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EQUAL BEFORE THE LAW? UNMASKING DISPARITIES IN REAL-WORLD JUSTICE

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Abstract

Equality before the law—a cornerstone of democratic governance—faces persistent challenges in the real world, undermining public trust and social cohesion. This article addresses the critical question: To what extent is equality before the law truly realized, and what factors perpetuate disparities in justice systems? Synthesizing two decades (2005-2024) of theoretical and empirical research, this study unmaskes disparities in criminal justice, migration, and economic policy, demonstrating how discretion, institutional design, and structural factors interact to shape access, protections, and legal outcomes. Our analysis reveals that independent oversight, diversified decision-making, procedural fairness, and addressing fundamental social determinants are crucial for advancing equality. Drawing on cross-national comparisons and diverse case studies, we identify policy pathways that promote equality, including targeted reforms in adjudication and risk assessment, governance frameworks that minimize bias, and integrated policies that address social and economic disparities. This research contributes novel insights into the persistent gap between formal legal protections and substantive equality, offering evidence-based strategies to enhance fairness and accountability in justice systems. The findings underscore the ongoing need for vigilance and reform, even in seemingly egalitarian contexts like Sweden and the United Kingdom, and highlight the importance of context-sensitive, policy-coherent approaches to promote real-world equality. These insights have significant implications for policymakers, legal practitioners, and researchers seeking to advance justice and reduce inequalities, particularly in the Asian context.

Keywords: Equality Before the Law, Justice Disparities, Criminal Justice Reform, Institutional Bias, Comparative Law

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Introduction

While the ideal of “equality before the law” stands as a bedrock principle of liberal democracies (Deearam & Wongudommongkol, 2024), its actualization remains a persistent challenge, marred by disparities in lived experiences and a resulting erosion of public trust (Limprasert, 2021). This is clearly seen in Thailand, where the cynical saying, “Prisons are for the poor,” reflects deep skepticism about equal justice (Masaning & Ua-amnoey, 2021). These concerns are not unique to countries like Thailand. Even in highly developed nations with strong social safety nets, questions persist about equitable access to justice. For instance, recent research from Sweden raises concerns about “Justice by privilege?” (Kahlmeter & Bäckman, 2025).

The struggle to achieve genuine equality before the law touches even countries with long-established legal traditions and seemingly robust commitments to justice. For example, in the United Kingdom, a nation deeply rooted in the rule of law and often cited as a model of democratic governance, persistent disparities within the criminal justice system raise serious questions about the practical realization of equality. These disparities, which affect marginalized communities and undermine the promise of equal treatment, highlight the critical need to examine how formal legal protections translate into lived realities across diverse contexts and to identify the systemic factors that contribute to unequal outcomes (Uhrig, 2016; Mahoney & Chowdhury, 2021).

In Thailand, headlines frequently amplify these concerns, questioning whether the legal system truly serves all citizens equally. For example, news outlets often ask, “Do the rich get away with hit-and-run incidents, only to receive suspended sentences? Are prisons only for the poor?!” (MGR Online, 2012). These sentiments are echoed repeatedly, with calls to ensure that “Prisons are not just for dogs and the poor!” (Bangkok Biz News, 2020)—stark contrasts in legal outcomes further fuel such skepticism. As highlighted by recent cases, villagers who gather mushrooms in protected forests face severe penalties, such as a 30-year prison sentence reduced to 15 years after confession for trespass (Bangkok Biz News, 2015). Meanwhile, government ministers and their families are often acquitted in land-grabbing cases in which forest land is seized and claimed for private ownership, often on grounds of lack of intent (Thai PBS, 2023). These disparities give rise to the long-standing question that reverberates across Thai society: “Who do Thai prisons hold? The poor and dogs” (Naewna, 2020). This article confronts the enduring chasm between legal promises and the reality of equal treatment, examining the structural and procedural mechanisms that perpetuate inequality and proposing evidence-based strategies to achieve more equitable outcomes.

Central to this inquiry is the distinction between formal equality, wherein laws are applied uniformly on paper, and substantive equality, which demands comparable outcomes and access to justice across diverse groups. As Helmke & Rosenbluth (2009) and Holmberg et al. (2009) highlight, this divergence is critical. Even seemingly neutral laws can yield unequal results due to discretionary enforcement, unequal access to legal resources, and the influence of implicit biases. For instance, studies consistently reveal racial disparities in sentencing in the United States, with Black defendants often receiving harsher penalties than their White counterparts for similar offenses (Freiburger & Hilinski, 2009).

The rule of law is not merely a set of legal doctrines but a dynamic social mechanism that shapes the interpretation, implementation, and lived experience of legal norms. A robust rule of law - characterized by transparency, accountability, and impartial enforcement - is essential for translating formal guarantees into tangible protections (Ongsupankul, 2023). However, comparative and cross-national research demonstrates that the rule of law interacts with a complex interplay of factors, including economic development, corruption control, and governance effectiveness, ultimately influencing both everyday political life and public perceptions of fairness and security (Haggard et al., 2008). Even in contexts with strong formal protections, empirical studies reveal persistent disparities along lines of gender, race, migration

status, and socioeconomic class. As Versteeg & Ginsburg (2017) note, these inequalities are often deeply embedded and not easily addressed through formal reforms alone.

This article seeks to answer the following critical questions: Are people truly equal before the law in real life? What are the root causes of existing inequalities in legal systems and their outcomes? Moreover, what evidence-based strategies can effectively promote greater equality and justice in practice? To address these questions, this article synthesizes 20 years of research (2005-2024) across diverse domains, including criminal justice, civil procedure, migration law, and governance. It proceeds as follows: Section 2 examines the conceptual foundations and historical evolution of the concept of equality before the law. Section 3 analyzes empirical realities across historical periods and diverse societal groups. Section 4 delves into specific mechanisms and conditions that create inequality in real life. Finally, Section 5 identifies promising policy pathways and best practices for realizing equality before the law in practice, offering insights relevant to both theory and policy.

