

Introduction: Comparative Criminal Justice and the Challenge of Globalisation

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The theme of this book is how best to compare crime and criminal justice phenomena across different cultures and societies in the light of the processes known as globalisation. In this introduction I shall first say more about why this is such a hot topic and then offer a brief summary of the contributions offered in this book. In an afterword, at the end of the book, I shall then discuss at greater length some of the issues that emerge in the various chapters, and the way they advance an agenda for further research in this field. (Throughout this volume there is an inconsistency in the spelling of 'globalisation'. This has been kept as it illustrates yet another example of the failure of globalisation to lead to homogeneity.)

Beyond Comparative Criminal Justice?

Traditional studies of comparative criminal justice accept the boundaries that frame the nation-state system and devote themselves to explaining differences in national laws, ideas and practices across different jurisdictions. On the other hand, most studies of the best ways to respond to supposed transnational threats or to spread human rights usually pay little attention to the difficulties of comparative enquiries except to lament the obstacles created by difference. This leads to a series of questions. How far does it still make sense to think about criminal justice systems in terms of separable national jurisdictions at a time of global links at the level of crime threats and criminal justice responses? In what ways do the nation state or other more locally-based justice practices shape or resist 'global' trends? To what extent is a global 'gaze' on crime threats possible and desirable? How can such a perspective avoid the risks of ethnocentrism or relativism by which what purports to be global is in fact local? Put more generally, to what extent can and should globalisation be taken into account in studying criminal justice comparatively (and what might comparative work have to teach students of globalisation)?

Comparative criminal justice textbooks and readers reveal considerable uncertainty about how to integrate the effects of globalisation into traditional

classificatory and descriptive schemes. Material that fits awkwardly into the normal comparative paradigm is sometimes relegated to a separate book (Reichel, 2007), to an early chapter (Reichel, 2008), or a closing one (Dammer, Fairchild and Albanese, 2005). Titles such as Winterdyk and Cao's *Lessons from International/Comparative Criminology/Criminal Justice* also signal that a variety of related topics are being dealt with – but do not say how, if at all, they may be connected (Winterdyk and Cao, 2004). In their important recent edited collection, Sheptycki and Wardak distinguish 'area studies', 'transnational crime issues' and 'transnational control responses' (Sheptycki and Wardak, 2005). But they themselves admit that more needs to be said about when our account of a country's criminal justice system should focus more on internal factors or on external influences. It may be plausible that the account of criminal justice in Saudi Arabia in their book treats the country as autonomous (though more could have been said about its pan-Islamic mission). But, as they themselves admit, it is less obvious why the chapter on South Africa focuses mainly on internal developments whereas the chapter on West Africa is all about its vulnerability to the outside world.

The crux of the problem discussed in this volume comes out particularly clearly in one of the most innovative recent collections of published papers in the field. In their edited book – *Global Criminology and Criminal Justice* – Nick Larsen and Russell Smandych explain that the 'cross-cultural study of crime and justice has evolved from a "comparative" or "international" approach to what is now increasingly referred to as a "transnational" or "global" approach to crime and justice. The effects of rapid globalisation have changed social, political, and legal realities in such a way that comparative and international approaches to crime and justice are inadequate to capture the full complexity of these issues on a global scale'. In particular they draw attention to 'global trends in policing and security, convergence and divergence in criminal justice and penal policy, and international criminal justice, war crimes and the global protection of human rights' (Larsen and Smandych, 2008: xi).

But Piers Beirne, in his foreword to the collection, warns against going too far down this road. He concedes that 'globalisation and transnational crime do indeed tend to blur the relatively distinct boundaries and mobilities that exist between nations and between sovereign territories. It is thus increasingly moot whether it makes sense to talk of crime in "Russia" or in "India" or in "Northern Ireland" or in the "USA"' (Beirne, 2008: ix). But he also argues that 'comparative criminology still has a vital role to play, both in its own terms and also adjacent to global criminology and as one of its key constituents. The question of how globalisation and transnational crime affect different societies – similarly or differently, both similarly or differently at the same time, or somewhere in between – is first and foremost a comparative one' (ibid). For example, he sees a valuable role for comparative criminology in identifying which (failed) states are more vulnerable to the penetration of transnational organised crime – which he identifies as places where there are corrupt politicians, weak controls, lengthy borders and so on.

Francis Pakes, the author of a leading student text in the subject (Pakes, 2010a), has also felt the need to ask recently whether comparative criminal justice is now

passé. The subject, he worries, 'is in the process of losing its relevance. Simply put, the reasoning is that the world has changed and comparative criminology has insufficiently changed with it. The charge against comparative criminology is that it tends to compare and contrast phenomena in distinct cultures or jurisdictions and that, by doing so, diffuse interrelations and complications brought about by globalisation are ignored or understated' (Pakes, 2010b: 17). Pakes cites Gregg Barak who argued some years ago that global criminology will supersede the field of what we currently think of as 'classic' comparative criminology and that before comparative criminology gets its act together we will have moved on to doing international and transnational criminology. Katja Aas, the author of a superb recent introduction to 'crime and globalisation', thinks that we already there. As she puts it, 'one can no longer study, for example, Italy by simply looking at what happens inside its territory, but rather need to acknowledge the effects that distant conflicts and developments have on national crime and security concerns and vice versa' (Aas, 2007: 286). Not surprisingly, therefore, she devotes little energy in her textbook to problems of comparing individual countries and instead seeks to show us the complex processes by which the 'global' and 'the local' are intertwined.

