



English Criminal Evidence in Comparative Perspective

Professor Paul Roberts

BCL, MA (Oxon) MPhil (Cantab)
Professor of Criminal Jurisprudence,
University of Nottingham School of Law, UK;
Adjunct Professor of Law, CUPL, Beijing &
University of New South Wales, Sydney, Australia

Introduction Pack

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1. Course Outline and Philosophy

This course provides an intellectually rigorous scholarly introduction to the law of criminal evidence in England and Wales, and frames this exposition within a broader comparative context relevant to the recent evolution of procedural law in China. It examines the jurisprudential foundations of English criminal evidence law, basic concepts of criminal adjudication, aspects of comparative law method, and current reform proposals relating to Chinese Evidence Law and Criminal Procedure.

The English Law of Evidence is traditionally associated with detailed exclusionary rules and common law doctrine. Whilst this historical legacy remains significant, English Evidence law is changing rapidly and many of the old comparative law assumptions and clichés no longer apply. Rather than reproducing extensive doctrinal analysis (much of which is liable to go out of date), this course focuses on the normative philosophical foundations of procedural law, its sources, jurisprudential character, and institutional applications in criminal trials. Students will be encouraged to understand English criminal evidence as a dynamic, constantly evolving, procedural system informed by its own distinctive set of professional-judicial cultural practices, and not merely as a static set of formal legal rules. The course will blend legal theory, human rights law and comparative law analysis with more traditional forms of procedural scholarship. It will also introduce students to on-going sources of normative conflict and controversy in English criminal evidence, prominently including the impact of human rights law on traditional common law doctrines.

The course is split into four principal parts, each comprising approximately two days' classroom instruction and student (including group) exercises.

Part I begins with **Comparative Methodology and Criminal Adjudication**. It is well known that both common law legal reasoning and adversarial trial process have exerted profound effects on the form and substance of English criminal evidence, yet both these fundamental features of English criminal process are widely misunderstood. Drawing on comparative legal method, this course will endeavour to explain the realities of adversarial adjudication and common law reasoning, shorn of exaggeration and caricature; and, more broadly, to examine the

Part II introduces the **Foundational Concepts and Institutional Context of English Criminal Evidence**. These are the basic doctrinal and contextual building blocks of English criminal trial procedure. They include fundamental epistemic concepts of relevance, admissibility and probative value which are to be found (however described) in the procedural law of every legal system. They also include more idiosyncratic features of common law legality implemented through an adversarial procedural system.

Part III of the course explores the **Impact of Human Rights Law on English Criminal Evidence**. The introduction of the Human Right Act 1998 has exerted a profound influence on the recent development of English procedural law. Major changes have occurred both at the macro-level of constitutional theory and fundamental conceptions of the rule of law, and also at the micro-level of particular legal doctrines including the presumption of innocence, judicial exclusion of improperly obtained evidence, hearsay and confrontation. Whilst other common law evidentiary systems in North America (Canada), Africa (Nigeria, South Africa), Australasia (Victoria, New Zealand) and the Far East (Hong Kong, Singapore) have also been affected by modern theories and doctrines of human rights, the British position is distinctive

in the extent to which it has been influenced by the supra-national jurisprudence of the European Court of Human Rights. Detailed examples of ECHR jurisprudence will be explored in this course, leading us to pose the provocative question: is the English law of criminal evidence developing into a hybrid “European” system of procedural law?

Finally, **Part IV** of the course addresses **Comparative Criminal Procedure Reform**, with reference to the current reform debates in China. This provides a practical, tangible context in which to explore further conceptual ideas of ‘legal families’, procedural models and legal ‘transplants’, and to apply general tools and concepts of comparative method to analyse contemporary local issues of procedural law and its reform.

