CHAPTER GOALS

1. Understand why the study of comparative law and justice is an important area of study and how it can be useful for justice and legal system professionals.
2. Become familiar with basic terminology used in the study of comparative law and justice.

Consider map 1. You will see that the countries of the world are each colored black or one of three shades of grey. What do you think these shades represent? What do Brazil, Kazakhstan, and Israel have in common? Russia, Algeria, and Papua New Guinea? Mexico, South Africa, and Iceland? Or perhaps hardest to explain, the United States, Saudi Arabia, Belarus, and Somalia? Take a moment, and make a guess.

Those who contemplate this map often struggle with the question of what it depicts, and they come up with a variety of explanations, ranging from aspects of world history to issues of global economics. The actual answer is that the map depicts countries’ policies about the death penalty (Amnesty International 2017). The lightest grey countries, like Mexico, South Africa, and Iceland, have completely abolished the death penalty—no one can be sentenced to death in those countries. The medium grey countries, like
Russia, Algeria, and Papua New Guinea, still have the death penalty on the books but have abolished it in practice, meaning they do not currently sentence people to death or carry out judicially imposed executions. The darkest grey countries, like Brazil, Kazakhstan, and Israel, retain the death penalty, but only for cases of extraordinary or exceptional crimes, such as treason or military offenses. Finally, the black countries, like the United States, Saudi Arabia, Belarus, and Somalia, retain the death penalty for ordinary crimes—whether only for murder, as in the United States, or for a wider variety of offenses.

The study of comparative law and justice can help us understand patterns like those we observe in map 1. People who study comparative law and justice have done the work of gathering and compiling the data that lets us group and categorize countries. More sophisticated analytical work can then be carried out to try to understand why countries do what they do and what the consequences of these differences might be. Some of these explanations regarding the death penalty can be found in chapter 7. But for now, let’s consider why we study comparative law and justice in the first place.

**WHY STUDY COMPARATIVE LAW AND JUSTICE?**

People often think of law, crime, and justice as local issues. In countries like the United States, Canada, India, and Australia especially, law is fairly localized, with different states, provinces, and regions taking somewhat different approaches to law enforcement, punishment, and criminalization. So why, then, is it important to take a global perspective on these issues?
Well, there are a number of reasons. First of all, we live in an increasingly globalized world. The sociologist George Ritzer defines **globalization** as “the worldwide diffusion of practices, expansion of relations across continents, organization of social life on a global scale, and growth of a shared global consciousness” (Ritzer 2011:166). Let’s consider what each of these four elements means.

By the **worldwide diffusion of practices**, Ritzer means that things that are done in one place become done everywhere. There are a wide variety of examples of such diffusion. Pizza and sushi are found all over the world today, not just in Italy and Japan, respectively. Similarly, many religions are practiced worldwide rather than solely in a specific nation or region. Soccer, cricket, and other sports are played around the globe. And movies—whether they come from Hollywood, Bollywood, or Nollywood—are viewed in countries far from those in which they were produced.

By the **expansion of relationships**, Ritzer is referring to the growth in connections between people and governments across the globe. Before globalization took hold, people would generally have known only others living nearby, and governments would have had ties only with neighboring nations. Now, countries on opposite sides of the world can forge alliances, and people can build and maintain personal and business relationships across oceans. Such relationships, and the practices embedded in them, lead to new ways of organizing social life. Consider the example of stockbrokers’ work schedules. When financial markets were local, traders worked the hours their local stock exchanges were open. But today, with global economic relationships and trades across multiple exchanges, brokers’ work lives have been reshaped to reflect the global marketplace. Thus, a stockbroker in New York may need to start work at 4 A.M. so they can talk to clients in London as their workday begins or check in with the Tokyo office as the day there comes to a close. Finally, Ritzer argues that globalization has brought with it a new level of **global consciousness**. By this, he means that we see ourselves as part of a global world and are conscious of the interconnections between people and between nations.

