

Author's Update (early February 2015)

Some important developments have occurred since April 2014, when I first submitted this article for publication. Because the two-volume set of *Festschrift* contributions in which this article was recently published is not available online, I have decided (with permission of those involved in the *Festschrift*) to have my own article posted on the website of the University of Kansas Law School (www.law.ku.edu). As will be apparent to readers, my principal aim in the article is to draw attention to some difficulties of “legal transplantation” in the specific area of criminal procedure. Although I am not aware of any changes bearing on the overall themes that I discuss in the article, there have been some noteworthy developments in the criminal case that I touched on briefly in the last third of the article – the rather notorious Amanda Knox murder case. Without delving deeply into details, I would like to offer a few observations regarding those recent developments.

First, what are the developments? In May 2014 the appeals court in Florence that was responsible for the re-conviction of Ms. Knox and Raffaele Sollecito released the written explanation of its decision. Several weeks later, an appeal was filed by the defense team with Italy's Supreme Court of Cassazione of Italy. A hearing in that appeal is scheduled to be held in that court late next month (March 2015).

These recent developments – and particularly the anticipation of a decision from Italy's Supreme Court next month – have brought renewed attention to the Amanda Knox case, and especially to an array of criticisms as to the conduct of the investigation and trial(s). Although my article is not intended to undertake an extensive analysis of the Amanda Knox case, I would offer the following observations regarding a few of those criticisms.

A first criticism relates to the interrogation of Ms. Knox by authorities. (I touched briefly on this point in my article – see pages 17-18 below.) Some accounts suggest that Ms. Knox was (consistent with Italian law) provided legal counsel once she became an actual suspect, and that this did not occur until fairly far into the sessions (and that up to then she had been regarded as someone who might become a witness, not a suspect). If those accounts are in fact not accurate, then the treatment of Ms. Knox would be unlawful and evidence obtained then would be inadmissible under rules set forth in the European Convention on Human Rights and Fundamental Freedoms. (I am indebted to Robert Hughes for drawing my attention to the relevance of Article 6 of the Convention in this regard.)

Another criticism focuses on the use of DNA-related evidence – not only as to the reliability of the evidence given the procedures followed in handling

and interpreting it but also as to the access provided to defense counsel (under data-disclosure or “discovery” rules) to the DNA-related information. Again, if serious enough mistakes were made in this respect to bring significant doubt on either (i) the reliability of the evidence or (ii) the fairness to the defense in building and presenting its case, then this too could implicate European Convention rules.

Yet another criticism regarding the handling of the Amanda Knox case suggests that members of the Italian judiciary – or specifically those members of it involved in the case – have intentionally subverted the proper machinery of justice in order to cover up a seriously compromised and mis-handled procedure . . . or, expressed more simplistically, that the system itself is broadly corrupted by a sense (among some or many members of the judiciary) that “patriotism prevails over justice”. (I am indebted to S. Michael Scandron for drawing my attention to this criticism.) If there is some validity to this criticism, then it would support not only an abandonment of the conviction(s) and corrective action in Italy; it would also serve to highlight the sort of difficulty that I emphasized in my article. My centerpiece proposition in the article (see pages 8-13 and 19-20, below) is that any “transplantation” of elements from one legal system into another legal system is bound to create discomfort and dissent. Indeed, Italy’s adoption a quarter-century ago of an American-inspired accusatorial-adversarial approach to criminal procedure has created a great deal of such discomfort and dissent, even to the extent of requiring a constitutional amendment to overcome strenuous objections.

There are, of course, other criticisms (relating to the Amanda Knox case, that is) that I have not mentioned here but that warrant close attention, especially as the case is given further consideration by the Supreme Court of Cassazione. What I believe would not warrant close attention – and this is my main purpose in using the Amanda Knox case to illustrate some key themes I developed in my article – are those criticisms that rest on a misunderstanding of certain fundamental differences between criminal procedure in Italy (and civil law countries more generally) and criminal procedure in the USA and other common law countries. While there are undoubtedly several immutable principles of criminal procedure – fair treatment of persons under investigation, competent handling of evidence, adequate opportunity to mount a defense, independence and integrity of judges, and the like – the existence of some structural and ideological differences among various countries in their response to criminal conduct is natural and legitimate.

John W. Head
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Criminal Procedure in Transition: Observations on Legal Transplantation and Italy's Handling of the Amanda Knox Trial

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Introduction

Feridun Yenisey deserves a robust show of appreciation for the good and lasting work he has done for the legal system of Turkey. Having been friends for many years with Feridun and Dilek, and with other members of their close and extended family, I am quite pleased to have this opportunity to contribute to that show of appreciation – celebrating Feridun's birthday, of course, but also highlighting and honoring the accomplishments that have resulted from his many years of untiring effort on behalf of his country.

As we all know, that effort has taken Feridun and Dilek all over the world – including to Kansas, where he has an enthusiastic circle of friends. But Feridun's effort has been especially important for Turkey, particularly in that country's long-term campaign for legal reform. Because much of Feridun's attention has focused on criminal procedure, I have decided to offer a few observations – as my contribution to this *festschrift* – on an area of criminal procedure that I find especially intriguing: comparative criminal procedure and particularly the legal 'transplantation' of rules governing criminal procedure.

In doing so, I shall draw attention to some criminal-procedure aspects of the Amanda Knox trial in Italy. Like Turkey, Italy has embarked in recent years on an effort to bring reform to its rules and practices of criminal procedure. Indeed, ever since 1988, some key elements of Italy's system of criminal procedure have been in transition because of a reform agenda that involved 'transplanting' some central aspects of an Anglo-American-inspired 'accusatorial-adversarial' criminal-justice system into a legal culture that was thoroughly entrenched in the civil law tradition – including a system of criminal procedure that was predominantly inquisitorial in character.

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My observations regarding these developments will begin by highlighting some aspects of European civil law attitudes and practices regarding criminal procedure – giving special attention to the sweeping eighteenth-century reforms credited in part to Cesare Beccaria – and will then summarize some specific legal developments in Italy in the late nineteenth century and early twentieth century. Next I shall give a synopsis of the 1988 criminal-procedure reform efforts and their aftermath, as a lead-up to some observations about the criminal prosecution of Amanda Knox, with special attention to certain criticisms that have been raised regarding that case. My brief essay will conclude with some observations about the difficulties, and yet the necessities, of managing a ‘mixed’ system that incorporates elements of more than one legal tradition – as is the case, of course, with Turkey.

