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The English Legal System

“The traditional view is that judges do not make the law, but merely declare what the law is and apply it to cases that come before them.”

The system of courts that comprise the totality of the European legal system are organized essentially by the European Constitution and the laws legislated by the European government. The European Court of Justice—considered as the highest court—embodies the whole judicial part in the government, which in the light follows the English doctrines which adheres to parliamentary sovereignty form of government. On the other hand, the intermediate appellate courts are referred to as the Court of Appeals which functions under a mandatory review process that amounts to the task of hearing all appeals from the lower court bodies (Martin, 2007). Although there are several issues that revolve around the Supreme Court in the contemporary society, still the laws are the ones needed to be focused and studied onto.

The organization of these two judicial bodies, generally speaking, is more parallel in contrast to being different. In essence, the differences between the federal trial courts and the appellate courts can be observed from their respective internal organizational composition. While much of the similarities between the two courts can be obtained from their general task of deciding on legal cases, their distinctive features on how they are to specifically function substantiates their individual characteristics and separates their roles despite their apparent overlapping similarities as we shall see later. What is important to note at this point is to bear in

mind that appellate courts and trial courts, specifically in a federal government, have separate functions amidst the parallel characteristics that one may observe from the two.

General laws as described in the constitution

The constitution being the entity which embodies and defines the laws made in a state, incur a dire sense of power and authority that all citizens of a certain jurisdiction must adhere to. The system of courts that comprise the totality of the European federal courts are organized essentially by the English Constitution and the laws legislated by the European federal government. Federal District Courts and Appellate Courts are two of the courts in the federal government that serve the identical functions of bringing justified and lawful decisions to legal cases. On the other hand, these two court systems also have varying functions. In essence, the differences they have rest on their respective jurisdictions (Huxley-Binns and Martin, 2005).

Consequently, in judicial selection, accountability, independence, and qualifications are three essential elements considered. *Accountability* is concerned with the idea of how 'accountable' the judge is with regard to the judge's improper activities such that the judge is to be held accountable to the degree of arriving at case decisions expeditiously. On the other hand, *independence* refers to the idea that judicial decisions should remain impartial and free from the influence of other governmental departments or private entities. Lastly, *qualifications* refer to the criteria stipulated necessary to be met by the judge in order to be appointed in the context of the judicial selection (Martin, 2007).

Judicial precedence

In the judicial context, *precedence* refers to the legal cases previously decided by a court which then serves as a judicial precedent to similar cases or a basis for deciding a case which may be adopted throughout the course of time. The main reason as to why judicial decisions are

so often based on precedents is the idea that these precedents have been considered as established decisions. Instances of which include legal decisions being used for deciding similar cases repeated throughout time thereby suggesting that the decision or ruling is legally affirmed. However, it must be noted that not all legal decisions become judicial precedents as proceeding court justices may relatively take a different decision albeit having a similar case.

Classification of systems and procedures

The *adversarial system* is a classification of the law which is chiefly adopted and used in most countries that have common law systems. Such depends on the skill of every advocate that represents the position of his or her corresponding party which also involves a person who is neutral oftentimes referred to as the judge who attempts to determine the truth of the case involved. It is also observed that the adversarial system is the structure which is primarily two-sided which serves as the basis for the operation of the criminal trial courts in Europe and the United States of America.

In essence, the system places the prosecution against the defending party whereby justice is obtained in the case when the most effective adversary achieves convincing the jury or a specific judge that the most effective adversary's perspectives and claims with regard to the case are the correct ones (Brekke et al., 1991)—it is evident that the judge serves as the neutralizer of the case. Hence the decision that they are to give flows on the context of the laws made by the government and by the state itself.

Further, it has been observed that the adversarial system is a notable feature of the tradition of the common law of Anglo-America. In essence, this system is seen as the contrasting system of the inquisitorial system which is usual in the legal practice in most European countries which is practically taken from the civil law employed in ancient Roman times. Convincing the

judge or the jury that the claims of a certain side from either of the two sides are with the most merit concerning legal assertions of guilt is of penultimate importance (Thibaut et al., 1972). However, the judge only partakes in the whole trial under absolute supervision while the trial is in process and like the other participants of the trial the judge himself follows set of rules drafted under the authority of the constitution.

