
IS COMPARATIVE RESEARCH ON QUESTIONS OF CRIME AND JUSTICE STILL FEASIBLE AND USEFUL IN THE WAKE OF GLOBALIZATION?

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I. Introduction

Globalization, as we understand, is the increasing interconnectedness of the world's economies, cultures, and populations as a result of cross-border commerce in commodities, services, technology, investment, people, and information.¹ What we are focusing here is the globalization of information pertaining to crime and justice which can be termed as comparative criminal justice. The study of what individuals and organisations in various areas do - and should do - about crime problems is known as comparative criminal justice. More broadly, it investigates the connections between crime, social order, and punishment, as well as the roles of police, prosecutors, courts, prisons, and other actors and institutions in the context of various types of social control. This seems a fascinating task of globalizing the facets of crime and justice. However, at the same time it is a complex mechanism as different societies are formed of different fabrics and it would be futile to apply anything remotely related to crime and justice anywhere. For instance, marital rape which is an exception to the offence of rape is penalised in countries like United Kingdom, USA however countries like Pakistan, Bangladesh, and China still uphold the validity of this exception as they see the marriage as a sacrosanct union and the act of rape cannot be committed in a marriage.² Similarly, in countries like UK, France, Belgium the adoption of right to privacy followed by enactment of General Data Protection Regulation (GDPR)³ moved a wave across globe on the issue of data breaches and data privacy. It is then when country like India upheld Right to be

¹ Team, W. (2022, May 23). Globalization. Wall Street Mojo. Retrieved December 26, 2022, from <https://www.wallstreetmojo.com/globalization/>

² Desk, N. (2021, August 26). Marital rape is not a crime in 32 countries. One of them is India. News18. Retrieved December 26, 2022, from <https://www.news18.com/news/india/marital-rape-is-not-a-crime-in-32-countries-one-of-them-is-india-4130363.html>

³ Regulation (Eu) 2016/679 Of The European Parliament And Of The Council Of 27 April 2016

forgotten as a fundamental right and introduction of privacy law bill thereto.⁴ What the above two examples set in motion is a dilemma as to the admissibility of the comparative criminal justice system and to what limits can it be put to action. The perception of the proper function of criminal law, the use of criminal justice systems relative to other types of sanctions, the political independence of the legal system, the conduct of police, the authority of prosecutors, lay or expert involvement, the rights of victims, the use of prison or the death penalty, or the extent of "trial by media" are all areas where there are still very real differences worldwide. What can be done, if anything, to stop what seem to be barbarous local customs? Can a society effectively adopt reforms from other societies? What we are trying to discern here is that to provide with a general understanding of the advantages, challenges, and, perhaps, conclude as to feasibility how criminal justice systems operate in various settings.

II. Comparative Crime and Justice

The system of procedures, agencies, and organisations that work to maintain or re-establish social order includes the criminal justice system. The organised means by which society responds to behaviour and individuals it perceives as deviant, problematic, disturbing, threatening, unpleasant, and undesirable can be the definition of "social order". The conventional institutions like the police, courts, and prisons form major part of criminal justice.⁵ Today, things are evolving quickly. Modern comparative law methodology, one that uses an integrative approach rather than a contrastive one, is now required by new international dynamics, which drive criminal justice into the area of studying the commonalities between criminal legal systems rather than their differences.⁶ The study of criminal justice systems from a comparative viewpoint is the main focus of comparative criminal justice policy. It examines criminal justice systems from various jurisdictions in order to highlight their benefits and shortcomings. These mechanisms may or may not support or obstruct the search for justice.

Comparing is difficult. The academic endeavour of comparative criminal justice necessitates a thorough study of not just the individuals participating in the criminal justice system but also the society that serves as these actors' social context. History is frequently crucial for

⁴ Panday, J. (2017, October 11). India's Supreme Court upholds right to privacy as a fundamental right-and it's about time. Electronic Frontier Foundation. Retrieved December 26, 2022, from <https://www EFF.org/deeplinks/2017/08/indias-supreme-court-upholds-right-privacy-fundamental-right-and-its-about-time>

⁵ The Criminal Justice System. The Crown Prosecution Service. (n.d.). Retrieved December 26, 2022, from <https://www.cps.gov.uk/about-cps/criminal-justice-system>

⁶ R. Schlesinger, 'Past and Future of Comparative Law', (1995) 43 American Journal of Comparative Law 477.

