

Preface

Comparative criminal justice is currently one of the fastest growing areas of interest in criminal justice. It is the study of not only the nature and evolution of criminal justice across the world's societies, but also the similarities and differences in their perceptions of crime and criminality, as well as their pursuit of law and justice. Although the issues of crime, law, and justice are as old as civilizations, criminal justice is one of the youngest academic specialties. Criminal justice as a recognized academic specialty in the United States and Europe is barely three decades old. In contrast, the academic specialty of criminal justice in most of the world's developing countries, such as Asia, Africa, and Latin America, is known only through assorted criminal justice reform activities of the United Nations and other international assistance organizations.

In the United States and Europe, even though criminal justice is a young academic specialty, it has grown very quickly concerning the rising complexities of governing crime, law, and justice in the high-tech global information society and the knowledge economy that has been rapidly engulfing the world from the beginning of the 1970s. What is intellectually challenging, however, is that the field of criminal justice has been evolving quickly in terms of its scope of interest, theoretical development and diversities, and methodology of studying diverse rates and patterns of crime and criminality. In the 1970s—in the initial phase of its academic evolution—criminal justice was perceived primarily as the study of the police, courts, prisons, parole, and probation. The approach was primarily intrasystemic in nature. In the 1980s and 1990s, interest in criminal justice began to expand to issues of penology, punishment, politics of crime control, equal justice, crime and poverty, systemic management, and the integration of science and ICT (information and communication technology) into criminal justice.

This shift to some of the more macro issues of criminal justice in the 1980s and 1990s generated a new interest in comparative criminal justice. Curiosity about the nature of criminal justice in different countries of the world—particularly in the countries of the West—began to emerge. From the late 1990s to the early 2000s, comparative criminal justice started to become more global in nature. This trend reflected the intensification of modernization and globalization processes across the world's societies following the end of the Cold War in the mid-1980s. The dream of a “new world order” devoid of wars, crises, and conflicts

went unrealized after the end of the Cold War, but a global movement for the spread of development and democracy started to expand all across the world's societies from that time. With this, a more global approach to understanding crime and justice began to grow. Criminal justice experts, development professionals, and political leaders began to express interest in understanding the world's diverse patterns of crime and criminality, and divergent systems of law and justice. It is from this focus, and from the perspective of modernization and globalization, that *Comparative Criminal Justice Systems: Global and Local Perspectives* was written.

Any work on comparative criminal justice must be seen from a global perspective—a perspective of diverse countries, creeds, cultures, and civilizations, and the processes that shape their specific nature and articulations. Modernization and globalization are spreading many homogenizing sets of institutions and cultural codes across the world's societies in almost all domains of life, including law and justice. As a result, global perspectives on organizing the world's polities and shaping the nature of their law, justice, and governance have emerged. Increasingly across the world's societies, there are similar demands for the criminalization of domestic violence, child abuse, corporal punishment, dating violence, genital mutilation, honor killing, torture, and sexual harassment. There are also growing demands for the decriminalization of abortion, homosexuality, alternative faiths and lifestyles, and various kinds of reproductive rights and behaviors. Different groups of individuals—including women, children, religious minorities, and LGBT groups—are demanding a system of criminal justice that is sensitive to their specific locations in a society and their specific life situations. At the same time, these groups demand a system based on some of the universal principles of equal justice, fairness, and human rights.

Similarly, there is also a vision across the world's societies of developing a system of criminal justice that is compatible with modernity. The search for modernity in criminal justice is pursued not just to obtain the latest technology of force and surveillance for the police and prisons, but also to design a new system of law and justice based on modernist values of secularization, due process of law, and policy-making for crime control and prevention on the basis of science, reason, and rationality. With the advancement of global crimes, different societies of the world are facing similar problems and predicaments. There is hardly any society today that has not been touched by the invisible hand of transnational organized criminal groups that are roaming across the world's continents, trafficking anything that can be economically profitable (from sex to human organs). Transnational organized criminal groups in societies around the world are not only bringing new challenges for their criminal justice systems, but also posing formidable threats to their development and democracy. Many failed states of the world today—from Somalia, to Guatemala, to Pakistan—are the hotspots of transnational organized crimes. In any serious comparative analysis of criminal justice, these global and local issues and their nexus need to be addressed in terms of the dynamics of modernization and globalization.

The processes of modernization and globalization are not creating a single world civilization. There are many forces and possibilities of “civilizational clash” and “intercivilizational”

debates and disputes with respect to what constitutes the nature of a “good society,” a “good government,” or a “good system of criminal justice.” Therefore, one must take a systemic, historical, and holistic approach to pursuing comparative criminal justice. A country’s criminal justice system is an extension of its instrumentality of the state and governance. The nature and the health of a state define the nature and the health of its criminal justice. A number of world reports and studies, such as the World Bank’s *Governance Indicators*, the World Justice Project’s *The Rule of Law Index*, and the Economic Intelligence Unit’s *Index of Democracy*, have shown that countries ranking low in democracy and rule of law also rank low in the efficiency of their criminal justice systems and have high rates of violent crimes (e.g., murder).

