



Six Model Nations

England
France
Germany
China
Japan
Saudi Arabia
Summary

Comparative Criminal Justice at the Movies: *Crash* (2006)
Critical Thinking Exercise: *Oil Industry Faces Trial on Rights Abuses*
Discussion Questions
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Key Terms and Concepts

Daijokudan
Confucian thought
Cultural Revolution
Legalism
Confederacy
Legal pluralism
Mandate
National People's Congress (NPC)
Metric law
Munition
Prefect
Prefectural police (PP)
Prefecture
Republican government
Mingun
Mongolian government
Mongolian state

Chapter 4 Learning Objectives

Discuss the particular historical developments that may have had a major effect on the formation of criminal law and criminal justice administration in each model country.
Analyze contributing factors to the crime rates in each model country.
Identify the distinct approach to criminal justice each model nation exemplifies.
Understand the basic structures of the criminal justice systems in each model country.
Compare the unique crime problems in model countries with crime in the United States.

According to data collected by the Home Office in England, during the 2010–2011 soccer season almost 3,100 English and Wales nationals were arrested at international and domestic soccer games around the globe. Another 3,173 persons were placed under a “football ban,” meaning they were not allowed to attend soccer games (Home Office, 12/23/11). In France during October 2011, youths engaged in a series of protests that included strikes and roadblocks; they smashed storefronts, caused hundreds of flights to be cancelled, and left thousands affected by shortages in fuel. The protestors also clashed with riot police in Paris and across the country. This situation was created by the French Senate’s move to pass legislation to increase the retirement age to sixty-two years of age (Barchfield, 2010). A branch of police in Saudi Arabia, formally called the *mutawa* (to be discussed in the next chapter), are called to actively enforce a law that states that women are not allowed to travel without approval of a male guardian or husband. These three examples of crime problems in three of our model countries may be surprising or at least odd to some, especially to Americans, who are often not familiar with the different

kinds of crimes and the reaction of the respective criminal justice systems in other parts of the world.

To better place in perspective the problem of crime and the operations of the criminal justice system in one nation, we need to know something about the country’s history, government, and social development. This chapter introduces the six nations that we will examine in depth in the rest of the book. These thumbnail sketches will make it easier to follow the material in subsequent chapters and will help you understand how respective criminal justice systems have developed.

Our model nations are England, France, Germany, China, Japan, and Saudi Arabia (see Figure 4.1). These nations are designated as “models” not because they provide an ideal that might be copied by other nations but because each exemplifies a distinct approach to the criminal justice system and criminal process. The distinctions are based on families of law, government arrangements, and historical traditions. For each country, we will provide current background information, a historical sketch of the development of government and summaries of the current crime situation, criminal law, and criminal justice system.

ENGLAND

Overview

The name England comes from the word *Angeln*, one of the Germanic tribes who settled there during the fifth century. England became a unified state in 927 AD and together with Wales was officially known as the Kingdom of England until 1701, when it united with Scotland to become the Kingdom of Great Britain. Americans know England as a place of old castles, stories of kings and queens, poetry, and literature; for them, the country is one where the police are without guns and the lawyers wear wigs. But the British are responsible for much more, including the Age of Exploration (15th century), which led to the Europeans’

discovery of other parts of the world, the development of the English language and the Common Law. England by any measure has played a significant role in the development of parliamentary democracy and in advancing literature and science. For example, William Shakespeare, Charles Dickens, Jane Austen, and Agatha Christie among the famous English authors whose works are read across the world. Famous scientists include Isaac Newton and Charles Darwin, and the Industrial Revolution in England led to many significant inventions in the 1800s, including advances in textile manufacturing, metallurgy, mining, and power. More recently, the English have developed the jet engine, the electric motor, the first computer, and the World Wide Web.

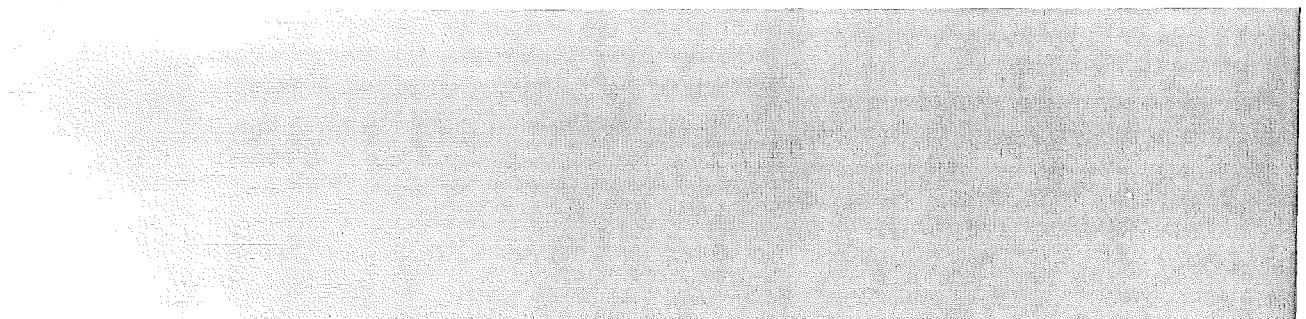




FIGURE 4.1 The Six Model Nations

England is the largest political division within the United Kingdom of Great Britain and Northern Ireland and is the largest entity within the geographic area called Great Britain (England, Scotland, and Wales). England is the historical backbone of the Common Law legal tradition. Scotland, however, continues to operate under a Civil Law tradition mixed with Common Law elements. We will consider only England and Wales rather than all of Great Britain or all of the United Kingdom, as the two form the constitutional successor to the former Kingdom of England. It is important to mention, however, that as of March 2011 the national assembly of Wales has direct lawmaking powers and no longer must consult with England.

