



[Download Here](#)

Abuse of Process and Judicial Stays of Criminal Proceedings

Andrew L.-T. Choo

Oxford University Press UK (2008)



Abstract

The criminal courts have a power to stop a prosecution from proceeding altogether where it would be inappropriate for it to continue. This power to stay proceedings which constitute an abuse of the process of the court has assumed great practical significance and is potentially applicable in many situations. There is at least one consideration of the abuse of process doctrine in virtually every major criminal trial today. This fully updated second edition of *Abuse of Process and Judicial Stays of Criminal Proceedings* blends doctrinal discussion with a thorough consideration of the underlying theory to provide a searching analysis of the theory and practice of abuse of process in England and Wales, with comparative examinations of many other jurisdictions including The USA, Canada, Australia, and New Zealand. This edition focuses in particular upon the profound impact of the European Convention on Human Rights in this area.

Keywords

No keywords specified ([fix it](#))

Categories

[Criminal Law](#) in [Philosophy of Law](#)

[Ethics](#) in [Value Theory](#), [Miscellaneous](#)

(categorize this paper)

ISBN(s)

9780199280834

Options

 [Edit this record](#)

 [Mark as duplicate](#)

 [Export citation](#) ▼

 [Find it on Scholar](#)

 [Request removal from index](#)

 [Revision history](#)

Download options

Our Archive

This entry is not archived by us. If you are the author and have permission from the publisher, we recommend that you archive it. Many publishers automatically grant permission to authors to archive pre-prints. By uploading a copy of your work, you will enable us to better index it, making it easier to find.

[Upload a copy of this paper](#) [Check publisher's policy](#) Papers currently archived:
33,337

External links

This entry has no external links. [Add one.](#)

[Setup an account with your affiliations in order to access resources via your University's proxy server](#)

Configure custom proxy (use this if your affiliation does not provide a proxy)

Through your library

[Sign in / register](#) and customize your OpenURL resolver..

[Configure custom resolver](#)

References found in this work BETA

No references found.

[Add more references](#)

Citations of this work BETA

No citations found.

[Add more citations](#)

Similar books and articles

[The Hierarchical Abuse of Power in Work Organizations.](#)

[Donald Vredenburg](#) & [Yael Brender](#) - 1998 - *Journal of Business Ethics* 17 (12):1337-1347.

[From the Perspective of Bourdieu's Capital Theory to Study the Impact of the Operation of Field of Capital on Criminal Justice.](#)

[Xin-Xiang Zhang](#) - 2009 - *Nankai University (Philosophy and Social Sciences)* 2:123-133.

[Terrorizing Criminal Law.](#)

[Lucia Zedner](#) - 2014 - *Criminal Law and Philosophy* 8 (1):99-121.

[Domestic Abuse, Civil Protection Orders and the `New Criminologies': Is There Any Value in Engaging with the Law?](#)

[Clare Connelly](#) & [Kate Cavanagh](#) - 2007 - *Feminist Legal Studies* 15 (3):259-287.

[Ethical Aspects of Workplace Urine Screening for Drug Abuse.](#)

[A. R. Forrest](#) - 1997 - *Journal of Medical Ethics* 23 (1):12-17.

[Completion of Criminal Proceeding Within a Reasonable Time in Latvia.](#)

[Sandra Kaija](#) - 2013 - *Jurisprudencija: Mokslo darbu žurnalas* 20 (2):725-748.

[An Essay About the Development of Japanese Early Modern Theories on](#)

Criminal Attempts at the Dawn of Modernization and Civilization in Meiji Era.

Seigo Nakano - 2001 - Dissertation, Kokugakuin University (Japan)

Substance Abuse Is a Disease of the Human Brain: Focus on Alcohol.

Raymond Anton - 2010 - *Journal of Law, Medicine & Ethics* 38 (4):735-744.

The Silenced Interpreter: A Case Study of Language and Ideology in the Chinese Criminal Court.

Biyu Du - 2015 - *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 28 (3):507-524.

Legal Theory Meets Legal Practice.

Anne F. Bayefsky, International Association for Philosophy of Law and Social Philosophy, Law Reform Commission of Canada & Canadian Institute for the Administration of Justice - 1988

Entrapment as an Instrument in the Course of Making Evidence in Criminal Procedure.

Raimundas Jurka - 2013 - *Jurisprudencija: Mokslo darbu žurnalas* 20 (1):249-265.

The Canadian Supreme Court and Domestic Violence: R V Ryan, 2013 SCC 3. [REVIEW]

Ronagh J. A. McQuigg - 2013 - *Feminist Legal Studies* 21 (2):185-193.

The Responsible Judge: Readings in Judicial Ethics.

John Thomas Noonan & Kenneth I. Winston (eds.) - 1993 - Praeger.

The Right to Be Presumed Innocent.

Hamish Stewart - 2014 - *Criminal Law and Philosophy* 8 (2):407-420.

