

ARTICLE

ECHOES ACROSS BORDERS:
COMPARATIVE CRIMINAL LAW AND
JUSTICE IN THE US LANDSCAPE

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Despite its substantial promise to deepen understanding of domestic criminal laws and their operation, offer alternative approaches to policy challenges, and foster cross-cultural dialogue, comparative criminal law and justice remains only modestly visible in the United States—both in academic discourse and policymaking circles. After tracing the trajectory of comparative criminal law and justice in the United States and examining the primary factors contributing to its marginal status in legal scholarship and reform debates, this Article investigates the reasons for its limited prominence through an analysis of findings from a web-based survey of faculty specializing in criminal law, criminal procedure, and criminal justice at ABA-accredited law schools. The survey assessed how US-based scholars engage with comparative perspectives and how they evaluate their relevance to current debates and reform efforts across US jurisdictions. In contextualizing and discussing the findings, the Article offers original insights into the notion of “American penal exceptionalism,” highlighting how knowledge of foreign criminal law, procedure, and penal policy is perceived and applied within US legal education, research, and policymaking.

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While responses reflect a generally favorable view of comparative criminal law, this support often remains aspirational rather than operational. The analysis identifies several structural and cultural barriers to the effective incorporation of comparative approaches, including a dominant focus on the decentralized structure of US criminal law, the complexity of domestic criminal justice institutions, judicial skepticism toward non-US legal sources, and a belief in the uniqueness of the American criminal legal system. Ultimately, the Article argues that although comparative criminal law continues to struggle for traction, it remains an imaginative and valuable enterprise. The effort it demands is considerable, and its reception may be uneven, yet its potential to inform meaningful reform across US jurisdictions is significant. At a time of growing demands for systemic change, engaging seriously with comparative criminal law is not merely worthwhile—it may, in fact, be indispensable.

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I. INTRODUCTION

In the United States, comparative criminal law and justice remains a significantly underdeveloped area within legal scholarship and academic discourse. The term refers broadly to normative, empirical, and reform-oriented research focused on substantive criminal law, criminal procedure, and the institutions and practices of penal systems in different jurisdictions. Unlike the narrower field of comparative criminal law, which emphasizes the study of legal rules across countries, comparative criminal law and justice also encompasses the functioning of criminal justice systems—their processes, key actors, and institutional frameworks.¹ Despite its considerable potential to enhance understanding of domestic legal systems, reveal alternative

1. See Kai Ambos, *The Current State and Future of Comparative Criminal Law—A German Perspective*, 24 UCLA J. INT'L L. & FOREIGN AFF. 9, 11 (2020) (noting that “comparative criminal law is a flexible concept, adapting to the aims and purposes of the comparison, and thus focusing on a ‘moving target’ . . .”; on the other hand, “comparative criminal justice . . . which is particularly widespread in the Anglo-American world, is even more general and markedly more empirical than is comparative law, enquiring how ‘people and institutions in different places’ deal with ‘crime problems.’ Its focus usually centers on sentencing and the prison system, as well as the actors involved.”) (citations omitted). See also Nicola Lacey, *Comparative Criminal Justice: An Institutional Approach*, 24 DUKE J. COMP. & INT'L L. 501, 501 (2014) (making a case for “studying comparative criminal law and criminal justice with close reference to the distinctive cultural contexts and the particular institutional settings in which rules and policies are developed and implemented in different countries.”); Andrew Ashworth, *Criminal Justice, Not Criminology?*, in WHAT IS CRIMINOLOGY? 343 (Mary Bosworth & Carolyn Hoyle eds., 2011) (“‘criminal justice’ is chiefly concerned with the institutions of the criminal justice system, and the roles and practices of those who work within them,” while “the legal rules and guidelines that those working within the criminal justice system are supposed to apply” fall within the domain of criminal law and criminal procedure. Nonetheless, the two are clearly interconnected.). Given this definitional premise, and for the sake of brevity, the terms “comparative law” and “comparative criminal law” will also be used throughout the article, even though “comparative criminal law and justice” is the broader concept employed here.

approaches to pressing issues, and foster cross-cultural insight, this field continues to occupy only a modest place in US academic analysis and policy debates.

While American legal scholars have delved into various facets of criminal law theory and penal policy, the integration of comparative analysis into the discourse has been notably limited.² And this despite the United States having developed over the past fifty years a system of mass criminal punishment that is so peculiarly harsh, well beyond mass incarceration, that, one might think, would certainly benefit from external insight on how to make it more lenient and more just.³ Viewed through a global lens, the exceptional nature of the US system of criminalization and punishment and the stark contrasts with the policies and practices

2. The primary exception—importing German Criminal Law theory into the United States—remains GEORGE P. FLETCHER, *RETHINKING CRIMINAL LAW* (1978). Commenting on his work, Fletcher notes:

Writing *Rethinking Criminal Law* . . . was a gamble. No one had ever written a serious book on comparative criminal law—in English or in any other language. No one had ever addressed English-speaking readers with the argument that some other system of legal thought—espoused by a nation defeated in a major war just thirty years before—had a superior literature on criminal law and a more refined way of thinking about the structure of criminal offenses.

See George P. Fletcher, *From Rethinking to Internationalizing Criminal Law*, 39 *TULSA L. REV.* 979, 979 (2004).

See also MARKUS D. DUBBER & TATJANA HÖRNLE, *CRIMINAL LAW: A COMPARATIVE APPROACH* (2014); Markus D. Dubber, *Theories of Crime and Punishment in German Criminal Law*, 53 *AM. J. COMP. L.* 679 (2005); MARKUS D. DUBBER, *The Promise of German Criminal Law: A Science of Crime and Punishment*, 6 *GERMAN L.J.* 1049, 1059 (2005) (noting that, unlike the system of German criminal law, in Anglo-American jurisdictions “a criminal law doctrine is only as good as a jury instruction.”).

3. On mass incarceration, mass probation, mass parole supervision, and mass conviction leading to far-reaching discrimination through collateral consequences, see, respectively, Kristen M. Budd, *Editorial Introduction*, in *BEYOND BARS: A PATH FORWARD FROM 50 YEARS OF MASS INCARCERATION IN THE UNITED STATES* vii (Kristen M. Budd, David C. Lane, Glenn W. Muschert, & Jason A. Smith eds., 2023) (“The year 2023 marks five decades since the United States embarked on a failed experiment by using mass incarceration as the primary strategy to control crime and the communities experiencing it.”); Michelle S. Phelps, *Mass Probation: Toward a More Robust Theory of State Variation in Punishment*, 19 *PUNISHMENT & SOC’Y* 53 (2017) (discussing the rise of mass probation in the United States); Dirk van Zyl Smit & Alessandro Corda, *American Exceptionalism in Parole Release and Supervision: A European Perspective*, in *AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT* 272 (Kevin R. Reitz ed., 2018) (describing the significant differences between United States and European parole supervision rates, policies, and practices, emphasizing the punitive nature of the American approach); Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 *U. PA. L. REV.* 1789 (2012) (examining the widespread collateral consequences of convictions and their role in perpetuating social exclusion).

of other Western nations are apparent.⁴ However, as Michael Tonry observes, “looked at from inside the United States, it is difficult to see how different the American system of punishment is from those in other Western countries.”⁵ As he explains, “[m]ost practitioners and informed scholars know that the United States has the highest imprisonment rates in the world and is the only Western country to retain and use capital punishment, but that is only the beginning.”⁶

The current knowledge gap and seeming lack of interest in comparative perspectives appear to be due primarily to parochialism and inward-looking attitudes. As Frank Zimring effectively put it:

The American lack of enthusiasm for comparative work is as easy to understand as it is difficult to justify. The United States is so big, after all, and so diverse that any values that might flow from comparing different environments and systems can be realized by comparing South Dakota with South Carolina. And many observers feel that transnational comparisons are not merely unnecessary but also pointless because the United States is such a singular place that little can be gained from comparing American uniqueness with foreign circumstances or practice. In this view, America can only be compared with itself.⁷

While the United States exhibits profound regional disparities in penal outcomes—with the South consistently ranking as the most punitive and the Northeast as comparatively less so⁸—these

4. See Kevin R. Reitz, *American Exceptionalism in Crime and Punishment: Broadly Defined*, in *AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT* 1–50 (Kevin R. Reitz ed., 2018); see also MATHIAS SIEMS, *COMPARATIVE LAW* 202–05 (3d ed., 2022) (summarizing the scholarly discussion of recent decades on the differences in punishment policies and practices between the United States and Europe).

5. Michael Tonry, *Looking Back to See the Future of Punishment in America*, 74 *SOCIAL RESEARCH* 353, 353 (2007).

6. *Id.*

7. Franklin E. Zimring, *The Necessity and Value of Transnational Comparative Study: Some Preaching from a Recent Convert*, 5 *CRIMINOLOGY & PUB. POL’Y* 615, 615 (2006).

8. See, e.g., Franklin E. Zimring, *The Complications of Penal Federalism: American Exceptionalism or 50 Different Countries?*, in *AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT* 181–92 (Kevin R. Reitz ed., 2018) (addressing state variations in capital punishment and imprisonment); Besiki Kutateladze, *Measuring State Punitiveness in the United States*, in *PUNITIVITY—INTERNATIONAL DEVELOPMENTS. VOL. 1: PUNITIVENESS—A GLOBAL PHENOMENON?* 151–79 (Helmut Kury & Evelyn Shea eds., 2011) (analyzing variations in punitiveness across US states using forty-four indicators, including average prison

internal differences exist within a broader context of exceptionalism. Even the least punitive US states, including those in the Northeast, maintain incarceration rates, along with punitive policies and practices, that far exceed in severity those found in nearly all other Western democracies.⁹ Therefore, relying solely on domestic comparisons offers limited insight for meaningful reform.

At the turn of the century, Tonry articulated as follows the stubborn parochial attitudes in US criminal law scholarship and policy circles: “Countries have successfully patterned new practices and policies on innovations first developed elsewhere . . . Genuinely comparative and cross-national research could provide a much better and more reliable body of knowledge and is likely, as the world continually becomes smaller, slowly but steadily to accumulate.”¹⁰ However, he noted, “[f]or the present at least, the United States seems curiously impervious to good ideas from elsewhere.”¹¹

Yet, until as recently as the mid-1970s, the picture was significantly different. Not only did the United States have an imprisonment rate comparable to that of other Western nations,¹² but there was an emerging consensus that such a rate would have

sentence length, rates of life imprisonment and death penalty usage, prison conditions, and juvenile justice policies).

9. See, e.g., Prison Policy Initiative, *States of Incarceration: The Global Context 2024* (June 2024), <https://www.prisonpolicy.org/global/2024.html> (noting that, compared to other Western democracies, “even ‘progressive’ U.S. states like New York and Massachusetts appear as extreme as Louisiana and Mississippi in their use of prisons and jails.”); Alessandro Corda & Michelle S. Phelps, *American Exceptionalism in Community Supervision*, AMERICAN PROBATION AND PAROLE ASSOCIATION (APPA) – PERSPECTIVES 20, 23 (Spring 2017) (observing that “[f]or both probation and parole, the international comparisons would be even starker if not for a handful of European countries with high community supervision rates.”).

10. Michael Tonry, *Parochialism in U.S. Sentencing Policy*, 45 CRIME & DELINQUENCY 48, 63–64 (1999).

11. *Id.* at 64; see also Christopher Slobogin, *Transnational Law and Regulation of the Police*, 56 J. LEGAL EDUC. 451, 451 (2006) (observing, “Americans tend to be ethnocentrically myopic”).

12. Joshua Kleinfeld, *Two Cultures of Punishment*, 68 STAN. L. REV. 933, 937 (2016) (“By the middle of the twentieth century, a mild, rehabilitative, and individualizing penal philosophy prevailed in both Europe and America. From the late 1920s through the early 1970s, the incarceration rate in the United States was low, roughly stable, and roughly equal to what it is in Germany, France, Italy, and Spain today.”).

remained substantially stable in the decades to come.¹³ Similarly, US scholars and policymakers maintained a rather sustained interest in ideas and policies developed in other parts of the world, particularly in continental Europe and other common law jurisdictions, especially in criminal justice areas such as sentencing and corrections. However, this interest noticeably faded as tough-on-crime policies emerged and the exponential expansion of criminalization and punishment took hold.¹⁴

Predictions about the stability of criminal punishment in the United States made in the 1970s proved to be spectacularly incorrect, to say the least.¹⁵ In the decades to follow, the United States went on to become a clear outlier with regard to penal policies and practices among its Western peers at many levels, from sentencing and incarceration to supervision in the community and collateral consequences of conviction.¹⁶ This unprecedented process of steep penal intensification did not occur

13. See Alfred Blumstein & Jacqueline Cohen, *A Theory of the Stability of Punishment*, 64 J. CRIM. L. & CRIMINOLOGY 198 (1973); Alfred Blumstein, Jacqueline Cohen & Daniel Nagin, *The Dynamics of a Homeostatic Punishment Process*, 67 J. CRIM. L. & CRIMINOLOGY 317 (1977); Alfred Blumstein & Soumyo Moitra, *An Analysis of the Time Series of the Imprisonment Rate in the States of the United States: A Further Test of the Stability of Punishment Hypothesis*, 70 J. CRIM. L. & CRIMINOLOGY 376 (1979).

14. Alessandro Corda & Rhys Hester, *Leaving the Shining City on a Hill: A Plea for Rediscovering Comparative Criminal Justice Policy in the United States*, 31 INT'L CRIM. JUST. REV. 203, 206 (2021) ("The United States has a long, yet largely forgotten, history of comparative attention to foreign criminal justice systems and institutions for policy reform purposes. Interestingly, the demise of such an attention coincided with the rise of mass punishment in the late 20th century.").

15. See Franklin E. Zimring, *The Scale of Imprisonment in the United States: Twentieth Century Patterns and Twenty-First Century Prospects*, 100 J. CRIM. L. & CRIMINOLOGY 1225, 1227 (2010) (noting that this prediction was subsequently "overtaken by events. From its low point in 1972, US prison populations had begun a consistent and unprecedented climb.").

16. See David Garland, *Penal Controls and Social Controls: Toward a Theory of American Penal Exceptionalism*, 22 PUNISHMENT & SOC'Y 321, 324–26 (2020) (listing and analyzing seven specific dimensions that make the US penal state exceptional for its harshness: capital punishment, incarceration rates, sentencing law and policy, conditions of confinement, community supervision rates, collateral consequences of conviction, and fines, fees, and other monetary penalties); JAMES Q. WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* (2003) (offering an analysis of transatlantic penal divergence, focusing in particular on the United States' uniquely punitive criminal justice practices in contrast to those of European democracies, which he attributes to distinct cultural and historical characteristics of US society).

in a vacuum and was attributable to several elements.¹⁷ Multiple factors—most notably partisan politics and highly politicized criminal justice systems,¹⁸ higher rates of violent crime,¹⁹ uniquely problematic race relations and ethnic disparities in policing, prosecution, and sentencing,²⁰ a distinctive political economy,²¹ and the absence of welfare state safety nets²²—created the breeding ground for the enactment of penal policies that, from a comparative perspective, stand out for their harshness to this day. The ratcheting up of penal severity was interestingly coupled with

17. See ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* 6 (2016) (observing one in every thirty-one adults is under some form of penal control, including one in eleven African American men).

18. Michael Tonry, *Explanations of American Punishment Policies: A National History*, 11 *PUNISHMENT & SOC'Y* 377, 385 (2009):

Judges are elected in most states and know that highly unpopular decisions can lead to their defeat. Many chief prosecutors and judges aspire to higher political or judicial offices. They worry about controversies that might diminish their future professional prospects. They no doubt sometimes are tempted to deal with a particular case in a particular way to curry popular approbation or avoid popular condemnation.

19. See Lisa L. Miller, *What's Violence Got to Do with It? Inequality, Punishment, and State Failure in U.S. Politics*, 17 *PUNISHMENT & SOC'Y* 184 (2015) (analyzing how state inaction toward violence in marginalized, especially African-American, communities contributes to punitive policy responses); Randolph Roth, *How Exceptional is the History of Violence and Criminal Justice in the United States*, in *AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT* 272 (Kevin R. Reitz ed., 2018) (tracing long-term patterns in U.S. homicide rates to argue that violence, not just institutions, underpins American penal exceptionalism).

