

A Brief Analysis of the Cultural Roots of Substantive Justice and Procedural Justice

Ying Dong*, Hao Lei

Inner Mongolia University of Finance and Economics, Hohhot 010051, Inner Mongolia, China

**Author to whom correspondence should be addressed.*

Copyright: © 2025 Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), permitting distribution and reproduction in any medium, provided the original work is cited.

Abstract: The world economy is developing rapidly nowadays, which has led to increasingly frequent international exchanges. Currently, the number of judicial cases worldwide is gradually increasing, and it is not uncommon to see cases with similar circumstances but significantly different judicial outcomes. This clearly shows that there is still a theoretical debate in the academic circle about how to understand the concept of justice, and the same is true in the practical field. Different cultures in different countries and regions have significant differences in their understanding and practice of “justice”, which affects the focus of each country and region in pursuing justice and leads to considerable differences in judicial practice. Therefore, reaching a consensus on legal concepts is undoubtedly an important measure for resolving international judicial cases. This article first lists the concepts of substantive justice and procedural justice, which represent the different legal emphases of the East and the West. Then it analyzes their differences, and finally explores the cultural roots of substantive justice and procedural justice in history, geography, religion, philosophy, etc. And it finally concludes that the two need to learn from and complement each other in the modern legal system.

Keywords: Substantive justice; Procedural justice; Cultural roots

Online publication: October 29, 2025

1. Introduction

The traditional civil law system represented by China emphasizes “substantive justice”, that is, the judgment is based on whether the result conforms to morality and substantive fairness. While the common law system represented by the UK and the US advocates “procedural justice”, that is, ensuring the fairness of the trial process through strict procedural rules. This article hopes to analyze the cultural roots that led to the emergence of substantive justice in China and procedural justice in the West by comparing the specific differences in legal concepts reflected in Chinese and Western dramas and real cases. The Chinese civilization can be traced back to the Xia Dynasty or even earlier, with a history of more than 5,000 years. The generally recognized Western civilization history starts from ancient Greece and is nearly 3,000 years. In the course of history, both China and the West have formed their own legal systems. After a simple review, the author finds that the legal systems of

China and the West have both been influenced by their respective history, geography, religion, philosophy, etc. It is hoped that through an in-depth understanding between China and the West, different countries and regions can reach a basic consensus on judicial concepts and practices. In the future, through global governance, international disputes can be resolved more easily, and the impact of international disputes on both sides can be minimized as much as possible.

2. Basic theoretical overview

2.1. Substantive justice

The comparison of the two judicial practices only needs to explore the differences between the two terms, namely “substance” and “procedure.” “Substance” is not an obscure word in both Chinese and Western contexts. Simply put, what can be seen and touched is substance. Substantive justice is the justice that everyone can see, and the most direct manifestation in judicial practice is the judgment result.

Substantive justice refers to the judicial subject determining, adjusting, and regulating the rights and obligations of the parties in the judicial practice process according to the good law that reflects the general justice of the substance, so that the judgment result is reasonable and moral. And by achieving individual justice in substance, a good social order is ultimately formed ^[1].

Overall, substantive justice not only pays attention to the legality of the judgment result but also has certain pursuits in terms of rationality. The majority of people believe that the court’s judgment should be recognized by the majority of the people, and the justice result should be obtained as it should be, so that “good people are rewarded and bad people are punished”, and the rights and obligations enjoyed by each person are proportional. The process of achieving this result is relatively secondary ^[2]. That is, it focuses on the substantive fairness of legal decisions and uses whether the result conforms to moral ethics and social justice as the criterion for judgment.

2.2. Procedural justice

“Procedure” is often understood in a general context as a specific process, a way or means to achieve a certain purpose. Procedural justice emphasizes that in judicial practice, the process of obtaining a certain judgment result must be legal, and the minor problems in the process should not be ignored in order to achieve efficient justice.

