Criminal Justice in Europe

Dispute Resolution

Prosecutors, Public Defenders, and the American Adversarial System

Special Advocates in the Adversarial System Revised by Elena Ricci

The Model Rules of Professional Conduct provides an up-to-date resource for information on legal ethics. Federal, state and local courts in all jurisdictions look to the Rules for guidance in solving lawyer malpractice cases, disciplinary actions, disqualification issues, sanctions questions and much more. In this volume, black-letter Rules of Professional Conduct are followed by numbered Comments that explain each Rule's purpose and provide suggestions for its practical application. The Rules will help you identify proper conduct in a variety of given situations, review those instances where discretionary action is possible, and define the nature of the relationship between you and your clients, colleagues and the courts.

Dispute Resolution

Prosecutors, Public Defenders, and the American Adversarial System

This book outlines key aspects of the use of non-adversarial practices in the Australian justice system with reference to similar developments in the United States, Canada, New Zealand and the United Kingdom. It examines in detail non-adversarial theories and practices such as therapeutic jurisprudence, restorative justice, preventive law, creative problem solving, holistic law, appropriate or alternative dispute resolution, collaborative law, problem-oriented courts, diversion programs, indigenous courts, coroners courts and managerial and administrative procedures.

Special Advocates in the Adversarial System Revised by Elena Ricci
Rebooting Justice Public defenders being equally effective at gaining acquittals for defendants when compared to private counsel has allowed for an assumption that the public defender, and the promise made in Gideon v. Wainwright (1963), is working. But what does this acquittal rate tell us about the public defender office? Sadly, the comparison does not tell us much. The effectiveness of a public defender can only be truly determined by using a comparison to its counterpart in the adversarial system, the prosecution. In order for our public defender office to be deemed adequate or effective, it must be found to parity the prosecution, not to be an equivalent, or better than privately obtained counsel. This research set out to determine the parity that exists between the public defender’s office and district attorney’s office. It attempts to do so in a way that accounted for the cooperative nature of the work these two sides do, by comparing them as two distinct agencies, rather than simply using case outcome analysis, which has been the standard for the small amount of research that exists on this topic. The population used for this study consists of all of the public defenders and district attorneys employed in the County of Sacramento, California. This was a total of 240 attorneys, with 160 working for the district attorney, and 80 working for the public defender. The research concludes that as far as education and experience are concerned the public defender and prosecution are very similar, with some slight advantages going to the public defender. While this does not mean the public defender is equally situated with the prosecutor as far as resources, funding, and public perception, they are equal when looking at the variables of education and experience.

Partisan Justice The global nature of crime often requires expert witnesses to work and present their conclusions in courts outside their home jurisdiction with the corresponding need for them to have an understanding of the different structures and systems operating in other jurisdictions. This book will be a resource for UK professionals, as well as those from overseas testifying internationally, as to the workings of all UK jurisdictions. It also will help researchers and students to better understand the UK legal system.

Civil Litigation in China and Europe Over the past decade, DR Congo and South Africa have attracted global attention for high rates of sexual and gender-based violence. Why is it that courts in eastern DR Congo have offered a robust judicial response, prioritizing gender crimes despite considerable logistical challenges, whilst courts in South Africa, home to a far stronger legal infrastructure and human rights record, have failed to provide justice to victims of similar crimes? Lake shows that state fragility in DR Congo has created openings for human rights NGOs to influence legal processes in ways that have proved impossible in countries like South Africa, where the state is stronger. Yet exploiting opportunities presented by state fragility to pursue narrow human rights goals invites a host of new challenges. Strong NGOs and Weak States documents the promises and pitfalls of human rights and rule of law advocacy undertaken by NGOs in strong and weak states alike.