20. See Vesla M. Weaver, *Frontlash: Race and Development of Punitive Crime Policy* 21 *STUD. AM. POL. DEV.* 230 (2007) (discussing the racialized roots of American penal policy, particularly in the context of post-Civil Rights era backlash politics); MICHAEL TONRY, *PUNISHING RACE: A CONTINUING AMERICAN DILEMMA* (2011) (examining the enduring racial disparities in the US criminal justice system and arguing that punitive policies disproportionately targeting Black Americans are rooted in systemic racism and political choices).

21. See Nicola Lacey, David Soskice & David Hope, *Understanding the Determinants of Penal Policy: Crime, Culture, and Comparative Political Economy*, 1 *ANNU. REV. CRIMINOLOGY* 195 (2018); Garland, *supra* note 16, at 331–38 (arguing that the United States' punitive penal policies stem from its distinctive political economy, weak welfare state, and majoritarian electoral system, which incentivize harsh crime control strategies. Unlike many European countries, the United States lacks strong social protections that could mitigate crime, leading to a reliance on incarceration. Additionally, cultural factors and historical legacies of racism reinforce a punitive approach, making meaningful reform challenging.).

22. See LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009) (arguing that neoliberalism in the United States has led to the expansion of punitive policies targeting the poor, replacing welfare support with aggressive policing and mass incarceration).

the gradual disappearance of any significant and systematic interest in comparative criminal law and justice, leading to yet another form of American isolationism.²³

This Article investigates the marginalization of comparative criminal law and justice within US legal academia and critically assesses the implications of this neglect for both scholarly discourse and domestic reform initiatives. In doing so, it contributes original insights to the ongoing debate surrounding “American penal exceptionalism,” i.e., the pronounced divergence of US punishment policies and practices from those of other Western democracies.²⁴ Through the analysis of data gathered through an empirical survey conducted among criminal law and justice professors working at ABA fully-accredited law schools—

23. Corda & Hester, *supra* note 14, at 207 (“[D]uring the last two decades of the past century interest for foreign criminal justice systems, once visible and tangible, gradually faded away from the U.S. stage, with very few exceptions confined at the scholarly level.”).

24. On the notion of “American penal exceptionalism,” see Reitz, *supra* note 4, at 1–2; Corda & Hester, *supra* note 14, at 204; Michael Tonry, *Fatalism and Indifference: The Influence of the Frontier on American Criminal Justice*, 50 CRIME & JUST. 425, 433–36 (2021); Garland, *supra* note 16; David Garland, *The Current Crisis of American Criminal Justice: A Structural Analysis*, 6 ANNU. REV. CRIMINOLOGY 43, 46–51 (2023) (noting, at 49, that in order to appreciate the striking contrast between US penal policies and practices and those of other Western democracies “[t]here is no reason to idealize criminal justice in Europe or Scandinavia.”); see also Mugambi Jouet, *The Exceptional Absence of Human Rights as a Principle in American Law*, 34 PACE L. REV. 688, 710 (2014) (observing that, unlike what happens in other Western countries, the “extraordinary repressiveness” of US punitive policies and practices “is seldom framed as a ‘human rights’ issue in America.”). On the more general notion of “American exceptionalism,” see SEYMOUR M. LIPSET, AMERICAN EXCEPTIONALISM: A DOUBLE-EDGED SWORD 18 (1996) (arguing that exceptionalism doesn’t mean American is better than other countries. It means that America “is qualitatively different, that it is an outlier.” He also observes that the United States “has defined its *raison d’être* ideologically. As historian Richard Hofstadter has noted, ‘It has been our fate as a nation not to have ideologies, but to be one.’”); Mugambi Jouet, *Projecting the Past into the Future of Constitutionalism: History, Atemporality, and American Society*, 173 U. PA. L. REV. ONLINE 79, 87 (2025) (“After the creation of the United States, America was increasingly defined in opposition to the “Old World” and its failures—a nation born of liberty and freed from the ‘rules of history.’ Over time, U.S. historians came to challenge this understanding of the American Revolution and Founding Fathers as ethnocentrism or nationalism.”); *id.*, *Theorizing American Exceptionalism: An Interdisciplinary Historiography and Intellectual History*, 14 J. INTERDISCIP. HIST. IDEAS 1, 35 (2025) (observing that “America has more sources and forces of polarization than peer Western democracies.”). For a critical take, see David Hughes, *Unmaking an Exception: A Critical Genealogy of U.S. Exceptionalism*, 41 REV. INT’L STUD. 527, 551 (2015) (arguing that the US exceptionalism discourse “is necessary to justify the United States’ own exceptions to the laws and norms it is meant to enforce. It does not matter precisely *how* the United States is deemed to be ‘exceptional’; all that matters is that the majority of US citizens continue to *believe* that it is exceptional.”) (emphasis in the original).

the very professionals who often act as the “thermostat” of legal trends in the country—this Article explores the relevance (or lack thereof) of comparative knowledge in contemporary criminal law and justice debates and conversations. The survey probed how US legal scholars, in their roles as educators, intellectuals, and often actors involved in policymaking,²⁵ view the function of comparative law in informing criminal justice policy and practice.

By identifying the barriers to incorporating comparative perspectives into mainstream legal thought and practice, this Article ultimately seeks to highlight pathways for revitalizing the use of comparative criminal law within US criminal law and justice debates. In doing so, it aims to foster a broader, more inclusive approach to criminal justice reform and intellectual development. In this way, the Article contributes to advancing a more global perspective within US legal scholarship and policymaking.

The Article proceeds as follows: Part II traces and examines the distinctive trajectory of comparative criminal law and justice in the United States, identifying the key factors that have contributed to its status as a relatively underdeveloped area within American comparative legal scholarship and policy discussions. Part III outlines the study’s methodology, describing the design and implementation of a web-based survey conducted among US criminal law and justice scholars. Part IV presents the data from the survey, analyzing the findings and exploring the key themes and implications emerging from the answers received in relation to the underutilization of comparative knowledge and insights in US criminal law and justice debates. Part V aims to identify strategies for renewing American engagement with comparative criminal law and justice, considering the current landscape of criminal legal reform. Finally, Part VI concludes with reflections on the study’s broader implications, highlighting the importance of comparative criminal law and justice for legal education and policy development in the United States.

25. On the different ways in which legal scholars contribute to criminal justice reform, see Carol S. Steiker, *Promoting Criminal Justice Reform through Legal Scholarship: Legal Scholarship: Toward a Taxonomy*, 12 *BERKELEY J. CRIM. L.* 161, 166–76 (2007).

II. COMPARATIVE CRIMINAL LAW AND JUSTICE IN THE UNITED STATES: AN OBSTACLE COURSE

As Kevin Jon Heller and Markus Dubber observe:

The comparative analysis of criminal law can do many things for many people. For the legislator, it can be a source of possible approaches to a specific issue or even to the enterprise of criminal law reform and criminal lawmaking in general. For the judge, it can suggest different solutions to tricky problems of interpretation or common-law adjudication. The theorist can mine the vast stock of principles and rules, of structures and categories, and of questions and answers that can be found in the world's criminal law systems. And the teacher, too, can draw on the positive manifestation of different, or not-so-different, approaches to particular or general questions of criminal law to challenge students' ability to comprehend, to formulate, and eventually to critically analyze black-letter rules that are all too often presented by judicial—or, occasionally, professorial—oracles of law as the manifestations of inexorable logic or, at least, of *stare decisis*.²⁶

Yet, despite these significant advantages, the study and relevance of comparative criminal law in the United States for scholarly and policy purposes remains marginal, to say the least, to this very day. This sharply contrasts with the growing American interest in comparative law in other areas, such as constitutional²⁷ and private law.²⁸ Since the 19th century, the field of comparative law has undergone a notable expansion within the United States. American scholars and jurists engaged with European legal systems, particularly French and German jurisprudence, to

26. Kevin Jon Heller & Markus D. Dubber, *Introduction: Comparative Criminal Law*, in *THE HANDBOOK OF COMPARATIVE CRIMINAL LAW* 1 (Kevin Jon Heller & Markus D. Dubber eds., 2010).

27. See, e.g., Tom Ginsburg, Aziz Huq & David Landau, *The Comparative Constitutional Law of Presidential Impeachment*, 88 U. CHI. L. REV. 81 (2021); Mark Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 YALE L.J. 1225 (1999); *id.*, *Returning with Interest: Observations on Some Putative Benefits of Studying Comparative Constitutional Law*, 1 U. PA. J. CONST. L. 325 (1998).

28. See, e.g., Franz Werro, *Comparative Studies in Private Law*, in *THE CAMBRIDGE COMPANION TO COMPARATIVE LAW* 117 (Mauro Bussani & Ugo Mattei eds., 2012); Ugo Mattei, *The Comparative Law and Economics of Penalty Clauses in Contracts*, 43 AM. J. COMP. L. 427 (1995); Saul Levmore, *Rethinking Comparative Law: Variety and Uniformity in Ancient and Modern Tort Law*, 61 TUL. L. REV. 235 (1986).

modernize legal education and refine doctrinal analysis;²⁹ in more recent decades, the attention to comparative law has also been driven by an increasing recognition of the interconnectedness of legal systems in our globalized world.³⁰ Progressively, scholars and practitioners have embraced comparative legal studies to glean insights from diverse jurisdictions, shaping legal doctrines, policies, and international relations. However, despite this surge of interest and engagement, the area of comparative criminal law in the United States remains overshadowed.

As Dubber notes:

Criminal law occupies an odd position in the field of comparative jurisprudence. Historically speaking, one can occasionally read that comparative law as a serious academic discipline began as comparative criminal law, either in Germany or in France, or both. And yet, few introductions to comparative criminal law fail to point out that comparative law means, and has meant for quite some time, comparative civil law first and foremost. Textbooks on comparative law feel no need to address, or even acknowledge the existence of, comparative studies in criminal law. The massive, seventeen-volume, *International Encyclopedia of Comparative Law* does not cover criminal law, devoting itself instead to virtually every aspect and variety of “civil, commercial and economic law.”³¹

At least four factors contribute to this phenomenon.

29. Early comparative law efforts were largely academic, with figures like Joseph Story advocating for a broader understanding of foreign legal systems to enhance American jurisprudence. See David S. Clark, *Development of Comparative Law in the United States*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 148 (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2019). In the twentieth century, comparative law gained institutional recognition with the establishment of the American Society of Comparative Law in 1951, reflecting growing scholarly interest. See *ASCL History*, AM.SOC'Y COMPAR. LAW, <https://ascl.org/ascl-history> [<https://perma.cc/T2EZ-SVTE>] (last visited June 25, 2025).

30. Mathias Reimann, *Beyond National Systems: A Comparative Law for the International Age*, 75 *TUL. L. REV.* 1103, 1115 (2001) (“In order to catch up with the times, comparative law needs to integrate today’s transnational legal systems, rules, and practices.”); see generally, Horatia Muir Watt, *Globalization and Comparative Law*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 599 (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2019).

31. Markus D. Dubber, *Comparative Criminal Law*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 1277 (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2019).

A. The 'Arrested Development' of Comparative Criminal Justice and the Struggles of Criminal Law

In the first decades of the 20th century, the development of comparative criminal justice in the United States took place in a context where substantive criminal law was still struggling to gain recognition as a respected discipline among law schools and practitioners. Criminal law initially faced significant challenges in securing a place within the US law school curriculum, and even after doing so, “it struggled for respect, remaining ‘the Cinderella of the law course’ (think Cinderella as mistreated ash-maid rather than princess) until at least the 1930s.”³² The situation remained unchanged through the 1950s.³³ In contrast, the early 20th century saw increased international interactions and the exchange of ideas among legal academics and practitioners from different jurisdictions. This exchange allowed American scholars to gain exposure to the criminal justice systems of other countries, providing fresh perspectives that could inform developments in the US context.³⁴

Progressive Era reforms were underway in the United States, focusing on addressing social issues, including concerns related to the operation of the criminal justice system.³⁵ Scholars and

32. Alice Ristroph, *The Curriculum of the Carceral State*, 120 COLUM. L. REV. 1631, 1641 (2020); see Harold Edgar, *Herbert Wechsler and the Criminal Law: A Brief Tribute*, 100 COLUM. L. REV. 1347, 1347 (2000), observing that, when Hebert Wechsler—the architect of the influential American Law Institute’s 1962 Model Penal Code—“joined the Columbia Law School faculty in 1933, [the] school did not teach criminal law and much of the profession thought the topic was not worth studying.”; see also JEROME MICHAEL & MORTIMER J. ADLER, CRIME, LAW, AND SOCIAL SCIENCE 371, 373 (1933) (“The existing Anglo-American criminal law is a texture of inconsistencies and confusions which have resulted from inconsistent conceptions of the ends it should serve and from the unsystematic and haphazard nature of its development.”; “No attempt has been made to clarify the subject matter of the criminal law by the construction of a rational science.”).

33. Ristroph, *supra* note 32, at 1643 (noting that “by mid-twentieth century, several scholars and teachers had developed together an account of criminal law’s structure that has disciplined criminal law courses, and criminal law theory, ever since.”).

34. James Q. Whitman, *What Happened to Tocqueville’s America?*, 74 SOC. RES. 251, 252–53 (2007) (stressing that, in the 19th century, the United States was widely regarded as a model for other civilized nations in criminal justice and that, as recently as the early 1970s, the country remained largely aligned in both spirit and practices with other developed Western democracies).

35. In 1910, at Northwestern School of Law, Dean John Henry Wigmore, who served as the Law School’s dean from 1901 to 1929, founded the *Journal of Criminal Law & Criminology*. Its purpose was to articulate and promote a criminal justice reform agenda, associated with the Progressive Era that dominated the first third of the twentieth century.

reformers sought to learn from the experiences of other countries that had implemented innovative approaches to penal systems. Comparative analysis allowed them to identify successful strategies and adapt them to the American setting. Academic institutions began to recognize the value of examining criminal justice systems beyond national borders. The emergence of sociology and criminology as academic disciplines encouraged scholars to analyze crime and criminal justice from a more holistic perspective, often incorporating comparative approaches to understand the broader social and cultural factors influencing criminal behavior and various aspects of justice systems. Yet, this intellectual vitality did not extend to the field of criminal law. Gerhard O. W. Mueller,³⁶ for example, noted that while John H. Wigmore at Northwestern succeeded in becoming the “organizer of American criminology,”³⁷ he was less successful in fostering the production of more theoretically sophisticated studies of criminal law.³⁸ Finally, the legal realism movement, which emphasized the importance of understanding law in action rather than just as a theoretical construct, contributed to the interest in comparative criminal justice while criminal law remained neglected.³⁹ Scholars

The journal went on to play a unique role in the history of criminal law and criminology in the United States especially until the 1970s. *See* Corda & Hester, *supra* note 14, at 206–7 (discussing the number of scholarly articles on comparative law subjects published each year in the journal between 1910 and 2019, which dropped consistently from the 1970s onward).

36. On the distinguished career of Gerhard Mueller, a German-born scholar who emigrated to the United States and became a leading figure in comparative criminal law scholarship and a notable policy entrepreneur, see M. Cherif Bassiouni, *In Memoriam: Gerhard O. W. Mueller, March 15, 1926 – April 21, 2006*, 77 *REVUE INT’L DR. PÉNAL* 9 (2006).

37. *See* GERHARD O. W. MUELLER, *CRIME, LAW, AND THE SCHOLARS: A HISTORY OF SCHOLARSHIP IN AMERICAN CRIMINAL LAW* 78 (1969).

38. *Id.* at 78–81.

39. *See* Alice Ristroph, *An Intellectual History of Mass Incarceration*, 60 *B.C. L. REV.* 1949, 1974, n. 99 (2019) (noting that “[t]hough Roscoe Pound wrote extensively on criminal law (and many other subjects), he wrote primarily about enforcement and administration, and called for someone else to reexamine the underlying conceptual structure of substantive prohibitions.”); *see also* Sheldon Glueck, *Roscoe Pound and Criminal Justice: A Memoir in Appreciation of the Dean of American Legal Scholars*, 10 *CRIME & DELINQUENCY* 299, 309 (1964):

Over many years Pound was a leader in creative, dynamic planning to improve the administration of justice, especially criminal justice. He was a founder of the American Institute of Criminal Law and Criminology and of its influential journal. He presided effectively at the first National Conference on Criminal Law and Criminology, called in 1909 to celebrate the fiftieth anniversary of Northwestern University Law School. He was instrumental in setting up at the

recognized the practical value of studying how laws were implemented in various jurisdictions and how legal principles were adapted to different cultural contexts.