Conceptual Foundations and Historical Development of Equality Before the Law

Conceptual Frameworks

The principle of equality before the law resides at the convergence of normative aspirations and practical realities. Its assessment transcends mere legal text, hinging on whether laws foster equitable treatment, equal protection, and genuine access to justice in everyday life. Scholarly analysis frames this tension through three interconnected perspectives: formal versus substantive equality, the differentiation between equal treatment and equal outcomes, and the role of process, representation, and legitimacy in upholding or undermining equality - a particularly salient consideration for practical politics and policy design.

Formal equality, aspiring to universal application of laws treating similar cases alike, contrasts with substantive equality, which seeks comparable real-world outcomes across diverse groups. Lucy (2011) asserts that equality before the law comprises multiple components, with formal equality rarely sufficient to ensure fairness across uneven social landscapes, thus motivating judicial and policy reforms. Thomsen (2018) emphasizes the need to distinguish non-discrimination from equal treatment in practice, highlighting how norms and institutional arrangements shape the translation of formal rules into fair experiences for marginalized groups. Empirical studies show that even with formal protections, discretionary decision-making and biased interpretation can undermine substantive equality, for example, in policing and sanctioning contexts (Acemoğlu & Wolitzky, 2020). Formal equality is a necessary but insufficient condition for real-world justice.

This tension between the formal and substantive gives rise to a distinction between equal protection, defined as legal rights on paper, versus equal opportunity or outcomes. Acemoğlu and Wolitzky (2020) theoretically explore how formal equality interacts with coercive power, social norms, and enforcement practices to produce unequal outcomes unless institutional design counterbalances the structural advantages elites enjoy. Legitimacy and compliance studies demonstrate that perceived fairness in legal processes, rather than the mere existence of neutral rules, shapes behavior and the willingness to engage with the system. Procedural justice research shows that perceptions of fairness influence trust and compliance, even when outcomes are unfavorable. Tyler's (2005) research documents substantial gaps in trust and cooperation along ethnic lines, persisting despite formal legal protections. Subsequent studies consistently find that perceived procedural fairness and respectful treatment predict greater legitimacy and voluntary compliance among diverse populations (Hinds & Murphy, 2007; Murphy et al., 2009; Penner et al., 2014), underscoring that fair processes must accompany equal protection to achieve substantive equality.

The literature also emphasizes the communicative and psychological dimensions of legality, particularly in relation to representation. The composition of decision-making bodies, the gender and racial makeup of legal professionals, and the quality of interactions between authorities and the public all shape how formal rules operate in practice. Process-based measures of policing indicate that legitimacy depends on procedures perceived as fair and inclusive, rather than solely on neutral statutes. Empirical work links procedural justice to reduced resistance or recidivism (Reisig et al., 2007; Murphy et al., 2009; Elliott et al., 2011; Penner et al., 2014). Cross-national research indicates that representation and governance quality influence the translation of formal equality into everyday outcomes, reinforcing the point that institutional design—how decisions are made, who makes them, and how they communicate—matters for achieving substantive equality (Thomsen, 2018; Acemoğlu & Wolitzky, 2020).

Historical Development and Reforms

The evolution of equality before the law has progressed from formal guarantees enshrined in constitutions and statutes to more substantive reforms aimed at addressing systemic disadvantages. This progression, observed across various jurisdictions, reflects an iterative process: first codifying equal treatment in law, then institutionalizing independent adjudication and human rights norms, and, in many cases, embedding targeted measures to counteract persistent inequalities that distort legal outcomes. This section outlines this trajectory in three phases, linking these reforms to their empirical implications for real-world equality.

Initially, formal equality, defined as the principle that rules apply equally to all, emerged as a foundational standard in liberal constitutionalism. In the decades following the establishment of liberal constitutions, many states enacted formal protections (e.g., equal protection, non-discrimination clauses) as the baseline for due process and legitimacy (Holmberg et al., 2009). However, governance research highlights that formal rules alone rarely ensure uniform outcomes, as implementation depends on institutions' ability to apply rules without bias and to provide equitable access to remedies (Haggard et al., 2008). Empirical studies show that when courts lack independence, enforcement is inconsistent, or regulatory frameworks are opaque, formal guarantees often fail in practice, leading to uneven protection across social groups (Holmberg et al., 2009). In the postwar period, formal equality was tied to development outcomes. Institutions that effectively translate rules into predictable enforcement and uphold contracts or rights free from corruption saw more reliable access to justice and fewer discriminatory practices (Haggard et al., 2008). Cross-national research indicates that formal equality is inadequate in the presence of social cleavages; thus, early reforms began to incorporate independence, transparency, and accountability to mitigate discretionary biases in adjudication (Helmke & Rosenbluth, 2009).

The modern era marked a shift toward substantive equality, recognizing that equal treatment requires measures to address historical disadvantages and contemporary barriers. International human rights frameworks after 1945, alongside regional instruments, prompted states to move beyond non-discrimination toward affirmative actions, remedies, and inclusive governance. Empirical studies show that reforms, including anti-discrimination statutes, gender quotas, and protections for vulnerable groups, have improved representation and access to justice. However, these gains are uneven and depend on enforcement capacity (Balagopalan, 2019). Research on migrant and minority rights in India shows that policy commitments can enhance formal protections, but equitable outcomes rely on how rights are implemented in institutions, mobilized by civil society, and supported by social policy ecosystems (Unnithan & Heitmeyer, 2014; Haq et al., 2020). Global analyses of discrimination law reveal that intersectional approaches - recognizing the compounded impacts of poverty, caste, gender, and race - offer more accurate accounts of unequal outcomes and inform better remedies than single-identity frameworks (Atrey, 2018; Karvatska & Toronchuk, 2021). Reforms during this period

institutionalized substantive equality through specific design features such as independent courts, transparent procedures, and accountability mechanisms.