In his book *The Theory of Justice*, American scholar Rawls systematically described procedural justice. He believed that there is no independent standard for the legitimacy of results, but only an independent standard for the legitimacy of the process that leads to the results, that is, procedural justice. Legal procedures are established to safeguard procedural values such as participation, fairness, and human dignity, which are independent of the judgment results ^[3]. In the common law countries, the prevailing view is that they would rather enforce a harsh law through a fair procedure than enforce a lenient law through an unfair procedure ^[4]. The British legal maxim “Justice must not only be done but must be seen to be done” also confirms the importance of procedural justice in Western legal concepts.

In judicial practice, the specific manifestation of procedural justice is that judicial organs should apply the law in accordance with the prescribed rules and procedures, promote the litigation process, and ensure that the parties’ litigation rights are fully exercised and not improperly infringed upon during this process. Even if the litigation affairs are complex, there are many relevant personnel, and the types of rights are rich, the court must strictly follow the established procedures to conduct trial activities and pay attention to that each step has a basis in

existing legal regulations.

2.3. The concept of culture and its role in law

What exactly is “culture”? There are various opinions on this, and no consensus has been reached. The author draws on the views of several scholars to try to understand the profound connotation of the word “culture.” British scholar Raymond Williams believes that “culture is one of the two or three most complex words in the English language” ^[5]. Famous cultural anthropologist Bronisław Malinowski (also translated as “Malinovsky”) believes that “culture, culture. It is easy to talk about, but it is not easy to define and describe it correctly” ^[6]. The current broad definition of “culture” refers to all human spiritual activities and their products relative to the economy and politics, which shows the richness of its connotation. This is one of the reasons why the author chose only the four cultural sub-keywords of history, geography, religion, and philosophy.

When it comes to the role of culture in law, culture is not an “entity” like the things people can perceive with their senses now. Therefore, its influence on law is subtle. It is most appropriate to use Du Fu’s “good rain” to illustrate its effect — “moistening things silently.” Law is like bamboo shoots that break through the soil only after being nourished by the spring rain of culture.

3. The manifestations of procedural justice and substantive justice in Chinese and Western dramas and reality

3.1. Drama

If justice flashes into the minds of Chinese people, the next image that comes to mind for most people is likely to be Bao Qingtian. Bao Zheng, a famous official of the Northern Song Dynasty, was known for his “keen insight.” He did not adhere to procedures when making judgments and even relied on supernatural beliefs to obtain the truth (such as in “The Case of Chen Shimei”). Although lacking modern evidence rules, because the results met the people’s expectations of “retribution for good and evil”, Bao Zheng is still regarded as the embodiment of justice to this day. The characters based on this prototype are numerous in dramas. The plots of these dramas leave the impression on the public that the lawsuit can be settled without evidence presentation, court debate, presumption of innocence, or reasonable doubt. However, it seems that the “four no’s” are not important. In the minds of the people, as long as justice can be served and the bad guys can be punished, that is enough. Although there may be some fictional elements in films and TV series, people can still see from them that the Chinese have always pursued the goal of punishing evil and promoting good since ancient times.

Looking at the film “The Gua Sha Treatment”, which involves Western law, although it is also a dramatic work, the content it presents is quite different from that in China. The characters, without understanding the traditional Chinese treatment method “Gua Sha”, took the red marks as the result of domestic violence and insisted on protecting the child. After many twists and turns, they only recognized the case after experiencing Gua Sha themselves. The process of complicating a simple situation is not easily understood by the Chinese, and some people even think it is making a fuss over nothing. However, in the eyes of foreign people, it is quite normal and naturally regarded as “due process.”

