7 The Courts and Legal Professionals

Key Terms and Concepts

adjudicators
advocates
court
courts of general jurisdiction
courts of last resort
courts of limited jurisdiction
European Court of Human Rights (ECtHR)
indigenous courts
intermediate appeal
International Court of Justice (ICJ)
International Criminal Court (ICC)
International Criminal Tribunal for Rwanda (ICTR)
International Criminal Tribunal for Yugoslavia (ICTY)
internationalized courts
judicial impartiality
judicial independence
jus cogens
legal advisors
legal scholars
Rome Statute
tribunals

Chapter 7 Learning Objectives

Describe the roles of the four categories of legal professionals in developed societies.

Explore the differences between bureaucratically and politically oriented organizations.

Compare similarities and differences that occur in court structures and legal professions in our model nations.

Describe the major forms of supranational courts available in the world today.

Explain the advantages and challenges of supranational courts.

a Haitian court, defense lawyers clashed loudly with judge, shouting objections as he rang a small bell to and regain order. After a heated exchange, the efense lawyers tore off their robes and left the court. e judge suspended the trail for the day but told the cused that if their lawyers did not return the following rning that they would remain in jail waiting for the to continue for the next six months. The defense yers returned the next morning (Bogdanich and tag, 2011).

The trial of Gu Kailai, wife of a Communist Party cial in China accused of murdering a British busisman, began and ended in single day, August 19, 2, with the final verdict to be delivered later by the rmediate People's Court at an unannounced date—a dard practice in a Chinese court case (Page, 2012).

In February 2011, the United Nations Security ncil decided unanimously to refer a possible criminal ation in Libya to the International Criminal Court) prosecutor. On March 3, 2011, the ICC prosecutor ounced his decision to open an investigation in the ation in Libya, and in June 2011 the Pre-Trial mber I of the ICC issued three warrants of arrest ectively for Muammar Mohammed Abu Minyar dafi, Saif Al-Islam Gaddafi, and Abdullah Al-Senussi rimes against humanity (murder and persecution) edly committed across Libya. In November 2011, Trial Chamber I formally terminated the case against mmar Gaddafi due to his death. The two other ects remain at large (ICC, 2012).

Courts and courtrooms such as these provide a ngly endless source of material for both fiction and nonfiction for writers, news reporters, and media producers from around the world. There are many reasons for our fascination with courts and court room drama. The element of suspense is certainly an ingredient: Will the accused be acquitted or convicted? Does the trial appear to be conducted in a "fair" manner? What will surface from witness testimony? Accounts of intrigue, violence, inequity, and lawlessness are of intense interest to those who follow courtroom sagas.

More important than the drama, however, a public trial tends to affirm the community values that the government seeks to protect and promote through the criminal process. As such, it provides vicarious satisfaction that justice is being done, that those who choose to reject these values do not go unpunished. The community is strengthened through this public repudiation of deviance, even if the accused is exonerated. In the end, then, the court system provides us with a sense of security and a feeling that justice is highly valued in society. As these three scenarios recount, the mechanisms of justice in courts around the world are quite diverse. And if they were presented to a lawyer or law student in the United States, they might seem quite peculiar.

In this chapter, we consider the subject of courts in general, the legal professionals who work in courts around the world, the organization of courts in our model systems, and a growing idea called supranational courts. Although we will concentrate on criminal courts, we must remember that courts also handle noncriminal (civil) disputes between individuals or between the government and individuals.

THE CONCEPT OF A COURT

t are courts, and what functions do they serve society? What is their role within the political work of a nation?

A simple definition of a **court** is that it is an agency with power to settle disputes in a society. The word *court* is derived from the Latin term *cohortus*, later shortened to *cohort* or *court*, meaning "being together in the same garden," such as being in the garden of a medieval castle or courtyard (Adler, Mueller, and Laufer, 2009). One of the parties in a court case, the plaintiff, presents the facts of the case and explains how these facts are related to some body of law or principles that are considered binding in the society. The other side, the defendant, disputes these facts and tries to show that the person or issue before the court is not within the jurisdiction of the proscribed law. The crucial word in this definition is "power." The judicial power in a court, whether it be a judge, a panel of judges, or a lay jury, is there to examine the truth and to determine whether the law applies in the case and whether any damage has been done to the plaintiff.

Some voluntary agencies also mediate disputes and may on occasion be called courts, but a court by our definition is an agency of government that has the coercive power of government behind it. The function of courts is to settle, authoritatively and according to predefined legal norms, the many disputes that arise in a society. In complex modern societies, disputes may be between two parties in a civil suit, or they may be between the state and a party accused of a criminal violation. Some countries have separate courts to handle civil and criminal matters and some handle both in the same courts. In societies where communal ties may be strong enough to enable disputes to be settled in informal ways, **indigenous courts** have been formed. Indigenous courts emphasize consensus and mediation with the goal of formalizing justice for persons who are culturally and or geographically removed from the mainstream of society. They serve to make court processes more culturally relevant for indigenous persons and to allow local leaders and citizens to become involved in the justice process and build strong communities.

Although indigenous methods of meting out justice have surely existed in various forms since the formation of communal living, there has been a recent trend in some countries to revitalize this form of court and justice process. One example of a revived traditional justice system is in Rwanda, where *gacaca* courts (rhymes with cha-cha) were reintroduced to deal with the over 120,000 Hum

leaders and supporters who are incarc
their part in the 1994 massacres in the
civil war. *Gacaca* courts have tried to b
suspected of genocide during the massa(
villages where they allegedly committed
The over 8,000 *gacaca* courts consist of l(
who pass sentences, with forgiveness e1
and reduced sentences for those wh
(Gacaca Courts, 2010)

Another example is the case of Austr:
convened the first indigenous urban cou
in Port Adelaide, South Australia, and
established others in other Australian re{
processes of the courts vary considerably
are similar in the following ways: Th(
must be an indigenous person and have
guilty plea, the offense must have occu
area covered by the courts jurisdictior
charge is generally one that was heard i1
level court of first instance (Marchetti
2004).

Indigenous courts are present in t
States on Native American reservatio1
some remote areas. For example, in A
of the population is located in cities, bu
countless remote villages throughout th(
consist largely of native Alaskans. Becaus(
resources to support a formal criminal
tem, many of these villages establish
nances and rules and handle undesirabl
in their own informal manner. The rule
ishments are determined primarily by c
meted out by village councils or vill:
When a matter is of a serious criminal
if the perpetrator does not voluntarily sul
rules of the jurisdiction, the case is hand
local and state law enforcement (Natic
Resource Center, 2010). The formulatio
enous courts has been partially motiva1
increased sensitivity towards diversity i
and also by the failure of traditional
address the problem of crime and the li
justice system.

In the second half of the twentieth c
role of the courts was expanded beyo1
boundaries. After World War II, the

als were held to try Nazi war criminals and to fine how international tribunals would handle rocities of war. More recently, the United ations has revived the idea of courts with the wer to adjudicate international crimes by coun-es and individuals. These courts have expanded e role of courts in our individual societies to the ger global context. Later in this chapter, we will cuss in more detail the background, purpose, and rrent status of these supranational courts.

Whatever the reality of court operations in society, most people can agree that a court ould have two basic characteristics to function perly: (1) judicial independence and (2) judicial partiality.

Judicial independence is a principle that ds that courts and judges are bound to the law should make decisions without being under the uence, direct or indirect, of other governmental political agents. In countries that have a demo-tic government structure, judicial independence ssential for maintaining individual rights for all zens. In authoritarian states, the independence of judiciary is often nonexistent. Judges on the side those in power are there simply to enforce the of the ruling party or leader in power. For mple, we have mentioned in previous chapters China has eschewed judicial independence er the rationale that it is "better for the society" all legal decisions be in sync with Socialist ls. To some extent, Islamic countries such as di Arabia have adopted the same approach to their religious values.

Pure judicial independence, to be sure, is an that hardly exists, as innumerable studies of rts, including the U.S. Supreme Court, have wn. But blatant political influence on court rations can usually be recognized, and we say courts that choose, or are forced, to carry out ernmental wishes have become "politicized." ewise, a court may operate in a politicized man-in particular trials, and we usually call these itical trials." There are many shades of ambigu-surrounding the concept of judicial indepen-e. Nevertheless, it remains a basic ideal in court structures.

The reality is that adjudicators do not live in a vacuum and are themselves shaped by the circumstances of their society, as well as by their upbringing and training. But the ideal of fairness and independence in accordance with a rule of law is a strong socializing influence and a societal norm that should provide a framework for the work of adjudicators.

Judicial impartiality may be tied to judicial independence in some cases, but it is a broader concept that calls for judicial authorities to treat parties in court as equals. "Equality before the law" is a cherished precept of modern justice systems. A judge who distinguished among plaintiffs by race, creed, or social class would not be practicing judicial impartiality. Of course, judicial impartiality, like judicial independence, is an ideal that often is honored only in the breach. Thus, although these two concepts are important in studying and evaluating the operations of courts, we cannot claim that they must be present for a court to exist.

ACTORS IN THE LEGAL PROFESSION

There are generally four categories of legal professionals in developed societies: adjudicators, advocates, legal advisors, and legal scholars (Ehrmann, 1976, p. 56). Adjudicators are those individuals who decide the outcome of legal disputes; more commonly, these legal professionals are called judges. Advocates represent either the defendant or the prosecution in legal matters before the court. Legal advisors provide legal advice to advocates and citizens outside the court. Legal scholars study the law and discuss it in legal commentaries and professional journals. Advocates, legal advisors, and legal scholars are more generally called "lawyers," which is a comprehensive term used to describe anyone who gives legal advice, manages legal affairs, and pleads cases in court. In this section, we discuss each of these legal professionals in some detail. It should be said here however, that there is often not a clear distinction between the categories of the legal profession. It is not uncommon for lawyers in different societies to fit into more than one of these categories.

Adjudicators

Many countries rely on professional judges who are trained and paid to be adjudicators of legal matters. In other countries, as in the popular (mixed) system discussed in Chapter 6, lay judges, jurors, or a combination of lay and professional judges handle the adjudicatory functions of the courts. More formally defined, **adjudicators** are professional judges or magistrates, "full- and part-time officials authorized to hear civil, criminal and other cases, including in appeal courts, and make dispositions in a court of law. Lay judges and magistrates are persons who perform the same functions as professional judges or magistrates but are not considered as career members of the judiciary" (Aromaa et al., 2003).

There are three primary methods, and their various permeations, for how judges are employed. The most common method, especially in the Common Law tradition, is by appointment. After gaining experience as a lawyer, the prospective judge is selected by an individual within the executive branch of the government or by a special committee. In England and Wales, judicial appointment above the magistrate level has been the result of a process that comes from the Judicial Appointments Commission since 2006.

The second method of judge selection is by career choice path, whereby individuals decide on their own to become judges either during or immediately after their legal training. Exams and extensive apprenticeships follow the decision to become a judge. This kind of career choice system is found in many Civil Law countries and some Islamic Law countries, such as Saudi Arabia. It may seem odd, especially to Americans, for legal actors to decide so early in their careers to become judges before gaining any real legal experience. The need for legal experience may be necessary in the Common Law legal tradition, which necessitates that judges be more knowledgeable so as to better handle the many legal subtleties of the tradition. But in the Civil and Islamic legal cultures, the interp of law is limited because of the nature of itself. Judges are asked not to make law or interpret law, but only to apply the law.

Finally, a less common method of judg tion involves citizen elections. Although this has been criticized as highly political, it h adopted by a number of local jurisdictions, c and even some states in the United State: states have adopted a combination metho the Missouri Plan, which requires judicial ca to be selected by a committee and then, aft time in office, to face the electorate. For a s of the methods of judge selection in ou countries, see the box on next page.