Historical Foundations

There are historical reasons why criminal procedure in European civil law countries has developed as it has. I have tried to explain some details of that history in another context,² giving emphasis to such factors as (i) the rise of the nation-state as the fundamental political unit and sole legitimate legislative authority in Europe, (ii) the long-term influence of Christianity and of canon law procedures for handling criminal behavior, (iii) the legacy of a comprehensive codification of laws, and (iv) the dramatic reforms of the intellectual revolution that swept across Europe in the seventeenth and eighteenth centuries.³ Although all of those factors are important, I shall confine myself for purposes of this brief essay mainly to the last of these developments – the intellectual revolution and its influence on criminal procedure in continental Europe.

John Henry Merryman of Stanford – one of the most distinguished comparative-law scholars of recent times – has offered this helpful synopsis of how the intellectual revolution crystallized modern principles of criminal procedure in civil law countries, especially as public criticism mounted regarding the *ancien regime* that had existed in France:

Although the [intellectual revolution in Europe] profoundly affected every part of the civil law tradition, its effects are most clearly observable in public law [and especially] . . . in the field of criminal procedure. Among the writers and philosophers of the eighteenth century who contributed to the ideology of

² See generally Chapters 2 and 3 of GREAT LEGAL TRADITIONS, *supra* note 1. For specific reference to criminal procedure, see pages 199-208 of that work. For a more detailed treatment of some of the topics addressed in this essay, including aspects of Italian criminal procedure and the Amanda Knox prosecution, see pages 228-229 and 302-316 of that work. Some of the discussion appearing there benefited greatly from the research and writings of Christopher A. Griffith, whose help and contribution I acknowledge again here with much gratitude.

³ *Id.* at 200-204.

revolution, most had something to say about the sorry state of criminal law and criminal procedure. The most important reformer in this field was Cesare Beccaria, whose book *Of Crimes and Punishments* exploded on the European scene in 1764 and became the most influential work on criminal law and criminal procedure in Western history.

. . . [Beccaria's book] begins by establishing the principle of *nullum crimen sine lege* and *nulla poena sine lege*.⁴ As Beccaria states it: 'Only the laws can determine the punishment of crimes; and the authority of making penal laws can reside only with the legislator, who represents the whole society united by the social compact.' Thus, according to Beccaria, crimes and punishments can be established only by law, and by 'law' he means 'statute.' Beccaria [also condemns vagueness in criminal laws, and he] goes on to establish two basic principles. The first is that there should be a proportion between crimes and punishments, so that the more serious crimes are more severely punished. The second is that punishments should apply impartially to criminals, regardless of their social station, position, or wealth.⁵

What were the criminal-law procedures that Beccaria urged *departing* from? That is, what was the nature of the system that he thought needed reform? At the risk of distortion through oversimplification, we might label it 'absolutist inquisitorialism'. The first word in that label ('absolutist') reflects the absolutism of the state that emerged with the Peace of Westphalia, which ended the Thirty Years War in 1648 and signaled the victory of the nation-state over the Church as the fundamental political (and hence law-making) unit in Europe. The second word in that label ('inquisitorialism') reflects a secretive system of proof taking and judgment – inspired by canon law and leading easily to abuse of power – that the political absolutism made possible.

Harsh abuses did in fact occur in the 'absolutist inquisitorialist' system of pre-revolution Europe. It was these abuses in the system of eighteenth-century criminal procedure in Europe that Beccaria and others saw in serious need of reform. In the feverish social and political upheaval of the European revolutions (in France and elsewhere) of the late 1700s and early 1800s, fundamental changes were called for. Among the demands – many of which were met in some form or other – were the following:

⁴ These would translate roughly as 'no crime without law (identifying the behavior as a crime)' and 'no punishment without law (specifying such punishment)'.

⁵ John Henry Merryman and Rogelio Perez-Perdomo, *THE CIVIL LAW TRADITION* 125-126 (3rd ed. 2007) [hereinafter *CIVIL LAW TRADITION*]. Cesare Baccaria, born in to an aristocratic family in Milan, received a law degree from the University of Pavia in 1758 and became part of a salon elite devoted to unconventional thinking. His treatise on crime and punishment, advocating reform of the criminal law system, influenced many great legal scholars. For example, Jeremy Bentham dubbed Beccaria 'the first evangelist of reason.' Blackstone also admired Beccaria's work and drew from it when drafting his famous treatise *Commentaries on the Laws of England*. Aaron Thomas, *Preface* to *CESARE BECCARIA, ON CRIMES AND PUNISHMENTS AND OTHER WRITINGS* (Aaron Thomas ed., Aaron Thomas & Jeremy Parzen trans., 2008).

- the use of some form of ‘jury’ to ensure public participation in criminal trials;
- the use of an oral public procedure in place of, or at least in addition to, a secret written procedure;
- the establishment of an accused person’s right to legal counsel;
- restrictions on a judge’s inquisitorial powers;
- an abolition of the requirement that the accused testify under oath;
- the abolition of torture; and
- the abolition of arbitrary intervention by the sovereign in the criminal process.⁶

Several of these proposed reforms pushed the inquisitorial system toward what I have referred to above (in the third paragraph of this essay) as an ‘accusatorial-adversarial’ system, of the sort that the eighteenth-century and early nineteenth-century observers on the continent of Europe saw appealing in the English system of criminal procedure. In order to understand this development, we should consider just what an ‘accusatorial-adversarial’ system is.⁷

The two pertinent terms – ‘accusatorial’ and ‘adversarial’ – are often used interchangeably, but they should be distinguished from each other. In an *accusatorial* system, emerging from common law practice, the judge in a criminal case makes decisions based only on evidence collected in oral form, in his presence, and in a public trial containing adversarial dynamics.⁸ Those ‘adversarial dynamics’ involved in an accusatorial system involve a procedure in which two sides zealously argue opposing viewpoints before a neutral judge and/or jury with no prior knowledge of the case and with no dossier prepared by an investigating judge or prosecutor.⁹ Accordingly, while ‘accusatorial’ implies ‘adversarial’, the opposite is not always true: a trial could theoretically be fully adversarial, but still allow the introduction of out-of-court evidence such as so-called ‘hearsay’ evidence or other information included in a previously-prepared dossier.¹⁰

What emerged from the reforms in European criminal procedure, then, was a system based on the old ‘absolutist inquisitorial’ system but with important amendments meant to

⁶ For enumerations of these reforms, and further explanation of some of them, see CIVIL LAW TRADITION, *supra* note 5, at 129-130.

