

# Comparative Criminal Justice Systems



Harry R. Dammer *and* Jay S. Albanese



**Comparative Criminal Justice Systems,  
Fourth Edition**

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## ***Key Terms and Concepts***

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comparative criminal justice

comparative criminology

criminal justice system

ethnocentrism

globalization

international crime

transnational crime

Recent headlines provide an insight into the significance of comparative criminal justice and the magnitude of the problems it addresses:

International Arms Trafficker Charged with Narco-Terrorism Conspiracy

Doctors Charged with Illegally Distributing Narcotics across Borders

Where Will the “Merchant of Death” Arms Dealer Stand Trial?

Attempted International Sale of Stolen Picasso Painting

Corruption at the U.S. Border Threatens Security

Guilty Plea in International Organ Sale and Transplant Scheme

These headlines make it clear that crime is occurring across borders, offenders must be caught and adjudicated, and strategies must be designed for international crime prevention and deterrence. But how is this to occur? How much transnational crime is actually occurring? How can we intervene against cross-border crimes when most police agencies and courts have authority only within their own country? How should international offenders be adjudicated and punished? All these questions are the subject matter of comparative criminal justice.

This book deals with these issues, and the different criminal justice systems of countries outside the United States, to understand basic philosophies of law and justice, arrangements for crime prevention and law enforcement, adjudication alternatives, methods of rehabilitation and punishment of convicted offenders, and selected issues of transnational organized crime, juvenile justice, and terrorism. These international and comparative processes will be compared to those in the United States, offering the reader context in evaluating different approaches to crime, law, and justice around the world.

## DEFINING TERMS

It is important to be clear about the central terminology of comparative criminal justice. **Comparative**

**criminal justice** investigates and evaluates a national system of justice in terms of other countries, cultures, or institutions. The key root word is *compare*, and comparative criminal justice offers a systematic method to examine the strengths and weaknesses of different approaches to crime, law, and justice around the world.

The term **comparative criminology** is the study of the causes and correlates of crime in two or more cultures. In comparative criminology, we try to explain why crime occurs in different forms and at different levels in one country versus another (Winslow and Zhang, 2008). We will discuss the reasons why some crime rates are high or low in different countries in Chapters 2, 10, 11, and 12, although a major focus of this book is on the criminal justice systems and their operations across countries.

**Criminal justice system** is the term used to explain and understand all of the agencies whose goal is to control crime. It consists of police, courts, and corrections agencies, which act to enforce the law, adjudicate suspects, and deal with convicted offenders.

**International crimes** have been described as “crimes against the peace and security of mankind” (Adler, Mueller, and Laufer, 2009). International crimes are based on international agreements between countries or on legal precedents developed through history, and include offenses such as genocide, torture, and enslavement of populations. These are among the acts identified by consensus among nations as being illegal everywhere. The list of international crimes has grown over the years, as nations have come to share common concern about various behaviors, so some national and transnational crimes have become international crimes as world nations reach consensus on unacceptable forms of conduct.

**Transnational crimes** are offenses whose inception, acts, and impact involve more than one country. These crimes usually involve the provision of illicit goods or illicit services, or the infiltration of business or government. Table 1.1 summarizes the most common transnational crimes and brief definitions. All of the offenses in Table 1.1 are

**TABLE 1.1 A Typology of Transnational Crimes**

Transnational Crime	Type of Conduct	Brief Definition
Drug trafficking	Provision of illicit goods	The manufacture or distribution of controlled substances
Trafficking in stolen property	Provision of illicit goods	The sale, distribution, or large-scale possession of property obtained in violation of the law
Counterfeiting	Provision of illicit goods	Forged or faked documents or products intended to deceive the purchaser
Human trafficking	Provision of illicit services	Recruitment, transportation, or harboring of persons for the purpose of exploitation, such as prostitution and forced labor
Cybercrime and fraud	Provision of illicit services	Obtaining property through deception of the owner, often accomplished using computers and the Internet
Commercialized vices (sex and gambling)	Provision of illicit services	Systematic provision of sexual or gambling services in violation of applicable laws
Extortion and racketeering	Infiltration of business or government	Obtaining the property of another or unfair competitive advantage because of threats of future physical injury, property damage, or exposure to criminal charges, as part of an ongoing criminal enterprise
Money laundering	Infiltration of business or government	Disguising funds obtained from illegal activity, using banks or businesses, to make it appear as lawful income
Corruption	Infiltration of business or government	The misuse of power or position for unlawful gain or advantage

transnational crimes when they occur across national borders, according to the definition above.