Debates and Tensions

The academic discourse on equality before the law is far from monolithic, as it is fueled by fundamental debates about its practical application and how legal systems should implement it. These tensions cluster around three central themes: formal versus substantive equality, equal protection versus equal outcomes, and the role of representation, legitimacy, and procedural fairness in translating law into equitable results. These debates shape how scholars and policymakers design reforms, allocate resources, and evaluate progress toward real-world equality.

The debate over formal versus substantive equality centers on whether laws should apply uniformly, providing universal protection based on equal rights, or yield comparable real-world outcomes, accounting for social context and historical disadvantage. Lucy (2021) contends that equality before the law comprises multiple components, with formal equality alone rarely guaranteeing fair outcomes, thereby motivating reforms that address context and power dynamics. Thomsen (2018) highlights the need to distinguish non-discrimination from context-sensitive fairness, emphasizing how norms, interpretation, and institutional design determine whether formal rules translate into just experiences. Empirical work further clarifies this boundary, demonstrating that discretionary decision-making and biased interpretation can erode substantively equal outcomes even with formal protections in place (Acemoğlu & Wolitzky, 2020). While formal equality is a necessary baseline, it is not sufficient for justice in everyday legal life.

A related debate concerns whether equal protection should be pursued at the level of equal opportunities or equal outcomes. Acemoğlu and Wolitzky (2020) offer a theoretical framework in which formal equality may coexist with entrenched advantages unless institutional design and incentives counterbalance structural asymmetries, underscoring that poorly designed laws can inadvertently perpetuate elite privileges. Empirical work supports this, showing that equality of protection does not automatically yield equality of outcomes; for example, the stigma associated with criminal records affects employability even when legal rights are protected.

A final debate centers on representation and legitimacy as drivers of real equality. The literature on legitimacy emphasizes that people's willingness to comply with the law is shaped more by perceptions of fair and legitimate processes than by abstract rules. Research links procedural justice to trust, cooperation, and compliance, demonstrating that perceived legitimacy can moderate the effect of procedural fairness across contexts (Murphy et al., 2009; Nagin & Telep, 2017). Meta-analytic reviews find that perceived fairness and impartiality are consistently associated with greater public legitimacy and cooperation (Mazerolle et al., 2013). However, procedural justice alone may not close substantive gaps; studies show that even when people view procedures as legitimate, broader structural inequalities can persist, limiting the translation of legitimacy into equal opportunities (Trinkner & Cohn, 2014). Legitimacy and procedural fairness are crucial levers for enhancing authority and compliance. However, they are most effective when paired with reforms that address representation, institutional design, and structural determinants of inequality.

Empirical Realities Across Historical Periods: Is Equality Before the Law Achieved in Practice?

De Jure Versus De Facto Equality Across Periods and Groups

Across historical moments and diverse populations, the divergence between equality codified in law (*de jure*) and equality experienced in reality (*de facto*) remains a central puzzle for political science and law. The literature consistently demonstrates that enacting formal rights

does not guarantee real-world parity. This gap is often widest where enforcement, interpretation, and social structures most powerfully interact, such as in justice systems, schools, and labor markets. This section clarifies this conceptual terrain and illustrates how the de jure-de facto divide manifests across periods and groups, highlighting mechanisms that sustain or erode real equality.

Conceptually, de jure equality refers to rights and protections existing in statutes, constitutions, or formal rules. De facto equality, conversely, concerns how those rights play out in practice, whether individuals and groups enjoy equivalent access, protection, and outcomes in everyday encounters with the law and state institutions. Increasingly, the literature emphasizes that de jure provisions are necessary but insufficient for substantive equality; without adequate enforcement, impartial administration, and inclusive governance, formal equality can remain hollow (Melton & Ginsburg, 2014; Hayo & Voigt, 2023). Likewise, the politics of law—how institutions are designed, how actors are represented, and how norms shape interpretation—plays a decisive role in translating de jure rules into de facto experiences. Recent work demonstrates that long-run convergence between de jure structures and de facto behavior is not guaranteed, depending on capacity, accountability, and contextual dynamics within and across legal regimes (Kanbur & Ronconi, 2018). De jure rights set the floor, but whether that floor supports equal treatment depends on enforcement, legitimacy, and structural context (Metelska-Szaniawska & Lewkowicz, 2020).

Historical progress toward equality has often proceeded through formal reforms, yet de facto gaps persist or even widen in specific domains. For example, the de jure abolition of slavery and the expansion of civil rights have not automatically erased de facto hierarchies. Paschke (2020) discusses how international definitions of slavery and national practices diverge, illustrating that formal human-rights instruments can exist alongside ongoing de facto subjugation or exploitation. In education, Donato & Hanson (2012) document persistent de facto school segregation in the American Southwest despite de jure equality claims, underscoring how local practices can sustain racialized separation even after formal equality is proclaimed. In the labor market, Kanbur & Ronconi (2018) show cross-country variation in how labor protections are enforced; de facto enforcement conditions—rather than de jure rules alone—shape worker protections, compliance, and outcomes. The digital-era rights literature reveals a gap between policy commitments and actual skill attainment or access; Dmitriev et al. (2021) find that de jure digital-skill rights do not automatically yield de facto competencies without effective implementation, resources, and accountability. This persistence of de facto inequalities is also evident in developed nations, as illustrated by the United Kingdom's criminal justice system. While the UK has a robust legal framework committed to equality, substantial disparities persist. For instance, data reveal that individuals from minority backgrounds are overrepresented in prisons, comprising 26% of the prison population compared to 13% of the general population (Mahoney & Chowdhury, 2021). Black individuals also face a disproportionately higher likelihood of imprisonment compared to White individuals (Uhrig, 2016). This overrepresentation highlights the limitations of formal legal protections in addressing systemic biases and structural inequalities. Finally, in post-socialist contexts, Metelska-Szaniawska & Lewkowicz (2020) find that de jure constitutional rights require supportive institutions (judicial independence, civil society, governance quality) to translate into de facto protections. Across these examples, the de jure-de facto tension persists, reflecting how formal reforms meet the friction of institutions, culture, and power.