⁷ The following five paragraphs draw heavily from the work of Christopher Griffith, referred to in note 2, *supra*.

⁸ Michele Panzavolta, *Reforms and Counter-Reforms in the Italian Struggle for an Accusatorial Criminal Law System*, 30 NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW & COMMERCIAL REGULATION 577, 582 (2005).

⁹ *Id.* at 582-583.

¹⁰ *Id.* at 583.

incorporate a cluster of elements found in an ‘accusatorial-adversarial’ system. In this modified form of inquisitorial procedure, much of the investigative work and fact-finding is still done behind closed doors before the trial. Merryman offers this explanation of the sort of pre-trial procedure used in many European civil-law countries:

The investigative phase comes under the direction of the public prosecutor, who also participates actively in the examining phases, which is supervised by the examining judge. The examining phase is primarily written and is not public. The examining judge controls the nature and scope of this phase of the proceeding. The examining judge is expected to investigate the matter thoroughly and to prepare a complete written record, so that by the time the examining stage is complete, all the relevant evidence is in the record. If the examining judge concludes that a crime was committed and that the accused is the perpetrator, the case then goes to trial.¹¹

In terms of the evidence presented, the typical European system of criminal procedure makes no clear demarcation between the investigation and trial stages. An impartial judicial officer conducts the criminal investigation and a single judge or panel of judges will have full access to the investigation file – the dossier – in handling the case to determine guilt or innocence.¹² This approach stands in contrast to the accusatorial system, in which the trial is a single concentrated event in which all evidence will be heard and ruled upon at that moment.

The comparison between a predominantly inquisitorial and a predominantly accusatorial-adversarial approach to criminal procedure can be understood further by considering their overarching goals. In the inquisitorial system, the (purported) fundamental goal is to find the truth. All evidence should be made available to the judge because no limit should be placed on this most imperative of quests.¹³ The (purported) fundamental goal of the accusatorial-adversarial system, on the other hand, is the resolution of the legal conflict between parties (that is, the state versus the accused) through the principles of orality, immediacy, and concentration – all while protecting rights of the accused that are regarded as highly important.¹⁴

Beyond these differing goals are differing attitudes about the state. One observer has asserted that in the inquisitorial system, ‘the state is the benevolent and most powerful protector

¹¹ CIVIL LAW TRADITION, *supra* note 5, at 130.

¹² Craig M. Bradley ed., CRIMINAL PROCEDURE: A WORLDWIDE STUDY xvii (2nd ed. 2007)

¹³ Panzavolta, *supra* note 8, at 583.

¹⁴ See CIVIL LAW TRADITION, *supra* note 5, at 114. For further comparisons, see Abraham Goldstein, *Reflections on Two Models: Inquisitorial Themes in American Criminal Procedure*, 26 STANFORD LAW REVIEW 1009 (1974).

and guarantor of public interest and can, moreover, be trusted to “police” itself as long as its authority is organized in a way that will allow it to do so’ – whereas the accusatorial-adversarial system reflects a ‘negative image of the state and a minimalist view of its functions.’¹⁵

In short, criminal procedure in most European civil law countries today has a distinctive ‘feel’ or culture that reflects a blend of elements; some of those elements date back to the old ‘absolutist inquisitorial’ system but a cluster of elements are drawn from the ‘accusatorial-adversarial’ system. This distinctive culture manifests itself in a range of ways: the layout of the courtroom, the role of the judge, the role of the prosecuting attorney and the defense attorney, the selection and posing of the questions and presentation of evidence, the admissibility of evidence of various sorts, the simultaneous consideration of culpability and sanction, and the grounds for appeal – indeed, even certain underlying values to be served by the system of criminal justice.¹⁶ In general, these elements reflect a modern (post-reform) modified inquisitorial system aimed at achieving the sort of balance that Feridun Yenisey himself has described in writing about the Turkish system of criminal procedure – that is, a balance between ‘the rights of the accused and the duties of the State to combat crime.’¹⁷

Criminal Procedure in Italy – Tradition with Transplantation

One reaction that an experienced Italian lawyer might have to the very general account offered above regarding criminal procedure in European civil law countries is that Italy is now different in certain key respects – and especially in terms of the role of the judge, the role of the prosecuting attorney, the role of the defense counsel, and the selection, order, and presentation of evidence in criminal trials. Why? Because substantial changes were introduced into Italy’s criminal procedure beginning in the late 1980s. Although Italy’s system of criminal procedure was built on the civil law tradition, amendments made in 1988 caused a remarkable shift toward a more Anglo-American-inspired system that adopted a larger number of ‘accusatorial-adversarial’ elements than other European civil law countries have done. The reasons for this departure, and for the consequent struggles over following through on it, go a long way to explaining the attitudes in contemporary Italian criminal law and its uneasy balance as a ‘mixed’ system.

¹⁵ Nico Jorg et al., *Are Inquisitorial and Adversarial Systems Converging?*, in *CRIMINAL JUSTICE IN EUROPE: A COMPARATIVE STUDY* (Phil Fennel et al, eds., 1995), at x.

¹⁶ For details, see *GREAT LEGAL TRADITIONS*, *supra* note 1, at 206-207.

¹⁷ Feridun Yenisey, *CRIMINAL LAW IN TURKEY* 30 (2012). That book by Prof. Yenisey is an updated version of a monograph published first in 2005 as part of the *International Encyclopedia of Laws*.

