

Comparative Justice Systems

JUS 301 01

Fall, 2014

Meeting: Monday and Wednesday from 3-4:50PM. Classroom: Notre Dame Hall, 255. Dates: August 23 thru December 12, 2014

2014 FALL SEMESTER

Saturday, August 23	Regular semester classes start, 1st Quarter Begins
Monday, September 29	Last day to drop 1st quarter classes
Thursday, October 16	First Quarter ends
Friday, October 17	Mid-semester Break
Monday, October 20	Second Quarter begins
Monday, November 10	Last day to drop full semester class
Wednesday-Sunday Nov 26-Nov 30	Thanksgiving Break
Monday-Friday, December 8-12	Exam Week

Required Text

Dammer, H. & Alabanese, J. (2014). 5th Ed. *Comparative criminal justice systems*. Belmont, CA: Wadsworth.

Instructor Contact Information

Thomas A. Lifvendahl, Ed.D.

Phone: 414.873.4170 (Home)

414.750.9359 (Cell)

MMU E-mail: lifvendt@mtmary.edu

E-mail: tlifven@wi.rr.com

Web Page: www.drtomlifvendahl.com

Office Hours: By Appointment

Course Description

Studies the justice systems of other nations and justice as an international matter. Helps students understand the historical, political, social, economic and other factors that influence legal trends around the world. Addresses the increasing globalization of legal and human rights issues and how they are dealt with. Note: satisfies the University's (g) global curriculum requirement. (3 credits)

Course Objectives

Comparative Justice is a survey of selected international criminal justice systems, including the police, courts, and correctional subsystems. Special emphasis is placed upon geographical, historical, and cultural perspectives that make the systems unique and/or similar to those in the United States.

As a consequence of the course, the student should be able to:

- Analyze the value of comparing international systems and issues of criminal justice systems.
- Articulate globalization and its effect on crime and criminal justice.
- Identify the primary sources of international crime statistics.
- Compare the unique crime problems and solutions in target countries.
- Define the functions of modern, worldwide, police forces.
- Identify mechanisms to deal with issues of human rights and international crimes and criminals.
- Examine the stages of the criminal process in different countries.
- Compare similarities and differences that occur in court structures and procedures in target countries.
- Analyze unique correctional practices in target countries.

Behavior Outcomes

Criminal justice systems are complex, socially and culturally bound and evolving. A student must feel competent in their ability to compare and contrast the varied contexts of justice applications in not only their native culture but also the global dimensions of seeking to live in a “just” society. Demonstration of that competence will be shown by verbal and written class communications.

THE MISSION AND VISION OF MOUNT MARY UNIVERSITY

MISSION

Mount Mary University, an urban Catholic University for women sponsored by the School Sisters of Notre Dame, provides an environment for the development of the whole person. The University encourages leadership, integrity, and a deep sense of social justice arising from a sensitivity to moral values and Christian principles. Mount Mary commits itself to excellence in teaching and learning with an emphasis on thinking critically. The baccalaureate curriculum integrates the liberal arts with career preparation for women of diverse ages and personal circumstances; the programs at the graduate level provide opportunities for both men and women to enhance their professional excellence.

VISION

Mount Mary University is recognized as a diverse learning community that works in partnership with local, national and global organizations to educate women to transform the world.

MISSION OF THE JUSTICE DEPARTMENT

The Justice Department provides students majoring in Justice with a strong foundation for applying “justice” in the real world. With Justice roots, students can move into any of the three branches of the justice field, or employ their skills in business settings, health care, non-profit work, and beyond. Courses in the major help students explore social welfare and the causes and impacts of crime. They also examine the structure, administration and dynamics of the legal system, and encourage students to analyze existing models and practical applications. Finally, the major asks students to respond with

empathy toward all participants in the justice and legal system, domestic and global, and to thoughtfully evaluate the challenges of striving for a just society.

Daily Class Sequence

The following should take place in each class...

Monday

- 3-3:30PM House Keeping and Review from Last Class
- 3:30-4:50PM Instructor Led Discussion with Power Point Outline

Wednesday

- 3-3:30PM House Keeping and Review from Last Class
- 3:30-4:50PM Student Led Article Presentation and/or Paper Discussion

The class will be formed around two person teams. Each team will be representing one country. Therefore teams will represent the views of:

Team England
Team France
Team Germany
Team China
Team Japan
Team Saudi Arabia

It is anticipated that each team will become subject experts for each country. As such you should be able to defend and/or critique varied aspects of each national justice system based on the reading for the week and/or topics raised in the instructor led portion of the class.

