

# Reconstructing Justice

AN AGENDA FOR TRIAL REFORM



Franklin Strier

WITH A NEW PREFACE

# Reconstructing Justice An Agenda For Trial Reform

**Munyao Sila**



## **Reconstructing Justice An Agenda For Trial Reform:**

**Reconstructing Justice** Franklin Strier, 1996-05-15 In this lively and persuasive critique Franklin Strier doesn't simply describe problems with the American trial system; he proposes reforms. He offers a detailed blueprint of how to improve our basic adversarial system while blunting its excesses and inequities. Strier points out that the jury system was originally intended to diffuse the power of the government but criticizes the method by which jurors are selected, patronized, and manipulated. Among his suggestions: eliminate peremptory challenges, give jurors the authority and judges the responsibility to ask questions of witnesses, and use neutral expert witnesses.

Reconstructing Justice Franklin D. Strier, 1994-09-30 The United States is so ensconced in the adversary system of trial justice that it has escaped serious public scrutiny. Yet it is replete with substantive deficiencies and injustices. As few others have, this book discusses and illustrates the major problems endemic to the adversary system in a scholarly but provocative fashion. Particular attention is given to the limitations of juries and the corrupting role trial attorneys often have on factfinding and jury decision making. The book's most salient contribution is a comprehensive and detailed scheme of proposed reforms. Many are adopted from foreign trial systems and domestic alternative dispute resolution mechanisms; others are based on a long overdue revamping of the jury system. Is the basic procedural mechanism of the American trial just? Is the role behavior of the trial attorney essentially immoral? Are juries competent? Do attorney skills and tactics dictate trial outcomes more than do the merits of the cases? Do trial remedies really solve problems? These are some of the central issues this scholarly but provocative book challenges us to confront. Transcending mere criticism of the trial system, the author explores nonadversarial and less adversarial remedial alternatives from both domestic and foreign dispute resolution procedures. By eclectic adoption from these sources plus some common sense reforms of the jury system, the author describes his vision of the courthouse of the future. Beginning with a comparison of the strategies used by the opposing attorneys in the two Rodney King trials and their decisive effect on the outcomes, the opening chapter provides an overview of the major concepts and issues raised in the book. The second chapter explores the traditional justifications for the adversary system and jury trials, suggesting why we are captive to the notion that an adversarial trial is a just trial. Chapter Three discusses the many substantial criticisms of the American trial. Two of the most significant ones are examined and illuminated more intensively over the next two chapters: the questionable continuing viability of the lay jury in many kinds of cases and the role of the attorney in flavoring and often corrupting the courtroom search for truth and justice. Chapter Six looks at domestic and foreign alternatives to adversarial trial court dispute resolution. In the final chapter, the author presents a comprehensive detailed blueprint for reform to meet the inevitable needs of our trial system in the years to come. This book will have particular appeal to legal educators, practicing attorneys, judges, and government administrators. But anyone with an abiding interest in the quality of trial justice will be intrigued by it.

**Trials Without Truth** William T. Pizzi, 2000-06 Uncovers a major deficiency of U.S. criminal justice: a trial system that prioritizes

winning over truth Reginald Denny O J Simpson Colin Ferguson Louise Woodward all names that have cast a spotlight on the deficiencies of the American system of criminal justice Yet in the wake of each trial that exposes shocking behavior by trial participants or results in counterintuitive rulings often with perverse results the American public is reassured by the trial bar that the case is not typical and that our trial system remains the best in the world William T Pizzi here argues that what the public perceives is in fact exactly what the United States has a trial system that places far too much emphasis on winning and not nearly enough on truth one in which the abilities of a lawyer or the composition of a jury may be far more important to the outcome of a case than any evidence How has a system on which Americans have lavished enormous amounts of energy time and money been allowed to degenerate into one so profoundly flawed Acting as an informal tour guide and bringing to bear his experiences as both insider and outsider prosecutor and academic Pizzi here exposes the structural faultlines of our trial system and its paralyzing obsession with procedure specifically the ways in which lawyers are permitted to dominate trials the system's preference for weak judges and the absurdities of plea bargaining By comparing and contrasting the U S system with that of a host of other countries Trials Without Truth provides a clear headed wide ranging critique of what ails the criminal justice system and a prescription for how it can be fixed