Italy inherited the inquisitorial system reflected in Napoleon's criminal procedure code of 1808, as did many other European civil law countries,¹⁸ along with the reforms that emerged from the Enlightenment demands (fueled by such influential persons as Beccaria) that were described above. However, Italy's system of criminal procedure was more reluctant in its early years than some other European countries were to adopt accusatorial-adversarial elements. Indeed, certain central values of the pre-reform inquisitorial system saw something of a revival in the late nineteenth century and early twentieth century – and this was particularly evident in Italy. Notwithstanding the 'push' that the Enlightenment ideology gave toward adopting some aspects of the accusatorial-adversarial system, the end of the nineteenth century saw an intellectual revolt or backlash against the allegedly arbitrary nature of the adversarial due process that was beginning to creep into the civil law tradition.¹⁹ One expert offers this explanation:

Enrico Ferri, . . . in his 1884 *Sociologia Criminale*, launched an uncompromised attack on adversarial methods, which he described as 'grotesque and often insincere contests between the prosecution and the defense to prevent or secure an acquittal. . . .' Instead of these 'combats of craft, manipulations, declamations and legal devices, which make every criminal trial a game of chance . . . a sort of spider's web which catches flies and lets the wasps escape,' . . . criminal procedure should be a 'scientific enquiry' conducted by a judge familiar with biology, psychology and psycho-pathology to determine which 'anthropological class' the defendant belongs. . . .²⁰

This perspective on the criminal process proved highly seductive to the totalitarian regimes that emerged in Europe in the early twentieth century. Adversarial due process, by contrast, was seen to present a direct threat to those regimes. Thus the Italian Code of Criminal Procedure of 1930, enacted under heavy fascist and totalitarian influence,²¹ displayed a high degree of state control and paternalism.

For instance, the 1930 Code placed heavy reliance on an investigating judge who dominated the first phase of a prosecution by compiling a dossier (laying out the judge's investigative findings), while defense attorneys played only a minor role in the investigation.²² The second phase of the criminal process under the 1930 Code was a public trial, but this stage

¹⁸ Richard Vogler, *A WORLD VIEW OF CRIMINAL JUSTICE* 157 (2005). This paragraph and the next several paragraphs draw heavily on the work of Christopher Griffith, referred to in note 2, *supra*.

¹⁹ Vogler, *supra* note 18, at 61.

²⁰ *Id.*

²¹ *Id.* at 64.

²² Panzavolta, *supra* note 8, at 579.

was likewise dominated by the judge or judges. For instance, legal counsel were not allowed to cross-examine witnesses. Instead, the parties could pose questions only through the judge, who would then formally conduct the direct and cross-examination. The trial constituted in essence a rubber stamp – a mechanism for the official reception of the evidence that had already been collected and deliberated upon in the instruction phase.²³ Moreover, because the trial – unlike the investigation – typically took place well after the commission of a crime, the findings of the investigation (as reported in the dossier) naturally received more weight than the facts presented at trial; hence the investigative dossier was ‘the crucial factor in determining guilt.’²⁴

Even after Italy put its fascist days behind it, Italy retained the 1930 Code of Criminal Procedure for many years. However, as one observer has remarked, ‘[d]issatisfaction with what was seen by many as being a system of criminal justice which favoured the State at the expense of its subjects led to many calls for reform.’²⁵ This marked ‘a loss of confidence in the State as the protector of its subjects[’] rights and an acceptance [of the proposition] that the subject sometimes needs protection *against* the State.’²⁶ Finally, after years of delay, in 1988, a new Code was adopted.²⁷

This new set of rules for criminal procedure brought dramatic change.²⁸ The two main goals of the new Code were to ensure (i) that the prosecution and defense were the main players in the criminal process and (ii) that the only evidence on which a decision could be based was the evidence collected orally at trial.²⁹ The instruction phase described above (dominated by the judge responsible for compiling a dossier) was abolished entirely and replaced by a ‘preliminary investigation’³⁰ that would be conducted by a prosecutor whose work was only loosely

²³ Thomas Glyn Watkin, *THE ITALIAN LEGAL TRADITION* 135 (1997).

²⁴ Panzavolta, *supra* note 8, at 581.

²⁵ Watkin, *supra* note 22, at 137.

²⁶ *Id.* at 136 (emphasis added).

²⁷ Codice de Procedura Penale, 1988, available as amended through 2011 at <http://www.legislationline.org/documents/section/criminal-codes> [hereinafter CPP 1988]. The CPP has been amended, of course, numerous times since 1988.

²⁸ For a more complete description of the changes made in 1988, see *GREAT LEGAL TRADITIONS*, *supra* note 1, at 320-321 (summarizing lectures on Criminal Procedure by Gabriella Di Paolo). As noted there, the main pillars of the new system were (i) a separation of functions between prosecutors and courts, (ii) other innovations in the law and procedure relating to evidence, including partisan presentation of evidence, certain exclusionary rules, and cross-examination conducted by the parties, and (iii) special proceedings, including plea bargaining and summary trial.

²⁹ Panzavolta, *supra* note 8, at 586.

³⁰ Vogler, *supra* note 18, at 168.

supervised by a ‘pre-trial judge’ (*giudice d’indagine preliminare*, or ‘*gip*’) with almost no investigatory role.³¹ The objectives of the pre-trial phase of the proceedings were changed from ‘obtaining the truth’ to determining whether or not there is sufficient evidence for trial.³² The essential accusatorial element of the demarcation between the investigation and trial phases was to be ensured by a ‘double dossier’ system (*doppio fascicolo*) in which the trial judge is never presented with the investigative dossier but instead oversees the development of a trial dossier, to be compiled on the basis only of the evidence that is collected during trial.³³

Why did Italy opt for this change to an accusatorial-adversarial system that extended much further in the Anglo-American direction than most European countries were willing to venture? The reasons cited for the shift vary widely. Some authorities attribute it to political and ideological post-war American influence that sparked interest in the adversarial trial mode.³⁴ Others explain that a general trend in Continental Europe towards an adversarial process derive mainly from the acceptance of the European Convention on Human Rights and its guarantee of certain trial rights that are typical of the common law style.³⁵ Whatever the case may be, advocates of the Code saw it as a revolutionary new system, one that drew important values from the Anglo-American experience while accommodating ‘the competing tensions of the criminal process more consistently and more rationally than the American system upon which it is otherwise modeled.’³⁶

What ensued in the years following the Code’s adoption in 1988, however, was an ideological tug-of-war, in which the very principles of the new accusatorial-adversarial system

³¹ CPP 1988 arts. 392-404. For details about the functions of the GIP and the pre-trial proceedings more generally, see GREAT LEGAL TRADITIONS, *supra* note 1, at 321-322 (summarizing lectures on Criminal Procedure by Gabriella Di Paolo). In this section of the code itself, the *gip* is referred to as the *giudice per le indagini preliminari* (‘judge for the preliminary investigation’), as distinct from another type of judge, the *giudice d’udienza preliminare* (‘*gup*’), with authority to prevent a prosecutor from bringing unfounded charges against an accused. *Id.*

³² Vogler, *supra* note 18, at 169.