Student Assignments

Each student will be responsible for the Chapter reading. You will be required to find one article per week (Presented by a Synopsis Handout) for each student.

Each Article Analysis will be graded on the following criteria:

Appropriate Comparative Criminal Justice topic	2 points
Compare/contrast to textbook topics or issues	6 points
Well-constructed/defended paper	8 points
Readable/spelling/grammar	4 points
Total	<u>20 points each</u>

Each student will be responsible for a major research paper on a subject of personal choice. The paper should be 15-20 pages in length, written in APA format, with a minimum of 5 references (excluding the text). Each Team will be responsible for a research paper (length to be determined) on the nation you represent. A topic of interest, approved by the instructor, focused on answering a specific “research question” will drive your work.

The presentations of both individual papers and Team research will be presented via Power Point Presentation during Exam Week. Thus this work will substitute for a written exam.

Academic Honesty and Integrity Statement

Mount Mary University is an academic community dedicated to the intellectual and social and ethical development of each of its members. As members of this community we all are responsible for maintaining an atmosphere of mutual respect and honesty.

Standards for academic integrity provide a structure for the creation of an academic environment consistent with the values of the School Sisters of Notre Dame and the mission of the University. In keeping with these goals, all students are expected to strive for integrity, in academic and non-academic pursuits. Acts that involve any attempt to deceive, to present another's ideas as one's own, or to enhance one's grade through dishonest means violate the integrity of both the student and University.

Academic dishonesty in any form has a negative impact on the essential principles of the Mount Mary University Community. Therefore, such acts are treated as a serious breach of trust.

A faculty member has the right and authority to deal with academic dishonesty in his or her classroom; however, a student who commits multiple violations against academic integrity shall be subject to administrative disciplinary action as described in the Academic Honesty and Integrity Policy and Procedures.

Copies of the full Academic Honesty and Integrity Policy and Procedures are available through the office of the Associate Dean for Academic Affairs. The policy and procedures are included in the Mount Mary University Student Handbook, the Undergraduate Bulletin and online at mtmary.edu/handbook.htm and my.mtmary.edu

Accessibility Statement

Mount Mary University complies with Section 504 of the Rehabilitation Act of 1973 which stipulates that the University will make reasonable accommodations for persons with documented disabilities. If you have a disability that may have some impact on your work in this class and for which you may require accommodations; please see me or Marci Ocker, Coordinator of Accessibility Services so that such accommodations may be arranged. Marci can be reached at (414) 443-3645 or (414) 258-4810 ext 645. Her email is ockerm@mtmary.edu. The Accessibility Services Coordinator's office is located in the Student Success Center on the first floor of Haggerty Library, room 124.

7.13.13

Faculty, staff and administrators are reminded that Mount Mary's policy regarding students with disabilities can be found in the Undergraduate Bulletin, Student Handbook, Graduate Handbook, and on the Mount Mary uwebsite: www.mtmary.edu

Text Information

Dammer, H. & Alabanese, J. (2014). 5th Ed. *Comparative criminal justice systems*. Belmont, CA: Wadsworth.