Most contemporary examples of transnational crime can be placed in one of the categories in Table 1.1. For example, sea piracy is a modern form of racketeering and extortion, theft of cultural objects is a form of trafficking in stolen property, and theft of intellectual property such as DVDs and software codes is usually a combination of counterfeiting and fraud.

Although there may be some overlap between transnational and international crimes, because a few crimes can sometimes be placed in both categories (such as international drug trafficking), they are not the same. Transnational crimes always involve at least two countries, whereas some international crimes can occur within the boundaries of only one country, as with genocide or apartheid. The term *transnational crime* will be used consistently throughout this book to describe the illegal activities that occur across international boundaries.

## THE ORIGINS AND GROWTH OF COMPARATIVE CRIMINAL JUSTICE

The origins of the comparative method in areas other than criminal justice can be traced back to ancient times. However, comparative criminal justice is a relatively new field of inquiry that applies the comparative methodologies used in law and political science to the social sciences of sociology, criminology, and criminal justice. Its origins can be traced back to the 1700s, the “Age of Enlightenment,” and to a man who is considered by some to be the first criminologist—Cesare Beccaria (1738–1794). In 1764, Beccaria’s essay on crime and punishment called for changes in Western European criminal justice, including the abolition of the death penalty, torture, and secret trials (Sherman, 2003; Hagan, 2007). Soon thereafter, others such as Jeremy Bentham (1748–1832), Adolph Quetelet

(1796–1874), Alexis de Tocqueville (1805–1859), and Emile Durkheim (1858–1917) conducted cross-national studies of crime.

During the mid-1800s, criminal justice professionals began the search to learn more about cross-national crime. In 1853, the General Statistical Congress was held in Brussels, in 1872 the International Congress on the Prevention and Repression of Crime was held in London, and in 1914 the First International Police Congress was held in Monaco. These meetings were the first large-scale attempts to collect data on international crime and to deal with issues related to crime and justice on an international scale. Because of the larger world problems in the first half of the twentieth century, including two world wars, there was little interest in comparative crime, and justice research was limited to individual countries looking inward to their specific crime problems. That changed in the late 1960s, when the United Nations developed the first Crime Prevention and Criminal Justice Branch under the direction of Gerhard O. W. Mueller.

Since that time there has been a steady and renewed interest in international crime and justice issues. Many criminologists, governmental agencies, and international organizations have come to see the value in the study and dissemination of information on issues of international and comparative criminal justice. Various forms of statistical data have been compiled by the International Police Organization (Interpol), the World Health Organization (WHO), and through the International Crime Victim Surveys (ICVS). The United Nations has created a large group of criminal justice information providers, including the Dag Hammarskjöld Library in New York City and the website of the United Nations Office on Drugs and Crime (UNODC).

The National Institute of Justice (NIJ) is the research, development, and evaluation agency of the U.S. Department of Justice. Recognizing the need to better identify and describe crime and support those who fight crime, NIJ decided to develop an International Center in 1998. The International Center's mission is to stimulate and facilitate

research and evaluation on transnational crime and justice issues and to disseminate the knowledge gained throughout the national and international criminal justice communities. Since its inception, the International Center has worked with the United Nations and its various institutes to mount a variety of studies on topics like transnational organized crime, corruption, and human trafficking (Albanese, 2007; Finckenauer, 2000).