Comparative Criminal Justice Systems Dispute Resolution: Beyond the Adversarial Model, Third Edition provides a comprehensive look at the current state of ADR. For each area of Negotiation, Mediation, Arbitration, and Hybrid processes, the text incorporates
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four key aspects: the theoretical framework defining the process; the skills needed to practice it; the ethical issues implicated in its use and how to counsel users of such processes; and legal and policy analyses, with questions and problems within the text. New to the Third Edition: A shorter, more compact book designed to be student-friendly. Exercises and discussion problems throughout. Designed for one chapter to be covered each week of a typical ADR course. The latest on Online Dispute Resolution, Dispute System Design, Supreme Court decisions on arbitration, and empirical work on mediation and negotiation. Professors and students will benefit from: Comprehensive, current coverage. The theory, skills, ethical issues, and legal and policy analyses relevant to all key areas of contemporary ADR practice—Negotiation, Mediation, Arbitration, and hybrid and multi-party processes and their appropriate uses—are thoroughly covered using a rich range of up-to-date cases and readings. Authored by the leading scholars and teachers in the field of Dispute Resolution. The authors are award winning and recognized for their scholarship, teaching, practice, policy making, and standards drafting throughout the wide range of particular ADR processes. Practical approach to problem-solving. The text engages students as active participants in resolving human and legal problems, using individual or combined resolution processes in varying gender, race, and cultural contexts. International and multi-party dispute resolution. These important, high-interest contexts and applications are thoroughly covered in discrete chapters. Readings balance theory and theory-in-use. Readings include cases, behaviorally and critically based articles, examples, empirical studies, and relevant statutory and other regulatory material to illuminate the challenge of balancing rules and laws with the economic and emotional constraints inherent in disputes. Challenging, relevant readings. The text includes a wide range of perspectives, from Fisher, Ury, and Patton’sGetting to Yes, Raiffa’sArt and Science of Negotiation, and materials on modern deliberative democracy, group facilitation and decision making, counseling clients about uses of ADR, enforcement of negotiation, and mediation agreements. Key cases include AT&T v. Concepcion and other recent Supreme court cases on arbitration. Teaching materials include: Numerous role-plays and simulations for skills development. Suggested teaching exercises, syllabi and “answers” to problem boxes found in text. Recommendations for supplemental materials, such as videos and transcripts. Examination and paper suggestions for each chapter.

The Oxford Handbook of Criminal Law

Readings on Adversarial Justice Until quite recently it was commonplace to describe the witness as the ‘forgotten man’ in the criminal justice system. The last few years have seen a dramatic shift in thinking with an increasing recognition of the legitimate expectations and rights of witnesses within the criminal process. At the same time research has drawn attention to a host of factors that conspire to deny the courts access to the best evidence potentially available when so-called vulnerable and intimidated witnesses are called upon to testify in accordance with conventional adversarial trial procedures and methods. The official response so far embodies an approach best described as one of accommodation. Efforts have centred on improving the treatment of witnesses within the established trial framework while preserving an overall commitment to key tenets of adversarial theory. The latter include the principle of orality with its general insistence upon direct evidence.
and the use of cross-examination as a device for testing the credibility of witnesses. The central contribution of this book lies in its demonstration of the significant limitations of the prevailing approach, most recently manifest in the Youth Justice and Criminal Evidence Act 1999. By providing a broader theoretical framework for understanding the treatment of vulnerable witnesses it signals the need to extend the search for solutions beyond the boundaries of the paradigmatic adversarial model. Drawing upon modern psychological, socio-linguistic, and victimological study across common law jurisdictions, the book provides a systematic critique of the special measures of the 1999 Act and of adversarial trial procedure more generally. As a point of contrast the book also explores the contended advantages inherent within inquisitorial style criminal proceedings for witnesses, drawing on the author's own experience of rape proceedings in the Netherlands. Throughout due account is taken of significant recent developments at national, European, and international levels which have ensured the place victims and witnesses, once excluded, in any discussion of criminal trial fairness.

Complex Litigation and the Adversary System
This book aims to provide a self-contained but critical account of the manner in which cases are tried in England and Wales.