3.2. Judicial examples

The case of She Xianglin in 1994 is a typical example of substantive justice. She Xianglin was a former security patrolman at the Madian Police Station of Jingshan County Public Security Bureau. A few days after his wife’s

disappearance, a female corpse was found in the local area. The timing was so coincidental that She Xianglin was suspected of killing his wife and was even criminally detained on suspicion of killing his wife. He was sentenced to death twice. But later, due to insufficient evidence, She Xianglin escaped the death penalty. However, he was eventually sentenced to 15 years in prison and deprived of political rights for 5 years by the Jingshan County People's Court for intentional homicide. After being imprisoned for 11 years, She Xianglin's wife suddenly returned to Jingshan on March 28, 2005, and the person who was originally "dead" appeared alive before everyone. On April 13 of the same year, the case of She Xianglin's "murder of his wife" was retried. And She Xianglin, who was originally convicted of the crime, was finally cleared. At that time, this case was jokingly called "the return of the dead." In the 1980s, China's "severe and swift" approach to punishing crimes did indeed deter criminal activities in the short term, but it also led to some wrongful convictions due to simplified procedures, such as the Hu Gejie case and the Nie Shubin case.

In contrast, the famous Simpson case in the West also occurred in 1994 and lasted for 474 days. On October 3, 1995, a jury composed mostly of blacks analyzed the testimonies of 113 witnesses and ultimately declared Simpson not guilty. How could such an apparently obvious case take so long to be tried? And after a series of rigorous procedures, was the result not guilty? One important reason is that several major mistakes by the police made the originally strong evidence invalid, and these pieces of evidence were legally excluded. Simpson was acquitted of criminal charges but was found civilly liable for the deaths of the two people. Due to the flaws in the chain of evidence, Simpson was acquitted, although the public generally believed him guilty. The principle of procedural justice led to the conclusion of not guilty. This case has become the most classic case in the United States and even the world to date that embodies the principle of "innocence until proven guilty" and the exclusion of illegal evidence. Similarly, the "Miranda v. Arizona" case in the United States established the "right to remain silent" rule, which is also a powerful force in procedural justice. It ensures the procedural rights of the defendant in the form of clear regulations and, to a certain extent, prevents the judicial system from becoming a tool of "tyranny of the majority."

4. Analysis of the cultural roots of substantive justice and procedural justice

4.1. Historical factors

In ancient China, the main body governing the country for a long time was the people, with the feudal monarch being the most representative. The concept of autocratic monarchy and centralization was passed down from generation to generation among the emperors. If there were people rebelling among the common people, it would surely pose a threat to the emperor's rule. For emperors, the top priority was to minimize or eliminate the social impact of incidents rather than to clarify the ins and outs of the rebellion. During the Western Zhou Dynasty, the idea of "matching virtue with heaven" (from *Shangshu Kanggao*) bound the authority of the monarch to moral cultivation, and law was regarded as an extension of "ritual." Confucius, a great Confucian scholar, further proposed that "proper norms should be observed to uphold peace", advocating maintaining order through moral education rather than coercive measures, which could also be said to rely as little as possible on law. In the Han Dynasty, Confucian scholars judged cases based on Confucian classics, focusing on whether the motives of the crime conformed to "benevolence and righteousness" rather than strict legal provisions. Although the Legalists advocated "governing the country by law" and made some attempts, such as Shang Yang's Reforms, the essence still served the autocratic monarchy, and the instrumentalization of law was prominent. Coupled with the long-

term influence of the patriarchal system and Confucian ethics, behaviors like “punishing one’s own kin for the greater good” were praised, and such social trends implicitly strengthened substantive justice while neglecting the significance of procedure.

The main governing body in foreign countries is the law, or they have been exposed to the rule of law earlier. In 1215, the Magna Carta of England established the principle of “the king is under the law”, laying a solid foundation for procedural justice. During the reign of Henry II, England systematized local customary law through the establishment of circuit courts and the jury system, forming the “stare decisis” tradition that continues to this day. The Enlightenment further strengthened individualism, advocating the advancement of the judicial process under the premise of safeguarding individual rights, undoubtedly placing more emphasis on procedural justice. In subsequent social governance, countries in the Anglo-American legal system are adept at using more rational tools to gradually reason through cases, and procedural justice has been gradually strengthened.