Pakes, for his part, urges us not to embrace a 'vision of comparative criminology being abandoned as if it were a ghost town after the gold rush'. The comparative method will remain an influential tool in inquiries involving transnationalisation, globalisation, crime and control. That, however, does not mean that the comparative method does not need to cope with the new objects of enquiry (Pakes, 2010b: *ibid.*). His own answer to the challenge of globalisation is to argue that, strictly speaking, the comparative approach is just a matter of methodology whereas globalisation is an 'object of study' (Pakes, 2010b: 18–19).¹ Globalisation, he says, concerns the 'what' not the 'how', describing something taking place in the world such as the trafficking of illegal goods – or people. Hence there cannot really be any contradiction.

But Pakes admits that the term globalising criminology can also be used as if it related to methodology and he therefore draws a further distinction between two senses of global criminology, that are 'subject to conceptual confusion'. "'Strong" global criminology', he claims, 'should probably take the world as its unit of analysis'. It might address questions such as the relation between climate change and civil unrest, transgressions and control. Here, 'global' denotes the object. In contrast, globalised criminology frequently refers to relations: those who advocate it frequently argue that we need to take the interconnectedness of the world into account. As this suggests, the question is still open of whether a globalised approach also implicates a change of methodology. It is also becoming more difficult to maintain a line between method and object once we engage in 'second' or even higher order comparisons (Nelken, 2007).

¹ '(S)ome of the confusion of the state of comparative or international criminology stems from a confusion of what they denote. Comparative is about method; whereas transnational, international and global is about object or subject matter' (Pakes, 2010b *id.*).

Comparative research, in such enquiries, is not just the comparison of ‘objects of study’ but also the effort to grasp how criminal justice actors – and ordinary citizens – understand what is being done elsewhere (and how they shape their own practices in its light).

Whatever the merits of Pakes’ solution (and the question of disciplinary boundary drawing will come up again in the course of this volume), it is remarkable how much the rise of interest in global criminological issues² has so far gone hand in hand with a continuation of more traditional type of comparative enquiries.³ To some extent these increasingly arbitrary separations are the result of the differing aims and audiences as well as the difficulties of cross-cultural research and the vagaries of academic compartmentalisation. Nor should it be assumed that comparative criminal justice and the globalisation of crime are coterminous. But trying to keep comparative and globalisation issues strictly apart has little to recommend it – other than to allow for the continuation of comparative ‘business as usual’. It may seem at first sight that there is no obvious connection between the details of lower criminal court procedure and the problem of how to combat various threats posed by serious transnational crime. But powers given to tackle high level threats may in fact end up being used to tackle more everyday police work (Sheptycki, 2002). On the other hand, even the ability to continue to mind one’s own business in criminal justice matters at a time of globalisation requires explanation.

A Summary of the Chapters

The chapters included here derive from an international workshop held in Utrecht University in May 2008 in connection with the inaugural lecture that I delivered on

2 As examples of recent textbooks, collections and readers see Crawford (ed.) (2011); Dammer, Fairchild, and Albanese (2006); Drake, Muncie and Westmarland (eds) (2009); Larsen, and Smandych (2008); Muncie, Talbot and Walters (eds) (2009); Nelken (2010); Pakes (2010a); Reichel (2008); Sheptycki and Wardak (eds) (2005); Tonry (ed.) (2007); Winterdyk and Cao (eds) (2004); and Winterdyk, Reichel and Dammer (2009). On cross-national perspectives on crime and criminal justice see Newman (1999); Van Dijk (2007); and Van Dijk, Van Kesteren and Smit (2007). On cross-national borrowing see e.g., Melossi, Sozzo and Sparks (eds) (2011); Newburn and Sparks, (2004); Jones and Newburn (2006); and Nolan (2009). On criminal justice and criminal procedure see Findlay (2008); and Vogler (2005). Specific debates in which comparative criminal justice issues have become central include that on the alleged ‘punitive turn’, e.g. Cavadino and Dignan (2006); Lacey (2008); Pratt et al., (eds) (2005); Wacquant (2009a, 2009b); and Whitman (2005). But there are also other examples, such as the attempt to understand why some places resist the abolition of the death penalty, see e.g. Johnson and Zimring (2009); and Hood (2001).

3 See, for example, descriptive comparisons of juvenile justice in different jurisdictions, e.g. Muncie and Goodson (2006) or cross-national collaborative efforts to test hypotheses on the organisational variables that affect police integrity and corruption (see Klockars et al., 2004).