**Non-Adversarial Justice** Michael King, Arie Freiberg, Becky Batagol, Ross Hyams, 2014-07-04 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

Openness and Evidence: The Oscar Pistorius Crossroad Dr Sonja Els, 2024-11-15 Weighing the constitutional rights of freedom of expression of the media and fair trial rights of the criminal accused known as the fair trial free press conundrum is a global challenge The development of technology such as live streaming of criminal trials through television and real time reporting through social media challenges the traditional views of open justice especially regarding evidence and the credibility thereof The legal maxim of Justice must be seen to be done lies at the heart of this book that focuses on openness and evidence in the South African criminal process The principle of open justice a Constitutional requirement is examined in relation to truth finding in the adversarial system of evidence New media challenge the procedural legitimacy of evidence As a rule of practice to prevent witness contamination witnesses in a criminal trial remain outside the courtroom while the other witnesses testify This book explores the impact of live broadcasting and streaming of criminal trials on the credibility of witnesses who might have been exposed to evidence before testifying The book also evaluates the applicability of the sub judice rule against the requirement of openness Furthermore the conflicting constitutional rights being the right to a fair trial and the right to freedom of expression are interrogated in the quest to new media broadcasting The book features a

legal comparison between the jurisprudence of South Africa the United States of America and Britain in the domain of new media court reporting In conclusion principles of therapeutic jurisprudence are considered as live broadcasting of criminal trials may provide therapeutic outcomes for the victim the accused and the broader society This book serves as an indispensable resource for those navigating the intersection between the use of new media in court reporting and the constitutional imperatives being open justice and fundamental rights Scholars in the fields of Law of Criminal Procedure Media Law and Constitutional Law will gain fresh insights into these topical issues

**Police Interrogation and American Justice** Richard A. Leo, 2009-09-30 Read him his rights We all recognize this line from cop dramas But what happens afterward In this book Leo sheds light on a little known corner of our criminal justice system the police interrogation An important study of the criminal justice system this book provides interesting answers and raises some unsettling questions

*New Approaches to Comparative Politics* Jennifer S. Holmes, 2008-01-01 The field of comparative politics traditionally has been divided into two camps on the one hand quantitatively driven work on a broad scale on the other more qualitative area studies This edited collection promotes a new approach to comparative politics theoretically informed comparative analysis The contributors essays are innovative in their interweaving of case studies of the political situations in particular regions from the United States to Colombia to Mali with the project of political theorizing

**Rape and the Culture of the Courtroom** Andrew E. Taslitz, 1999-06 A study of how rape stereotypes are used by defence lawyers to gain acquittals in the USA The author also presents reform proposals consistent with feminist theories of justice designed to improve both the American adversary system in general and the way in which the system handles rape cases

**The Structural Exclusion of Rape Complainants in South Africa's Criminal Justice System** Jameelah Omar, 2025-10-09 Exploring the intricate dynamics surrounding rape complainants within the South African criminal justice system this book proposes reforms in the approach to participation of victims with the aim of mitigating the structural barriers imposed by the adversarial process Broadening the concept of participation the book takes a comprehensive view of meaningful participation at every stage of the legal process and argues that participation can further justice for rape victims In doing so it highlights that justice as an outcome of the criminal process should not solely be focused on convicting perpetrators but about restoring the dignity of and empowering victims Through the practical proposals included in the book to integrate complainants into the criminal process readers will gain an understanding of what is possible even within the structures of the adversarial system and activists both within and outside the system will be better equipped to advocate for systemic change The Structural Exclusion of Rape Complainants in South Africa's Criminal Justice System will be of value to students and scholars of socio legal studies criminal law and criminology particularly those focused on sexual offences victimology and the criminal justice system It will also be of interest to those working with victims such as NGOs providing legal representation victim support and therapeutic counselling

