



Undergraduate Honors Theses

---

2020-04-01

# IMPARTIALITY: A COMPARISON OF LEGAL PROCESSES IN THE UNITED STATES AND ITALY

Robert Borden

Follow this and additional works at: [https://scholarsarchive.byu.edu/studentpub\\_uht](https://scholarsarchive.byu.edu/studentpub_uht)

---

## BYU ScholarsArchive Citation

Borden, Robert, "IMPARTIALITY: A COMPARISON OF LEGAL PROCESSES IN THE UNITED STATES AND ITALY" (2020). *Undergraduate Honors Theses*. 116.  
[https://scholarsarchive.byu.edu/studentpub\\_uht/116](https://scholarsarchive.byu.edu/studentpub_uht/116)

This Honors Thesis is brought to you for free and open access by BYU ScholarsArchive. It has been accepted for inclusion in Undergraduate Honors Theses by an authorized administrator of BYU ScholarsArchive. For more information, please contact [scholarsarchive@byu.edu](mailto:scholarsarchive@byu.edu), [ellen\\_amatangelo@byu.edu](mailto:ellen_amatangelo@byu.edu).

Honors Thesis

IMPARTIALITY: A COMPARISON OF LEGAL PROCESSES IN THE  
UNITED STATES AND ITALY

by  
Robert Borden

Submitted to Brigham Young University in partial fulfillment of graduation  
requirements for University Honors

Italian Department  
Brigham Young University  
April 2020

Advisors: Dr. Marie Orton, Dr. Dan Paul, and Dr. Justin Collings

Honors Coordinator: Dr. Marie Orton



## ABSTRACT

### IMPARTIALITY: A COMPARISON OF LEGAL PROCESSES IN THE UNITED STATES AND ITALY

Robert L. Borden

Italian Department

Bachelor of Arts

This thesis examines the constitutional guarantees of impartiality granted in both the United States and Italian constitutions. Aided by the presentation of these two constitutional legal systems, this paper will attempt to break apart the elements of each system and point out key differences. By pointing out the differences in these systems including variations in their founding documents, the structure of the courts, the role of the judges, the role of the advocates, and the role of other key players, this paper will show that while individual cases in both countries are exposed to multiple biases throughout the legal process, in the end justice is given impartially.



## ACKNOWLEDGEMENTS

It goes without saying that this project would have been impossible without the help of so many others. I have been the recipient of graceful counsel all along the way. There have been many at BYU, in the Honors Program, in the Italian Department, and in my family, who have sustained and supported me through this project. I would be remiss if I did not take a few lines to acknowledge the great dedication that they have shown to me, yes, but more importantly to the ideals of intellect, character, spirit, and service.

First, a big thank you to my professors in the Italian department who believed in my ability to learn something that was completely foreign. Their patience and goodness have been a tremendous blessing to me as I have done my best to properly complete the tasks that they have assigned to me. I would like to make a special dedicatory note to the late Professoressa Mariolina Esposto Johnson whose memory will live on forever in the hearts of the many students whom she laughed with, patiently corrected, and taught what it means to love the nation of Italy.

Another tribute of gratitude goes to emeritus professors Dr. David Magleby of the Political Science Department and Dr. Ilona Klein of the Italian Department. Their mentorship and guidance taught me the power of great questions and the need for cross-disciplinary understanding to solve big problems. Their willingness to employ me in various roles was also a great asset.

To Dr. Orton, thank you for sharing this experience with me. Your time at BYU as a professor and my time at BYU as a student began at the same time and it has been a pleasure for me to spend so many hours as your pupil. Your energy, dedication, and

passion for the study of all things Italy have been inspirational, to say the least. Thank you also for taking on the extra work of being the Honors Coordinator and Faculty Advisor of this project. Without you, none of this would have been possible.

To Dr. Collings, Dr. Paul, Dr. Spencer Magleby, Professor Julie Radle, Vika Filimoeatu, my Honors coursework professors, the Honors Program employee team, and the countless others who have been willing to set aside their lives for a moment to help me with mine, thank you. While a day's work in your world may, at times, go without thanks, know that your work brings meaning to the lives of others each and every day.

Finally, to Jenny, your companionship and love throughout this entire process of leading and learning have been, without comparison, the best part of my journey to where I am today. With your hand in mine, I look forward to the future. There have been long days and long nights of difficult work, and we're not done yet! But together, we truly can accomplish greatness. Thank you for pushing me and believing in me. Let's continue, forever, to try and be the best we can be.



## TABLE OF CONTENTS

Title.....	i
Abstract.....	iii
Acknowledgements.....	v
Table of Contents.....	viii
I. INTRODUCTION.....	1
II. OBJECTIVES OF THE PROCESS.....	2
III. FOUNDING DOCUMENTS.....	3
IV. THE ROLE OF COURT STRUCTURES.....	8
V. THE ROLES OF THE PLAYERS.....	13
VI. CONCLUSION.....	21
WORKS CITED.....	23

## I. INTRODUCTION

In 1917, Justice Oliver Wendall Holmes dissented in the case *Southern Pacific Co. v. Jensen*. In his dissent, he opined “law is not a brooding omnipresence in the sky.” By this, Justice Holmes intended to point out that for every law there is a lawgiver, someone who creates the law and may attempt to enforce it. This is consequential. For citizens of a world governed by law, this means that when a violation of the law occurs, one must answer to the lawgiver.

Governments around the world act as the lawgivers that Holmes described in his dissenting opinion. They operate to create laws and to enforce them. This, however, is done in many different ways. In this paper, the author will present examples of two legal systems, first that of the United States and second, that of Italy. In other words, this paper will present two examples of independent lawgivers that seek to create and enforce laws. Aided by the presentation of these two legal systems, this paper will attempt to break apart the elements of each system and point out key differences. By pointing out the differences in these systems including variations in their founding documents, the structure of the courts, the role of the judges, the role of the advocates, and the role of other key players, this paper will show that while individual cases in both countries are exposed to multiple biases throughout the legal process, in the end justice is given impartially. This conclusion, while perhaps controversial, is significant because both the U.S. and Italian governments seek to execute impartial justice but are often derided for a lack thereof.