In essence, while substantive criminal law faced challenges in establishing itself as a distinct discipline, the growth of comparative criminal justice up to the 1970s—before being, by and large, abandoned as the United States increasingly diverged from the policies and practices of other Western democracies—was driven by a combination of international interactions, social reforms, interdisciplinary interests, and the practical relevance of understanding criminal justice systems beyond national borders. The delayed integration of criminal law into the national law school curriculum and the lack of sustained scholarly interest had a consequential impact on the evolution of comparative criminal law from an American perspective. The absence of a comprehensive intellectual criminal law framework hindered the cultivation of a strong foundation in domestic criminal law principles, impeding the capacity of legal scholars and practitioners to engage in meaningful cross-jurisdictional analyses.

A concise yet highly insightful historical account of the trajectory of comparative criminal law and justice in the United States can be found in *Comparative Criminal Law in the United States*, a little-known book published by Gerhard Mueller in 1970. In it, the author identifies nine eras of comparative criminal law and justice in the United States, drawing parallels to different periods of art history:⁴⁰

1. In the 17th and early 18th century, rudimentary criminal laws emerged in the American colonies, shaped by religious rules and institutions inherited from England;⁴¹

Harvard Law School an Institute of Criminal Law which, although not developing along anticipated lines, did lead to a series of fundamental pioneering researches into the causes, treatment, and prediction of juvenile delinquency and young-adult criminalism.

40. See GERHARD O. W. MUELLER, *COMPARATIVE CRIMINAL LAW IN THE UNITED STATES* (1970).

41. *Id.* at 14 (“The pioneers chose the political and juridical institutions of their mother country, and the substantive rules of their religion. ‘The Court’ of Massachusetts established the ‘Capitall Lawues,’ which were directly derived from the Old Testament.”).

2. By the mid-18th century, legal thought was influenced by reprints of common law commentaries, including treatises on criminal law;⁴²

3. Dissatisfaction with the colonial approach in the late 18th and early 19th centuries led to increased interest in European criminal law codifications, particularly from France;⁴³

4. By the mid-19th century, Americans were importing systematic legal analyses from the continent while also gaining the confidence to export their own ideas—most notably, the American jury system, which was admired and adopted abroad, and the model of the penitentiary, which attracted European interest;⁴⁴

5. In the mid-to-late 19th century, comparative interest waned as America turned inward, though European legal standards continued to influence the organization of US criminal law;⁴⁵

6. At the turn of the 20th century, little development occurred in comparative criminal law; while the field expanded in size, complacency prevailed;⁴⁶

7. During the Progressive Era, early 20th-century scholars established close ties with their continental counterparts, but domestic reforms remained largely uninfluenced by comparative studies;⁴⁷

8. In the mid-20th century, comparative criminal law played a critical role in the Nuremberg trials, where a hybrid of continental and Anglo-American legal principles was applied in unprecedented ways;⁴⁸

9. By the second half of the 20th century, comparative criminal law had become a “public utility,”⁴⁹ shifting from an

42. *Id.* at 18 (“Between 1765 and 1773 the first American edition of Blackstone’s *Commentaries on the Laws of England* was printed, with its significant influence on the subsequent development of criminal law and procedure in the United States.”).

43. *Id.* (“France had just completed the great Napoleonic codification, most prominently the *Code Penal*, which was promptly translated into English and published in the *American Review of History and Politics*.”).

44. *Id.* at 21.

45. *Id.* at 24 (“This era . . . is more ‘American’ than any other. The continent of Europe was far away and perhaps not even worth imitating . . . Comparative law had no home in America during this period.”).

46. *Id.* at 27.

47. *Id.* at 27, 30.

48. *Id.* at 33.

49. *Id.*

academic exercise to a practical tool, as exemplified by the American Law Institute's Model Penal Code of 1962.⁵⁰

Mueller's periodization highlights the evolving—and often uneven—attention the United States has given to comparative criminal law and justice, reflecting broader intellectual and historical shifts. The trajectory reflects cycles of engagement and retreat. Periods 3, 4, 7, and 8 illustrate moments when comparative perspectives were actively integrated into national conversations and debates, though in different ways and for distinct purposes. However, Period 9 signaled the beginning of a decline in comparative engagement. A more parochial, inward-looking approach took hold, with greater emphasis on intra-US state comparisons rather than transnational influences. This shift coincided, as previously noted, with the rise of mass incarceration, setting the United States on a divergent path from other Western nations. Yet, Mueller's historical account crucially underscores that US penal exceptionalism has not always been the norm; rather, there were periods of genuine comparative engagement before the shift into domestic insularity.⁵¹

B. The Courts' Reluctance to Use Foreign Law

While the delayed inclusion of criminal law in the US legal curriculum might have posed challenges for the development of comparative criminal law, it is also worth acknowledging that legal education and scholarship have evolved significantly since then, and contemporary legal professionals have a broader perspective on global legal issues. That being said, criminal law is still, for the most part, "a parochial discipline."⁵² This means that "[c]ourts and

50. See, e.g., Hans-Heinrich Jescheck, *The Significance of Comparative Law for Criminal Law Reform*, 5 HASTINGS INT'L & COMP. L. REV. 1, 18 (1981) ("The American Model Penal Code (1962) is a work resulting from intensive inter-American comparative law which includes English common law and, on some points, continental European law As regards prison reform, European models have likewise been taken into account.").

51. See Corda & Hester, *supra* note 14, at 204–06 (observing, at 204, that American penal exceptionalism "is neither historically immutable, nor politically inevitable, nor desirable policy-wise.").

52. See Luis E. Chiesa, *Comparative Criminal Law*, in THE OXFORD HANDBOOK OF CRIMINAL LAW 1089 (Markus Dubber & Tatjana Hörnle eds., 2014); see also Markus D. Dubber, *Criminal Law in Comparative Context*, 56 J. LEGAL EDUC. 433, 433 (2006) (observing that "[c]riminal law traditionally has been the most parochial of legal disciplines. The power to punish is closely associated with the power to govern and, in fact, with the very idea of political might. A state without the power to punish lacks sovereignty, the essence

scholars in the English-speaking world seldom take seriously the criminal statutes, cases and scholarly writings published in the non-English speaking world.”⁵³

Despite an ongoing debate on the use of foreign law in constitutional adjudication,⁵⁴ the US Supreme Court has made rather clear that what other countries do with regard to criminal law and procedure is not essential or relevant per se to their analysis. The approach of the US Supreme Court toward foreign law in cases related to criminal law and procedure has been mixed, and the Court has taken different positions depending on the specific issue and context.⁵⁵ Overall, while comparative law and international human rights standards have occasionally played a role in the Court’s decisions related to criminal law and procedure, their use has been limited and controversial.

Mentions of non-US law are extremely rare and hardly decisive.⁵⁶ A few examples: in *Atkins v. Virginia* (2002), Justice Stevens, in his majority opinion, referenced comparative law by noting the global consensus against the execution of individuals with intellectual disabilities. He cited the views of the international community as additional support for the Court’s conclusion that executing such individuals violated the Eighth Amendment’s

of statehood.”); Dubber, *supra* note 31, at 1277 (“The persistent peculiar parochialism of criminal law is deeply bound up with the history of criminal law itself.”).

53. Chiesa, *supra* note 52, at 1090.

54. See, e.g., Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication*, 22 YALE L. & POL’Y REV. 329 (2004); Norman Dorsen, *The Relevance of Foreign Legal Materials in U.S. Constitutional Cases: A Conversation Between Justice Antonin Scalia and Justice Stephen Breyer*, 3 INT’L J. CONST. L. 519, 531-34 (2005); Steven G. Calabresi & Stephanie Dotson Zimdahl, *The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision*, 47 WM. & MARY L. REV. 743, 750 (2005); Austen L. Parrish, *Storm in a Teacup: The U.S. Supreme Court’s Use of Foreign Law*, 2007 U. ILL. L. REV. 637 (2007); Stephen A. Simon, *The Supreme Court’s Use of Foreign Law in Constitutional Rights Cases: An Empirical Study*, 1 J.L. & CTS. 279 (2013).

55. In general, the Supreme Court’s approach to non-US law in criminal law and procedure cases has been influenced by a variety of factors, including the specific issue at hand, the political context, and the justices’ individual views on the role of foreign law in US jurisprudence.

56. See Steven G. Calabresi, *A Shining City on a Hill: American Exceptionalism and the Supreme Court’s Practice of Relying on Foreign Law*, 86 B.U. L. REV. 1335, 1341–42 (2006) (“Between 1940 and the present, the Supreme Court considered and relied on foreign law in at least seventeen cases. Seven of these cases were criminal law and procedure cases: *Trop v. Dulles*, *Miranda v. Arizona*, *Coker v. Georgia*, *Enmund v. Florida*, *Thompson v. Oklahoma*, *Atkins v. Virginia*, and *Roper v. Simmons*.”).

prohibition on cruel and unusual punishment.⁵⁷ In *Roper v. Simmons* (2005) Justice Kennedy, writing for the majority, acknowledged that, while the opinions of other countries and the international community cannot control the outcome of the decision, they can serve as important confirmation of the Court's conclusion. He noted that the global consensus against the juvenile death penalty reinforced the Court's determination that such punishments violated the Eighth Amendment.⁵⁸ In other cases, comparative references have been pragmatic, if not openly opportunistic, depending on the case at hand. For instance, in his dissent in *Lafler v. Cooper* (2012), the late Justice Scalia, otherwise a staunch opponent of using non-US law in constitutional interpretation,⁵⁹ criticized plea bargaining, arguing that in other legal systems, such as those where plea bargaining typically applies only to crimes punishable by a maximum of five years, a

57. See *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) ("Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.").

58. See *Roper v. Simmons*, 543 U.S. 551, 575–76 (2005), noting:
Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty. This reality does not become controlling, for the task of interpreting the Eighth Amendment remains our responsibility. Yet at least from the time of the Court's decision in *Trop*, the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments.

59. Justice Antonin Scalia was known for his opposition to the use of non-US law in interpreting the US Constitution and laws, including in criminal law and procedure cases. He believed that US law should be based solely on domestic sources, such as the text and history of the Constitution, and that the use of non-US law could undermine American sovereignty and democratic legitimacy. See, e.g., *Lawrence v. Texas*, 539 U.S. 558, 598 (2003) (Scalia, J., dissenting) (characterizing the use of non-US views as "meaningless" and "dangerous dicta"); *Atkins*, 536 U.S. at 347–48 (Scalia, J., dissenting) (describing as "irrelevant... the practices of the 'world community,' whose notions of justice are (thankfully) not always those of our people"); for the alternative, see *Washington v. Glucksberg*, 521 U.S. 702, 710, 730–34 (1997), where Scalia joined a unanimous majority in upholding a state ban on assisted suicide, referencing studies on euthanasia practices in the Netherlands and noting that many European countries have laws criminalizing assistance in suicide; see also Jeff Neal, *Who Needs Foreign Law?*, HARV. L. TODAY (Mar. 4, 2020), <https://hls.harvard.edu/today/who-needs-foreign-law/> [<https://perma.cc/Y2NT-G7P7>] (reporting on a lecture delivered by Mary Ann Glendon, where she explained that "for Scalia, it was one thing for a state legislature to use evidence from other countries about how similar laws worked, and another for the Court to rely on those examples to determine a law's constitutionality.").

serious case like attempted murder would not be subject to plea negotiations.⁶⁰

*C. The Distinctive Nature and
Multilayered Structure of US Criminal Law*

Besides the courts' reluctance to use and engage non-US law in their decision-making, the very nature of US criminal law and its strong focus on constitutional principles and procedural aspects appear to have deterred legal scholars from delving into the complexities of comparative analyses, further diverting attention from the potential benefits of cross-jurisdictional inquiries. Commentators have observed that "Anglo-American criminal law continues to be regarded as an exercise of the police power of the state;"⁶¹ also, "[a]s essentially discretionary, and defined by its very indefinability, the police power is incompatible with principled critique. And insofar as a penal police regime is not subject to critical analysis, it has no use for regarding criminal law comparatively."⁶² Furthermore, the distinctiveness of the US criminal justice system—characterized by a combination of

60. *Lafler v. Cooper*, 566 U.S. 156, 185 (2012) (Scalia, J., dissenting) ("In many—perhaps most—countries of the world, American-style plea bargaining is forbidden in cases as serious as this one, even for the purpose of obtaining testimony that enables conviction of a greater malefactor, much less for the purpose of sparing the expense of trial.").

61. *Heller & Dubber*, *supra* note 26, at 1.

62. *Id.* at 2.

federal,⁶³ state,⁶⁴ and local⁶⁵ criminal laws, creating intricate frameworks,⁶⁶ and a diverse range of policies and practices⁶⁷—has likely fostered an insular, inward-looking attitude. This diverse legal landscape can make it difficult to compare US criminal law to the legal systems of other countries that have a more centralized system of government.⁶⁸ The resulting introspection, while vital for understanding the complexities of the US systems, has hindered

63. See, e.g., Sara Sun Beale, *The Many Faces of Overcriminalization: From Morals and Mattress Tags to Overfederalization*, 54 AM. U. L. REV. 747, 753 (2005) (“Whatever the precise number, the number of federal crimes and the number of federal prosecutions have skyrocketed.”); Rachel E. Barkow, *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519, 526 (2011) (“The increasing use of federal criminal law to address local crime has hardly gone unnoticed.”).

64. See, e.g., Maria Ponomarenko, *Some Realism About Criminal Justice Localism*, 173 U. PA. L. REV. 789, 808 (2024) (“Although it is tempting to generalize about the ‘American’ system of criminal justice, the reality is that there are fifty separate state systems—many of which have made widely divergent choices about how to allocate criminal justice policymaking authority between cities and states.”). A fear of tyrannical/centralized government created an emphasis on localized democracy. Accordingly, “the federal constitution is structured to ensure state dominance over criminal law.” Carol S. Steiker, *Capital Punishment and American Exceptionalism*, 81 OR. L. REV. 97, 121 (2002). On the distinct legal system of American Indian tribal law, see *infra* notes 162 and 163 and accompanying text.

65. See, e.g., Wayne A. Logan, *The Shadow Criminal Law of Municipal Governance*, 62 OHIO ST. L.J. 1409, 1414 (2001) (noting that the local authority to enact new crimes has become more pronounced “in the prevalent municipal effort to legislate against public disorder and ‘quality of life’ offenses, given effect by such strategies as ‘zero tolerance’ and ‘community’ policing, which have become mainstays of contemporary law enforcement.”); Brenner M. Fissell, *Against Criminal Law Localism*, 81 MARYLAND L. REV. 119 (2022) (observing that “localities can add to criminal law, but they cannot subtract from it.”); *id.*, *Police-Made Law*, 108 MINN. L. REV. 2561, 2565 (2024) (addressing the quasi-legislative role of police at the local level through “offense-sponsorship,” i.e., “identifying a social problem, drafting a new offense to address it, and formally proposing it during a legislative session.”).

66. Scott M. Sullivan & Iben Sullivan, *The Empirics of Criminal Federalism*, 21 OHIO ST. J. CRIM. L. 377, 377 (2024) (“The increasingly indistinguishable substantive scope of federal and state criminal law has encouraged scholars to abandon efforts to draw strict lines between state and federal power in that area. Instead, “cooperative” models of federalism, emphasizing institutional, and sometimes somewhat coercive, means of effectuating federal supremacy have gained favor.”).

67. Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 968 (2021) (noting that, unlike federal and state criminal courts, “municipal courts routinely lack the usual indicia of independence, impartiality, and legal due process that conventionally characterize the judiciary and on which criminal law relies for much of its integrity.”).