Measuring de jure versus de facto equality requires multiple indicators, incorporating formal rights, enforcement intensity, and observed outcomes to avoid conflating paper guarantees with lived reality. Paschke (2020) emphasizes definitional clarity, while Kanbur & Ronconi (2018) argue for integrated measures of regulation that capture both de jure rules and their enforcement in practice. The cross-country literature demonstrates that while de jure indicators capture

constitutional commitments, de facto indicators—enforcement, judicial independence, and day-to-day experiences of rights—are essential to assess real equality (Melton & Ginsburg, 2014). Therefore, progress toward true equality requires not only expanding de jure protections but also strengthening the institutions, practices, and social conditions that realize those protections in everyday life (Hayo & Voigt, 2023; Metelska-Szaniawska & Lewkowicz, 2020).

Domain-Specific Empirical Patterns and Illustrative Cases

This section highlights concrete patterns in which formal equality encounters everyday friction in policing, the courts, and governance. Drawing on cross-national and within-country studies, it foregrounds (1) criminal justice and sentencing disparities by gender and race, (2) how court processes, representation, and organizational structure shape outcomes, and (3) macro-structural determinants that generate cross-national variation in the translation of de jure rights into de facto realities.

Micro-level research reveals disparities emerging at multiple junctures of the criminal justice pipeline, with race and gender often interacting to produce non-uniform outcomes. Black defendants face disproportionately harsher sentencing relative to similarly situated White defendants, even after accounting for offense seriousness and prior records, reflecting cumulative disadvantage within the system (Wooldredge et al., 2015). Race also shapes prosecution and charge decisions, contributing to harsher downstream consequences for minority defendants (Stolzenberg et al., 2013). Racialized treatment in the initial processing of suspects produces downstream disparities in sentencing (Kim & Kiesel, 2017). Formal equality in statutes does not guarantee equality in practice, as differential treatment accumulates across contacts with police, prosecutors, and courts.

Beyond individual bias at sentencing, the structure and composition of decision-making bodies matter. Research reveals that who sits in the courtroom—judge, jurors, or courtroom staff—can influence decisions in nuanced ways (Freiburger & Hilinski, 2009). Procedural justice research indicates that perceived fairness, voice, neutrality, and respectful treatment cultivate legitimacy and compliance, thereby affecting cooperation and acceptance of outcomes (Murphy et al., 2009; Mazerolle et al., 2013). The organizational features of courts and enforcement agencies—such as how decisions are communicated, who has a say, and whether procedures are experienced as legitimate—help translate formal rules into legitimate, enforceable outcomes. Cross-national work shows that the legitimacy of law varies with governance quality and representation in legal institutions (Schaap & Scheepers, 2014).

Constitutional design, judicial independence, enforcement capacity, and the strength of civil society shape whether de jure protections become real protections. The literature documents persistent gaps between de jure and de facto judicial independence and enforcement, illustrating that formal guarantees do not automatically produce substantive equality without supportive institutions and governance. De facto divergence from de jure independence is a cross-national pattern, signaling that institutional design must be complemented by practice and accountability mechanisms (Hayo & Voigt, 2023). Similarly, enforcement capacity matters for realizing labor and other rights (Kanbur & Ronconi, 2018). In post-socialist contexts, even strong constitutional rights yield limited real protections without strong judicial independence, democratization, and civil society (Metelska-Szaniawska & Lewkowicz, 2020). Historical and comparative cases—such as slavery or school segregation—underscore that de jure commitments require ongoing institutional support (Donato & Hanson, 2012; Paschke, 2020). Cross-national variation in equality tracks macro-structural determinants such as governance quality, court independence, and civil-society monitoring, rather than formal protections alone (Melton & Ginsburg, 2014).

Limitations and Counter-Narratives

Despite efforts to document and close the gaps between de jure rights and de facto experiences, the literature in this domain has limitations that warrant careful interpretation. Simultaneously,

counter-narratives highlight conditions under which formal protections translate into more equitable real-world outcomes. This subsection organizes these concerns into three interlocking threads: measurement and comparability, data gaps and methodological biases, and progress under certain institutional designs.

A central limitation concerns how equality before the law is measured across diverse jurisdictions and historical moments. There is no single, universally valid metric for the rule of law or equality in practice; indicators vary in scope, weighting, and normative assumptions, complicating cross-national comparisons (Versteeg & Ginsburg, 2017). The *de jure-de facto* distinction introduces measurement challenges: formal guarantees may exist while enforcement remains weak or uneven, yielding divergent pictures across domains (Paschke, 2020). Cross-country comparisons are further muddled by governance quality and civil society strength, which influence how rights are realized even when formal rules appear similar (Metelska-Szaniawska & Lewkowicz, 2020). Researchers must triangulate multiple indicators—constitutional text, enforcement intensity, implementation capacity, and observed outcomes—to approximate substantive equality, recognizing that even these composites are imperfect proxies for lived experience.

Beyond measurement challenges, data limitations impede causal inferences about what improves real-world equality. Cross-national data on enforcement and judicial practice are often sparse or uneven, limiting the ability to disentangle policy design from implementation dynamics (Kanbur & Ronconi, 2018). Endogeneity concerns arise when jurisdictions that invest in formal protections also undertake broader reforms (education, welfare, policing) that independently affect outcomes, complicating claims of causal impact from rights provisions alone (Metelska-Szaniawska & Lewkowicz, 2020). Micro-level studies of sentencing and policing reveal that observed disparities can reflect cumulative disadvantage across decision points, measurement error, or unmeasured contextual factors (Stolzenberg et al., 2013; Wooldredge et al., 2015; Kim & Kiesel, 2017). Laboratory and field experiments sometimes produce counterintuitive results when participants modify behavior to conform to social desirability or institutional expectations (Smalarz et al., 2023). Finally, the literature increasingly cautions against single-axis analyses of inequality and urges intersectional approaches (Bailey et al., 2019).