Advocates

Advocates are expected to be partisan, and zeal in pursuing the interests of their cli serious violation of the norms of this cat legal actor. This is so even in Socialist sys which the interests of the state are conside amount and may influence the degree of a that can be exercised. **Advocates** are leg sentatives, usually lawyers, who present dence and the arguments that allow adj to make their decisions. Advocates w the state (prosecution) or the criminally (defense). As we have mentioned man before, advocates working on behalf of the ment are called prosecutors or pr although their roles vary considerably fron to country (see Ambos, 2000).

Efforts have been made on the inte level to ensure the quality of legal throughout the world by standardizing t and responsibilities of lawyers and others legal assistance. To assist nations around t with the proper development of law United Nations has developed the *UN pr the role of lawyers*. The Principles address is as qualifications and training, duties and re ities, and disciplining lawyers.

Like adjudicators, advocates are subje nomic, social, and political pressures that a

Methods of Judge Selection in Our Model Countries and the United States

- England: Appointed in magistrates' courts, local committees are responsible for appointments; since 2006, in other courts the Judicial Appointments Commission appoints judges.
- Germany and France: Self-selected candidates undergo an extensive apprenticeship period and then face rigorous civil service examinations.
- China: Elected and appointed. The heads of the courts, called presidents, are elected by the corresponding people's congresses while all other judges are appointed by the corresponding standing committee of the particular court.
- Japan: Self-selected and then promoted by merit. After passing a national-level judicial examination, candidates train for two years at the Legal Research and Training Institute and then move up through the ranks based on merit.
- Saudi Arabia: Self-selected. Candidates must first qualify for this position and then go through a period of apprenticeship before being allowed to decide cases.
- United States: Usually elected on local and county levels, appointed on state and federal level. A combination method plan (Missouri Plan) is available in some states.

In two of our model countries, Saudi Arabia and China, advocates for both the prosecution and defense are under considerable pressure to conform to forces beyond the courtroom. In Saudi Arabia, advocates must be schooled in classic Islamic law because there is no distinction between religious and secular offenses. In China, lawyers must be approved by the Ministry of Justice and are expected to protect the rights of their clients while also promoting the interests of the state.

Advisors

Legal **advisors**, akin to paralegals in the United States, are the many legally trained individuals who work outside the courtroom to advise and assist individuals who have legal problems or issues, both civil and criminal. They handle a large proportion of the paperwork that is necessary for the functioning of large bureaucratic societies: contracts, tax analysis, real estate transactions, and analysis of business regulations. Legal advisors are also the first point of contact in criminal cases. They do investigations and advise clients prior to the start of formal adjudication processes. The position of advisors is often viewed as less prestigious than that of advocates because they do not handle cases in the public arena. However, this is only a matter of perception. In reality, legal advisors handle many of the same legal tasks as advocates and usually possess the same qualifications and training except that they lack courtroom expertise.

Legal Scholars

In every society, **legal scholars** have played an important role in shaping the law and clarifying its meaning. Legal scholars often work behind the scenes doing the arduous legal research, writing opinions, and legislation that are necessary for nations. Their role has been much more prominent in Civil and Islamic Law than in Common Law systems. For example, in a Civil Law country such as Germany, a law professor may consult with legislators and write commentaries on the law. In Saudi Arabia a scholar may be asked to provide judicial reasoning opinions concerning the Shari'a or Hadith. For Americans the distinction between adjudicators, advocates, advisors, and scholars might seem unclear because we often do not distinguish clearly between these categories. For example, a single attorney usually handles all aspects of a case. And judges may have previously held positions as an advocate and law scholar. But again it is important to remember that the categories posed here are functional ones rather than classifications of particular individuals.

CAREER PATHS OF LEGAL PROFESSIONALS

Our discussion of the kinds of legal professional around the world today would be incomplete if we did not briefly discuss the career paths of these individuals. More specifically, we answer the question "how do judges and the different kinds of legal counsel around the world become legal professionals?" One way to understand the career paths of legal actors is to use the distinction between persons employed through bureaucratically based systems and politically based systems (Weber, 1985).

Bureaucratically Oriented Systems

The bureaucratically based systems are found in the countries that have rational systems of law—that is, Civil Law systems. Such an organization has the general characteristics of a rational bureaucracy: (1) It is hierarchical in nature, (2) entry into the organization is based on merit alone, and (3) employees of the organization are highly trained for specific tasks.

Among our model systems, Germany, France, and Japan display the greatest degree of bureaucratic organization of the personnel of the justice system. In each of these countries, students interested in the law follow university programs that emphasize both a general liberal education and specific training in the code law. Upon graduation, many law school students go on to careers in business, public administration, or other nonlegal fields. Those who continue in the legal profession, however, must choose among training to be a judge, an attorney for the state, or an attorney in private practice. This training determines the kind of career that the individual will follow, unless he or she goes into legal scholarship and university teaching. Rigorous examinations and years of apprenticeship are necessary to become fully accredited in the particular branch of legal process that the individual chooses. Both prosecutors and judges have civil service status—that is, they are tenured and rise through the ranks gradually, with some possibility of more rapid advancement for particularly talented individuals.

Exceptions occur chiefly at the highe of judicial appointment, such as the S Court in Japan and the Federal Consti Court in Germany. In these policy-making the legislature chooses a mixture of career political figures, and legal scholars to serve f terms. While civil service status assures tha in Civil Law systems are chosen on the merit rather than ideology or politics, a advancement to higher-court adjudication i controlled by those in political power. As despite efforts to mitigate this political in the system in Civil Law countries tends to conservatism and conformity rather than i alism and willingness to risk unpopularity cause of equal justice (Ehrmann, 1976, p.

Law school education in bureaucratic does not actually prepare students to practi any practical sense. Rather, they are prepared years of apprenticeship to be either practicin or state officials such as judges and pr Over the course of centuries, legal educati Civil Law countries has developed along ra demic lines, with an emphasis on philosophy science, and legal history. These educationa in which case precedents do not have the for naturally do not emphasize case law as Am schools do.

Politically Oriented System

Politically based systems are based on factors such as appointment by politi and election by the people. Individuals tem generally cannot divorce themselv people they serve. Although trained i they are not usually highly prepared for tasks they must undertake.

Of our model countries, England and to a lesser degree Saudi Arabia, mig fied as legal systems that are politically organization. The United States, as we earlier, also displays a clear political structure. English judges are chosen f barristers, who are practicing lawyers civil servants trained to be judges.

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ancellor, a cabinet member who is somewhat analogous to the attorney general of the United States, makes judicial appointments, generally from among the most prestigious barristers, the queen's counsel (QC). The law lords, who sit in the House of Lords and act as the court of final appeal, are also appointed rather than achieving their position through a merit system.

In China, the head judges of the various people's courts are called *presidents*. The presidents are elected by the people's congresses of the respective court levels. For example, the president of the Supreme People's Court is elected by the National People's Congress, while the presidents of the local people's courts are elected by the people's congresses on the local level. All remaining judges are appointed by standing committees at the particular court levels. Politics greatly affects the judge selection process in China because the National People's Congress and the standing committees consist primarily of influential members of the Communist Party.

Prosecutors, who are politically chosen in the United States, fall into different categories in both England and China. Although there have been some changes in recent years, English prosecutors are not traditionally specialized even in prosecuting cases. Instead, they are chosen for particular cases from among the ranks of the barristers. Thus, it is quite possible for an individual to be a prosecutor one day and a defense attorney the next. Prosecutors in China, called *procurators*, are under the direct supervision of the office of the procuratorate. At the federal level, procurators are appointed (and removed) by the Standing Committee of the National People's Congress. At the provincial, regional, and municipal levels, the chief procurators are elected or removed by the respective people's congresses, and the deputy procurators are selected by the standing committees of the respective level of government.

When we come to Saudi Arabia, our distinction between bureaucratic and political organization breaks down. However, since judges are part of the religious establishment and are chosen from a committee that is approved by that establishment or from the ranks of the royal family, this system tilts toward the political. Advocates and advisors in the system, however, follow the Civil Law model imported from France.

In sum, the distinction between bureaucratic and political arrangements is not always clear-cut. Nevertheless, a dominant style or orientation exists in each of our model systems, and awareness of that style helps us analyze and understand the details of the various systems as we examine them. This dominant style is related to the particular family of law to which a country adheres, with the rational, code-based systems having a rational bureaucratic hierarchy of legal professionals working for the state, and the empirical, case-based systems having a more political, even pluralistic culture of the legal profession. As we consider legal training, judicial recruitment, and career paths of prosecutors and defense attorneys in the model systems, these classifications of bureaucratic and political will provide a useful framework for the analysis.

THE COURTS AND LEGAL PROFESSIONS IN OUR MODEL COUNTRIES

There are many ways to study courts and their role in a society. We can look at litigiousness, or the tendency to take cases to court, in various societies which can tell us a great deal about the levels of consensus or complexity in a society. We can also look at patterns of decision making by judges, as has been done in great detail by scholars of the U.S. Supreme Court. In this chapter we will look at the arrangement and organization of courts within our model countries. To assist in understanding of the various levels of courts around the world, it is helpful to categorize them *generally* into at least four court types or levels. We place the word *generally* in italics to emphasize the point that although the court types apply in many cases around the world, there is also considerable variation in the way courts are organized. This is particularly true in countries where one court may handle criminal and civil cases whereas in another country there are separate courts for such matters. Another example of this variety and complexity is the United States, where there are separate courts systems for the states and the federal government.

The first general types of courts are **courts of limited jurisdiction**. These courts handle minor criminal cases and may also conduct preliminary hearings for cases that will be handled at the next level of courts—courts of general jurisdiction. **Courts of general jurisdiction** are the major trial courts that have jurisdiction over any cases involving criminal law and sometimes civil law. Courts of first or **intermediate appeal** handle appeals from the lower courts. **Courts of last resort** are those that are authorized by law to hear the final appeal on legal matters. These courts are often labeled called supreme courts or high courts. For a table that summarizes the courts in our model countries, see Table 7.1.

COURTS AND THE LEGAL PROFESSION IN ENGLAND

England has established two levels of trial courts for criminal cases: magistrates' courts for minor crimes and crown courts for serious crimes. Magistrates' courts are courts of limited jurisdiction. They handle minor criminal cases and also conduct preliminary hearings in major criminal cases, with the magistrates deciding whether to bind the case over to the crown court. Thus, they serve in lieu of the grand juries or other devices for pretrial hearings that exist in the United States. In addition to trials for petty crimes and preliminary hearings, certain magistrates' courts are designated to handle some minor civil cases and juvenile cases involving defendants under 18 years of age. Over 96 percent of English criminal trials are conducted in the 500 magistrates' courts (Terrill, 2013, p. 45).

There are two types of magistrates: stipendiary magistrates, who are attorneys by trade and are paid by the state for their work, and lay magistrates, who are appointed to serve as volunteer judges.
Stipendiary magistrates, also called district
usually sit alone, whereas lay magistrates us
or groups of two or three and decide large n
of cases in the course of an ordinary court sess
magistrates, also called *justices of the peace*, vas
number stipendiary ones (30,000 to 130), a
the numbers of the latter are increasing. Lay
trates receive a minimal amount of training
one week in aggregate). Appointment as a lay
trate is an honor often bestowed on tho
belong to the majority political party in a
Many of them are women, a natural phen
since professional men usually do not have t
to devote to this volunteer service. Lay ma
may serve until age seventy, and they are o
to sit in court at least twenty-one days each

For minor civil cases, the court of first
tion is the county court. If the matter is appe
brought to the High Court of Justice, whi
first level of appeal for the county court bu
acts primarily as a court of original jurisdi
serious civil cases and some criminal cas
High Court of Justice is divided into three b
(1) the Queen's Bench Division, which ha
majority of civil and criminal matters of orig
appellate jurisdiction, (2) the Chancery
which is responsible for matters involving
trusts, and wills, and (3) the Family Divisio
deals with matrimony and guardian issues.

