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Autore	Carrette Jeremy R.
Titolo	Foucault and religion : spiritual corporality and political spirituality // Jeremy R. Carrette
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Nota di contenuto	Part One -- 1. The Enduring Legacy of 'Inquisitorial' and 'Accusatorial' Procedural Forms in the Debate on Comparative Criminal Procedure -- AThe Enduring Legacy of the Inquisitorial -- Accusatorial Divide -- BThe Connection to Legal Nationalism -- CDeveloping a New Approach for Analysing European Criminal Procedure Law -- 2. The Origins of the European Criminal Procedural Tradition -- AIntroduction: The Importance of the Developments of the Nineteenth Century -- BThe Development of the 'Accusatorial Trinity' -- CJudicial Impartiality -- (i) The Separation of the Functions of 'Judging' and Prosecuting in -- France and Germany -- (ii) Impassivity or Activity: The Role of the English Judge in the -- Examination of the Evidence -- (iii) Institutional Impartiality -- DThe Public Hearing Requirement -- EImmediate and Oral Proceedings -- (i) Immediate and Oral Examination of Evidence at Trial -- (ii) Consideration at Trial of Evidence Collected before the Trial and -- Submitted in Writing -- (iii) Immediate and Oral Proceedings as Fundamental to the Accusatorial -- System -- FConclusions -- 3. The Rights of the Defence: Lessons from the Nineteenth Century -- AThe Institutional Nature of the 'Rights of the Accused' -- BThe Rights of the

Defence at Trial -- (i) The Presence of the Accused -- (ii) Participatory Rights of the Accused -- (a) The Developing Conception of the Accused as a Party -- (b) Understanding the Nature of the Accused's Participatory Rights: The English Reforms of the Late Nineteenth Century -- (c) The Assistance of Counsel -- C The Role of the Defence in the Pre-trial Phase -- (i) The Pre-trial Phase as 'Investigative' -- (a) The Questioning of the Accused -- (b) The Examination of Evidence -- (ii) The Determinative Reality of the Investigation -- D Conclusions -- Part Two -- 4. Defining Fairness in Article 6(1) ECHR -- A Introduction -- B Identifying Varga's 'Accusatorial Trinity' -- C The Role of the 'Equality of Arms' Doctrine -- D The Relationship between the Adversarial Procedure Requirement and the -- Equality of Arms -- E The Court's Interpretation of the Adversarial Procedure Requirement in -- Criminal Proceedings -- (i) The Right to be Present at Trial -- (ii) Knowledge of the Other Side's Submissions -- (iii) Opportunity to Comment on the Other Side's Submissions -- F The Relationship between the Defence and the Prosecution -- G Fairness and Implied Procedural Forms -- 5. The Structure of the 'Trial' in Article 6 ECHR -- A Introduction -- B The Defence's Right to Challenge Witness Evidence -- C Witness Evidence in Europe: An Overview -- D Regulating Witness Evidence: Article 6(3)(d) -- (i) What is an Adequate and Proper Opportunity to Challenge Witnesses? -- (a) The Identity of the Witness -- (b) The Importance of the Witness -- (ii) When Should Witnesses be Examined? -- E The Importance of the Trial as the Forum for Confronting Witness Evidence -- F Reconciling Examination of Witnesses in the Investigation Phase with the -- 'Accusatorial Trinity' -- (i) The Presence of Counsel during Pre-trial Examination of Witnesses -- (ii) The Presence of an Impartial Supervisory Authority during the Examination of Witnesses -- (iii) Immediacy -- G The Privilege Against Self-incrimination -- (i) Improper Compulsion -- (ii) Indirect 'Acceptable' Compulsion -- (iii) The Relationship between Compulsion and the Assistance of Counsel -- (iv) The Privilege against Self-incrimination as a Substitute for the Refusal to Insist on Adversarial Principles in the Investigation Phase -- H The Root of the Problem: Defining the 'Trial' -- (i) The Investigation Phase Lacuna -- (ii) Explaining the Investigation Phase Lacuna: Les Travaux Préparatoires -- (iii) Resolving the Fairness Deficit: Acknowledging the European Procedural Tradition -- 6. Reassessing Fairness in European Criminal Law: Procedural Fairness, Defence Rights and Institutional Forms -- A Procedural Fairness as Individual Rights -- B Procedural Rights and Institutional Forms -- C Article 6 ECHR and the European Criminal Procedural Tradition -- D Towards an Institutional Understanding of Fairness in Criminal Proceedings

Sommario/riassunto

The right to a fair trial has become an issue of increasing public concern, following a series of high profile cases such as the Bulger case, Khan (Sultan) and *R v DPP ex p Kebilene*. In determining the scope of the right, we now increasingly look to the ECHR, but the court has given little guidance, focusing on reconciling procedural rules rather than addressing the broader issues. This book addresses the issue of the meaning of the right by examining the contemporary jurisprudence in the light of a body of historical literature which discusses criminal procedure in a European context. It argues that there is in fact a European criminal procedural tradition which has been neglected in contemporary discussions, and that an understanding of this tradition might illuminate the discussion of fair trial in the contemporary jurisprudence. This challenging new work elucidates the meaning of the fair trial and in doing so challenges the conventional approach to the analysis of criminal procedure as based on the distinction between

adversarial and inquisitorial procedural systems. The book is divided into two parts. The first part is dominated by an examination of the fair trial principles in the works of several notable European jurists of the nineteenth century, arguing that their writings were instrumental in the development of the principles underlying the modern conception of criminal proceedings. The second part looks at the fair trials jurisprudence of the ECHR and it is suggested that although the Court has neglected the European tradition, the jurisprudence has nevertheless been influenced, albeit unconsciously, by the institutional principles developed in the nineteenth century