In recent years, academics have had considerable interest in comparative crime and justice. In the United States prominent American scholars have called for the “globalizing” of criminal justice curricula (Adler, 1996) and for “internationalizing” criminology and criminal justice study (Friday, 1996). During the 1990s, at least three major North American academic conferences chose the related theme. In November 1995 and November 1999, the American Society of Criminology titled their annual conferences “Crime and Justice: National and International” and “Explaining and Preventing Crime: The Globalization of Knowledge,” respectively. In March 2003, the Academy of Criminal Justice Sciences held their annual conference under the theme of “The Globalization of Crime and Justice.”

Comparative criminal justice courses in colleges and universities have flourished in recent years (Cordner et al., 2000; Peak, 1991). The John Jay College of Criminal Justice in New York City developed what is the first full-fledged bachelor's degree in International Criminal Justice (Natarajan, 2002). Various forms of written and electronic material on the subject have now been published, with thousands more cross-national studies as compared to a mere decade ago (Howard et al., 2000; Adler, 1995). To some there is a question as to whether comparative criminal justice study has indeed grown out of its “infancy” and whether comparative study may be an “exotic frill” or “an excuse for international travel” (Howard et al., 2000; Bayley, 1996, p. 241). However, even healthy skepticism cannot deny the fact that the field has grown considerably, and current events continue to highlight the international nature of crime and justice issues.

## WHY COMPARE SYSTEMS OF AND ISSUES IN CRIMINAL JUSTICE?

There are many reasons to study and compare issues in and systems of criminal justice. From a broader perspective, everything we perceive is based on comparison. As stated by political scientist Karl Deutch:

The differences which we perceive in certain aspects of any two events, are perceived against a background of similarity with others, and so is the relative uniqueness of an event. We call an event unique if it is similar in very few aspects or dimensions, and different in very, very many from others. Without attempting comparison, how could we know that something was unique? If something were truly unique in any aspect, how could we discuss it? We should have no words for it. We could only talk about it in negatives, calling it ineffable, unmeasurable and so on, and then we would be very close to magic or religion and well away from science. (1996, p. 31)

Therefore, comparisons lie at the foundation of all our thinking, because it is only through comparison that we can assess the relative utility of laws, policies, programs, and alternative actions of all types.

Comparison is also a key element in critical thinking. Critical thinking is purposeful mental activity which permits us to examine the relative strength of evidence, arguments, and alternate courses of conduct. In many ways, the ability to think critically helps us to solve daily problems and even make important life choices. There are many ways to engage in critical thinking. One way is to follow a simple three-step process. First, we determine what we know about an issue and ask ourselves why we think that way. For example, maybe we feel that the death penalty is a legitimate way to punish offenders because we believe that it

is less costly than life imprisonment. Second, we seek out the opposite side of the story. In the case of the death penalty, we may learn about the volume of research indicating the actual cost of life imprisonment compared to the death penalty. Finally, we objectively weigh the evidence, compare the diverging opinions, and then make a decision based on the available evidence.

For the purposes of this book, there are three practical reasons we should compare systems of and issues in criminal justice: (1) to benefit from the experience of others, (2) to broaden our understanding of different cultures and approaches to problems, and (3) to help us deal with the many transnational crime problems that plague our world today.

### To Benefit from Others' Experience

“The reason for comparing is to learn from the experience of others and, conversely, that he who knows only one country knows none.” This profound statement by George Sartori (1996, p. 20) was made to illustrate the importance of international comparative study in the field of political science. But his remarks are equally relevant to criminal justice study. Comparative work in criminal justice is an excellent vehicle for learning more about how others practice criminal justice. When we can learn about the criminal justice processes of other countries, we are then able to develop hypotheses that will help us begin to solve our own problems related to crime and justice (Burnham, 1998; Zimring, 2006).

In all areas of the criminal justice system—police, courts, and corrections—there are many examples of how nations have adapted others' methods of criminal justice implementation. For example, people wonder why Japan has a much lower crime rate than the United States or, indeed, most other Western nations. The Japanese themselves give some of the credit for their low crime rates to their police methods—most notably, community policing. Many countries have become interested in adapting the Japanese police practices, including the use of Kobans (small local police stations). Many U.S. cities,

including Atlantic City, Detroit, and Houston, have modified the Japanese methods and use them in their local police operations.