## II. OBJECTIVES OF THE PROCESS

The goal of the legal processes of both the United States and Italy is to give impartial justice. This is made clear in the United States Constitution where it is noted in the Sixth Amendment “in all criminal prosecutions, the accused shall enjoy the right to an impartial jury.” Thomas Jefferson once penned in a correspondence with Antoine Destutt de Tracy “the most sacred of the duties of a government [are] to do equal and impartial justice to all its citizens.” In Italy, this is also made clear in the Constitution where it is noted in Article 111: “All court trials are conducted with adversary proceedings and the parties are entitled to equal conditions before an impartial judge in the third-party position.” Further, Article 111 notes the guarantee of “*giusto processo*” which directly translates to “just process.” However, upon further examination, this expression connotes, in its translation, a sense of elevated justice—something more than “just process.” It points to a process that promotes and sustains impartiality.

It is the prerogative of both the U.S. and the Italian systems to give impartial justice. In practice, however, this is quite difficult. One social scientist, the Eugene Higgins Professor of Psychology and Public Affairs in the Department of Psychology at Princeton University, has noted “By some counts, 80% of Western democratic populations . . . display subtle biases” (Fiske 123). Further, social scientists have “investigated the ways in which the higher mental processes such as judgment and social behavior could be triggered and then operate in the absence of conscious intent and guidance” (Bargh 74). The forces at play in any given case are many and they often seem partial. Perhaps the strongest of these is the simple presence of human influence.

Court structures, judges, advocates, and other key players inject varying levels of human influence into legal processes around the world. This human influence, in some cases, leads to wrongful convictions. The U.S. cases discussed in Bryan Stevenson's *Just Mercy* and the Italian cases involved with the Monster of Florence prosecutions are just a few examples of such missteps. Contrarily, in other cases, sometimes human influence leads to the guilty being left without punishment. While these cases are much more difficult to identify, it was once said by a jurist that "it is better that ten guilty people escape than that one innocent suffer" (Blackstone). Regardless of one's opinion on the matter, the reality is that this does occasionally happen. Despite the extraordinary cases where there is a miscarriage of justice, however, in most cases, in both the United States and in Italy, justice is given, impartially. The impartiality of the legal processes of both the United States and Italy is often questioned (Vitiello 263; Gill 9). As has been noted by previously referenced social scientists, bias simply exists in the western world of democracy whether or not it is welcome (Bargh; Fiske). Given these constraints, however, checks and balances are in place in both the United States and in Italy to protect the innocent and condemn the guilty, impartially.

Up to this point, the paper has discussed impartiality as a central tenet of the U.S. and Italian legal processes, the ideal. However, the presence of this ideal alone is not enough to prove the impartiality of the legal process. It must be demonstrated that the process itself gives justice impartially. Therefore, it is necessary to highlight examples of cases where the outcome, despite the presence of partiality, was reached impartially. Such examples demonstrate at what point partiality is injected into the process and how it is mitigated.

As previously stated, the legal processes of both the United States and Italy do give impartial justice. The O.J. Simpson case from the U.S. and the Amanda Knox case from Italy are quintessential examples of this thesis. These cases are exceptional in nature. They represent some of the most unique scenarios the legal process has seen and by no means do they represent the aggregate of cases in either nation. However, the cases do represent what the legal processes of the United States and Italy look like from start to finish. This is important to the paper because, it is “estimate[d] that about 90 to 95 percent of both [U.S.] federal and state court cases are resolved through [plea bargains]” (Devers 2). Further, not all cases make their way to the Court of Cassation in Italy. Cases that did not fully push the system, those in the U.S. that finished with plea deals and those in Italy that were not appealed would severely skew the analysis presented in this paper. Thus, to fully explore this thesis, the O.J. Simpson case is being posited as an example of the U.S. legal process and the Amanda Knox case as an example of the Italian equivalent. Without such cases, ones that truly test the legal processes of the either nation, the conclusion that justice is given impartially in both nations would be deeply flawed.

There are several main aspects of the legal processes in the United States and in Italy that can be comparatively analyzed as the mechanisms that promote impartiality in either nation. These aspects include, in regard to the legal process, the foundational documents, the structure of the courts, the role of the judges, the role of the advocates, and the roles of other key players. The paper will now analyze these aspects of the legal process to demonstrate more fully how the legal processes of either nation give justice impartially.

### III. FOUNDING DOCUMENTS

The Constitution of the United States is a framework for governance. In other words, it is the contract that endows the lawgiver, the United States Government, with its authority to make and enforce laws. This framework, while simple and concise, sets forth a system of check and balances to offset what James Madison termed in the Federalist Papers “the mischief of factions.” These “checks and balances” operate in Newtonian fashion to ensure that an equilibrium of political power can safely exist in society, that there is a state of justice, and that this state of justice is attainable through government by the people. The people’s voice is the ultimate voice of justice in the United States. This matter, which will be discussed later on, is essential and different from Italy, where the voice of the people is not as readily recognized. Why, then, is this, voice of the people relevant to the execution of impartial justice? It is relevant because impartial justice is not justice free of the forces of faction. Rather, it is justice that integrates and mitigates all the forces to maintain a state of steady equilibrium between the actors of the state and the voices of the people. It is balanced, impartial. This ideal, espoused by the very writers of the framework, the founders of the United States, points directly to the idea that bias, or as they put it “faction” has the power to derail the speeding train of the United States or any nation (Madison).

Faction exists in the legal process by nature. Such is the case in both the United States and in Italy. Madison and the rest of the founders understood this fact. More apparent in the United States than in Italy, the “adversarial system” breeds faction. By pinning compatriot against compatriot on mostly equal footing, the process generally lends to counsel, debate, argument, mediation, arbitration, and litigation. In these

scenarios, it would be extremely difficult to operate without outlined guidance. To this end, the Constitution of the United States exists, and it works. It is by way of the United States constitution that the basics of the legal process are established.