68. See DAVID GARLAND, *PECULIAR INSTITUTION: AMERICA’S DEATH PENALTY IN AN AGE OF ABOLITION* 155 (2010) (“Compared with other Western nations, the United States government has been, until recently, a less prominent economic and criminal justice actor, leaving a much greater role to the market and to local regulation”).

a robust and systematic engagement with the comparative approach. In a context where, “for the most part, the national government leaves issues regarding crimes and punishments to the separate determination of 50 different states,”⁶⁹ the lack of a unified legal framework further complicates efforts to adopt a comparative perspective, as variations across state laws create additional barriers to meaningful cross-jurisdictional analysis. This results in a focus, at most, on intra-state comparisons rather than broader international or cross-national engagements.

In 1932, Justice Louis Brandeis famously wrote that US states should be seen as laboratories of innovation in law and policy. He saw this as a unique advantage of the American federal system. He argued that successful experiments in individual states could be exported to other jurisdictions.⁷⁰ This intra-American comparison—though rarely conducted in a systematic manner⁷¹—has, particularly since the second half of the 20th century, gained prominence in both policy debates and scholarly inquiries, including within the field of criminal law and justice.⁷² However, in the absence of innovative solutions and out-of-the-box thinking⁷³ structural crises remain unresolved,⁷⁴ and any changes or reforms

69. Zimring, *supra* note 8, at 181.

70. *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory”).

71. This has occurred due to the significant diversity among the states and the absence of a systematic comparative approach. See PAUL H. ROBINSON & TYLER SCOT WILLIAMS, *MAPPING AMERICAN CRIMINAL LAW. VARIATIONS ACROSS THE 50 STATES* xii (2018) (“Unfortunately, there has been little work done to map the enormous diversity among the states, perhaps because it is an extremely burdensome project.”).

72. See, e.g., Barkow, *supra* note 63; Richard Frase, *State Sentencing Guidelines: Diversity, Consensus, and Unresolved Policy Issues*, 105 COLUM. L. REV. 1190, 1191–208 (2005); Ryan S. King, *Recent Developments in State Parole Reform, 2004-2006*, 20 FED. SENT’G REP. 124 (2007); Kelly L. Mitchell, *State Sentencing Guidelines: A Garden Full of Variety*, 81 FED. PROB. 28 (2017).

73. See Corda & Hester, *supra* note 14, at 217 (“[A]lthough American penal exceptionalism may well still be today’s prevailing reality, it is not an inevitable fate. Thinking otherwise would lead to an agency-sapping fatalism.”); Jonathan Simon, *Uncommon Law: America’s Excessive Criminal Law & Our Common-Law Origins*, 143 DAEDALUS 62, 70 (2014) (“If almost every move toward independence from England has, in fact, made U.S. criminal courts more punitive, we may need to look beyond the Anglo-American dialectic for legal solutions.”).

74. See Garland, *The Current Crisis*, *supra* note 24, at 58 (“The current crisis of American criminal justice is a deeply rooted one that will not be easily or quickly resolved.”).

risk being merely ephemeral, vulnerable to the contingencies of an increasingly volatile political climate.⁷⁵ Such tunnel vision can even lead to the outright denial by some of well-documented problems—quite astonishingly, including mass incarceration—further entrenching blind spots within legal and policy discourse.⁷⁶

D. Barriers to Gaining Comparative Knowledge

Furthermore, the existing emphasis on specialization within legal academia has directed scholars toward narrower domains of study. Comparative law may be seen as an interdisciplinary field, necessitating familiarity with different legal systems, languages,

75. See Francis T. Cullen, *The End of American Exceptionalism: An Enlightened Corrections*, 21 CRIMINOLOGY & PUB. POL'Y 769, 781 (2022) (calling for a “New American Exceptionalism” in criminal law and justice law, policies and practices); *but see* Mirko Bagaric et al., *American Exceptionalism at Its Finest: “Soft on Crime” Now a Vote-Winner in the World’s Largest Incarcerator*, 25 LEWIS & CLARK L. REV. 489, 527 (2021) (“If any evidence emerges that suggests that the current momentum to reduce incarceration rates is inappropriate, such as an inflation of the crime rate, this could lead to a rapid stalling or reversal of the new policy direction.”); Alessandro Corda, *Reshaping Goals and Values in Times of Penal Transition: The Dynamics of Penal Change in the Collateral Consequences Reform Space*, 49 LAW & SOC. INQUIRY 1479, 1501 (2024) (“Politicians on both sides of the aisle may face pressure from their constituents to take, once again, an un-nuanced ‘tough-on-crime’ approach. This would make it extremely difficult to pass reforms that are seen as lenient or permissive, even if capable of improving public safety in the long term [. . .].”).

76. See Paul H. Robinson & Jeffrey Seaman, *“Mass Incarceration” Myths and Facts: Aiming Reform at the Real Problems*, 50 AM. J. CRIM. L. 1, 10 (2024) (“The myth of exceptional and unjustified American punitiveness overlooks the role of non-sentencing factors in the rise of incarceration, overstates punishment increases, and falsely assumes that any punishment increases that did occur were inappropriate. In addition to being simplistic and false, this myth’s implications are disturbing and damaging to the prospects of useful reform.”) (emphasis added); Charles Stimson & Zack Smith, *The Myth of Mass Incarceration*, HERITAGE FOUNDATION, May 29, 2024, <https://www.heritage.org/crime-and-justice/report/the-myth-mass-incarceration> (last visited July 9, 2025) (“Mass incarceration is a myth. . . . The United States criminal justice system is not systematically racist.”); *contra* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 40–58 (2012) (chronicling the rise of mass incarceration from the 1950s onward); Arthur J. Lurigio, *The Golden Anniversary of Mass Incarceration in America*, 104 PRISON J. 271, 271–72 (2024) (“The so-called ‘imprisonment binge’ defined the character of our nation’s penal system and established its reputation for being harsh among leading democracies. Since 1973, the U.S. prison population has climbed by 500%.”); Garland, *The Current Crisis*, *supra* note 24, at 50 (“The penal state is disproportionately focused on racial and ethnic minorities, but it also houses a massive population of White offenders. If every person of color were to be released from custody and correctional supervision, America’s penal system would still be larger—absolutely and relative to population—than that of any other nation.”).

and cultures. As it has been lamented, “The most obvious challenge to engaging in comparative criminal law analysis is overcoming language barriers. While this is a problem that plagues comparative law in general, it is particularly acute in the case of comparative criminal law.”⁷⁷ Additionally, the relative scarcity of readily available resources, comprehensive textbooks, and standardized methodologies for comparative criminal law studies could be a barrier to entry for legal scholars seeking to venture into this realm and may discourage those interested in the field from pursuing in-depth analyses across multiple jurisdictions.⁷⁸

Differing approaches to legal reasoning and jurisdiction-specific social and institutional dynamics often hinder the effectiveness of comparative law in general, and comparative criminal law and justice in particular, due to the deep entanglement of criminal justice with national cultures and histories. Unfortunately, “[i]n their provinciality, in their listening only to those who subscribe to the indigenous sense of authority, legal cultures resemble religious communities.”⁷⁹ A significant effort is therefore required from the criminal law and justice comparativist, but it is one that is well worth making. This is because a comparative approach can serve as a valuable, if not critical, tool for evaluating domestic criminal law, as well as punishment policies and practices.⁸⁰

77. Chiesa, *supra* note 52, at 1094. For a curated collection of comparative criminal law resources, see LUIS E. CHIESA, *SUBSTANTIVE CRIMINAL LAW: CASES, COMMENTS AND COMPARATIVE MATERIALS* (2014).

78. The potential—as well as the effort—required for conducting comparative legal studies is clearly illustrated by John C. Reitz, *How to Do Comparative Law*, 46 AM. J. COMP. L. 617, 617–18 (1998):

Most of us who teach and write in the field of comparative law . . . were not taught formally how to do comparative law. Rather, we have for the most part worked out our own methods based on an amalgam of the scholarship we thought effective for our particular purposes at the time. Moreover, we keep adjusting our approach for every new task. Some would see this self-taught experimental approach as a strength of the field. It may be a bit inefficient for every scholar to make up his or her own method, but no promising avenue will be barred by orthodoxy.

79. George P. Fletcher, *Comparative Law as a Subversive Discipline*, 46 AM. J. COMP. L. 683, 693 (1998) (adding that “[l]aw is more like religion than we are inclined to assume.”). On the concept of “legal ethnocentrism” and the value of comparative law in combating it, see Nora V. Demleitner, *Combating Legal Ethnocentrism: Comparative Law Sets Boundaries*, 31 ARIZ. ST. L. J. 737, 739–47 (1999); see also Erik Luna, *A Place for Comparative Criminal Procedure*, 42 BRANDEIS L.J. 277, 282–83 (2003).

80. See Chiesa, *supra* note 52, at 1091–105.

John H. Langbein effectively captured and summarized the state of the art—a perspective that rings especially true in the field of criminal law and justice:

Within the intellectual life of the American legal academy, comparative law is a peripheral field. Questions of comparative and foreign law seldom figure in the conversation about law and law-related subjects that comprises the common intellectual life of an American law faculty. Like a child in Victorian England, the comparativist on an American law faculty is expected to be seen but not heard. Even when scholarly inquiry concerns topics on which foreign experience is deep and potentially instructive, American legal dialogue starts from the premise that no relevant insights are to be found beyond the water's edge.⁸¹

As a result, although “[c]riminal law and criminal justice are becoming increasingly globalized . . . attempts at trans-jurisdictional discourse are often hampered by mutual misunderstanding”⁸² arising from factors related to different cultures, languages, and legal traditions.⁸³ Accordingly, “critical and theoretical discussions too often take place within the different legal traditions rather than between them.”⁸⁴ This creates persistent gaps in understanding across legal systems.

81. See John H. Langbein, *The Influence of Comparative Procedure in the United States*, 43 AM. J. COMP. L. 545, 546–7 (1995); see also Nora V. Demleitner, *Challenge, Opportunity and Risk: An Era of Change in Comparative Law*, 46 AM. J. COMP. L. 647, 648–49 (1998) (“Increasingly, American society and academia have become inward looking even though much lip service is being paid to the global society and the internationalization of markets and societies. Even though national borders have decreased in importance and transnational issues appear with greater frequency and demanding relevance in “domestic” courses, the law school curriculum remains domestically focused.”); *id.*, *Comparative Law in Legal Education*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 320, 341 (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2019) (noting that the rise of international and transnational law may contribute to a further weakening of comparative law within US law schools as they “can pay but limited attention to matters beyond the domestic curriculum, and they will focus on courses that appear more directly relevant to the practice in U.S. courts.”).

82. Kai Ambos et al., *Introductory Remarks*, in CORE CONCEPTS IN CRIMINAL LAW AND CRIMINAL JUSTICE, Vol. I, Anglo-German Dialogues 3 (Kai Ambos et al. eds., 2020). On the development of comparative criminal law from a continental European perspective, see ALBIN ESER, *COMPARATIVE CRIMINAL LAW: DEVELOPMENT—AIMS—METHODS* 5–14 (2017).

83. Ambos et al., *supra* note 82.

84. *Id.* It is interesting to note that most scholars conducting comparative criminal law and justice research from an American perspective are either originally non-US-born or educated, or have lived and worked in other jurisdictions for extended periods. See, e.g.,

In conclusion, multiple historical and structural factors have contributed to the neglect of comparative criminal law and justice in the US context. The struggles of criminal law to establish itself within American legal scholarship and policy debates, combined with the ‘arrested development’ of comparative criminal justice studies as the United States increasingly diverged from other Western democracies from the 1970s onward, created an academic environment dominated by domestic concerns. These foundational issues have been reinforced by institutional impediments including the courts’ reluctance to engage with non-US law, the complex and fragmented nature of the US criminal legal system, and the lack of adequate comparative resources.

However, recognizing the untapped potential of comparative criminal law and justice insights—and their ability to offer fresh perspectives, innovative solutions, and a deeper understanding of justice systems in a time of deep crisis for the American criminal legal system⁸⁵—could prompt a reevaluation and eventual

Luis E. Chiesa, *Comparative Analysis as an Antidote to Tunnel Vision in Criminal Law Reform: The Example of Complicity*, 70 RUTGERS L. REV. 1117 (2018); Luis E. Chiesa, *Mens Rea in Comparative Perspective*, 102 MARQ. L. REV. 575 (2018); Jenia I. Turner, *Plea Bargaining and Disclosure in Germany and the United States: Comparative Lessons*, 57 WM. & MARY L. REV. 1549 (2016); Jenia I. Turner, *Judicial Participation in Plea Negotiations: A Comparative View*, 54 AM. J. COMP. L. 199 (2006); Michael Tonry, *Differences in National Sentencing Systems and the Differences They Make*, 45 CRIME & JUST. 1 (2016); Jacqueline E. Ross & Stephen C. Thaman, *Introduction: Mapping Dialogue and Change in Comparative Criminal Procedure*, in *COMPARATIVE CRIMINAL PROCEDURE* 3 (Jacqueline E. Ross & Stephen C. Thaman eds., 2016); STEPHEN C. THAMAN, *COMPARATIVE CRIMINAL PROCEDURE: A CASEBOOK APPROACH* (2d ed. 2008); Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT’L L.J. 1 (2004); Michael Tonry & Richard Frase, eds., *SENTENCING AND SANCTIONS IN WESTERN COUNTRIES* (2001); Nora V. Demleitner, *Continuing Payment on One’s Debt to Society: The German Model of Felon Disenfranchisement as an Alternative*, 84 MINN. L. REV. 753 (1999); Richard S. Frase, *Comparative Criminal Justice as a Guide to American Law Reform: How Do the French Do It, How Can We Find Out, and Why Should We Care?*, 78 CALIF. L. REV. 539 (1990). For more recent scholarship, see CHRISTOPHER SLOBOGIN, *REHABILITATING CRIMINAL JUSTICE: INNOVATIONS IN POLICING, ADJUDICATION, AND SENTENCING* 105–20 (2025) (proposing the adoption of three inquisitorial features from European legal systems—judicial oversight of trial proceedings, non-adversarial handling of expert evidence, and mandatory unsworn statements from defendants—as a means to improve the factual accuracy of American criminal adjudication.).

85. DAVID A. SKLANSKY, *CRIMINAL JUSTICE IN DIVIDED AMERICA: POLICE, PUNISHMENT, AND THE FUTURE OF OUR DEMOCRACY* 3 (2025) (“American criminal justice is in crisis. It doesn’t do nearly enough to prevent crime, and it doesn’t deliver nearly enough justice.”); Garland, *The Current Crisis*, *supra* note 24; RACHEL E. BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* 2 (2019) (“If we want better outcomes that will improve

resurgence of interest. The empirical survey at the heart of this study aims to provide a clearer understanding of the current status, diffusion, and perceived actual and/or potential contribution of comparative criminal law and justice within the landscape of US legal academia.

III. METHODOLOGY

A web survey (see Appendix A)⁸⁶ was developed to inquire about the current state and relevance of comparative criminal law and justice research within American legal academia from the perspective of criminal law and justice scholars. As stated in the survey form, the aim of the questionnaire was to assess how US-based legal scholars view comparative insights both in general terms and, more specifically, in the current climate of criminal justice reform across US jurisdictions. The survey included two dichotomous questions (Yes/No), four multiple-choice questions with three or more answer options, and two open-ended questions allowing participants to provide detailed responses, ensuring a balance of quantitative and qualitative insights. Questions focused on teaching, research, and policymaking.

The survey was sent via email in late November 2021 to full-time tenured and tenure-track research and teaching faculty members employed at ABA-accredited law schools individually ranked in the 2022 *U.S. News Best Law Schools Rankings*.⁸⁷ Recipients were identified based on their online faculty profiles indicating primary teaching and research interests in criminal law, criminal procedure, and criminal justice. Clinical/lawyering faculty

public safety, we need to change the institutional framework we currently use to make criminal justice policy.”).

86. Survey on Comparative Criminal Law and Justice Research in US Legal Academia (data on file with author and available upon request). Web surveys allow respondents to complete questionnaires that are delivered to them and administered over the Internet. They are a data collection method in which surveys or questionnaires are distributed online to a sample of respondents, who can complete them via the internet. These surveys can be shared through various channels, such as email, website embeds, and social media. Respondents answer the questionnaire using a web browser, and their responses are stored in web-based databases.

