The U.S. and Italian Criminal Justice System:  
Through the Lens of the Amanda Knox Trial

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The inquisitorial criminal justice systems prevalent in continental Europe derive their characteristics not only from their written codes but also from their culture and history. In this paper, I compare a few key differences between the system of Italy and that of the United States, using examples from the Amanda Knox and Raffaele Sollecito trial. In particular, I discuss differences in jury voting, the appeals process, the concept of guilt beyond a reasonable doubt, and non-formalized aspects of each court system. I conclude that the United States criminal justice system is the more pro-defendant of the two, at least when defendants are not limited by access to legal representation.

I. Italian Criminal Justice System

In 1861, the numerous Italian states were unified into one by the House of Savoy, who eventually became the Italian royal family.1 It promulgated its first national code of criminal procedure in 1865, adopting France’s inquisitorial system.2 An investigative judge was tasked to collect evidence, with the support of the prosecutor, and create an investigative report called a dossier.3 A trial judge received the dossier and conducted a public trial of the accused.4 Previously, the scattered practice of the Italian city-states did not always conduct a public review of the evidence, and therefore subject to the criticism of holding secret accusations.5

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3 Id.
4 Id.
5 Marongiu, supra.
The investigative stage was intended to be more inquisitorial, with little to no participation of the accused, while the public trial stage was to be somewhat more adversarial, the prosecutor and defense presenting their sides in front of a supposedly neutral trial judge. However, in practice (and particularly during the Fascist era of the 1930’s), the trial judge relied heavily on the dossier of the investigative judge, with the public trial a little more than a formality.

By the 1980s, there was a growing feeling that Italy needed to break away from its inquisitorial traditions to pursue a more adversarial model. The expansion of the investigative stage was reminiscent of secret accusations. The system of mandatory prosecutions, similar to other inquisitorial jurisdictions, was thought to contribute to judicial inefficiency, with some defendants having their cases lingering in the court system for over ten years.

The Italian legislature provided a number of changes in the 1988 revised Code of Criminal Procedure. American-styled exclusionary rules were introduced. The investigative judge was abolished. The written dossier available to the trial judge was limited to only a few records from the prosecutor’s investigative file, including only evidence which was objectively impossible to reproduce in court and prior convictions of the accused. Plea-bargaining-type procedures were created to improve efficiency.

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7 Id.
8 Id.
10 Id.
11 Id.
12 Id.
13 Id.
Its implementations, however, resulted in a system that was much less adversarial than it may have appeared on the surface. Only the most serious crimes on the level of murder or terrorism involved fact-finding by the lay public.\textsuperscript{15} All other crimes were tried to professional judges. Thus, “excluded” evidence was not actually excluded from being presented.\textsuperscript{16} The only restriction was that it could not make its way into the court opinion to justify guilt or innocence. Even for serious crimes, laypersons were not shielded from excluded evidence. Such crimes were tried in the \textit{Corte d'Assise} (Court of Assizes), whose deciding body is composed of eight people: two professional judges and six lay judges selected from the general public.\textsuperscript{17} Their rules for using “excluded” evidence were the same as for courts decided by professional judges alone.\textsuperscript{18}

Also, the judiciary, being used to wide latitude to produce its own evidence and having a full dossier to refer to in trial, began to interpret the code expansively, allowing more evidence to be included in the dossier and chipping away at the strictness of the exclusionary rules.\textsuperscript{19} What remained was a mixed inquisitorial-adversarial system, with the judiciary hanging onto inquisitorial notions of finding objective truth, in spite of criminal code language that suggested otherwise.

\section{Differences in Right to a Jury}

\subsection{Size and Unanimity}

One big difference between the Italian and U.S. systems is the voting procedures to arrive at a verdict. In the U.S., the Constitution’s Sixth Amendment provides that “[i]n all criminal

\textsuperscript{15} Id.
\textsuperscript{16} Id.
\textsuperscript{17} Pietro Marongiu \textsc{world factbook of criminal justice systems}, U. S. Department of Justice, U. S. Department of Justice (last accessed April 24, 2018).
\textsuperscript{18} Id.
\textsuperscript{19} Id.
prosecutions, the accused shall enjoy the right to a speedy and public *trial, by an impartial jury* of the State and district wherein the crime shall have been committed . . .” (emphasis added). The Supreme Court has interpreted this provision to require that juries need to be composed of at least six people,\(^\text{20}\) and if the minimum of six is used, the decision must be unanimous.\(^\text{21}\) In *Johnson v. Louisiana*, the Court voted 5 to 4 that Louisiana’s law of allowing convictions on jury votes of 9 to 3 was permissible.\(^\text{22}\) Therefore, this 9-to-3 ratio seems to be the Court’s limit.