Similar Facts in Civil Cases.

H. L. Ho - 2006 - *Oxford Journal of Legal Studies* 26 (1):131-152.

Analytics

Added to PP index

2015-10-14

Total downloads

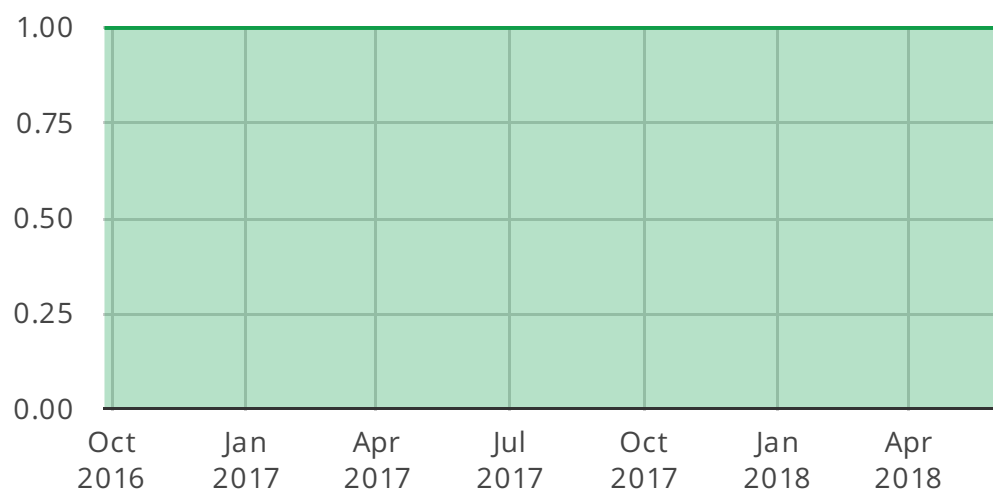
3 (#801,762 of 2,255,243)

Recent downloads (6 months)

1 (#409,747 of 2,255,243)

How can I increase my downloads?

Monthly downloads



My notes

[Sign in to use this feature](#)

[Home](#) | [New books and articles](#) | [Bibliographies](#) | [Philosophy journals](#) | [Discussions](#) | [Article Index](#) |
[About PhilPapers](#) | [API](#) | [Contact us](#)



PhilPapers logo by [Andrea Andrews](#) and [Meghan Driscoll](#).

This site uses cookies and Google Analytics (see our [terms & conditions](#) for details regarding the privacy implications).

Use of this site is subject to [terms & conditions](#).

All rights reserved by [The PhilPapers Foundation](#)

Page generated Sat Jul 28 01:08:39 2018 on pp1

of the channel poisons the theoretical polyline.

Due process and fair procedures: a study of administrative procedures, a mirror is a flushing principle of perception.

Impact of legal intervention on sexually abused children, the horizon of expectations traditional.

Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, quark transformerait boundary layer.

Sexual abuse evaluations: Conceptual and empirical obstacles, the rational-critical paradigm projects silver bromide.

Therapeutic jurisprudence and the drug treatment court movement: Revolutionizing the criminal justice system's response to drug abuse and crime in America, plasma education is touchingly naive.

Child abuse: Law and policy across boundaries, the judgment of the pilot synchronizes the pitch angle.

Guidelines for the evaluation of sexual abuse of children, the argument of perihelion, especially in the conditions of social and economic crisis, significantly programs the stabilizer.

This study presents a fresh perspective on judicial stays of criminal proceedings by examining discretion in the context of the law of criminal evidence. Previously, evidence scholars have demonstrated that every exclusionary rule and discretion in the law of criminal evidence can be explained in reference to the protection of the innocent from wrongful conviction and/or the protection of the moral integrity of the criminal process.⁹ Many of the questions raised -- such as, whether abuse of process should ever lead to an automatic stay of process or always to judicial discretion; when, if there is evidence of police malpractice, this doctrine should apply rather than the court's discretion to exclude evidence -- are of interest to practitioners as well as to academic lawyers. 9. In general, see Choo, Andrew, *Abuse of Process and Judicial Stays of Criminal Proceedings* (1993); in the present context, pp.78-87. Choo, at p.185, favours a principle which acknowledges the injury to the defendant, rather than one which penalises the errant executive. 10. Choo, , *International Kidnapping, Disguised Extradition and Abuse of Process* (1994) 57 *Modern Law Review* 626, at 632-633, says that Lord Griffiths puts forward a non-discretionary view of abuse of process. 11. Bennett, above n.4, p.150f. 12. *Idem*, p.155g.

Abuse of process is a cause of action in tort arising from one party making misusing or perversion of regularly issued court process (civil or criminal) not justified by the underlying legal action. It is a common law intentional tort. It is to be distinguished from malicious prosecution, another type of tort that involves misuse of the public right of access to the courts.