87. For 2022, the rankings measured 193 law schools that are fully accredited by the American Bar Association (ABA), see Staci Zaretsky, *The 2022 U.S. News Law School Rankings Are Here*, ABOVE THE LAW (Mar. 29, 2021), <https://abovethelaw.com/2021/03/2022-us-news-law-school-rankings/2/> [<https://perma.cc/DX5T-EBMP>] (last visited June 25, 2025).

and emeriti professors were excluded from the recipient pool.⁸⁸ The search conducted following the above-mentioned criteria led to the selection of a sample of 444 scholars across the country. A follow-up email to the selected group was sent out in early January 2022. The survey was closed at the end of the same month.⁸⁹ Of 444 recipients, 116—over one in four—responded to the survey, which constitutes approximately a twenty-six percent response rate. This represents a satisfactory response rate considering that a 15–20 percent response rate is widely reported as average for online surveys of this kind, especially when addressed at specialized populations.⁹⁰

The closed questions (Yes/No and multiple-choice) generated quantitative data suitable for descriptive statistical analysis, providing insights into response patterns across the participant group. The open-ended responses were subjected to qualitative

88. Clinical/lawyering professors are typically hired as experts in specific areas of legal practice. Their primary focus is on experiential learning, such as in-house clinical programs, externships, and courses that integrate the traditional law school curriculum with practice-oriented content. While clinicians play an invaluable role in modern US legal education and often become tenured faculty with their own research agendas, the core nature of their work remains centered on practical skills training and domestic legal practice. *Cf.* Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 *CLINICAL L. REV.* 287 (2019). Including clinical faculty in the sample could have embedded a structural bias and diluted the findings, as the comparative analysis of foreign legal systems—a central concern of the study—typically falls outside the defined scope of a clinician’s role. As for emeriti professors, who constitute a much smaller group overall, the rationale for their exclusion rests on the observation that most no longer teach core criminal law or procedure courses, and their involvement in scholarship and policymaking often changes significantly after retirement. The overarching aim was to maintain a sample that was both as inclusive as possible and sufficiently homogeneous in terms of current status, duties, and academic engagement. This approach was intended to ensure that a range of perspectives could emerge from a shared professional context—recognizing, of course, that even within this group, faculty vary in their degrees of activism, theoretical focus, or policy orientation.

89. The study received full approval from the Queen’s University Belfast School of Law ethics committee before the survey was distributed.

90. Overall, email surveys report an average response rate of around 25 percent, comparatively lower than in-person (57 percent) and mail (50 percent) surveys, but higher than telephone (18 percent) and in-app (13 percent) surveys. People are receiving more spam emails every day and, unfortunately, spam filters are extremely hard on the word “survey.” *See* Gi Woong Yun & Craig W. Trumbo, *Comparative Response to a Survey Executed by Post, E-mail, & Web Form*, 6 *J. COMPU-MEDIATED COMM’N.* (2000), <https://doi.org/10.1111/j.1083-6101.2000.tb00112.x> [<https://perma.cc/FUJ2-XHNR>]; *see also* Vasja Vehovar & Katja Lozar-Manfreda, *Overview: Online Surveys*, in *THE SAGE HANDBOOK OF ONLINE RESEARCH METHODS* 143–161 (Nigel G. Fielding, Raymond M. Lee & Grant Blank eds., 2d ed. 2017).

content analysis. This involved an iterative coding process to identify recurring themes, informed by both inductive and theoretically guided approaches. The dual structure of the survey allows for triangulation of findings, capturing both the quantifiable scope of responses and the underlying, deeper rationales, perceptions, and experiences expressed in participants' own words.

IV. FINDINGS AND DISCUSSION

A. The Comparative Gap: Aspirations and Realities

The first question of the survey (Q1) asked, "*How often do you incorporate aspects of foreign law in your teaching of U.S. law?*". The responses reveal a cautious but present engagement with comparative materials. Specifically, 39 percent of participants indicated that they *occasionally* incorporate such content, while 38 percent said they *rarely* do. A smaller group, 17 percent, reported using foreign law *frequently*, and only 6 percent responded with *never*. These results suggest that, although there is interest in and some integration of non-US legal perspectives, they remain supplementary rather than central to most courses in criminal law, criminal procedure, and criminal justice. The fact that over three-quarters of respondents (77 percent) fall into the 'occasionally' or 'rarely' categories points to a pattern where comparative material is used selectively, perhaps in specific modules, for illustrative purposes, or in response to particular topics. The relatively low percentage (6 percent) of respondents who *never* incorporate foreign law indicates that total exclusion is rare, reflecting an awareness of the importance of global legal contexts even within a domestically focused system. At the same time, the limited share of those who *frequently* engage with foreign law (17 percent) seems to point to institutional, pedagogical, and/or curricular barriers to deeper integration.⁹¹

The second survey item (Q2), "*Have you ever taught a course or carried out research at an institution located outside the United States?*", revealed that 58 percent of respondents have had such international academic experience, while 42 percent have not. This

91. This point arose in the open-text responses and is further discussed *infra* in Part IV.B.3.

indicates a solid majority of US-based legal scholars in this sample have engaged with institutions abroad, suggesting that comparative perspectives are often grounded in firsthand exposure to other legal systems. Such experiences are likely to enrich both teaching and research, contributing to more nuanced comparative insights. However, the substantial portion of academics who have never worked outside the United States may reflect either structural limitations, such as lack of institutional support or mobility, or a preference for domestically focused scholarship. Encouraging more international collaboration and mobility could certainly further diversify and strengthen comparative legal studies in the US setting.

The next set of questions focused on research engagement with foreign and comparative criminal law.

In response to the third question (Q3), *"Have you published scholarly work addressing foreign and/or comparative criminal law and justice issues?"*, 61 percent said yes, while 39 percent said no. This suggests that comparative criminal law is a meaningful area of scholarly activity among US law faculty, though not yet universally embraced.

For those who had published comparative work, the follow-up question (Q4)—*"If you answered 'Yes' to Q3, how often does your research focus on the law, policy and/or practice of foreign jurisdictions – either exclusively or in comparison with U.S. federal and/or state jurisdictions?"*—showed a varied level of depth in engagement: 22 percent said *frequently*, 35 percent *occasionally*, and 43 percent *rarely*. These figures indicate that while comparative criminal law features in the research portfolios of many scholars, it is more often a supplementary rather than a sustained or primary focus. This could reflect institutional research incentives, curricular demands, or a tendency to reference foreign systems mainly for illustrative purposes rather than as core subjects of analysis.

Participants were then asked (Q5), *"If you answered 'Yes' to Q3, what jurisdictions have been the main focus of your interest?"*. Responses here paint a picture of broad jurisdictional engagement. A majority of 67 percent said their work spans a combination of common law, civil law, and hybrid legal systems, suggesting a multi-jurisdictional approach that reflects increasing complexity and openness in comparative research. An additional 22 percent

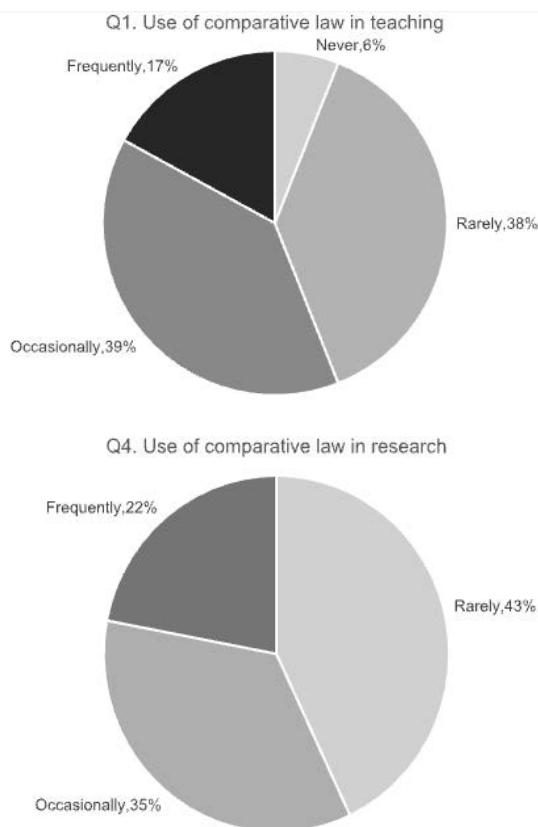
focused specifically on other common law jurisdictions—such as Canada, the United Kingdom, Ireland, or Australia—likely due to linguistic familiarity and shared legal heritage. Only 7 percent focused on civil law systems like Germany, France, or the Nordic countries, and just 4 percent on hybrid or mixed jurisdictions such as Israel or Scotland. These patterns underscore both the comfort and accessibility of common law comparisons for US scholars and a relative underrepresentation of civil law and mixed systems in comparative criminal law research. Nonetheless, the strong showing of scholars engaging with multiple systems points to a promising trend toward more integrative and diverse comparative legal scholarship.

The final multiple-choice question of the survey (Q6)—“*In your view, how is foreign and comparative criminal law and justice knowledge relevant to current law reform and/or scholarly debates about criminal law and criminal justice in the United States?*”—offers insight into how US criminal law and justice scholars perceive the practical and intellectual value of comparative perspectives. A significant majority of respondents—47 percent—indicated that such knowledge is *often relevant*, while an additional 19 percent considered it *always relevant*. This suggests strong recognition of the importance of engaging with non-US legal frameworks to inform both academic discourse and domestic reform efforts. Another 30 percent viewed comparative knowledge as *sometimes relevant*, highlighting a perception that its utility may vary depending on the issue at hand—perhaps more salient in areas like sentencing, incarceration policy, or policing practices, where international variation can be particularly instructive. Only 4 percent of respondents felt this knowledge is *almost never relevant*, indicating that outright skepticism toward comparative criminal law is minimal. At first glance, this distribution suggests broad acknowledgment of the value of comparative knowledge—with two-thirds of respondents placing it in the “often” or “always” relevant category.

However, when viewed alongside earlier responses in the survey, a more complex picture emerges. While many scholars express a belief in the importance of comparative insights, relatively few incorporate them frequently into their own teaching or research. For instance, only 17 percent said they frequently use non-US law in teaching, and just 22 percent said their research

frequently focuses on non-US jurisdictions. The rest engage only occasionally or rarely. This discrepancy between attitude and practice suggests that while skepticism about comparative criminal law may be low, active integration of such perspectives remains limited. Structural factors—such as curricular constraints, lack of institutional support, or the dominance of US-centric frameworks—may inhibit scholars from translating positive views into consistent practice. In short, while the perceived relevance of foreign and comparative criminal law is relatively high, its practical influence on US legal education and scholarship appears more modest. The data point to a landscape in which openness to comparative insights exists in principle, but deeper engagement still faces systemic and professional barriers.

Figure 1 illustrates the gap between the perceived relevance of comparative criminal law and justice and its actual use in teaching and research. While Q1 and Q6 reflect responses from the full sample, Q4 is based on a smaller subset (61 percent) of participants who indicated they had published on comparative criminal law and justice topics (i.e., those who answered “yes” to Q3). The figure is therefore intended to illustrate overall trends in engagement and perception, rather than to provide a direct comparison across all respondents.



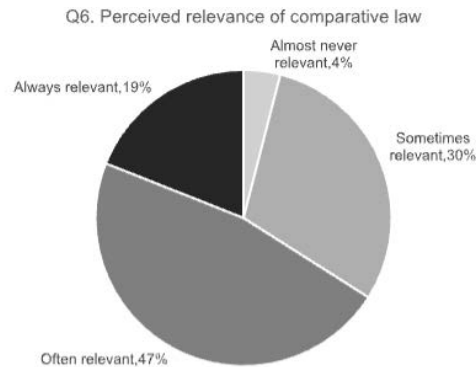


Figure 1: Gap between actual use of comparative criminal law and justice in teaching and research compared to its perceived relevance

The survey results for the first six questions paint a picture of many “aspirational comparativists” within US legal academia—scholars who recognize the importance of foreign and comparative criminal law and justice, affirm its relevance to law reform and scholarly debates, and often have some international exposure or past engagement, yet do not consistently incorporate comparative perspectives into their teaching or research. This is evident in the gap between the 66 percent who view comparative knowledge as “often” or “always” relevant and the much smaller proportion who frequently use or study foreign law in practice. As mentioned, the data suggest that while interest and support for comparative criminal law are strong *in principle*, actual integration remains limited, likely due to institutional, curricular, or practical hurdles. This highlights both a challenge and an opportunity: with greater institutional support, training, and space in the curriculum, many of these aspirational comparativists could be empowered to deepen and sustain their engagement with comparative approaches, moving from endorsement to active practice.

B. What Role for Comparative Criminal Law in Law and Policy Reform?

The final two questions of the survey invited open-text responses. Question seven (Q7) asked participants “*Could you please briefly elaborate on your answer to Q6?*” (i.e., on the relevance of comparative law to US criminal law and justice reform and

scholarship). Nearly 96 percent of participants answered this question, sharing their insights. The eighth and final question of the survey (Q8) asked participants, “*Do you have any other comments to add about the topic of comparative criminal law and justice research in U.S. legal academia?*”. Nearly 34 percent of participants answered this second open-text question. This section draws primarily on responses to Q7. In certain cases, answers to Q8—prompting final reflections—are also used where relevant, particularly when they expand upon or clarify earlier points, or introduce new significant arguments. References to survey responses refer to individual anonymous participants, identified by respondent number using the format “RXX.”

1. “De-naturalizing” US Criminal Law

From the answers, a view emerges that comparative criminal law can provide a critical lens through which US legal scholars, policymakers, and practitioners can interrogate the presumed naturalness and inevitability of domestic criminal justice policies and practices. By engaging with other legal systems, US scholars can explore a wider array of policy options and reform models that can help address persistent challenges that may seem unsolvable: “*Understanding how foreign jurisdictions approach issues is often useful for revealing the contingency of domestic legal practices.*”⁹² “*Students and policymakers need to realize the U.S. is not the end-all and be-all.*”⁹³ This perspective underscores the inherent value of comparative analysis in broadening the imagination of what is possible within the US context. As one respondent observed: “*I like to point to practices in other countries as a way of illustrating to students that just because we do it a certain way here, it does not have to be that way. Moreover, practices in other countries offer concrete alternative approaches.*”⁹⁴ Illustrating the reflective function of comparative criminal law, one participant noted: “*Foreign and comparative criminal law and justice knowledge is relevant to current law reform and/or scholarly debates about criminal law and criminal justice in the United States because other*

92. R90, Response to Q7.

93. R23, Response to Q7.

94. R106, Response to Q7.

jurisdictions might do things better than we do, or do things worse in instructive ways."⁹⁵

Comparative criminal law is seen as serving important pedagogical functions, helping students and scholars appreciate that criminal law and justice systems reflect deliberate decisions rather than predetermined outcomes. US criminal justice policies and practices are the result of "*choices made by a society.*"⁹⁶ Understanding more about how other jurisdictions handle certain problems "*helps to reflect on our own choices and to view them solely as choices rather than givens.*"⁹⁷ On this point, one respondent emphasized the importance of exposing students to the laws, policies, and practices of other jurisdictions: "*They see that policies and practices are choices and not inevitable. They also learn that there are different choices for addressing similar challenges and issues.*"⁹⁸ The point is reiterated several times. For example: "*Comparative criminal law helps expand our imagination of what is possible, feasible, and workable in the area of criminal law. It can helpfully be used to rebut arguments of 'that could never work.' It can help us understand the choices our system is making, by illuminating how different choices can be made.*"⁹⁹

One respondent articulated the subversive value of comparative criminal law in challenging deep-seated assumptions, remarking that "[a]s *policing and criminal adjudication are core concerns of every government, looking at alternative arrangements is critical for destabilizing expectations of what is possible, or at the very least more seriously interrogate and contest the choices we have made.*"¹⁰⁰ Adding further nuance to the picture, one respondent cautioned against the uncritical adoption of foreign legal models, emphasizing that comparative insights risk losing their value when detached from the specific contexts in which they arise:

I think that foreign criminal law/justice is more relevant and more useful in U.S. conversations when it is framed in terms of relevant political, social, and cultural context. I worry that it is least helpful when U.S. academics or activists don't situate

95. R11, Response to Q7.

96. R88, Response to Q7.

97. *Id.*

98. R108, Response to Q7.

99. R26, Response to Q7.

100. R14, Response to Q7.

foreign examples against the backdrop of different political economies or cultural contexts.¹⁰¹

The same response added: “[O]ne important aspect of including non-U.S. examples in conversations and study is that it can help U.S. academics, policymakers, and activists appreciate what’s exceptional and new in our contemporary moment and what isn’t.”¹⁰²

Looking at US criminal law through a comparative lens can thus fundamentally disrupt the commonly held assumption that the present-day American criminal justice system is unavoidable. This recognition is crucial as it fosters critical thinking and intellectual humility by challenging parochial perspectives that often dominate American legal discourse. “*American students often think of U.S. criminal law as somehow natural. An attention to comparative practices de-naturalizes American law.*”¹⁰³ These reflections stress that what exists today is the product of historical contingencies, political choices, and institutional path dependencies, rather than any kind of preordained outcome. This awareness is foundational to fully understand the importance of recognizing legal pluralism, alternative models, and the socially constructed nature of legal systems. Viewing US criminal law as mutable—rather than fixed or inevitable—opens space for critical inquiry, reform, and transnational learning.