Nonetheless, counter-narratives suggest that policy design and governance arrangements can narrow *de jure-de facto* gaps. Procedural justice research demonstrates that perceived fairness, voice, neutrality, and dignified treatment during legal encounters bolster legitimacy and voluntary compliance, even when outcomes are not favorable (Murphy et al., 2009; Mazerolle et al., 2013). This indicates a pathway to broader real-world equity through process improvements. Studies show that increasing racial and ethnic representation in legal institutions can modify sentencing patterns in some contexts, although findings are not uniformly causal and may depend on local conditions and measurement choices (Ward et al., 2009; King et al., 2010). Cross-national comparisons also reveal that where governance quality, judicial independence, and civil society strength are robust, the translation of formal rights into real protections improves (Metelska-Szaniawska & Lewkowicz, 2020). Finally, anti-discrimination research indicates that substantive equality can be realized when courts, legislatures, and civil society engage in targeted reforms that address structural disadvantage rather than relying solely on formal equality (Farrell, 2011; Fredman, 2016, 2023). These counter-narratives highlight that progress depends on inclusive institutions, credible enforcement, and integration of rights with social policy.

Mechanisms and Conditions That Create Inequality in Real Life

Institutional Design, Discretion, and Procedural Bias

Institutional design shapes how justice is produced in everyday life. While formal rules are important, the architecture of enforcement agencies, courts, and regulatory bodies determines the locus and magnitude of discretion, which can lead to biased outcomes. Discretion can be a source of both adaptability and inequality: when decision-makers interpret neutral procedures through social stereotypes, historical practices, or organizational incentives, formal equality may not translate into substantive equality (Murphy et al., 2009). Conversely, deliberate design choices—ensuring voice, neutrality, and accountable procedures—can mitigate bias and enhance legitimacy, even when outcomes are imperfect.

Discretion operates at multiple junctures in the justice pipeline. In policing, discretionary decisions regarding stops, searches, and arrests create significant opportunities for racial and gender biases to emerge, leading to downstream penalties and sentencing disparities (Kim & Kiesel, 2017). Researchers document cumulative disadvantage across the criminal-legal process: minority defendants often face a sequence of discretionary decisions—charging, plea-bargaining, and sentencing—that result in harsher outcomes compared to similarly situated White defendants. These patterns persist even after accounting for offense severity and records (Wooldredge et al., 2015).

Representation and organizational structure also play a key role. The gender and racial composition of courtroom staff, public prosecutors, and judges can influence decision-making or the interpretive frame applied to a case. Empirical research indicates that courtroom composition and the presence of diverse actors correlate with variations in punitive outcomes. However, these effects are often contingent on jurisdiction, case mix, and measurement choices (Ward et al., 2009; King et al., 2010). Deliberative-design experiments suggest that the organization of groups during deliberation can affect inequality: under certain rules, gender disparities in voice and influence can be diminished or exacerbated, illustrating that institutional design can influence inequality in legal processes (Karpowitz et al., 2012).

Procedural fairness and legitimacy are key channels through which design shapes behavior and outcomes. Perceptions of fairness—voice, neutrality, respect, and trustworthy motives—enhance legitimacy. This promotes voluntary compliance and cooperation with authorities (Murphy et al., 2009). Measurement and accountability mechanisms are critical in institutional design. Even well-intentioned procedural reforms can yield unintended consequences if designers overlook implementation contexts, biases in risk assessment tools, or incentives that prioritize formal compliance over substantive equity (Uggen et al., 2014). Institutional reforms should integrate standardized, transparent procedures with a focus on representation, accountability, and ongoing evaluation. Evidence-based design—incorporating diverse voices, ensuring neutral and accountable processes, and aligning incentives with equity goals—provides a promising approach to reduce discretionary bias and translate formal equality into real-world fairness.

Representation, Organization, and the Gendered Dynamics of Legal Institutions

Representation and organizational design in legal institutions shape not only who makes decisions but how decisions are made, interpreted, and enforced. The literature distinguishes between descriptive representation (the presence of women and racial/ethnic minorities in key roles) and substantive representation (the extent to which those actors advance the interests and rights of their groups). Celis & Childs (2011) argue that substantive representation cannot be inferred from mere presence; it requires attention to how norms, incentives, and institutional arrangements empower actors to pursue equality-enhancing outcomes, especially in gendered and racially diverse contexts. Organizational reforms must go beyond hiring quotas to alter power dynamics, thereby enabling more equitable procedures and outcomes.

Empirical work demonstrates that representation matters, but its effects are context-dependent. In the United States, King et al. (2010) find that the demographic composition of the legal profession in a given county interacts with sentencing outcomes: jurisdictions with greater Black representation among lawyers exhibit reduced Black-White sentencing disparities. Farrell et al. (2009) extend this idea to the broader federal court workforce, showing that higher Black representation within court staff correlates with smaller sentencing disparities. However, the magnitude and causality of these effects vary across contexts and measurement methods. Wu (2016) reinforces this, documenting that race/ethnicity interacts with prosecutorial discretion to produce differential treatment, underscoring that representation must be complemented by bias mitigation.