Habermas' Communicative Action Theory and the Adversarial Assumption of the Civil Litigation System
Provides an indepth analysis of the American legal system and proposes reforms in the workings of the court. Bibliogs

Ethics and the Advocate in the Adversarial System
True Crime/Law/Current Affairs/Political Science and Government
Provocation
Sparkman use thought-provoking cases to illustrate the failures of a trial system we revere only because we have been told it is the best in the world — a system we have been too arrogant to question. Charley “I won’t leave any witnesses next time.” Charley stated after being sentenced to ten years for the rape of three women. He subsequently pulled just over two years. Dwayne I asked Dwayne when he would stop committing crimes. He smiled his warm smile and replied. “When I’m dead.” Myth America has the greatest and fairest legal system conceived by the mind of man. Truth America has a trial system that cannot control crime and has legal services that are too complex and too expensive. More Truth We have a large legal profession — criminal defense lawyers — who labor to return drunk drivers to our streets, burglars to our homes, and child molesters to our neighborhoods. Revelation It works! We have the highest crime rate in the world with no apparent remedy other than surrendering our rights and building a police state. Solution Scrap our trial system and build a new one, effecting the most fundamental change in American government since 1789. Read Failed Justice, then send it to our leaders.

Beyond the Adversarial System
In recent years far more attention has been paid to victims of crime both in terms of awareness of the effect of crime upon their lives, and in changes that have been made to the criminal justice system to improve their rights and treatment. This process seems set to continue, with legislative plans announced to rebalance the criminal justice system in favour of the victim. This latest book in the Cambridge Criminal Justice Series brings together leading authorities in the field to review the role of the
victim in the criminal justice system in the context of these developments.

Victim Participation Rights Robert Kagan examines the origins and consequences of the American system of "adversarial legalism". This study aims to deepen our understanding of law and its relationship to politics, and raises questions about the future of the American legal system.

Evidence & the Adversarial Process America is a nation founded on justice and the rule of law. But our laws are too complex, and legal advice too expensive, for poor and even middle-class Americans to get help and vindicate their rights. Criminal defendants facing jail time may receive an appointed lawyer who is juggling hundreds of cases and immediately urges them to plead guilty. Civil litigants are even worse off; usually, they get no help at all navigating the maze of technical procedures and rules. The same is true of those seeking legal advice, like planning a will or negotiating an employment contract. Rebooting Justice presents a novel response to longstanding problems. The answer is to use technology and procedural innovation to simplify and change the process itself. In the civil and criminal courts where ordinary Americans appear the most, we should streamline complex procedures and assume that parties will not have a lawyer, rather than the other way around. We need a cheaper, simpler, faster justice system to control costs. We cannot untie the Gordian knot by adding more strands of rope; we need to cut it, to simplify it.

The Adversary System "An Introduction to the American Legal System" is ideal for undergraduate students in legal studies, political science, criminal justice, pre-law, and sociology programs, paralegal programs, as well as for anyone with an interest in the historical and contemporary approaches to law in America.

Adversarial Legalism This book traces victims’ active participatory rights through different procedural stages in adversarial and non-adversarial justice systems, in an attempt to identify what role victims play during criminal proceedings in the domestic setting. Braun analyses countries with different legal traditions, including: the United States, England, Wales and Australia (as examples of mostly adversarial countries); Germany and France (as examples of inquisitorial systems); as well as Denmark and Sweden with their mixed inquisitorial-adversarial background. Victim Participation Rights is distinctive in that it assesses the implementation of formal processes and procedures concerning victim participation at three different procedural stages: first, investigation and pre-trial; second, trial and sentencing; and third, post-trial with a focus on appeal and parole. In addition, Braun provides an in-depth case study on the general position of victims in criminal trials, especially in light of national criminal justice policy, in Germany, a mostly inquisitorial system and Australia, a largely adversarial system. In light of its findings, the book ponders whether, at this stage in time, a greater focus on victim protection rather than on active procedural rights could be more beneficial to enhancing the overall experience of victims. In this context, it takes a close look at the merits of introducing or expanding legal representation schemes for victims.

Preserving the Adversarial System of Justice The Oxford Handbook of Criminal Law
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reflects the continued transformation of criminal law into a global discipline, providing scholars with a comprehensive international resource, a common point of entry into cutting edge contemporary research and a snapshot of the state and scope of the field. To this end, the Handbook takes a broad approach to its subject matter, disciplinarily, geographically, and systematically. Its contributors include current and future research leaders representing a variety of legal systems, methodologies, areas of expertise, and research agendas. The Handbook is divided into four parts: Approaches & Methods (I), Systems & Methods (II), Aspects & Issues (III), and Contexts & Comparisons (IV). Part I includes essays exploring various methodological approaches to criminal law (such as criminology, feminist studies, and history). Part II provides an overview of systems or models of criminal law, laying the foundation for further inquiry into specific conceptions of criminal law as well as for comparative analysis (such as Islamic, Marxist, and military law). Part III covers the three aspects of the penal process: the definition of norms and principles of liability (substantive criminal law), along with a less detailed treatment of the imposition of norms (criminal procedure) and the infliction of sanctions (prison or corrections law). Contributors consider the basic topics traditionally addressed in scholarship on the general and special parts of the substantive criminal law (such as jurisdiction, mens rea, justifications, and excuses). Part IV places criminal law in context, both domestically and transnationally, by exploring the contrasts between criminal law and other species of law and state power and by investigating criminal law's place in the projects of comparative law, transnational, and international law.

