administrative state, judicial policymaking and. see judicial policymaking
adversarial bias. see bias
alternative dispute resolution processes, problems with. 82
assault. see gender-motivated violence
baby farms and infanticide in Victorian England, 176, 187
behavioral science perspectives on adversarial bias in criminal process, 20, 25
on miscarriages of justice, 27
best practices, law reframed as, 199
bias on adversarial bias in criminal process, 19, 23
behavioral science perspective on, 20, 25
measures to reduce, 31
MF’s concept of adversarialism, 20
MF’s contribution to scholarship on, 19
miscarriages of justice, 27
phenomenon of adversarial bias, 20
reconciliation of perspectives on, 20, 29
bureaucratic autonomy of judges, 246
bureaucratic element in judicial policymaking, 231

children. see also infanticide in Victorian England

*criminological effect of early childhood trauma, 58
*effects of exposure to courts
*brutalization by court environment, 63
court process as intergenerational punishment, 55
effects of parents’ court experiences, 55, 57
home environment negatively compared to court, 65
lessons from research on, 56, 68
*loss of respect for parents, 62

*manipulative uses of children by defense lawyers, 64
*measures to reduce, 56, 68
*normalization of wrongdoing, 60
*offender perspectives, 66
*prosecutorial perspectives, 60
*research methodology and data, 59
*traumatic effects, 58
*effects of parents’ imprisonment, 56

China
courts’ role in e-cigarettes regulation, 116
e-cigarettes regulation, 98, 99, 101, 106, 107, 113
repression of rights lawyers
*arrest and disappearance of Wang Yu, 289
disinformation campaign against Wang Yu, 289
response by international civil society and public opinion, 306
response by international legal community, 290, 294, 300, 302
tobacco regulation, 111, 116

civil procedure
*alternative dispute resolution processes, problems with, 82
class action process, problems with, 80
costs of invoking rights outweigh rights themselves, 91
discovery rules, problems with, 76
due process, gap between ideal and reality, 73, 90
Federal Rules of Civil Procedure (1938), 73, 90
MF’s contribution to scholarship on problems of, 72
pleading process, problems with, 74
*reduction of due process protections, 73, 90
*summary judgment process, problems with, 78
civil rights. see rights
class action process, problems with, 80
Index

comparative law
criminal court reform, 140
MF’s contribution to scholarship on, 98, 116
prisons, 165
complex policy choices. see policy
compliance
as defined by compliance professionals, 106
symbolic compliance, social change and, 205
constitutional provisions, judicial independence from, 344, 353
constitutional reform as tool for repression, 369, 374
costs
of criminal pre-trial processes, 55
of invoking civil due process rights, 91
counsel. see lawyers
court reform. see also prisons
criminal courts. see criminal courts
Japan. see Japan
MF’s contribution to scholarship on, 122, 135
US, 122
Court Reform on Trial: Why Simple Solutions Fail? (book). see Feeley, Malcolm
courts. see also civil procedure; criminal courts
and complex policy choices, 116
and e-cigarettes regulation, 114
criminal courts
adversarial bias, 19, 23
behavioral science perspective, 19
children’s exposure to. see children
costs of pre-trial processes, 55
institutional power in American society, 55
organizational theory perspective, 19, 23
reform
comparative law perspective, 140
criteria for success, 144
Italy, 141, 143, 145, 147
Japan. see Japan
MF’s contribution to scholarship on, 139, 152
and politics of criminal justice, 147
reasons for failure, 141, 152
criminal justice, politics of, 147
criminological effect of early childhood trauma, 58
culture of legal profession. see lawyers
decision making. see judicial reasoning
defense lawyers. see lawyers
defence. see judicial deference
Dewey, John
concept of law, 36
influence on MF, 43
disability rights and mass incarceration, 269
discovery rules, problems with, 76
diversity, rights reframed as, 200
due process. see civil procedure; legal process
e-cigarettes, regulation of
China, 98, 99, 101, 106, 107, 113, 116
classification of e-cigarettes, different approaches to, 99
corruption and divergence in regulatory policy, 99
courts’ role, 114
definition of e-cigarettes, 102
definition of e-cigarettes, 102
emergence of e-cigarettes, 97
EU, 98
financial regulation compared, 100
globalization and, 97, 100
health perspectives on, 101, 105
health risks of e-cigarettes, 104
Japan, 98, 99, 101, 106, 107, 111, 116
MF’s concept of comparative law applied to, 98, 116
national variations, 97
popularity of e-cigarettes, 103
reasons for regulatory divergence, 101
tobacco regulation and, 107
UK, 97
US, 98, 99, 101, 105, 107, 109, 114
education and training reform. see Japan
equal employment opportunity. see EEO law
equal employment opportunity (EEO) litigation; workers rights regulation
England. see infanticide in Victorian England;
United Kingdom
equal employment opportunity (EEO) litigation
civil rights reframed as diversity, 200
compliance as defined by compliance professionals, 106
EEO law equated with management best practices, 109
judicial deference in, 105
managerialization
and legal risk, 108
decoupling of organizational practice and policy, 108
internal dispute resolution (IDR), 198
of law, 107
rhetorical reframing of legal ideals, 109
European Union (EU), e-cigarettes regulation, 98
executive branch, judicial independence from, 348
families, intergenerational punishment of. see children
Fates of Political Liberalism in the British Post-Colony (book). see Feeley
Federal Rules of Civil Procedure (1938), 73, 90
Feeley, Malcolm (Referred to elsewhere in the index as MF)
Index