Italy, on the other hand, determines the guilt of serious crimes by a majority vote of the deciding body. In the Court of Assizes, at least five of the eight judges on the deciding body—including at least one of the professional judges—need to agree on guilt for a conviction.\(^\text{23}\)

Game-theoretical methods and social science experiments have tried to determine whether unanimous versus majority-vote juries are more accurate, with no clear consensus.\(^\text{24}\) Accuracy can be improved by decreasing false acquittals as well as false convictions. The American justice system, however, was created with the view that false convictions are worse than false acquittals. This view can be traced back to William Blackstone’s statement that it is “better that ten guilty persons escape, than that one innocent person suffers.”\(^\text{25}\)

Since gaining a unanimous verdict for conviction is more difficult than gaining a majority, the (near) unanimity rules of the U.S. seem to favor defendants more.\(^\text{26}\)

\(^{20}\) *Ballew v. Georgia*, 435 U.S. 223 (1978). Interestingly, the Court referenced social science research in its opinion, which it does not often do.

\(^{21}\) *Burch v. Louisiana*, 441 U.S. 130 (1979). The express reasoning was that unanimous or near-unanimous jury verdict rules were the norm in most other states. Blackwell’s reasoning, though not express, seemed to be implicitly accepted by the Court.


\(^{23}\) Pizzi, supra.


because a “not guilty” verdict also requires the same near-unanimous vote—with all closer votes resulting in a hung jury and a retrial—this conclusion may require a deeper analysis to be confirmed.

Knox’s first trial resulted in a unanimous conviction. This may suggest that a unanimity rule would not have changed the outcome. Convincing a minority of jurors to join a unanimous decision, however, may be easier when those votes aren’t needed for legal force. When a juror’s vote is determinative of the outcome, their decision may weigh more heavily on their minds, so that more would be required to convince them to join the majority.\textsuperscript{27} Thus, the publicity surrounding Knox’s trial could reasonably have convinced Presiding Judge Giancarlo Massei to pursue a unanimous decision to enhance legitimacy, with such a task being less difficult once a majority vote was achieved.

Another difference between American juries and their lay counterparts in the Italian system is the extent of collaboration with professional judges in the Italian system. The English translation of the 427-page Massei Report (from the first trial) is filled with legal and scientific technical jargon.\textsuperscript{28} It seems likely that the professional judges and their legal staff wrote it. Also, as some scholars have noted, although the revised Italian Code of 1988 was intended to separate the influence of investigators on the trial judge, Italian judges have fought back in terms of interpreting the code in a more inquisitorial manner, and the cultural connection between

\textsuperscript{27} One anecdotal example might be how Chief Justice Earl Warren convinced his fellow Supreme Court Justices to unanimously sign a single opinion to \textit{Brown v. Board of Education}. Although a unanimous decision was not needed for legal force, he knew its implementation would be facilitated by the Supreme Court speaking as one. It is reasonable to expect that convincing his fellow Justices, with the concession of changing certain opinion phrasing, would be easier than if unanimity was required to change the law. Jesse Greenspan, \textit{10 Things You Should Know About Brown v. Board of Education}, \textsc{History} (May 16, 2014), https://www.history.com/news/10-things-you-should-know-about-brown-v-board-of-education.

prosecutors and the trial judges may still remain in their cognitive biases. For these reasons, the American system seems to be more pro-defendant than the Italian one.

I. Guilt Beyond a Reasonable Doubt

Another reason for a pro-defendant tilt in the American justice system is the mindset of jurors. The concept of proving guilt beyond a reasonable doubt is ingrained in the American psyche, either through television shows or the news. In Italy, the standard of proof for a criminal conviction is not so clear. I looked for but could not find a clear statement of it. Some blogs written by Italian lawyers do express the standard of “beyond any reasonable doubt.” However, the standard actually used seems to be weaker. In France, the same standard of proof exists for both criminal and civil trials, and is referred to as the intime conviction, meaning “inner belief,” but sometimes translated as “conviction beyond a reasonable doubt.” I could find no statement of contrary practice in Italy or any indication that the 1988 Code altered this practice. The ideals of the inquisitorial system—the pursuit of objective truth—seem to suggest a rationale for this single standard. If Italy is reasonably assumed to subscribe to the same practice, it would also be reasonable to expect that this single standard would be lower than the standard of beyond a reasonable doubt as used in American criminal trials, but perhaps higher than the preponderance of the evidence standard used in civil trials.