In the O.J. Simpson case, for example, it seems reasonable to hypothesize that were it not for the basic governing guidelines that prevent “the violence of faction,” O.J. Simpson may have very well lost his life, liberty, or freedom before the case was completed (Madison). The U.S. Constitution’s perambulatory guarantees of justice and tranquility protected, in part, Mr. Simpson’s well-being (United States Constitution, Preamble). O.J. Simpson, a famous football star from California, was accused of a grisly murder (Mueller 729). Yet, at no point in the legal process was he in grave danger of losing these basic guarantees. After his freedom was legally and lawfully revoked, he was under constant protection by both the executors of the law and the legal system itself. Justice in the courtroom and tranquility in the jail cell were protected by the legal process, via the Constitution.

In Italy, the Constitution does not have quite the same historic underpinnings that the Constitution of the United States does. The Constitution of the Republic of Italy came nearly 200 years after the Constitution of the United States. It was ratified after World War II and ushered in an era of democracy for a nation that had been subject to the tyranny of fascism for many years before. The Constitution represented a new beginning and its ratification meant new additions and renovations to the legal process. However, what the Constitution of the Republic of Italy did not do the same way the Constitution of the United States did was give voice to the people. It gave structure and legislative

power, but it did not give, to the same degree as the U.S., power to the people. The State retained much more.

Since ratification, the Constitution of the Republic of Italy has served the people in promoting impartiality in the legal process. The document itself, as previously noted, specifies “just process” and “impartial judge[ment]” as essential characteristics of the Republic of Italy (Constitution of the Republic of Italy, Art. 111). These ideals, while lofty, are the same ideals that the United States Constitution successfully set forth. Their presence in the document signifies a national standard that can be upheld by the rule of law. This was the case for Amanda Knox.

In 2007, Amanda Knox was accused, like Mr. Simpson, of a grisly murder. After discovery of her connection to the crime, she was detained according, generally, to the stipulations that the Constitution of Italy sets forth (and also by way of the criminal code). The Constitution of the Republic of Italy reads “The State has exclusive legislative powers in jurisdiction and procedural law; [and] civil and criminal law” (Constitution of the Republic of Italy, Art. 117). This means that the State writes the codes that determine what is and what is not a crime, how a victim of a crime must report, how a report must be processed, how the accused must be notified, how the accused can be detained, and so forth. This is the “legislative power” previously noted. These codes differentiate Italy from the United States as a country that follows the legal process of civil law. However, the codes and mechanisms in place via the constitution point directly to the idea that a standard of legal expectation exists as part of the social order. The standard is enforced and, in part, because it exists, justice can be given impartially. In Amanda Knox’s case, justice was given impartially. The system worked and it continues to work, day in and

day out, to provide the letter of the law so that individuals that find themselves in difficult situations know how to navigate the deep waters by their own means or via the help of others.

The foundational documents of the United States of America and the Republic of Italy, the Constitutions of these great nations, serve to provide the bare bones framework of social order. When problems arose, as they did in the cases of the murder accusations against O.J. Simpson and Amanda Knox, there was a set process, a bare minimum that O.J. and Amanda could rightfully expect because the Constitutions guaranteed that to them. Constitutions are central to impartiality because they set the framework for dealing with problems when problems arise.

If the foundational documents of the United States and Italy represent frameworks for impartiality, the structure of the courts is the framing itself, the physical bones of the beast that is justice. The court system structure of the United States and Italy are vastly different, but in the context of the Simpson and Knox cases, one can see just how essential they both are to give justice impartially.

#### IV. THE ROLE OF COURT STRUCTURES

In the United States, the court structure consists of two principal foundations. The first is the federal court structure. The second is the state court structure. While these foundations are separate, lending to a principle known as federalism, they are virtually mirror copies of one another (Kendrick 2:00-15:00). This mirrored structure is precisely the type of structure that would be expected to establish the sort of equilibrium previously discussed as essential to impartiality. The federal courts balance the state courts. Their power is held at equilibrium. The state courts can act as a check on the federal courts to

maintain balance and the higher courts can act as a check on the lower courts as well. All of these structures promote balance or in other words, impartiality.

To further this analogy, think of a beam balance, impartiality requires an equilibrium amongst the factions just like a beam balance requires equal gravitational forces on either side of the scale to maintain equilibrium. To an individual accused of a crime, like O.J. Simpson, this balance, the equalization of the opposing legal forces, comes in the form of a procedural right to appeal. Lower courts can appeal to higher courts and state courts can appeal to federal courts (it is a bit more nuanced than this in reality, but for the sake of simplicity, this explanation need not go too much into those details). This right, the right to appeal, exists, not in every case, but in those outlined by the law as a check on the opinion of the court. Where circumstances allow, an individual can, if they choose, appeal the decision of a lower court to a higher court. Likewise, to maintain equilibrium on the balancing scales of justice, the prosecution has the right to appeal the decision in favor of the defendant, where circumstances allow. The forces at play are balanced via the structure of the courts to ensure impartiality throughout the process.

In the O.J. Simpson case, this idea of balanced forces via the structure of the court system played out very uniquely. Because of the fact that Mr. Simpson's case was a criminal matter that ended in an acquittal, the state (prosecution) was not allowed the opportunity to appeal. This is the case because, as a check on the possibility of mischief by the prosecution, the founders, established the "double jeopardy clause" in the Constitution of the United States. The double jeopardy clause of the Fifth Amendment to the United States Constitution states "No person shall be . . . twice put in jeopardy of life

or limb.” This clause, in the most basic of terms, is the way for the accused to prevent multiple accusations for the same offence, against the same person, over time. There are varying authorities with ability to rule on matters at various instances. The process works. It maintains peace, generally, and preserves impartiality in each individual case. There is virtually always a mechanism for redress.

Italy’s courts are even more generous than the courts of the United States. In *every* case, “appeals to the Court of Cassation are allowed” (Constitution of the Republic of Italy, Art. 111). This allowance of appeal at every level in every case all the way to the highest court in Italy puts the adversaries in any case on even more level footing. Regardless of the outcome, there are no stipulations on appealing to the next level.