Another definition of globalization, which takes a slightly different perspective, refers to globalization as “the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa” (Giddens 1990:64). While it is clearly the case that some local events always affected distant areas—for example, when volcanoes erupt, they result in not only local destruction but also global weather changes—globalization as a social phenomenon emerged with the development of global travel and global communications technologies. Therefore, we can say that globalization began during the ages of exploration and colonization in the 1500s and 1600s and that its pace intensified in the 1800s with the development of steamships (see figure 1) and telegraphs.
Globalization has led to increased interaction among countries in relation to issues of law, crime, and justice. Our world must grapple with global problems like environmental catastrophe, world war, cross-border crime and terrorism, and human migration. Without a global approach, we cannot understand how and why these problems arise, what their consequences are, and what approaches might most effectively reduce the harm they can cause. Limiting this harm, whether by intervening when problems arise or by working to prevent them from arising in the first place, requires countries to work together. And working together requires that people understand one another’s perspectives, approaches, norms, and values.

As countries have worked together on various global and regional problems, they have built a complex array of global justice institutions. Historically, these institutions were limited to bilateral or multilateral treaties and alliances between nations. Today, though, we have many more global organizations and institutions. Some of these are global, like the World Trade Organization, and others are regional, like the African Union. Some, like the United Nations and the European Union, deal with a broad spectrum of issues, and others, like Interpol and the International Criminal Court, deal with a narrow set of topics and tasks. Without people who are willing to work with those from quite different national contexts to find solutions that are acceptable everyone, such global institutions could never be built. Again, this type of work requires understanding across legal, political, and value systems.

Taking a global perspective on issues of law, crime, and justice therefore enhances our international understanding in our increasingly globalized world, and it establishes the basis for cooperation between countries. But that
is not all it does. It also allows people who work within or make policy for legal and justice systems in a particular national context to learn from the ways that other groups or nations do things (Breyer 2018). For example, Norway has an unusual prison system, discussed in chapter 7, which provides prison inmates with much more freedom of activity and movement and treats them much more like they would be treated outside the prison walls (Slater 2017). Yet Norwegian prisoners are much less likely than prisoners in many other countries to be returned to prison in the first few years after their release. Could prison authorities in other countries learn something from Norway’s approach? Would adopting some of Norway’s practices reduce recidivism elsewhere? Questions like these can extend to any area of the legal system, whether it is an analysis of the effects of making Election Day a national holiday in the United States, a study of the consequences of requiring all employers to provide paid vacation time to their employees, or an investigation into what happens if most police officers are not permitted to carry firearms.

Thus, it is clear that it is important for people who care about legal and justice systems, whether as policymakers, employees, or observers, to learn about what other countries do. There are even career paths devoted to working specifically on questions of global justice, often through nongovernmental organizations (NGOs). These include global NGOs focused on specific issues or causes, as well as those focused more generally on global access to justice. For example, The Hague Institute for Innovation of Law (HiiL), based in the Netherlands, works to develop policies to ensure that people all over the world have access to justice and legal services when they need them to help resolve disputes (HiiL 2017). Other options include employment in a global governance organization like the United Nations, in a country’s foreign service, or as a consultant who works with countries struggling with particular issues. For example, Independent Diplomat is a consulting firm that helps countries develop political strategies and navigate international law (Independent Diplomat n.d.). It has worked on issues as disparate as how the low-lying Marshall Islands will be able to cope with climate change and sea-level rise and how the non-self-governing territory of Western Sahara can work toward autonomy.

But even if your career will not ever relate to global law and justice or directly benefit from an understanding of how legal and justice systems in other countries have addressed particular problems and issues, it is still useful to learn about and pay attention to the rest of the world. In our increasingly globalized context, what happens on the other side of the planet can have real consequences for our lives, whether by shaping our economic opportunities, contributing to climate change, or creating or avoiding a global military conflict. And so many of us are caught unaware by these processes—from the military service member who has not learned enough world geography to know where the countries to which he or she may be deployed are located to the small business person planning to import a trendy new food product without
developing an understanding of the complex dynamics of cross-border trade regulations, from the parents planning an international adoption to the senior citizen sitting in a recliner and trying to follow the incredibly complicated stories of global interaction that are part of our daily news in today’s world.

THE ROOTS OF THE FIELD

So we see that studying comparative law and justice is important. But where did this field of study come from, and how are such investigations carried out today? It is likely that for as long as governments and legal systems have existed, there have been individuals within those systems who have committed themselves to understanding how things worked across the border (borders are a relatively modern invention, actually, but the turn of phrase is still useful). Throughout recorded history, there is documentation of emissaries traveling from one kingdom to another and settling down to learn about and observe governmental behavior. But as an area of academic study, comparative law is much younger. According to legal scholars Konrad Zweigert and Hein Kötz (1988), the academic and applied study of comparative law in the Western world did not become a serious practice until the 1800s. Many early scholars of comparative law focused their research on the historical development of legal systems and on the question of why and how it is that we have law in the first place.