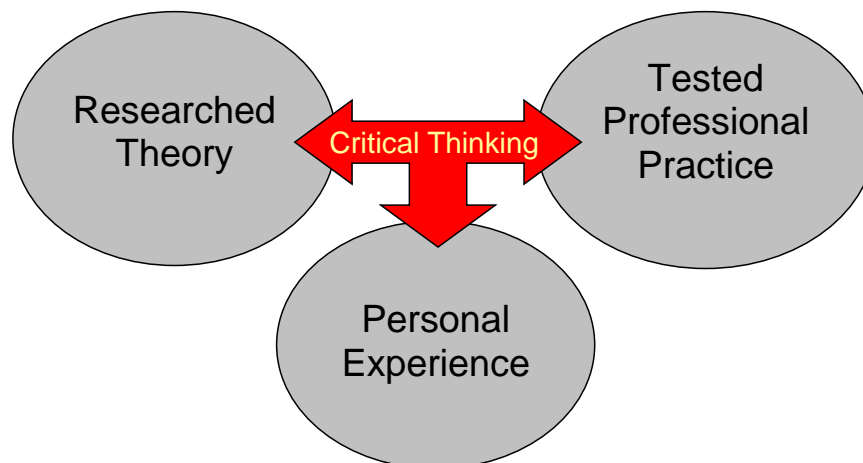
Chapter 1 Introduction

The study of comparative justice is a relatively new field (30 years) and reflects a desire to compare and contrast varied aspects of human behavior in order increase critical thinking about how humans around the world react to “criminal behaviors”. Such an activity can lead to improved methods of law enforcement in a world increasingly diverse and complex. For Americans, the historic tendency for citizens of this country to believe that what we do is best for everyone (ethnocentrism) is directly challenged when comparing international justice programs.

The method this course will employ is both historical (a focus on cultural, normative behaviors over time that impact justice programming) and comparative (defining specific countries and studying them by asking the same research questions and contrasting responses gathered from data). This technique provides a natural setting for examining the social, economic and political structures that determine management and diminishment of societal reprehensive individual behaviors.

The countries that will drive our inquiry are the United States of America (benchmark), Great Britain, France, Germany China, and Japan. A dominant theme will be the interplay between historic conditions, cultural normative behavior, legal conditions (past/present/future) in each nation. Our goal is to understand that comparative justice is driven by the historical and political conditions decision makers must deal with in a complex evolving world.

Dialogue of Learning



Chapter 2 Measuring and Comparing Crime in and across Nations

What is crime? How is it determined? To what extent does it exist? How can it be accurately measured? Modern policing is “data driven”. Allocation of resources, deployment of personnel, prosecution of criminals, and incarceration options is directly affected by accurate knowledge of who commits crime and why they act.

Crime is usually studied by those affected by the activity. For the purpose of our class those perspectives are: the offender; the victim and the police (law enforcement agency). The chapter readings highlight varied reportage, the fallacy of some of the data derived from those reports (self-generated) and the difficulties of trying to compare information sets generated by national reportage systems that vary in quality and quantitative rigor.

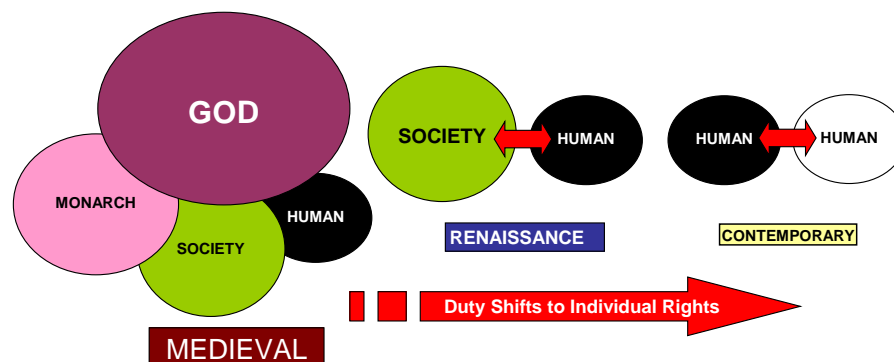
Understanding the meaning of “crime” provides insight into national values, codes of ethical conduct, and economic/political conditions imposed by dominant elites and justified by historic precedence. Crime statistics on specific offenses (homicide for example) provide direct evidence of how a given society deals with internal social conditions. Nations with high rates of criminal activities and incarceration usually possess social conditions in which heterogeneous and diverse ethnic and social status conditions are in conflict. Nations with low rates of crime usually possess homogeneous ethnic and social conditions that elicit social solidarity. Table 2.4 (p. 33) in the text provides useful information on this subject.

Chapter 3 Families of Law

This chapter seeks to investigate types of law (public, private) and the conditions in which each is practiced. The dominant criminal justice social structures that we will study are:

- Common Law Systems. These are dominant in English speaking counties sharing a colonial history with Great Britain. They are distinguished by an adversarial system wherein lawyers interpret law and judges tend to be bound by precedent. The primary method for evidence presentment is oral with the forum a public trial and peer (jury) review.