³³ Panzavolta *supra* note 8, at 587. There were some features of the traditional model that the 1988 Code did retain. For instance, no attempts were made to create a jury system to operate within the courts – with the exception of the *Corte d’Assise*, a discussion of which will be very important once we look more closely below at the Amanda Knox trial.

³⁴ See Vogler, *supra* note 18, at 168.

³⁵ *Criminal Procedure: Comparative Aspects – Adjudication*, <http://law.jrank.org/pages/901/Criminal-Procedure-Comparative-Aspects-Adjudication.html>. The most important of these, according to this source, were the defendant’s rights to present evidence in his defense and to confront witnesses against him.

³⁶ Lawrence J. Fassler, *The Italian Penal Procedure Code: An Adversarial System of Criminal Procedure in Continental Europe*, 29 COLUMBIA JOURNAL OF TRANSNATIONAL LAW, pp.245, 275 (1991).

were weakened one by one by Italy's Constitutional Court.³⁷ Among the principles attacked were those that excluded hearsay evidence and judge-introduced evidence.³⁸ Soon the system was in very real danger of reverting back to a fully inquisitorial system. However, in efforts to curb the constitutional attacks on accusatorial process, the legislature acted in 1999 to amend the Constitution. In 2001, these constitutional reform provisions, emphasizing the equal rights of the parties to offer evidence before an impartial judge and other due process protections, were also imported directly into the Code of Criminal Procedure.³⁹ These efforts proved only partly successful, and over time the inquisitorial process filtered through the system once more in areas such as petty crimes and the *guidizio abbreviato* or fast-track trial.⁴⁰ However, procedures for handling the most serious crimes, heard in the *Corte d'Assise*, still maintained an especially accusatorial-adversarial character and do so to this day.

What has resulted following the years of internal struggle within the Italian criminal justice system is a truly mixed system that reflects both (i) a traditional attraction to strongly state-centered inquisitorial principles and (ii) a quarter-century effort to make a dramatic shift toward the accusatorial-adversarial approach to criminal procedure. Thus the so-called 'shift to

³⁷ Indeed, the version of the CPP 1988 cited above – see *supra* note 27 – still carries numerous notations identifying particular provisions of the code that the Constitutional Court found constitutionally invalid (using the term *l'illegittimità costituzionale*) in the early 1990s.

³⁸ Vogler, *supra* note 18, at 171. Hearsay evidence, expressed most simply, comprises testimony in which a witness present in the courtroom reports what some *other* person – not present in the courtroom – said; because that *other* person cannot be subjected to cross-examination or other tests of veracity, common law courts will often bar or severely limit the introduction of the testimony into evidence during the trial. For related reasons, common law courts would typically limit the capacity of the judge to introduce evidence.

³⁹ *Id.* For a more complete description of the 1999 constitutional amendments, see GREAT LEGAL TRADITIONS, *supra* note 1, at 321 (summarizing lectures on Criminal Procedure by Gabriella Di Paolo). As noted there, they gave constitutional status to the following rights and guarantees (among others):

- the right to an impartial and independent judge;
- the right to defense (including right to self-defense, right to counsel, right to remain silent, right to have adequate time to prepare defense, etc.);
- the right to the presumption of innocence;
- the right to have a written opinion and to a review of the judge's decision;
- a guarantee that guilt shall not be established on the basis of statements made by anyone who has freely chosen not to submit to questioning by the defendant or the defendant's counsel (subject to certain exceptions); and
- the guarantee that all parties may speak in their own defense in the presence of the other parties during the taking of evidence (also subject to certain exceptions).

⁴⁰ The fast-track trial has been much criticized because a defendant who chooses this inquisitorial form of procedure, as did one of Amanda Knox's co-defendants (Rudy Guede), will be guaranteed a one-third reduction in sentence. See Panzavolta, *supra* note 8, at 620.

adversariality' in Italy was 'only half accomplished, leaving a criminal justice system compromised by competing ideologies and structures.'⁴¹

A confirmation of that outcome from the quarter-century of effort to reform Italian criminal procedure appears in the following brief synopsis offered by a law firm operating in northern Italy:

The first and initial code in the Italian Republic was established by the Fascist Government in 1930 and was kept until 1988. This code adopted an inquisitorial system. In 1988, a new code was enacted. This chose to abandon the inquisitorial system, but did not go so far as to represent a complete transition to an adversarial one. The resulting system could be considered to be somewhere in between the two (although it is closer to being an adversarial system).

[Under that revised system,] the trial is supposed to be party-dominated and strictly separated from the pre-trial process (investigations). . . . It is the parties who present lists of evidence to be taken, and it is they who examine and cross-examine witnesses. But the presiding judge can strike manifestly superfluous witnesses from the list, reject irrelevant lines of questioning, ask witnesses and experts additional questions, and can even, 'if absolutely necessary', order additional evidence to be taken.

[The reality, however, is different.] The supposed strict separation between pre-trial investigations and trial proceedings has not survived the very first years after the reform of the Italian criminal process: the law and the jurisprudence of the courts have since permitted the introduction of pre-trial statements under more and more liberal rules.⁴²

The Amanda Knox Prosecution – Challenges of a Mixed System

The hybrid character of the Italian criminal justice system was placed on display a few years ago in the trial in Perugia of American Amanda Knox and her Italian boyfriend Raffaele Sollecito over the murder of a British foreign exchange student named Meredith Kercher. The two defendants, along with a third suspect Rudy Guede, were tried and found guilty of murder. The conviction of Knox, whose case received the most attention, led to outrage in some

⁴¹ Vogler, *supra* note 18, at 171-172. The relative breakdown of the purely accusatorial system in Italy has been attributed principally to cultural factors. As one observer notes, '[t]he magistrates not only kept thinking in terms of the old inquisitorial ideology, but they also strongly believed that such ideology was far better than the new one.' Panzavolta, *supra* note 17, at 609. For another discussion of the Italian efforts at criminal procedure reform, see Giulio Illuminati, *The Frustrated Turn to Adversarial Procedure in Italy*, 4 WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW (2005), available at <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1214&context=globalstudies>.

⁴² Nicolo Canestrini, *The Italian Criminal Trial*, available on the website of the Studio Canestrini Legale, at <http://www.canestrinilex.com/resources/trial/>.

quarters.⁴³ Criticism continued even following the 2011 reversal of Knox's conviction, which led to her release after serving four years in prison – and the criticism reignited recently when Knox's conviction was reinstated by a court in Florence.⁴⁴

The fact that public attention focused on the criminal prosecution of Amanda Knox is hardly surprising, given the sensational nature of the facts of the case. In early November 2007, police discovered the body of a murdered 21-year-old British university exchange student, Meredith Kercher, in the apartment she had shared with three other young women, one of whom was Knox. Kercher lay partially clothed under a duvet in her locked bedroom, with blood on the floor, bed, and walls. Forensic investigators concluded that Kercher had been strangled and stabbed in the neck.