The primary objective of this course is to provide students with an astute working knowledge of the fundamentals of criminal evidence law and practice in contemporary English criminal trials which is also directly relevant to their own situation. By adopting a theoretically sophisticated conception of procedural law and expounding key methods and concepts of comparative legal scholarship, it is hoped that students will gain a more profound understanding of the normative foundations, legislative techniques, institutional competence, and practical realities of criminal procedure law in their own legal system(s) – just as learning a foreign language fosters deeper understanding of vernacular grammar and syntax.

2. Instructor Biography

Paul Roberts is Professor of Criminal Jurisprudence in the University of Nottingham, School of Law, UK, having joined Nottingham’s then Department of Law in 1993 as a lecturer; and (since 2011) an Adjunct Professor in the Law Faculty at the University of New South Wales. He has been a member of the Board of Foreign Advisors of CUPL’s Institute for Evidence Law and Forensic Science since 2007.

Paul is one of the UK’s leading Evidence scholars. His principal publications are: Roberts and Zuckerman, *Criminal Evidence* (OUP, 2/e 2010), Roberts (ed), *Theoretical Foundations of Criminal Trial Procedure* (Ashgate, 2014); Roberts (ed), *Expert Evidence and Scientific Proof in Criminal Trials* (Ashgate, 2014); Jackson, Aitken and Roberts, *Case Assessment and Interpretation of Expert Evidence* (Royal Statistical Society, 2014); Roberts and Aitken, *The Logic of Forensic Proof: Inferential Reasoning in Criminal Evidence and Forensic Science* (Royal Statistical Society, 2014); Roberts and Hunter (eds), *Criminal Evidence and Human Rights* (Hart, 2012); Puch-Solis, Roberts, Pope and Aitken, *Assessing the Probative Value of DNA Evidence* (Royal Statistical Society, 2012); Aitken, Roberts and Jackson, *Fundamentals of Probability and Statistical Evidence in Criminal Proceedings* (Royal Statistical Society, 2010); Greenberg (ed.), *Jowitt’s Dictionary of English Law* (Sweet & Maxwell, 3rd edn 2010) (specialist editor on criminal law and criminal procedure & evidence); Roberts and Saunders, *Interviewing Prosecution Witnesses: A Socio-Legal Evaluation of the Pre-Trial Witness Interview Pilot* (CPS, 2008); Roberts and Redmayne (eds), *Innovations in Evidence and Proof* (Hart, 2007), Cooper and Roberts, *Special Measures for Vulnerable and Intimidated Witnesses: An Analysis of Crown Prosecution Service Monitoring Data* (CPS, 2005), and Roberts and Willmore, *The Role of Forensic Science Evidence in Criminal Proceedings* (HMSO, 1993), in addition to which he has published over 100 journal articles, book chapters, essays and reviews.

In addition to his visiting post at UNSW, Paul has been visiting professor or invited lecturer at CUPL, Beijing, the International Islamic University Malaysia (IIUM), the University of Warsaw, the Jagiellonian University in Krakow, the University of Göttingen, and the University of Natal (Pietermaritzburg), RSA, and has delivered keynote speeches and conference paper in more than twenty countries around the world. He is currently an editorial board member of four academic journals: the *International Journal of Evidence and Proof* (E & P), serving as Editor 2005-9; *Law and Philosophy*; *Criminal Law & Philosophy*; and *Law, Probability and Risk*. Paul has previously been a consultant to the British Crown Prosecution Service and to the Law Commissions of England and Wales and Scotland, and is currently an on the Advisory Board of Northumbria University's Centre for Forensic Science and a Council member of the International Association of Evidence Science.

3. Course Timetable

The course will be taught in 28 contact hours delivered over two weeks, as follows:

Month	Date	Time	Course Title	Lecturer	Location
April	6 (Weds)	8:50 - 12:10	<i>English Criminal Evidence in Comparative Perspective</i>	Prof Paul Roberts	Basement Room 102
	7 (Thurs)	14:00-17:20			Room 102
	8 (Friday)	14:00-17:20			Room 102
	9 (Saturday)	14:00-17:20			Room 102
	10 (Sunday)	14:00-17:20			Room 102
	13 (Weds)	8:50 - 12:10			Room 102
	14 (Thurs)	14:00-17:20			Room 102
					Room 102

4. Lecture Preparation and Reading

Detailed lecture notes (indicating extensive further reading) will be provided for the course, and other readings will be made available electronically. So there is no *requirement* to purchase a course text.