In Amanda Knox’s case, this ability to appeal every decision was her saving grace. On November 2<sup>nd</sup>, 2007, Meredith Kercher’s mangled body was found between the mattress and the comforter of her bed (Judgement 4). Shortly thereafter, Amanda was arrested for the murder of her late roommate (Knox 136). In the following months, Amanda Knox would be investigated, indicted, tried as the accused killer, declared guilty, then innocent, then guilty again, and then innocent again, conclusively. This progression through the courts was surely difficult but looking at the Knox case from the perspective of the entire court system structure, her case shows how the structure maintains impartiality.

Imagine for a moment that a bad judge has been hired to take cases of accused mafia members and pass them off as innocent regardless of the facts or the law. Unfortunately, this has happened in Italy (Vanucci 233). That judge, in order to be accountable, is forced to answer, via the appeals process, to a higher judge. The higher

judge has the ability to retry the case entirely. Unlike in the United States, if a lower court in Italy, for example, acquitted a mobster for his or her actions, that acquittal could move to a higher court and face an entire retrial. Given the circumstances of Amanda Knox's situation, this process of appeal was extremely helpful to her case.

In the court of first instance of Amanda's journey through the legal process, she was convicted of the crime she was accused of on the basis of evidence that was later proven to be quite shoddy (Judgement 4). Had this first trial been held in the American court structure, Amanda would have been able to appeal just as well. However, at the second level, Amanda's case took a different turn. In the Knox case, the Court of Appeals of Perugia, headed by Judge Claudio Pratillo Hellmann, was the court of appeal for the first appeal of Amanda's case. In this case, she was appealing her conviction. During the appeal, it was brought to the attention of the judge that "glaring errors" were made in the course of the investigation conducted by Dr. Giuliano Mignini in Perugia (Judgement 30). "In a point-by-point deconstruction experts [stated] that because of the errors made by police during the original investigation, the evidence against Amanda should be considered 'inadmissible'" ("Amanda Knox Case Timeline"). The legal process eventually led to a ruling in favor of Amanda and Judge Hellmann ruled that Amanda Knox was innocent (Judgement 4). Following the release of the verdict, Amanda quickly left the country that had turned her dreams to nightmares ("Amanda Knox Case Timeline"). This, however, was not the end of her problems.

Had Amanda's case been tried in the United States, this point, the acquittal, would have been the end of her trial (Barton). Because of the double jeopardy clause of the Fifth Amendment, she, like O.J., would not have been able to be tried again for the crime that

she had just been acquitted of (Const. of the United States, Amend.V). However, the Italian Constitution's right to appeal applies to all parties in a suit regardless of outcomes. Therefore, the prosecution took advantage of the opportunity to appeal the appeals court's decision (Barton). On the second appeal, Knox was convicted again, and a new trial was ordered. Before this trial could take place, though, the Italian Court of Cassation—the Italian court of final instance—ruled that the second appeals court's "judgment is affected by an incorrect assessment of all the available evidence" (Judgement 55). The Court of Cassation then ruled that it was not, in fact, Amanda Knox who had committed the murder (Judgement 55). Amanda Knox's case was finally, decisively concluded.

The back and forth of Ms. Knox's case through the court system and from verdict to verdict must have been excruciatingly difficult for her, her family, and the prosecution. That said, this example shows how a case can move through the court system and finish differently in the later courts than it does in the earlier courts. It is this system of appeals via the structure of the courts from lower power to higher power and different people that maintains the balance of the forces of the factions at play in the Italian system. Although the structure is very different from the American model, the principle of appeal via the court structure does the same thing in both countries: it helps ensure that justice is given impartially.

As noted previously, all of the elements being discussed in this paper as mechanisms for producing impartiality have introduced, in some measure, human influence. The Constitutions of both the United States and Italy were written by human hand. The court structures were established by human ideation and refinement. At this

point in the paper the discussion will shift, however, from documents and structures written and created by humans to the humans themselves. From this point on, the need for impartiality becomes more apparent, as do the measures in place to correct problems.

In the United States and in Italy, the courtroom is the central hub of action for any particular case being tried. The courtrooms of each nation, however, are filled with somewhat different actors. These actors are central to understanding how both nations introduce bias and then mitigate it to the end of impartiality. At this point in the paper, the various human actors tasked with dealing with a case will be analyzed via the Simpson and Knox cases. Then, in conclusion, the voice of the people, as jurors, being the distinguishing factor of the U.S. legal process will be discussed.

#### V. THE ROLES OF THE PLAYERS

The courtroom of the O.J. trial was filled with several groups and individuals. The central individual in the courtroom was Mr. Simpson, the accused. The late victims were not in the courtroom, but their presence, in every form but physical, was surely felt. Operating the machine of legal process there in the courtroom was then the presiding judge, Lance Ito. There were jurors. There was an audience. Then, finally, there were two teams of legal experts. Arguing in favor of the accused, Mr. Simpson, the “dream team” thirteen of the best legal experts from across the nation (Walraven). Arguing in favor of the State, Marcia Clark and Christopher Darden, the prosecutors (OJ Trial Uncut). Each of these parties is important, several are essential.

The defendant, Mr. Simpson, was being charged with a heinous crime. Unlike most accused criminals in the United States, however, Mr. Simpson was a renowned football star, a hall of famer. O.J. was the recipient of the 1968 Heisman trophy, the

overall first pick of the 1969 NFL draft, and a member of the 1985 NFL Pro Football Hall of Fame cohort (“Heisman Trophy Winners List”; “1969 NFL Draft”; “1985 Pro Football Hall of Fame Ballot”). He was rich and famous and capable of bringing to bear against the prosecution, an incredible team of legal experts. He could afford a strong defense team. Knowing the strength of the case that was being built against him by the prosecution, antagonistic media, and the families of the late Nicole Simpson and Ron Goldman, O.J. wanted to exercise his right “to have the Assistance of Counsel for his defense” (U.S. Const., Amend VI). His life as a football player had taught him the significance of a powerful team so he assembled the best group of legal professionals whom money could buy. With the millions of dollars that he could pour into protecting his “life, liberty, and property,” O.J. recruited a team of thirteen legal experts from across the United States: Robert Shapiro, Sara Caplan, Johnnie Cochran, Carl Douglas, Shawn Chapman, Gerald Uelmen, Robert Kardashian, Alan Dershowitz, F. Lee Bailey, Barry Scheck, Peter Neufeld, Robert Blasier and William Thompson (U.S. Const., Amend XIV; Walraven). They were going to find a way to keep O.J. out of a cell.

