

Causation in the Law

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Causal Inference Lab
Master of Logic project
14 January 2020



- 1 Motivating the place of causation in the law
 - Linking logic and law
 - Causation, justice and equality

- 2 Jurisprudence (the philosophy of law)
 - Legal certainty
 - Theories of legal interpretation

Happy World Logic Day!



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World Logic Day



The ability to think is one of the most defining features of humankind. In different cultures, the definition of humanity is associated with concepts such as consciousness, knowledge and reason. According to the classic western tradition, human beings are defined as "rational" or "logical animals". Logic, as the investigation on the principles of reasoning, has been studied by many civilizations throughout history and, since its earliest formulations, logic has played an important role in the development of philosophy and the sciences.

14
JANUARY

It is because of its multiple practical applications – perhaps especially because of them – that logic has been studied so extensively. To be sure, logic has been a key element in the development of science and engineering, cognitive psychology, linguistics and communication. A wellspring of innovation, logic has always been a veritable catalyst for change.

In the twenty-first century – indeed, now more than ever – the discipline of logic is a particularly timely one, utterly vital to our societies and economies.

— Message from Ms Audrey Azoulay, Director-General of UNESCO on the occasion of World Logic Day, 14 January 2020

https://unesdoc.unesco.org/ark:/48223/pf0000372449_eng.locale=en,

see also https://en.unesco.org/commemorations/worldlogicday?fbclid=IwAR2S5RI36WXvusdmDn_rErzHMvniHzeGdebnmCSdrj-qYZ6RJLXe7GeVbLo

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Why should lawyers and logicians talk to each other?

Lawyers and logicians are both concerned with **explaining reasoning**

- Why is this argument valid?
- How did we arrive at this conclusion?
- What hidden assumptions are we making?

Both achieve the goal of explaining reasoning
using **systems** and **general principles**



The one thing that the law does not allow you to do is be irrational.

— Lady Hale,
President of the U.K. Supreme
Court, 2017–2020

<https://youtu.be/PZtYENfNa7k?t=2949>

Painting: Benjamin Sullivan [link]

The need for explanatory methods

We have come to take democracy for granted, and civic education has fallen by the wayside. In our age, when social media can instantly spread rumour and false information on a grand scale, the public's need to understand our government, and the protections it provides, is ever more vital. [...]

*When judges render their judgement through written opinions that **explain their reasoning**, they advance **public understanding of the law**. [...]*

Today, federal courts post their opinions online, giving the public instant access to the reasoning behind the judgments that affect their lives.

— John Roberts, Chief Justice of the U.S. Supreme Court
2019 Year-End Report on the Federal Judiciary, page 2 [\[link\]](#)

Given law's explanatory methods – appealing to systems and general principles – we might think of law **as the logic of society**

*[Law is] the complex of general precepts
for the living-together of human beings.*

— Gustav Radbruch (1950)

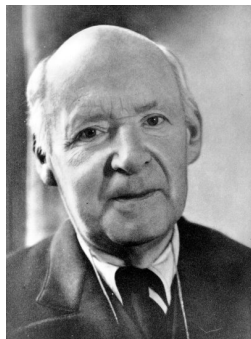


Figure: Gustav
Radbruch

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*Justice is the first virtue of social institutions,
as truth is of systems of thought.*

— John Rawls, *A Theory of Justice* (1971)

But what does it mean to be just?

*Law is the will to justice. Justice means: To judge without regard
to the person, to measure everyone by the same standard.*

— Gustav Radbruch, ‘Five minutes of legal philosophy’ (1945)

[[Link to the \(very concise\) text](#)]

Radbruch (paraphrase): to be just is to **not discriminate**

Justice = non-discrimination in legal treatment?

- There might be another component of justice: **proportionality**
- Proportionality enshrined, e.g., in the EU Charter of Fundamental Rights, article 49, §3: “The severity of penalties must not be disproportionate to the criminal offence.”

Example: The Felony Murder Rule

The felony murder rule is a rule that allows a defendant to be charged with first-degree murder for a killing that occurs during a dangerous felony, even if the defendant is not the killer. — Justia.com [link]

See <https://youtu.be/jKGy8T1GMDI> for a light introduction.

- Intuitively, the felony murder rule is **unjust**
- **Question:** But how does the rule create unequal treatment under the law?

