laws and legal interpretation system, which requires the efforts of the sovereign.

### **5. Conclusion**

This paper introduces two well-known cases in China and the United States to illustrate the existence of the situation that current law failing to justice. In this paper, law is divided into natural law and positive law, justice is divided into procedural justice and statute justice, and the definition and relationship of the four are also discussed. Finally, this paper analyzes the causes of current law failing to justice and tries to put forward a solution.

At the same time, this paper also has some defects. First, law and justice can be classified in a variety of ways, and definitions change according to the classification methods. This paper only uses one of the more common ones, and the other classification methods and definitions need to be analyzed in the future research. Secondly, this paper elaborates only one or two reasons and solutions for the situation that current law failing to justice. More reasons and solutions are to be studied in future papers.

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