In exploring comparative criminal justice around the world’s societies, analysis of the nature of polities, political ideologies, and political elites is very important. Pakistan is a good case-in-point. Pakistan was born with a vision of a modern society under the leadership of highly educated modernist elite in the sub-continent of India in 1947. The criminal justice system of Pakistan was solidly built on the foundations of modern law and legal institutions imported to India by the British colonial government. This legacy was completely overthrown in the late 1970s when political leadership was taken over by the military, who introduced a Shari’a system of law and justice in Pakistan—a country that did not have any historical legacy of an educated Islamic clergy capable of understanding and interpreting the intricate laws and rules of Islamic jurisprudence.

China is another case-in-point. Modernization of China’s criminal justice system began at the behest of the imperial rule in the late 19th century. In 1940, criminal justice in China was built on some major institutions of modern law and law enforcement, but in the 1950s and 1960s, under communist government ideology and the leadership of Mao Zedong, China’s modern institutions of criminal justice were deliberately and completely destroyed. The same is true for Iran. Until 1979, Iran’s criminal justice was firmly based on modern law and legal institutions. A secular system of justice had been growing in Iran since the beginning of the Safavid dynasty in the 16th century. Under the rule of Reza Shah Pahlavi in the 1950s and 1960s, the foundation for a modern criminal justice system was firmly established. However, this was completely destroyed when the Shi’ite clergy captured the political power of Iran and introduced its own version of Shari’a Law.

Understanding the nature of the state, state ideologies, and political elites is equally relevant for understanding comparative criminal justice in the West. In almost all Western countries, the rise and expansion of new penology (e.g., the “get tough” approach) from the mid-1970s was closely associated with the rise to power of a new generation of conservative political elites, such as Richard Nixon and Ronald Reagan in the United States, Brian Mulroney and Stephen Harper in Canada, Margaret Thatcher and David Cameron in the United Kingdom, and John Howard in Australia. Although political elites of all brands of ideologies like the new penology’s rhetoric, it is a particularly popular perspective on crime control and prevention among conservative political elites in the West. Such political and ideological perspectives take us to Chapter 1 of this text, which argues that an analysis of comparative

criminal justice must be both intrasystemic and extrasystemic in nature. The intrasystemic nature of criminal justice in a country—the police, courts, and prisons, and the way they have evolved over time—needs to be examined in the larger context of that country’s political evolution, and evolution of the state, state elites, and ideologies. Therefore, modernization and globalization, discussed in Chapter 2, are relevant as overarching processes and forces of connectivity that have been shaping the nature and dynamics of Western societies since the Renaissance and Age of Enlightenment, and developing worlds such as Asia, Africa, and Latin America since the days of colonialism.

This book is divided into two parts. Part I contains four chapters that define and describe the nature, theories, and methods of comparative criminal justice. One of the objectives of these chapters is to provide an understanding of how the problem of comparison is to be conceptualized and theorized—that is, how different societies of the world are connected and what forces shape that connectivity. This section examines four theoretical perspectives: Modernization Theory, Civilization Theory, World-Systems Theory, and Globalization Theory. Chapter 3 (on methodology) describes the nature and sources of data on crime trends and patterns, and the performance indicators for criminal justice systems in different countries. It also examines national crime surveys of the United States, Canada, the United Kingdom, Germany, and Japan; describes the various regional crime surveys in Europe; and characterizes the nature of various international crime surveys, such as the United Nations Surveys on Crime Trends (UN-CTS) and the International Crime Victimization Survey. Chapter 4, which is one of the major chapters of this book, describes and characterizes the nature and profile of modern criminal justice in terms of its core institutions and values. An argument has been made in this chapter that since the beginning of the 19th century, a modern system of criminal justice has been evolving within the framework of a modern state based on democracy and the rule of law. The institutions and values of the modern system of criminal justice are the benchmarks of comparison—benchmarks of studying the nature and evolution of criminal justice across the world’s societies.

Part II comprises eight chapters organized in terms of four models or types of criminal justice systems: modern systems (e.g., the United States, Canada, the United Kingdom, European Countries, and Australia); modernizing systems (e.g., Asia, Africa, and Latin America); traditional systems (e.g., Saudi Arabia and Iran); and dual systems (e.g., China, Pakistan, Malaysia, Indonesia, and Nigeria). The major dividing line among these four models of criminal justice is between secular and sacred traditions of law. The modern and modernizing criminal justice systems are based on secular legal traditions (e.g., English common law and continental civil law). The traditional systems of criminal justice are based on religious law (i.e., Shari’a Law in both Saudi Arabia and Iran). The dual criminal justice systems exist in countries that try to adopt modern institutions and values of criminal justice within the framework of either their traditional religion (e.g., Shari’a Law and English common law in Pakistan, Malaysia, and Nigeria; and Shari’a Law and civil law in Indonesia), or traditional politics (e.g., China’s modernization of criminal justice within the framework of a socialist polity).