**Crime, Procedure and Evidence in a Comparative and International Context** John D Jackson, Maximo

Langer, 2008-09-29 This book aims to honour the work of Professor Mirjan Dama ka Sterling Professor of Law at Yale Law School and a prominent authority for many years in the fields of comparative law procedural law evidence international criminal law and Continental legal history Professor Dama ka s work is renowned for providing new frameworks for understanding different legal traditions To celebrate the depth and richness of his work and discuss its implications for the future the editors have brought together an impressive range of leading scholars from different jurisdictions in the fields of comparative and international law evidence and criminal law and procedure Using Professor Dama ka s work as a backdrop the essays make a substantial contribution to the development of comparative law procedure and evidence After an introduction by the editors and a tribute by Harold Koh Dean of Yale Law School the book is divided into four parts The first part considers contemporary trends in national criminal procedure examining cross fertilisation and the extent to which these trends are resulting in converging practices across national jurisdictions The second part explores the epistemological environment of rules of evidence and procedure The third part analyses human rights standards and the phenomenon of hybridisation in transnational and international criminal law The final part of the book assesses Professor Dama ka s contribution to comparative law and the challenges faced by comparative law in the twenty first century In the Hands of the People William L. Dwyer, 2002-01-22 Chronicles the history of trial juries discussing how verdicts of guilt or innocence have been reached in the past and tracing the evolution of the present day system **Modern Law of Criminal Procedure in Kenya** Munyao Sila, 2014-10-25 The law on criminal procedure in Kenya has tremendously changed after the Constitution of Kenya of 2010 New institutions with an impact on the criminal process such as the National Police Service the Office of the Director of Public Prosecutions and the Supreme Court were created Certain rights that were hitherto unavailable were entrenched in the constitution including the right to bail irrespective of the offence and the right to legal representation The superior courts have had a busy time in the interpretation of the current law and groundbreaking jurisprudence has emerged There is no doubt that the study of criminal procedure has significantly changed This book covers all important aspects of criminal procedure taking into consideration the changes brought about by the Constitution of 2010 It fills a void created by the lack of updated texts on the law of criminal procedure It utilizes simple easy to understand language and makes reference to both local and international case law This book will prove to be an invaluable companion to students of criminal procedure legal practitioners researchers and the general public **Criminal Justice** Jill Karson, 1998 This book discusses reforms that would improve the criminal justice system how the rights of the accused affect the system sentencing laws the effect of the legal system on criminal justice and more *Survival of the Slickest* Gene Louis, 2006 **Transitional Justice and Rule of Law Reconstruction** Padraig McAuliffe, 2013-06-26 This short and accessible book is the first to focus exclusively on the inter relation between transitional justice and rule of law reconstruction in post conflict and post authoritarian states In so doing it provides a provocative reassessment of the various tangled relationships between the two

fields exploring the blind spots contradictions and opportunities for mutually beneficial synergies in practice and scholarship between them Though it is commonly assumed that transitional justice for past human rights abuses is inherently conducive to restoring the rule of law differences in how both fields conceptualise the rule of law the scope of transition and obligations to citizens have resulted in divergent approaches to transitional criminal trial international criminal law restorative justice and traditional justice mechanisms Adopting a critical comparative approach that assesses the experiences of post authoritarian and post conflict polities in Latin America Asia Europe and Africa undergoing transitional justice and justice sector reform simultaneously it argues that the potential benefits of transitional justice are exaggerated and urges policy makers to rebalance the compromises inherent in transitional justice mechanisms against the foundational demands of rule of law reconstruction This book will be of interest to scholars in the fields of transitional justice rule of law legal pluralism and peace building concerned by the failure of transitional justice to leave a positive legacy to the justice system of the states where it operates This is a bold and nuanced scrutiny of the international system s approach to transitional justice and the much vaunted rule of law project Dr McAuliffe should be congratulated for this well researched book which should be a must read for not only scholars and researchers in transitional justice and peace and conflict studies but also policy makers in the international system Dr Hakeem O Yusuf Senior Lecturer University of Strathclyde and author of *Transitional Justice Judicial Accountability and the Rule of Law* Judicial Process and Judicial Policymaking George Alan Tarr,2003 JUDICIAL PROCESS AND JUDICIAL POLICYMAKING focuses on policy in its discussion of the judicial process The author s approach is based on four major premises 1 that courts in the U S have always played an important role in governing and that their role has increased in recent decades 2 that judicial policymaking is a distinctive activity 3 that courts make policy in a variety of ways and 4 that courts may be the objects of public policy as well as creators Rather than limit the text to coverage of the U S Supreme Court G Alan Tarr examines the judiciary as the third branch of government Then he brings students into the debate by asking them to form their own evaluations of the organization function and impact of the courts on and within government International Criminal Procedure Göran Sluiter,Sergey Vasiliev,2013-03-21 The ambitious aim of the work is to create a guiding framework for international criminal procedural law and practices in the future As explained by the working groups the overarching objective of the project is to assist the challenge of delivering fair but also effective trials

