

An Analysis of the relationship between procedural Justice and procedural value.

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Abstract

Procedural justice and procedural value are two important branches of procedural theory, and the relationship between them has not been clearly divided in many literatures. In many literatures, procedural justice is even directly discussed as a proposition of procedural value. Although there is a theoretical overlap between the two, there is an important difference between procedural justice and procedural value. This paper hopes to put procedural justice and procedural value in the model of social development to explore the similarities and differences between them to further clarify the relationship between the two to provide a perspective.

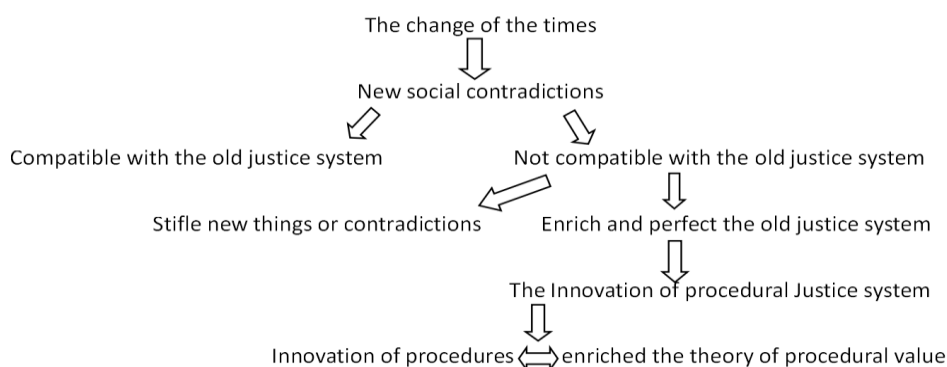
Keywords

Procedural justice, procedural value, contradiction.

1. Introduction

Procedural justice and procedural value are two important branches of procedural theory, and the relationship between them has not been clearly divided in many literatures. In many literatures, procedural justice is even directly discussed as a proposition of procedural value. Although there is a theoretical overlap between the two, there is an important difference between procedural justice and procedural value.

As a part of the social justice system, the content of procedural justice is often enriched with the development of society, but the value of procedure is an element which is strongly related to the procedure itself, although with the development of the times, The theory of procedural value has been constantly enriched, but whenever we see that new procedural values have been discovered, we will find that it is still applicable to apply the proposed procedural values to the pre-proposed procedures. It is as if these values have always been accompanied by the program itself, being proposed is only discovered. The reasons for the above situation are closely related to procedural justice, procedural value and the logic between procedures. Procedural justice, procedural value, and logic between programs can be summarized in the following models:



For this model, the author wants to do the following interpretation:

First, any change in procedure is based on the emergence of contradictions:

Contradiction is the fundamental driving force to promote the emergence, development and demise of things. From this point of view, the procedure and all the contents related to the procedure cannot be separated from the contradiction. It can be said that there is no contradiction, that is, there is no need for the existence of the procedure. This is the fundamental premise for the author to establish the model, that is, contradiction is not only the premise of the procedure, but also the reason for the development of the program. However, the above logic is only an abstract theoretical level. In the process of complex social operation, on the one hand, the relationship between contradiction and procedure needs to be analyzed from the perspective of the whole society and can not be separated from the whole society. This needs to introduce the upper concept which leads to the emergence and development of contradiction; On the other hand, it is necessary to refine and perfect the process from contradiction to procedure based on the social background of contradiction and procedure. Only in this way can we clarify the relationship between procedure, procedural justice and procedural value from the perspective of the whole.

Second, the contradiction that has a significant impact on the procedure is caused by the development and change of the times:

The development and change of the times is a very complex concept, its content includes science and technology level, political level, economic level, legal level, artistic level, ideological level and so on. The author mainly wants to discuss the relationship between the development of the times and contradictions from two aspects.