The trial courts, or courts of general ju
for serious crimes in England, are known
courts. Cases in crown courts are decided
This is in contrast to the various civil tr
such as the county courts and the High
Justice, in which jury trial is all but obso
have been in existence for over 80(
England. But despite their historical si
they are used very infrequently—less th
two percent of all criminal trials in Eng
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use of plea, and the fact that most cases
the magistrates' court level keep the nun
in crown courts to a minimum (Pakes,

The High Court is both a court
jurisdiction and a court of appeal for bo
and civil matters. It consists of about ei

TABLE 7.1 Court Levels in Model Countries and in the United States

	United States	England	France	Germany	China	Saudi Arabia	Japan
Courts of Last Resort	U.S. Supreme Court and (some) state Supreme Courts	Supreme Court of the United Kingdom (formerly House of Lords)	Court of Cassation	*Bundesgerichtshof and Bundesverfassungsgericht:* constitutional questions only	Supreme People's Court	Supreme Judicial Council	Supreme Court (handles criminal and civil appeals and constitutional questions)
Courts of Intermediate Appeal	U.S. Appellate Division of Supreme Court and state Superior Courts of Appeals	Court of Appeals and High Courts (appeals for criminal and civil cases)	Courts of Appeal (Cours *d'appel)*	*Oberlandesgerichte*	Higher people's courts	Courts of Appeal	High Courts; criminal and civil
Courts of General Jurisdiction	U.S. District Courts; state superior, district, or county courts	Crown Courts (criminal cases); High Courts (civil cases)	Assize Courts (Cours *d'Assise)*	*Landgericht*	Intermediate people's courts	High Courts (formerly Kubra Courts)	District Courts (major cases); criminal and civil
Courts of Limited Jurisdiction	Federal Magistrate Courts; County Magistrate or District Courts or Municipal Courts	Magistrates Court (criminal cases); County Courts (civil cases)	*Tribunaux d'instance:* police and correctional	*Amtsgerichte*	Basic (also called primary) people's courts	First Degree Courts	Summary Courts (minor courts); criminal and civil

who are usually assigned cases based on their own expertise. Cases of original jurisdiction are handled by one judge, and appeals cases by two or three judges.

The Court of Appeals, the intermediate appellate court for England, handles both civil and criminal matters. The judges are selected from the High Court of Justice and the House of Lords and are assigned in groups of four or five to review cases. A unique feature of the Court of Appeals is that the judges can actually add time to the sentence (up to three months) if they feel the appeal made by the convicted was frivolous.

Until 2009 the House of Lords (Parliament) served as the court of last resort for England. Since October 2009, however, this role is now held by the newly created Supreme Court of the United Kingdom. The House of Lords remains one of the three chambers of the English Parliament. The new Supreme Court's main role is to hear appeals from courts in the United Kingdom's three legal systems: England and Wales, Northern Ireland, and Scotland (although the latter has its own final court of appeals for criminal matters). The twelve-person Supreme Court also has jurisdiction to determine disputes among the three governments or legislatures, concentrate on cases, and hear appeals on arguable points of law of general public importance (The Supreme Court, 2012).

Until recently, the function of prosecution was in the hands of police, and larger police agencies had prosecution divisions as part of their organizational structure. In minor cases, police officers were the only prosecution representatives in court. For crown court cases, the police appointed barristers to conduct the cases in court. In 1985 Parliament passed a law setting up the Crown Prosecution Service, taking responsibility for prosecution away from the police and placing it in the hands of crown prosecutors. In doing so, Parliament hoped to assure independence and uniformity in the prosecution of cases, to enhance the quality of prosecutions with the public in mind, and to improve court efficiency (Terrill, 2013).

The clear distinction between prosecution and defense as professions that exists in Civil Law and Socialist Law countries, and even in the States, does not occur in England. Barriste duct trials in major cases and are experts ir room advocacy; which side they are on important than their specialized training to in public. Solicitors do not have the "right ence" before the court. They have all the nary contacts with the client, gather the evic the case, and share their findings with the assigned to the case about their findings and ences with the client. However, solicitors bidden to participate in crown court cases– the more serious cases. They routinely appe lower criminal and civil courts.

"Taking silk" (being allowed to wea gown and a more elaborate wig) is the term for appointment to the coveted status or queen's counsel. The QC is a group of nent barristers who serve as counsel to the Crown. Junior (QC) barristers are those t been practicing law for less than fifteen ye must apply to the Lord Chancellor to becom

Solicitors and barristers receive slightly legal training. For a career as a solicitor, one to complete a three-year university law deg serve for two-and-one-half years in an appre with a solicitor. Another route is to attend of law for one year and then serve a apprenticeship. Barristers must receive a t law degree from a university, then must jo the four ancient Inns of the Court: Middle Inner Temple, Gray's Inn, and Lincoln's In clubs are where each barrister serves a one-ye age under the supervision of a junior barrist they gain knowledge about the complex cas covered in law school (Terrill, 2013). T around 116,000 solicitors in England and V only 15,000 barristers. For a comparison bo cation and legal training in our model cour the United States see Box on next page.

The role of Lord Chancellor has cha nificantly in recent years. Until 2006, Chancellor was the head of the judiciary of and Wales and also charged with making a appointments to the courts. This changed passage of the Constitutional Reform Ac

Legal Education and Training for Lawyers in Our Model Countries and the United States

- England: Solicitors—three-year university law degree, then serve an apprenticeship with a solicitor for two-and-one-half years, or attend college of law for one year and then serve a four-year apprenticeship. Barristers—three-year law degree from a university, membership in one of the Inns of the Court, one-year pupilage (apprenticeship) under the supervision of a junior barrister
- France—Baccalaureate (undergraduate) degree, three-year law degree, one year for Master of Law, three-year apprenticeship, and must pass national exam.
- Germany—Abitur (undergraduate) degree, three-and-a-half-year education, apprenticeship, national exam.
- China—Entrance exam, four-year undergraduate program, three-year graduate law education, two additional years of legal work (practicum), national bar exam, and approval by the Ministry of Justice.
- Japan—Undergraduate degree including two years in legal studies, national bar exam, then 18-month apprentice training.
- Saudi Arabia—Five-year secondary education at religious school then attendance at a Shari'a institute.
- United States—Undergraduate college degree and three-year law degree.

...e then, the Lord Chief Justice is the presiding ...ge of the criminal division of the Court of ...eal and thus President of the Courts of England ... Wales and the head of the judiciary; he is ...onsible for judicial appointments. More specifi...y, the duties of the President include a) repre...ing the views of the judiciary of England and ...es to Parliament, to the Lord Chancellor, and ...Ministers of the Crown generally; (b) maintain...g appropriate arrangements for the welfare, train...g and guidance of the judiciary of England and ...es within the resources made available by the ...d Chancellor; and (c) maintaining appropriate ...ngements for the deployment of the judiciary ... England and Wales (Terrill, 2013).

The Constitutional Reform Act (2005) was ...ficant for other reasons than changing the role ... the Lord Chief Justice and Lord Chancellor. ...e Act was responsible for the creation of the afore...tioned Supreme Court that opened for business ... 2009. It also clearly stated for the first time in 900 ... that judges were allowed independence from ...ernmental influence and set up an ombudsman ...hanism to supervise judicial conduct. But most ...ortant for our purposes here, it formed the Judi... Appointments Commission. This Commission is composed of fifteen commissioners who are appointed by the monarch on the recommendation of the Lord Chancellor. The Commission includes a layperson chair, five members of the judiciary, two lawyers (one barrister and one solicitor), five laypersons, one lay magistrate, and one tribunal member (such as a member of the Immigration Appeal Tribunal). Among the general goals of the Commission are to continue to select people to the judiciary based on merit and to encourage a wider and more diverse pool of well-qualified candidates to apply. Each year the Commission provides data as to the number of applicants and selection recommendations for judicial appointments in England and Wales (JAC, 2010; The Supreme Court, 2010).

COURTS AND THE LEGAL PROFESSION IN FRANCE

The court structure in France is relatively complicated when compared to that of the English. Continental Europe is the realm of the bureaucratized system of courts and state attorneys. The rather formal and rational nature of the Civil Law, compared to the case- and tradition-bound Common Law, is reflected in the court structure, with its prominent administrative courts (themselves part of the government bureaucracy) and its other specialized courts. In general, French courts have lesser concern with procedural detail than England or the United States. At the same time, French courts are accessible and fairly inexpensive for defendants in criminal trials and for parties in civil suits. (For an English explanation of the complex French courts, see http://www.justice.gouv.fr/art_pix/2plaquette_justiceenfrance_angl.pdf.)

Criminal cases in France move up a hierarchy of courts much as they do in Common Law countries. The major difference is that there are three levels of trial courts that hear cases according to the seriousness of the crimes involved. The courts of limited jurisdiction are the nearly five hundred minor courts called *tribunaux d'instance*. There are two kinds of these courts, the first being the police courts (Tribunaux de Police), which handle more than half the criminal cases that arise. Minor misdemeanors and violations (contraventions) are heard by these police courts. The maximum sentence in police court is two months in jail, and the maximum fine is approximately $1,000. Judges in police courts are generally younger and less experienced and are just starting up the hierarchy of judicial positions. Matters in these courts are often dealt with outside the courtroom, and when a trial does occur, it is usually very brief (Frase, 1988).

The other minor court is the correctional courts (Tribunaux Correctionnel) in which more serious misdemeanors (delits) are tried. Generally, three or more judges hear the cases in these courts, and the verdict is by majority vote. However, since 1995 a single judge can hear certain types of delits such as traffic offenses, use of soft drugs, and some financial crimes (Terrill, 2013). The accused has the right to appeal the judgment and demand a new trial in a higher court, the assize court.

In addition to hearing appeals from lower courts, the almost two hundred assize courts (*cours d'assise*) have original jurisdiction in major felony cases. In appeals from lower courts, three judges handle the case. In cases where it is a court of original jurisdiction, the court employs th
fessional and nine lay judges. Unlike the
judge and jury system, in which the jury
matters of fact and the judge decides m
law, the French tribunal considers both n
a group. Further, decision is by a plurality
votes rather than by the unanimous or
jurisdictions) near-unanimous vote requir
U.S. system for conviction in major crimi
Decisions on the sentence, which are ma
same time, are by majority vote. Both ve
sentence are announced after the delibe
the tribunal. This court also handles cases
serious crimes committed by juvenile offe

The French courtroom presents a
aspect from the English one. As a lega
revolutionary tradition, there are fewer
pomp or status. The professional and l
seem almost huddled together in the fro
courtroom, which is not raised as prom
the bench in English courts. However, p
and defense attorneys do wear black go
starched white collars when appearing in

The case file, or dossier, is available
judges prior to the trial. Nevertheless,
before the assize courts, the "principle
requires that all evidence be brought ou
court. In the correctional and police c
not necessary to go through each step o
and each piece of evidence at the actual
the case in England and the Unit
Although spectators may not get the
recounting of all the facts and circum
the case, the judges have all the infor
hand (Ingraham, 1987, pp. 86–87; Del
and Spencer, 2002, pp. 260, 513).

For civil and criminal cases that are d
level lower than that of the assize courts,
to one of the twenty-seven judicial distri
thirty-three courts of appeal (Cours d'Ap
courts hear appeals from the lower civil
nal courts and from a plethora of spe
including the commercial court and th
court. Three to five judges rule on cases
on points of law and of fact (Abrah
Delmas-Marty and Spencer, 2002, p. 271

...er points of law can be appealed to the next court level.

The highest level of appeal is the Court of Cassation (Cour de Cassation), which hears appeals from the assize courts and the courts of appeal. The Court of Cassation sits in five chambers with fifteen judges in each, although only seven need be present to hear a case. Criminal cases are heard in only one of these chambers. In criminal cases, as opposed to civil cases, the Court of Cassation must hear appeals. Therefore, it does not have the authority to turn down cases, as the U.S. Supreme Court does in most instances through its power to grant or deny a writ of certiorari.