Simpson’s team of legal experts was herculean in comparison to the prosecution. Not only was the prosecution outnumbered more than six to one, they were facing the most capable experts of legal defense and civil rights practice, who had been trained at the nation’s best schools, and gained authoritative reputation for their work (Staples). Los Angeles prosecutors Marcia Clark and Christopher Darden were set to take on the monstrosity of the dream team. How could they possibly be an even match? Their advantage was the support of the state. They had the fierce winds of the power of the state at their backs (OJ Trial Uncut 00:01:30-00:06:40). They were not going to lose.

While the defense and the prosecution are very important in presenting the facts of a case in court, in the United States, and specifically in the Simpson case, judges are extremely influential. In the Simpson case, for example, Judge Lance Ito was tasked with “respect[ing]” O.J. Simpson the same way that any other person would be “respect[ed]” in his courtroom. He was responsible for treating O.J. like anyone else despite the fact that O.J. was the recipient of the 1968 Heisman trophy, the first draft pick of the first round of the 1969 NFL draft, and a member of the 1985 NFL Pro Football Hall of Fame cohort (“Heisman Trophy Winners List”; “1969 NFL Draft”; “1985 Pro Football Hall of Fame Ballot”). Judge Ito was in charge of a case that was broadcast throughout the world and it was his job to “faithfully and impartially discharge and perform all the duties incumbent upon him” (28 U.S.C § 443). The job was difficult, no doubt. In the end, opinions split. Judge Ito was criticized by many and revered by others for his work on the Simpson case (Gilberg). However, his role from the beginning was never to answer to the factions. He, as judge, was to be the impartial “referee” of the court proceedings, period.

The U.S. legal process is like a competitive sport and judges are the referees. They are responsible for protecting the rights of the accused and the accusers, impartially. Judges in the United States are sworn to

administer justice without respect to persons, and do equal right to the poor and to the rich [to] faithfully and impartially discharge and perform all the duties incumbent upon [them] as [judges] under the Constitution and laws of the United States. So help [them] God (28 U.S.C § 443).

This oath is the solemn promise of a judge to give impartial justice. Yet, despite this oath, the fact still exists that “80% of Western democratic populations . . . display subtle

biases” and “judgment and social behavior [can] be triggered and then operate in the absence of conscious intent and guidance” (Bargh 74). This can be viewed as immensely problematic in the world of U.S. legal process. Judges, for instance, harbor their own biases and, while they certainly work to keep as objective a lens as possible while they operate, it is—as the social scientists have pointed out—tremendously difficult to eliminate all bias.

In the United States, the defense, the prosecution, and the judge play equally important roles in doing impartial justice. Like the three sides of an equilateral triangle, each player helps make up the structure of the legal process from the state’s perspective (see figure 1).

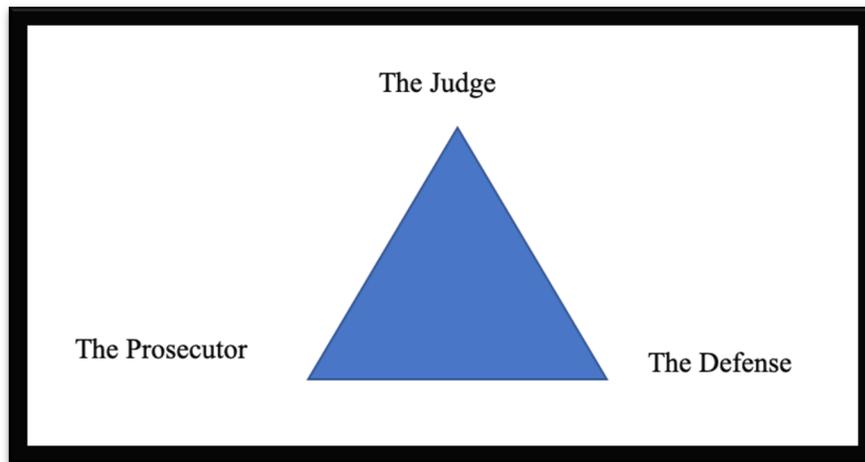


Figure 1. The triangle represents the three key players in the U.S. federal and state legal processes.

Imagine for a moment that the three points of the triangle represented the forceful collisions of ideas, evidence, arguments, and perspectives in the courtroom. The three points pushing one against another offset any imbalance that could come about if one side was longer or, in other words, more powerful, than the other. The interdependence of the component actors of the court maintains high levels of impartiality without compromise.

This is quite unique. In large part, the bias of a judge is mitigated by the defense and the prosecution. Their right to object and present precedent in favor of their position in a court of law serves as a check on the judge's power to referee the process of any given court hearing.

In O.J. Simpson's trial, courtroom procedure and the interplay of judge and advocate played a major role in reaching a verdict. The system of law in the United States, as previously noted, follows the pattern of common law in which the law is made by judges. The system itself is derived from English common law and was received by all states, except Louisiana, via formal "reception statutes" ("Origins of American Law"). In California, where the Simpson case was heard, this statute reads "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State" (California Civil Code, Sec. 22.2). This system of judge-made-law is relevant to the O.J. Simpson case because statements of precedent were made to persuade the presiding judge to admit certain evidence or allow certain motions all throughout the trial.

