

“Legal Justice” from the Perspective of Comparative Law

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Abstract: Legal justice, as the core value of law and the ultimate pursuit of social governance, exhibits diverse forms in its connotation and realization path due to differences in historical traditions, social structures, and cultural contexts. Comparative law, through normative analysis of the generation logic, institutional expression, and practical effects of the concept of justice in different legal systems, provides a methodological tool for resolving the dilemma of diverse interpretations of the connotation of justice. This paper focuses on the balance between procedural and substantive justice, the path to achieving substantive justice, and the new forms of justice in the digital age. Combining institutional practices and typical cases from China, the United States, Germany, and other countries, it systematically elucidates the common foundations and differentiated expressions of legal justice, revealing the important value of comparative law in promoting the integration of justice concepts and improving the mechanism for achieving justice, and providing a theoretical reference for the construction of a concept of justice within the context of the rule of law with Chinese characteristics.

Keywords: Comparative law, Legal justice, Procedural justice, Substantive justice, Digital justice.

1. Introduction

Justice is the "primary virtue of social institutions," and its degree of realization directly relates to the credibility of the law and the stability of social order. In an era intertwined with globalization and digitalization, legal transplantation and institutional borrowing are becoming increasingly frequent, and the collision and integration of different concepts of justice have become an important characteristic of the development of the rule of law. Comparative law, through "legal observation across borders," breaks down the geographical limitations of legal justice, enabling us to examine the essential attributes and conditions for its realization from a broader perspective.

From a practical perspective, China is at a crucial stage of legal modernization. Issues such as equal rights in the household registration system reform, algorithmic discrimination in the digital economy, and the "too many cases, too few judges" dilemma in judicial practice all require solutions through comparative analysis. Roman law long ago proposed the principle of justice, "giving each person what is rightfully theirs." This concept of "rightfully theirs" remains the core of legal justice in contemporary times, but different countries have significantly different institutional designs for its implementation. Research from a comparative law perspective can avoid blindly copying foreign systems and provide rational support for improving local views on justice, thus possessing significant theoretical and practical value.

2. The pluralistic theoretical core of legal justice

2.1. The binary division between procedural and substantive justice:

Rawls categorizes procedural justice into three types: perfect, imperfect, and pure. Pure procedural justice, which achieves legitimacy through the enforcement of fair rules, has become a core consensus in modern rule of law. [1] Research by German scholar Wolfgang Karl shows that in Germany, procedural justice has evolved from a subordinate position to

substantive law to an independent value with constitutional guarantees. This evolution reflects the trend in civil law systems from prioritizing substantive law to integrating procedural and substantive law. Common law systems, on the other hand, have always emphasized the independence of procedural justice, such as the US "due process of law" which constrains government power, but in contemporary times, they have also begun to focus on the substantive effects of procedural actions.

2.2. The dialectical relationship between formal justice and substantive justice:

Formal justice emphasizes the universal applicability of "equality before the law," while substantive justice focuses on the balance of interests in specific situations, such as preferential protection for vulnerable groups. This tension was already evident in the Roman law concept of "deservedness"—emphasizing both the matching of individual contributions with rewards and acknowledging special protection based on need. Contemporary legal systems all seek a balance between the two, but the choice of this balance point varies depending on the social context.

2.3. A New Form of Justice in the Digital Age:

With the formation of the physical world, the digital world, and the hybrid world of the virtual and real, digital justice has transcended the scope of traditional distributive justice, presenting new dimensions such as data justice, algorithmic justice, and visual justice. This new type of justice not only requires the technological adaptability of rights protection but also necessitates the reconstruction of the rules governing the allocation of rights and obligations in digital space, posing a common challenge to the legal systems of all countries.

3. A Comparative Approach to Procedural Justice: Value Balancing and Institutional Practice

3.1. A comparison of the core elements of procedural justice

According to the research of German scholar Wolfgang Karl, the core elements of procedural justice include four dimensions: the right to participate in the process, judicial neutrality, the obligation to explain the reasons, and the possibility of remedies. The implementation of these systems in various countries exhibits a unity of commonalities and individual characteristics.

1. **Neutrality Guarantee:** Germany establishes judicial neutrality through life tenure for judges, professional immunity, and a strict recusal system, while the Federal Administrative Court's judicial practice further establishes the principle of "independent review of procedural defects." The United States introduces a civilian perspective through the jury system, complementing the professional judgment of judges. China strengthens the personal responsibility of judges through the judicial accountability system, supplemented by mechanisms such as trials in different jurisdictions and professional judge conferences to prevent bias, forming a model that emphasizes both professional protection and accountability.