Anecdotally, the American public accepts the high standard of proof needed for a guilty verdict. The trials of O.J. Simpson and Casey Anthony—which resulted in acquittals despite a

32 I could not find a discussion on this specific point in the literature.
general consensus that they were guilty—did not result in an attack on the legal standard of proof (either in academia or the media). Instead, the criticism was directed to the ability to “buy” justice, especially in the O.J. Simpson case.\textsuperscript{33}

In contrast, controversial convictions in high-profile cases are more difficult to find in the United States. Some defendants who were controversially convicted obtained a higher profile over time,\textsuperscript{34} but the majority of false convictions, as evidenced by DNA exonerations, were of poor defendants without much support.

Whether Americans should be proud of this as an aspirational idea, or disgusted by the influence of money on the justice system, is an important question, but beyond the scope of this paper. Nonetheless, it suggests that with proper legal representation, the United States system would have been more favorable to Amanda Knox, and other defendants with adequate means, than the Italian one.\textsuperscript{35}

\textbf{a. Beyond a Reasonable Doubt Standard Applied to Amanda Knox}

The physical evidence used to convict Knox and Sollecito were all of questionable quality and offered with questionable interpretations.\textsuperscript{36} The Massei Report considers the possibility of DNA contamination but also recites the crime scene investigator’s response that

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\textsuperscript{33} I consider only cases that involve disputed factual determinations. The Rodney King verdict was not accepted by a large minority of the American public, but it was the legality of the police officers’ actions that were in dispute, as the actions themselves were undisputed (having been video recorded). As a side note, the scrutiny on Simpson and Anthony continues to this day, making a (potentially continued) life of crime difficult to conceive of. Whether this consideration was contemplated to add to Blackstone’s rationale to have a difficult guilty verdict is unknown, but possible.

\textsuperscript{34} Rubin Carter, wrongfully convicted of murder, and Damien Echols, Jessie Misskelley, Jr., and Jason Baldwin (known as the West Memphis Three), also wrongfully convicted of murder, are two such examples.


\textsuperscript{36} Injustice in Perugia, http://www.injusticeinperugia.org/ (last accessed April 24, 2018). For example, Kercher’s bra strap was found on the ground of her bedroom after 47 days, and was once in the trash during that period, before it was mishandled with dirty gloves, tested, and found with traces of Sollecito’s DNA—supposedly connecting him to the crime despite the obvious explanation that he was in the house in the days before and after the murder.
the chance of contamination was “practically zero.” The expert testimonies alone would not likely have swayed a jury one way or another.

The more persuasive (and perhaps prejudicial) evidence was the prosecution’s presentation of Knox’s strange behavior, sexual proclivities, and multiple inconsistent stories. Drugs and lack of empathy may be the source of these behaviors; however, in my experience, lack of empathy is more common in the non-murderous population than one might expect. Although the combined evidence does not foreclose the possibility that Knox and Sollecito were involved, the evidence would not likely lead American jurors to a guilty verdict, given the high standard of proof and unanimous vote required.

II. Strategic Considerations by Knox’s Legal Team

a. Approach to Differences in Exclusionary Rules

Our class readings and discussions considered the admissibility in the U.S. of (1) Amanda Knox’s inconsistent statement regarding Patrick Lumumba, since the civil and criminal trials would be held separately, (2) her statement at the police station if it was was challenged as involuntary, (3) her same statement if it was challenged as obtained in violation of Miranda, (3) and evidence about her sexual character (from her MySpace page) under U.S. evidence rules.37 Danielle Lenth takes the position that much of the evidence allowed in the Italian trial would still be allowed a U.S.-styled trial, although perhaps for different purposes (e.g., using her sexual nature to show motive).38

However, in addition to the rules being different, U.S. lawyers pursue different strategies as a result of those rules. For example, Lenth argues that Knox’s character assassination in the

38 Id.
press might compel her U.S. lawyers to bolster her character. However, a better strategy may be to use the voir dire process to exclude jurors that have been heavily influenced by the negative press, using both for-cause and peremptory strikes. Sequestration of jurors might also be more likely in the U.S., if only because its relative wealth allows such extravagances. Scholars have noted that sequestration in Italy is impractical because of the long periods of time in the court system, but this does not fully explain the difference, as each proceeding (e.g., in the Corte d'Assise or the Corte d'Assise d'Appello) uses different lay judges. Thus, even the subtle differences in implementation for various (e.g., character-based exclusionary) rules would allow Knox’s hypothetical American lawyers to present a more favorable case in the United States.

b. Approach to Differences in the Appeals Process

Defenders of the Italian justice system say their system worked fairly, as intended. Appeals in the United States only consider legal error or newly discovered evidence, not usually poorly presented evidence. On the other hand, the first appeal in Italy is like a second trial, with the same type of deciding body, and based on a review of the witnesses and evidence admitted in the first trial. Witnesses can be requestioned, and indeed were cross-examined more vigorously in Knox’s appeal, mostly by Presiding Judge Hellmann. Knox’s journey through the Italian legal system involved three trials in which evidence was presented (one conducted while Knox was back in Seattle, in absentia), and two reviews before the Supreme Court.