Examples of precedent being used as part of this interplay of judge and advocate were pervasive in the court of the Simpson trial. For one, on the very first day of Mr. Simpson's trial, his defense team argued before the judge that he should be permitted to participate in the opening statement (OJ Trial Uncut 00:01:30-00:06:40). To make this argument, the defense cited *People v. Darrow* and *People v. Davis* which provided two examples of instances wherein a defendant was allowed to participate in the opening statement posited before a California judge (OJ Trial Uncut 00:01:30-00:06:40). To rebut

the defense's motion, the prosecution cited *People v. Perez* and *People v. Wong* (OJ Trial Uncut 00:06:40-00:13:48). In Simpson's case, the use of these precedents to persuade the judge to let the defendant participate in the opening statement by addressing the jury, ended unsuccessfully for the defense (OJ Trial Uncut 00:20:15-00:20:30). However, this pattern of persuasion via precedent continued throughout the trial sometimes helping and sometimes hurting the cause of Mr. Simpson. Without this interplay of judge and advocate, the courtroom would have been chaos and Mr. Simpson's case may have ended differently (or perhaps not at all).

Like the courtroom during the O.J. Simpson trial, the Italian courtrooms where Amanda Knox's various hearings took place were also filled with several important groups and individuals. Amanda Knox, the defendant or appellant was generally present with her counsel. Counsel for the late Meredith Kercher was also present. In addition, various presiding judges oversaw the courtroom hearings as the trials pressed toward completion. Each individual party played a role in the process.

Counsel for Amanda Knox, the defense counsel was retained by Knox's family after it had been discovered that she would be arrested in conjunction with the murder of Meredith Kercher. Amanda's family was desperate for a strong legal team that could interpret the Italian system well and communicate accurately with Amanda. Thus, on referral from the United States embassy in Rome, the Knox family retained Luciano Ghirga and Carlo Della Vedova (Knox 63). The two had the ability to argue before the various courts in Italy and would do everything in their power to attain complete exoneration of Ms. Knox.

Counsel against Ms. Knox, backed by the state, and known for his ruthless prosecution of criminals was Dr. Giuliano Mignini (Preston). Mignini, a *pubblico ministero*, the Italian equivalent of a public prosecutor minced words with none. He believed that Amanda Knox committed the murder and would do all things necessary to prosecute her crimes (Amanda Knox 00:23:00-00:24:34). As the trial wore on, he was never put off by the case against him. As prosecutor, he set forth to do his job without vacillation (Preston). This was his moment to shine.

In the course of the Knox case, many judges filled many roles. At each level of appeal, there was a different judge giving justice as he saw fit. Throughout Italy, judges play a different role than they do in the United States. Where the judge in a U.S. case takes on a role as referee, a judge in Italy is both a referee and a player in the game. The judge or judge(s), depending on the scenario, play a part in what is referred to as the “inquisitorial” system (Liu). In this style of courtroom procedure, the judge oversees and conducts an investigation of the crime with the assistance of the prosecutor and police (Codice di Procedura Penale, Art. 326). Based on the evidence collected and posited in various written forms, the judge then determines if the accused is innocent or guilty (Codice di Procedura Penale, Art. 442). Simply put, the judge is much more involved in Italian proceedings than judges are in the United States.

In Italy, the defense counsel, *pubblico ministero*, and the judge all play fairly equal roles in the legal process. The triangular structure previously referenced is essentially the same in Italy as it is in the United States (see figure 2).

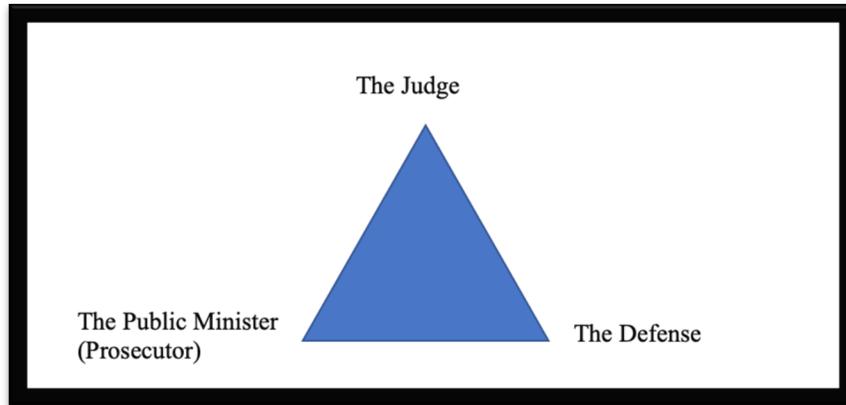


Figure 2. The triangle represents the three key players in the Italian legal processes.

While the collisions of ideas, evidence, arguments, and perspectives still take place in the Italian courtroom, the judge does play a somewhat different role. That said, the process is still very much the same. Even though the Italians work their system of civil law from a set of written codes and the Americans work their system of common law from a system of judicial lawmaking via precedent, both systems negotiate the power between defense, prosecution, and judge to properly mitigate the biases and partisanship of the court. In both the United States and Italy, the legal process mitigates bias by pinning adversaries against one another in a sort of battle overseen by an impartial third-party, the judge.

The issue with this structure, the equilateral triangle of impartiality, as it has been discussed thus far, is that it is one sided. Defense lawyers in both Italy and the United States are registered agents of the various associations that ensure ethics and enforce academic standards for the profession. In the United States, the American Bar Association oversees this work and in Italy, the Italian National Bar Council does the same (“The American Bar Association”; “Italian National Bar Council”). The same associations oversee the work of prosecutors. Then, finally, they also oversee the work of

judges. Thus, while the individual actors within these associations are sworn and held to a degree of impartiality by the government's oversight. The fact of the matter is that the people are still subjected to their organizational biases. For this reason, the founders of the United States, understanding the "mischiefs of faction" decided to write in the requirement for a jury into the U.S. Constitution (Madison; Constitution of the United States, Amend. XI). It is this added protection that ensures that the people's voice can be heard, and it is this protection that Italy does not provide nearly as well as the United States.

## VI. CONCLUSION

Occasionally, when U.S. citizens get jury duty in the mail, they see it as an onerous burden that will distract them from their lives far too much to take an interest in helping the legal process move forward. This sort of attitude may seem acceptable, but, with a deeper understanding of the way justice works, I would argue that people may become more prone to gratitude when they receive notice for jury duty in the mail. The legal process of the United States, although flawed, is, relatively to other nations, quite strong. In many other nations, people have access to the same mix of freedom and impartiality available in the United States. Yet, despite the presence of such immense legal blessings, there are often misunderstandings when it comes to legal responsibilities. It is essential that the laymen of the United States, the potential jurors, seek to better understand their role in the legal process. If they do not, the nation is at risk of losing power to the "tyranny of the majority" and the "violence of faction" (Madison).