2. **Right to participate in proceedings:** Article 6 of the European Convention on Human Rights explicitly requires parties to have the right to cross-examine and debate all grounds for judgment, and the European Court of Justice extends this right to the field of algorithmic decision-making. China's Civil Procedure Law's time limit system for presenting evidence takes into account both the right to participate and efficiency, and the Judicial Interpretation of the Civil Procedure Law, revised in 2023, further refines the rules for participating in online litigation, adapting to the procedural needs of the digital age.

3. **The avenues for redress are open:** Germany allows constitutional appeals against procedural defects, and even if the procedural defects do not affect the substantive outcome, serious violations of procedural justice can still be overturned; the United States has established the "harmless error" rule, which does not overturn minor procedural violations that do not affect the impartiality of the judgment, reflecting a balance between efficiency and fairness; China has constructed a dual redress system through retrial procedures and prosecutorial supervision, but in practice, there are problems such as inconsistent standards for initiating retrials and blurred boundaries between procedural and substantive error correction.

3.2. Conflicts of procedural justice in typical cases

1. In a German case, the defendant was acquitted by the court of first instance due to insufficient evidence. Two years later, DNA testing confirmed that he was the perpetrator. The German Federal Supreme Court rejected the prosecution's request for a retrial, explicitly stating that the prohibition of double jeopardy is a constitutional right, and procedural boundaries must not be crossed even if it might lead to the conviction of a criminal. This case highlights the German legal stance that "procedural certainty takes precedence over substantive correctness," the theoretical basis of which lies in

protecting fundamental civil rights by limiting the state's right to prosecute.

2. A typical case of a third-party revocation lawsuit in China (released by the Supreme People's Court in 2022): A company transferred assets through a fraudulent lawsuit to evade debts. Wang, a creditor who did not participate in the lawsuit, filed a third-party revocation lawsuit, and the court revoked the original effective judgment. This case reflects the Chinese procedural design principle of "substantive error correction first"—allowing a breakthrough in the relativity of res judicata to correct substantive injustice. This contrasts with the German model, which only allows for the correction of judicial errors through retrial, reflecting a priority pursuit of "substantive justice."

3. In the 1966 case of *Miranda v. Arizona*, the Supreme Court ruled that police must inform suspects of their "right to remain silent" and "right to legal counsel" before questioning them, even if the procedure might lead to the escape of some offenders. This case established the "Miranda warning" system, elevating procedural justice to the level of a fundamental civil right. This differs from the "truthful confession" policy in Chinese criminal proceedings. However, recent revisions to China's Criminal Procedure Law have gradually strengthened the protection of the right to defense, showing a trend towards convergence.[2]

3.3. The trend of convergence of procedural justice

The development of procedural justice in contemporary times exhibits a "pluralistic yet unified" characteristic: on the one hand, the International Covenant on Civil and Political Rights establishes minimum procedural standards, such as the presumption of innocence, the right to defense, and open trials, which have become international consensus; on the other hand, countries innovate their systems according to their national conditions. China's online litigation rules enhance procedural transparency through "one trial, live streaming throughout," Germany safeguards the right of vulnerable parties to access justice through its legal aid system, and the United States innovates procedural design in class action lawsuits to achieve batch relief of rights.

The EU's practice further demonstrates the possibility of cross-regional procedural integration—by coordinating procedural differences among countries through the EU Rules of Civil Procedure, it has established a minimum standard of procedural uniformity while ensuring procedural diversity, providing a new path for coordinating procedural justice in the context of globalization.

4. Comparative Law Practice of Substantive Justice: Path Selection and Institutional Innovation

4.1. Civil Law: Achieving Justice in Secured Transactions

The differences in the guarantee systems of China, the United States, and Germany vividly illustrate the divergence between formal justice and substantive justice, but their core objectives all point to substantive justice: "fairness and security in transactions."

1. **The U.S. view of substantive security:** Title 9 of the Uniform Commercial Code (UCC) uses the function of the transaction as the standard, defining retention of title, finance

leases, factoring, etc., as security transactions, and achieving equal protection of security interests through a uniform registration system. This model breaks through the formal restrictions of statutory property rights and is more in line with the substantive needs of commercial practice. Its core logic is "function takes precedence over form," meaning that as long as a transaction has a security function, the uniform rules apply.

2.China's compromise model: Article 388 of the Civil Code explicitly includes "contracts with guarantee functions" in the guarantee system. The Supreme People's Court's judicial interpretation further incorporates transfer of title as collateral and security deposits into the regulatory scope, forming a system that "emphasizes both typical and atypical guarantees." Article 414 establishes the rule of concurrent security interests, applying a unified priority standard to different types of guarantees. This maintains the formal framework of statutory property rights while achieving substantive fairness through functionalist interpretation, reflecting a "balance between form and substance."