Beyond race, gender dynamics within courts also matter. Boyd et al. (2010) provide evidence that judges' sex and race can shape their judging. However, effects vary by jurisdiction and legal domain, highlighting that representation does not operate through a single universal channel but interacts with case type, legal culture, and institutional norms. Cross-national insights add depth: Jasper (2021) analyzes diversification within the Israeli judiciary, showing how intersectional representation can alter deliberative dynamics and foster more inclusive decision-making in a pluralistic legal system. Grossman (2012) extends the argument to international courts, asserting that women judges contribute to the legitimacy of judicial institutions, thereby influencing public acceptance and perceived fairness, even when substantive outcomes differ. Representation matters as a lever of legitimacy and, potentially, of equity, but its effectiveness hinges on how institutions structure voice, accountability, and the evaluation of outcomes.

Organizational design—such as diversified bench panels, inclusive court staffing, transparent promotions, and adaptive training—complements representation. Simply increasing diversity without altering rules of deliberation and accountability can yield limited gains; reforms must ensure genuine voice, neutral procedures, and equitable access to opportunities (Karpowitz et al., 2012). Representation and organization matter for real-life equality only when embedded in accountable, legitimacy-enhancing procedures that reduce bias (Celis & Childs, 2011; Jasper, 2021).

Structural Determinants, Migration Status, Race, and Economic and Social Context

Structural determinants operate at a broad level to shape access to justice, opportunities, and security. Migration status, race/ethnicity, and the broader economic and social context interact to produce inequalities in legal outcomes. Disparities arise not only from individual biases or discrete institutional choices but from embedded market, state, and social hierarchies that govern access to resources, representation, and protection. Understanding these determinants is essential for designing policies that narrow the gap between *de jure* and *de facto* protections. Migration status crystallizes multiple forms of disadvantage that reverberate through legal and administrative processes. Immigrant and asylum-seeking populations frequently encounter language barriers, limited legal representation, and mistrust of state institutions, all of which constrain effective engagement (Kanyajit et al., 2018). Language obstacles, fear of retaliation or deportation, and unfamiliarity with rights reduce the likelihood of reporting abuse, seeking redress, or pursuing legal remedies (Henry et al., 2021). Migrants face higher barriers to accessing civil justice and lower utilization of health and social protections, even when formal rights exist, due to procedural complexity and fear of exposure (Velandia-Morales et al., 2023). Further complicating these issues, Angermeyer (2021) highlights how linguistic differences can create pragmatic inequalities in the courtroom, where standard legal practices often disadvantage those who do not communicate in the dominant language or dialect. Policy design—regularization pathways, labor-market protections, and asylum procedures—interacts with social attitudes toward migrants to shape enforcement and inclusion (Akkan & Buğra, 2021).

Race and ethnicity shape access to resources, influence institutional trust, and determine the likelihood and severity of legal sanctions. Racialized groups experience differential treatment in policing, court processing, and employment barriers, even when formal protections exist. Research on sentencing disparities indicates that Black defendants often face harsher outcomes than White defendants, signaling cumulative disadvantage (Stolzenberg et al., 2013; Wooldredge et al., 2015). Studies on representation in legal professions reveal that higher racial diversity within the judiciary and legal staff can modestly reduce disparities when paired with accountable governance (Farrell et al., 2009; King et al., 2010). Trust in legal institutions and perceived legitimacy vary with historical legacies of racism, colonialism, and contemporary discrimination (Nazroo et al., 2007; Schaap & Scheepers, 2014).

Economic inequality intensifies status competition, stigma, and differential access to law and governance. Higher economic inequality is linked to heightened material and symbolic deprivation, elevating status anxiety and reliance on formal rules that may not be equally enforceable for all (Sánchez-Rodríguez et al., 2017; Velandia-Morales et al., 2023). Socioeconomic stratification interacts with race and migration status to shape health, education, and legal outcomes, creating feedback loops in which disadvantaged groups face higher risks and lower resilience (Nazroo et al., 2007; Jacobs & George, 2021). Widening gaps in material resources restrict access to consultation, translation services, and legal aid, reinforcing de facto inequality even in systems with strong formal commitments to equality (Akkan & Buğra, 2021).

Lessons and Policy Pathways: Approaches to Realize Equality Before the Law in Practice

Reducing Bias and Improving Fairness in Adjudication and Risk Assessment

Reducing bias and enhancing fairness in adjudication and risk assessment are pivotal for translating formal equality into real-world justice. This section synthesizes evidence from psychology, criminology, and legal studies to illuminate practical strategies for designing and implementing risk assessment instruments (RAIs) and adjudicative processes that minimize disparate impacts while preserving accuracy and public safety. Fairness must be embedded into both the construction of predictive tools and the procedural contexts in which they are applied, with continuous evaluation and accountability mechanisms to prevent drift toward biased outcomes.

The case for algorithmic or instrument-based risk assessment is grounded in empirical assessments of reliability and consistency. Well-constructed RAIs can yield more consistent, transparent, and, on average, more accurate judgments than unaided human judgment, particularly in high-volume decisions such as pretrial release and parole (Berk et al., 2018). Algorithms can address trade-offs in predicting recidivism by standardizing variables and decision rules, reducing ad hoc reasoning and cognitive biases (Skeem & Lowenkamp, 2020). Fairness in RAIs can be enhanced through methodological advances that calibrate risk estimates while controlling for distributional disparities (Berk et al., 2023). There is a strong empirical basis for deploying RAIs with principled fairness constraints rather than abandoning predictive tools.

Translating these tools into fair practice requires rigorous attention to model specification, data quality, and ongoing calibration. No single operational definition of fairness suffices; various definitions carry different policy implications, particularly in contexts with unequal base rates (Berk et al., 2018). Counterfactual or fairness-aware designs help isolate the effect of protected attributes and allow adjustments that reduce biased predictions without sacrificing predictive validity. Removing sensitive attributes alone may be insufficient to achieve fairness if proxies persist (Johndrow & Lum, 2019). Counterfactual fairness approaches offer a path to more robust equity by evaluating how predictions would change under interventions on protected

characteristics. Superficial de-biasing may fail to address underlying structural inequities embedded in data-generating processes.