In March 2010 a major reform in the French system occurred with the reform of the Constitutional Council, which prior to that time did not hear cases but only decided on the constitutionality of laws at the request of high government officials. Now individuals can call on judges in lower courts to rule on constitutional issues and allow the Council itself to rule on specific legislative matters, especially as they relate to individual liberties. This change is significant for the Court of Cassation because it is no longer the default organ for interpreting the constitutionality of certain kinds of legislation (Hunter-Henin, 2011).

The legal professions in both France and Germany fall into the category of bureaucratic systems, and both fall within the Civil Law family. Because there are many similarities between the legal professions of the two countries, it is convenient to group them together. We will discuss the legal professions in France and Germany in tandem after our discussion of German courts.

COURTS AND THE LEGAL PROFESSION IN GERMANY

German trial courts are similar in style and tradition to French courts. Procedure is based on the inquisitorial model, including extensive pretrial investigation with which the accused is expected to cooperate. As in France, however, procedural safeguards based on the adversarial model, such as the right to an attorney at the trial and pretrial stages of the criminal process, dilute the inquisitorial nature of the process.

The judicial system in Germany consists of three types of courts: (1) ordinary courts, which handle criminal and most civil cases; (2) specialized courts, which hear cases related to administrative issues; and (3) constitutional courts, which deal with judicial review and constitutional interpretation.

At the ordinary level, there are four tiers of courts. The *Amtsgerichte*, which by our earlier classification are courts of limited jurisdiction, hear minor criminal and civil cases at the local level. Many of these more than seven thousand courts are staffed by a single judge, but in some criminal cases, lay judges provide assistance. A large percentage of cases in Germany—for example, minor crimes such as routine traffic offenses—are disposed of through summary procedures and fines at the police and prosecutorial levels. The prosecutor also has the power to handle criminal cases through summary procedures, in which a disposition is offered to a defendant and the case proceeds no further if the disposition is accepted. An accused may always assert the right to trial rather than accepting the summary actions of either police or prosecutor.

Above the *Amtsgerichte* level are courts of general jurisdiction called the *Landgerichte*, which are the more than a hundred regional courts trying major criminal and civil cases and hearing appeals from the amtsgerichte courts. At the top level of the state (Länder) court system are the twenty-four *Oberlandesgerichte*, which primarily hear points of law raised in appeals in the lower courts, thus are courts of intermediate appeal, and hold original jurisdiction in cases of treason and anticonstitutional activity. The fourth ordinary court, called the *Bundesgerichtshof*, or Federal Court of Justice, handle final appeals (thus a court of last resort) in all case from the lower courts except those involving constitutional interpretation.

The Germans are known for their many specialized courts that deal with five areas: social security, labor, tax law, administrative law, and paten law. These courts are organized on the local, Länder, and federal levels, and within their own subject area. With regard to the constitutional courts, any judge in Germany who believes that a constitutional question is involved in a case may refer that question to the *Bundesverfassungsgericht*, the Federal Constitutional Court. However, individual appellants who believe that their constitutional rights have been violated generally may not appeal to the Federal Constitutional Court until they have exhausted all other avenues of petition and appeal. The Federal Constitutional Court consists of sixteen judges and does not actually decide the outcome of cases; rather, it rules on the constitutional question involved and then returns the case to the lower court for final disposition.

As mentioned, lay judges in Germany serve in courts of limited jurisdiction and in higher-level courts with general criminal jurisdiction (crimes involving potential sentences of three or more years in prison). In the lower criminal courts, we find two lay judges and one professional judge. In the courts in which more serious crimes are tried, there are three professional judges but only two lay judges. The verdict in a trial is by majority vote, so the lay judges theoretically can have an important voice in deciding guilt or innocence. In reality, however, the professional judges dominate both the questioning of the accused and witnesses and the deliberations about the verdict. Since there is no separate jury, the judge does not instruct a jury formally in matters of law, but instead informs the lay judges about the law as part of the general deliberations leading to a verdict. Appeals in criminal cases are heard by professional judges and are restricted to matters of law (Delmas-Marty, 2002, p. 306).

As in England, legal education in France and Germany is both a product of the legal culture and a major influence on the development of the legal profession. In both countries, legal education in its earliest stages consists of a basic university education that encompasses general liberal arts courses and some courses in the law.

In Germany, with its federal structure, basic regulations for legal education are set by the central government with rigorous federal exan requirements have dictated a fairly uniform Upon receiving the academic secondary degree (known as the *baccalaureate* in Fra the *abitur* in Germany), students in both c are eligible to enter the law school at the state universities. Both countries con have unacceptably large numbers of law in the various universities (Glendon, Gorc Osakwe, 1985, ch. 3). These students do n on to become legal professionals, however a law school education in these countries a vides the basic liberal education for students not wish to go to professional schools of n science, or various technologies.

With respect to duration of studies, student in France may graduate in thr with a general degree, known as the *licen* who plan to enter the legal profession gen on to a fourth year, leading to the degree ister, or master of law. Students must pass examinations in order to obtain these deg

Germany also has a unified bar with a examination, or *staatsexamen*, that follows a half years of university education. Germa ments with a more "practical" legal e (often inspired by the case-based educa American students receive) have been h the national requirements regarding le content of study.

University education is followed by sive apprenticeship and further training France and Germany. In Germany, th to specialize is deferred, and the appr known as the *referendar* period, rotate among different specialties. In the end, students in both countries must take rigor inations to qualify for the civil service p judge or prosecutor or the advocacy posit law—known as *advocats* in France and R in Germany (Salas and Alvarez, 20(embarked on a specialty, the student opportunity to change career paths. major exception to this rule is that in F secutors may switch to the judiciary, anc (David, 1972).

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There are a number of differences between the ts and the legal professions in Germany and the ed States. First, during the trial in Germany, rt witnesses are called and paid for by the . Second, it is possible for the prosecution to al acquittals in criminal cases. However, the does not allow an increase in severity of sentence appeal is successful. Third, all cases in Germany ried in the state courts and may move through us levels of state jurisdiction before being ght to a federal court of final appeal. Fourth, ve federal supreme courts in Germany are tech- y the final courts of appeal. The Federal Con- onal Court has the last word in interpreting the ution, but it remands cases to the lower courts position based on its opinions. Fifth, there are number of specialized courts in Germany, for g trials and appeals related to social security, tax law, administrative law, and conventional nd criminal law. Also, with about one-third pulation of the United States, it has more ice as many judges overall. Sixth and finally, the bureaucratic method of judge selection, in Germany (and France) are much younger hose in United States.

COURTS AND THE LEGAL PROFESSION IN CHINA

ucture of the formal court system in China, veloped in 1949 after the establishment of the s Republic of China, is outlined in the Con- and Organic Law of the People's Courts. courts are highly centralized and organized our levels: (1) basic (also called primary) s courts, (2) intermediate people's courts, er people's courts, and (4) the Supreme Peo- urt. Except for the Supreme People's Court, these courts operates in different geographic s that include provinces, autonomous municipalities, prefectures, cities, counties, districts (Guo et al., 1999).

lowest level court of limited jurisdiction formal Chinese court system is the basic court, which is found in each county and municipal area. These courts, around thr sand in number, handle most criminal, ci economic matters of first instance unless the is a special case. Factors that can make a case cial" include severity and provincial or na importance. Another important purpose of basic people's courts is to coordinate the peo mediation committees.

People's mediation committees (PMCs), a called grassroots committees, are one of the thr informal social control mechanisms implemen throughout China and the only one under the cont of the formal court system. The other two—pub security committees and security departments of co mercial enterprises and institutions—are supervised the police branch and serve as crime prevention me sures. PMCs are found in the workplace, schools, ru areas, and city neighborhoods (Zhang et al., 199 There are over one million of these committe throughout China.

The PMCs have a two-thousand-year histo in China, going back to the early days of Confu cianism. The general idea behind the PMC is th harsh punishment does not necessarily cont behavior and that moral education is the most pru dent method of correcting behavior. A PMC h five to seven members who use the force of pub opinion and education to persuade those involv in minor disputes and misdemeanors to resolve th problems without formal court interventio Therefore, only the most serious crimes are dea with by the formal court system, with less serio criminal behaviors and civil matters general disposed of locally through people's mediatio (Situ and Liu, 1996, p. 135; Liang, 2008).

The parties involved must agree beforehand mediation. During mediation, the parties discuss th offense, relevant laws, and the public interest in th matter, and then reach an agreement. The agreeme has the force of law and, if violated, could resul further legal action (Ai, 1989). From the 1970s to th early 2000s, the number of cases going to the PMC decreased nearly 50% (Liang, 2008, p. 183).

More recently, judicial mediation has bee revived in China. The revival has occurred as result of a combination of political and juridic forces. China's courts have been struggling to keep up with the increasing number of cases before them and the growing demand for access to justice. Much of this demand can be traced to the economic and civil law cases resulting from a changing economy that allows for a freer market and more private ownership of businesses (Peerenboom, 2010). Also, the revival of judicial mediation is a reaction of the Chinese government to the growing influence of the adversarial, Western-style legal process. As a result, the judicial mediation has been called upon again as a part of a broader policy to promote mediation as a mainstream dispute-resolution mechanism (Wayne and Xiong, 2011).

Two other formal courts have special legal jurisdiction equal to the basic people's courts. The first are people's tribunals, which handle the duties of the basic people's courts both in rural areas and in large urban districts like Beijing. The decisions of these more than eighteen thousand tribunals are equal in weight to those of the basic people's courts, and any appeal goes directly to the next level, the intermediate people's courts. The second group of formal courts, called the special people's courts, are also equal in the court hierarchy to the basic people's courts: these courts handle military, railway, and maritime matters.

The intermediate people's courts are the courts of general jurisdiction in China; they handle serious criminal, civil, and, economic cases of first instance at the municipal and prefectural levels. They also deal with serious cases that might be transferred from basic people's courts, including murder, rape, robbery, bombing, arson, and grand larceny, as well as special cases related to counterrevolution or involving the death penalty or life imprisonment and cases involving foreigners. These almost four hundred courts also handle appeals from the basic people's courts, and protests from procurators from the lower courts about the decision of a case.

The next level in the formal Chinese court system is the higher people's courts. These thirty courts handle criminal, civil, and economic matters of first instance that may affect the entire province, autonomous region, or municipality, and matters of second instance (appeal) from the intermediate courts. Like the intermediate courts, th handle first-instance crimes transferred fron courts and cases protested by the procurato

The highest court is the Supreme l Court of China, which deals with ma national importance. Most of the cases th: before this court are appeals from the nex level, the higher people's courts. It is divic seven permanent divisions: two criminal (and a single division each for administrativ civil matters, communications and transpoi plaints and petitions, and economic matters 2013). The criminal courts mostly handle aj serious felony crimes, including death penal The Supreme People's Court also provide nations and advice to lower courts, interpr and supervises the administration of the courts.

Every court at every level must con president, two or more vice presidents, o judge, and several deputy judges and judges. The president is elected by the congress at the corresponding level, wh members are appointed by the standing co of those congresses. Every court must als judicial committee, whose members are se the National People's Congress, to deal most difficult or most important cases (and Wang, 1996).