Courts on Trial Australia is presently seeking to streamline its civil justice system. It is popular folklore that the Australian civil justice system is inaccessible to 'ordinary people' as it is expensive, slow and complex. The reasons for these alleged failings are attributed to various causes, such as arcane and inefficient judicial practices, money-hungry lawyers or, more fundamentally, to the very underpinnings of civil litigation - adversarialism. This volume confronts this folklore. It provides perspectives about civil justice from its major user and funding source (government) and the group of Australians who have used it the least and feel most alienated from the system (indigenous Australians). It explores the insights of those who work with adversarialism day in and day out (judges and lawyers) and reveals both defenders and strident advocates for change. Finally, it steps back and gives an outsider's view of Australian adversarialism from those with knowledge of a sister system in the United States.

Pretrial Discovery and the Adversary System This is the first volume that directly compares the practices of adversarial and inquisitorial systems of law from a psychological perspective. It aims at understanding why American and European continental systems differ so much, while both systems entertain much support in their communities. The book is written for advanced audiences in psychology and law.

The Origins of Adversary Criminal Trial

Strong NGOs and Weak States Our adversarial legal system is used to evade the truth and makes winning the paramount goal. Here, a law veteran proposes we shift to an
inquisitorial system seeking the truth, and recommends changes to evidentiary rules that confuse law enforcement and juries alike.

Failed Justice Presents the results of the first national field survey of how lawyers use pretrial discovery in practice. Pretrial discovery is a complex set of rules and practices through which the adversaries in a civil dispute are literally allowed to "discover" the facts and legal arguments their opponents plan to use in the trial, with the purpose of improving the speed and quality of justice by reducing the element of trickery and surprise. Dr. Glaser examines the uses, problems, and advantages of discovery. He concludes that it is in wide use in federal civil cases, but that while the procedure has produced more information in some areas, it has failed to bring other improvements favored by its original authors.

Symposium on the Adversarial Vs. the Inquisitorial System Adversary trial emerged in England in the 18th century. Its origins and significance had tended to go unrecognized by judges, lawyers, jurists, and researchers until relatively modern times. Even now, there is considerable dispute as to how and why adversary trial came into existence, and little connection has been made with the fact that its existence contributed to the genesis of a the modern doctrine of human rights, whereby citizens are able to make a stand against the power of the state or vested interest. Fighting for Justice focuses on the birth and meaning of adversary trial, including the key role of Sir William Garrow. The book assesses how deep-rooted is the notion of opposing parties in the common law and the English psyche generally, and that of countries such as the US that have followed the same pattern whereby legal representatives champion the cause of individuals. The book touches on moves through restorative justice around the world, to alter adversarial systems in favor of a less conflict based approach. Because justice and the rule of law are frequently nowadays under attack, Fighting for Justice will be a valuable aid to understanding the contributions that have been made to the overall development of criminal justice and common law systems.