3.Germany's middle ground: While adhering to the formal security view and regarding retention of title as a transaction of ownership rather than a security interest, the Federal Supreme Court's judicial practice demands substantive fairness through the "liquidation obligation"—when a debtor defaults, the creditor cannot directly acquire ownership of the object but must realize the claim through auction or sale. This "formal recognition + substantive correction" model both maintains the systemic logic of the debt-property dichotomy and avoids the injustice caused by formalism.

4.2. Administrative Field: Regulation of Discretionary Power and Guarantee of Justice

The core of substantive justice in administration lies in regulating discretionary power. The Chinese and German systems present different paths: "procedural regulation" and "principle constraints."

1.The German principle of proportionality, considered the "kingpin" of administrative law, requires that administrative actions must meet the criteria of legitimate purpose, necessary means, and a balance between profit and loss. [3]The Federal Administrative Court has explicitly stated in its rulings that the reopening of terminated procedures by administrative agencies must meet the strict condition of "discretion reduced to zero"—it can only be initiated when there is significant public interest and no other alternative, preventing the abuse of power and disruption of administrative order. This principle-oriented regulatory model provides a substantive standard for judging the exercise of discretion.

2.China's procedural regulations regulate administrative actions in advance through the discretionary benchmark system and hearing procedures outlined in the Administrative Penalty Law. For example, the Chengdu Municipal Urban Management Comprehensive Administrative Law Enforcement Regulations stipulate that citizens have the right to record audio and video of law enforcement processes, and law enforcement personnel cannot refuse. This "procedural transparency + rights supervision" model promotes substantive fairness through process transparency, complementing Germany's "principle constraints + judicial review" model.

3.Comparative Implications: Yang Jianshun points out that China should learn from Germany's "three as much as

possible" concept (broad participation, early intervention, and full expression) to build a dual guarantee mechanism of "procedural participation + substantive review" in areas such as land expropriation. The German practice of "full participation of stakeholders" in administrative procedures demonstrates that procedural participation is not only a formal requirement but also a crucial path to achieving substantive justice.

4.3. Criminal Law: Preferential Protection for Vulnerable Groups

Different legal systems achieve substantive justice through special mechanisms, but their core lies in transcending formal equality and achieving substantive fairness in the sense of "deservedness."

1.Germany's legal aid system: The German Code of Civil Procedure stipulates that in civil disputes such as those involving sales contracts, courts can advance appraisal fees and appoint lawyers for parties without sufficient funds. Even if legal aid eligibility is subsequently revoked, the costs already incurred cannot be passed on to the winning party. The Federal Supreme Court's rulings emphasize that the core value of legal aid lies in "guaranteeing substantive participation opportunities," rather than simply providing financial assistance. This concept has become an important hallmark of substantive justice in Germany.

2.China's juvenile justice system: The Law on the Protection of Minors establishes the principles of "education, persuasion, and rehabilitation," sets up specialized juvenile courts, and seals the criminal records of minors. Typical cases released by the Supreme People's Court in 2023 show that the handling of juvenile delinquency considers not only the harmfulness of the behavior but also the subjective malice and the possibility of correction. This "individual difference consideration" transcends the logic of accountability based on formal equality and is consistent with the Roman law concept of "differential protection based on status."

3.The EU Criminal Legal Aid Directive requires member states to provide free legal counsel to criminal suspects facing financial hardship, with the counsel's involvement no later than the investigation stage. The European Court of Justice further clarified that legal aid is a mandatory right in cases potentially leading to sentences of three years or more imprisonment. This standard has been adopted by most EU member states and has become the minimum standard for substantive justice in the criminal field.

5. Comparative Law Challenges to Digital Justice: Reconstructing Justice in an Emerging Field

5.1. The core conflict of digital justice

Digital technologies have reshaped the landscape of justice, creating new value conflicts that are universal globally, but whose solutions vary geographically.

1.Data Ownership and Information Justice: China's Personal Information Protection Law establishes the concept of "personal information rights," emphasizing individuals' control and defense of their information; the EU's GDPR grants positive rights such as the right to data portability and the right to erasure, constructing a data governance model led by individuals; the United States seeks a balance between information freedom and protection through a combination of

industry self-regulation and state legislation. These three models reflect different value preferences—China emphasizes security and order, the EU emphasizes individual rights, and the US emphasizes markets and innovation.