However, if you did wish to purchase one or more books as companion general reading for this course (all of which are readily available – in English – via Amazon.co.uk or directly from the publisher – the following are recommended:

As basic course texts:

- **Paul Roberts and Adrian Zuckerman, *Criminal Evidence* (OUP, 2nd edn 2010)**
- John D Jackson and Sarah J Summers, *The Internationalisation of Criminal Evidence* (CUP, 2012)
- Andrew L-T Choo, *Evidence* (OUP, 4th edn 2015).

There is one item of **compulsory preparatory reading** for each lecture session (sometimes there is a choice between two – read whatever sounds most interesting to you!). These have been supplied as pdfs.

It is expected that the compulsory reading will have been completed prior to the relevant lecture. It does not matter if you do not understand the reading fully. The lecture is your opportunity to ask questions, participate in discussion and improve your understanding. **But you will not be able to participate fully in the lecture discussion if you have not done the reading!**

The compulsory readings are as follows:

Class 1 (Weds 6 April):

1. H. Patrick Glenn, 'Comparative Legal Families and Comparative Legal Traditions' in Mathias Reimann and Reinhard Zimmermann, *The Oxford Handbook of Comparative Law* (OUP, 2006), ch 12

Class 2 (Thurs 7 April):

2. Oscar G Chase, 'Legal Processes and National Culture' (1997) 5 *Cardozo Journal of International and Comparative Law* 1 [reprinted in Paul Roberts (ed), *Theoretical Foundations of Criminal Trial Procedure* (Ashgate, 2014)].

Class 3 (Friday 8 April):

3. Paul Roberts and Adrian Zuckerman, *Criminal Evidence* (OUP, 2nd edn 2010), ch 1.

Class 4 (Saturday 9 April):

4. *R v Blastland* [1986] 1 AC 41, HL.

Class 5 (Sunday 10 April):

5. M Cherif Bassiouni, 'Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions' (1993) 3 *Duke Journal of Comparative and International Law* 235;

OR

John D Jackson and Sarah J Summers, *The Internationalisation of Criminal Evidence* (CUP, 2012), ch 4.

Class 6 (Weds 13 April):

6. UN Basic Principles on the Independence of the Judiciary (1985); UN Basic Principles on the Role of Lawyers (1990); & UN Guidelines on the Role of Prosecutors (1990):
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

Class 7 (Thurs 14 April):

7. Simon N M Young, 'Human Rights in Hong Kong Criminal Trials' in Paul Roberts and Jill Hunter (eds), *Criminal Evidence and Human Rights* (Hart, 2012).

Class 8 (Fri 15 April):

8. John J Capowski 'China's Evidentiary and Procedural Reforms, the Federal Rules of Evidence, and the Harmonization of Civil and Common Law' (2012) 47 *Texas International Law Journal* 455;

OR

Jia Li and Zhuhao Wang, 'A Trail to Modernity: Observations on the New Developments of China's Evidence Legislation Movement in a Global Context' (2014) 21 *Indiana Journal of Global Legal Studies* 683.

5. Background Reading and On-line Resources

For background reading: a comparatively-minded (but now a little dated) analysis of criminal proceedings in England and Wales:

Mike McConville and Geoffrey Wilson (eds), *Handbook of the Criminal Justice Process* (OUP, 2002).