The role of government is to enact and enforce laws. As Justice Holmes put it in *Southern Pacific v. Jensen*, "law is not a brooding omnipresence in the sky."

Governments do the work of governing in many different ways. Two of these ways, as they have been discussed in this paper, include the United States' legal process and the Italian legal process. This paper has presented the mechanisms and means by which the U.S. and Italy seek to attain justice, impartially. Via the presentation of these two systems, this paper has attempted to analyze each and point out key differences. This analysis has been directed toward the conclusion that the differences in the U.S. and Italian legal systems—including variations in their founding documents, the structure of the courts, the role of the judges, the role of the advocates, and the role of other key players—allow multiple levels of bias to be introduced to the process while preserving the impartiality of the final verdict. In conclusion, the author has noted that the defining difference between the legal processes of the United States and Italy is the presence of a jury.

The U.S. model of a jury is the pinnacle representation of how the government and the governed can interact together to preserve the highest level of impartiality. While lawyers and judges are said to be the agents of justice, this is only partially true. In both the United States and Italy, they are agents of the government and government ought to be, as Lincoln put it, “of the people, by the people, and for the people.” Therefore, to the end that justice is to be attained by means of government intervention, it only makes sense that it be attained—at least in tandem—by means of the people. Increased jury presence worldwide might be the solution to the many problems legal processes around the world face today.

## Works Cited

*Amanda Knox*. Netflix, 2016.

“Amanda Knox Case Timeline.” *Injustice Anywhere*,

<http://www.amandaknoxcase.com/amanda-knox-case-timeline/>. Accessed 16 Feb. 2020.

“Attacks on Justice.” *International Court of Justice*, 2000, [https://www.icj.org/wp-](https://www.icj.org/wp-content/uploads/2001/08/italy_attacks_justice_2000.pdf)

[content/uploads/2001/08/italy\\_attacks\\_justice\\_2000.pdf](https://www.icj.org/wp-content/uploads/2001/08/italy_attacks_justice_2000.pdf). Accessed 15 Mar. 2020.

Bargh, John and Ezequiel Morsella. “The Unconscious Mind.” *Perspectives on*

*Psychological Science*, vol. 3. no. 1, 2008, pp. 73-79, doi:

<https://doi.org/10.1111/j.1745-6916.2008.00064.x>. Accessed 16 Feb. 2020.

Blackstone, William. *Commentaries on the Laws of England*. J.B. Lippincott and Co.,

vol. 2, 1753, [https://oll.libertyfund.org/titles/blackstone-commentaries-on-the-](https://oll.libertyfund.org/titles/blackstone-commentaries-on-the-laws-of-england-in-four-books-vol-2/simple)  
[laws-of-england-in-four-books-vol-2/simple](https://oll.libertyfund.org/titles/blackstone-commentaries-on-the-laws-of-england-in-four-books-vol-2/simple). Accessed 10 Mar. 2020.

California Civil Code. 2020.

Clements Worldwide. *The Most Litigious Countries in the World*. p.1.

Codice di Procedura Penale. 2020.

Constitution of the Republic of Italy. 1948.

Council of Bars and Law Societies of Europe. *Number of Lawyers in European*

*Countries*. CCBE Lawyers’ Statistics 2015, May 2015, p.5.

Destutt De Tracy, Antoine. *Treatise on Political Economy*. 1816,

<https://founders.archives.gov/documents/Jefferson/03-09-02-0433>. Accessed 10  
Mar. 2020.

- Devers, Lindsay. "Plea and Charge Bargaining." *Bureau of Justice Assistance*, 2011, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>. Accessed 10 Mar. 2020.
- Fine, Toni. "American Legal Systems: A Resource and Reference Guide." *LexisNexis*, LexisNexis Group, 1997, <https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>. Accessed 28 Jan. 2020.
- Fiske, Susan. "What We Know Now About Bias and Intergroup Conflict, the Problem of the Century." *Current Directions in Psychological Science*, vol. 11, no. 4, 2002, pp. 123-128, doi: <https://doi.org/10.1111/1467-8721.00183>. Accessed 19 Feb. 2020.
- Gilberg, Ari. "Marcia Clark rips Judge Lance Ito for allowing O.J. Simpson trial to turn 'into a circus'." *New York Daily News*, 2016, <https://www.nydailynews.com/sports/marcia-clark-rips-judge-ito-o-trial-circus-article-1.2672412>. Accessed 11 Mar. 2020.
- Gill, Peter. "Analysis and implications of the miscarriages of justice of Amanda Knox and Raffaele Sollecito." *Forensic Science International: Genetics*, vol. 23, 2016, pp. 9-18, doi: <https://doi.org/10.1016/j.fsigen.2016.02.015>. Accessed 10 Mar. 2020.
- Hans, Valerie. "Jury Systems Around the World." *Cornell Law Faculty Publications*, pp. 276-297, <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1378&context=facpub>. Accessed 15 Mar. 2020.

“Heisman Trophy Winners List.” *The Heisman Trophy*, Heisman.com,

<https://www.heisman.com/heisman-winners/>, Accessed: 15 Feb. 2020.

Hunziker, Stephanie. “Understanding the Italian Justice System.” *IN Public Safety*,

<https://inpublicsafety.com/2015/04/amanda-knox-case-is-a-lesson-in-understanding-the-italian-justice-system/>. Accessed 15 Mar. 2020.