However, the actual trying of cases in people's, intermediate people's, and highe courts is done either by one judge if it i criminal matter or by a collegial bench. T gial bench is composed of one to three j two to four people's assessors depending o and court level. The people's assessors a who must be elected, at least 23 years o eligible to vote (Situ and Liu, 1996, p. 1

Although people's assessors are an component of trials and involve the publ cial proceedings, and although technically represent a majority when it comes to a ve are not likely to disagree with professional matters of either fact or law. In this way, l: are similar to lay judges in Germany, who leadership of the professional judge in

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The professional judges are chosen for indi- rials by the president or vice president of the ve court.

we compare the court system of the 's Republic of China with our other countries, we see a number of both similar- d differences. All of our model countries, g China, have a hierarchical court struc- ith certain jurisdictional limits; that is, ly handle cases within their own bailiwick. ferent levels also handle appeals from the levels. Another similarity is the use of le as adjudicators. In China, the collegial onsists of professional and lay assessors. ges are also used in Germany, and laypeo- e as jurors in serious crimes in England and ted States.

ferences also are clearly evident. Unlike in n Law countries, Chinese judges are unable e law. As a result, they often handle cases xibly and in accordance with the needs of ernment (Leng, 1982). Another significant ce is the extensive informal system in China events cases from moving level by level the formal court system. The PMCs handle ur million minor civil and criminal matters ear (Liang, 2008).

e Chinese courts are also averse to the ntation of many procedural rights that are e in other countries. The presumption of nce, the exclusionary rule, protections self-incrimination, the right to trial by nd protection against being tried twice for e offense (double jeopardy) are absent in e criminal justice (Situ and Liu, 1996). , there are clearly serious questions relative e issue of judicial independence in China 2002). Verdicts in important legal cases iewed by the president of the court, and t difficult cases are dealt with by the judicial ttee. This may at first seem to constitute an e method of checks and balances. After , however, one finds that the president and ers of the judicial committee are, in effect, l appointments selected by the National 's Congress, which means that the principle of judicial independence essentially is absent in China.

Since the formation of the People's Republic in 1949, the legal profession in China has undergone a number of considerable changes. After the Communist Chinese came to power, the number of lawyers dwindled to below three thousand, and their influence was reduced considerably. This situation turned from bad to worse in the political turmoil of the late 1950s. The Anti-Rightist Campaign attacked lawyers with considerable vigor, claiming that, by defending criminals and protecting the economic interests of clients, lawyers were in direct conflict with Socialist ideology. Many lawyers were labeled capitalists and rightists and were often persecuted, law offices were closed, and the Ministry of Justice was disbanded (Lawyers Committee, 1998b, p. 15). The Cultural Revolution of 1966–76 resumed the attack on the legal profession, basically abolishing the legal profession and halting the training of new lawyers (Leng and Chiu, 1985).

Following the Cultural Revolution, the Ministry of Justice was reestablished, and all law departments and schools were reopened. With Deng Xiaoping's broad reforms came massive amounts of legislation and the need for qualified lawyers. In 1982 there were only 5,500 lawyers in China, but by the early 1990s the number had grown to 50,000 and by 2007 had risen dramatically again to approximately 130,000 (Situ and Liu, 1996; Clark, 2008). More good news is the growing number of law schools and law students in China. Recent studies show that the number of law schools has increased from 300 in the 1990s to 560 with almost 450,000 law students by the mid-2000s (Lancaster and Xiangshun, 2007; McMorrow, 2010). Although a drastic increase from only ten years earlier, the numbers of lawyers in China remains small in number considering the size of the population, the legal needs of citizens, and the fact that half of the lawyers work part-time as law teachers or legal researchers.

Two pieces of legislation have been paramount in the development of the legal profession in China over the past thirty years. The first, the Provisional Regulations of the PRC on Lawyers, was passed by the National People's Congress in 1980. This law outlined the purpose, rights, activities, and qualifications of lawyers in China and called for an increase in the expansion of the legal profession while calling for lawyers to "serve the cause of socialism" (Lawyers Committee, 1998b, p. 17). The second was the Lawyers Law, which in 1996 was unanimously passed by the Standing Committee of the National People's Congress to address issues such as low pay and protection from governmental influence (Lu and Miethe, 2002).

The Lawyers Law appears to be a serious attempt to improve the quality of legal representation and rule of law. However, it is generally believed that, because of the strong political influence of Communist party, the Lawyers Law lacks some of the essential elements stated in the Basic Principles on the Role of Lawyers as outlined by the United Nations. In comparison with the Basic Principles, the Lawyers Law fails to address lawyers' freedom of expression, due process concerns, and the duty to uphold human rights as recognized in international law (Lawyers Committee, 1998b, p. 46).

The term *lawyer* in China actually refers to a professional who is a legal representative or attorney-at-law and excludes judges, law teachers, and legal scholars. Law teachers and scholars devote most of their time to teaching and research and sometimes dabble in part-time law or legislative drafting. The role of defense counsel in China is very different from that in most other countries (Mc Morrow, 2010). Individuals can represent themselves or allow another to represent them. The legal representative can be a lawyer, someone from an organization the defendant belongs to, or even a relative or friend. Chinese defense attorneys are "encouraged" to help the court render a just verdict. Although the job of the defense counsel is supposedly to prove that the defendant is innocent, the reality in China is that the defense counsel in most cases can only act to help mitigate the severity of the sentence. Until recently, defense attorneys in China were not allowed to meet with defendants until the trial, defense counsel had restricted access to information about the case prior to the trial, and in some cases trials began without defense counsel's having been notified about the case (Chenguang and Xianchu, 1997). There still is some as to whether Chinese defense lawyers a meet with clients, see court transcripts suc fessions, and avoid personal intimidation a tion (Rosenthal, 2000).

Judges in China at most levels are po cated and lack any formal legal traini recently, many judges were selected fro former military officers. However, eff also been made to improve judicial qua and standards with passage of the Jud which set new standards for judges (Zha To improve the quality of judges at the lo levels, China has established a National of Judges, and the Supreme People's formed a special training center for senio

Legal training for advocates in Chin regulated by the Ministry of Justice and t try of Education. In recent years, law h an important field of study in China, wit ject being studied in high schools and in kinds of training courses. To pursue a for in law as a lawyer, court administrator, p or law enforcement officer, one must f national exam to enter either a univ department or legal institute. While in year university program, students take Chinese legal history, political science, fo guages, and various kinds of law. In the tutes, the training is more practical in na courses in investigation, forensics, and c (Terrill, 2009). To complete their legal t become lawyers, students must comp years of graduate law education and two years of legal work, pass a national bar ex approved by the Ministry of Justice.

COURTS AND THE LEG PROFESSION IN JAPA

Japanese court structures, like those of ern countries, form a hierarchy that beg lower courts, known as summary co have limited jurisdiction but do ha minal and civil cases. Procedures in these courts e usually very brief with very few formal trials esearch and Training Institute, 1996). If the fendant agrees, the judge, who is not necessarily rained lawyer, can decide the case based on the idence in the case file and on the prosecutor's ntence recommendation. Neither side appears ore the judge. If the prosecutor or the defense nhappy with the ruling, they can ask for a for- l trial (Castberg, 1990). If the criminal case ore one of the 438 summary courts would result prison term of more than three years, or if civil case would result in a fine of more than million yen, then the case would be handled by district courts level.

The fifty district courts, one each in every pre- ure and three in Hokkaido, are courts of general diction that handle civil and criminal cases and ers that have been appealed from the summary s by the prosecution or the defense. At the level as district courts are the family courts, h handle most domestic and juvenile cases.

A single judge presides over most district court In important criminal cases, a three-judge may be convened. Three judges are always ary when the sentence would result in impris- nt of more than a year or a death sentence or civil cases are heard on appeal from the sum- courts. Most cases at this level are handled y because many defendants confess to the s brought before the court. When the defen- does contest the charges, a formal trial ensues.

The high courts in Japan are courts of immedi- ppeal. They generally handle cases that are ed from the district or family courts, but also deal with appeals that come directly ummary courts and with cases of initial juris- when a person is charged with insurrection ition. Each of the eight high courts has a nt and a group of judges, from which a of three are chosen to hear an appeal. gh high court cases normally have three in extraordinary cases there may be five. ndividual cases are decided, a written major- nion is provided. If the decision is appealed, ought before the Supreme Court.

The Supreme Court is the highest court in Japan and is the final court of appeal in civil and criminal cases. In addition, the Supreme Court, according to the Japanese Constitution (Article 81), determines "the constitutionality of any law, order, regulation, or official act." It is also responsible for nominating judges to the lower courts, determining judicial procedures and training, and supervising the judicial system. Interestingly, the judges on the Supreme Court in Japan are somewhat older and serve less time on the bench than in many other countries. This is due to the fact that, except in extreme cases, the judges are not appointed until at least sixty-four years of age and they are required to retire at age seventy (Repeta, 2011).

In the rare cases dealing with constitutional questions, all fifteen members of the bench preside: eight justices must agree for a law to be declared unconstitutional. For all other cases, the court divides into panels of five justices. Unlike in the high court, both opinions of the court are provided, and the justices can express their personal views on the case (Terrill, 2013).

The Supreme Court of Japan has not developed as the potent political force that the U.S. Supreme Court or even the German Supreme Court have during their histories. This may reflect the fact that Japan has not traditionally been a nation in which the assertion of individual rights and recourse to litigation have been culturally accepted. An important function of the Japanese Supreme Court is general oversight of court administration throughout the country. The U.S. Supreme Court exercises this function for the federal system, and the state supreme courts exercise it for their systems, usually through a separate administrative office.

Judges in Japan have a bureaucratic career trajectory similar to the French model. Judges are chosen upon finishing study at the Legal Research and Training Institute—that is, at a relatively young age—and are reappointed to successive ten-year terms throughout their careers. Since they start at the lowest level and their chances for elevation to higher courts depend on their winning the approval of their superiors, they tend to be conservative and cautious in their approach, rarely handing down unpopular or controversial opinions (Feeley, 2002).

One of the most interesting features of the Japanese legal profession is that, relative to the population, there are very few lawyers. In 2007 there were 24,302 attorneys in Japan. In comparison, the United States produces almost three times as many lawyers each year. These figures comparing lawyers in the United States and Japan are somewhat misleading however, in that they do not count the people in Japan called *quasi-lawyers* who are performing the functions that in the United States would be performed by lawyers such as doing legal research; drawing up legal papers; advising on tax problems; and dealing with inheritances, divorces, and commercial contracts.

The stark contrast between the numbers of lawyers in the two nations is usually explained by the fact that the Japanese people are not as litigious as Americans. According to this analysis, the ideals of harmony and conciliation are so strong in Japan that few people will embark on the inherently conflictual process of formal adjudication. The dearth of lawyers ensures that citizens will find informal ways to settle conflicts rather than taking these conflicts to court. The result is the increased use of mediation in which legal disputes between parties are resolved informally with a mediator rather than through formal court involvement. One common form of mediation is to solve minor disputes between two parties through mediation with police officers and lawyers acting as judges. Another is the use of summary courts that handle minor civil matters and are staffed by untrained lawyers and court clerks.

Finally, since 1949 the Japanese have implemented Civil Liberties Bureaus. The bureaus were formed to hear complaints and provide remedies for individuals whose civil liberties had been infringed. Civil Liberties Bureau personnel are volunteer unpaid commissioners who are nominated by their localities and confirmed by the Ministry of Justice. There are over 11,000 volunteer commissioners, operating in every town and neighborhood. It had roughly the same

mission as the Civil Rights Section of the U.S
ment of Justice and undoubtedly was a brai
post–World War II reconstructionists in Jap

It is hoped that changes in the trainin
yers will reduce the dearth of Japanese la
2002, the Japanese Diet (Parliament) passe
of laws and standards, as suggested by th
Reform Council, to increase the number c
and make legal services more accessible to
lic. The new laws and standards called for
schools, new training procedures, increas
sity, and a new bar exam. Unfortunately, t
of this effort were not very successful. Sp
one of the goals of the 2002 legislatio
increase the rate of those passing the l
from 40–50% to 80%. What happened
opposite: The rate of passage dropped tc
2011 (Nottage and Green, 2011). Results
have an impact on the number of attorn
able to defend and prosecute criminal
address the civil cases that arise in Japan.