Many countries have also adopted rules of criminal procedure that were pioneered by others. In fact, some criminal procedure rules, like the right to counsel at an early stage of the criminal process, are becoming universal in Western systems of justice. And many countries have even adopted entire legal codes from the codes of others. The Napoleonic Code of civil law, developed in France in the early nineteenth century, was one such export, as was the French penal code, also developed under Napoleon. Another export in the late nineteenth century was the German Civil Code. These codes have had an enormous influence on the development of legal systems and criminal justice systems throughout the world (Merryman, 1985).

Corrections strategies also tend to spill over borders. For example, the idea of day fines, which was first developed in Scandinavian countries, has been adopted by Germany and, more recently, by Great Britain and the United States. And New Zealand, Belgium, Australia, Canada, and the United States all have implemented different kinds of restorative justice programs. Restorative justice is an idea that was cultivated by many victims'–rights advocates in the United States, but it has its roots in the justice practices of many indigenous cultures.

There are many other examples of countries borrowing or adapting criminal justice practices from the United States. In the nineteenth century, many European countries, especially France, copied American methods of incarceration—specifically, the Auburn system and the Pennsylvania system. More recently, former communist countries in Eastern Europe have called upon the FBI to help train them in the fight against corruption and organized crime. Many countries have also improved their ability to collect and disseminate crime statistics using the U.S. models of the Uniform Crime Reports (UCR) and National Crime Victimization Surveys (NCVS).

However, specific practices should be adopted only after serious thought and evaluation. Criminal justice system reformers are aware that it is naive to

try to import institutions that are bound to local cultural values without modifying them to conform to the new context. For example, it would be shortsighted for U.S. policymakers to think that we could easily implement a strict corporal punishment system like that found in Islamic societies. The separation of church and state, the heterogeneity of U.S. society, and the democratic basis for our laws would preclude such an idea.

### To Broaden Our Understanding of the World

A second reason for studying the administration of justice in other countries is to broaden our understanding of other countries and cultures. If we fail to broaden our understanding of other countries we are more likely to fall prey to the problem of **ethnocentrism**—the belief that one's own country or culture does things “right” and all other practices are “wrong” or “foreign.” Ethnocentrism is a common phenomenon, as people often think their country, culture, or religion is better than all others. In terms of crime and criminal justice, ethnocentrism is a problem because it can lead to crime within and across borders as well as discrimination, oppression, or violent ethnic-based conflicts.

Americans are frequently astonished to hear about practices related to crime and punishment in other systems. Why does one country, Saudi Arabia, cut off a hand or a foot or stone a person to death as punishment for certain criminal acts? Why is lengthy pretrial detention without bail condoned in some countries, such as France, as a way to ensure greater justice? Why does Japan have so few lawyers compared to most countries, especially the United States? The fact is that a nation's way of administering justice often reflects deep-seated cultural, religious, economic, political, and historical realities. Learning about the reasons for these different practices can give us insight into the values, traditions, and cultures of other systems. Such broadening of perspective helps us see our own system in more objective terms.

## To Deal with Transnational Crime Problems

A third good reason to study criminal justice from a comparative perspective is the increasing need to address transnational and international crime problems. These problems have now become imperative because the multicultural world we now live in has entered the stage of globalization. **Globalization** is the term used to describe how the world has become interdependent in terms of the events and actions of people and governments around the world. In short, globalization embodies the idea that the world is “getting smaller.” Globalization has occurred as a result of a number of cultural and technological changes in the twentieth century (Adler & Mueller, 1996). Tremendous innovations in communications, increases in worldwide transportation, and growth in technology—especially the Internet—have served to fuel the move to globalization. Numerous worldwide events, such as the end of the Cold War and the subsequent demise of the former Soviet Union, the changing of China to a market economy, and the creation of free-trade blocs such as the European Union and the North American Free Trade Agreement (NAFTA) have also fueled the globalization process. One of the results of globalization, however, is the rise in international and transnational crime.