4.2. Geographical factors

China has a vast territory, mostly plains, and a suitable climate. Coupled with the influence of land dependency, most people are less concerned about events outside their own “three mu and a paddy field.” Additionally, due to geographical and family community consciousness, even major events can be basically determined within a certain range through relatively simple investigations, without the need to resort to law. Just as Mr. Fei Xiaotong described in *From the Soil*, the rural atmosphere in China leads to most conflicts being resolved through clan mediation rather than involving third parties outside the family.

In contrast, most Western countries have limited land, and some are close to the ocean, with limited access to production materials. For the survival and development of individuals and the country, they had to “leave” the continent and head to the ocean. As a result, the interpersonal relationships involved are more complex than in China. When encountering an incident, Western countries cannot determine the individuals involved in a short time, and even the scope cannot be narrowed down. The marine commercial civilization has fostered individual independence. For example, the *Twelve Tables* of ancient Rome already stipulated individual property rights, and modern law continues the “individualism” approach, such as the French *Civil Code*, which allows couples to agree on separate property systems. With more regulations, naturally, there are more disputes. Without strict legal procedures, the consequences for Western countries today would be unimaginable.

4.3. Religious factors

In China, the proportion of religious components is relatively small, and many doctrines mention the people. However, at that time, “the people” was more of a political concept, and disputes among the common people did not receive much attention from the rulers. They themselves also ignored the process of disputes; as long as the result was reasonable, the process seemed dispensable. Even if emperors and ministers intervened to mediate, it was only to maintain and consolidate their rule, without considering the respect and protection of individual rights in the process.

In Western countries, most members have religious beliefs. For example, the Christian concept of “all men are equal before God” has significantly enhanced people’s awareness of protecting their own rights. In such a religious environment, both organizations and individuals are well aware of the boundaries of their rights, and thus are more cautious when exercising them to avoid unnecessary trouble for themselves. Furthermore, the secular rational tradition in Roman law and the Protestant ethic have also subtly influenced the development of the capitalist rule

of law. Weber believed that formal rationalization is a prominent feature of Western society, especially in the legal field. A formally rationalized legal system has clear rules and procedures that are universally applicable and do not change due to the emotions or will of any individual. This legal system emphasizes logical consistency, efficiency, and predictability, enabling people to anticipate the consequences of their actions and plan accordingly.

4.4. Philosophical factors

China has been influenced by the Confucian concept of “family and state as one” for a long time, with emperors particularly emphasizing the foundation of social order. The Daoist concept of “harmony” supports mediation systems, where both parties reach an agreement and reconciliation either through their own efforts or with the help of a third party. This approach does not focus on sorting out the specific causes, processes, and results of events, nor does it pay attention to the concept of procedural justice.

In the West, the contract theory of Locke and Rousseau holds that law is the product of citizens’ transfer of rights, and the fairness of procedures is the prerequisite for the legitimacy of a regime. Kant’s theory of “human dignity” promotes the supremacy of individual rights. For instance, it cannot be recognized that the state infringes upon individual rights when exercising public power. From the above-mentioned theoretical propositions, it is not difficult to see that procedural justice in Western countries is deeply influenced by philosophical factors.

5. Conclusion

Emphasizing substantive justice can achieve the fairness and justice that the general public believes in relatively short time, and meet the moral demands of the majority of society members. However, subjective judgment has a significant influence on the trial process, and individual rights may not be given sufficient attention. Emphasizing procedural justice ensures that the judiciary remains as neutral as possible, prevents the abuse of public power, and keeps power within the cage of institutions. However, it may lead to an unjust outcome due to the prolonged trial process, tolerate crimes, and even help some people escape punishment. But substantive justice and procedural justice are not opposing sides; rather, they are like the two wheels of a car or the two wings of a bird. The differences in the focus of Chinese and Western laws ultimately stem from the divergence of cultural paths.

