

The McDonaldization of justice and the disappearance of fair trial?

*11th Conference on the future of adversarial and inquisitorial systems
Criminal Justice Centre and School of Law, University of Warwick, UK*

19-21 May 2022

Are preoccupations with managerialism, cost-saving, preventive justice and the avoidance of trial supplanting the values of adversarial and inquisitorially rooted systems of criminal justice? As the trial becomes increasingly rare, along with opportunities to challenge the reliability of evidence, the accused finds herself encouraged to make an admission at the earliest opportunity based on the information gathered during the police investigation. The presence of defence counsel at strategic points in the process lends some legitimacy, but the practices of law reflect little of the safeguards and values so celebrated in the rhetoric of both adversarial and inquisitorial-type systems. Processes are being 'simplified' – not in ways that make the process clear and easy to navigate – but through the removal of fundamental safeguards deemed too costly and time-consuming such as juries, judicial investigation, or any form of trial or opportunity to contest the charges made. Power is increasingly shifted to police and prosecutors, to dispose of cases without resort to prosecution or trial. The result is what has been described by Ritzer as a kind of McDonaldisation of criminal justice.

Most recently, the global pandemic as a result of COVID-19 has prevented in-person court hearings, resulting in trial delays, extended periods of detention for defendants, and spurring on the growth in virtual court hearings. It is clear that virtual courts in particular are seen as attractive and efficient in the processing of cases without requiring staff and witnesses to be in the same physical space. The impact of this on the fair trial rights of the accused will require careful scrutiny however.

Several conference panels will be devoted to discussion of these themes drawing on Hodgson's *The Metamorphosis of Criminal Justice* (2020, OUP). In this work, through a comparative analysis of the potentially radical and fundamental changes taking place across two contrasting jurisdictions (England and Wales, and France), she explores the ways that criminal justice traditions continue to be shaped in different ways by broader policy and political concerns, and the ways in which different systems adapt, change and distort when faced with (sometimes conflicting) pressures domestically and externally. This comparative lens also illuminates the ways that, in England and Wales and in France, different procedural values may serve to structure or limit reform, and so work to facilitate or resist change.

From a comparative perspective, this conference invites consideration of core issues within this theme of McDonaldization. This might include, for example: how the defence is co-opted to provide guarantees that enable other safeguards to be reduced; the broad shift away from judicial and court roles, to a stronger prosecution function; ways of avoiding trial; or the role of technology in new modes of trial, and machine learning (AI) in criminal justice.

This is the 11th conference in the series, the result of a collaboration between the Universities of Basel, Bologna, North Carolina, Warwick and Duke University.

Thursday 19th May is devoted to presentations from Early Career Researchers and attendance is free, but participants [must register via email](#) first to secure a place.

The main conference is on **Friday 20 May** and the morning of **Saturday 21 May**. All are welcome but you [must register via email](#) and there is a small charge for attendance (£35 Friday, including lunch; £25 Saturday). You are also welcome to join the conference dinner on the evening of Friday 20th May at a cost of £35.

Bursaries of up to £500 are available for PGR and ECR colleagues – please contact Jenny Paterson at law.events@warwick.ac.uk

Friday 20 May, 2022 – Scarman House, University of Warwick

09:00	Coffee
09:20-09:30	<u>WELCOME</u> Andrew Sanders (Head, Warwick Law School) Jackie Hodgson (Warwick Law School & Deputy Pro-Vice-Chancellor (Research))
09:30-10.45	<u>(I) PROSECUTORIAL DISCRETION</u> <i>Chair Sabine Gless, Basel</i> <i>Discussant Andrew Sanders, Warwick</i> <ul style="list-style-type: none"> • Rosa Anna Ruggiero, Tuscia Prosecutorial discretion versus mandatory prosecution of corporate crimes: the Italian experience • Marc Thommen, Zurich Prosecutors as Judges? The Case of the Swiss Summary Penalty Order
10:45 -11:15	Coffee
11:15-12:30	<u>(II) COURTROOM CULTURES</u> <i>Chair Alan Norrie, Warwick</i> <i>Discussant Kent Roach, Toronto</i> <ul style="list-style-type: none"> • Cyrus Tata, Strathclyde How 'Humanisation Work' is shown to resolve the efficiency-participation gap in criminal justice • Sharon Weill, American University of Paris & Sciences-Po Slow Justice: The French Bataclan trial as a new paradigm?
12:30-13:45	Lunch
13.45-14:45	<u>(III) METAMORPHOSIS OF CRIMINAL JUSTICE</u> <i>Chair Michele Caianiello, Bologna</i> <i>Discussant Jackie Hodgson, Warwick</i> <ul style="list-style-type: none"> • Jenia Iontcheva Turner, SMU Dallas Guilty pleas in the virtual court
14:45-15:15	Coffee
15:15-17:00	<u>(III) METAMORPHOSIS OF CRIMINAL JUSTICE</u> <i>Chair Victor Tadros, Warwick</i> <i>Discussant Jackie Hodgson, Warwick</i> <ul style="list-style-type: none"> • Kent Roach, Toronto The Global Migration of the Criminal Cases Review Commission • Joe Kennedy, UNC The Punitive Imagination
17:00-18:00	Wine Reception
19:00	Dinner - Scarman House

Saturday 21 May 2022

09:30-10.45	<p><u>(V) NEW APPROACHES TO TRIAL</u></p> <p><i>Chair</i> Joe Kennedy, UNC <i>Discussant</i> Laure Baudrihaye-Gérard, FTI</p> <ul style="list-style-type: none">• Mojca Plesnicar, Ljubljana Radical changes in criminal procedure: the case of plea-bargaining in Slovenia• John Jackson, Nottingham The Shrinking Orality/Confrontation Paradigm: Addressing the Fair Trial Deficit
10:45–11.15	<p>Coffee</p>
11:15-12.45	<p><u>(IV) ROBOJUSTICE</u></p> <p><i>Chair</i> Jackie Hodgson, Warwick <i>Discussant</i> Jenia Iontcheva Turner, SMU Dallas</p> <ul style="list-style-type: none">• Michele Caianiello, Bologna AI systems in the promotion of EU defence rights• Sabine Gless, Basel “Machine evidence” in the criminal trial? Germany & the US• Brandon Garrett, Duke Judging algorithms in forensics
12:45-13:00	<p>Close of Conference</p>