Police arrested suspects Amanda Knox and Raffaele Sollecito, Knox's Italian boyfriend of two weeks. Later, based on DNA and fingerprint evidence found near the victim's body, Rudy Guede, a Perugia resident from Côte d'Ivoire, was arrested in Germany and extradited to Italy. While Sollecito and Knox faced a lengthy and enduring trial, characteristic of the Italian criminal justice system, Guede elected for a *guidizio abbreviato* (abbreviated judgment) under a fast-track procedure. He was convicted of the sexual assault and murder of Meredith Kercher and sentenced to 30 years in prison, but on appeal his sentence was reduced to 16 years. The trial of Knox and Sollecito lasted about a year in the *Corte d'Assise* in Perugia, a court that has jurisdiction to judge the most serious crimes – particularly those that are punishable with life imprisonment or imprisonment for more than 24 years.⁴⁵ The judicial panel was composed of two professional judges (*giudici togati*) and six lay judges (*giudici popolari*).

On 4 December 2009, both Knox and Sollecito were found guilty of murder, sexual violence, and other charges. Knox was sentenced to 26 years in prison, while Sollecito received a sentence of 25 years. In March 2010, following the conviction of Knox, the *Corte d'Assise* of

⁴³ The outrage at her first conviction, and at the proceedings leading up to it, is evident in numerous online newspaper opinion pieces dating from that time. See, e.g., Tim Edwards, *OJ Simpson Lawyer Slams 'Public Lynching' of Amanda Knox*, THE FIRST POST, Oct. 19, 2009, <http://www.thefirstpost.co.uk/54907>; Timothy Egan, *An Innocent Abroad*, NYTimes.com, June 19, 2009, <http://opinionator.blogs.nytimes.com/2009/06/10/an-innocent-abroad/>.

⁴⁴ For a recent account of what has followed the 2009 conviction of Amanda Knox, see Elisabeth Povoledo, *American Is Again Found Guilty in 2007 Murder of Her Roommate in Italy*, THE NEW YORK TIMES, Friday, January 31, 2014, page A9. For further details of the January 2014 reinstatement of the 2009 conviction, see also *Italy Court: Knox, Kercher Fought on Day of Murder* (Apr 29, 2014), http://www.aol.com/article/2014/04/29/italy-court-knox-kercher-fought-on-day-of-murder/20877675/?icid=maing-grid7%7Chtmlws-main-bb%7Cd13%7Csec1_in3%26pLid%3D470049, and Barbie Latza Nadeau, *Italian Court Explains Amanda Knox Conviction* (May 1, 2014), <http://www.cnn.com/2014/04/29/world/europe/italy-amanda-knox/>.

⁴⁵ For details about *guidizio abbreviato* and the jurisdiction of the *Corte di Assise*, see GREAT LEGAL TRADITIONS, *supra* note 1, at 319, 323 (summarizing lectures on Criminal Procedure by Gabriella Di Paolo).

Perugia published the reasons for the conviction in a 427-page opinion document. The judges said in that report that there was no inconsistency in the evidence and suggested there was a sexual motive in the case. Under the influence of drugs, they said, Knox and Sollecito ‘actively participated’ in helping Guede subdue Kercher. However, this was a murder ‘without planning, without any animosity or grudge against the victim.’ The motive, the judges said, was ‘erotic sexual violence.’ The judges said that the judgment was based on forensic evidence presented.⁴⁶

Following that guilty verdict, criticism abounded.⁴⁷ A fairly representative illustration of such criticism can be found in a statement released shortly after the verdict by US Senator Maria Cantwell of Amanda Knox’s home state of Washington:

I am saddened by the verdict and I have serious questions about the Italian justice system and whether anti-Americanism tainted this trial. The prosecution did not present enough evidence for an impartial jury to conclude beyond a reasonable doubt that Ms. Knox was guilty. Italian jurors were not sequestered and were allowed to view highly negative news coverage about Ms. Knox. Other flaws in the Italian justice system on display in this case included the harsh treatment of Ms. Knox following her arrest; negligent handling of evidence by investigators; and pending charges of misconduct against one of the prosecutors stemming from another murder trial.⁴⁸

In the following few paragraphs I wish to offer some observations about some of the specific criticisms made by Senator Cantwell – those questioning (i) the impartiality of the jurors and (ii) the protections afforded to the accused – as well as the more general concern running through the Senator’s statement, which is that Italy’s criminal justice system fails to observe adequate standards of due process.

The suggestion that the members of the ‘jury’ – that is, the lay judges – were not impartial is tantamount to a charge that they were biased or prejudiced in some regard. Two grounds on which this might be alleged would be (i) that the professional judges unduly influenced those lay judges and (ii) that because the lay judges were not sequestered, the media unduly influenced them. I shall address those briefly in turn.

⁴⁶ BBC News, *Amanda Knox murder case ‘has no holes’*, March 4th, 2010, <http://news.bbc.co.uk/2/hi/europe/8549724.stm>.

⁴⁷ See, for example, Phillip Sherwell and David Harrison, *Amanda Knox: ‘Foxy Knoxy’ Was an Innocent Abroad, Say US Supporters*, Telegraph.co.uk, 5, December, 2009, <http://www.telegraph.co.uk/news/6736512/Amanda-Knox-Foxy-Knoxy-was-an-innocent-abroad-say-US-supporters.html>.