The evolution of Common Law based courts must be understood within the context of European history and one’s relationship to the State/King and to each other...the following graphic:



British and American court evolution reflects the migration of power and state control from an omnipotent King to the present form of jurisprudence exemplified by:

- ✓ Star Decisis (it stands decided...the dominance of precedent in the development of judicial rules)
- ✓ Judicial Independence (decisions bound by law, not the whim of the ruler)
- ✓ Standardized Criminal Procedures (processes that bring stability and predictability in the application of justice within Common Law court systems)

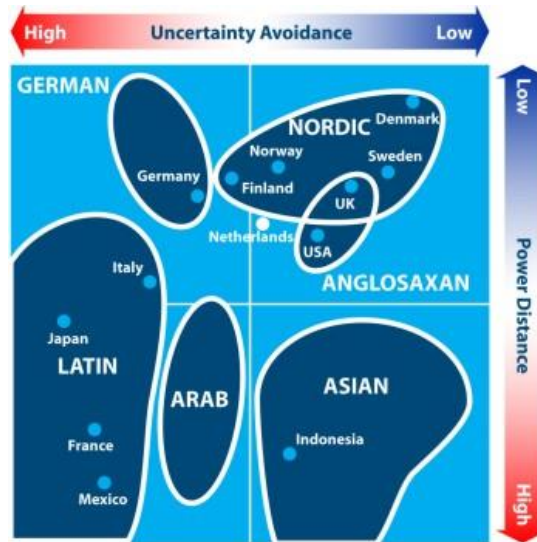
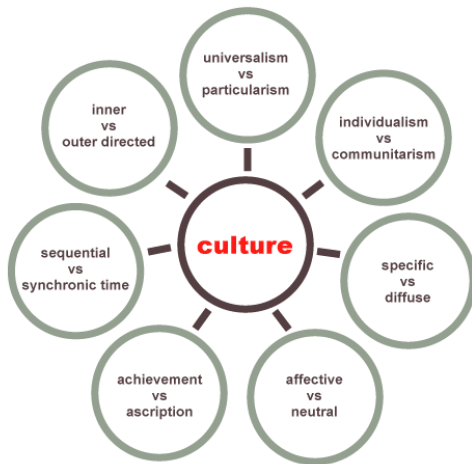
See Table 3.4 P. 52 for a comparison of Civil and Common Law adjudication.

- Civil Law Systems (Roman, Napoleonic). Practiced globally this administrative system is distinguished by inquiry led by professionals with diminished regard to the rights of the accused. There is also a tendency to see the written law as gospel and not subject to much interpretation.
- Socialist Law Systems. Dominant in countries affected by the Communist Revolutions of the early 20th Century in which previous civil law was restructured to provide procedures for the rehabilitation of asocial behaviors in people in order for them to attain responsible interaction with the State. Marxist/social philosophy saw “laws” as transitory conditions that in time would be unnecessary because the humans would evolve into a new type of human. Thus in a socialist state non-legal officials administer law and interpretation of the law by other than state entities is prohibited.
- Sacred (Islamic) Law Systems. Practiced in Muslim majority nations this system is based on the interpretation of the Koran with a focus on justice as a natural condition (indigenous) that sees crime as activities in conflict with tradition norms. Religion and theocratic rule are standard in some Islamic nations.

Chapter 4 Six Model Nations

How does the cultural value and national history of the model countries determine law enforcement methods? The research of [Geert Hofstede](#) on the effects of individualism (Cultural Dimensions) is

informative. See Graphics:



1. [England](#)
2. [France](#)
3. [Germany](#)
4. [China](#)
5. [Japan](#)
6. [Saudi Arabia](#)

For each country consider the following questions:

1. Utilizing the CIA link for each country confirm or deny the information displayed on Table 4.1 (p. 68). How have things changed since the source for the table was done by the same CIA World Fact book, 2012?
2. What is the historic development of each nation’s cultural norms and behaviors in regards to crime? See Table 4.2 (p. 73).
3. Research and define the cultural dimensions for each model country...prepare appropriate graphics for class presentation.

Chapter 5 Law Enforcement: Functions, Organizations and Current Issues

What does it mean to “police” society? What do police “do”? When does policing a society become oppressing a society? What are the varied types/levels of law enforcement agencies prevalent in each nation we are studying? Are they dispersed, independent or centrally administered? Given all these questions the historical context and political stability of any nation determine how we answer the aforesaid questions.