2. Areas Where Comparative Perspectives Offer Particular Value

Comparative criminal law is especially valuable in illuminating domains where US policies and practices diverge significantly from those of other liberal democracies. “*American criminal law is a tragic mess. Foreign comparisons help us come to terms with that.*”¹⁰⁴ Echoing this view, another respondent noted: “*Understanding the aberrational nature of many aspects of U.S. criminal legal systems is crucial context. It is also an important motivation for change and confirmation that other designs are*

101. R45, Response to Q7.

102. *Id.*

103. R93, Response to Q7.

104. R38, Response to Q7.

feasible."¹⁰⁵ Along the same lines, one participant stressed that *"considering how foreign jurisdictions address problems that also occur in the U.S. gives us new perspectives on the range of possible solutions; helps us identify when the U.S. approach is anomalous (and therefore gives us new ammunition to question whether we should up-end the status quo here)."*¹⁰⁶

This position, widely reflected in the responses, is effectively encapsulated in the following reflection:

I wish that U.S. courts, legislators, and scholars were more open to insights from other jurisdictions more generally, and certainly in the area of criminal law and justice. We could learn a great deal—for example, about how other major democracies define crime and handle crime in a manner that avoids creation of the mass incarceration society we alone have built.¹⁰⁷

Recognizing that different jurisdictions often grapple with similar issues, one answer stressed that *"comparative law is often important to show alternatives to the U.S. system, especially potential solutions to similar problems that criminal legal systems face."*¹⁰⁸ In a related vein, complementing the view that criminal law is shaped by local values, one respondent emphasized its engagement with universal concerns, and highlighted the value of comparative perspectives in deepening our understanding of domestic systems and their shortcomings: *"Criminal law deals with the management of human behavior and moral norms around such behavior and consequences of transgressing the law. Those are universal human issues, and so examining other frameworks for addressing shared concerns is often helpful to understanding domestic laws and their limitations."*¹⁰⁹ The importance of the comparative methodology is also underscored: *"It is always helpful to see how different systems around the world approach similar problems and pursue similar goals such as the search for truth, fairness, efficiency, and legitimacy. U.S. courts and scholars frequently compare the approaches of different U.S. systems for*

105. R65, Response to Q7.

106. R92, Response to Q7.

107. R17, Response to Q7.

108. R54, Response to Q7.

109. R20, Response to Q7

similar reasons."¹¹⁰ If comparisons among different jurisdictions are already conducted internally, why not extend this approach beyond national borders as long as it is done in a methodologically sound way?

Comparative criminal law also situates the US system within a shared global tradition, revealing universal concerns and moral intuitions that transcend cultural differences. The comparative framework highlights both convergence and divergence, fostering a richer understanding of justice itself: *"It's important to consider U.S. criminal law as a part of the Western common law tradition, but there is much we can also learn about the universality of punishment and theory across culture and what that says about our shared moral intuitions in treating criminals."*¹¹¹

One respondent underscored the importance of mutual learning in transnational justice efforts, noting that the United States has just as much to gain from studying other systems as it does in promoting reform abroad:

Just as the U.S. goes to other countries to help them improve their legal systems and implement various justice reforms—I have been involved in several USAID and State Department programs—the U.S. can and should learn from the successes and experiences of the[se] countries. Especially when we have such a diverse population.¹¹²

But which particular areas are seen as potential beneficiaries of comparative inquiries?

Sentencing consistently emerged as an area ripe for comparative analysis. One respondent emphasized the usefulness of *"looking at sentencing lengths for similar crimes across different jurisdictions,"*¹¹³ which helps reveal the United States as a punitive outlier. The issue of prisons is also mentioned several times. One answer, in particular, elaborated on relevant non-US models: *"I think the Scandinavian model of prisons is really helpful, and the prison ombudsperson system in the UK is one that I have often discussed with policymakers in the U.S."*¹¹⁴

110. R50, Response to Q7.

111. R101, Response to Q7.

112. R85, Response to Q7.

113. R75, Response to Q7.

114. R27, Response to Q7.

Policing procedures and practices can also benefit from comparative scrutiny. As one answer noted: *"The difference between adversarial and inquisitorial systems is essential to any discussion of the Miranda case and rules about interrogation."*¹¹⁵ One respondent, citing their policy reform work, observed: *"I have been working on police reform in the U.S. Criminal procedure law and criminal justice methods used in other countries help me evaluate the potential effectiveness and workability of proposed changes to U.S. law and process."*¹¹⁶ Another answer stressed the potential benefit of *"understanding different regimes"* in the areas of *"use of force in policing," "interrogation practices," "exclusionary rule,"* as well as *"suspicion' laws permitting stops and searches."*¹¹⁷

Drug policy reform similarly exemplifies an area enriched by non-US examples. Several respondents emphasized that comparative models provide tangible alternatives to entrenched American approaches, offering practical solutions to the longstanding *"war-on-drugs"* mindset. For instance, Portugal's decriminalization of drugs and harm-reduction policies in Canada and Switzerland have served as models for US scholars and policymakers seeking to rethink punitive approaches.¹¹⁸

One response underscored the selective value of comparative law, emphasizing that its relevance can vary significantly by topic: *"One of my areas of scholarly interest is capital punishment law; in that area, the substantive constraints on (or abolition of) capital punishment in foreign jurisdictions is relevant, but the procedural requirements generally are not."*¹¹⁹

A respondent noted how academics are lagging behind in incorporating comparative conversations that are relevant not only at the scholarly level but also to inform policymaking: *"Advocates on the ground take a lot of lessons from comparative policies and regulations in other countries but academics are slower to do so."*¹²⁰ However, a caveat was raised regarding the often-uncritical adoption of comparative insights in policy reform initiatives, warning that such models can lose their relevance if the

115. R66, Response to Q7.

116. R74, Response to Q7.

117. R47, Response to Q7.

118. See R64, R77, R83, R105, Responses to Q7.

119. R9, Response to Q7.

120. R76, Response to Q8.

contexts in which they were developed and operate are not carefully considered. One answer in particular, observed the following:

Some criminal justice reform organizations have integrat[ed] European approaches in their analysis. Yet, often those have limited legal focus or fail to consider the scope of the entire criminal justice/legal system. While some areas may allow for the sole comparison of two sets of laws to gain insights, others require consideration of an entire system. If the latter approach isn't taken, attacks are cheap but they are successful in undermining the relevance of comparative law.¹²¹

Finally, many respondents emphasized the inherent value of learning from specific legal traditions. Several noted that examining other common law jurisdictions serves as a natural starting point for comparative analyses, given the shared historical and doctrinal roots that facilitate meaningful dialogue and exchange of ideas: “[I]t’s particularly helpful where other common law jurisdictions have adopted a different answer to a question with which U.S. jurisdictions have also grappled.”¹²² Others highlighted that, given the increasingly statutory nature of US law, comparison with civil law jurisdictions is no longer to be seen as not fit for purpose: “Looking at other common law countries helps illuminate how far the U.S. has gone off the rails. Looking at code countries illuminates a fuller range of alternate possibilities in an age of statutes.”¹²³

121. R81, Response to Q8. On some of these efforts, involving US academics, see, for example, Richard S. Frase, *Learning from European Punishment Practices—and from Similar American Practices, Now and in the Past*, 27 FED. SENT’G REP. 19 (2014) (commenting on a Vera Institute’s report on German and Dutch sentencing and prison practices); Jordan M. Hyatt et al., “We Can Actually Do This”: *Adapting Scandinavian Correctional Culture in Pennsylvania*, 58 AM. CRIM. L. REV. 1715, 1735–44 (2021); Jordan M. Hyatt & Synøve N. Andersen, *Rethinking the Prison Environment: Pennsylvania’s Experience with Piloting Scandinavia-Inspired Prison Reform*, VITAL CITY (Oct. 16, 2024), <https://www.vitalcitynyc.org/articles/rethinking-prison-pennsylvania-pilots-scandinavian-inspired-prison-reform> [<https://perma.cc/G8EU-6LG4>] (discussing the Scandinavian Prison Project, an international interdisciplinary effort evaluating Pennsylvania’s prison reform in collaboration with Swedish and Norwegian correctional services).

122. R31, Response to Q7.

123. R115, Response to Q7.

3. Challenges to the Integration of Comparative Perspectives in US Criminal Law

A primary hurdle frequently mentioned in responses is the enduring reluctance of American courts—particularly the US Supreme Court—to engage with or cite non-US law in their reasoning.¹²⁴ This “judicial insularity” not only discourages scholars from foregrounding comparative insights but also sends a broader signal about their perceived irrelevance. As one respondent observed, “*the U.S. Supreme Court has stated that what other countries do with regard to criminal law/procedure is not relevant to their analysis.*”¹²⁵ This view reinforces a wider judicial culture that tends to sideline comparative engagement: “*American courts are not typically amenable to decision-making based on foreign jurisdictions.*”¹²⁶

Similarly, “*as long as the Supreme Court fails to incorporate [comparative insights], advocates [are left] to do the same.*”¹²⁷ This perceived judicial resistance is not seen as temporary; rather, it reflects deeper ideological and political shifts. As one respondent predicted, “*With the current composition of our Supreme Court, foreign and comparative references [are] likely to be even more scant than in the past.*”¹²⁸ Another participant articulated this pessimism even more directly: “*Until U.S. courts take foreign and/or international law seriously, these are not productive avenues for reform.*”¹²⁹

Some respondents pointed to constitutional constraints as another significant obstacle to comparative engagement. These limitations are seen not merely as matters of judicial preference, but as baked into the legal architecture itself. “*Some issues are governed by the U.S. Constitution in a way that makes foreign law of little or no relevance (given the difficulty of amending our Constitution).*”¹³⁰ This comment underscores a structural rigidity

124. For a discussion of the rare Supreme Court cases that address the use of non-US law in judicial decision-making, see *supra* Part II.B.

125. R98, Response to Q7.

126. R87, Response to Q7.

127. R76, Response to Q7.

128. R21, Response to Q7.

129. R7, Response to Q7.

130. R42, Response to Q7.

that distinguishes the US system from more adaptable legal regimes.

Beyond the judicial reluctance outlined above, academic and pedagogical pressures also inhibit the integration of comparative criminal law. Several participants noted that law school curricula—especially in doctrinal, bar-focused courses—leave little room for comparative perspectives. Time constraints and institutional priorities tend to marginalize content not directly tested on standardized exams. As one participant explained, there is an “[a]lready limited amount of time available to cover domestic law adequately.”¹³¹ Another respondent echoed this sentiment, stating: “It’s always relevant to the debate, I just often don’t have time to cover [it] in class.”¹³² For early-career academics, the burden is even greater: “I think comparative views of criminal law are very important, but this early in my career, I don’t have time to go outside of my textbook to extensively research them so I can incorporate them into my criminal law class. So I’m restricted to the very limited material presented in my textbook.”¹³³ These comments reveal a clear disconnect between normative endorsement of comparative approaches and the day-to-day realities of legal education.

The result is that comparative materials often remain peripheral to curricula centered on domestic legal doctrine and professional qualification. One respondent summed up this dilemma succinctly: “Comparative criminal law may not feel very relevant to my students who are mostly concerned with passing a state administered bar exam.”¹³⁴ Another answer resonated with those remarks: “When I teach criminal law or procedure courses, there isn’t much time to look at other countries. Those courses are typically tested on the bar exam and there is a lot to cover without getting into topics that would be interesting, but aren’t relevant to the bar exam.”¹³⁵ However, the same respondent also offered

131. R68, Response to Q7.

132. R86, Response to Q7.

133. R1, Response to Q7.

134. See R91, Response to Q7; see also R34, Response to Q8: “I suspect that American law students are even less interested in comparative criminal law and justice than their teachers, unfortunately.”

135. R73, Response to Q8.

valuable insights regarding the research aspect, including reflections from a career perspective:

In the U.S., law reviews that publish articles are not as interested in what other countries do legally. There are some international law journals, but they are limited in number. If you write an article that is comparative, the likelihood it will be published in a more desirable journal is unlikely. So I'm not sure there is the time to discuss what other countries do in class, nor is there much of a reward for researching it. Perhaps that is why so few American law professors explore these topics regularly.¹³⁶

The lack of institutional incentives to conduct comparative research also emerged clearly in other responses: "*There is a lack of support and interest in many U.S. institutions to have a comparative approach to teaching and publishing.*"¹³⁷ "*I would love to engage in more comparative scholarship but often don't know where to start! I feel that it is not encouraged enough in this country and it's a shame.*"¹³⁸

At the same time, respondents emphasized that comparative scholarship should remain accessible and engaging, avoiding excessive abstraction—particularly in its foundational premises. As one participant explained:

I sometimes have the impression that comparative law scholars feel the need to establish a theoretical justification for the work, whether for their scholarship or for teaching comparative law. My concern is that this search of a justifying theory can make comparative law scholarship less accessible to a broader range of students and faculty members who are otherwise interested.¹³⁹

The absence of adequate comparative resources was also stressed: "*I wish foreign sources-including translations of foreign primary sources-were more easily available. The lack of easily available legal sources (including translations of those sources) from*

136. *Id.*

137. R85, Response to Q8.

138. R91, Response to Q8.

139. R108, Response to Q8.

*different countries is a major reason for the reluctance or inability of students, scholars, and judges to engage in comparative research.”*¹⁴⁰

Finally, cultural attitudes and professional norms also emerged as key barriers to comparative engagement. These are often less visible than institutional rules or curriculum structures but no less powerful in shaping scholarly and pedagogical choices. Several respondents expressed frustration with a perceived assumption that defines much of the American legal imagination. As one participant put it, *“The U.S. legal system has been very slow to look for best practices, or just good ideas, from other countries. We exhibit a great chauvinism in that respect on the whole and it hampers our progress.”*¹⁴¹ This sense of cultural insularity is mirrored in professional practice and legal academia alike: *“Most U.S. scholars are not comparativists and most U.S. audiences are not receptive to hearing about how things are done elsewhere.”*¹⁴²

The implications extend beyond legal education and into public policy, where resistance to foreign models often persists even in the face of evident shortcomings in the domestic system. As one participant observed, *“I think American voters and policy makers know that our system differs from other systems—most notably in that it is more punitive. But that doesn’t seem to matter.”*¹⁴³ This insularity also shapes the direction of comparative influence itself. As another respondent critically noted, *“In criminal justice policy, lesson learning and implementation are crucial, and it sadly turns out to be one-directional: the U.S. woefully neglects comparative perspectives, while the rest of the world does rely on comparative law (including comparisons to the U.S.)”*¹⁴⁴

Taken together, these reflections underscore that, even as many respondents express support for comparative approaches in principle, the broader environment often renders such engagement difficult or strategically inadvisable in practice. While scholars often acknowledge the value of comparative perspectives, multiple factors prevent their substantive integration into legal discourse, pedagogy, research, and practice.