An Introduction to the American Legal System This volume addresses the role of the judge and the parties in civil litigation in mainland China, Hong Kong and various European jurisdictions. It provides an overview and an analysis of how these respective roles have been changed in order to cope with growing caseloads and quality demands. It also shows the different approaches chosen in the jurisdictions covered. Mainland China is introducing far-reaching reforms in its system of civil litigation. From an inquisitorial procedure, in which the parties play a relatively minor role, the country is changing to a more adversarial system with increased powers for the parties. At the same time, case management and the role of the judge as it is understood in mainland China remains different from case management and the role of the judge in Western countries, mainly as regards the limited powers of individual Chinese judges in this respect. Changes in China are justified by the ever-increasing case load of the Chinese courts and the consequent inability to deal with cases in an adequate manner, even though generally speaking Chinese courts still adjudicate civil cases within a relatively short time frame (this may, however, be problematic when viewed from the perspective of the quality of adjudication). Growing caseloads and quality concerns may also be observed in various European states.
and Hong Kong. In these jurisdictions the civil procedural systems have a relatively adversarial character and it is some of the adversarial features of the existing systems of procedure which are felt to be problematic. Therefore, the lawmakers have opted for increasing the powers of the judge, often making the judge and the parties mutually responsible for the proper conduct of civil cases. Starting from opposite directions, mainland China and the various European states and Hong Kong could meet half way in their reform attempts. This is, however, only possible if a proper understanding is fostered of the developments in these different parts of the World. Even though in both China and Europe the academic community and lawmakers are showing a keen interest in the relevant developments abroad, a study addressing the role of the judge and the parties in civil litigation in both China and Europe is still missing. This book aims to fill this gap in the existing literature.

The Confrontation Right of the Adversarial System Includes such presentations as: Introduction to Adversary System; Other Views of Adversary System; The Trial Judge: The Limits of Neutrality and Passivity; Place of the Jury in Adversarial Adjudication; and Lawyers: Their Usefulness, Zeal, and Candor.

Adversarial Justice and Victims' Rights Cases connected with the troubles in Northern Ireland have been tried by a judge sitting without a jury in 'Diplock Courts'. Given the symbolic importance of the jury within the common law tradition, this study offers the first systematic comparison of the process of trial by judge alone with that of trial by jury. The authors determine the impact of the replacement of jury trial with trial by a professional judge on the adversarial character of the criminal trial process.

The Role of the Defense Lawyer The last twenty years have seen an unprecedented rise in the use of secret courts or 'closed material proceedings' largely brought about in response to the need to protect intelligence sources in the fight against terrorism. This has called into question the commitment of legal systems to long-cherished principles of adversarial justice and due process. Foremost among the measures designed to minimise the prejudice caused to parties who have been excluded from such proceedings has been the use of 'special advocates’ who are given access to sensitive national security material and can make representations to the court on behalf of excluded parties. Special advocates are now deployed across a range of administrative, civil and criminal proceedings in many common law jurisdictions including the UK, Canada, New Zealand, Hong Kong and Australia. This book analyses the professional services special advocates offer across a range of different types of closed proceedings. Drawing on extensive interviews with special advocates and with lawyers and judges who have worked with them, the book examines the manner in which special advocates are appointed and supported, how their position differs from that of ordinary counsel within the adversarial system, and the challenges they face in the work that they do. Comparisons are made between different special advocate systems and with other models of security-cleared counsel, including that used in the United States, to consider what changes might be made to strengthen their adversarial role in closed proceedings. In making an assessment of the future of special advocacy, the book argues that there is a need to reconceptualise the unique role that special advocates play in the
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administration of justice.

Judge Without Jury The adversarial criminal trial is changing, as are the roles of the actors within the process. This book examines the implications of such change.

The Expert Witness, Forensic Science, and the Criminal Justice Systems of the UK The theme of this book is the developing influence of European law and European integration on the criminal justice systems of the Netherlands and England and Wales. It examines the different responses adopted in the two jurisdictions to current problems in criminal justice, against the background of European law. The topics included in this original study include: the influence of the European Convention on Human Rights; the influence of European Community law; the influence of treaties concerning criminal justice co-operation between the two systems; and, finally, the extent to which supranational mechanisms of criminal justice are developing in the wake of European integration.

Adversarial Justice A law school level coursebook on complex litigation and the adversary system. The book examines the four ways in which cases can be complex: joinder issues, pretrial issues, trial issues, and remedial issues. The book challenges the reader to consider whether the prevailing doctrines in these areas are consistent with modern adversarial theory, with the aspirations of our system of justice, and with a democratic system’s constraints on judicial power. One volume.