There is evidence on the interaction between risk tools and adjudicative context. Even accurate RAIs can be influenced by legal culture, institutional incentives, and risk-management goals. While RAIs can improve decision consistency, they may also entrench risk-averse practices that disproportionately affect minority or economically disadvantaged defendants if not accompanied by guardrails and accountability (Skeem & Lowenkamp, 2020). When RAIs are combined with transparent governance, public reporting, and avenues for human review, fairness can improve without a meaningful loss in safety or efficiency (Buckler et al., 2007; Rief et al., 2024).

Governance and accountability mechanisms are essential to sustaining fairness gains. Transparency about model inputs, variable selection, and performance metrics enables independent auditing and public scrutiny. Implementing regular bias and impact assessments alongside judicial performance reviews creates a feedback loop that can detect drift and prompt recalibration. Procedural justice reinforces the importance of legitimacy and trust; transparent, participatory, and explainable RAIs and adjudicatory procedures gain public acceptance even when outcomes remain imperfect (Buckler et al., 2007; Murphy et al., 2009). Fairness interventions should operate on multiple levels: technical fairness in the instrument, process fairness in adjudication, and governance fairness through accountability.

A prudent policy blueprint combines technical refinements with broader reforms: (1) adopting fairness-aware design principles, (2) ensuring a human-in-the-loop architecture, (3) implementing continuous monitoring, independent audits, and public reporting, and (4) addressing data gaps (Berk et al., 2018, 2023; Johndrow & Lum, 2019). Integrated with training, oversight, and transparent governance, risk assessments can contribute to more equitable discretion without compromising public safety.

Institutional Design and Governance Reforms to Enhance Equality Before the Law

Achieving real equality before the law requires more than formal rights; it demands governance architectures that institutionalize fairness, accountability, and inclusive participation. This section synthesizes evidence from comparative politics, administrative law, and governance studies to outline practical institutional reforms that strengthen the translation of *de jure* protections into *de facto* justice. Deliberate design choices—transparent rulemaking, independent oversight, diversified decision-making, and robust accountability—significantly reduce discretionary bias and enhance public trust, legitimacy, and compliance (Chong et al., 2020; Dhuli, 2021; Gulati & Schoeffmann, 2023).

Independent oversight and judicial-administrative separation are foundational for credible equality. Analyses of post-authoritarian and transitioning systems show that judicial independence, reinforced by constitutional guarantees and civil-society monitoring, correlates with adherence to equality and fewer politically motivated interventions (Kanbur & Ronconi, 2018; Metelska-Szaniawska & Lewkowicz, 2020). Independent oversight bodies—anti-corruption commissions, ombudsperson offices, and inspectorates—serve as crucial checks and balances (U.S. Agency for International Development et al., 2009). Independent review stabilizes environmental and administrative reform when credible sanctions and transparent processes accompany rulemaking (Gulati & Schoeffmann, 2023). Institutional reforms should prioritize durable independence and shield key justice functions from *ad hoc* political manipulation.

Descriptive and substantive representation within legal institutions matters, but must be paired with structural accountability. Increasing diversity among judges, prosecutors, and court staff can alter decision-making, particularly when accompanied by transparent criteria for promotion, performance, and disciplinary processes (Dhuli, 2021). Representation alone yields only partial gains unless it is framed by governance rules that ensure voice, neutral procedures,

and accessible redress mechanisms. Deliberative design—rules that grant minority representation or provide structured opportunities for minority participation—can modify outcomes and perceptions of fairness, especially when coupled with oversight and clear accountability (Karpowitz et al., 2012). Institutions with formal channels for appeals, independent audit trails, and regular public reporting further anchor legitimacy (Buckler et al., 2007).

Procedural fairness enhances legitimacy, cooperation, and compliance (Nagin & Telep, 2017). Reforms should embed procedural fairness into everyday adjudication, not merely in assurances of outcome equality. This entails training focused on bias mitigation, standardized complaint and redress procedures, open access to information, and mechanisms for audit and redress (Murphy et al., 2009). When procedural fairness is visibly integrated with performance accountability and independent monitoring, public confidence rises (Buckler et al., 2007).

A central requirement for reforms is rigorous, ongoing evaluation. Institutions should implement pre-registered reforms, specify fairness metrics, and commit to regular external audits. Evidence underscores the value of transparent measurement, public reporting, and independent evaluation. Data-informed reforms—paired with citizen oversight and participatory budgeting—have improved service delivery and fairness (Chong et al., 2020).

Policy synthesis emphasizes a comprehensive approach to improve governance and promote equality. Strengthening judicial independence, promoting diverse representation, embedding procedural fairness, and implementing regular, independent evaluations fosters accountability. Aligning legal reforms with social policies addresses the structural roots of inequality.

Policy Integration and Best Practices: Lessons from Empirical Evidence and Case Examples

Achieving real equality before the law requires coherent policy integration and careful translation of empirical findings into scalable governance practices. This section distills lessons from cross-national experiences to outline best practices for integrating legal reform with education, health, labor, migration, and social policy. Integrated, evidence-based policy packages—designed with transparency, accountability, and continuous evaluation—produce more durable reductions in de jure-de facto gaps.

Multifaceted social determinants shape legal outcomes. Programs that combine legal rights with supportive services—such as legal aid, language access, social protection, and employment support—tend to reduce barriers to real access and enhance compliance. Inclusive policy designs that couple anti-discrimination law with targeted social programs have shown more substantial alignment between formal protections and lived experiences, particularly for migrants and minorities (Akkan & Buğra, 2021; Henry et al., 2021). Integrated approaches improve legitimacy and trust, enhancing compliance (Murphy et al., 2009; Mazerolle et al., 2013).