They developed their analysis against the backdrop of legal philosophy that had begun to emerge in seventeenth-century Europe. The central debate here concerns the origin of government and legal systems, and it is exemplified by the different perspectives of Thomas Hobbes and John Locke. In his book *Leviathan* (see figure 2), Hobbes argued that before the development of government, humans existed in the “state of nature,” living lives that were “solitary, poor, nasty, brutish, and short” and characterized by a war of all against all (Hobbes 1909–14). To Hobbes, then, law is what makes the building of society possible by regulating the rampant conflict between people that would otherwise destroy any chance to create and maintain social bonds. Thus, he believed that a lawless society is not a society at all. Locke’s perspective is quite different. He argued that people are by nature social and cooperative beings who live in a state of fundamental equality and have a sense of moral right and wrong. This means, according to Locke, that people will strive to live in peace, even without a government or a ruler. Locke did believe, though, that leadership and law would tend to emerge as a structured and orderly way to ensure justice and the protection of property (Locke [1690] 2008).

Regardless of which of these perspectives you find more persuasive, it is important to note that the fact that governmental and legal systems exist across societies does not mean that they always look like contemporary Western people expect them to look. There are many different ways to organize
systems designed to ensure justice or maintain social order. Thus, early scholars of comparative law began to construct research agendas involving detailed studies of various societies. While some such scholars came from legal backgrounds and confined their study to the formal legal texts of European nations (Zweigert and Kötz 1988), others were anthropologists who extended their study far beyond formal legal institutions. Such scholars lived among the populations they studied for extended periods, often years, engaging in ethnographic observations of all aspects of social life, including dispute resolution and social control. What they found was that while all societies have ways to resolve disputes and maintain order or compliance with norms, the mechanisms and methods they use vary widely, ranging from tribunals that might closely resemble modern court systems to a variety of processes modern observers might not see or understand as law, like contests or witchcraft. In fact, as you will see in chapter 6 when you learn about the history of trials, European
societies used to use methods of dispute resolution that were much like those
the early legal anthropologists encountered on far-flung Pacific islands (though
by the time these anthropologists came around, few European scholars were
eager to recall their own history).

Today, scholars of comparative law and justice have even more traditions to
draw on. They come from a vast array of disciplines, including (but not limited
to) law and legal studies, sociology, anthropology, geography, political science,
and history, and many do interdisciplinary work. And they use a wide variety
of methodological strategies (Bracey 2006). For example, many anthropolo-
gists, especially in the earlier days of legal anthropology, used descriptive eth-
nographic methods. They observed dispute resolution and rule-making proc-
esses, whether complex modern systems or simple small-group traditions, and
recorded how those processes worked. As more and more descriptive studies of
legal systems became available, scholars became more able to develop compar-
ative cross-cultural studies of these systems. Such studies enabled scholars to
understand many of the ways systems differ as well as to begin to generalize
about characteristics that groups of systems have in common (a topic taken up
in chapter 2).

Contemporary scholars of comparative law and justice go beyond simply
describing or comparing. They look to understand what sorts of dynamics
might have led to particular legal arrangements—for example, are there com-
plex relationships of conflict and compromise between different groups in a
given society? And they study the consequences of particular legal and justice
processes—for example, what sorts of punishments are correlated with higher
or lower levels of crime? Finally, they engage in applied analysis, using the com-
parative study of law in more practical contexts. This includes the ways
described above, looking at how countries seek to work together as well as
investigating approaches that might improve their own internal systems. It also
includes using legal study to explain cultural conflicts within systems, such as
when different groups of immigrants with different legal and cultural tradi-
tions find themselves in conflict.

Because the study of comparative law and justice draws on so many discipli-
nary traditions, it is common for two people to talk about the same kind of
phenomenon using very different language. This can be a real obstacle for the
field, though it also presents opportunities to discover new things by blending
various approaches. It does mean, however, that those who are writing about
comparative law and justice should be clear about where they are coming from.
This book, for example, comes from a sociological perspective. That has certain
consequences—in particular, it means that the analysis presented here will pay
close attention to structural characteristics of legal and justice systems and
will take notice of the ways in which inequality and stratification might be
related to those systems. But it will also explore other kinds of issues, even
those that are not typically a central focus of sociologists. It will consider