international legal community (cont.)
MF’s contribution to scholarship on, 292, 308
process of mobilization, 300
public support for, 306
response to China’s repression of rights lawyers, 290, 294, 302
rhetoric of mobilization, 302
Israel
High Court of Justice (HCJ)
effectiveness of policy changes, 284
hearing of, 279
hearing of informer status applications, 279
policymaking by, 277, 281
role of, 278
informer status applications by
Palestinians
effectiveness of policy changes, 284
HCJ policymaking, 277, 281
HCJ’s dilemma over policy, 274
number of, 273
recruitment of informers, 275
status of informers and threatened persons, 274
by threatened persons, 274
threatened persons
hearing of informer status applications, 279
status as, 274
Italy, criminal court reform, 141, 143, 146, 147
Japan
court reform
expectations from, 122, 136
MF’s insights applied to, 135
scope of, 122
courts’ role in e-cigarettes regulation, 116
criminal court reform
background to, 123
changes, 127
continuity, 129
lay judges, 122, 123
reasons for, 125
e-cigarettes regulation, 98, 99, 101, 105, 111, 116
legal education reform
aim of, 122
change and continuity in tension, 134
professional law schools, 131
reasons for, 131
tobacco regulation, 110
judges
bureaucratic autonomy outside court, 246
civil rights and judicial bargaining, 249
enforcement of civil rights, 240
independence. see judicial independence
lay judges reform in Japan, 122, 123
policymaking. see judicial policymaking
judicial deference
equal employment opportunity (EEO) litigation, 195
influences on judicial reasoning, 193
and managerialization of law, 197
MF’s insights applied to, 194
organizational theory perspectives, 194
to organizations, 209
prison conditions litigation, 194, 205
social change
and judicial deference, 207
and symbolic compliance, 205
symbolic structures
defERENCE to, 202
influence of, 201
judicial independence
bureaucratic autonomy of judges, 246
and common law, 340
historical development of
UK, 340, 349, 352
US, 342, 352
independence
from constitutional provisions, 344, 353
from executive, 348
from legislature, 339, 350
from litigants, 336, 348
as relationship, 335
liberalism and, 335
MF’s contribution to scholarship on, 335, 355
and political reform, 348
Judicial Policy Making and the Modern State
(book). see Feeley, Malcolm
judicial policymaking
bureaucratic autonomy outside court, 246
by out-of-court settlements, 273
civil rights and judicial bargaining, 249
controversy about, 277
example of, 242
ideological conflict over administrative state, 243
institutional conceptualization, 231
judges as policy makers, 193
as judicial action, 230
MF’s contribution to scholarship on, 230, 239, 270
and modern administrative state, 230
modes of, 231
judicial policymaking
judicial reasoning, influences on, 193
jurisprudence. see also law and society scholarship, philosophy of law
Index

