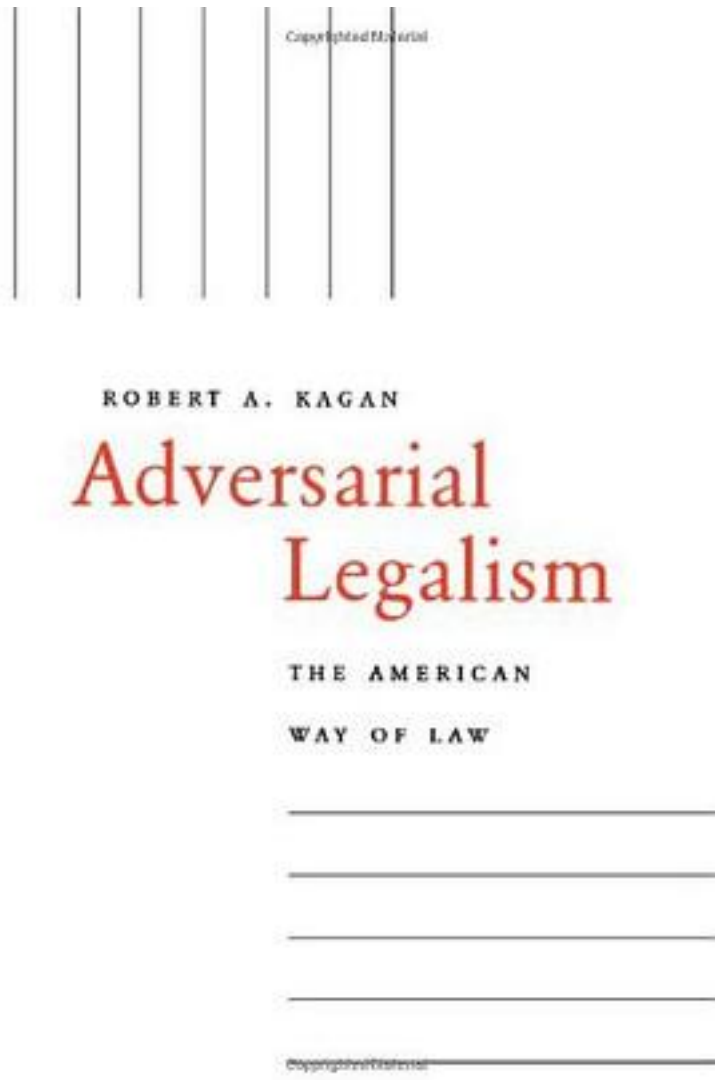


# Adversarial Legalism



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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 this text, 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 programmes, 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 study aims to deepen our understanding of law and its relationship to politics in America and raises questions about the future of the American legal system.

作者介绍:

目录:

[Adversarial Legalism 下载链接1](#)

标签

司法制度

民事诉讼法

法社会学

法理学

美国法

法院

法律社会学

法律与社会

## 评论

Damaska范式下对于美国法律制度的“深描”（深黑）——一种费时费力、当事人中心主义且高度不确定的对抗制法律体系。该体系奠基于美国建国时期的政治文化以及该文化所塑造的碎片化政体模式，而其所滋养出的法律人阶层反过来又得以不断固化这套体系。对于我国法学院内多少存在的“崇美”情节，确是一针清醒剂——中国的体量与文化不可能，也承担不起这种Adversarial Legalism。

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对于教科书，我有种纯天然的排斥感..  
要不是这次的作业逼我非读不可,这本书会慢慢生霉的...  
好吧,是本好书,特别是对于COMPARATIVE STUDY有兴趣的人来说，是本不错的入门书

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kagan大神真是无所不用其极地“黑”美国的司法制度啊。格外喜欢第三章分析美国独特的adversarial legalism的养成，具体论述在Damaska的框架下，对于政府供给的猛增与一个合作式、权力分散的政府这种文化-政治结构错配的结果。突然觉得应该补习一下historical institutionalism的理论了。

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## 书评

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