

Defendant Participation in the Criminal Process

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Requirements for the defendant to actively participate in the English criminal process have been increasing in recent years such that the defendant can now be penalised for their non-cooperation. This book explores the changes to the defendant's role as a participant in the criminal process and the ramifications of penalising a defendant's non-cooperation, particularly its effect on the adversarial system.

The book develops a normative theory which proposes that the criminal process should operate as a mechanism for calling the state to account for its accusations and request for official condemnation and punishment of the accused. It goes on to examine the limitations placed on the privilege against self-incrimination, the curtailment of the right to silence, and the defendant's duty to disclose the details of his or her case prior to trial. The book shows that, by placing participatory requirements on defendants and penalising them for their non-cooperation, a system of obligatory participation has developed. This development is the consequence of pursuing efficient fact-finding with little regard for principles of fairness or the rights of the defendant.

Abenaa Owusu-Bempah is Lecturer in Law at City, University of London.

For my father



Preface

There has been no shortage of reform to criminal procedure and the law of evidence in England and Wales in recent years. While much has been written about individual areas of reform, little attention has been paid to the effect of reform on the role of the defendant in the criminal process. Over the past 25 years, the role of the defendant has been affected by, *inter alia*, legislative reform to the right to silence and pre-trial disclosure, the introduction of the Criminal Procedure Rules and an increasingly narrow interpretation and application of the privilege against self-incrimination. The defendant is no longer able to put the prosecution to proof without fear of being penalised; if the defendant fails to answer questions or provide information which may assist in his or her prosecution, he or she now faces the risk of adverse legal consequences, such as criminal sanction and inferences of guilt.

This book provides a critical exploration of defendant participation in the criminal process by considering the various requirements which have been placed on defendants to actively participate. The development of the defendant's new participatory role is exposed through an in-depth examination of the law in relation to the privilege against self-incrimination, the right to silence and pre-trial disclosure. As well as a doctrinal exploration of the law, consideration is given to the wider implications of requiring defendant participation, particularly in respect of the application of fair trial rights and the nature of criminal procedure. It is contended that England's traditionally 'adversarial' system has transformed into a system of 'obligatory participation'. The exploration of the law and its wider consequences is underpinned by a normative theory of the criminal process as a process of calling the state to account for its accusations against the accused. The book, therefore, draws together various strands of criminal procedure and the law of evidence from both a doctrinal and theoretical perspective, while presenting a novel means of characterising criminal procedure, based on the participatory role of the defendant.

The themes of the book were originally explored in a doctoral thesis which was completed in 2012. There have since been significant developments to the relevant areas of law and procedure, and every attempt has been made to keep up to date with new material. Writing was completed in early 2016 and the book attempts to state the law as at March 2016.

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List of abbreviations

Abbreviation	Full title
CJA	Criminal Justice Act 2003
CJPOA	Criminal Justice and Public Order Act 1994
CPIA	Criminal Procedure and Investigations Act 1996
<i>Crim LR</i>	<i>Criminal Law Review</i>
CrimPR	Criminal Procedure Rules 2015
<i>E & P</i>	<i>International Journal of Evidence and Proof</i>
ECHR	European Convention on Human Rights
<i>MLR</i>	<i>Modern Law Review</i>
PACE	Police and Criminal Evidence Act 1984
YJCEA	Youth Justice and Criminal Evidence Act 1999

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