understanding how certain arrangements came to be in the first place. In order to comprehend how criminal justice systems operate in connection to one another and how the many components of systems fit together, we must contextualise criminal justice systems. Additionally, we need to determine how criminal justice systems mesh with a nation, a culture, or a legal heritage. As Fairchild and Dammer put it:

“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.” (Fairchild and Dammer, 2001, p. 9)

Tracing the history of comparative criminal justice systems reveals that A transnational substantive and procedural criminal law was created as a result of the establishment of temporary international tribunals - Yugoslavia, Rwanda, Sierra Leone, and Lebanon and later the establishment of the permanent International Criminal Court in 2002 which intended to deal with genocide, crimes against humanity, and war crimes. This needed a close examination of all of the international community's rules and legal customs. Thus, in order to create the norms for the new international organisations, it became crucial to compare various legal systems in search of parallels as well as disparities. As a result, comparative criminal justice finally embraced an integrated methodology.⁷ Comparative criminal justice has also moved beyond the appearance of being a purely theoretical field with the establishment of the international criminal tribunals. This is especially true when one considers that the ICC applies not only "the Statute, Elements of Crimes and its Rules of Procedure and Evidence" or, in second place, "applicable treaties and the principles and rules of international law," but also, "failing that, general principles of international law".⁸ Therefore, in order to determine the relevant legislation while determining a case, the ICC itself must do an integrated comparative search.

What can be seen is that comparative criminal law has a lengthy history, but only in the extremely narrow sense of researching other countries' penal codes. Studying foreign criminal laws for reform reasons has occasionally resulted in more or less effective legal transfers. Other

⁷ Grande, Elisabetta. (2012). Comparative Criminal Justice. 10.1017/CBO9781139017206.012.

⁸ Article 21 of Rome Statute of the International Criminal Court: International Criminal Court Forum. The International Criminal Court Forum. Retrieved December 26, 2022, from <https://iccforum.com/rome-statute>

times, they have been researched in order to get familiar with the ideas and classifications common to a distinct and esteemed legal culture, such as the example of Marital Rape Exception given in introduction. But why do we need to delve into such a thing as comparative criminal justice. To be clear, many comparable initiatives have more reasonable and modest goals. These comparison studies are typically more useful and frequently motivated by current problems. There is frequently a domestic issue that has to be looked at. That can make someone want to go elsewhere for examples of how the identified issue is solved elsewhere. Such studies offer significance to household agreements in respect to arrangements made elsewhere. Contrarily, the relativist viewpoint would contend that arrangements should be given significance in their own context and that we shouldn't assume that what works in one situation would work in another. Therefore, the concept of policy transfer will frequently be repugnant to the ethnographer. Research in comparative criminology reflects these issues.

III. Positive Impact of Comparative Crime and Justice

Conducting comparative or transnational research has four major advantages. All are related to the approach's potential to broaden our intellectual boundaries and increase our understanding of how crime and justice systems work. The first two advantages have immediate and direct significance for policymakers and practitioners. The latter two benefits are more concerned with theory building regarding crime and justice, and they may have policy consequences that are not immediately apparent.

With period of time what could be understood is that to fight the crime and reach the ends of justice that some of the major offences, say, terrorism is international and inextricably tied to transnational criminal activity. The more we understand about transnational crime, the more equipped we will be to combat international terrorism. We need to understand how criminal and terrorist organisations support themselves and use our incapacity to correlate and evaluate cross-border illegal activities. We must arrange our judicial systems so that we can better detect, investigate, and seize people who pose a threat to global security. National intelligence agencies have been doing these actions for some time, but academic scholars have just recently begun to investigate the difficulties. Academic research has an advantage over national intelligence assessments in that scholars look for the cultural foundations, organisational structures, and social processes that underpin any specific criminal or terrorist group in order to gain a thorough understanding of their behaviour and possibly generalise our findings to

similar groups. Thus, comparative study engages to understand and control or reduce the threatening behaviour thereto.

Second, comparative study gives a comprehensive grasp of how judicial systems throughout the world function. On a variety of fronts, this understanding has immediate and direct policy ramifications. First, by knowing how different systems function (for example, common law vs. civil code vs. religious), one may propose effective links between those systems for more effective worldwide crime and terrorist control. Second, knowing how justice systems function and evolve provides a foundation for assisting developing nations in advancing their justice systems in order to better deal with internal and international crime concerns (as the United States is now doing in countries of the former Soviet Union). Finally, by researching justice systems across the world, we may begin to compile a list of "best practises" in criminal justice.