Fighting for Justice Errors are inevitable in criminal adjudication because we live in a world in which essential facts are often missing or distorted. Thus, it is natural that a criminal defendant wants to see every witness who testifies against him and to correct any misperceptions or manipulations of fact finders. There is a question, however, of how much the legal system should protect this inherent right, given the limited time and resources in criminal proceedings. In this sense, a defendant's confrontation right represents a conflict between individual rights and public policy. The Korean society achieved remarkable progress in judicial democracy over the past decade, during which several foreign legal institutions based on the common law adversarial system were adopted. This was a strong reaction to Korea's efficiency-driven criminal justice system, in an effort to check and control government abuse during the era of authoritative government. Despite the current reforms, however, the undiminished skepticism of the Korean people toward the judicial system and the legal professions casts doubt on the effectiveness of legal transplants initiated by these distrusted legal professions. In other words, there is a huge gap between the public perception of justice and the actual performance of the legal professions. This dissertation suggests that a defendant's confrontation right operates as a fundamental principle of hearsay rule in the adversarial system and that judicial reform in Korea should start by correctly defining such a right. Furthermore, this study urges the Korean judicial system to reflect political and legal morality, and to set forth a defendant's confrontation right and its related principles in advance. This study starts by outlining the confrontation right and its related cases in the United States. The main purpose of this dissertation is, however, to theorize a general principle of confrontation rights under the adversarial system (Chapter 3), and to apply it
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to the Korean context (Chapter 4). Therefore, this study does not focus on flat comparison of the confrontation right in the two jurisdictions. Rather, it illuminates common and essential denominators of the adversarial system that underlie the fundamental principle of confrontation rights.

Non-Adversarial Justice

The Adversarial Process and the Vulnerable Witness The lawyer-dominated adversary system of criminal trial, which now typifies practice in Anglo-American legal systems, developed in England in the eighteenth century. Using hitherto unexplored sources from London's Old Bailey Court, Professor Langbein shows how and why lawyers were able to capture the trial, and he supplies a path-breaking account of the formation of the law of criminal evidence.

Adversarial versus Inquisitorial Justice

Adversarial Justice Our adversarial legal system is used to evade the truth and makes winning the paramount goal. Here, a law veteran proposes we shift to an inquisitorial system seeking the truth, and recommends changes to evidentiary rules that confuse law enforcement and juries alike.

Hearing the Victim Offering a comprehensive analysis, bestselling COMPARATIVE CRIMINAL JUSTICE SYSTEMS, 5e compares the various criminal justice systems throughout the world using six model countries: China, England, France, Germany, Japan, and Saudi Arabia. The book illustrates the different types of law and justice systems while exploring the historical, political, economic, social, and cultural influences on each system. It examines important aspects of each type of justice system--common law, civil law, socialist law, and sacred (Islamic) law--to highlight the similarities and differences of each. Completely up to date, it provides expanded coverage of such high-profile topics as human trafficking, Internet pornography, identity theft, transnational policing, terrorism and more. Important Notice: Media content referenced within the product description or the product text may not be available in the ebook version.

European Criminal Procedures The rights, status and treatment of sexual assault victims has emerged as a significant 21st-century concern, occupying the forefront of legal commentary on international policy agendas. This book explores the extent to which reforms that offer victims enhanced rights to information and participation across England and Wales, Ireland and South Australia can address sexual assault victims’ procedural and substantive justice concerns. Informed by the voices of 26 high-level criminal justice professionals, legal stakeholders and victim support workers, and a quantitative dataset, this book also considers whether legal representation can address some of the problems of the prosecution process for sexual assault victims in Victoria and, indeed, in other adversarial jurisdictions that employ similar legislative frameworks. While acknowledging the value of victim-focused reforms, this book contends that cultural changes to the ways in which sexual assault victims are perceived and treated are necessary in order to improve
victims’ experiences of the legal process. Reconceptualising the role of sexual assault victims from ‘witnesses’ to ‘participants’ will also increase the likelihood that victims’ rights and interests will be considered alongside those of the state and the accused. This book situates its findings within broader debates about the role, rights and treatment of sexual assault victims in adversarial justice systems and outlines prospects for the transfer of policy and practice between jurisdictions. Adversarial Justice and Victims’ Rights will interest academic and policy stakeholders engaged in criminology, law and socio-legal studies, as well as undergraduate and postgraduate students researching sexual violence and victims’ access to justice.

Model Rules of Professional Conduct

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