On the one hand, the author believes that the media and power of the development of the times is the emergence of new things. Marxist philosophy defines development as the process of replacing old things with new things. From this point of view, the media of development can be determined as new things. At the same time, the birth of new things is bound to bring new contradictions, and the contradictions produced by new things are the driving force of the development of the times.

On the other hand, from the perspective of the function and influence of the development of the times, many contents of the development of the times can be divided into two situations:

One situation is that the process of alternation between new things and old things or continuous improvement of themselves, as the medium of the development of the times, does not give rise to major social contradictions, which requires three conditions. First, new things have absolute advantages over old things, and second, the benign factors of new things themselves in promoting social progress far exceed their side effects. Third, the vested interest groups of the old things accept the new things actively or passively through internal or external factors. New things that meet these conditions often do not produce significant color contradictions, such as the invention of synthetic insulin technology is a very typical example. Artificial insulin has an absolute advantage over the technology of extracting natural insulin in terms of cost and efficiency, and the insulin produced by this technology has not produced any greater side effects than natural insulin. Because of these technical advantages, medical departments or institutions that use traditional technology to extract natural insulin are willing to achieve their own transformation through research and development or purchase technology rather than suppress the development of new technology.

In contrast to the first case, when the new things can not meet the three conditions mentioned above, there will be a major social contradiction, which has also become an important driving force to promote social change. The invention of the automobile, for example, fully reflects this situation in the process of development. At the beginning of the invention of the car, although its performance and capacity far exceeded that of the carriage, the early car performance was very unreliable, with frequent failures and stop-and-go. Whenever the car broke down, the driver became the object of ridicule. And they were in such a hurry that they booed on both sides of the street. At the same time, as a vested interest, horse owners were unable to make up for this gap through their own efforts, and at that time, as an external factor, the administrative management could not force horse owners to accept the impact of cars on their industry. This has given rise to a fierce contradiction between the owner of the horse and the owner of the car. In that era of immature automotive technology, there

were a series of laws restricting cars, such as the Red Flag Act, the earliest road traffic law in Britain in 1858. The law limits steam cars to less than four miles per hour in the suburbs, less than two miles per hour in the city, and a man with a red flag a few metres in front of a steam car to let people know that dangerous things are approaching. The town of San Lafel, California, even issued a decree requiring car drivers to park 300 feet away from any passing horse. With the continuous innovation of automobile technology, although the contradiction with the carriage has become history, the development of automobile technology has not fully met the second condition mentioned above. The contradictions caused by the development of automobile industry, such as environmental problems, traffic congestion problems and frequent traffic accidents, have had a far-reaching impact on the management of society and the construction of the rule of law.

Through the discussion of the above two aspects, we can draw such a conclusion, that is, the development of the times is mediated by the occurrence of new things, and the birth of new things will produce the process of alternation with the old things. This process can be relatively peaceful, does not produce major contradictions, can also be intense, resulting in major contradictions. The contradiction in the latter has become an important driving force to promote the reform of the social justice system.

Here, the author does not deny that some contradictions caused by judicial technology will also become the inducement of procedural change, but this inducement can not be separated from the background of the times, so the first two elements of the model form a causal relationship. The author's discussion on the characteristics of the times of procedural justice is also an interpretation of this logic.

Third, the new social contradictions are bound to have a series of effects on the old justice system:

Contradictions will inevitably lead to the following results: first, there are contradictions, that is, there is a contradiction between the two sides, and if there is reason, there will be an evaluation of both sides, and the evaluation itself will be positive or negative. The highest level of positive evaluation is "justice", just as the highest level of negative evaluation is "injustice". Second, if there is contradiction, there needs to be a harmonious way, and if there is a harmonious way, there will also be an evaluation of whether this way is just or not; Third, there is a harmonious way will produce harmonious results, the results can be evaluated from the perspective of success or not, but it can not be avoided from the perspective of justice. From the above analysis, we can see that no matter whether people are in any aspect of contradiction or at any stage of reconciliation, it is impossible to avoid thinking about whether it is just or not. Contradictions torture people's understanding of justice with all of them from birth to grave, and new social contradictions will lead to a greater probability that people will have a new interpretation of justice or enrich the existing concept of justice. When people face new contradictions, explore new means of reconciliation, and face expected or unexpected results, two situations may arise:

