The Choice between Procedural Justice and Substantive Justice in Criminal Procedure-An Analysis Based on the Perspective of Law and Economics

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Abstract: In Criminal Procedure, which is more important between the substantive justice and the procedural justice is a controversial issue for a long time. This paper uses the perspective and method of law and economics, introduces the concept of utility, and analyzes the utility balance of judicial justice. The theoretically analysis shows that there is a certain proportion of both substantive justice and procedural justice, which can maximize the judicial justice utility pursued by judicial organs. In judicial practice, when the actual situation fails to make the society get the greatest utility, we can adjust the proportion of procedural justice and substantive justice to increase the judicial justice utility.

Text: In Criminal Procedure, which is more important between the substantive justice and the procedural justice is a controversial issue for a long time. This controversial issue is a basic issue in criminal procedure theory. The significance of discussing this issue lies in: the answer to this question determines the basic appearance of criminal procedure legislation. If procedural justice is preferred, the criminal procedure legislation will start from the protection of human rights, focus on limiting the judicial power is used by arbitrary, and protect the basic rights of criminal suspects and the defendants. If substantive justice is preferred, criminal procedure legislation will focus on investigation and focus on how to make the criminal procedure law cooperate with the criminal law to help solve cases. Public prosecution and trial will also be carried out around investigation. Restrictions on the arbitrary use of judicial power will be extremely limited and the protection of the basic human rights of criminal suspects and defendants will be very weak.

Which is the correct choice between substantive justice and procedural justice? This paper uses the logical deduction method and introduces the concept of utility to make a balanced analysis on how to choose between substantive justice and procedural justice.

Theoretical Review

How to choose between procedural justice and substantive justice, there are three basic viewpoints : Give priority to substantive justice; Give priority to procedural justice and pay equal attention to both. Firstly, this paper makes a theoretical review of the basic viewpoints .

The theoretical review of give priority to substantive justice. This view regards procedure as a tool to realize the substantive justice. Procedure justice serves for the substantive justice, and its ultimate goal is to realize the substantive justice. Procedure is only a way to realize the substantive justice. It was called the "procedural instrumentalism". Postema is the first person to explicitly advocate "procedural instrumentalism". He advocates that substantive law is "radical", "primary" and "principal", while procedural law is "subservient", "accessory" and "adjective". In his view, "the only legitimate purpose of procedural law is to realize the greatest extent substantive justice."[1] Postema advocated that procedural justice absolutely serves substantive justice, which was questioned and criticized by later scholars. The theory of procedural instrumentalism has gradually developed the theory of economic cost and the theory of moral cost .

Richard Allen Posner said: "Minimizing the economic cost in the process of law enforcement is an important value that should be considered when evaluating and designing legal procedures, and

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is also a value goal that judicial activities should achieve. In order to realize this value, two kinds of economic costs should be reduced: The first is the direct cost, it is the economic resources consumed in the process of implementing the law, including public cost and private cost; The second is the wrong cost, it is the resource consumption caused by the court's wrong judgment. The general objective of economic analysis of legal procedures is to measure whether legal procedures and judicial activities can minimize the sum of the above two economic costs. "[2] Posner defines the goal of procedural law as saving the cost of judicial activities. Procedural law still exists as a tool of substantive law, in order to minimize the cost of legal implementation when realizing substantive justice.

Ronald M.Dworkin's moral cost theory holds that when evaluating and designing a legal procedure, the moral cost in legal implementation should be minimized. Moral cost refers to the injustice caused by the wrong punishment of innocent people. The moral cost originates from the deprivation of human rights, deprive a person's rights he deserves is to treat him unfairly. In Dworkin's view, to truly enjoy a substantive right (such as the right not to be wrongly convicted), one must resort to the second right-procedural right. Dworkin concluded that procedural safeguards are basically a matter of policy rather than principle when leaving substantive rights, because any requirement for specific procedural safeguards is negligible at this time.[3] Dworkin still believes that procedural law is essentially a tool set up to minimize the moral cost in the implementation of the law, leaving procedural guarantee of substantive justice as a policy rather than a matter of principle.