2. Algorithmic Discrimination and Distributive Justice: Amazon's hiring algorithm in the US was suspended due to systemic discrimination against women, exposing the fairness flaws of the algorithmic black box; multiple lawsuits in China stemming from "big data price discrimination" show that platform algorithms' differential pricing for different consumers violates the principle of fairness. Both countries face the challenge of balancing algorithmic transparency and trade secret protection, but the US relies more on judicial case determinations, while China uses administrative supervision and standard setting for ex-ante regulation.

3. Cross-border data flows and sovereign justice: The EU's "digital frontier" policy constructs data protection barriers through the extraterritorial effect of the GDPR, the US "CLOUD Act" advocates territorial jurisdiction over data control, and China's "20 Measures for Data Protection and Control" establishes a classification and grading system that distinguishes between core data and general data, implementing differentiated cross-border rules. This conflict is essentially a tension between digital sovereignty and global justice, testing the adaptability of national legal systems.

5.2. Comparative Analysis of Institutional Responses

1. Algorithm governance: The EU's Artificial Intelligence Act officially came into effect on August 1, 2024, categorizing AI applications into four levels: unacceptable risk, high risk, transparent risk, and minimum risk. High-risk algorithms are subject to prior assessment and continuous monitoring. [4] China's "Regulations on the Management of Algorithm Recommendations for Internet Information Services" establishes an algorithm registration system, requiring platforms to disclose the basic principles and application scenarios of their algorithms. The US, through judicial review, determines algorithmic discrimination as an infringement; for example, in 2024, a recruitment platform was ordered to pay damages in a class-action lawsuit due to algorithmic discrimination. These three paths respectively embody the governance logic of "pre-regulation," "transparent registration," and "post-judicial review."

2. Digital remedies: The German Federal Administrative Court allows administrative lawsuits against algorithmic decisions, requiring administrative agencies to explain the logic and data basis of the algorithms; China has a multi-layered remedy mechanism of "platform complaints + consumer protection lawsuits + administrative supervision," and the 2024 "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Algorithm Dispute Cases" further clarified the allocation of the burden of proof for algorithmic infringement; the EU's "right to be forgotten" system grants individuals the right to delete digital traces, and the European Court of Justice has extended this right to search engines and social media platforms.

3. Bridging the digital divide: China has implemented the "Digital Village" strategy, achieving full 5G network coverage in administrative villages by the end of 2024, providing basic digital services to rural areas; India has implemented the "Digital Identity Scheme" (Aadhaar), providing digital identities for 1.2 billion people through biometric technology, ensuring the access to financial and

government services for vulnerable groups; and the European Union has provided free digital training for low-skilled groups through the "Digital Skills Passport" project. These practices have provided diverse paradigms for global digital justice.

5.3. The Chinese Path from the Perspective of Comparative Law

China's digital justice development should draw on diverse experiences to construct a distinctive path that prioritizes both security and development: Regarding data ownership, it can refer to Germany's "functional zoning" model to clarify the open nature of public data, the property nature of corporate data, and the personality nature of personal data, forming a categorized ownership system; [5]. Lanzhou University Jin algorithm governance, it should absorb the EU's "risk classification" concept, implementing mandatory assessments for high-risk algorithms in fields such as finance and healthcare, and implementing registration management for general commercial algorithms; and in terms of redress mechanisms, it should learn from the US class action system to establish a collective rights protection mechanism for digital infringements, addressing the challenges of protecting rights in cases of small-scale, dispersed infringements.

At the same time, it is necessary to base ourselves on the local context and integrate the goal of "common prosperity" into the construction of digital justice—ensuring access justice through equal access to digital infrastructure, ensuring procedural justice through algorithmic transparency, and ensuring distributive justice through data sharing, thereby forming a digital justice system with Chinese characteristics.

6. Conclusion

The diverse forms of legal justice are shaped by historical evolution and social needs. Comparative law, through penetrating institutional analysis, reveals their realization logic: the balance between procedural and substantive justice must adapt to local legal culture; the balance between formal and substantive justice must align with the stage of social development; and the construction of digital justice must take into account both technological innovation and rights protection. From the Roman law concept of "each to their own" to contemporary demands for digital justice, the core of justice has always revolved around "the reasonable allocation of rights and the full guarantee of remedies," providing a foundation for dialogue among different legal systems. China's improvement of its socialist legal justice concept requires adhering to a "people-centered" approach, promoting institutional innovation in three aspects—procedural refinement, substantive justice, and digital justice—through comparative learning. Simultaneously, it should actively participate in the formulation of global justice rules, transforming local experiences such as digital rural construction into universal consensus and contributing Chinese wisdom. From a comparative law perspective, there is no universally applicable model for justice; the pursuit of justice is the eternal driving force of legal development. In the era of globalization, only through mutual learning among civilizations and institutional innovation can a higher form of legal justice be achieved, providing a guarantee for social progress.

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