The first is that the old justice system can perfectly guide people to evaluate and resolve new contradictions. Under such circumstances, although the new social contradictions are bound to have friction with the old system, the existing systems, norms, habits, and other contents in the system can be solved through simple adjustment, and in the process of solving them, Nor does it need to create new solutions for new social contradictions, resulting in major changes in the old justice system;

The second situation is that the old justice system is not compatible with the new social contradictions, that is, the old justice system is not enough to guide people to reconcile new contradictions. As the subject (individual or state) in the justice system, there are two ways to deal with it. One way is to directly stifle new things, directly prohibit or resist the existence and development of new things through national or folk forces, and stifle new contradictions in the cradle so that they will not have an impact on the old order. Another way is to perfect and innovate the old justice system to reconcile the social contradictions caused by new things, in this way to eliminate the negative impact of social contradictions, and promote the continuous change of new things to meet the needs of society.

The above two situations sometimes occur at the same time in the process of dealing with the same thing by people in different regions, especially at the beginning of the century when Internet science and technology tells them to develop, in the face of endless new things. In the face of the same new things, people from different countries and regions will make completely different choices because of their different concepts of justice. The most typical example is the different experiences of taxi-hailing software in different countries. As a product of the development of the Internet industry, taxi-hailing software has appeared many disputes and contradictions in many aspects, such as legalization of operation, dispute resolution, passenger safety and so on. Countries around the world have adopted different ways and reflect the differences in the concept of justice:

In Europe, people in many countries and regions have adopted a boycott attitude towards taxi-hailing software. They argue that taxi-hailing software does not guarantee their safety and harms the interests of taxi drivers. Due to the resistance of the people, the governments of many countries and regions in Europe have also issued a lot of policies to ban taxi-hailing software. The most typical examples are France and Germany, which announced a ban on Internet taxi-hailing services as early as 2014 in the face of taxi-hailing software, which came into effect on January 1, 2015. The relevant departments believe that because the relevant departments are unable to ensure that the drivers involved in the service have taken out formal full insurance, so they are unable to guarantee the safety of consumers' declared property, so it is illegal to take a taxi. Germany, however, has shown the same attitude as France on this issue. Also in 2014, Hamburg and Berlin issued bans. Taxi-hailing software is prohibited from providing for-profit private car passenger transport services on the grounds that drivers do not have a license and passenger safety cannot be guaranteed. Such a straightforward ban also reflects the German government's undeniable negative attitude towards taxi-hailing software.

In Japan, since the law itself imposes strict restrictions on the use of cars, it is illegal to use self-driving cars for profit. The starting point of taxi-hailing software is to provide temporary services for people who need cars but can not reach them. This concept is contrary to the law of car use in Japan from the very beginning. In addition, Japan's taxi industry has a history of several decades, industry norms, industry competition, industry barriers are very complete and strict. As an emerging economic model, taxi-hailing software is difficult to impact the mature and perfect industry. Finally, although Japan is a developed country, the national economy has already experienced 20 years of stagnation. The income of the younger generation has not increased, but decreased. In this case, Japanese young people are more likely to choose to travel through sound and developed public transport. In addition to those who are reimbursed by the company, most of the customers are elderly people who can afford the taxi-hailing service. Although the customer demand of the elderly is more and more exuberant away from the prosperous economic zone, but let the elderly quickly accept and embrace new things and put forward higher time and publicity costs for taxi-hailing software.