140. R50, Response to Q8. On the difficulties of obtaining comparative materials and knowledge, see *supra* Part II.D.

141. R52, Response to Q7.

142. R21, Response to Q7.

143. R99, Response to Q7.

144. R111, Response to Q7.

4. The Long Shadow of American Penal Exceptionalism

A recurring theme in the participants' responses is the transformative potential of comparative criminal law to challenge American penal exceptionalism and encourage critical reflection on US penal policies and practices. The US criminal legal system *"remains an outlier in many respects. U.S. students/scholars should know that."*¹⁴⁵ *"U.S. criminal law is an outlier in so many ways that most Americans do not realize, e.g., life sentences for juveniles."*¹⁴⁶ At the same time, however, the logic of US penal exceptionalism seems deeply embedded: *"The problems are the same. But the context is often different because of economic, cultural and social differences between the U.S. and the rest of the world."*¹⁴⁷ As a result, *"[l]egal compromises struck under different circumstances are unlikely to succeed here."*¹⁴⁸ One answer provided a particularly comprehensive summary of this view:

The extremely decentralized nature of the U.S. criminal legal system, our incomparably high incarceration rate, our unique reliance on elected prosecutors and judges (and politically accountable parole boards), our remarkably thin safety net and total absence of national health care, the nature of our gun culture: the nature and causes of our problems—and thus our solutions—are so idiosyncratic that I'm not sure other experiences will often be that useful.¹⁴⁹

This leads to a landscape where, for the most part, US scholars *"tend to be pretty parochial in their interests."*¹⁵⁰ The inward-looking approach is not merely neutrally acknowledged, but also either criticized or explained. Critics noted: *"In the area of criminal law, particularly, the United States is blinkered. It rarely looks outside itself to appreciate appealing alternatives that other countries have wisely developed. This is singularly true in respect to sentencing and imprisonment."*¹⁵¹ Similarly, one participant lamented that *"Americans like to think of our system as the gold*

145. R40, Response to Q7.

146. R79, Response to Q7.

147. R97, Response to Q7.

148. R60, Response to Q7.

149. R8, Response to Q7.

150. R34, Response to Q7.

151. R28, Response to Q7.

standard. Showing that other liberal democracies adjudicate differently challenges what many of us take for granted as being the only way."¹⁵² One respondent presented parochialism as possibly stemming in part from so-called "penal imperialism,"¹⁵³ where the United States' hegemonic role in shaping other jurisdictions' criminal legal systems limits the potential learning from other experiences: *"Even though (or perhaps because) we are an exporter of our law, we often seem little interested in other approaches."*¹⁵⁴

Many voices, however, tried to contextualize, if not openly justify, why certain factors would inevitably lead to a diminished attention to comparative insights from a US perspective. The deeply political nature of American criminal justice systems is cited as a limitation on the feasibility of directly applying ideas and practices from non-US jurisdictions. For instance, one answer agreed that comparative analyses can be *"[o]ften valuable to provide a frame/comparison point for U.S. policy and practice, but politics and context can be so different that it can be hard to draw too many lessons."*¹⁵⁵ Similarly, another respondent noted that *"the political nature of criminal justice in the U.S. sometimes limits the application of best practices from elsewhere."*¹⁵⁶

The fragmented nature of the US criminal justice system is also recognized by many as a barrier to comparative inquiry. Such a hyper-decentralized structure can make cross-national comparisons appear mismatched or impractical. As one respondent observed, *"because criminal justice is hyper-localized in the U.S. . . . comparative analysis to criminal law and public policy of nations with more centralized national approaches to criminal justice can be challenging."*¹⁵⁷ This point is articulated in other responses, most notably the following:

152. R119, Response to Q7.

153. See Allegra M. McLeod, *Exporting U.S. Criminal Justice*, 29 YALE L. & POL'Y REV. 83, 84 (2010) ("In the years leading up to and following the end of the Cold War, the U.S. government embarked on a new legal transplant project, carried out through the foreign promotion of U.S. criminal justice techniques, criminal procedures, and transnational crime priorities."); see also Alessandro Corda, *Policy Transfer, Policy Mobility, and Policy Hegemony in the Penal Field*, in RESEARCH HANDBOOK ON PENAL POLICY 54–57 (Alessandro Corda ed., 2026) (discussing the notion of "penal hegemony" in relation to the circulation of penal policy models across jurisdictions).

154. R81, Response to Q7.

155. R67, Response to Q7.

156. R48, Response to Q7.

157. R36, Response to Q7.

I feel that many U.S. criminal law and justice controversies and debates arise because the U.S. is large and contains diverse ideologies to a degree not found in other national criminal jurisdictions. Solutions that work for relatively small communities or countries often do not translate well to the U.S.¹⁵⁸

On the other hand, other responses emphasized that this internal diversity calls for its own form of comparative thinking: *"The federal system in the U.S. gives us separate criminal justice systems in 50 states plus D.C. and the federal system. Often we have to do what is, in essence, a comparative evaluations [sic] within the U.S."*¹⁵⁹ In the same vein: *"U.S. states are appropriate for comparative law work. They are the primary sovereigns with respect to criminal law."*¹⁶⁰

Another respondent added that *"criminal law teachers and practitioners could learn a great deal from studying other jurisdictions, but (apart from a few subject areas) one could spend an entire career in the U.S. practicing and writing about criminal law without engaging criminal law from other jurisdictions."*¹⁶¹ This quote highlights a key tension in the study and practice of criminal law in the United States: while comparative legal analysis may offer rich insights, many American scholars and practitioners remain deeply rooted in domestic doctrine and policy, confirming the sense of prevailing insularity of the US legal system, where one can have a full and accomplished career without ever engaging with comparative criminal law.

An additional layer of complexity worth mentioning was raised by a respondent whose research focuses on Tribal Law:

I'm not sure where/whether my primary research focus—tribal and indigenous justice systems—fits in. Q4 references federal and state jurisdictions, but does not mention tribes. There are 574 sovereign Tribal Nations in the U.S., over 300 of whom operate justice systems and courts that are completely independent of the state and federal governments. Some Tribes model their courts to (at least from the outside)

158. R97, Response to Q8.

159. R35, Response to Q7. For a discussion of the complex federal framework of U.S. criminal law, see *supra* Part II.C.

160. R33, Response to Q8.

161. R12, Response to Q7.

conform to Anglo-European justice norms. But many Tribes incorporate traditional approaches to wrongdoing into their justice ecosystems (either instead of, or in addition to, western-style courts). To the extent Tribal Nations in the U.S. are considered ‘foreign jurisdictions’ for comparative law purposes (which I think they should be), my answers to Q1 and Q4 would be different because I regularly and frequently incorporate comparative Tribal Law and indigenous justice approaches into my courses and research.¹⁶²

The inclusion of Tribal justice systems both complicates and enriches the overall picture by adding a further level of analysis, while also challenging the assumption of a singular, hegemonic legal model articulated through 51 main varieties within the United States.¹⁶³

Finally, and importantly, distinctive historical legacies are also seen as a key factor influencing the focus of scholarly attention by US legal academics. While acknowledging that “[p]ositive *American criminal law is allergic to foreign perspectives*,”¹⁶⁴ one answer stressed the pressing need to address the legacy of slavery and discrimination against the African-American population:

162. R36, Response to Q8.

163. This perspective also aligns with broader efforts to decolonize legal scholarship by acknowledging and valuing non-Western and indigenous legal traditions as integral components of global legal discourse. For a very useful discussion, see Sherali Munshi, *Comparative Law and Decolonizing Critique*, 65 AM. J. COMP. L. 207, 224–29 (2017) (discussing how, historically, comparative law has developed, in both the old and new continent, as the study of different varieties of Eurocentric models); see also Helge Dedek, *The Tradition of Comparative Law: Comparison and Its Colonial Legacies*, in THE CAMBRIDGE HANDBOOK OF COMPARATIVE LAW 394 (Mathias Siems & Po Jen Yap eds., 2024) (tracing comparative law’s intellectual roots back to nineteenth-century comparative disciplines “intrinsically connected to imperialist/colonial thought and practices.”); cf. *McGirt v. Oklahoma*, 591 U.S. 894 (2020). In *McGirt*, the US Supreme Court affirmed that the Muscogee Nation’s reservation was never disestablished, holding that land within its historic boundaries remains “Indian country” under the Major Crimes Act. Consequently, Oklahoma lacks jurisdiction to prosecute Native Americans for crimes committed on this land; such cases fall under tribal and federal jurisdiction. The decision led the Oklahoma Court of Criminal Appeals to extend this reasoning to several other Tribal Nations, effectively recognizing that much of eastern Oklahoma remains Indian country. In response, state courts began vacating prior convictions of Native defendants and transferring those cases to the appropriate courts. On American Indian tribal law, see Robert D. Cooter & Wolfgang Fikentscher, *American Indian Law Codes: Pragmatic Law and Tribal Identity*, 56 AM. J. COMP. L. 29, 31 (2008) (“Until the 1960s, most tribal councils contented themselves with making occasional decisions and producing few written laws. Since the 1960s, however, laws have accumulated rapidly in well-organized codes.”).

164. R41, Response to Q7.

“[A]cademic analysis among American criminal law scholars is strongly focused on domestic concerns, particularly anti-black racism and the oppression of unempowered groups by the American criminal enforcement system.”¹⁶⁵ The uniquely racialized history of the US criminal law shapes scholarly focus inward, prioritizing domestic injustices. This, obviously, does not render comparative knowledge useless, but highlights the challenge of integrating it meaningfully into a context defined by deep, specific structural harms.

V. CHARTING A FUTURE FOR COMPARATIVE CRIMINAL LAW AND JUSTICE IN THE US CONTEXT

The insights from the survey discussed in Part IV illuminate the persistent ambivalence—if not resistance—toward integrating comparative criminal law and justice perspectives into US criminal law scholarship and policy discourse. Despite a broad acknowledgment that comparative knowledge can enrich understanding and offer pathways toward meaningful reform, there remains a striking gap between aspiration and practice. This disjunction reflects deeper structural and ideological commitments within the US legal system that end up prioritizing notions of insularity and exceptionalism which, like it or not, contribute to the perpetuation of the current punitive status quo by limiting penal imagination and reformative horizons. And this persists, although comparative research played a crucial role in making US policymakers aware “that mass imprisonment was not the inexorable product of rising or high crime rates, but the consequential result of conscious policy choices.”¹⁶⁶

After George Floyd’s murder in Minneapolis in 2020, abolitionist discourses gained unprecedented visibility in both media and scholarly circles.¹⁶⁷ However, this surge in attention

165. *Id.*

166. Michael Tonry, *Is Cross-National and Comparative Research on the Criminal Justice System Useful?*, 12 EUR. J. CRIMINOLOGY 505, 507 (2015).

167. See, e.g., Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1842 (2020) (“We must understand that decarceration and depolicing will require fundamental transformation of the material and ideological infrastructure of our collective lives.”); Aya Gruber, *Policing and “Bluelining”*, 58 HOUS. L. REV. 867, 933 (2021) (“[A]bolitionist ideology... is currently experiencing a renaissance in progressive scholarly circles.”); Zhandarka Kurti & Michelle Brown, *Carceral Reckoning and Twenty-First Century U.S. Abolition Movements: Generational Struggles in the Fight against Prisons*,

was not matched by a parallel rise in serious comparative inquiries into how other countries have successfully reduced their prison populations or de-intensified their penal regimes. While abolitionist responses gained moral and rhetorical prominence, they ultimately did not prove to be a practically transformative avenue. Despite their powerful critique of structural injustice, these discourses lacked detailed, scalable policy frameworks and failed to gain traction within mainstream institutions.¹⁶⁸ The moment presented—and still presents—a rare opportunity to look outward: to examine alternative models of justice, decarceration, and harm reduction from other contexts. Yet, the US discourse has remained largely inward-facing. This reflects a persistent tendency within American criminal law scholarship and penal policy debates to approach reform in isolation, even when addressing systemic crises that require broader, transnational perspectives.

Long before Donald Trump's presidencies, US criminal law scholarship tended to be quite insular. The political climate under Trump arguably amplified this tendency. The rhetoric of "golden isolationism" and emphasis on national sovereignty¹⁶⁹ resonated

25 PUNISHMENT & SOC'Y 1353 (2023) (discussing the reasons why abolitionism gained mainstream acceptance in public discourse especially in the wake of George Floyd's murder); Christopher Slobogin, *The Minimalist Alternative to Abolitionism: Focusing on the Non-Dangerous Many*, 77 VAND. L. REV. 531, 533–34 (2024) (discussing the resurgence of abolitionist scholarship in the US legal academy).

168. DAVID GARLAND, *LAW AND ORDER LEVIATHAN: AMERICA'S EXTRAORDINARY REGIME OF POLICING AND PUNISHMENT* 9 (2025) (noting that "the moment of radical hope soon passed. The masses who took to the streets for the summer months did not stay around for fall and winter. The protests and large crowds became less frequent. By the end of 2020, challenges to the penal state had become more muted—on the streets and in the media."). Without denying its normative appeal, abolitionist discourse has undeniably redefined the contours of what is possible, though its influence has yet to translate meaningfully into substantive shifts in policy or reform agendas. Cf. Máximo Langer, *Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then*, 134 HARV. L. REV. F. 42, 46–57 (2020) (discussing the challenges to prison and penal abolitionism from an historical comparative perspective, tracing the origins and development of European and Latin American abolitionist movements).

169. See Ronen Ziv, Amanda Graham & Liqun Cao, *America First? Trump, Crime, and Justice Internationally*, 14 VICTIMS & OFFENDERS 997, 998 (2019) ("At the core of his creed is the buzz phrase 'America First,' which Trump has used to encompass his international policy positions"); see also Heather Hurlburt & Elena Souris, *Isolationism in the Trump Era of 'America First'*, NEW AMERICA (Aug. 24, 2017), <https://www.newamerica.org/weekly/isolationism-trump-era-america-first/> [<https://perma.cc/Y43T-K5QR>]; Georg Löfflmann, *America First and the Populist Impact on U.S. Foreign Policy*, 61 SURVIVAL 115 (2019); John L. Harper, *American Isolationisms and the Riddle of Trump Redux*, 67 SURVIVAL 23 (2025).

with broader political and cultural trends that discouraged international engagement. This climate may have, inadvertently, subtly reinforced an academic tendency to focus on domestic concerns through exclusively domestic lenses, particularly in a period marked by intense national debates over policing,¹⁷⁰ mass incarceration,¹⁷¹ sentencing reform,¹⁷² and the death penalty.¹⁷³ Urgent and visible crises within the United States—from police violence to systemic racism—understandably commanded scholarly attention. Yet this focus may have come at the cost of engaging with how other countries address similar issues, missing opportunities for comparative learning or critique.

Comparative criminal law and justice holds the promise not only of expanding intellectual horizons but of offering practical alternatives to the deeply entrenched carceral logic that characterizes US penal policy. Yet, as the survey responses reveal, there is often limited institutional support, curricular space, or

170. See, e.g., Christy Lopez, *Trump's Vision for Policing Comes into Focus*, LAWFARE, (May 21, 2025), <https://www.lawfaremedia.org/article/trump-s-vision-for-policing-comes-into-focus> [<https://perma.cc/RNB2-RCX3>] (discussing the Trump administration's announced plans to roll back Biden-era police reform efforts, particularly in cities where high-profile incidents of police brutality and killings have drawn national attention); see also Trevor George Gardner, *Law and Order as the Foundational Paradox of the Trump Presidency*, 73 STAN. L. REV. ONLINE 141, 145 (2021) ("Then-candidate Trump would restore *law and order* upon entering the White House by, among other things, ending the supposed free rein given violent criminal predators by Democratic Party politicians. Yet the Trump White House, time and again, showed open contempt for rule-of-law principles.")

171. See, e.g., Alex Valdez et al., *Trump on the Criminal Legal System: Threatening a New Era of Mass Incarceration*, ACLU (Jul. 19, 2024), <https://www.aclu.org/publications/trump-on-the-criminal-legal-system> [<https://perma.cc/AP93-VFZ4>]; Sam Raim, *Trump's First 100 Days: Friend or Foe to Criminal Justice Reform?*, VERA INST. JUST. (May 13, 2025), <https://www.vera.org/trumps-first-100-days-friend-or-foe-to-criminal-justice-reform> [<https://perma.cc/GB67-AATJ>] ("It seems clear that meaningful criminal justice reform is not coming under a second Trump presidency. Trump's first 100 days have seen not just inaction on criminal justice reform, but also many actions that run explicitly counter to reform and have undermined public safety as well.")

172. See, e.g., Ames Grawert & Priya Raghavan, *Criminal Justice Reform Must Start with Sentencing Reform*, 31 FED. SENT'G REP. 101, 103 (2018) ("Although the [FIRST STEP] Act contains one notable 'back-end sentencing reform' provision, it does not address the draconian mandatory minimum sentences that continue to fuel mass incarceration and constitutes a step backwards from recent progress toward sentencing reform.")