Thirdly, Cross-national and cross-cultural research is a key strategy for demonstrating if criminology's assertions go beyond local realities, yet it falls short in this regard because presumptive starting places are also influenced by other variables, such as gender, society. However, comparative research provides several additional potential advantages (and drawbacks) that go beyond merely expanding the set of possible factors that might be employed in developing criminological explanations. We can get closer to a comprehensive understanding of the relationship between crime and its control by attempting to comprehend one situation in the context of another. Additionally, this might help us understand why changes that are restricted to those who develop from inside the same community frequently tend to perpetuate the issues they are meant to fix - exactly because they come from the same culture or, it could provide insight into the causes of corruption and anti-corruption cycles in a particular community. For instance, the legality of same-sex unions extends throughout the United Kingdom. Due to the devolved nature of UK law, marriage was recognised and conducted in England and Wales beginning in March 2014, Scotland beginning in December 2014, and Northern Ireland beginning in January 2020. The very same law doesn't seem to be adopted in many countries in Asia due to their strong belief it to be against the order of nature. Thus, this is a classic example of the transnational law being beyond local reality.

Finally, this comparative research provides models for law reform emulation. As an illustration, consider how the Canadian Conservative government emulated US policy by introducing a number of legislations requiring mandatory minimum sentences (Doob and Webster, 2014).

Sometimes it is technocratic, even idealistic, as when policymakers in England, Scotland, and the Netherlands created community service programmes to divert offenders from prison using Californian models, or when restorative justice programmes were created around the world using precedents from other places (Braithwaite, 2001; Tonry, 1998)

IV. Impediment to Comparative Criminal Justice

We must recognise that definitions of crime as well as understandings of crime can vary significantly. One in three sex offender victims in the UK were found to not view their offence as criminal but rather as "something that occurs" (Walby and Allen, 2004). That discovery is alarming. Like this, victims may not recognise crimes like stalking as such. Because of this, it is doubtful that such offences would be consistently reported in official reporting, let alone self-report statistics. Comparatively speaking, these issues are constantly made worse by the fact that offences don't necessarily have the same cultural connotations over the world. It is improbable that a sexual offence in Europe would be treated the same way as the same physical act in Asia. That requires sensitive comparative investigation.

Lack of adequate funding is also one of the impediments to comparative research. Any research involving more than one country will be expensive, whether it uses archive data, observations, interviews, or survey administration. As a result of our War on Drugs, the United States government began to sponsor comparative and international research. This funding was intended towards transnational investigations of narcotics and money laundering, as well as research that benefited individual nations' investigative and apprehension skills.⁹ Funding for comparative and transnational crime and criminal justice research is also available from the European Council and the United Nations. The Council, for example, is now sponsoring four-year research (located at the University of Utrecht in the Netherlands) on police human rights practises in four countries: Brazil, Mexico, Costa Rica, and Jamaica. However, such funding is not adequate when it comes to global level.¹⁰

Another impediment to such research is that the access to the subject matter of the research could be violation of the privacy laws on such country. Secure sensitive and confidential

⁹Bennett, Richard. (2004). Comparative criminology and criminal justice research: The state of our knowledge*. Justice Quarterly. 21. 10.1080/07418820400095721.

¹⁰ Netherlands Institute of Human Rights (SIM) (2021) Utrecht University. Available at: <https://www.uu.nl/en/research/netherlands-institute-of-human-rights-sim> (Accessed: December 27, 2022).

governmental data (not necessarily classified material), interviewing members of sensitive institutions, seeing clandestine operations, or acquiring access to unlawful groups and/or activities are all examples of access to conduct the research. Although access issues are not confined to comparative research (the same restricting constraints are faced in domestic criminal justice research), they are typically more severe in comparative contexts, particularly in the developing world. Governments dislike being embarrassed. Crime statistics, as well as information about the misbehaviour and corruption of government workers or agencies, can cause worldwide humiliation. What does a government stand to gain by providing an outsider access to critical areas of operations over which it likely has little control? Access is based on confidence in the researcher, which takes time and work to build and maintain.

Language is another hurdle to comparative study. English proficiency might be difficult for non-native English speakers. The inability to read the literature of a nation in which one intends to do research is a considerable disadvantage, even when using historical data. For example, INTERPOL publishes crime statistics for a select group of countries. The statistics are numerical and are classified according to the country that willingly contributes them. INTERPOL's basic categories may not always sufficiently capture the illegal behaviour outlined in each country's penal code. More importantly, because the researcher is unable to read and comprehend the nation's penal procedural law, he or she is uninformed of what the data truly reflect. For example, can an officer arrest based just on probable cause, or does the officer require an arrest warrant prior to arrest? The response might have a significant impact on the arrest statistics reported to INTERPOL.