The primary functions of police are to:

- ✓ Control deviant behaviors (deviance is an evolving concept and reflects the society)

- ✓ Maintain civil order

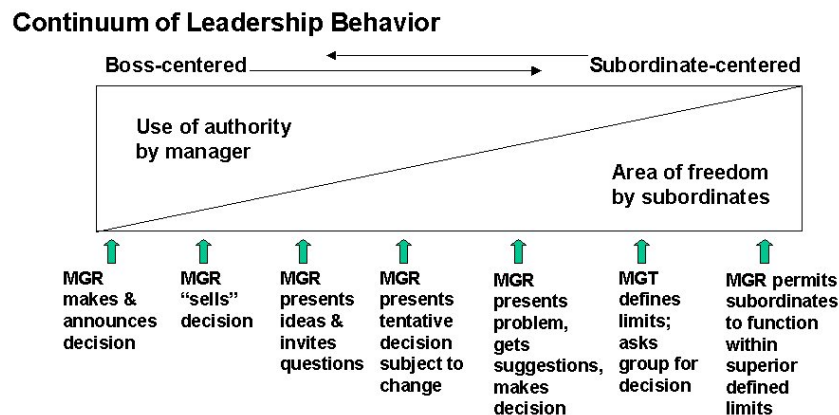
Refer to Table 5.1 (p. 102) for further explanation.

A key question one can ask is “policing” a profession. The attributes of any profession usually include:

1. A systematic body of knowledge unique to that profession exhibiting language and research that encompasses its foci of interest
2. Specialized education and/or training that leads to certification by a state/local authority
3. Community sanctions for the police power to arrest and hold individuals against their will
4. An ethical set of standards that govern individual/agency action
5. Unique symbols, uniforms, regalia, folk lore, language and collective history that are distinctive to police

Each of our study nations has professional variations on what national authority deems as “professional” in a police agency. If you were creating a set of evaluative standards for judging the professionalism of any police agency what would those standards be?

Leadership Model (Police-Paramilitary)



Chapter 6 Criminal Procedure

In order to compare varied national systems of criminal processing we need to define the basic outline involved. For the sake of discussion these steps in an **adversarial** (American) court system are:

1. Arrest...a person is arrested based on probable cause evidence sufficient to charge the accused
2. Prosecution formal filing of a complaint in the appropriate court
3. Accused arraignment and arrangement for release (bail) or incarceration
4. Preliminary hearing to review sufficiency of probable cause
5. Arraignment in a Superior Court and formal filing by prosecution of a charging document

6. Pre-trial conference in which defense and prosecution exchange information sufficient to determine is a “deal” (plea bargain) can be arranged
7. Trial (usually by Jury) to present evidence and hear witnesses sufficient to determine guilt or innocence
8. Sentencing hearing in which determination of punishment is meted out. A contemporary addendum to sentencing is the use of Victim Impact Statements where the effects of criminal activity are documented in order to insure a just sentencing.
9. Determination of collateral consequences regarding felon rights and privileges in he/she’s society to be suspended
10. Appeals and writs designed to prove that the guilty were given a fair trial or denied due process

In contrast to the adversarial system of justice is the **inquisitorial** system. The process of adjudication are as follows (<http://legal-dictionary.thefreedictionary.com/Inquisitorial+System>):

The court procedures in an inquisitorial system vary from country to country. Most inquisitorial systems provide a full review of a case by an appeals court. In civil trials under either system of justice, the defendant, or respondent, may be required to testify. The most striking differences between the two systems can be found in criminal trials.

In most inquisitorial systems, a criminal defendant does not have to answer questions about the crime itself but may be required to answer all other questions at trial. Many of these other questions concern the defendant's history and would be considered irrelevant and inadmissible in an adversarial system.

A criminal defendant in an inquisitorial system is the first to testify. The defendant is allowed to see the government's case before testifying, and is usually eager to give her or his side of the story. In an adversarial system, the defendant is not required to testify and is not entitled to a complete examination of the government's case.

A criminal defendant is not presumed guilty in an inquisitorial system. Nevertheless, since a case would not be brought against a defendant unless there is evidence that indicates guilt, the system does not require the Presumption of Innocence that is fundamental to the adversarial system.

A trial in an inquisitorial system may last for months as the presiding judge gathers evidence in a series of hearings.