FOREWORD *Our Corrupt Legal System* Evan Whitton,2010 Looks at the adversary system used in Britain and its former colonies including Australia the US Canada India Ireland New Zealand and South Africa Details the origins and methods of the more widespread investigative inquisitorial system used in other countries including Japan and South Korea Author is Walkley Award winner *Consumer Law Sourcebook for Small Claims Court Judicial Officers* ,2005 **From Pluralist to Patriotic Politics** Charles Blattberg,2000-02-03 The moral and political philosophy of pluralism has become increasingly influential To pluralists when values genuinely conflict we should aim to strike an appropriate balance or trade off between

them though this means accepting that compromise will be inevitable Politics as a result appears as a thoroughly tragic affair Drawing on a hermeneutical conception of interpretation the author develops an original account of practical reasoning one which assumes that though making compromises in the face of conflicts is indeed often unavoidable there are times when reconciliation as distinct from compromise is feasible For this to be so however citizens must strive to converse and not just negotiate with each other thus fulfilling the good that is at the heart of their shared political community This is the central message of the patriotic alternative to pluralist politics that the author defends here

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## **Table of Contents Reconstructing Justice An Agenda For Trial Reform**

1. Understanding the eBook Reconstructing Justice An Agenda For Trial Reform
  - The Rise of Digital Reading Reconstructing Justice An Agenda For Trial Reform
  - Advantages of eBooks Over Traditional Books
2. Identifying Reconstructing Justice An Agenda For Trial Reform
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Reconstructing Justice An Agenda For Trial Reform
  - User-Friendly Interface
4. Exploring eBook Recommendations from Reconstructing Justice An Agenda For Trial Reform
  - Personalized Recommendations
  - Reconstructing Justice An Agenda For Trial Reform User Reviews and Ratings
  - Reconstructing Justice An Agenda For Trial Reform and Bestseller Lists

5. Accessing Reconstructing Justice An Agenda For Trial Reform Free and Paid eBooks
  - Reconstructing Justice An Agenda For Trial Reform Public Domain eBooks
  - Reconstructing Justice An Agenda For Trial Reform eBook Subscription Services
  - Reconstructing Justice An Agenda For Trial Reform Budget-Friendly Options
6. Navigating Reconstructing Justice An Agenda For Trial Reform eBook Formats
  - ePub, PDF, MOBI, and More
  - Reconstructing Justice An Agenda For Trial Reform Compatibility with Devices
  - Reconstructing Justice An Agenda For Trial Reform Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Reconstructing Justice An Agenda For Trial Reform
  - Highlighting and Note-Taking Reconstructing Justice An Agenda For Trial Reform
  - Interactive Elements Reconstructing Justice An Agenda For Trial Reform
8. Staying Engaged with Reconstructing Justice An Agenda For Trial Reform
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Reconstructing Justice An Agenda For Trial Reform
9. Balancing eBooks and Physical Books Reconstructing Justice An Agenda For Trial Reform
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Reconstructing Justice An Agenda For Trial Reform
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Reconstructing Justice An Agenda For Trial Reform
  - Setting Reading Goals Reconstructing Justice An Agenda For Trial Reform
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Reconstructing Justice An Agenda For Trial Reform
  - Fact-Checking eBook Content of Reconstructing Justice An Agenda For Trial Reform
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

### 14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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