From the way Europe and Japan deal with taxi-hailing software, we can see that in the face of new things and new social contradictions, both places have adopted the first way of dealing with the third result. By directly strangling new things to prevent their impact on the old order and old ideas. From the point of view of the reason, the reason why Europe directly kills taxi-hailing software is more subjective, and the concept of the public has directly led to the government's ban on taxi-hailing software. Europeans' adherence to personal safety and property rights, as well as Europe's democratic traditions, directly determine that the existence of ride-hailing software in Europe is not in line with the concept of justice and is banned, while in Japan, Taxi-hailing software can not survive is more determined by objective reasons, the regular Japanese society is very difficult for the newborn taxi-hailing software to flow out of the survival space; From the point of view of the result, taxi-hailing software has been strangled in these countries and regions, although it can guarantee the old concept of order and justice within a certain period of time. However, this way itself kills new things in the long run is not in line with the law of the development of things;

Contrary to the attitude of Europe and Japan to directly stifle ride-hailing software, the attitude towards online ride-hailing is relatively relaxed. This is why taxi-hailing software sprang up in the

United States in the first place. In the United States, to become a ride-hailing under the ride-hailing software, only need the driver to test for a commercial driver's license with a driver's license, send TLC car insurance to the vehicle and join the car-hailing company to operate. Although the price of ride-hailing insurance is relatively expensive, joining the car-hailing company also has some constraints on online ride-hailing, but the American ride-hailing market is so huge that many drivers choose to join them. At the same time, drivers in the United States must take orders by software or by phone in order to pick up customers. The relevant authorities in the United States will also supervise the drivers of electric vehicles by means of spot checks. If it is found that the behavior of the electric car driver does not meet the requirements of the industry, the driver will face quite serious fines from the relevant departments.

The attitude of the United States towards taxi-hailing software is in line with the first result mentioned above, that is, the old concept of justice can perfectly solve the contradictions arising from new things, as can be seen from the current situation of taxi-hailing software in the United States. The American society has completely brought the taxi-hailing software into the original social management system, so that the original social management system can be directly compatible with new things. This is closely related to the open and inclusive cultural characteristics of American society, and benefits from the flexibility and compatibility of its social management system.

Different from Japan and the United States in the first week, the situation of taxi-hailing software in China is closer to the result 2 above. From the point of view of the social contradictions caused by new things such as taxi-hailing software in Chinese society, Taxi-hailing software has encountered some similar conditions in China as in Europe and Japan: first, resistance from the traditional taxi industry, a contradiction that was particularly prominent in 2014-2015, when taxi-hailing software was first launched. Even in the later years of development, it happened occasionally; Second, there is a lack of complete legal basis and institutional norms at the legal level. The contradiction at this level is different from that in Japan, where the law is completely incompatible with the existence of taxi-hailing software. On the other hand, in China, there is a lack of complete institutional norms for taxi-hailing software. On the one hand, the absence of such institutional norms makes the taxi-hailing software have a relatively free development space in a certain period of time, on the other hand, it also causes some contradictions in the following series. Third, similar to Europe, the dispute resolution between passengers and operators' platforms and drivers, as well as the maintenance of passengers' own rights and interests, has become a new social contradiction. There have even been extreme cases of significant threats to the personal safety of passengers. All the above contradictions challenge the existence of taxi-hailing software.

In the face of the social contradictions caused by taxi-hailing software, the coping style adopted by our country is worthy of affirmation. In the early days when the contradictions caused by taxi-hailing software began to appear, China did not directly prohibit or directly allow the online operation of taxi-hailing software throughout the country, but allowed different administrative areas to make corresponding adjustments to their own situation. Although this response from the administrative level has deviated from the track of the rule of law to a certain extent, it can effectively avoid further escalating the conflict in areas where contradictions have intensified. At the same time, the taxi-hailing software provides living space for the taxi-hailing software in the area where there is no social contradiction or contradiction in the controllable range. When the social contradictions caused by taxi-hailing software began to emerge, the state made corresponding adjustments to different contradictions from the aspects of law, system and norms, and social services. This kind of adjustment has not only explored the new social management mode, but also gone to the very benign result in some fields. For example, in view of the personal safety of passengers, the software operators have realized a benign interaction with the public security organs. The software operator has directly set up an alarm function in the software setup, which allows passengers to contact the police in the first place in the event of danger, which also forms a deterrent to drivers who may have illegal intentions. This kind of benign interaction has also achieved a breakthrough in some fields, among which people are most interested in talking about the docking of taxi-hailing software with the anti-kidnapping

system of public security organs, which provides a great help for the timely rescue of abducted children.