13 June as the Wiarda Professor that year.⁴ Papers were given by John Braithwaite, David Downes, Chrisje Brants, René Van Swaaningen and David O. Friedrichs, and this collection includes a revised version of my inaugural lecture itself as well as the papers delivered at the workshop (with the exception of that by John Braithwaite).⁵ In addition, Susanne Karstedt, John Muncie, Joachim Sävelsberg and James Sheptycki, all well-known comparative scholars, kindly agreed to add their contributions to this collection. In order to bring out the different aspects of the overlap between comparative criminal justice and globalisation that emerge from these different contributions this book has been organised into three sections. The first focuses on approaches to comparative criminal justice, the second on the globalisation of crime and criminal justice, and the last on the agenda for further exploring their interrelationship.

In the opening chapter of the first part, entitled ‘Making Sense of Punitiveness’, David Nelken sets out his criticisms of much recent work in the debate over why there has been an allegedly widespread (global) ‘punitive turn’. Taking as his starting point a recent book by Cavadino and Dignan on the link between neo-liberalism and incarceration rates, and drawing on Italian illustrations, Nelken argues for the need to balance explanatory and interpretative enquiries. He also underlines the difficulties of getting beyond ethnocentric ideas of what does and should connect punishment and society. In the next chapter – ‘Comparative Criminology, Globalisation and the “Punitive Turn”’, David Downes takes up some of the same issues as he seeks to explain why the use of prison went up in the Netherlands. He also considers other cases such as England, on the one hand, and Canada on the other, that do not fit with the thesis that prison rates are lowest where there is strong welfare provision. In the concluding contribution to this part, ‘Comparing Criminal Process as Part of Legal Culture’, Chrisje Brants discusses the difficulties of interpreting different systems of criminal procedure. She offers in particular an examination of what produces miscarriages of justice in civil law and common law systems.

4 The Wiarda chair is an annual part-time professorship offered by Utrecht law faculty to visiting professors on the basis of invitations extended on a revolving basis by the different Institutes of the faculty. My chair was held at the Willem Pompe Institute of Penal Law (<http://www.uu.nl/faculty/leg/en/organisation/schools/schooloflaw/organisation/departments/willempompeinstitute/research/Pages/default.aspx>). The Institute is famous for the part it played in creating the climate of tolerance described by David Downes in his book *Contrasts in Tolerance* and it continues to be a key centre for criminological and penal research. For their kind invitation, and their hospitality during the year (and their help in organising the workshop), I would like to thank in particular Professor Stijn Franken (then head of the Institute) and Professor Chrisje Brants, as well as Wilma Puper and Lousie van Tetterode of the university’s administrative staff.

5 John Braithwaite’s presentation was based on his major current project on peacekeeping, an issue that comes up again in Karstedt’s chapter on ‘failed states’. He had indicated when accepting the invitation to the workshop that he would be unable to offer a chapter for this volume.

The second part of this book collects those chapters that begin from the opposite side and describe new globalisation processes and their implications for national and local systems of criminal justice. Joachim Savelsberg in his chapter, 'Globalisation and States of Punishment', explains the way global norms, scripts, and institutions emerge regarding punishment and how nations process global scripts and challenges in light of local institutions and cultures. He advocates a synthesis in terms of the process-turn of globalisation theory so as to account for the dialectic between the global and the local. In another wide-ranging chapter, 'On Globalisation and Exceptionalism', John Muncie seeks to unravel the complexities of national and international criminal justice policy formulation, reform and implementation. Again picking up on the neo-liberal convergence and cultural divergence debate he focuses on the concept of exceptionality. In this way his chapter also links with that by Susanne Karstedt who in her chapter 'Exit: The State. Globalisation, State Failure and Crime', focuses on the exceptional cases of failed states which have lost their monopoly of force.

The chapters in the last part reflect on the disciplinary issues that arise when thinking about how best to study the connections between comparative criminal justice and globalisation. Van Swaaningen, in a comprehensive survey of what he calls 'Critical Cosmopolitanism and Global Criminology', argues that we need to move away from 'methodological nationalism', and argues that social justice and human rights, despite the different shape they take in different realities, are universal enough to function as a normative standard for a critical cosmopolitan criminology. In his chapter, 'Transnational and Comparative Criminology Reconsidered', James Sheptycki pleads for globalisation studies that are sensitive to local conditions and their consequences for local penal regimes. In the closing chapter, 'Comparative Criminology and Global Criminology as Complementary Projects', David O. Friedrichs distinguishes the remits of comparative criminology, globalising criminology and international criminology, applying his argument to crimes committed by international financial institutions.

Each of the contributions to this collection represent a stage in their author's thinking through a variety of problems relevant to this collection even if they have special resonance for the sections in which they have been placed. Given the fact that they address common questions there are also inevitably some areas of overlap within the sections (as well as between them). Points of agreement and disagreement with respect to explanatory and interpretative ways of doing comparative research can be found in the chapters by Nelken, Downes and Brants. Different priorities for the study of globalisation and for explaining the emergence of 'exceptional' cases in those by Savelsberg, Muncie and Karstedt. Van Swaaningen, Sheptycki and Friedrichs seek out different literatures in their quest to enrich the study of globalisation of crime and criminal justice disciplinary boundaries. Put together, they map some (if by no means all) of the issues that will need further investigation in the coming years.

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