Response: the Felony Murder Rule is indeed unfair

Example (Loaning your car to your thief friend)

- *A* and *B* loan their car to their friends *A'* and *B'*, respectively, knowing that *A'* and *B'* each want to use the car for robbery
- *A'* and *B'* each commit robbery
 - *A'* kills someone during their robbery (things got out of hand)
 - No one dies during the robbery that *B'* committed
- Typically, via the Felony Murder Rule, *A* would be guilty of murder
- *B* would be not guilty of murder (but of aiding and abetting)
- **Notice:** *A* and *B* play identical roles with respect to the crime
 - *A* and *B* performed the same action with the same mental state (intent to help their friend commit robbery)
 - The similarity in involvement, but the difference in conviction, is **unfair**, and hence **unjust**

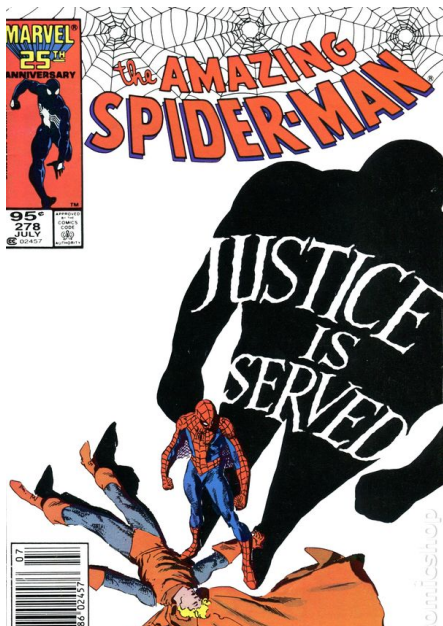
Justice and punishment

Yet another aspect of Justice:

punishment

- “Justice is served”
- “Get one’s just deserts”

An open question: Is this justice as fairness?



Justice is the first virtue of social institutions

— John Rawls, *A Theory of Justice*

- Justice is a virtue and aspiration of **the law**, a social institution
- But what about private individuals, businesses, society at large?
 - Do they have to be just?

Connecting justice and non-discrimination

Justice means: To judge without regard to the person, to measure everyone by the same standard.

— Radbruch, ‘Five minutes of legal philosophy’ (1945)

Radbruch (paraphrase): justice = non-discrimination

A proposed link between justice and anti-discrimination law

Anti-discrimination law is a mechanism to extend justice beyond the legal system to society at large.

- Anti-discrimination law has a special place within the field of law:
- To bring justice beyond the social institution of law

- There is an intuitive connection between fairness and equality
- Some properties should not be significant for determining one's treatment in society

[Justice] is essential to the legal precept in its meaning to be directed toward equality

— Radbruch (1950, p. 76)

[Justice] leaves open the two questions, whom to consider equal or different, and how to treat them

— Radbruch (1950, pp. 90–91)

Two equalities

1 Equal worth

- Everyone has the same capacity for pleasure and pain
- Serves as a foundation for...

2 Equal treatment

- Includes equality of opportunity
- Does not say that people should all be treated the same
 - After all, different people perform different actions, with different mental states (beliefs, intentions), and are treated differently as a result
- Applies with respect to a set of protected categories:

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

— EU Charter of Fundamental Rights, Article 21

http://data.europa.eu/eli/treaty/char_2012/oj

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

— EU Charter of Fundamental rights (adopted 2000) [[link](#)]

What does equal treatment mean?

A proposed answer: Equal treatment is the principle that one's membership of a protected category shall be **causally inert** in determining one's treatment