[**This book was also published in a 2003 Chinese-language edition, with the title *English Criminal Justice Process*.**]

For more comprehensive reference works on criminal adjudication, fair trials and human rights, see:

- Andrew Ashworth, Ben Emmerson and Alison Macdonald, *Human Rights and Criminal Justice* (Thomson Sweet & Maxwell, 3rd edn 2012)
- Paul Roberts (ed), *Theoretical Foundations of Criminal Trial Procedure* (Ashgate, 2014).
- Stefan Trechsel with Sarah Summers, *Human Rights in Criminal Proceedings* (OUP, 2006)

Like every other corner of the law school curriculum, Evidence teaching (and scholarship) is in the process of being revolutionised by the advent of internet resources. You may already be familiar with the major English language databases providing comprehensive coverage of primary materials and an incredibly extensive selection of full-text, fully searchable periodicals: WESTLAW (my personal first-choice) and LEXIS.

Note that HeinOnline, though narrower in scope than WESTLAW, contains fuller back-runs of journals, and is also best for any article containing graphical representations (HeinOnline reproduces the original pagination and format, whereas WESTLAW reformats and sometimes omits tables, graphics etc altogether.) An important database of unreported cases is housed on the British and Irish Legal Information Institute (BAILII) website: <http://www.bailii.org/>.

The UK government has been quite conscientious in placing policy information relating to criminal proceedings on the internet. With particular salience for this course, see:

1. Ministry of Justice website (criminal justice policy; public consultations; legislative instruments): <http://www.justice.gov.uk/>

Note, in particular, the **Criminal Procedure Rules (2005 →)**:
<http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>

2. Judiciary of England and Wales website (news, cases, stats, **practice directions**, reports relating to trials, courts and judges): <http://www.judiciary.gov.uk/>

Note, in particular, Judicial Studies Board (JSB) *Crown Court Bench Book – Directing the Jury* (2010)
<http://www.judiciary.gov.uk/publications/crown-court-bench-book-directing-the-jury-2/>.

(Since this document was created, the JSB has been reconstituted as the Judicial College: <http://www.judiciary.gov.uk/about-the-judiciary/training-support/>.)

3. Law Commission homepage (including full text reports and consultation papers on hearsay, character evidence, expert evidence, double jeopardy):
<http://www.lawcom.gov.uk/>

4. MoJ contemporary CJS statistics: <http://www.justice.gov.uk/statistics/criminal-justice> (for archived Home Office statistics and hundreds of research papers and briefings, see: <http://www.homeoffice.gov.uk/rds/pubsintrol.html>)

5. Home Office “crime and policing” portal; general background on policing and criminal justice, policy documents, etc: <https://www.gov.uk/government/topics/crime-and-policing>.

There are also some useful websites dealing specifically with aspects of procedure and evidence. I can’t pretend to have undertaken an exhaustive search of the Internet, but the following are definitely worth checking out if you have time:

1. Prof Peter Tillers' (Cardozo Law School, NY) Dynamic Evidence Page (various materials and papers concentrating on proof and fact-finding; readings lists and links) <http://www.tillers.net/>
2. *International Commentary on Evidence* (ICE) – full-text on-line journal <http://www.bepress.com/ice/>
3. E & P Homepage (contents lists, alerts service, sample copies) <http://epj.sagepub.com/>
4. US Federal Judicial Center, *Reference Manual on Scientific Evidence*, 3d (2011) (bench book for US trial judges, containing useful summaries of particular areas of scientific expertise, free to consult or download): http://www.fjc.gov/public/home.nsf/autoframe?openform&url_1=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/1448

6. Assessment

This course will be assessed by a **coursework essay assignment of 3,000 words**. It may be written in English or Chinese.

Assignment question:

Critically consider how, if at all, a comparative analysis of English criminal evidence might help to inform criminal procedure reform in China.

Guidance notes:

1. Always define and explain key terms and concepts.
2. Helping to “inform” can be by positive example and/or negative warning.
3. You may answer the question in general terms or pick key procedural and/or evidentiary topic(s) on which to focus (possibly drawing on your previous studies of Chinese criminal procedure). In either case, you need to explain and justify your approach (“methodology”).

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