A recent trend in criminal justice is to look at the impact of globalization on crime (Bossard, 2003). This approach supports the view that crime transcends national boundaries; for example, ease of travel by air has enabled criminals to do their work in other countries or easily escape to a safe haven. As air and sea trade have increased, so has the smuggling of illegal goods such as drugs and guns. Strong evidence suggests that some individuals have even engaged in the illegal smuggling of human body parts to wealthy persons in other countries who need medical assistance. In countries that are in economic or political turmoil, many persons attempt to flee, causing problems such as international criminal activity, refugee flows, the spread of contagious disease, and nuclear weapons and drug

trafficking (Cusimano, 2000, p. 4). When refugees enter a country, either legally or illegally, they experience difficulties adjusting to new language and cultural norms, and many find themselves in some kind of legal trouble.

Technological growth also has contributed directly to the vast increase in the types and volume of transnational crime, with computers and telecommunications playing a key role. “The very networks that legitimate businesses use to move goods so cheaply are the same networks that criminals use to move illicit goods so easily” (Winer, 1997, p. 41). So technology, like all advances, can be used for good or bad.

Sensitivity to the values of and problems faced by other countries also helps in resolving conflicts or overcoming barriers to cooperation across borders. And if the recent past has taught us anything, the key to solving the problems of transnational crime and criminal justice is global cooperation. We now know that in order to effectively deal with terrorist groups like al-Qaida we must work internationally to eliminate their worldwide financial networks. To address drug trafficking into the southern regions of the United States we must work effectively with Mexican law enforcement agencies, a task that is made more difficult by the corruption at various levels of government.

If we wish to serve justice well, whether it be for crimes committed within our borders or in another region of the world, international cooperation is an essential ingredient. Without international cooperation we cannot find, extradite, or serve justice on those who violate laws and cause pain and suffering throughout the world.

## THE HISTORICAL-POLITICAL APPROACH

The general approach taken in this book can be characterized as historical and political. Individual national arrangements for the administration of justice develop over the course of centuries in response to local needs, efforts by individual leaders,

and historical events. For example, if we wish to learn more about the reasons for the current violent crime rate within a country, it is imperative to understand the historical reasons behind violent crime development in that country (Neapolitan, 1999). Therefore, this book contains relevant historical information that bears upon the systems of justice we are examining.

The political context of systems of justice is also important because criminal justice agencies are governmental institutions, and they reflect political decisions about law and the administration of justice. In the United States, for example, it would be difficult to understand the development of criminal procedure over the years if we did not have a good understanding of the role of the U.S. Supreme Court in American government. In this book, then, criminal justice arrangements are examined in a historical context with attention to the political developments that affected the process.

Social and economic forces are also extremely important in shaping attitudes and developments related to administration of justice, and they are often tied to historical and political events. Understanding the power of drug trafficking gangs in Latin America, drug use patterns in developed countries, and ongoing conflicts in African countries must account for social and economic forces in those societies. These influences will be noted where relevant in our discussion.

## MODEL SYSTEMS

This book will describe and compare six model systems of justice as manifested in six different nations. There are 192 independent states in the world. *Independent state* refers to people who are politically organized into a sovereign state with a definite territory. A *sovereign state* is an internationally recognized unit of political authority. In addition, there are 76 “dependencies” or “areas of special sovereignty” that are associated in some way with an independent state. Examples are

Puerto Rico and American Samoa, which are dependencies of the United States, and Bermuda and the Cayman Islands, which are politically tied to the United Kingdom.

To make matters more complex, there are even more “nations” than independent sovereign states. Nations can be any group with a common cultural, ethnic, racial, or religious identity, such as the different Native American groups present in North America (Cusimano, 2000). Each sovereign state or nation has its own unique system of law and justice. The student of comparative criminal justice cannot learn all the facts about all these systems in depth. In fact, such information gathering does not necessarily result in better understanding of the nature of crime and justice in any particular system. But by describing in some detail the particular arrangements in representative or model systems, we can keep the discussion in better focus than would otherwise be possible.