The theoretical review of give priority to Procedural Justice. Contrary to the doctrine of priority of substantive justice, the doctrine of priority of procedural justice advocates that procedure is regarded as an existence with independent value, legal procedure is legitimate and procedural value is intrinsic and does not exist depending on entity. This view is called “procedural departmentalism” in academic circles.“Procedural departmentalism” originated from the concept of "natural justice" in Roman law, "no one is allowed to be a judge in his own case" and "any party's lawsuit must be heard". At present, the most representative theories concerning the independent value of procedure abroad are Robert S. Summers' theory of procedural value and Jerry L. Mashaw's theory of dignity value.

Summers found through empirical research that some legal values can be realized through the legal process itself, which has nothing to do with the correctness of the judgment results.[4] Mashaw further developed the "Dignity Value Theory" on the basis of Summers' "Procedure Value Theory". The core of his theory is "to emphasize that those whose interests are directly affected should be treated fairly in the design and operation of legal procedures, thus having human dignity. This is the value goal that must be realized through legal procedures themselves, and is also the basic measure to judge whether a legal procedure is fair or not. In Mashaw's view, winning the case and getting fair treatment are the double wishes of the defendant, and they both are completely independent.[5]

Theoretical Review of Equal Emphasis on Substantive Justice and Procedural Justice. It is a compromise view to pay equal attention to substantive justice and procedural justice. Miller, a British scholar, stated in his book: "In some cases, procedural justice and substantive justice are in conflict. As for what outcome will be produced at that time, it is just a question of judgment. However, there is no reason to must make a choice between two kinds of fairness(The carriage of procedural justice should not stop in front of the horse of substantive justice) .[6]"German scholar Claus Roxin believed:" In criminal proceedings in a country ruled by law, the legality of judicial proceedings is regarded as having the same importance as that of the guilty defendant, the guilty verdict and the restoration of legal peace.[7]"Japanese scholar believes that "substantive law and procedural law are like two wheels of a car, which play a role in litigation. there can be no master-slave relationship between them."[8]

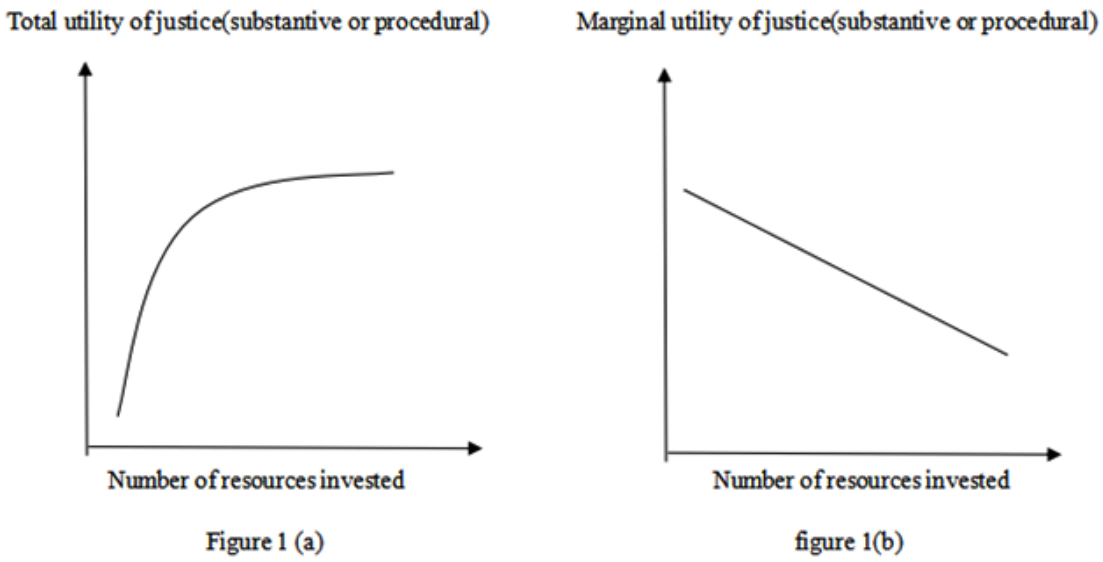
The judicial justice utility balance analysis

Over the years, scholars have held different positions on the above three viewpoints, and have been arguing about them endlessly. They can not agree on which is right or wrong. Research methods

based on moral philosophy and value judgment are not good at revealing the optimal choice. Economics, as a science to study how to allocate resources optimally, guides people to make the best choice, so it is also called "science of choice". This paper adopts the logical deduction method of economics, starting from the basic assumptions and concepts, and through strict logical deduction, makes a balanced analysis of the choice between procedural justice and substantive justice in the method of law and economics.