The decision in an inquisitorial criminal trial is made by the collective vote of a certain number of professional judges and a small group of lay assessors (persons selected at random from the population). Neither the prosecution nor the defendant has an opportunity to question the lay assessors for bias. Generally, the judges vote after the lay assessors vote, so that they do not influence the conclusions of the lay assessors. A two-thirds majority is usually required to convict a criminal defendant, whereas a unanimous verdict is the norm in an adversarial system.

The inquisitorial system does not protect criminal defendants as much as the adversarial system. On the other hand, prosecutors in the inquisitorial system do not have a personal incentive to win convictions for political gain, which can motivate prosecutors in an adversarial system. Most scholars agree that the two systems generally reach the same results by different means.

Chapter 7 The Courts and Legal Professionals

All societies seek to review the actions of their citizens within a cultural/political framework. A court is a place wherein all parties in a dispute (criminal or civil) can be brought together in order to determine guilt or innocence. Usually, the power of the court resides in a “judge”, a person trusted to settle disputes authoritatively within pre-determined legal norms. Informal (indigenous) courts represent an alternative to formal courts and provide culturally relevant forms of consensual dispensation of justice.

In order to be effective any court (formal or informal) must be seen and trusted as independent and impartial. The court system is administered and served by individuals with specialized knowledge. These individuals can be described as Adjudicators (Judges), Advocates (Presenters of Evidence...Lawyers), Advisors (External Providers of Legal Knowledge and Services), and Legal Scholars (Professors and/or Researchers).

Court Systems can be oriented in two ways: bureaucratically (Rational...code based) or politically (non-rational...case based). The legal training and education of court professionals is thus driven by the approach to serving justice taken by each.

Courts are tiered. Authority is defined around limitations of authority and usually they are seen as “minor”, “general”, “intermediate” and “courts of last resort” Table 7.1 presents each target nation’s court structure.

The legal profession in each nation reflects the social system it represents. The early history in Europe saw both judges and advocates as lay individuals authorized by the King. As the law professionalized formal education and field experience took hold in each nation. On page 167 a table defines the training of legal professionals. What is of importance in this chapter reading is the relationship between national histories, social needs, and evolving legal conditions. Generally one can say that all national systems have moved away from lay practitioners to formally educated professionals. The nature of what constitutes a “trained professional” varies for each nation but the need to have competent advocates is glue that holds society together.

As modern society has become more interdependent and criminality internationalized supranational courts have come into existence. Specifically, as war has become increasingly destructive and societally disruptive the response of the international community has been to create “tribunals” (example: Nuremburg) that have culminated in the International Court of Justice housed at the Peace Palace in The Hague, Netherlands.

The chapter chronicles other dominant courts but the overall theme is to try individuals accused of “crimes against humanity”, economic criminal activity, and socially abhorrent conduct. Finally the jurisdiction of these courts is supported by the degree to which each nation and its national government is willing to accede to the international court’s authority. This is an evolving relationship.

Chapter 8 After Conviction: The Sentencing Process

The consequence of criminal behavior is to catch, try and control the activities of the perpetrator. This chapter defines “sanctions” for criminal acts as accomplished by the application of the following concepts: Retribution, Rehabilitation, Deterrence, Incapacitation, and Restoration. The approach any society takes is derived from the legal, social, cultural and historical contexts of the law. It is also guided

by the philosophy one has of the relationship of an individual to that society, to each other as members of the society, and the social goals the society has to guiding behavior to its norms. See Table 8.1 p. 193.

Once a person has been convicted to a crime punishment is meted out. The definitions listed on p. 195 state the range of punishment and their severity commonly used by most countries. Once a person has been sentenced, served that sentence and freed the community still normally to seek control over their behavior until a point is reached wherein “society” no longer sees the felons activity as a menace.

The two common sanctions one sees are imprisonment and for capital crime, execution. Imprisonment numbers are hard to define for comparative purposes. The Chapter cites varied information sources ([World Prison Brief](#)) but the variety of data set styles (stock/flow) descriptors make for difficulty in fully understanding the prison population.

The ultimate sanction, death, again reflects the social, cultural, and some cases religious norms of society. Capital punishment has decreased in use in most contemporary societies. The constraints are listed on p. 208 of the text.

Chapter 9 After Conviction: The Problem of Prison

The concept of “prison” and thus “prisoner” has evolved over time and driven by historic, political, and social needs. The act of denying any individual their “freedom” is the ultimate control a society has (excluding execution).