With the increasing frequency of cultural exchanges between China and the West, their legal concepts have influenced each other. The concept of “emphasizing substantive justice while neglecting procedural justice” in China has gradually weakened. In 2012, the *Criminal Procedure Law of the People’s Republic of China* was revised to introduce the exclusionary rule for illegally obtained evidence and restrict torture for confessions, demonstrating an increased emphasis on procedural justice. However, there may still be cultural resistance to the full development of procedural justice in China. Countries that prioritize procedural justice are also gradually considering substantive justice. For instance, to avoid excessive sentencing disparities, the United States has established sentencing guidelines, and the federal courts have restricted judges’ discretionary power through quantitative standards. The United Kingdom has a “public interest immunity” system, allowing the government to apply for non-disclosure of sensitive evidence in counter-terrorism cases to balance procedural justice and national security.

However, achieving a certain balance between the two still requires continuous efforts. Although the differences between substantive justice and procedural justice originate from cultural genes, in the era of globalization, a single model cannot meet the complex social demands. Substantive justice and procedural

justice should complement each other, and to achieve this goal, it is necessary to review traditions with historical rationality, incorporate substantive considerations into the procedural framework, and improve the procedure under the substantive goals. Through innovation, a cross-cultural legal dialogue that “seeks common ground while reserving differences” should be realized. China and foreign countries should learn from each other and jointly strive for a better legal blueprint. The legal systems of the East and the West should draw on each other, such as paying attention to the design of evidence rules and the consideration of judges’ discretionary power, to jointly promote the formation of a new judicial paradigm that takes substantive justice as the core and procedural justice as the means in the world.

Disclosure statement

The authors declare no conflict of interest.

References

- [1] Osakwe C, 1982, The Bill of Rights for the Criminal Defendant in American Law, in *Human Rights in Criminal Procedure*. Martinus Nijhoff Publishers, Leiden, 260.
- [2] Rawls J, 2001, *A Theory of Justice*, translated by He Huaihong et al. Social Sciences Academic Press, Beijing.
- [3] Williams R, 2006, *Culture Theory and Popular Culture: An Introduction*, translated by Yang Zhushan et al. Nanjing University Press, Nanjing, 1.
- [4] Malinowski B, 2002, *Culture*, translated by Fei Xiaotong, Huaxia Publishing House, Beijing, 2.
- [5] Zhang ZT, 2022, Towards Great Judgments: How to Achieve “Expressive Justice” Based on Procedural Justice and Substantive Justice in Judicial Documents — An Analysis of the Style of Judicial Documents. Supreme People’s Court. Research on the Service of the People’s Courts to the Construction of the Socialist Rule of Law System with Chinese Characteristics and the Application of Criminal Law — Award-winning Papers of the 34th National Court Academic Discussion Conference (Part II). Beijing Intellectual Property Court, 2022: 31–48. <https://doi.org/10.26914/c.cnkihy.2022.087466>
- [6] Zhu CY, 2022, The Improvement of the Securities Special Representative Litigation System, thesis, East China University of Political Science and Law. <https://doi.org/10.27150/d.cnki.ghdzc.2022.000456>.
- [7] Han DP, 2021, What is Culture? *Journal of Shanxi Normal University (Social Science Edition)*, 48(6): 50–61. <https://doi.org/10.16207/j.cnki.1001-5957.20211028.001>
- [8] Xiao HT, 2020, On the Relationship between Procedural Justice and Substantive Justice — From the Perspective of the Contradiction and Unity of Value Choices in Criminal Procedure Law. *Journal of Mudanjiang Education College*, 2020(7): 122–124.
- [9] Su K, 2019, Analysis of the Legal Connotations of Procedural Justice and Substantive Justice. *Legal System and Society*, 2019(2): 3–4. <https://doi.org/10.19387/j.cnki.1009-0592.2019.01.118>
- [10] Gu YJ, 2019, Thoughts on the Value of Criminal Procedure from the Perspective of Procedural Justice and Substantive Justice. *Legal System and Society*, 2019(2): 190–191.

Publisher’s note

Bio-Byword Scientific Publishing remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.