In order to determine the pro- or anti-defendant effect of the appeals process in Italy, a somewhat detailed explanation must be given because its procedures are not mere modifications

39 Id.
41 Pizzi, supra.
42 Id.
of the American system. For cases that start in the *Corte d'Assise*, appeals are made to the *Corte d'Assise d'Appello*. Appeals can be made based on incorrect applications of law as well as incorrect consideration of the evidence. Therefore, the first appeal is almost like a retrial, as a matter of right. Witnesses may be called to the stand again, and new questions asked of them. Appeals from the *Corte d'Assise d'Appello* are made to the *Corte Suprema di Cassazione* (Supreme Court of Cassation), which is supposed to only rule on questions of law.

The first retrial as of right may seem pro-defendant. However, prosecutors can appeal a first acquittal too. Because the entire journey through the court system is considered one proceeding, double jeopardy rights do not attach until no more appeals are available. Even if the appellate process is not decidedly pro- or anti-defendant in terms of its final verdict, the lack of finality, and its wear-and-tear on the accused, might put the procedures in the category of anti-defendant.

In Knox’s case, her first appeal at the *Corte d'Assise d'Appello* was an acquittal. The *Corte Suprema di Cassazione* overturned the acquittal, claiming that the *Corte d'Assise d'Appello* did not base its decision on all the evidence. One can see how such a determination might be viewed as going beyond a question of law. The remanded case was again tried in the *Corte d'Assise d'Appello* with new members in the deciding body, which upheld the murder conviction. Finally, the *Corte Suprema di Cassazione*, citing “glaring errors,” “investigative amnesia,” and “guilty omissions,” annulled the guilty verdict and declined to order a remand—

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43 Id.
44 Id.
45 Id.
47 Id.
48 Id.
again, a questionable treatment of a question of law.49 Although the justice system finally came to the same conclusion that many Americans (laypersons and legal scholars) came to long ago, the entire process lasted from January 16, 2009 (beginning of the first trial) to March 27, 2015, and relied on questionable procedures by the appeals courts.50 As discussed below, Knox’s lawyers were not very vigorous in their examination of key witnesses in the first trial. Perhaps their view of litigation as one long six-year proceeding may have contributed to this lackadaisical attitude.

III. Inquisitorial Culture with Adversarial Features

Many differences in judicial systems are unwritten and can be discovered only by studying actual practice—and understood in terms of tradition and history.51

One such example can be seen in the cross-examination of Antonio Curatolo, a key witness of the prosecution, who claimed he saw Sollecito and Knox in a public square at around 11 pm the night of the murder—conflicting with their account that they were at Sollecito’s place.52 The prosecutor and presiding judge asked Curatolo most of the hundred or so questions, with Sollecito’s attorney Bongiorno asking two questions, Meredith Kercher’s attorney asking three, and Knox’s attorney asking none. Curatolo was a homeless heroin addict, but he faced no questions about this topic.53 For Americans who are familiar with pointed cross-examination questions, this proceeding didn’t seem adversarial at all. The court’s decision contained the

50 Amanda Knox and Raffaele Sollecito: timeline of the seven-year legal fight, supra.
53 This fact came out during the first appeal, in which the secondary Judge Massimo Zanetti questioned Curatolo about his heroin use that night. Homeless Heroin Addict Antonio Curatolo, supra.
statement, “It does not seem questionable that it was the evening of November 1 when Curatolo (according to what he stated) saw the defendants in the vicinity of the Piazza Grimana basketball court.” The parenthetical remark does not seem to temper the full acceptance of his statement.

It is unknown why Knox’s attorney did not question Curatolo vigorously; perhaps it is due to deference to the judge and prosecutor that exists culturally in the inquisitorial model. Thus, the presence of adversarial features in written code may only mask the inquisitorial mode of acceptable behavior that is ruled by more importantly by unwritten culture and tradition.

IV. Conclusion

In my view, the U.S. justice system would have treated Amanda Knox and Raffaele Sollecito with greater fairness; under it, they would have likely been acquitted in the first trial. I would not have reached this conclusion without studying Italy’s system in practice, as revealed by actual court documents and trial transcripts. Therefore, culture and history can influence a system beyond its legal code.

A generalization to the entire country’s justice system, however, may not be fair because defendants without adequate legal representation face greater pressure to accept plea bargains, among other hardships. Further research on this would be enlightening.