⁴⁸ *Cantwell Statement on Amanda Knox Guilty Verdict*, Dec. 4, 2009, <http://cantwell.senate.gov/news/record.cfm?id=320475>

As noted earlier, the ‘judicial panel’ in the *Corte d’Assise* is composed of two professional judges (*giudici togati*) and six lay judges (*giudici popolari*). In making their decisions on issues of law and fact, no distinction is drawn between the lay and professional judges.⁴⁹ Although it is likely that the professional judges do exert influence over the lay judges, the reverse is probably true as well. Moreover, it is important to bear in mind that the use of such lay judges (sometimes called lay triers of fact) is a ‘well established institution in the criminal proceedings of civil law jurisdictions.’⁵⁰ It is not some hurried implant from the common law system; to the contrary, it has been used in many countries for many years as a mechanism by which (i) public opinion is reflected and (ii) the accountability of the professional judges to the community is safeguarded, while still serving the overarching civil law emphasis on truth-finding in criminal cases.⁵¹

Perhaps the most frequent criticism appearing in the American media about the procedure used in the Amanda Knox prosecution focuses on the influence of Italian media on the non-sequestered lay judges. As noted earlier, the heavy media attention devoted to this trial, including the character assassination of Amanda Knox, makes the influence of the media in the courtroom a very real concern. However, the fact is that sequestering jurors is highly impractical and costly,⁵² which partially explains why it is also becoming less and less common in the USA.⁵³ Moreover, two specific features of the Italian system (both of them absent in the USA) offer safeguards against inappropriate media influence. The first is the guidance from the professional judges to make informed decisions – helping guard against possible pre-judgment or reliance by the lay judges on extraneous ‘evidence’ circulating in public press. The second is the requirement that a report be published by the court following the conviction presenting the exact finding on which the case was decided. Taken together, these factors would seem to augur reasonably well against inappropriate influence being exercised by media reports on the judgment of the lay judges.

⁴⁹ Watkin, *supra* note 23, at 129.

⁵⁰ CIVIL LAW TRADITION, *supra* note 5, at 131.

⁵¹ For some further discussion of this, see GREAT LEGAL TRADITIONS, *supra* note 1, at 207, 211.

⁵² See Brendan I. Koerner, *When do Judges Sequester Juries*, SLATE, Nov 14, 2003, available at <http://perugiamurderfile.org/viewtopic.php?f=10&t=194&start=0> (noting that in the USA, ‘[S]equestration has fallen so far out of favor that judges rarely bother anymore’ and that ‘[t]he current thinking is that isolating a jury causes more problems than it solves’).

⁵³ *Id.*

What about a second criticism identified in Senator Cantwell's statement – that there were insufficient protections afforded to the accused in the Amanda Knox case? (Senator Cantwell alleged 'harsh treatment of Ms. Knox following her arrest'.) Much has been made of the fact that during initial questioning by the police, Knox was without an attorney, a fact that might have worked to her detriment in fashioning a legal defense.⁵⁴

Questions on this point were in fact directed by a newspaper reporter to Stefano Maffei, an Italian attorney specializing in criminal procedure, and his replies (on this and other issues relating to the Amanda Knox case) were included in the reporter's 2009 *Seattle Post* article.⁵⁵ In response to the question 'Was it legal for Knox not to have an attorney present when police questioned her?', Maffei gave this answer:

Yes and no.

Amanda Knox's interrogation falls into a gray area of the law because she came voluntarily to the police station and was being interviewed in the beginning as someone who could become be a witness, not a suspect. . . . Then, in the course of questioning by police in November 2007, she blamed Patrick Lumumba for the slaying, [which caused the police, who knew that could not be true, to regard Knox not in fact as a witness but as a suspect.]

The law is very clear: A suspect must not be interrogated without a lawyer. Once a [person is a] suspect, an interrogation must be interrupted, [and] the suspect [must be] read his or her rights to remain silent and be provided a lawyer. Italian law does not allow waiver of one's right to counsel. Even if a suspect doesn't want a lawyer, the authorities are required to appoint one.⁵⁶

Knox was apparently afforded the safeguards that Maffei referred to above, consistent with pertinent rules in the 1988 Code.⁵⁷ Moreover, Italy's Supreme Court ruled that some of

⁵⁴ Knox claimed during the interrogation, for instance, that she was coerced into blaming the murder on a person for whom she worked as a waitress at his nightclub – a person who was later released because of an adequate alibi.

⁵⁵ See Andrea Vogt, *Computer and crucifix: Amanda Knox's guilt will be judged in a system that is a mix of old and new*, SeattlePI.com, Dec. 3, 2009, available at http://www.seattlepi.com/local/412696_knox30.html. The reporter identified Maffei as 'a criminal defense lawyer in Rome [with] . . . a doctorate in law from the University of Oxford and . . . a guest lecturer at The University of the Pacific McGeorge School of Law' as well as a lecturer in criminal procedure at the University of Parma. *Id.*

⁵⁶ *Id.*

⁵⁷ Pertinent provisions include CPP 1988 arts. 63, 351, 386(1), and 401(1). The last two of these provide for the right of legal counsel for the accused. Article 386(1) requires that upon taking an accused into custody, the police must advise her of her right to an attorney: *Avvertono inoltre l'arrestato o il fermato della facoltà di nominare un difensore di fiducia* (requiring that in addition to notifying the public minister, the police 'also warn the arrested or detained person of the right to name a defense attorney'). Article 401(1) extends the same right to an accused at an

Knox's earliest statements were not to be used against her because they were made without an attorney⁵⁸ – thereby affording a further safeguard against possible impropriety. It is impossible to know exactly what went on in the interrogation room, of course, but there is little support for any claim that the interrogation was conducted in a way that was grossly unjust or coercive; to the contrary, the evidence suggests that her individual rights as an accused were in fact respected.

Lastly, what about the third, more overarching, form of criticism that can be drawn from Senator Cantwell's statement – that the prosecution of Amanda Knox failed generally to meet adequate standards of due process? For one thing, it is important to recognize that there was hardly a rush to judgment in the case: it lasted roughly two years and involved multiple stages of procedure before a guilty verdict was reached. As Prosecutor Mignini observed, '[a]t the various levels in this case, from the preliminary investigating judge to the trial itself, the evidence was scrutinized by no less than 19 judges.'⁵⁹ This fact cuts against allegations that Knox was found guilty on little or no reliable forensic evidence. On the other hand, perhaps it does illustrate how complicated and laborious the trial stages have become in Italy's mixed system.