The text provides a clear delineation of the evolution of the prison; its purposes and use. Penal policy for each model nation and the philosophy of incarceration reflects national views. The continuum tends to revolve around controlling criminal activity over the long term (lock ‘em up) or changing felon behavior through (progressive rehabilitation). The degree to which any given nation utilizes these concepts is driven by the social, political, economic, and/or technical constraints (prison capacity and willingness to expand that capacity) existent in that nation.

Modernity in prison reform has evolved over time to care about how offenders are treated when placed in prison. The continuity of criminal activity (minor civil crime to major violent behavior) tends to determine levels of punishment and prisoner treatment. The chart on p. 232 delineates international treaty agreement as to what or what is not permitted.

Chapter 10 Terrorism

[Terror is a tactic](#). It is a method of asymmetric warfare designed to force compliance by a given society by the activities of marginal actors in any society who seek change. International terrorism is the aggregate of both national and non-nation entities (Al-Qaida). Terrorism, both domestic and international, is a concern of all law enforcement agencies. Nation states have banded together to form interlocking security agencies. But terrorism has evolved into convoluted, increasingly complex sets of tactics that include both cyber and physical (bombs, random killings, etc.) activities.

The response of national governments has reflected the political, economic, social and technical needs of each society to live in an increasingly insecure world. One thing is for certain; terrorism, as a tactic will continue. What will constitute a terrorist act will evolve, as will the punishment meted out to fit the crime

Chapter 11 Transnational Organized Crime

Systematic criminal activities planned and executed through networks of individuals who seek to achieve group goals through violence and corruption can be defined as organized crime crossing state boundaries. Typically these criminal networks see of exploit weak and ineffective governance for the purpose of providing illegal services (drugs, prostitution, etc.). See Table 11.7. p. 271.

Political turmoil, international communications and trade, while enhancing the lives of world citizenry have also had the unintended effect of providing lucrative avenues for conducting criminal activities. International cooperation is imperative to diminish trans-national crime.

“Transnational criminal rings are becoming more and more powerful and universal, and their mobility is growing. The means and resources of any state are not enough to seriously harm them.”

—Yuriy A. Voronin, Professor of Criminal Law, Urals State Law Academy, Ekaterinburg, Russia

Chapter 12 Juvenile Justice in International Perspective

<i>What are the distinctive and common features between Juvenile and Criminal Justice Systems?</i>		
Juvenile System	Common Ground	Adult Criminal System
Operational Assumptions		
Youth behavior malleable	Community protection primary goal of both	Sanctions should be proportional to the offence
Rehabilitation viable goal	Violators must be held accountable by both	General deterrence works
Youth are family dependent	Constitutional rights apply to both	Rehabilitation not primary goal
Prevention		
Many options to prevent delinquency	Educational approaches are taken to specific behaviors (drunk driving, drug use, etc.) by both	Prevention activities are generalized towards deterrence (e.g. Crime Watch)
Law Enforcement		
Specialized "juvenile" units	Jurisdiction involves the full range of criminal behavior	Open public access to all information required
Some additional behaviors are prohibited (truancy, running away, curfew violations)	Constitutions and procedural safeguards exist in both	Law enforcement exercises discretion to divert offenders out the criminal justice system
Some limitations are place on public access to information	Both use reactive and proactive approaches to goal solutions	

A significant number of youth are diverted away from the system, often to alternative programs	Community policing strategies employed by both	
--	--	--

Derived from: https://www.ncjrs.gov/html/ojjdp/9912_2/images/fig_05.gif

Juvenile delinquency is the perceived conduct of non-adults (the age of adulthood is a dependent on national/cultural norms) who present antisocial conduct typically beyond parental control. Typically juveniles are exempt punishment involving death or life imprisonment. The basic philosophy that governs juvenile justice are to: rehabilitate the offender, enforce the rule of law (regardless of age), or punish the offender in order to ensure public safety.

Typically minors commit what are called “status offenses” Normally the offenses are not illegal for adults and include not attending school (vagrancy), breaking curfew, running away from home, possession or consumption of alcohol and/or drugs. The legal doctrine that supports court action is “parens patriae” (a Latin term meaning parent of his country...the state is the legal guardian for minors and/or incompetent persons). Adjudication is variably enforced. See Table 12.4, p. 288.