Only public procurators (prosecu
allowed to initiate the prosecution of
cases and to direct enforcement of crimi
tions. Prosecutors in Japan have two ma
(1) to investigate and collect evidence in
and (2) to provide information to the jud
the suspect to assist in sentencing. One u
ture of criminal procedure in Japan is the
suspend prosecution even when the prose
prove the offender committed a crime.
to the Japanese Criminal Procedure Cod
248), if the prosecutor feels the crime o
represents or reflects some special situati
she can choose to suspend the matter. A
special situations that can trigger a
sentence are the age of the offender, an
of remorse, the possibility of rehabilitati
desire to avoid the stigma attached
formally processed through the crimin
system.

Defense attorneys, called private adv
provided for all those accused of a crime i
the accused is indigent, a lawyer is appoin
list of attorneys from one of the two loca
of the Japanese Bar Association. Altho

of the U.S. De... was a brainch... ...sts in Japan.
...e training of ... ...panese lawyer... ...ent) passed a ... ...ed by the Ju... ...number of la... ...essible to the ... ...alled for new ... ..., increased d... ...unately, the r... ...essful. Speci... legislation ... ...ng the bar ... happened w... ...ropped to 24... Results like ... of attorneys ... criminals a... ...n Japan.
(prosecutor... ...ation of cr... of criminal ... two major ... ...idence in th... to the judge ... One uniqu... ...an is the ab... the prosecut... crime. Acc... ...dure Code ... crime or cr... ...ial situation. ... matter. Amo... ...gger a susp... ...nder, an exp... rehabilitation, ... attached to ... the criminal ...

...rivate advocat... a crime in J... is appointed ... two local br... ...on. Although ...

...gent offenders are eligible for court-appointed ...nsel, because the court does not often check the ...ncial status of clients there have been some ...es of the system. To address the growing num... of persons seeking court-appointed counsel, the ...nese have devised a system called duty lawyers. ... lawyers meet with the arrested or detained ...ndant in a court case once free of charge. ...ndants who want to retain the lawyer must ... apply for legal aid for pretrial defense. This ...ars to have improved the abuse of the ...inted-lawyer problem for the immediate ...e, although this system still relies on the vol...erism of local attorneys, who often feel that ... are insufficiently compensated for such work ...ayama, 2002, pp. 46–48). Because of the high ...ssion rate (over 90 percent) and low crime rate ...an, there is little business for private advocates, ...hey must often do other kinds of legal work to ... a living (Castberg, 1990; Foote, 2002).

The Japanese judicial process has historically ...ed for little opportunity for the citizen ...vement in court decisions, either through ... or lay judges. Japan did have a short-lived ...ment with juries between 1928 and 1943, ... which time a defendant in a felony case ... request a jury trial. Because of the course of ...ese history and the cultural realities at that ..., the use of juries was not well accepted. However, there has been a recent change to this practice, ...k thereof, and it is sure to change the way ...se citizens view the criminal justice system ...ars to come.

... 2009 the Japanese instituted a mixed jury ... called *saiban-in seido* (Ohtsubo, 2006). The ... calls for the use of lay assessors for serious ... in which there is considerable public interest. ...*aiban-in* has been designed with three purposes ...nd: (1) to get citizens involved so as to ...e understanding and support for the system ...tice, (2) to reduce the time it takes to take a ... trial, and (3) to make the criminal justice ... more understandable for citizens through ...ed participation. Lay assessors will be selected ... pool of candidates and asked to serve for one ...long with others on a panel consisting of four to six *saiban-in seido* and one to three pro... judges (Terrill, 2013).

In the period immediately following its ...tion, the *saiban-in* received considerable cr... from judges, lawyers, and citizens. But it ... that, three years into implementation, the *s...* system has been accepted as an effective meth... judicial decision making. Among the positive re... that have been observed are an increased numb... cases solved, a more transparent trial proc..., increased levels of citizen participation, and the full support of higher court levels in Japan. In fact, there has been talk in Japan about the possibility of expanding the *saiban-in* system to the civil court system (Wilson, 2012).

Comparison of the legal profession in Japan with that in our other model countries again shows some basic similarities and differences. It is very difficult to become a lawyer in Japan, and there are very few lawyers there. Essentially, advocates and public professionals have higher status than advisors, although Japan does not have the colorful differences that one finds in England.

Despite efforts by the postwar American occupation authorities to create a more political third branch of government in the sense that such a branch exists in the United States, Japan has largely reverted to the bureaucratic Civil Law model, with career judges and prosecutors chosen according to merit and rising through the ranks of a hierarchical organization (Feeley, 2002).

COURTS AND THE LEGAL PROFESSION IN SAUDI ARABIA

There have been some significant changes ... marked for the Saudi Arabian judicial sys... because of a royal decree signed by King Abd... called the Judiciary Law of 2007. The intentio... of the new law is to shape the Saudi judicial system so that it can meet higher judicial standards and respond to the changing social and econo... needs of Saudi society. As a result of the Judiciary

Law, the Saudis have a new judicial arrangement with three primary court levels: the high courts, courts of appeal, and first-degree courts. The new judicial system will assume jurisdiction over most of the civil, commercial, and criminal disputes previously decided by various administrative committees. In most cases, however, the minister of justice, appointed by the king, presides over the judicial system.

The first-degree courts, which are similar to courts of general jurisdiction, are located throughout the country and will divide their caseloads among Labor, Commercial, Criminal, Personal Status, and General Circuits. Each of these is further divided into specialized courts. For example, the General Courts will handle traffic cases, the Personal Courts will handle divorce and the Criminal Court will consist of the following specialized circuits: *qisas* (retaliatory punishment) cases, *hudud* cases (prescribed punishment), ta'zir (discretionary punishment) cases, and juvenile cases. The criminal court will be composed of a three-judge panel. Cases in other courts will be heard by one judge (Terrill, 2013).

The next level serve as intermediate appeals courts, and they are called *courts of appeals*. These courts can overturn decisions by lower courts and take over for the former courts of cassation; they will be established in all thirteen provinces. Each court will function through specialized circuits comprised of three three-judge panels, except for the criminal circuit, which reviews judgments involving certain major crimes, including those which bear the death sentence. It will be composed of five judge panels. Courts of appeals will consist of the following circuits: labor, commercial, criminal, personal status, and civil. Each circuit will be composed of a president appointed by the chief of the appellate court and judges holding the rank of appellate judge. The courts of appeals will hear appealable decisions from lower courts. They will render their judgment after hearing the litigants' arguments in accordance with the Law of Procedure before Shari'a courts and the Law of Criminal Procedure.

Finally, a new court called the High Court will replace the Supreme Judicial Council as the highest authority in the judicial system. The High Court will review rulings issued or upheld by the c appeals, including those relating to cases pu by death and certain other major crimes. T Court will also review judgments and (issued or supported by the courts of appeals ters not previously addressed (Ansary, 201 King of Saudi Arabia can give a pardon or a final appeal to determine whether a verdi consonance with the Shari'a (Moore, 1996)

Prior to the implementation of the Law, the Supreme Judicial Council serve highest court of appeal in Saudi Arabia now perform several administrative roles, i supervision of the Shari'a courts and all me the judiciary. It will also ensure that judges Arabia are allowed judicial independence.

In 2008 a special criminal court was f Riyadh to deal with terrorism cases. The directed toward those accused of joining or threatening national security. Cha involve implementing a terrorist act, armed attacks; the manufacture and pro explosives; car bombings; and hiding know ists, in addition to collecting informati people and places, recruiting members recruits, fundraising for a movement, il trading, and facilitating members of a te (Terrill, 2013).

Despite the significant changes in th court structure, Saudi Arabia has retained pendent administrative judicial commi responds directly to the King called the Grievances. The Board of Grievances, the French Council of State, hears cases government rulings and actions includin of foreign businessmen to the Saudi go The board has three levels of judicial adm courts, each with appellate jurisdiction ov court or administrative commission.

Not surprisingly, judges in Saudi Aral significant training and study in the Islan addition to meeting several general req aspiring advocates and judges are required religions preparatory schools for five yea attending the Shari'a institutes or colle graduation, future judges must attend

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demy and an Institute of Public Administration which they will learn their craft, including two nths of training in the commercial, labor, and inal procedure laws and other relevant regula-s. In addition to the judges' educational legal ing, Saudi Arabia assigns newly appointed es to a court for a two-year probation period at they can become acquainted with its work-procedures. During the probation period, the es are given simple cases and settlements that referred to them by the court's presiding judge, reviews and approves the judgment before it is ded down.

Saudi lawyers who practice in court must be Muslims, a requirement that not only reinforces status for this group but also highlights the rtance of the religious tradition that infuses nal life. According to Islamic tradition, it is not sary to have a trained advocate in criminal trials. e Shari'a courts, in fact, the accused are expected defend themselves, calling on legal counsel, ves, friends, fellow employees, and others to e them. Counsel by nonlawyers formerly was evalent, amounting to the practice of law with-a license, that a Saudi law now regulates the ber of cases allowed to be handled by lay counsel n, 1985b, p. 325). Licensed attorneys may also e advocates of choice. The Ministry of Justice licenses for those who wish to practice before a courts. The Ministry of Commerce issues es for practice before the administrative and mercial courts and for general work as a solicitor er, 1990, p. 14). Thus, the dichotomy between two types of courts is reinforced at the earliest s of a lawyer's career. Foreign lawyers may act as ors but not as advocates in Saudi courts.

Court procedures in Saudi Arabia's Shari'a s are quite informal by Western standards, per-because of the long tradition of *quadi* justice, in h the *quadi*, an agent of the caliph, heard and ded cases on an individual basis. As mentioned ously, *quadi* is still the term used to describe ic judges who decide cases in the Shari'a courts d on the facts according to their own wisdom the principles of the religious law. Courtrooms audi Arabia may simply be small rooms in a government building, and proceedings may be held in secret if the judge determines that the interests of morality demand it. Journalists are not permitted in court, and spectators are rarely present.

SUPRANATIONAL COURTS

As we mentioned briefly in Chapter 6, there are now judicial mechanisms that direct judges' decisions across international borders and supposedly have a higher legal standing than decisions of courts in individual countries. The trend to form these judicial mechanisms, called supranational courts, is part of a larger trend to promote global human rights and global justice. The main goals of supranational courts are two in number. First, supranational courts serve to help provide individual citizens who have exhausted all their legal means of redress but still feel that they have been wronged by the justice system in a particular country. Second, supranational courts serve to hold those responsible for international law violations to a higher standard than are present in domestic courts. Relative to the latter goal, we have learned throughout history that allowing serious criminals to escape accountability for their acts can have a negative and long-term impact on a country and often leads to future turmoil. The remainder of this chapter will discuss the historical background, current status, and jurisdictional range of supranational courts. It is important to mention that our discussion here includes only supranational courts that address matters related to criminal justice. There are other supranational courts that deal with a variety of noncriminal justice matters, such as the International Tribunal for the Law of the Sea located in Hamburg, Germany, and the Permanent Court of Arbitration in The Hague.

The Background of Supranational Courts

The idea of developing courts to handle legal matters across boundaries and/or for violations of international standards is not a novel one. For centuries, serious violations of international law (i.e., war crimes) were prosecuted in the national criminal courts where the violations occurred, and this method continued well into the twentieth century. An actual prosecution for violations across boundaries, instituted by two or more states, was believed to occur first in 1474, when Peter von Hagenbach was tried by twenty-eight judges of the allied states of the Holy Roman Empire. He was prosecuted and beheaded for "violations of the laws of God and man" because he allowed troops to commit war atrocities during the Swiss-Burgundian War of 1474 (Bassiouni, 1991; McCormack, 1997; Schabas, 2007). It is believed that modern history of international judicial arbitration dates back to the Jay Treaty of 1794, when the United States and Great Britain agreed to settle a number of unresolved issues that were present after the American Revolution. The nineteenth century brought at least two attempts to prosecute individuals for acts of military aggression: first an unsuccessful prosecution for Napoléon early in the eighteenth century, and later trials for "crimes against humanity" in Crete following the Cadia massacres in 1898.

