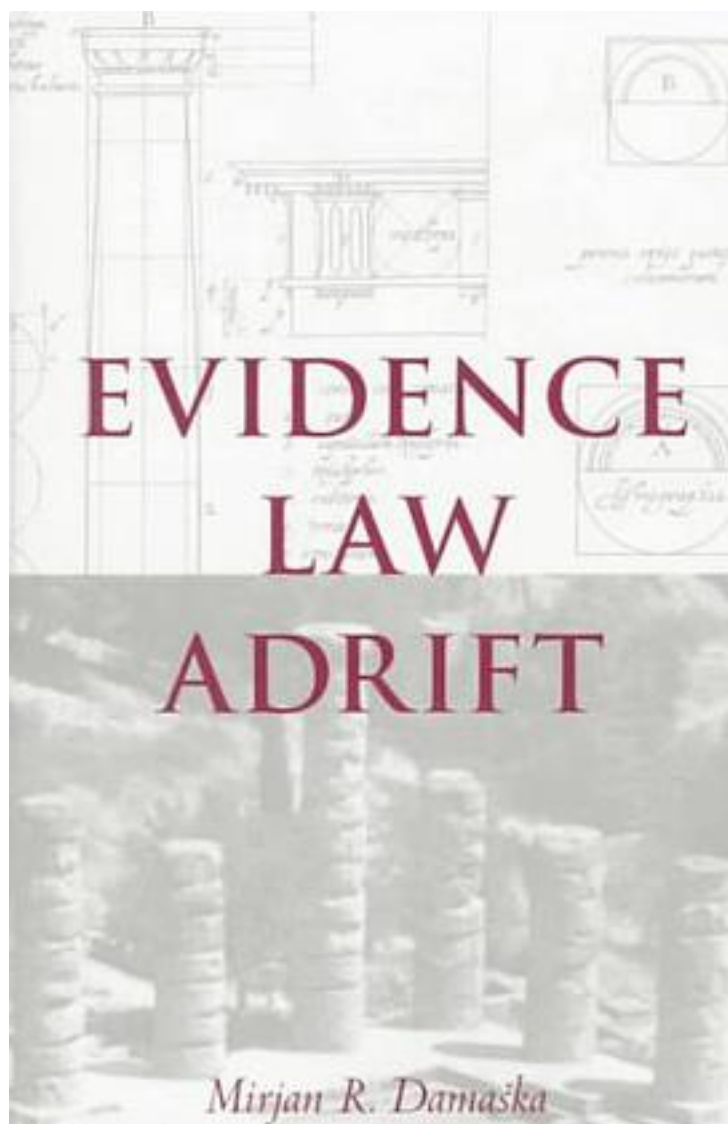


# Evidence Law Adrift



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著者:Mirjan Damaska

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In this important book, a distinguished legal scholar examines how the legal culture and institutions in Anglo-American countries affect the way in which evidence is gathered, sifted, and presented to the courts. Mirjan Damaska focuses on the significance of the divided tribunal (the judge-jury division), the concentrated character of trials ("day-in-court" justice), and the prominent role of the parties in adjudication (the adversary system). Throughout he contrasts the Anglo-American system with continental, or civil law justice, where lay fact finders sit with professional judges in unified tribunals, proceedings are episodic rather than concentrated, and the parties have fewer responsibilities than in the common law tradition. Damaska describes the impact of the traditional institutional environment on the gathering and handling of evidence in common law jurisdictions and then explores the more recent transformations of this environment: trial by jury has dramatically declined, pretrial proceedings have greatly proliferated, the adversary system shows signs of weakening in some types of cases. As a result, many rules and practices supporting the treatment of evidentiary material face the danger of becoming extinct. In addition, says Damaska, the increasing use of scientific methods of inquiry could place further strains on the use of traditional common law evidence. In the future we should expect greater variety in decision-making activity, with factual inquiries tailored to the specific type of proceeding and common law evidence restricted to a narrow sphere.

#### 作者介绍:

米尔建·R.达马斯卡 (Mirjan R.Damaska, 也被译为达玛什卡), 原前南斯拉夫人, 现加入美国国籍。主要研究领域为刑法与刑事司法、证据学、社会主义法律制度以及比较法。

1955年毕业于前南斯拉夫萨格勒布大学(University of Zagreb), 获法学学士学位。

1960年在卢布雅那大学(University of Ljubljana)获法学博士学位。

1956-1957年在前南斯拉夫的审判法院和上诉法院担任书记员。

1961-1962年在宾夕法尼亚大学(University of Pennsylvania)作"两百周年校庆纪念访问学者"(Bicentennial Fellow)。

1964年和1965年暑期任卢森堡国际比较法学院教授。

1966-1968年任宾夕法尼亚大学客座教授。

1968-1973年任萨格勒布大学教授, 期间, 于1970年出任系主任。

1970-1971年任宾夕法尼亚大学教授。

1975-1982年为耶鲁大学教授。

1982-1996年为耶鲁大学福特基金讲座教授。

1996年至今, 任耶鲁大学斯特林(Sterling)讲座教授。

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评论

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书评

“你如何认识别人的心智”？这种认识难题在法系与法系之间同样存在。而在证据法领域，达马斯卡的出现为我们提供了一些启示。正如大家所知道的，达马斯卡出生成长于南斯拉夫、游学于欧陆诸国、任教定居于美国，掌握八国语言，这种特殊的经历使得达氏能游刃有余地穿梭于各国之间...

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《漂移的证据法》一书是美国证据法学大师达马斯卡的著作，作者早年在南斯拉夫接受大陆法系的法学教育，后移民美国担任教职。达马斯卡的大陆法系教育背景使其能够以“局外人”的目光审视美国证据规则。在《漂移的证据法》一书中，作者的视线不断从大陆法系证据规则和英美法系证...

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