Our model systems are found in the countries of England, France, Germany, China, Japan, and Saudi Arabia. These systems are “models” in the sense that they closely reflect the workings of particular historical families of law within various political frameworks. From this point on, we will use the terms *model countries* and *model systems* interchangeably. Chapter 3 will introduce these systems and their respective families of law. The choice of these six model countries does not imply that they are superior in any way to other countries that may have a similar legal background. Information about a number of other countries would have been equally informative for comparative purposes, but that would result in a much longer book. The six model countries were chosen because of their long history, their stability, and their representation of different legal traditions. Notable in exclusion are developing countries in Africa and the emerging democracies of Eastern Europe, but turbulent political situations in many of these countries, coupled with the dearth of material available in English, makes their inclusion premature. It is the authors’ hope that, after reading this book, you will be

inspired to study other systems in different countries to apply what you have learned here.

## BASIC VALUES IN THE CRIMINAL JUSTICE SYSTEM

The values of any system of justice may be classified as professed values and underlying values. *Professed values* are those that are proclaimed as values by the participants in the system. For example, equal justice under law—the ideal that all individuals, regardless of social status or background, should be treated equally and according to an existing rule—is a professed value of most established systems of justice. In the British and American systems of justice, another professed value is that the government has an obligation to prove an individual's guilt without any requirement that the individual cooperate with the prosecution. This value lies at the heart of the adversary process.

*Underlying values* are those that are not openly proclaimed but that nevertheless govern actions within the criminal justice system. Efficiency, or expeditious handling of cases, is one such value that may conflict with the value of equal justice under law. Tolerance or intolerance of certain kinds of substance abuse, or prejudice against certain groups of individuals, are examples of underlying values in the criminal justice process. For example, in the Chinese criminal justice system, there are numerous situations in which individuals have certain rights that may protect them from governmental intrusion and abuse—a professed value. According to the underlying values of Chinese society, however, societal needs are more important than individual rights, so individual rights may become secondary during a legal proceeding.

Underlying values are harder to understand and distinguish than professed values, and they require lengthier and more intense study. This presents a problem for students of comparative justice, as such values and the practices they engender are

easy to miss in a superficial description of a justice system. Although examples of research in comparative criminal justice that focuses on underlying values are limited (Klenowski, 2009; Abramson, 2003; Rosch, 1987; Berman, 1963), it is important that we appreciate their significance within the context of a justice system. The student of comparative criminal justice must acquire knowledge of professed values while also understanding which underlying values are present. These values will be highlighted in this book as we discuss particular practices in criminal justice systems.

## POLITICAL CULTURE VERSUS POLITICIZED JUSTICE

Administration of justice is a governmental function, and therefore reflects the political culture of a nation. When we speak of *culture*, we are talking about deep-seated patterns of behavior and thought that have developed over the course of a society's history. A nation like Germany, with a political culture that emphasizes legalism, or close adherence to rules, is bound to reflect that concern in its justice system. A nation with a political culture that values community welfare over individual rights, as does Japan, will reflect those values in its justice system. In the Chinese legal system, independence of the judiciary is not valued to the extent that it is in the United States. This is because the political culture in China emphasizes the needs of the collective (the entire society) and discourages independent action by citizens. In the United States, by contrast, the fear of centralized power that dominated the discussion at the Constitutional Convention in 1787 was reflected in a federal judiciary whose insulation from political influence was supposed to be guaranteed by a life term. Revolutionary or post-revolutionary societies and settled societies will have different approaches to justice.

The fact that administration of justice in a given country reflects the political culture does

not mean that justice is politicized. *Politicized justice* involves perverting the judicial or criminal justice process in order to achieve particular political ends, usually to punish enemies of the regime in power or to deter others from joining those enemies. Politicization of justice occurs in all countries on occasion and in some countries on a regular basis. Politicized justice may also involve an attempt to get publicity for causes that are supported by a regime's opponents. The trials of Stalin's opponents in the Soviet Union of the 1930s and of the Chicago Seven in the United States of the 1960s have been cited as examples of politicized justice (Danelski, 1971; Juviler, 1976). A more recent example would be the legal treatment, or lack thereof, of those persons involved in the 1989 Tiananmen Square incident in China, where over 800 persons died from the result of Red Army bullets and countless others were incarcerated without trial. Although politicized justice is hard to demarcate with precision (because it is usually mixed with real violations of conventional law), it is an object of concern throughout the world.