On the other hand, under the inquisitorial system, the court or a certain part of the legal court has an active participative role in identifying the facts involved in the pending case. Mostly utilized in European and Latin European judicial systems, this system is enforceable to questions that fall under criminal procedure in contrast to questions concerning substantive law. In this sense, the system pinpoints how criminal questions as well as criminal trials are made as opposed to the types of crime for which an individual can be charged with and prosecuted as well as their corresponding punishments before the court. It is usually readily accessible in most but not all civil systems of the law (Kagan, 1997).

Nevertheless, there are judges who do not bode into this perceived dichotomy for they view legal procedure and the substantial relationships under the law as directly linked together and a member of a theory of justice as enforced quite in variance depending on the predominant legal cultures (Searle, 1995). Trial judges in several jurisdictions have the ability to take active part in determining the facts inquiry through the questioning of the witnesses involved even under proceedings that are adversarial in nature. The judge under this system is also allowed by the rules of admissibility of evidence to continue with the case more of as an enquirer than a mere arbiter of the judicial proceedings.

The primary feature of the inquisitorial system especially in the criminal justice system in the French region is the presence and function of the *investigating magistrate* or *judge*. Under

this system, the presiding justice hears criminal suspects and the witnesses to the crime and enjoins orders for searches in relation to other vital investigations (Brekke et al., 1991). The determination of the truth is the primary task of the *juge d'instruction* and not essentially the prosecution or sentencing of an accused individual which relates the idea that the justice's primordial task is to identify and establish exculpating as well as incriminating evidence.

Actions from the presiding judge may be requested not only by the prosecution but also by the defense. Both sides may also take to the court of appeal and appeal the decision of the presiding justice in the lower court. Nevertheless, the extent of the enquiry is restricted by the prosecutor's office's legal mandate. In this connection, it can be stated that the judge cannot begin to examine alone.

The worst case scenario would be when the judge becomes involved in abusing jurisdictional discretion which results to a decision that is apparently biased thereby making the legal process of the justice system as obsolete. In short, instances when the rules of man are granted the higher status over the rule of law which translates into the idea that the laws or the rules of law are placed under the rule of man thereby rendering them with lesser value.

Adversarial system versus inquisitorial system

There are quite a number of differences between the adversarial system and the inquisitorial system which stems from the contrasting composition of the two systems. Among these differences is the fact that in the adversarial system there is no standing controversy and that the court or criminal cases ensues in a legal sentencing. However, the defendant in most jurisdictions under the adversarial system must speak out formally of his or her crimes respectively yet a confession that is false will not be accounted for even under courts under the common law (Thibaut et al., 1972). On the other hand, the confession of the defendant is simply

one of the facts that are taken into consideration into the list of evidences in the inquisitorial system. Further, the defendant's confession with regard to the legal case does not lift the necessity called upon the prosecution to present before the court a complete case. Plea bargaining becomes the result of this established practice under adversary systems in a difficult manner or perhaps even below possibility under the scope of the inquisitorial system. Most cases of felony in Europe and even in other countries like the United States of America are legally taken even with the absence of a trial by the use of plea bargains.

Conclusion

Although there remains the wide disagreement between adversarial and inquisitorial systems justice stemming from its composition and the manner in which they are applied, there remains the observation that each of these two systems has their own corresponding functions which the other system may be lacking. In effect, each of these systems has corresponding roles in the handling and resolution of legal cases. It appears that the adversarial and inquisitorial systems are systems that act like lenses upon which we view the legal world.

The former system may have its own subset of approaches that resolve cases beyond the reach of the latter system. For the most part, adversarial and inquisitorial systems have functions that are useful in specific contexts (Thibaut et al., 1972). It is legitimate for the European Court of Justice to take into account the public opinion because it is this opinion which defines the voice of the majority—specifically in a democratic environment, public opinion matters as well. Nevertheless, the court justices may not necessarily resort to an explicit pronouncement that reaffirms the public opinion. The court, specifically the judge, having been vested with the authority to declare the laws which adheres to the case beforehand is traditional yet the most just and fair schema in the judicial realm.

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