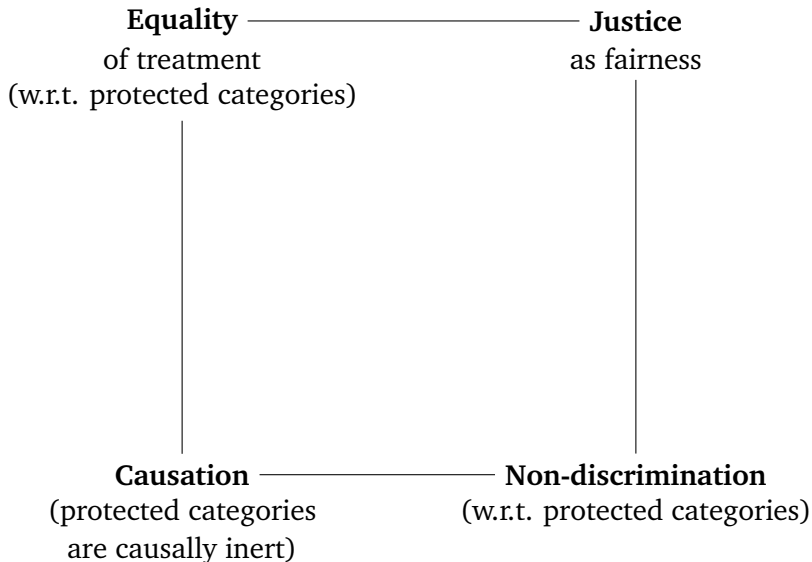


Figure: Four expressions of the same idea: that only some of a person's properties are should be causally relevant to their treatment in society



Equality
of treatment
(w.r.t. protected categories)

Justice
as fairness

Causation
(protected categories
are causally inert)

Non-discrimination
(w.r.t. protected categories)

Equality of worth

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The Principle of Legal Certainty

Subjects of law must be able to comply with it.

See Betlem (2002) for a discussion of legal certainty in the European Court of Justice (ECJ)

Legal certainty is important in this course for (at least) two reasons:

Legal responsibility The principle of legal certainty is a consequence of two ideas concerning legal responsibility:

- 1 To be convicted of breaking a law, one must be held legally responsible for breaking it
- 2 To be legally responsible for an act (e.g. break a law), one must have been able to do otherwise (e.g. comply with it)

Clarity of interpretation To be able to comply with a law, its subjects must know its meaning (i.e. what conduct is compliant with it)

Plain Meaning Rule

When the language is unambiguous and clear on its face the meaning of the statute or contract must be determined from the language of the statute or contract and not from extrinsic evidence.^a

^aMiriam Webster, “Plain meaning rule”

<https://www.merriam-webster.com/legal/plain%20meaning%20rule>, accessed 3 January 2020.

See e.g. *Caminetti v. United States*, 242 U.S. 470 (1917) for an endorsement of the plain meaning rule by the U.S. Supreme Court;

<http://cdn.loc.gov/service/ll/usrep/usrep242/usrep242470/usrep242470.pdf>

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Textualism

The meaning of a legal text is based on its ordinary meaning.

“Ordinary meaning” does **not** include

- Dictionary definitions of the words of the statute
- The intent of the law in the minds of those who passed it
- The purpose of the law (the problem it was designed to solve)

Some limits of textualism

Textualism will not relieve judges of all doubts and misgivings about their interpretations. [...] But textualism will provide greater certainty in the law, and hence greater predictability and greater respect for the rule of law. (Scalia and Garner, 2012)

- When the ordinary meaning is not precise (e.g. vagueness)
- When the text is not unique:

The different language versions of an [EU] text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part. R v. Bouchereau European Court of Justice (1977, para 14), see also Lenaerts and Gutiérrez-Fons (2013, §1.A.2)

Some other theories of legal interpretation

A legal text is to be interpreted according to...

Purposivism its purpose (the problem it was supposed to address)

Intentionalism the intent of the legislators who passed it

Originalism its original meaning (i.e. at the time it was written)

Some issues with these approaches

- The problem a law addresses may change as society changes
- Does a parliament, as a collective, have a single collective intent?
- Discerning purpose/intent/original meaning requires historical scholarship — bringing in guesswork
- As society changes, its understanding of old terms may change...

Old words, new meanings

[The U.S.] Constitution begins with the words, “We the people of the United States [...]” So think about how things were in 1787. Who were ‘We the people’? Certainly not people who were held in human bondage because the original Constitution preserves slavery. Certainly not women whatever their color and not even men who own no property. It was a rather elite group, ‘We the people’.

— Ruth Bader Ginsburg
3 September 2019

<https://youtu.be/LgTeSHF7PqE?t=75>



Figure: From the Collection of the US Supreme Court, 1977

- Gerrit Betlem. The Doctrine of Consistent Interpretation—Managing Legal Uncertainty. *Oxford Journal of Legal Studies*, 22(3):397–418, 09 2002. ISSN 0143-6503. doi:10.1093/ojls/22.3.397.
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