Through the above analysis, we can see that although the taxi-hailing software, as a new thing, has violated the old justice system in the process of operation, it is unable to achieve American-style compatibility and docking in our country. However, through exploration and practice, our country constantly enriches and improves the old justice system, and forces the new things to optimize and innovate together to achieve the reconciliation of contradictions, this process is the concentrated embodiment of result two.

Similar to mainland China, in Taiwan, taxi-hailing software has also encountered various problems. Taiwan is also constantly optimizing and adjusting the contradictions caused by taxi-hailing software. In February 2019, Taiwan's transportation authorities have announced new rules requiring online ride-hailing software to be charged by hour or day, and banning drivers from traveling quickly on the streets in search of customers. The rule will take effect at the end of the 60-day public review period ending April 26. The main purpose of this policy is to solve the contradiction between the practice of downloading passengers and traditional taxis, but under the relevant policies, online ride-hailing often does not accept the constraints from the relevant provisions. Similar explorations are common in Taiwan.

Among the three results of the collision between the new social contradiction and the old justice system, the perfect result is that the old justice system is perfectly compatible with the new things and the contradictions caused by them. But this result is random even in the United States, which boasts a free and inclusive legal system, and not everything new is as lucky as ride-hailing software. The stagnation of mobile payment in the United States, which sprang up almost at the same time as taxi-hailing software, reflects the cruelty of randomness. Because this result will not have an impact on the procedural justice of the object of this paper, so the author will not do further development.

In sharp contrast to the above results, when the justice system is unable to be compatible with the contradictions arising from the new things, the new things and contradictions are directly strangled. The disadvantages of this way have been analyzed in the case of taxi-hailing software, and I will not repeat it here. Similar to the first result, maintaining the old justice system by strangling the new things often only adds more prohibitive norms to the old justice system, and has no positive significance in enriching and perfecting the justice system. Therefore, it is not what this article needs to expand.

Compared with the above two ways, it is a benign way to reconcile and solve the new contradictions by perfecting and innovating the old justice system, although this way requires a high practical cost. However, it is of great significance for the development of new things and the improvement of the justice system. The model constructed by the author is also through the development of this result to analyze the relationship between procedural value, procedural justice and procedure.

Fourth, procedural justice is an important part of the social justice system, and the changes produced by the new social justice system will inevitably lead to the continuous enrichment and development of the connotation of procedural justice, which is often demand-oriented. The times have given people the need for justice, which has led to changes in the process itself. For example, the reform of the case-filing system in our country.

Fifth, the new procedure plays an important role in the reaction relationship between the value of the procedure and the value of the program. The value of the program must first of all be based on the existence of the program.

If there is no program, the value of the program becomes a pseudo-concept. From this point of view, the value of the program is more objective. It can even be said that the value of the program already exists from the moment the program acts. He is not transferred by human will or needs, but is born with each other in the process. With the development of practice, when people begin to understand and consciously sort out the positive value of the procedure, they begin to form the theoretical system of the procedure value. With the development of the theory, the positive procedure value begins to

play an evaluation role. This role can be used to evaluate existing procedures or to predict whether newly built programs meet positive procedural value requirements.

There is a closer relationship between procedural value and procedure itself, and there is a relationship of mutual promotion between them, while procedural justice is a cutting of social contradictions arising from the development of the times, with more distinct characteristics of the times.

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