

Comparative Criminal Law:  
The What and the What For  
(Panel 1)

[Markus Dubber](#), SUNY Buffalo

Introduction: Criminal Law's Parochialism

- law most parochial discipline; criminal law most parochial legal discipline
  - “choice of law”
  - territorial jurisdiction; sovereignty; police power; king's peace
- external (transnational) and internal (domestic) parochialism
  - history as comparison
- broad comparative/contextual approach to teaching (and scholarship)

1. Framework (Compare What?)

- transnational/-systematic/-cultural (external comparison)
  - common law (US, UK) vs. civil law (Germany)
    - German influence (Latin America, Spain, Japan, Korea, etc.)
      - French, Italian, Spanish influence
    - UK influence (“Commonwealth”)
      - US influence?
  - other forms of conflict resolution
    - e.g., Maori mediation
  - doctrinal significance (see [Panel 2](#))
    - international criminal law
    - domestic criminal law
      - “cultural defense”
        - mistake/ignorance, de minimis, provocation, reasonableness
    - 8th am. decency?
- domestic/intranational (internal comparison)
  - transjurisdictional
    - “American criminal law”
    - Scotland vs. England
    - old German common criminal law (Feuerbach)
  - transdisciplinary
    - torts
    - contracts
    - property
    - victim compensation

- insurance
- doctrinal significance (see [Panel 2](#))
  - jurisdiction
    - Native American law
    - military law
  - general part: negligence, intent, causation, lawfulness, sentencing
  - special part: larceny, mail fraud

## 2. Context/Function (Compare What For?)

- reform
  - MPC
  - Germany (1905-09 collection)
  - Ethiopia
  - Israel
  - China
- theory
- Jescheck, Fletcher, etc. etc.
  - comparison or assumption of universality (theory)?
- occupation/imperialism
  - India (Macaulay)
  - Canada (Stephen)
  - Namibia (Naucke)
  - Baden (Napoleon)
  - comparison or assumption of universality (power)?
- international criminal law
  - Rome Statute
  - Europe
  - Latin America
  - Scandinavia
- eaching
  - comparative perspective on domestic law (see [Panel 2](#))

## 3. Sample Issues (see [Panel 2](#))

- general part
  - group criminality
  - intoxication
  - definition/justification/excuse
- special part
  - white collar/money laundering

- euthanasia
- abortion
- sentencing
  - death penalty
  - guidelines
  - day fines/imprisonment
  - cf. correctional/execution law
- Rome Statute
  - e.g., mens rea, complicity, inchoacy

## Bibliography

- American Series of Foreign Penal Codes (English translations of foreign criminal codes, now published by W.S. Hein)
- [Buffalo Criminal Law Center, "Criminal Law Resources on the Internet"](#) (collection of materials and websites on comparative penal law)
- Dubber/Kelman, [American Criminal Law: Cases, Statutes, and Comments](#) (2005) (casebook with extensive comparative materials) (for examples, see [Panel 2](#))
- Fletcher, *Basic Concepts of Criminal Law* (1998) (introductory textbook with broad comparative perspective)
- Frase, *Main-streaming Comparative Criminal Justice: How to Incorporate Comparative and International Concepts and Materials into Basic Criminal Law and Procedure Courses*, 100 W. Va. L. Rev. 773 (1998)
- Lowenstein, *Materials on Comparative Criminal Law as Based Upon the Penal Codes of Ethiopia and Switzerland* (1965)