The fact that the Knox case has been the subject of several appeals raises another noteworthy point about Italian criminal procedure – suggesting that the Italian system might in fact afford more protections than are available in the US system. In case of an appeal, the appellate court will review the case *de novo* as to questions of both law and fact.⁶⁰ Furthermore, an individual unsatisfied with that appeal – nearly the equivalent of a second trial – may follow it with yet another opportunity of appeal. Article 111 of the Constitution provides that 'recourse shall always be allowed to the Court of Cassation [the highest level of the system of ordinary courts] on the ground of any violation of any law, against judgments as well as sentences affecting personal liberty, whether pronounced by courts of ordinary or special jurisdiction.' In

evidentiary hearing: *L'udienza si svolge in camera di consiglio con la partecipazione necessaria del pubblico ministero e del difensore della persona sottoposta alle indagini.* (requiring that 'the [evidentiary] hearing shall be held in closed session with the necessary participation of the public prosecutor and the defense attorney for the person under investigation.') For further details, see Bradley, *supra* note 12, at 324-333. Especially pertinent to Knox's case is Article 63. According to its terms, if during the course of obtaining information from an individual who may have information useful to an investigation that person reveals incriminating evidence, the police are required to interrupt the individual and warn her that investigations may begin against her, and that she has the right to a defense attorney. *Id.* at 324.

⁵⁸ Vogt, *supra* note 55.

⁵⁹ Nick Squires, *Amanda Knox conviction: Italy strikes back at US complaints*, CSMonitor.com, Dec. 7th, 2009, <http://www.csmonitor.com/World/Europe/2009/1207/p06s22-woeu.html>.

⁶⁰ For further details, see *Great Legal Traditions*, *supra* note 1, at 219 (citing Mary Ann Glendon, Paolo G. Carozza, and Colin B. Picker, *COMPARATIVE LEGAL TRADITIONS IN A NUTSHELL* 204 (2008)).

short, the appeals process in Italy presented more than one opportunity for Amanda Knox to reverse her conviction – and indeed it is this very feature of the Italian system that brought about the reversal of her 2009 conviction in 2011. It is also true, of course, that the multiple opportunities for review have also resulted even more recently in her re-conviction in early 2014.⁶¹

In general, then, there seems to be very little basis on which to conclude that Amanda Knox did not receive due process. In addition to what seems to be a respect for her individual rights as an accused, as secured in the Italian Constitution and in the 1988 Code, the long and tedious process involved careful and repeated scrutiny of the evidence mustered against her and also afforded opportunities for appeal.

I would hasten to add, however, some further observations – and they relate directly to the challenges inherent in a ‘mixed system’. As explained above, roughly a quarter-century of internal struggle over the reform of Italy’s criminal justice rules has left the country with a system that reflects both (i) a traditional attraction to strongly state-centered inquisitorial principles and (ii) a dramatic but not-yet-completed adoption of the accusatorial-adversarial approach to criminal procedure.⁶² Might it be that some of the incompatibilities between the competing ideologies and structures – that is, frictions between the old and the new – ‘infected’ the Amanda Knox case and trial?

Possibly so. If we were endowed with supernatural abilities to discern and understand the minds and motivations of the main players in the Amanda Knox prosecution, perhaps we could find several grounds for concluding that ideological conflicts inherent in the ‘mixed’ system did in fact undercut due process or otherwise work against a fair outcome. For instance, we might speculate that the professional judges were unduly deferential to the prosecutor in the case because of the long tradition of the prosecutor serving as an auxiliary to the judge. Expressed differently, maybe the provisions in the 1988 criminal procedure code – relegating the prosecutor to the position as an advocate on one side of a conflict between parties⁶³ – were not fully observed, resulting in too much persuasive influence being wielded by the prosecutor in the Knox trial. While plausible, this speculation is counterbalanced by the fact that, as noted above, the *Corte d’Assise* of Perugia set forth (as required) an explanation of its reasons for entering the

⁶¹ For details on this development, see Povoledo, *supra* note 44.

⁶² See *supra* note 41 and accompanying text, drawing from works by Vogler and Panzavolta.

⁶³ Indeed, in recent years the role of the prosecutor as an advocate for a party (the state) rather than an auxiliary to or even colleague of) the judge has become even more pronounced. A 2006 law separates the careers of prosecutors from the judiciary and places prosecutors under the supervision of the *Procura della Repubblica*. Bradley, *supra* note 12, at 346.

judgment of conviction. That 427-page opinion document expressly dismissed some of the more lurid claims made by Prosecutor Mignini.

Conclusion

I find it inappropriate to criticize the conduct of the Amanda Knox trial, and Italian criminal procedure more generally, from an uninformed perspective – that is, without understanding the larger context surrounding this particular trial and Italy’s criminal procedure in general. In the preceding pages I have tried to summarize that larger context, emphasizing (i) the historical background to Italy’s system of criminal procedure and (ii) the particular difficulties that Italy has experienced in incorporating ‘accusatorial-adversarial’ elements into a traditional inquisitorial system.

My overall conclusions about the subject of this essay on ‘Legal Transplantation and the Amanda Knox Trial’ can be distilled into two main points. First, the criticisms offered by many observers regarding the Amanda Knox prosecution – particularly as illustrated by Senator Cantwell’s statements – are not persuasive, at least insofar as they allege defects in (i) the impartiality of the jurors and (ii) the protections afforded to the accused. Likewise, the more general proposition that Italy’s criminal justice system fails to observe adequate standards of due process seems unfounded and unpersuasive.

Second, there remains in the system of Italian criminal procedure a cluster of strong tensions that reflect the challenges associated with any sort of legal transplantation. This is to be expected. As I have discussed elsewhere, the US legal system (and, before that, the legal systems in the British American colonies) went through considerable trauma in the process of ‘legal transplantation’ from England.⁶⁴ Whether the tensions in Italy’s system of criminal procedure had any significant impact on the prosecution of Amanda Knox is a matter of speculation; it is not, in my view, supported by any evidence – and certainly not by uninformed criticism. Indeed, when viewed with some objectivity and in its overall context, the Italian system of criminal procedure includes a range of features that I believe most reasonable and informed people would consider appropriately fashioned to produce proper results in most cases, thereby striking a reasonable balance between (to use Feridun Yenisey’s phrase again) ‘the rights of the accused and the duties of the State to combat crime.’⁶⁵

⁶⁴ See *Great Legal Traditions*, *supra* note 1, at 372-382 and 412-417, discussing the ‘transplantation’ of English law to America. For observations about ‘transplantation’ of foreign law into China, see *id.* at 530-531, 590, and 626.

⁶⁵ See *supra* note 17.

As a final observation, I would suggest that Italy's efforts at legal reform through legal 'transplantation' warrant our respect. However difficult such efforts might be, they are essential to the improvement of *any* legal system. The US legal system would unquestionably improve, for instance, if more legislators across that country paid more attention to the legal systems of other countries and cultures elsewhere in the world.