failure of liberalism in legal complex, 363
Hungary. see Orbán, Viktor
law and arbitrary power, 362
law making as tool of repression, 365
and legal complex, 363
legal interpretation as tool for repression, 365
legal training as tool for repression, 362, 363
legalism, 360
liberal political inclination, 360
MF’s contribution to scholarship on, 360, 362
rule by law, 363
and rule of law, 362, 363
Russia. see Putin, Vladimir
lay judges reform in Japan, 122, 123
legal complex concept, 290, 308, 320, 363
legal culture. see lawyers
legal education
lawyers and politics. see lawyers as heads of state
reform in Japan. see Japan
legal freedoms, lawyers’ defense of, 291, 305
legal ideals. see rhetorical reframing
of legal ideals
legal language of violence, 236
legal policymaking. see judicial policy
law process. see also civil procedure; courts;
criminal courts; judges; lawyers
adversarial bias. see bias
costs of pre-trial processes, 55
intergenerational punishment of families. see children
MF’s contribution to scholarship on problems
of, 72
legal profession. see lawyers
legal risk, managerialization of, 198
legalism and anti-liberal government, 361
legislature, judicial independence from, 339, 350
liberalism
international legal community, 305
and judicial independence, 335
lawyers and politics. see lawyers as heads of state
and legal complex concept, 320
literature and infanticide in Victorian England,
174, 177
litigants, judicial independence from, 336, 348
lower criminal courts. see criminal courts
managed democracy in Russia, 367
managerialism in prisons, 159
managerialization of law
decoupling of organizational practice and
policy, 198
internal dispute resolution (IDR), 198
legal risk, 198

justice
grounded social theory of justice, 325
miscarriages of justice, 27
politics and criminal justice reform, 147
promise of justice, 319, 321
socio-legal perspective on justice in the legal profession, 314

labour law. see equal employment opportunity
(EEO) litigation; workers rights regulation
law
managerialization of. see managerialization
of law
reframing of legal ideals. see rhetorical reframing
of legal ideals
theories of
Dewey, John, 43
MF’s concept, 36
law and society scholarship. see also jurisprudence; philosophy of law;
socio-legal work
MF’s contribution to, 36, 226
law schools reform in Japan. see Japan
lawyers. see also international legal community;
lawyers as heads of state
collective activism, 301
defense of basic legal freedoms, 291
humanistic values, 314
idealism, 319, 321, 327
legal complex concept, 290, 308, 320
legal scholarship approach to professional values, 322
manipulative uses of children by defense lawyers, 64
materialism, 315
moderation of state power as aim of, 291
prosecutorial perspectives on children in court, 60
social science approach to empirical basis of, 322
grounded social theory of justice, 325
justice in the legal profession, 314
legal complex concept, 320
legal scholarship’s role in, 327
normative basis of, 324
shaping of legal culture, question of, 328
tensions within legal culture, 315, 327
lawyers as heads of state
anti-liberalism, 362, 382
case studies, 362
effective heads of executive with legal training, 364
liberal or illiberal, 365
position of, 364

Cambridge University Press
978-1-108-41568-2 — The Legal Process and the Promise of Justice
Edited by Rosann Greenspan, Hadar Aviram, Jonathan Simon
Index

© in this web service Cambridge University Press
www.cambridge.org
managerialization of law (cont.)
process of, 197
rhetorical reframing of legal ideals, 199
mass incarceration. see prisons
miscarriages of justice, adversarial bias and, 27
murder
gender stereotypes, 187
infanticide and neonaticide. see infanticide in Victorian England
unwritten law as to, 187
neonaticide. see infanticide in Victorian England

Orbán, Viktor
anti-liberalism, 362
constitutional reform as tool for repression, 369
democracy and liberalism in post-communist Hungary, 365
election as prime minister, 367
illiberal state as aim, 367
legal education and governing style in relation, 362
legal training as tool for repression, 368, 382
legalism, 362
organizational theory perspectives
adversarial bias, 19, 23
consequences of punishment’s organizational context, 158
decoupling of organizational practice and policy, 198
judicial deference, 194, 209
prisons. see prisons
out-of-court settlements, judicial policymaking by, 273

Palestinian informers in Israel. see Israel
parental experiences of court and prison, effects on children. see children
penology. see prisons
philosophy of law. see also jurisprudence; law and society scholarship
plantation prisons, abolition of, 259, 261, 270
pleading in civil proceedings, problems with, 74
policy
complex policy choices
courts’ role in, 116
MF’s contribution to scholarship on, 99, 116
globalization and convergence in regulatory policy, 100
judges as policy makers. see judicial policymaking
social policy and workers rights regulation, 226