“Italian National Bar Council.” 2020,

[https://www.consiglionazionaleforense.it/web/cnf/ricerca?p\\_p\\_id=101&p\\_p\\_lifecycle=0&p\\_p\\_state=maximized&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_assetEntryId=219271&\\_101\\_type=content&\\_101\\_urlTitle=italian-national-bar-council-](https://www.consiglionazionaleforense.it/web/cnf/ricerca?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_101_struts_action=%2Fasset_publisher%2Fview_content&_101_assetEntryId=219271&_101_type=content&_101_urlTitle=italian-national-bar-council-)

[eng&redirect=https%3A%2F%2Fwww.consiglionazionaleforense.it%2Fweb%2Fcnf%2Fricerca%3Fp\\_p\\_id%3D3%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1%26\\_3\\_keywords%3DItalian%2BBar%2BAssociation%26\\_3\\_showMenu%3Dfalse%26\\_3\\_groupId%3D0%26\\_3\\_delta%3D10%26\\_3\\_struts\\_action%3D%252Fsearch%252Fsearch%26%23p\\_3&inheritRedirect=true](https://www.consiglionazionaleforense.it/web/cnf/ricerca?p_p_id=101&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_3_keywords%3DItalian%2BBar%2BAssociation%26_3_showMenu%3Dfalse%26_3_groupId%3D0%26_3_delta%3D10%26_3_struts_action%3D%252Fsearch%252Fsearch%26%23p_3&inheritRedirect=true).

Accessed 15 Mar. 2020.

Judgement of the Supreme Court of Cassation of the Republic of Italy. 2013.

[http://themurderofmeredithkercher.com/PDF/translation\\_Supreme\\_Court\\_report\\_v1.0.pdf](http://themurderofmeredithkercher.com/PDF/translation_Supreme_Court_report_v1.0.pdf). Accessed 16 Feb. 2020.

“Jury.” *National Geographic*, <https://www.nationalgeographic.org/encyclopedia/jury/>.

Accessed 15 Mar. 2020.

- Kendrick, Leslie. "Overview of the American Legal System." *University of Virginia School of Law*, YouTube, <https://www.youtube.com/watch?v=d75upaDHSvY>. Accessed 10 Mar. 2020.
- Kets de Vries, Manfred. "The spirit of despotism: Understanding the tyrant within." *Human Relations*, vol. 59, pp. 195-220, doi:10.1177/0018726706062732. Accessed 15 Mar. 2020.
- Knox, Amanda. *Waiting to be Heard*. HarperCollins, 2013.
- Lincoln, Abraham. "The Gettysburg Address." 1863.
- Little, Sarah. "The Importance and Effect of Sample Size." *Select Statistical Service*, <https://select-statistics.co.uk/blog/importance-effect-sample-size/>. Accessed 11 Mar. 2020.
- Liu, Jessie. "Truth and Justice?" *Yale Law Journal*, vol. 106, is. 6, art. 6, 1997, pp. 1953-1958, URL: <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7751&context=yaj>.
- Madison, James. "No. 10." *The Federalist Papers*, [https://avalon.law.yale.edu/18th\\_century/fed10.asp](https://avalon.law.yale.edu/18th_century/fed10.asp). Accessed 10 Mar. 2020.
- Mueller, Christopher. "Introduction: O.J. Simpson and The Criminal Justice System on Trial." *U of Colorado Law Review*, vol. 75, no. 4, 1996, pp. 727-745, <https://scholar.law.colorado.edu/articles/684/>. Accessed 28 Jan. 2020.
- OECD. "What makes civil justice effective?" *OECD Economics Department Policy Notes*, no. 18, Jun. 2013, p.4.

- OJ Trial Uncut. OJ Simpson Trial - January 24th, 1995 - Part 1. 28 Nov. 2016,  
[https://www.youtube.com/watch?v=Zbiov\\_K8QXo&list=PLMI3RjXTXUqrhWN3Vp05AcfySgMVMq9d&index=32](https://www.youtube.com/watch?v=Zbiov_K8QXo&list=PLMI3RjXTXUqrhWN3Vp05AcfySgMVMq9d&index=32), 2:04:01, Accessed 15 Feb. 2020.
- “Origins of American Law.” The Judiciary, Boundless Political Science,  
<https://courses.lumenlearning.com/boundless-politicalscience/chapter/origins-of-american-law/>, Accessed 15 Feb. 2020.
- Preston, Douglas. “The Monster of Florence.” *The Atlantic*, 2006,  
<https://www.theatlantic.com/magazine/archive/2006/07/the-monster-of-florence/304981/>. Accessed 10 Mar. 2020.
- Southern Pacific Co. v. Jensen. 244 U.S. 205 (1917),  
<https://supreme.justia.com/cases/federal/us/244/205/>. Accessed 10 Mar. 2020.
- Stevenson, Bryan. *Just Mercy*. Random House Publishing Group, 2014.
- “The American Bar Association.” *American Bar Association*, 2020,  
[https://www.americanbar.org/about\\_the\\_aba/](https://www.americanbar.org/about_the_aba/). Accessed 15 Mar. 2020.
- United States Code. 1947.
- United States Constitution. 1788.
- Vanucci, Alberto. “The Controversial Legacy of ‘Mani Pulite’: A Critical Analysis of Italian Corruption and Anti-Corruption Policies.” *Bulletin of Italian Politics*, vol. 4, no. 2, 2009 pp. 233-264,  
[https://www.gla.ac.uk/media/Media\\_140182\\_smxx.pdf](https://www.gla.ac.uk/media/Media_140182_smxx.pdf). Accessed 10 Mar. 2020.
- Vitiello, Michael. “Bargained for Justice: Lessons from the Italians?” *The U of the Pacific Law Review*, vol. 48, 2017,

<https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1298&context=facultyarticles>. Accessed 10 Mar. 2020.

Walraven, Jack. "The Simpson Trial Transcripts." [simpson.walraven.org](http://simpson.walraven.org). Accessed 15 Feb. 2020.

"What is the Civil Law?" LSU Law, <https://www.law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/>. Accessed 28 Jan. 2020.

"1985 Pro Football Hall of Fame Ballot." *Pro Football Reference*, [pro-football-reference.com](http://pro-football-reference.com), <https://www.pro-football-reference.com/hof/1985-ballot.htm>. Accessed 15 Feb. 2020.

"1969 NFL Draft." *Pro Football Reference*, [pro-football-reference.com](http://pro-football-reference.com), <https://www.pro-football-reference.com/years/1969/draft.htm>. Accessed 15 Feb. 2020.