The first multinational criminal court was convened after World War I and signing of the Versailles Treaty of 1919, which called for a special international tribunal to prosecute Germany's Kaiser Wilhelm II. However, the trial never occurred because Wilhelm fled to the Netherlands for sanctuary. Also at that time, an unsuccessful attempt was made by the League of Nations to establish an international tribunal to deal with war crimes. Instead, more than three thousand war crimes tribunals were conducted by the French and Belgians. International **tribunals** are generally temporary bodies that are organized to judge persons for their behavior during a specific time for a specific event. They have usually been formed as military courts to adjudicate atrocities committed during times of war or civil unrest.

Surely the most famous international tribunals of the twentieth century were the Nuremberg and Tokyo war tribunals formed following World War II. With the drafting of the Nuremburg Charter, an international military tribunal was formed to bring to trial and punishment the major war criminals of the Axis powers. The Nuremburg tril
jurisdiction or authority to adjudicate crir
the peace, crimes against humanity, and v
The tribunal lasted from November I
September 1946 and ended with the co
twenty-two defendants, twelve of wl
sentenced to death by hanging. See the
web page for a graphic layout of the N
Trial http://law2.umkc.edu/faculty/proj
nuremberg/nuremberg.htm.

In Tokyo, the international militai
for the Far East was held from April 19
November 1948. The tribunal, foll
model of the Nuremberg tribunal, even
victed twenty-eight defendants, and s
sentenced to death. Some 5,700 othe
were charged with lesser crimes such
abuse. A lesser-known fact is that
World War II, China also held 13 trib
own, resulting in 504 convictions and
tions of Japanese nationals.

The Nuremberg and Tokyo
although not the first or only war c
were very important because they esta
basis of contemporary international l
2010; Browne-Marshall, 2011). More
the Geneva Convention of 1949 w
using much of the customary law on
Nuremberg Trials were based, and it
as the legal foundation for many of
supranational courts and cases.

Supranational Courts Toda

The longest-running and most perman
tional court is the **International Cour**
(ICJ). Located at the Peace Palace in
Netherlands, the ICJ serves the Unitec
the capacity of adjudicating disputes a
ber countries. The ICJ was establishe
original Charter of the United Natic
and held its first session in April 194
was actually the successor to a judicial
the Permanent Court of Internatic
which was established by the League
in 1922. As the principal judicial

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ted Nations, the ICJ has fifteen judges, with no e than one from any one country, all of whom elected by the General Assembly and Security ncil of the United Nations. In some instances, ICJ can be divided up into smaller chambers of e or more judges to handle the volume of cases.

Also known as the *World Court*, the ICJ has a role: (1) to settle, in accordance with international law, legal disputes submitted to it by the member states and neutral parties (Nauru and erland) and (2) to give advisory opinions on questions referred to it by international orgaons. The decisions of the court are binding—ppeal is available, and all decisions are decided cordance with international treaties, interna conventions, international custom, general ples of law, and, in a few cases, prior judicial ons and teachings (ICJ, 2012).

Although the ICJ does not often directly ss *criminal* matters, it does make decisions nfluence criminal proceedings around the . For example, in April 2012 the ICJ began plex case to determine which country has the to try Hissene Habre, the former president of who has been indicted in two nations in ction with political killings, torture, and brutalities. Senegal and Belgium have both d Habre, but Senegal has stalled legal action fused to try him or extradite him to Belgium. 1946, the ICJ has addressed 152 cases in ber of areas such as maritime issues, use e, international treaties, environment issues, rritorial frontiers.

Another example of a supranational court that with international criminal justice in an indishion is the **European Court of Human ts (ECtHR)**. The ECtHR allows individuals, of individuals, or nongovernmental organi to bring complaints against a European state dicial body after they have been denied relief r national courts. Issues it addresses include ath penalty, police misconduct, and terror-or example, in 2010 the Court upheld a com against British antiterrorism law that allowed to stop and search people without firm s for suspicion. The mission of the ECtHR in general is to interpret and uphold the Europe Convention on Human Rights and Fundamen Freedoms, a treaty that was prepared by the Council of Europe in 1950.

In almost 50 years, the ECtHR has delivered more than 10,000 judgments. There has been a tremendous increase in the number of cases brought to the ECtHR in recent years, with an average of 50,000 cases brought annually to the Court. This has led to a serious backlog of over 120,000 cases as of 2011. However, with the inclusion of Russia in 2012, 46 member states have ratified reform procedures that will soon enable the ECtHR to deal with the backlog and increasing number of cases. The ECtHR should not be confused with the European Court of Justice (ECJ), which is the highest court of the European Union (EU). The ECJ rules on questions of EU laws and also acts as arbiter between the EU's institutions to determine whether they are acting within their prescribed powers.

Although some global regions like Europe have made attempts to develop methods to address past or current abuses of human rights, these and other problems of global crime and justice have often become too complicated for regional courts to handle. This can happen, for example, when justice should be meted out to an individual or individuals responsible for illegal acts that are in violation of international standards or treaties especially related to criminal law. In response, the international community has developed three additional forms of supranational courts that deal directly with criminal matters in violation of international law. Each has a judicial body with a higher legal standing than decisions of courts in individual countries. The first are ad hoc tribunals, the second is a permanent international criminal court, and the third are recently formed **internationalized courts**.

The two supranational tribunals dealing with international criminal law violations are ad hoc tribunals, meaning they have been developed for a specific purpose, have a narrowly defined jurisdiction, and are meant to be temporary. The first, established in 1992 by the UN Security Council using the powers vested in it in Chapter VII of the United National Charter, is the **International**

Criminal Tribunal for Yugoslavia (ICTY). The ICTY was formed to deal with the atrocities committed during the conflicts in Croatia (1991–1995), Bosnia and Herzegovina (1992–1995), Kosovo (1998–1999), and the Former Yugoslav Republic of Macedonia (2001). Since it was created in 1993, the ICTY, located in The Hague, Netherlands, has indicted or served arrest warrants on 161 suspects and sentenced 64 convicted criminals. Most of those convicted have been soldiers, guards, midlevel military officers and a few commanders. The ICTY did attempt to prosecute Slobodan Milosevic, the former president of Yugoslavia, for his crimes in the region, but he died of a heart attack in his cell in The Hague before his trial was completed. There are 35 ongoing proceedings before the ICTY, and all are requested to be completed by the end of 2014.

During legal proceedings, those accused and being tried before the court are held in the ICTY's Detention Unit. However, the Unit is not a penitentiary for the long-term incarceration of criminals. After conviction and sentencing, all criminals are transferred to a prison outside the Netherlands. Seventeen nation states have signed an agreement stating that they will enforce the sentences of the ICTY and take into long-term custody those found guilty by the Tribunal (UNICTY, 2012).

The second supranational tribunal was formed in November 1994 by the UN Security Council and is called the **International Criminal Tribunal for Rwanda (ICTR)**. The ICTR was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between January 1994 and December 1994. Located in Arusha, United Republic of Tanzania, the ICTR also deals the prosecution of Rwandan citizens responsible for genocide and other such violations of international law during the same period. Since issuing its first indictment in 1995, the ICTR has completed a total of 69 cases with 59 convictions (17 of those pending appeals) and 10 acquittals. Among those convicted include Jean Kambanda, the prime minister of the Rwandan government during the genocide, who wa[s] head of a government to be indicted an[d] quently convicted for genocide. If convicte[d] ICTR, the sentence is carried out in Rwan[da] number of states that have agreed to incarce[rate] sons convicted by the Tribunal, including ernments of Mali, the Republic of Benin, S Italy, Sweden, and France (UNICTR, 201

Although the war tribunals in Yugos Rwanda may be direct descendants of th[e] Nuremberg and Tokyo, they differ in a n significant ways. For one, the ICTY and IC been developed with the full support of th[e] tional community under the direction of tl Nations. With full support of the Unitec comes acknowledgment by the internatio munity of the legitimacy of the actions the tribunals and acceptance of the results. lem however, is that without full occup total victory, it is quite difficult to capture ecute all those involved. Some procedural are also present. Within the rules of the cu tribunals, it is not possible to prosecute i in absentia. Also, there was no appeal Nuremberg, whereas those convicted by and the ICTR can appeal their cases to spe bers within the tribunals. Further, the the current war tribunals allows for concu diction in other countries. This means nations that agree to follow the procedure by the tribunals can assist in prosecuting the persons responsible for serious violatio national humanitarian law. The ICTY a are funded by regular contributions from ber states. Additional funds are in the forr tions from international agencies and don contributions must comply with the Unit policies on donations.

International Criminal Cour

Over sixty years ago, the United Natio ognized the need to establish an internati inal court to prosecute crimes such as Finally, in July 1998, at a UN diploma ence in Rome, delegations from 16C

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...d the first-ever permanent treaty, the **Rome** ...**tute**, that would establish the **International** ...**minal Court (ICC)**. The Rome Statute is an ...rnational treaty binding only on those states that ...ally express their consent to be bound by its ...isions. These states then become parties to the ...te, and anyone from those states who then ...mits any of the crimes under the statute after ... date are liable for prosecution by the Court. ... crimes are the most serious crimes of concern ...e international community as a whole, namely, ... crimes of genocide, war crimes, crimes against ...nity, and the crimes of aggression. The Rome ...te entered into force on July 1, 2002, once ...tes became parties. In July 2012, Guatemala ...ght the number of states party to the statute to ... Held at The Hague, the ICC is an indepen-... institution. The Court is *not* part of the United ...ns, but it maintains a cooperative relationship ... the UN. Like the aforementioned tribunals, ...CC's expenses are funded primarily by state ...s, but it also receives voluntary contributions ... numerous sources.

...dges for the ICC may impose a prison sentence, ... or forfeiture of proceeds from crimes committed. ... Court cannot impose a death sentence, and the ...mum prison sentence allowed is 30 years, ...gh life imprisonment is an option. Like the ad ...tribunals, those convicted by the ICC serve their ...ces in a state designated from the list of states that ... to accept convicted persons. As of May 2012, the ... is involved in sixteen individual cases in seven ...nt legal matters (ICC, 2012).

The development of a permanent ICC seems ... a good idea. Among the reasons that ... been presented by UN human rights expert ... Sunga in support of such a court are the ...ing:

- Crimes under international law that go unchecked hinder international peace, fuel ...stability, and can lead to long-term armed hostilities and war.
- ...ternational criminal law cannot be effective unless it is enforced systematically and on a regular basis.
- International instability should not be able ... dictate that international law is relative.
- Individuals who commit crimes in violatio... international law should always be punishe... and this principle should take precedence o... other factors such as politics, administrative convenience, or historical accident.
- Ad hoc tribunals such as the ICTR and th... ICTY are created retrospectively and with some discretion, leaving open the questio... to whether criminals will always be prosecu... and punished.
- Creation of a permanent court would sym-bolize the international community's deter... nation to enforce international law univers... (Sunga, 1997, pp. 329–331)

However, the ideal of a permanent ICC ... raised some opposition. Among the argum... against the ICC is the sticking point of the ... and powers of the prosecutor. Some feel that ... UN Security Council should have the final say ... regard to who is prosecuted. Others feel that giv... the countries in the Security Council the right ... veto will eliminate cases that would otherwise ... brought to prosecution. Another major limitatio... that the court is limited to exercising jurisdicti... only if the state or territory is a party to ... Rome Statute, and it relies heavily on the coope... tion of states to fulfill its functions (Hopfel ... Angermaier, 2005; Pakes, 2010).

The United States is among a group of count... (others include China, Israel, Iran, Russia, Syria, ... Pakistan) that have not ratified the treaty. Although ... Clinton administration signed the treaty in late 20... the Bush administration immediately "unsigned" ... treaty after taking office in early 2001—a mo... unprecedented in over 200 years. Soon thereafter, ... 2002 the U.S. Congress passed the American Serv... Members Protections Act, which prohibits Americ... cooperation with the ICC and authorizes the presid... to use military force against the court if it attempts ... prosecute an American citizen.