## THE PLAN OF THIS BOOK

We will consider each stage of the criminal justice process, from arrest through punishment, as it exists in the model countries chosen. We will also look at crime rates, legal cultures, trial processes, sentencing philosophies, and penal systems. Because of the tremendous variety of criminal justice practices and institutions, it would be confusing (or even impossible) to discuss all of them. Fortunately, major systems can be classified according to historically based families of law. These families of law, also called legal traditions or legal systems, are four in number: Common Law, Civil Law, Socialist Law, and Sacred Law. All modern legal systems are based at least partially on one or another of these historical legal arrangements. We will describe these families of law

before we examine criminal justice processes, and we will group countries according to their major orientation toward one or another family. This approach will simplify the task of considering all systems, making clear major similarities and differences around the world.

To further add to the coherence of comparative criminal justice, we will describe in summary form the rules and practices in the six model countries: England, Germany, France, China, Japan, and Saudi Arabia. These countries were chosen because they represent different governmental and legal structures, as well as different cultural traditions that affect the criminal justice process.

England has a unitary centralized government and historically has been the prototype of a Common Law system. France, also with a unitary centralized government, is a model of a Civil Law system and, indeed, was the leading nation in developing the modern Civil Law tradition. Germany, a federal nation with both state and national levels of government, has implemented its own version of Civil Law since the latter part of the nineteenth century. China, the most populous country in the world, is one of the few that still uses the Socialist legal system. And although Socialist systems actually practice a variant of Civil Law, they have enough distinctive characteristics to warrant classification as a separate family. Japan has a truly hybrid system. At various times in its history, Japan has adopted Chinese law, French law, German law, and American law, all of which continue to influence and inform Japanese law and justice. The product, however, is distinctly Japanese and is attuned to the particular culture and social needs of the Japanese people. Finally, Saudi Arabia adheres to the Sacred Law tradition with a justice system based on principles of Islamic law as outlined in the Koran. This fact makes its justice system distinct from those of the other model nations, which have secular legal systems. Because of the familiarity of the American system to most readers, the U.S. system will be referred to frequently in this book to provide points of contrast with other systems.

## SUMMARY

This chapter describes many of the reasons for studying comparative crime and justice. It explains how comparing across national borders helps us to learn how other nations approach crime and justice, increases our understanding of other cultures, and provides a basis for dealing with the increasing global crime problem. Although a relatively new field of study, comparative criminal justice has grown considerably in recent years and will continue to do so in a globalized world. We review

how professed and underlying values are practiced by various governments and impact crime and criminal justice. The historical-political approach is employed to explain and understand the context for differences in criminal justice around the world. We will augment our understanding of criminal justice practice around the world using six model systems representing different families of law and diverse cultural values and traditions.

### Comparative Criminal Justice at the Movies

*Movies seek to entertain and inform the audience about a story, incident, or person. Many good movies also hit upon important substantive themes relevant to understanding crime and justice in comparative perspective. Read the movie summary below (and watch the movie if you haven't already) and answer the questions below to make the subject matter connections to comparative criminal justice.*

#### **Hotel Rwanda (2005)**

Terry George, Director

Genocide occurred in Rwanda during a period of 100 days in 1994, and the world did not take notice. An estimated one million members of the Tutsi tribe were massacred by members of the Hutu tribe in a tragic case of ethnic rivalry and hatred. The movie *Hotel Rwanda* does not focus on the massacre, but tells the story of a hotel manager who saved the lives of 1,200 people during the genocide. The manager, Paul (Don Cheadle), is a Hutu married to a Tutsi, bringing the tension to the personal level.