political leadership. see lawyers as heads of state
political reform, judges’ role in, 335
political repression of rights lawyers. see China
politics of criminal justice, 147
prisons
and colonial-era executions, 155
comparative law perspective, 165
decarceration movement, 259
disability rights and human rights, 269
effects of parents’ imprisonment on children, 56, 57
failure
criminal court reform failure compared, 152
persistence of prisons in spite of, 152, 166
responses to, 165
judges as policy makers, 193
judicial deference in prison conditions
litigation, 194, 205
judicial policymaking in prison reform
litigation, 230
mass incarceration
consensus on, 259
courts and abolition of, 264
developments towards reform, 260
disability rights and human rights, 269
judges’ support for reform, 259, 270
Prison Litigation Reform Act 1996, 266
prospects for ending, 270
rehabilitative penology, 267
MF’s contribution to scholarship on, 259, 270
MF’s insights applied to, 153, 193, 230
modern prisons, 156
as organizations
administrative and official discretion, problem of, 161
ambiguity and conflict in goals and rules, 162
beginning of penal organization, 157
consequences of organizational context, 158
growth of informal structures, 163
historical development, 155
managerialism, 159
organizational framework as cause of failure, 153, 164
organizational theory perspectives, 154
persistence and repeated failure of, 152, 166
plantation prisons, abolition of, 259, 261, 270
Prison Litigation Reform Act 1996, 266
rehabilitative penology, 267
symbolic compliance and social change in relation, 205
Process is the Punishment, The (book). see Feeley, Malcolm
process of law. see legal process
Index

promise of justice, 319, 321
prosecutors. see lawyers
psychological perspectives
criminological effect of early childhood trauma, 58
effects of children's exposure to courts. see children
punishment
consequences of organizational context, 158
intergenerational punishment of families. see children
prisons. see prisons
Putin, Vladimir
anti-liberalism, 392
communist legacy and democratic failure in Russia, 367
constitutional reform as tool for repression, 374
democracy and liberalism in post-communist Russia, 365, 367
election as president, 367
legal education and governing style in relation, 362
legal training as tool for repression, 368, 382
legalism, 362
managed democracy, 367
rape. see gender-motivated violence
reason. see judicial reasoning
reform. see courts, reform of; criminal courts, reform
rehabilitative penology, 267
repression. see political repression
rhetorical reframing of legal ideals
civil rights reframed as diversity, 200
EEO law equated with management best practices, 199
managerialization and, 199
rights
civil rights and judicial bargaining, 249
costs of invoking rights outweigh rights themselves, 91
disability rights and mass incarceration, 269
freedom from gender-motivated violence. see gender-motivated violence
human rights and and mass incarceration, 269
and judicial bargaining, 249
judicial enforcement of civil rights, 240
lawyers' defense of basic legal freedoms, 291, 305
reframing of civil rights as diversity, 200
repression of rights lawyers. see China
workers rights. see workers rights regulation
risk, managerialization of legal risk, 108
rule by law, and rule of law, 363
rule of law
nature of, 362
and rule by law, 363
Russia. see Putin, Vladimir
separation of powers. see judicial independence
smoking. see e-cigarettes
social change
and judicial deference, 207
and symbolic compliance, 205
social policy. see policy
socio-legal perspective on justice in the legal profession, 314
summary judgment process, problems with, 78
theories of law. see law, theories of threatened persons applications by Palestinians. see Israel
tobacco. see e-cigarettes
trauma in early childhood, criminological effect of, 58
trials, costs of pre-trial processes, 55
United Kingdom (UK). see also infanticide in Victorian England
development of legal complex in former colonies, 320
e-cigarettes regulation, 97, 106
illiberal laws and rule of law, 362
judicial independence, historical development of, 340, 349, 352
United States (US)
children's exposure to criminal courts. see children
court reform, 122
courts' role in e-cigarettes regulation, 114
criminal court reform. see criminal courts
e-cigarettes regulation, 98, 99, 101, 105, 107, 109, 114
judicial independence, historical development of, 342, 345, 352
jury trials, 131
legal community's response to China's repression of rights lawyers, 266
as organizations. see prisons
tobacco regulation, 107
Index

United States (US) (cont.)
unwritten law, 187

unwritten law, 187

vaping, see e-cigarettes

Victorian England: see infanticide in Victorian England

violence against women: see gender-motivated violence

Wang Yu
arrest and disappearance, 289
Chinese government disinformation campaign against, 289
support from international legal community, 290

women

infanticide by: see infanticide in Victorian England

violence against: see gender-motivated violence

workers rights regulation
consequences of reform, 224
courts’ role, 215
development of different statutory and legal regimes, 216
expansion of employment and employment discrimination law, 221
failure of, 215
labor law redefinition of workplace rights, 217
law and social policy in relation, 226
MF’s insights applied to, 226
wrongful convictions: see miscarriages of justice