The main concern of those against the ICC ... the fear that a country as powerful as the Unit...

States, with military might present throughout the world, would be vulnerable to prosecutions. As a result, it is possible for high-ranking officials from the secretary of defense to soldiers in the field to be accused of crimes. Detractors of this position state that the U.S. position is really reluctance on the part of the United States to be held accountable for gross human rights violations or to the standard established for the rest of the world (Elsea, 2006).

The Obama administration has taken a different direction on whether to support the Rome Statue and the ICC from the previous administration. Although there has been no movement to sign the statue or join the ICC, the administration has said it will work with the ICC on prosecution on certain matters. More specifically, the formal position of the U.S. State Department on the International Criminal Court as stated in May 2010 is as follows:

> From Nuremberg to Yugoslavia to Liberia, the United States has seen that the end of impunity and the promotion of justice are not just moral imperatives; they are stabilizing forces in international affairs. The United States is thus working to strengthen national justice systems and is maintaining our support for ad hoc international tribunals and hybrid courts. Those who intentionally target innocent civilians must be held accountable, and we will continue to support institutions and prosecutions that advance this important interest. Although the United States is not at present a party to the Rome Statute of the International Criminal Court, and will always protect U.S. personnel, we are engaging with State Parties to the Rome Statute on issues of concern and are supporting the ICC's prosecution of those cases that advance U.S. interests and values, consistent with the requirements of U.S. law.
>
> Although the United States is not a party to the ICC's Statute, the Obama administration has been prepared to support the Court's prosecutions and provide assistance in response to specific requests from the ICC prosecutor and other c officials, consistent with U.S. law, wh is in U.S. national interest to do so (U Department of State, 2012).

The final type of supranational cou **internationalized courts**. Interna courts, also called mixed tribunals or hybr operate with the support of the United N prosecute those responsible for crime humanity, war crimes, and violations of law. These courts are similar to each oth they generally are located in places w crimes occur and they utilize law and ju the international and domestic jurisdictio same time, these courts are each distin face their own challenges, including go influence of domestic judges and secu (Fichtelberg, 2008, pp. 52–54).

There are a number of these courts active around the world. All serve to addre that occurr in their respective countries. At are currently in operation: the Extraordin bers in the Courts of Cambodia (ECCC), Court for Sierra Leone, and the Special T Lebanon. The ECCC is a domestic court with international staff, established in with Cambodian law. Under the terms of ment between the United Nations and Government of Cambodia, the ECCC h to trial senior leaders of Khmer Rouge r those who were most responsible for and serious violations of Cambodian penal national humanitarian law and custom, a tional conventions recognized by Cam were committed during the period fro 1979 (ECCC, 2012). In early 2012, t found Kaing Guek Eav guilty of numer against humanity and grave breaches of t Convention of 1949 for his involvement ture and killing of over 16,000 people in t Penh region. He was sentenced to 35 year

Also currently in operation with the the United Nations is the Special Court Leone. This court, held in the Neth security reasons, has been formed to h

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...sible the perpetrators of serious violations of ...ational humanitarian and Sierra Leonean law ...itted in that country since 1996. On April 26, ..., the judges for the Special Court for Sierra ... convicted former Liberian President Charles ... of eleven counts of war crimes and crimes ... humanity for his role in the eleven-year civil ... Sierra Leone that ended in 2002 and left ... than 50,000 dead. The Taylor trial is signifi... because he is the first head of a state to be ... to judgment by an international tribunal ... WWII. He will be sentenced in May 2012 ...al Court for Sierra Leone, 2012).

Finally, the Special Tribunal for Lebanon (STL) ...ablished in 2005 with support of the United ..., but it is an independent judicial organiza... not a UN court. The STL began work in ... 2009 in The Hague, its main purpose being ... trials for those accused of a deadly attack that ... 23 people in Lebanon in February 2005 includ... Prime Minister Rafiq Hariri. The STL has handed ... no convictions as of April 2012 (STL, 2012). ... the box below for a list of supranational courts ... their dates of establishment) that have dealt with ... matters over the last 60 years.

The Legal Jurisdiction of Supranational Courts

... does international humanitarian law come ... and what gives the supranational courts the power to decide the fate of individuals around th... world? The answer has three parts. First, the Unite... Nations, as the only international body of power i... the world and with support of its member states an... the Security Council, provides the initial legal juris... diction. Without the approval of the UN, ther... would be no ICJ, no ICC, and no criminal tribunal... Second, as we mentioned briefly with regard to th... ICJ, various international courts gain legal legitimac... and power through the application of internation... laws that have been developed over time in the for... of conventions and treaties. Examples of such law... are the Geneva Conventions of August 1949 an... most recently, the Rome Statute of 2002.

The final source of legal power and legitimac... for the supranational courts is the general legal prin... ciple of **jus cogens**, whereby fundamental norm... are recognized on the international level as havin... status superior to other norms. What this means i... practical terms is that, if one country believes it ... "in the right," this belief may be acceptable withi... its own borders. However, if the international com... munity condemns the behavior of that country a... illegal, the latter supersedes the former in a court o... law. The principle of jus cogens likely evolved from a similar Roman concept of jus gentium—a term that describes the law practiced by Roman jurist... and later medieval jurists, who stated that basi... principles of right reason are applicable to a... human relationships across borders. Later, Dutch jurist Hugo Grotius (1583–1645) used this princip...

...anational Courts and Dates of Establishment

- 1945 and 1946 Nuremberg and Tokyo International Military Tribunals
- 1993 UN International Criminal Tribunal for the former Yugoslavia (ICTY)
- 1994 UN International Criminal Tribunal For Rwanda (ICTR)
- 1999 Hybrid Courts in Kosovo
- 2000 East Timor and Indonesia*
- 2002 Special Court for Sierra Leone (SCSL)
- 2002 International Criminal Court (ICC)
- 2005 War Crimes Section, State Court, Bosnia and Herzegovina
- 2006 Extraordinary Chambers in the Courts of Cambodia (ECCC)
- 2007 Special Tribunal for Lebanon (STL)

*Special Panels for Serious Crimes; Serious Crimes Investigation Team and the Indonesian ad hoc Tribunal for East Timor.

as legal authority to develop rules for international law (Mueller, 1997).

Challenges Facing Supranational Courts

Although the concept of supranational courts has become generally accepted around the world, they do face considerable challenges. Among the key issues of concern are cost effectiveness, logistics of implementation, and political influences. It is estimated that from 1993, when the first wave of the current supranational courts were formed (beginning with the ICTY), to 2015, when most of them are proposed to close, the international community will have spent nearly $6.3 billion (Ford, 2011). As a result, many have questioned whether the effectiveness as measured by the scant number of convictions is worth the incurred cost. Another major issue is the problem of implementing the process of justice from arrest through incarceration. Supranational courts do not have their own police force able to gather suspected criminals and bring them to the respective courts for prosecution. In the few cases that have been prosecuted, the courts have generally depended on su turn themselves; in only a few instances v able to execute arrest warrants with the f eration of member states. Relatedly, if a c is obtained, the courts must find meml willing to incur the costs and security ris ated with long-term incarceration.

Probably the biggest obstacle for sup courts, however, is their inability to gain fu support of key member states. Can sup courts really gain influence and respect a world stage if major powers do not supp For example, among the UN member na do not support the ICC are the Unit China, and Russia. Individual countries ha reasons for their decision to support sup courts, but probably the most common i of giving up state sovereignty. Many especially those who have a long history unbridled global power, are concern answering to any international body. It is supranational courts have gained legitimac last twenty years, but these and other hu need to be addressed if they wish to grow tance and achieve sustained success.

SUMMARY

As we consider the issue of courts and the legal profession, we can see that there are many similarities and differences alike in our model countries. In each system, courts of limited jurisdiction, often staffed by laypeople, dispense justice in minor matters. Serious cases are heard in trial courts of general jurisdiction. In all countries we looked at, the possibility of error at the lower level is handled through the institution of intermediate courts of appeal. A high court of final appeal is at the top of each judicial hierarchy. Courts in all these systems lay claim to impartiality and independence in making decisions, and an opportunity for both sides to be heard is guaranteed in the proceedings.

It is the differences among systems, however, that show the relation among culture, tradition, and legal process. In England, the successful s curtail the powers of the monarchs is refle strong emphasis on procedure and on lay tion through the jury. The continental systems of France and Germany, with the zation of courts and their civil servant judic nel, reflect the rational bureaucratic ap administration that infuses other aspect state apparatus. The judicial system of th Republic of China takes a highly central with both informal and formal mechanism in educating the citizenry about the Socia In Japan, Western-style judicial process cc a premodern emphasis on harmony, con nonconflictual relationships. In the Islami Saudi Arabia, deep religiosity and de

Islamic principles dominate the criminal law process and much of family law.

Legally trained professionals hold positions of status and relatively high income in each system we have examined, as they do in all modern systems. Looking back at the various systems of justice, however, we find important points of difference that allow us to make some broad generalizations about legal actors in different families of law. These generalizations deal with legal education and training, as well as with the four functional categories of legal actors: adjudicators, advocates, advisors, and scholars.

The international community has developed international courts that deal directly with criminal actions in violation of international law. Each has a judicial body with a higher legal standing than decisions of courts in individual countries. The first are the permanent courts supported by the United Nations and the EU including the ICJ, ECtHR and ICC. The next are ad hoc tribunals such as the ICTY and ICTR. Finally, there are the recently formed internationalized courts that have arisen to deal with the ravages of civil wars in Sierra Leone, East Timor, Kosovo, and Cambodia. Supranational courts gain their support from the United Nations, international laws and treaties, and the legal principle of jus cogens. Although supranational courts have gained many supporters, they must address significant challenges, including cost effectiveness, logistics, and politics.

Comparative Criminal Justice at the Movies

Movies seek to entertain and inform the audience about a story, incident, or person. Many good movies also hit upon important substantive themes relevant to understanding crime and justice in comparative perspective. Read the movie summary below (and watch the movie if you haven't already) and answer the questions below to make the subject matter connections to comparative criminal justice.

The Last King of Scotland (2006)
Kevin MacDonald, Director

The movie depicts Ugandan President Idi Amin (Forest Whitaker) and recounts his reign of violence and terror through the eyes of a fictional character, Nick Garrigan (James McAvoy), a young doctor from Scotland who travels to Uganda hoping to help people. Nick is hopeful about the charismatic new president Amin, as was the rest of the world at the time. After an automobile accident, Nick is called in to treat the president's wounds, and Amin is impressed with Nick and charms him into becoming his personal physician.

Nick enjoys his new life of privilege but does not grasp the reality of the situation. Amin is charismatic but also moody, extremely violent, and paranoid about former supporters of the previous regime in Uganda. At one point, Amin decides to expel all Asians from his country, regardless of how many years they have lived there. Nick tries to talk him out of it. Amin later becomes furious that international newspapers have labeled him a madman and a cannibal for this decision. Amin screams, "These are all lies!" and threatens to throw all foreign journalists out of Uganda. Nick protests that he tried to talk Amin out of it, but Amin replies, "Ah, but you did not persuade me!"

When he finally realizes the atrocities Amin is inflicting upon his people and that the president is killing those around him whom he falsely labels conspirators or traitors, Nick tries to make a frantic escape before it's too late. Idi Amin is said to have killed more than 100,000 people in his country during his reign from 1971 to 1979. Forest Whitaker won the Academy Award for Best Actor for his portrayal of Amin.

Questions

1. A country with a dictator usually suffers from the moods and excesses of its leader. What does an independent judicial system provide in a country to prevent the excesses seen in Uganda?
2. In real life, Idi Amin was ultimately overthrown as a result of his own ambitions to expand his empire. He fled to Libya and then to Saudi Arabia where he died in 2003. Make an argument for what you believe would be a more just outcome, and why do you believe it did not occur at the time?