Evidence-based reform requires robust data governance, transparent metrics, and regular audits. Policy packages should include pre-registered reforms, explicit fairness indicators, and independent evaluations. External audits, public reporting, and iterative recalibration prevent drift toward biased outcomes (Higgins & Altman, 2008; Rhodes et al., 2019). Openness about decision criteria, model inputs, and performance fosters legitimacy (Buckler et al., 2007; Rief et al., 2024). Transparency and accountability, when combined with independent oversight, correlate with greater fairness (Chong et al., 2020; Gulati & Schoeffmann, 2023).

Representative diversity must be matched with governance mechanisms that ensure voice and redress. Increasing racial and gender diversity can influence outcomes (Farrell et al., 2009; King et al., 2010). Experimental studies show that representation benefits are amplified with fair procedural rules and accountability (Karpowitz et al., 2012). Diversified bench composition enhances legitimacy, reinforcing the case for integrated reforms (Jasper, 2021).

Advancing equality requires a coherent, cross-sectoral policy ecosystem rooted in empirical evidence and continuous evaluation. Effective reform packages integrate legal reforms with policies in education, employment, housing, health, and migration to address the social determinants of inequality. Institutional reforms should pair increased representation with accountability through transparent promotion criteria. Embedding fairness-aware governance entails pre-defining fairness objectives, publishing impact assessments, and establishing redress processes. Reducing procedural barriers requires accessible services for migrants and minorities. Building learning systems through periodic evaluations supports sustainable reform.

Realizing equality requires a coherent, data-driven policy ecosystem. Integrated reform—grounded in evidence, designed for diverse populations, and continuously monitored—narrows the chasm between guarantees and real-life justice. This aligns with broader governance literature linking institutions, representation, accountability, and cross-sector collaboration.

Conclusion and Discussion

This article synthesizes two decades (2005-2024) of theoretical and empirical work on equality before the law - a principle also known as equality under the law, equality in the eyes of the law, legal equality, or legal egalitarianism, which fundamentally means all people must be equally protected by the law, regardless of background (United Nations, 1948, art. 7) - distinguishing between formal equality on paper and substantive equality in everyday life. Across criminal justice, civil procedure, migration, labor, and governance, a consistent pattern emerges: *de jure* protections are necessary but insufficient for real-life equality. Discretion, representation, institutional design, and macro-structural determinants collaboratively shape whether formal guarantees yield comparable access, protections, and outcomes for all citizens. This synthesis demonstrates that the gap between *de jure* rights and *de facto* experiences narrows, albeit unevenly, when proper rules are paired with fair processes, inclusive institutions, and rigorous accountability (Murphy et al., 2009; King et al., 2010; Mazerolle et al., 2013; Berk et al., 2018).

Connections to real-world practice, particularly in Thailand and Asia, highlight shared challenges and region-specific dynamics. Formal commitments to equality coexist with disparities rooted in selective enforcement, bureaucratic opacity, and social stratification. Procedural fairness and legitimacy emerge as crucial pathways to voluntary compliance, suggesting that Thai and broader Asian publics place high value on dignified, transparent procedures as a basis for trust in law (Murphy et al., 2009; Mazerolle et al., 2013). At the same time, macro-structural determinants shape differential access to justice in ways that standard legal reforms alone cannot fully address (Nazroo et al., 2007; Velandia-Morales et al., 2023). Asia-specific contexts—such as internal and cross-border migration, labor-market segmentation, and varied levels of judicial independence—highlight the need for cross-sectoral policy integration, robust data governance, and institutional reforms tailored to national trajectories while learning from regional peers. Thailand, with its evolving governance structures and strong civil society movements, offers a fertile ground for applying harmonized reforms that combine fair adjudication with inclusive governance and targeted social supports. Key implications for policy and practice emerge from the synthesis: design for fair processes, not just fair outcomes. Procedural justice—voice, neutrality, respect—enhances legitimacy and compliance, even when outcomes are not perfectly equal. Policy initiatives should prioritize transparent, participatory procedures, coupled with clear channels for redress. This approach aligns with evidence from policing, taxation, and administrative law and is relevant for public trust in Thailand's regulatory and judicial institutions (Murphy et al., 2009; Mazerolle et al., 2013).

Policy integration across sectors is crucial. The most durable gains occur when legal reforms are embedded in broader social policy—education, health, housing, and labor—so that rights are supported by resources and opportunities that enable equal participation. Thailand's development agenda and Asian regional initiatives can leverage integrated reforms to address structural determinants of inequality and accelerate progress toward substantive equality (Akkan & Buğra, 2021; Henry et al., 2021). Importantly, concerns about socioeconomic disparities in access to justice are not limited to developing nations or specific regions. Recent research from developed countries like Sweden continues to question whether “Justice by privilege?” exists, underscoring the ongoing need for vigilance and reform even in seemingly egalitarian contexts (Kahlmeter & Bäckman, 2025). Similarly, in the United Kingdom, studies have revealed persistent disproportionality in the treatment of Black, Asian, and minority ethnic individuals within the criminal justice system, highlighting that even nations with established legal traditions face challenges in ensuring equal justice for all (Uhrig, 2016). These findings across diverse contexts emphasize the universal nature of the struggle for equality before the law and the importance of continuous assessment and improvement of justice systems worldwide.

Future research should deepen cross-country comparability within Asia by emphasizing intersectional analyses in both criminal and civil contexts and exploring how regional cooperation frameworks can catalyze shared best practices. Context-sensitive, policy-coherent pilots that combine procedural fairness with structural reforms would help move closer to substantive equality. The evidence supports a multi-layered roadmap for Asia and Thailand: institutionalize independence and accountability, embed procedural fairness, diversify and empower decision-makers, and pursue cross-sectoral reforms that address structural determinants of inequality. These interventions—guided by rigorous data, transparent evaluation, and inclusive governance—will advance real-world equality, contributing to more legitimate institutions, social cohesion, and public welfare.

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