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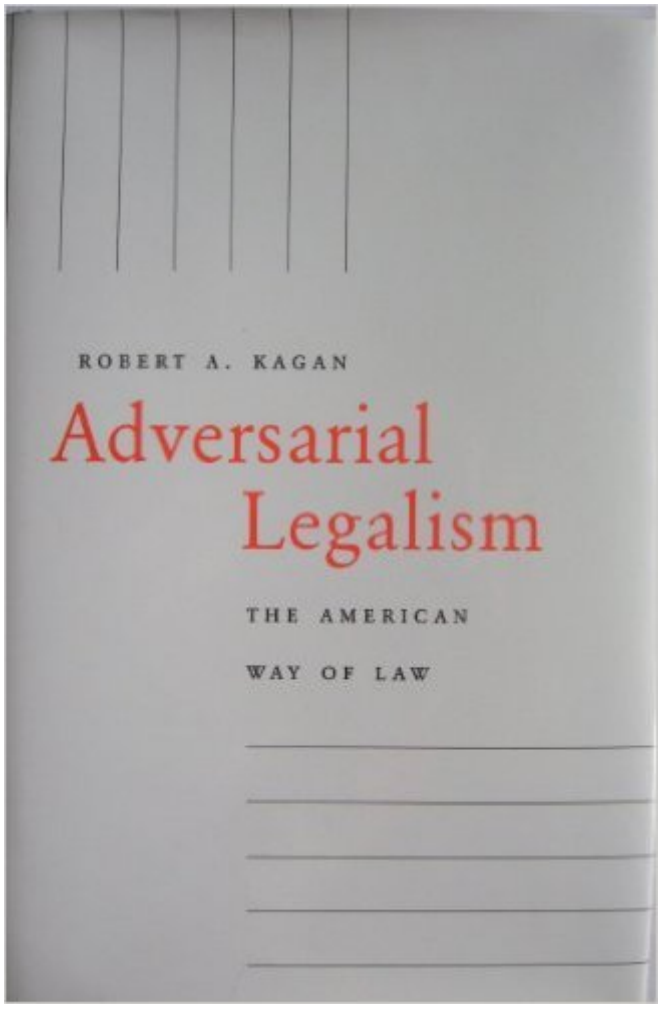
Adversarial Legalism: The American Way Of Law



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Synopsis

American methods of policy implementation and dispute resolution are more adversarial and legalistic when compared with the systems of other economically advanced countries. Americans more often rely on legal threats and lawsuits. American laws are generally more complicated and prescriptive, adjudication more costly, and penalties more severe. In a thoughtful and cogently argued book, Robert Kagan examines the origins and consequences of this system of "adversarial legalism." Kagan describes the roots of adversarial legalism and the deep connections it has with American political institutions and values. He investigates its social costs as well as the extent to which lawyers perpetuate it. Ranging widely across many legal fields, including criminal law, environmental regulations, tort law, and social insurance programs, he provides comparisons with the legal and regulatory systems of western Europe, Canada, and Japan that point to possible alternatives to the American methods. Kagan notes that while adversarial legalism has many virtues, its costs and unpredictability often alienate citizens from the law and frustrate the quest for justice. This insightful study deepens our understanding of law and its relationship to politics in America and raises valuable questions about the future of the American legal system.

Book Information

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Customer Reviews

The book is a brilliant description about why similar problems abound in many different areas of law (criminal, civil, regulatory, social welfare). Adversarial legalism has its roots in fundamental mistrust of government in USA. This leads to multiple overlapping jurisdictions and the need to turn to the courts to achieve policy gains. Agency officials are hamstrung by so many requirements that they

cannot apply their expertise. Instead we have a lawyer/judge centered system. Our system is less elite focused than in Europe/Japan but is also in many ways leads to less egalitarian outcomes and a decisionmaking process that takes years often without a corresponding benefit to justify the delays.In sector after sector, Kagan demonstrates how the fracturing of authority between branches, agencies, and levels of government leads to policies that no one would describe as "first best" or even "second best" but rather ugly compromises between competing interests. The fear of litigation permeates policy-making and the power to wield litigation empowers those who can afford the time and money to retain talented lawyers.And yet the same people who often bemoan the legalistic culture in the United States would be reluctant to embrace a more bureaucratic centered hierarchical solution found in Europe. It is in the last chapter, where Kagan discusses solutions, that I found my only real criticism of the text. Kagan recommends steps, both large and small to move toward a European system. However, while diligently listing the political/legal/cultural barriers to doing so, he seems to be overly optimistic that these can be overcome.The book was written in 2003.

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