When performing field research that includes interviews and interaction with field subjects, the situation becomes much more complicated. Lack of skill in the participants' language or dialects (particularly their idioms) often prevents study or requires data collection through the filter of a translator/informer. The latter is possible, as evidenced by Bayley's (1991) work with Japanese police. The employment of translators, however, is expensive, and unless the researcher is intimately connected with the culture, the researcher will not necessarily know the relevant questions to ask or how to understand the respondents' translated comments. Due to language limitations, researchers are forced to choose national samples depending on the language spoken or to collaborate with other researchers who are fluent in the languages of the nations tested.

Last hurdle that I see is the dependability and quality of comparative crime and justice data. Kalish (1988) analyses data dependability difficulties and finds that official crime statistics should be utilised with extreme caution and that cross-national comparisons or rankings of nations are invalid. Bennett and Lynch (1990) agree that direct comparisons or rankings give variable results depending on the data source, but they show that when such data are utilised for explanatory purposes, such as regression analysis, the findings are quite comparable regardless of the data source employed. The validity and reliability of comparative victimisation data are additional issues. Although Alvazzi del Frate, Anna & Van Kesteren, John. (2004) did an admirable job of arranging the gathering of victimisation data worldwide, data comparability remains doubtful due to variances in sampling and survey methodologies across nations. Even when the same survey instrument is used in two or more countries, the data produced is not comparable (Bennett & Flavin, 1994).

Despite the fact that these challenges to comparative and international research are genuine and widespread, motivated researchers have acquired money, gained access, coped with language barriers and concerns of dependability and validity, and found appropriate publication channels. What needs to be seen is if the growing interest in comparative and transnational research will grow to the point where it becomes a mainstream area in criminology and criminal justice in the future.

V. Conclusion

It is evident that comparative criminal justice research has a rich tradition that has achieved significant progress throughout the years. The advantages of a comparative approach may be especially relevant in the current period of globalisation, which has brought the world's countries closer together. Furthermore, as seen by the numerous instructional textbooks presently accessible, a comparative perspective has proven beneficial for both research and teaching (see Dammer and Reichel, 1997; Deflem, 1998; Fairchild 1993; Reichel, 1999; Terrill, 1997). Comparative criminal justice research, by providing clarity in method and presentation, may also aim to be valuable for policy concerns that confront countries in terms of crime. Criminal justice systems which varies from culture to culture due to differences in beliefs and historical events. The essence of criminal law is explained and better understood in this book through an examination of historical and political trends in many nations. Criminal law is not a divine design, and it does not originate or embody the norms, beliefs, values, and standards

of the people in their whole, as consensus theorists argued (Durkheim 1933; Parsons 1951). Instead, in many respects, current criminal law reflects the attempts of people in power to defend their own interests through legislation (Quinney 1975; Chambliss and Mankoff 1976; Ebbe 1985b)

Every sort of comparative study has greatly improved our understanding of crime and justice. Descriptive studies have helped us narrow our search for crime trends throughout the world by alerting us to disparities in the realm of justice. Analytic research has improved our understanding of the causes of crime and the correlates of criminal justice functioning, resulting in empirically supported policy solutions. Finally, transnational research has demonstrated that crime is not restricted by national borders and that national social institutions may jointly impede or increase criminal behaviour. If comparative and transnational studies are to become a mainstream field in criminology and criminal justice rather than a passing fad, a concerted effort must be made to encourage increased participation of professional organisations, the development of a new generation of researchers and research consumers, and a coordinated strategy to increase governmental, foundation, and other funding. We must meet the promises of comparative research by demonstrating that comparative research studies increase our understanding of the influence of culture, family, religion, and other social institutions on crime. We need to remove the barriers to transnational research and investigate how transnational criminal enterprises, such as terrorism, operate beyond national borders. Finally, we must accelerate the application of comparative approaches in criminal justice research by demonstrating that police, judicial, and penitentiary systems differ greatly due to their national setting but also have significant commonalities. Without these initiatives, comparative and international research will continue to be a niche field of study.

I believe that as business, economics, politics, and cultures continue to globalise, there will be a greater demand for global criminology and criminal justice study. Comparative research will gain acceptance and reputation in all typology areas as demand develops. The establishment of International Criminal Court provided a unique chance for comparative and transnational research to demonstrate its relevance and promise in today's society. This subject of research will take its appropriate place as a mainstream discipline in criminology and criminal justice with the help of academics, practitioners, and funding organisations.

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