Chapters 5 and 6 (on modern systems of criminal justice) examine the nature of police reforms in the United States, the United Kingdom, Germany, and the European Union; the growing trends of homogenization in sex offender registration laws in the United States, Canada, and the United Kingdom; and the growing trends of homogenization in sentencing laws (e.g., the rise of new penology) in the United States, Canada, the United Kingdom, and Australia. Chapters 7 and 8 are on modernizing systems of criminal justice. Chapter 7 examines the nature of colonial legacies in criminal justice; the problem of the rule of law, democracy, and criminal justice; and the problems and predicaments of criminal justice systems in the failed and fragile states of Africa and Central America, as well as in the postauthoritarian states of South America. Chapter 8 examines the problem of police reforms in India, Kenya, Bangladesh, and Brazil; the new demands for the criminalization of sexual harassment, domestic violence, and child sexual exploitation in different countries of Asia, Africa, and Latin America; new movements for the decriminalization of homosexuality; and progress of reforms in criminal procedural laws in Indonesia, Chile, and Nigeria. One of the key observations made in this section is that a vast number of countries in Asia, Africa, and Latin America are slowly but surely reforming their criminal justice systems under the impact of modernization and globalization. Chapter 9 (on the nature and evolution of Islamic jurisprudence and Shari'a Law) intends to provide an understanding of the intricate laws and rules of Islamic criminal justice. The chapter describes the meaning and sources of Shari'a Law; the nature of *Hudud*, *Qisas*, and *Ta'zir* crimes and punishments; and the nature of due process in Islamic criminal justice. As an example of how Islamic criminal justice depends on the nature of the state and the ideology of the state elites, this chapter presents some historical examples related to the implementation of Shari'a Law during the Ottoman Empire of the Turks (1300–1920) and the Mughal Empire of India (1526–1757). Chapter 10 further examines the nature and implementation of Shari'a Law and Islamic criminal justice in the context of two contemporary states: Saudi Arabia and Iran. One of the key observations from Chapters 9 and 10 is that the central point of debate and discourse in Islamic criminal justice is the extent to which *ijtihad* (logic and analytical reasoning) and *ijma* (judicial consensus) can be applied in the interpretation of the Quran and the Sunna—the sources of Shari'a Law. Modernists within Islamic jurisprudence, based primarily on the Hanafi School of Islamic jurisprudence, argue that Islamic criminal justice can be made compatible with varying times and spaces through the use of *ijtihad* and *ijma*. The ultra-traditionalists, on the other hand, assert—primarily on the basis of the Hanbali School of Islamic jurisprudence—that there is no scope for the use of human reason, logic, and rationality in the interpretations of the divine sanctions of the Quran and Sunna. A close examination reveals that there are tensions within Islamic criminal justice in Saudi Arabia. The monarchy of Saudi Arabia represents the modernist version of Islamic jurisprudence, but the Islamic clergy, who are not a part of the monarchy and the ruling elite, represent the ultra-traditionalist perspective (e.g., the Wahhabist perspective) of Islamic jurisprudence. In Iran, unlike Saudi Arabia, the Islamic clergy are in political power, and they represent their own version of radical and ultra-orthodox interpretation of Islamic jurisprudence. They have deliberately destroyed secular

and modern systems of law and justice in pursuit of their vision of an ideal Islamic state based on an ideal system of Islamic criminal justice. For the radical ultra-orthodox Shi'ite clergy of Iran, modern criminal justice is incompatible with Islam.

A considerable number of countries in Asia, Africa, and the Middle East have systems of criminal justice that are dualistic in nature. China and Pakistan are two examples, and are examined in Chapters 11 and 12, respectively. China has been pursuing modernization in criminal justice within the political framework of a socialist state, while Pakistan has been pursuing Islamic criminal justice within the framework of a modern state and modern law and justice.

I have searched for an understanding of how, in the context of modernization and globalization, criminal justice systems in varying societies are performing and pursuing changes and reforms. Curiosity is basic to science and it is at the core of comparative methodology. In reading this book, I hope students develop a genuine sense of curiosity about criminal justice in different countries, cultures, and civilizations. I have gone back and forth in my analysis of criminal justice workings, from micro to macro and macro to micro issues. I have described the nature and the plights of the failed states in Africa and Central America; how reforms in pretrial detention are underway in Nigeria; the legal traditions of imperial China; and police reforms in India, Bangladesh, Kenya, Brazil, the United States, the United Kingdom, and Germany.

This book is substantially different from existing literature on comparative criminal justice. It relies mostly on primary materials—such as different countries' constitutions, legislative documents, court cases, governmental crime reports, and studies by the United Nations and the world's leading think-tanks on crime and development—in order to examine how criminal justice systems of disparate countries and cultures are performing and reforming in the context of modernization and globalization. Although this book is deliberately broad and deeply historical, it focuses on issues of criminal justice that are mundane and pragmatic, such as the rule of law and democracy; criminalization of sexual harassment, intimate partner violence and child sexual abuse; decriminalization of abortion and homosexuality; due process of law in China; human rights issues in Iran; judicial reform in Saudi Arabia; and issues of equal justice in Pakistan. Understanding the nature and dynamics of both intrasystemic and extrasystemic characteristics of criminal justice across the world's societies in terms of the vicissitudes of modernization and globalization form the core of comparative criminal justice.