Introducing the concept of maximizing utility. The state invests certain resources and requires judicial organs to pursue "substantive justice" and "procedural justice" in order to maximize the effectiveness of judicial justice. By pursuing "substantive justice", judicial organs will find out the facts of crimes accurately and timely, apply punishment to criminals' criminal acts correctly, make up for the losses of victims and society caused by criminal acts, and form a deterrent to potential criminals, thus obtaining "substantive justice judicial utilities";By pursuing "procedural justice", the judicial organs, on the one hand, prevent the public power of the judicial organs from being arbitrarily used, infringe upon the basic litigation rights of criminal suspects and defendants which can easily caused unjust, false and misjudged cases; On the other hand, By improving the litigation status of criminal suspects and defendants, The balance of power between the prosecution and the defense should be realized through the criminal litigation structure of equal armed forces, separation of prosecution and trial, and trial neutrality, the prosecution and defense play a game under the condition of basically equal power to help the real discovery of substantive justice. The "judicial utility of procedural justice" will be obtained through the correct application of criminal law through neutral trial."Substantive justice judicial utility" and "procedural justice judicial utility" are both aspects of "judicial justice utility".

Application of Law of Diminishing Marginal Utility. The state invests resources to pursue substantive justice utility and procedural justice utility, and is also subject to the universal law of economics-the law of diminishing marginal utility. As the state invests more and more resources, the total amount of "substantive justice judicial utility" continues to increase with the investment, but the growth rate is slower and slower. The newly added investment of one unit makes the newly added "marginal substantive justice judicial utility" in the society decrease continuously. The "procedural justice judicial utility" also shows this rule with the increase of investment-the total amount is still increasing, but the growth rate is slower and slower. As shown in figures 1(a) and 1 (b):



Figures 1(a) and 1 (b). Application of law of diminishing marginal utility

Characterization of the indifference curve of judicial justice utility. If the state's budget for judicial investment is not considered, the judiciary can pursue any combination of "substantive justice" and "procedural justice" without considering costs. For a certain number of combinations, the judicial justice utility it can obtain is the same as that obtained by several other different number of combinations. The curve formed by connecting these number of combinations is called the "judicial justice utility indifference curve". Different combinations of "substantive justice" and "procedural justice" have different utility levels, so we can depict a group of "judicial justice utility indifference curves" with different utility levels (as shown in Figure 2).The law of diminishing marginal utility implies the law of diminishing marginal substitution rate, which determines that the group of indifference curves are convex to the origin. The "judicial justice utility indifference curve" closer to the origin indicates that the lower its utility level is, the "judicial justice utility indifference curve" further away from the origin indicates that its utility level is higher. The x axis represents substantive justice, the y axis represents procedural justice, U_1, U_2, U_3 and U_4 represent four judicial justice utility curves with different utility levels, and the order of utility levels is $U_1 < U_2 < U_3 < U_4$.

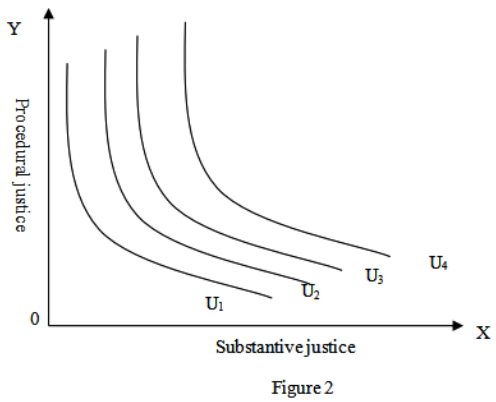


Figure 2. Characterization of the indifference curve of judicial justice utility

Equilibrium Analysis of Judicial Justice Utility. There is a budget B constraint on the state's investment in the pursuit of judicial justice in a fixed period. We set the budget constraint as budget line b, and assume that the unit cost for the pursuit of substantive justice utility is Px and the unit cost for the pursuit of procedural justice utility is Py. From this we can depict the equilibrium point that can make the society obtain the maximum judicial justice utility (as shown in figure 3).