173. See, e.g., J. Richard Broughton, *The Federal Death Penalty, Trumpism, and Civil Rights Enforcement*, 67 AM. U. L. REV. 1611 (2018) (arguing that Donald Trump's election to the presidency is likely to not only preserve but potentially expand the federal government's use of capital punishment).

scholarly incentive to engage with models that fall outside the dominant framework. This tension between stated openness and actual resistance underscores the need for a more deliberate and sustained effort to integrate comparative approaches—not as a marginal or exotic supplement, but as a core component of rethinking justice in the United States.

Bridging the gap between aspiration and reality requires not only scholarly engagement but institutional reform, pedagogical innovation, and a willingness to confront the foundational assumptions of the current system. As one respondent highlighted: “*Teaching more comparatively would have a liberating effect on United States policies, legislation, and practice.*”¹⁷⁴ Only then could comparative criminal law realize its transformative potential in helping to dismantle the punitive leviathan that the US penal state has become.¹⁷⁵

To be clear, this Article does not seek to present adopting a more robust comparative approach as a panacea. First and foremost, while comparison ideally should be “an essential preparatory stage to much legal reform,” it cannot be denied that “it is often part of an intensely political process that is selective in what it seeks to highlight.”¹⁷⁶ As Thomas Weigend has noted, “[i]f used in this way, comparison may have a mere alibi function, providing support to a proposed reform by a simple show of ‘it works elsewhere.’”¹⁷⁷ An antidote to this risk is a more reflexive and methodologically grounded approach to comparative legal analysis—one that acknowledges its political dimensions while maintaining transparency in the selection of cases, jurisdictions, and interpretative frameworks.¹⁷⁸ Rather than treating comparison as a neutral or technocratic exercise, scholars and reformers must be attentive to the power dynamics embedded in what is chosen for comparison and why. This requires expanding

174. R28, Response to Q8.

175. GARLAND, *LAW AND ORDER LEVIATHAN*, *supra* note 168.

176. David Nelken, *From Pains-Taking to Pains-Giving Comparisons*, 12 INT’L J.L. CONTEXT 390, 390 (2016).

177. Thomas Weigend, *Criminal Law and Criminal Procedure*, in ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW 483, 485 (Jan M. Smits, Jaakko Husa, Catherine Valcke & Madalena Narciso eds., 2023).

178. *Id.* (“Law reformers sometimes use comparative law like a buffet dinner: from the vast variety of ‘models’ that can be found globally, they pick and choose those that best fit their idea of which way the law should go and ignore the rest.”).

the range of models under consideration and subjecting dominant, and sometimes even trendy, comparative narratives to critical scrutiny.¹⁷⁹ In doing so, a comparative approach can become not just a tool for policy borrowing but a means of unsettling normative assumptions and imagining genuinely transformative alternatives.¹⁸⁰

A number of other possible objections merit consideration in advancing the argument for reviving comparative analysis within US criminal law and policy discourse. As a few respondents to the survey highlighted, meaningful comparative inquiry does not necessarily require cross-national engagement; subnational engagement can suffice, especially if one thinks of the rich variation across US states. From this perspective, it is suggested, internal comparisons may be as revealing as transnational ones. However, while subnational comparison is certainly relevant, it does not diminish the importance of engaging with external models. Rather, it underscores the value of a layered comparative analysis that reveals structural patterns and anomalies both within and beyond national borders.

Another concern is the risk to idealize, in particular, European penal systems and their penal policy solutions, which can obscure crucial differences in legal culture, political dynamics, and institutional capacity. This highlights the importance of a critical, context-sensitive approach to comparison—one that goes beyond normative admiration to understand how and why certain reforms

179. See e.g., Vanessa Barker, *Nordic Exceptionalism Revisited: Explaining the Paradox of a Janus-Faced Penal Regime*, 17 THEORETICAL CRIMINOLOGY 5 (2012) (discussing how the much-admired Swedish welfare state embodies a paradox by merging democratic inclusivity with exclusionary ethno-cultural nationalism, which marginalizes certain groups, particularly criminalized individuals and foreign nationals); Günter Frankenberg, *Stranger than Paradise: Identity & Politics in Comparative Law*, 2 UTAH L. REV. 259, 262–64 (1997) (criticizing the Anglo/Eurocentric focus of mainstream comparative law); Mathias Reimann, *Stepping Out of the European Shadow: Why Comparative Law in the United States Must Develop Its Own Agenda*, 46 AM. J. COMP. L. 637, 645 (1998) (arguing that American comparative law should “break out of the Eurocentric civil v. common law paradigm and take a much broader and more realistic view of today’s legal systems.”).

180. But see Pablo Ciochini & Joe Greener, *Mapping the Pains of Neo-Colonialism: A Critical Elaboration of Southern Criminology*, 61 BRIT. J. CRIMINOLOGY 1612, 1617–18 (2021) (identifying the risk of reification by Global North actors of criminal justice institutions, models, and ideas originating in the Global South).

succeed or fail, and how they may need to be adapted to fit local contexts.¹⁸¹

Some could also argue that episodic, marginal reforms inspired by comparative models may serve as a proverbial fig leaf for US politicians and policymakers—allowing them to enact minimal changes while avoiding or vetoing major legislation. However, even limited reforms can function as important stepping stones toward broader transformation by introducing new ideas, cultivating public support, and fostering institutional learning. These seemingly minor shifts may help generate momentum and pave the way for more substantial reforms in the future.¹⁸²

Finally, some may question the practical utility of comparative scholarship, asserting that academic research plays only a marginal role in driving criminal justice reform, which is more often shaped by political actors, social movements, and electoral cycles. While it is true that scholars rarely lead legislative change, their work remains essential in framing the narratives, evidence bases, and normative aspirations that shape reform discourse. Academic inquiry helps construct the intellectual architecture through which crime, punishment, and justice are interpreted. Comparative analysis, in this regard, would not merely constitute an exercise in knowledge accumulation but a means of challenging the insularity of American penal thought and expanding the range of possible futures.¹⁸³

181. See Weigend, *supra* note 177 (“To be a reliable basis for law reform, however, comparison should be as comprehensive as possible and should take into account the context in which an institution or legal norm operates; only if it can be shown to thrive under circumstances similar to those of the adopting country should it be cited as a viable example for domestic reform.”); Dubber & Hörnle, *Introduction*, in *CRIMINAL LAW: A COMPARATIVE APPROACH*, *supra* note 2, at vi (“To unlock its considerable potential, domestic and international, comparative criminal law must take a comprehensive and contextual approach that enables rich comparative analysis, rather than collect point-by-point contrasts or make grand but vague statements about essential systemic distinctions and similarities.”).

182. See, e.g., Anita Chabria, *California to Transform Infamous San Quentin Prison with Scandinavian Ideas, Rehab Focus*, L.A. TIMES (Mar. 16, 2023), <https://www.latimes.com/california/story/2023-03-16/newsom-wants-to-transform-san-quentin-using-a-scandinavian-model> [<https://perma.cc/LLF9-AGKN>].

183. David Nelken, *Why Compare Criminal Justice?*, in *WHAT IS CRIMINOLOGY?* 395 (Mary Bosworth & Carolyn Hoyle eds., 2011) (arguing that comparative research “uses other places as a foil . . . to prove that growing punitiveness is not the only game in town, and not the only path that can be taken.”).

VI. CONCLUSION

This Article, based on a first-of-its-kind survey of criminal law and justice academics, has offered original insights that add important nuances to both historical narratives and institutional explanations for the decline of comparative criminal law in the United States, highlighting potential directions for renewed research and engagement in this critical field, while also acknowledging the barriers that remain. Echoing some of the findings of this study,¹⁸⁴ Christopher McCrudden has compellingly stressed the beneficial—and even subversive—nature of comparative studies. “[C]omparisons—he argues—help in destabilizing traditions of thought” and in “overcom[ing] the tendency to naturalize one particular approach (our own). The utility of comparison, for example, may be to de-familiarize the normal.”¹⁸⁵ He also debunks the “ontological singularity” argument underpinning the American exceptionalism thesis, noting that the almost dogmatic notion that the US legal system and institutions are beyond comparison “seems to have more in common with theology,” and, cleverly, that “singularity is itself already the result of comparison.”¹⁸⁶

The rise of comparative law as an academic discipline in Europe fostered a broader appreciation for legal diversity and cross-cultural learning. It is often forgotten that European scholars and policymakers, during the 19th and most of the 20th century, saw the US criminal legal system as an essential case study for comparative analysis, enabling them to explore different approaches to, among others, criminalization, sentencing, prisons, and criminal procedure.¹⁸⁷ This interest facilitated cross-border

184. See *supra* Part IV.B.1.

185. Christopher McCrudden, *What Does It Mean to “Compare”, and What Should It Mean?*, in *COMPARING COMPARATIVE LAW* 62–3 (Samantha Besson, Lukas Heckendorn Urscheler & Samuel Jubé eds., 2017).

186. *Id.* at 79.

187. See e.g., Gerhard O. W. Mueller, *Lessons of Comparative Criminal Procedure*, 15 AM. U. L. REV. 341, 344 (1966) (“At a time when the continent suffered from a secret, non-direct, inquisitorial, and painful chamber justice, the Anglo-American system seemed unattainably high. Indeed, by the outgoing eighteenth century the Anglo-American system had become the envy of the world. In France ordinary citizens and reformers alike clamored for an end to the inquisitorial procedure [...].”); James Q. Whitman, *The Comparative Study of Criminal Punishment*, ANNU. REV. LAW SOC. SCI. 17, 17 (2005) (“The early nineteenth century was already a period of vigorous comparative scholarship, in particular among continental Europeans who were eager to import both the common-law

dialogue, enriched legal scholarship, and contributed to the evolution of criminal justice systems both in Europe and in the United States.¹⁸⁸

The neglect of comparative perspectives in contemporary US criminal law research and policy debates reflects a deeper problem of presentism—the implicit belief that “things have always been done the way we do them now.”¹⁸⁹ Such thinking distorts the historical record, which shows that earlier reformers routinely engaged with non-US legal models to question and reshape domestic institutions. It also reinforces the perception that the current system is both inevitable and unreformable, contributing to a reform environment increasingly polarized between modest, technocratic fixes and calls for outright abolition. While the resurgence of abolitionist positions has brought renewed urgency and moral clarity to debates on systemic criminal legal harm, it can, at times, reflect the same presentist tendency—i.e., treating the existing system as uniquely resistant to reform, while overlooking the longer, more global history of penal policy experimentation, adaptation, and change. Recovering the comparative tradition does not preclude radical critique; rather, it offers a broader set of tools and historical reference points for imagining criminal law and justice beyond the confines of the present.

Writing in 1958, Gerhard Mueller, advocating for the introduction of comparative law into criminal law courses across the United States, noted that “certainly nobody would contend that the criminal law course should be comparative for reason of immediate practical usefulness, i.e., we do not expect our students to make a living by practicing comparative criminal law.”¹⁹⁰ His goal was far more ambitious—to cultivate a habit of mind, a cultural *forma mentis*, that would shape the thinking of future

jury and the American penitentiary”); Elisabetta Grande, *Comparative Approaches to Criminal Procedure: Transplants, Translations, and Adversarial-Model Reforms in European Criminal Process*, in *THE OXFORD HANDBOOK OF CRIMINAL PROCESS* 67 (Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weisser eds., 2019) (“During the last few decades, European continental criminal procedures underwent extensive reforms, and in that process, the American adversary system often became the reference model for the overhaul.”).

188. Corda & Hester, *supra* note 14, at 206, 217.

189. See Roberto Catello, *Critiques of Presentism in Criminology: Challenges and Paradoxes*, 11 *LAW, CRIME & HIST.* 1, 9 (2023) (defining presentism “as a form of *historical short-sightedness* and as a kind of *harmful forgetfulness*.”) (emphasis in original).

190. Gerhard O. W. Mueller, *The Teaching of Comparative Law in the Course on Criminal Law*, 49 *J. CRIM. L. CRIMINOLOGY & POLICE SCI.* 101, 101 (1958).

judges, advocates, reformers, and policymakers exposed to comparative methodologies and solutions. This was intended as a remedy for what he identified as a distinctly American ailment of the time: insularity in legal thought and resistance to learning from non-US legal systems.¹⁹¹ He observed:

If foreign countries are ahead of us in criminal law, and many countries are ahead of us in many respects, so is one of the principal reasons, therefore, that they have never passed any important piece of criminal legislation without first ascertaining what everybody else's experiences have been. While they learned from us practically all we know, we have learned little of what they know.¹⁹²

A response from the survey reflected the same aspiration over sixty years later, when not much has changed:

I believe that the primary focus of American legal education will remain and should remain understanding the content of our own law, but studying comparative law and considering how other jurisdictions approach issues in the criminal law context is quite important, especially as we seek out more creative but also 'tested' approaches to our own challenges in the criminal justice realm.¹⁹³

In conclusion, as this Article has documented, while the use of comparative criminal law and justice insights in the United States still struggles for traction in mainstream academic and policy circles—not infrequently met with skepticism or resistance—it remains a deeply valuable and imaginative endeavor. Though the effort is substantial and the reception uneven, the potential rewards are significant. In an era marked by urgent calls for reform, engaging seriously with comparative criminal law and justice is not only worthwhile—it may prove indispensable.

191. However, things only deteriorated further, as US legal culture became even more inward-looking and resistant to external influences. *See* Corda & Hester, *supra* note 14, at 207–11.

192. Mueller, *The Teaching of Comparative Law*, *supra* note 190, at 108. The author even proposed the establishment of “a permanent American Institute of Comparative Criminal Law, operated under the auspices of th[e] Association of American Law Schools and/or within the framework of teaching and research at a major law school.” *Id.* at 109. On the Comparative Criminal Law Project launched at New York University School of Law in 1958, *see* MUELLER, CRIME, LAW, AND THE SCHOLARS, *supra* note 37, at 205–6.

193. R113, Response to Q8.

VII. APPENDIX A

Survey on Comparative Criminal Law and Justice Research in US Legal Academia:

You are invited to participate in a study investigating the current state and relevance of comparative criminal law and justice research in American legal academia. The aim is to assess how US-based legal scholars view comparative criminal justice insights both in general terms and, more specifically, in the current climate of criminal justice reform across US jurisdictions. This survey is addressed to Criminal Law and Criminal Justice academics (i.e., faculty members whose primary teaching and research interests are in the areas of criminal law, criminal procedure, sentencing, and criminal justice policy broadly defined) based in US law schools. All responses will be collected anonymously via the present form and treated as strictly confidential. The data you provide will be stored on password protected computer databases. Clicking the 'Submit' button at the end of the survey will constitute the participant providing consent to participate.

Q1: How often do you incorporate aspects of foreign law in your teaching of US law? (i) Frequently; (ii) Occasionally, (iii) Rarely; (iv) Never.

Q2: Have you ever taught a course or carried out research at an institution located outside the United States? (i) Yes; (ii) No.

Q3. Have you published scholarly work addressing foreign and/or comparative criminal law and justice issues? (i) Yes; (ii) No.

Q4: If you answered "Yes" to Q3, how often does your research focus on the law, policy and/or practice of foreign jurisdictions—either exclusively or in comparison with US federal and/or state jurisdictions? (i) Frequently; (ii) Occasionally; (iii) Rarely.

Q5: If you answered "Yes" to Q3, what jurisdictions have been the main focus of your interest? (i) Other Common law jurisdictions (e.g., Canada, England, Ireland, Australia); (ii) Civil law jurisdictions (e.g., Germany, France, Nordic countries); (iii) Hybrid or mixed systems (e.g., Israel, Scotland); (iv) A combination of the above.

Q6: In your view, how is foreign and comparative criminal law and justice knowledge relevant to current law reform and/or scholarly debates about criminal law and criminal justice in the United States? (i) Always relevant; (ii) Often relevant; (iii) Sometimes relevant; (iv) Almost never relevant.

Q7: Could you please briefly elaborate on your answer to Q6?

Q8: Do you have any other comments to add about the topic of comparative criminal law and justice research in U.S. legal academia? (Whatever they may be. I am aware that the seven questions above may seem limited in scope).