Rwanda was earlier ruled by Belgium, and during that period the Tutsis ruled and the Hutus were oppressed and many were killed. The Hutus are now in control, and the genocide consisted of armed troops

prowling for and slaughtering Tutsis. The movie shows how the United Nations and the international community ignored the pending massacre and failed to intervene while it was occurring. A colonel (Nick Nolte), representing the UN as a peacekeeper, is portrayed in the film reporting the situation to his superiors and being ignored. Paul also informs his corporate headquarters of what is going on, but his hotel location is not a priority for them. These two men then act on their own to save as many lives as possible.

Rather than being a film about a million deaths, it is a film about how two people responded to tragedy when no one else did. It shows how they used finesse and guile to take on genocide and managed to save many lives in the process, even though the situation was an impossible one. *Hotel Rwanda* raises important questions about human strength and weakness in the face of persecution.

#### **Questions**

1. Does this movie describe transnational or international crimes?
2. How could such a large massacre happen without outside intervention? Do you think it could happen again?

### Critical Thinking Exercise

*Critical thinking requires the ability to evaluate viewpoints, facts, and behaviors objectively to assess information and methods of argumentation in order to establish the merit of an action, law, policy, or procedure. Please evaluate this scenario objectively, applying your knowledge of comparative criminal justice to the facts of the case presented, and answer the questions that follow it.*

#### Honor Killing

Three teenage girls in Pakistan, ages 16–18, were kidnapped, taken to a remote area, shot, and then buried while still breathing in a case of “honor killing,” where local officials officiated. Under tribal tradition, marriages are carefully arranged by elders. Marrying without permission is considered an insult to the honor of the tribe. Honor killings are done to serve as a warning to others. One Pakistan legislator said, “These are centuries-old traditions and I will continue to defend them. Only those who indulge in immoral acts should be afraid.” According to a report by Human Rights

Watch, a nongovernmental organization (NGO), there have been 4,100 honor killings in Pakistan since 2001, with others occurring in other Muslim countries. (Honor killing is not advocated under Islamic religious tradition, but it has a long tribal tradition in some countries and is not dealt with harshly, according to in-country observers.)

#### Questions

1. Is this case an international or a transnational crime, and why?
2. Given the very serious nature of the conduct and the lack of an urgent response within the countries where it occurs, what should be the response and approach to prevent continuing honor killings?

SOURCES: Safed Shah, “Tribal Traditions and Three Girls’ Gruesome Demise,” *The Globe and Mail* (Canada), September 1, 2008, p. A8; Jeff Jacoby, “Honor Killing Comes to the U.S.,” *The Boston Globe*, August 10, 2008.

### DISCUSSION QUESTIONS

1. How do international and transnational crime differ?
2. Why should we study comparative criminal justice?
3. Using newspapers, magazines, or the Internet, find one example of how a country has borrowed an idea or way of doing criminal justice.
4. What are some of the underlying values that are present in the U.S. criminal justice system?
5. What are the advantages of using a historical-political approach to the study of comparative justice systems?

### FOR FURTHER READING

Maier-Katkin, D., D. P. Mears, and T. J. Bernard. (2009). Towards a Criminology of Crimes against Humanity. *Theoretical Criminology*, vol. 13, pp. 227–255.

Hagan, J., and W. Raymond-Richmond. (2008). *Darfur and the Crime of Genocide*. Cambridge University Press.

Ragin, C. C. (1989). *The Comparative Method: Moving beyond Qualitative and Quantitative Strategies*. University of California Press.

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Zimring, Franklin E. (2006). The Necessity and Value of Transnational Comparative Study: Some Preaching from a Recent Convert. *Criminology & Public Policy*, vol. 5, pp. 615–622.

**WEB PAGES FOR CHAPTER**

Go to <http://www.ojp.usdoj.gov/nij/international/> to visit the International Center of the National Institute of Justice within the U.S. Department of Justice.

See <http://www.cia.gov/library/publications/the-world-factbook/index.html> to visit the CIA

World Factbook, which provides socio-demographic, political, and criminal justice information about 268 geographic entities.

Go to <http://www.unodc.org/> to visit the web page of the United Nations Office on Drugs and Crime and view its scope of work.