The modern criminal trial as an institution of justice is in a state of significant transition. Various influences have come to bear upon the scope, function and form of the criminal trial. Many of these influences, such as terrorism, victim rights, and the need for expediency, remain controversial as to the extent to which such influences ought to be entertained as influencing the scope of the adversarial trial. However, modern criminal justice policy is operating in accordance with a number of competing discourses that challenge the adversarial model in various ways. As the previous chapter has indicated, the criminal trial has never taken a particular form or function to the exclusion of social change. As an institution, it has always been open to change. What the present debate over the scope of the criminal trial shows, moreover, is how the criminal trial continues to transform to meet a number of competing needs. This is not to say that the modification of the trial ought to go unchallenged. We should protect the extent to which ill thought out, reactionist, or popular demand may influence the criminal trial. This chapter will demonstrate, however, that various contemporary influences now seek to dislocate the criminal trial from those characteristics that identify it as an institution of adversarial justice exclusively. This, arguably, is consistent with the continued modification of the criminal trial over time. It shows that the criminal trial continues to be shaped through an array of discourses that render the criminal trial a transgressive institution of social justice. This further challenges the assumption that the criminal trial ought to be constituted through a set of normative assumptions that prescribe its form.

The criminal trial is facing various changes brought about by broad shifts in criminal justice policy. By way of selective indication, this chapter will consider the rise of a number of changes within criminal
law and justice in order to highlight the broader influences on the modern criminal trial. These include the extent to which the trial ought to be modified, or even circumvented, to allow for expedient justice, in the form of summary justice, committals, plea or charge bargaining, or through the issuing of infringements or penalty notices. Other challenges, such as the requisite need for a jury, or unanimous jury verdicts, indicates how the mode of proof that was increasingly instituted following the Assize of Clarendon 1166 is now being dispensed with for an alternative, usually more expedient, means to justice, including judge alone trials. The law and order debate, or the need to modify institutions of justice, including the police, bail and appropriate punishments, the use of infringements, as well as new court procedures for the handing out of domestic control orders and ASBOs, is increasingly responding to a fear of crime, expediency and the regulation and control of groups of known deviant or ‘risky’ offenders. The defences available and procedural limitations against double prosecution have also been significantly modified or reconsidered in light of changing perspectives on the balance of rights the trial ought to protect. The abolition or reform of the defence of provocation, and the modification of the rule against double jeopardy, feature as key examples. The rise of victim lawyers also suggests how the traditional ambit of the adversarial criminal trial, as a contest between defence and state, is changing to accommodate a new agent of justice formerly excluded as irrelevant or prejudicial to ‘public’ justice – the victim of crime. The rise of legislative frameworks for the integration of victims, represented through counsel, now challenges the basic premise that prosecutorial decision-making is exclusive of the victim, and a linear construct of ‘community’. Terrorism also responds to our fear of events of mass destruction and has perpetuated expansive policing techniques and the proliferation of new offences and procedures in the form of control orders to target persons suspected of terrorist activity or domestic disorder. Whether control orders are constituted within the criminal law is arguable, however, given the types of restrictions commonly contained in such orders are similar to those forward-looking sentencing options available to the criminal court.

**Expedient justice**

The criminal trial as an ascribed apparatus of justice for the determination of liability is increasingly circumvented by changes to aspects of the trial process that allow for quicker, more expedient outcomes.