

A Quick Comment on Fairness of Law

Rongqing Dai*

Freelance Philosopher New Jersey, USA

Abstract

Fairness is the very basic requirement of a legal system by the public. This short communication provides some simple discussion on the fair and unfair aspects of law.

Keywords: Fairness; Law; Legal; Inherent; Philosophy; Example

Introduction

Law is an idealized concept for the common good of the public, especially for people living in a modern democratic society; however, historically it often symbolized the untouchable power of the authority of a nation or a community. The history of our modern legal system might go back only to less than a thousand years [1], but the concept of law and the need of various laws could be traced back much longer in various parts of this world. No matter who made the law and for whom that law was made, there would always be fair and unfair aspects of a law. Misunderstandings of this dual nature of law in terms of fairness have been one important source of confusion about the role of legal system in human society. On one hand, over human history law makers around the world have often ignored that they would be bound by the laws they made as well; on the other hand, not only ordinary people but even elite scholars have often made their arguments based on the wrong assumption that laws are always fair. This short communication article would provide a simple philosophical discussion on the fair and unfair aspects of law in order to help people to better work with or work out the system of laws.

The Inherent Fairness of Law

Whenever a law is laid down publicly, no matter by whom and for what cause, it always comes with a sense of fairness. Even though the direct statement given to the public by making a law is that anyone who breaks the law would be punished, that action of making a law publicly also produces such an undertone that as long as one obeys the law he would not be punished by the law. Many people might have difficulty to hear this undertone because it might be a familiar scenario to us that a tyrant who made a law might still kill an innocent person who did not violate any law. However, even when that happened, a tyrant would not have the excuse of killing that person for a law he did not violate. Or even if he might frame that person up for violating the law, he would bear the consequence of being considered as guilty by many in the public for making false charges and killing an innocent person.

In general, the existence of a law itself would form a moral bond on everyone in the society including the individuals who laid down the law. This is because the demand of fairness is one of human instincts [2] and whenever a law is made publicly people would demand a fair treatment according to that law. Even if the person who made the law for his own benefit violates the law or could not treat others fairly according to the law, he would become the target of potential fury from the public. Therefore, law becomes an ideal notion for the common good of the general public in the sense that law provides a basis for social fairness, even though as we will see in the next section that real life laws and real life enforcement of laws might not always be fair.

The Unfairness of Law as a Reality

While any publicly made law comes with some sense of fairness, legal systems have never operated in a perfectly fair way through human history. Here we could see a typical example of the contrast between ideal and real. The inherent fairness of law is ideal and the operation of any legal system is real. Unlike ideal notions, real life is full of defects and so are human legal systems as one part of real life. It would be way beyond the scope of a short writing to discuss various kinds of unfairness of human legal systems; however, we might still get a *glimpse* of the unfairness of law in real life by considering a few simple logical scenarios as examples.

A. A legal system for protecting the interesting of very few (e.g. a tyrant and his relatives and friends)

In this case the intention of making the laws already bears the seed of unfairness. Even though a law for protecting very few might still normally benefit the majority of the public, when it comes to the enforcement of the law, people would most probably be treated differently depending on which social class they belong to. The whole society would be divided by a legal system that is designed to protect certain highly privileged social class against the rest.

B. A legal system for protecting the general public but with discriminatory nature

Any discriminating legal system is unfair. A legal system could be a discriminating system in many aspects even if its constitution does not support any discrimination in principle. As examples, if a system would prescribe that anyone could pay 10 million dollars to cancel any legal punishment against him no matter what he do, then even though this system is not designed to benefit certain group of people by their names (e.g. royal family), it would practically divide the society based on the economic status of its members; or if we would have a legal system that forbids anyone under age 30 to work, then even though as long as a person could live long enough he/she would have the legal right to work sometime in his/her life, that system would divide the society severely; or if the law clauses of a legal system would grant rights to citizens based on their natural conditions as we see from the fiction movie *Divergent*, then it would be a very discriminating system.

*Corresponding author: Rongqing Dai, Ph.D., Freelance Philosopher New Jersey, USA, Tel: + 0017185147243; E-mail: ronald_dai@yahoo.com

Received February 15, 2016; Accepted March 03, 2016; Published March 07, 2016

Citation: Dai R (2016) A Quick Comment on Fairness of Law. J Civil Legal Sci 5: 178. doi:10.4172/2169-0170.1000178

Copyright: © 2016 Dai R. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

C. A legal system without discriminatory nature on paper

Even if a legal system does not contain any laws that might be discriminatory, its operation would not be completely fair as long as human activities are involved. The practices of attorney systems could be a good example. First of all, if a legal system would not allow people to have lawyers on their own behalf in the court, then the rights of any side, the plaintiff or the defendant, would not be fully respected and fairly protected in the court. Secondly, if people would be allowed to hire lawyers from a commercialized market, considering that different lawyers might have different experiences and capabilities, people who can afford to hire most expensive lawyers would have the advantage over economically disadvantaged social groups. Thirdly, if people would not be allowed to hire lawyers from market but would be assigned lawyers by the court or certain unit of the government, then the mechanism of unfairly assigning different lawyers would be formed in the channel of assigning different lawyers to different people.

The above logical scenarios are far from being inclusive since they do not cover the variety of patterns of the existing legal systems around the world. But we might still sense the intrinsic unfairness in real world legal systems from these simple scenarios.

Conclusion: Fairness of Law as a Demand

The notion of law is inherently fair in the sense that it could provide a basis for social fairness, but real life legal systems would always entail some unfair practices. Then the question left is how to make a real life legal system fairer? Unfortunately, there seems no simple universal solution for this question. However, people around the world have never stopped demanding the fairness of law in the past and they would certainly not do so in the future. This demand of fairness of law by the general public is one of the most meaningful forces for the improvement of fairness of legal systems around the world. As long as the general public would keep the fairness of law as a demand, efforts would be made through academic studies and education, resource allocation, and legislative actions to make the legal system around the world fairer and fairer. A better understanding of the fair and unfair aspects of law could help people to act more efficiently in their efforts to make the legal systems fairer.

References

1. Berman HJ (2000) The Western Legal Tradition in a Millennial Perspective: Past and Future. *Louisiana Law Review* 60: 740-763.
2. Dai R (2015) A brief discussion on fairness analysis. Outskirts Press.

Citation: Dai R (2016) A Quick Comment on Fairness of Law. J Civil Legal Sci 5: 178. doi:10.4172/2169-0170.1000178

OMICS International: Publication Benefits & Features

Unique features:

- Increased global visibility of articles through worldwide distribution and indexing
- Showcasing recent research output in a timely and updated manner
- Special issues on the current trends of scientific research

Special features:

- 700 Open Access Journals
- 50,000 editorial team
- Rapid review process
- Quality and quick editorial, review and publication processing
- Indexing at PubMed (partial), Scopus, EBSCO, Index Copernicus and Google Scholar etc
- Sharing Option: Social Networking Enabled
- Authors, Reviewers and Editors rewarded with online Scientific Credits
- Better discount for your subsequent articles

Submit your manuscript at: www.omicsonline.org/submit