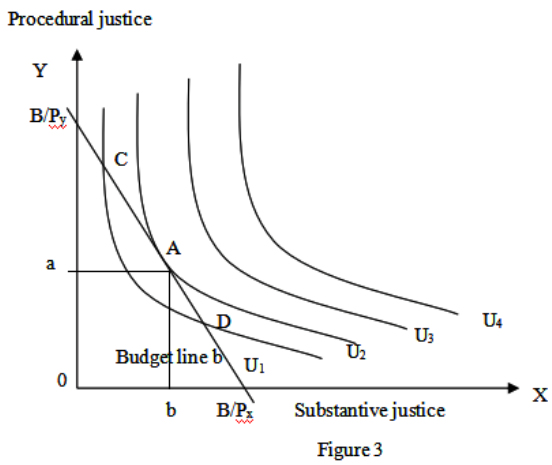


Figure 3. Equilibrium Analysis of Judicial Justice Utility

In figure 3, the intersection of the budget line b and the Y axis is B/Py, which represents the degree of procedural justice that can be achieved by putting all budgets into pursuit of procedural justice. The intersection of the budget line b and the X axis is B/Px, which represents the degree of substantive justice that can be achieved by putting all budgets into the pursuit of substantive justice.

The budget line b intersects the U_1 curve at points C and D, and intersects the U_2 curve at point A. This means that the judiciary can obtain the judicial justice effects of U_1 and U_2 grades by investing in a given budget. The judicial justice utility of U_2 grade is higher than that of U_1 grade, while the judicial justice utility of U_2 grade is the height that the judiciary cannot reach under the specific budget constraint (i.e. the budget line b can never intersect or tangent with U_3 and U_4 curves).Therefore, the maximum judicial justice utility that the judicial organ can achieve under this specific budget constraint is U_2 grade, and the specific number combination of "procedural justice" and "substantive justice" represented by tangent point a of budget line b and U_2 curve will maximize the judicial justice utility of the country.

The basic condition to satisfy the utility maximization is to conform to the equal marginal law. In other words, when the marginal utility of procedural justice obtained by the last unit of money spent on procedural justice by the judicial organ is exactly equal to the marginal utility of substantive justice obtained by the last unit of money spent on substantive justice, the judicial organ realizes the maximization of the "judicial justice utility". If the last unit of money spent on procedural justice by the judiciary can provide more marginal utility, then increasing the investment in procedural justice can increase the total utility until the law of diminishing marginal utility makes the marginal utility of the last unit of money spent on procedural justice drop to just the same as the marginal utility of the last unit of money spent on substantive justice. Assuming that the unit price of substantive justice is P_X and the marginal utility of substantive justice is MU_X ; ;The unit price of procedural justice is Py and the marginal utility of procedural justice is MU_Y. when $MU_X/P_X=MU_Y/P_y$, society obtains the maximum judicial justice utility, corresponding to the state represented by the tangent point a of the budget line b and U_2 curve in fig. 3.

Conclusions

This paper uses the logical deduction method of economics, starting from the basic assumptions and concepts, to analyze the utility balance of judicial justice between procedural justice and substantive justice. This paper holds that when the state invests resources to pursue procedural justice and substantive justice, it will correspondingly obtain "procedural justice utility" and "substantive justice utility". The sum of these two utilities is called "judicial justice utility". The state's investment in the pursuit of procedural justice and substantive justice is subject to budget constraints. The pursuit of both substantive justice and procedural justice under budget constraints will maximize the effectiveness of judicial justice in society. The condition of utility maximization is to satisfy the equal marginal law, that is, when the marginal utility of procedural justice obtained by the last unit of money spent on procedural justice is exactly equal to the marginal utility of substantive justice obtained by the last unit of money spent on substantive justice (satisfying the equation $MU_X/P_X=MU_Y/P_y$), the state obtains the maximum judicial justice utility.

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