England and Wales span 58,350 square miles and include 48 counties and 7 metropolitan counties, including London. England basically operates a capitalist economy, although various forms of socialism have made the country resemble a welfare state. England remains one of the world's great trading powers and financial centers, and boasts one of the four largest economies in Europe. It is also a world leader in the manufacture of heavy machinery, although it has lost much of the smaller industry that formerly was a major source of employment. For more economic and demographic data, see the columns about England and Wales in Table 4.1.

England is a **unitary government**. This means that governmental power is centralized rather than

TABLE 4.1 Selected Demographics Summary

	United States	China	France	Germany	Saudi Arabia	England and Wales	Japan
Area (sq km)	9,826,675	9,596,960	551,500	357,022	2,149,690	71,114	377,915
Capital	Washington, DC	Beijing	Paris	Berlin	Riyadh	London	Tokyo
Population	313,847,465 (11)	1,343,239,923 (11)	65,630,692 (12)	81,305,856 (11)	26,534,504 (12)	56.1 million (12)	127,368,088 (11)
Government							
Type	Federal republic	Communist; party led	Republic	Federal republic	Monarchy	Constitutional	Parliamentary with constitutional monarchy
Divisions	50 states, 1 district	23 provinces, 5 regions, 4 municipalities	22 metro regions, 5 overseas regions	16 states	13 provinces	54 counties, 7 metro counties	47 prefectures
Constitution	Sept. 17, 1787	Dec. 4, 1982	Sept. 28, 1958	May 23, 1949	None	Unwritten	May 3, 1947
Economy							
GDP	\$15.29 trillion (11)	\$11.44 trillion (11)	\$2.246 trillion (11)	\$3.139 trillion (11)	\$691.5 billion (11)	*\$2.418 trillion (11)	\$4.497 trillion (11)
Per capita income	\$46,400 (09)	\$6,500 (09)	\$32,800 est. (09)	\$34,200 (09)	\$20,300 (09)	*\$36,600 (11)	\$35,600 (11)
Majority Races/Ethnic Groups	White 79.9% Black 12.8% Hispanic 15.1%	Han Chinese 91.5%	Basques** Celts Germanic	German 91.5%	Arab 90%	White 90%	Japanese 95%
Major Religions	Protestant 51.3% Catholic 24%	Officially atheism Taoism Buddhism	Catholic 85%	Protestant 34% Catholic 34%	Muslim 100%	Christian 72%	Shintoism 83.9% ***Buddhism 71.4
Unemployment Rate	9%	6.50%	9.30%	6%	10.90%	8.10%	4.60%
Language	English		French			English	

*Includes Scotland and N. Ireland.

**The French choose not to identify ethnic groups by traditional forms of race/ethnicity or percentages, but 94% of French are identified as "French."

***Some follow both religions.

SOURCE: CIA World Factbook, 2012.

being divided between states and a central government, as happens in systems of **federalism** such as in the United States and Germany. **Parliament** is the supreme power in England. What makes Parliament so powerful is that parts of the executive, judicial, and legislative branches are contained within it; thus, it can override both executive decisions and Common Law legal decisions made by lower courts. Parliament consists of three parts: the monarch, the House of Lords, and the House of Commons.

A **monarch** is a person who is the sole and absolute ruler of a country, such as a king, queen, or emperor. However, in England, the influence of the monarchy has eroded, and today it serves a ceremonial rather than an executive function. The House of Lords, with 775 unfixed members, is the reviewer of legislation of the House of Commons. It does have some power to reject bills passed by the House of Commons, but its power is limited by various Parliament Acts.

The House of Commons is the major component of Parliament because its 650 fixed elected members discuss and vote on legislation proposed by the executive or by House members. The real leader of the nation is the prime minister, who is the head of the political party that possesses a majority of seats in the House of Commons. The prime minister acts as an advisor to the monarch and chairs of the cabinet. Cabinet ministers are responsible in turn for the administration of various government departments.

Historical Development

From the time of the Norman Conquest of England in 1066 to the end of the 17th century, English history was marked by power struggles between the monarchs and their subjects, both nobles and commoners. For example, William the Conqueror centralized royal power at the expense of the local nobles. In 1215, the nobles retaliated by drafting the Magna Carta, or "great charter," forcing the king to recognize certain of their rights. In the 16th century, the Tudor monarchs, including Henry VIII and Elizabeth I, ruled with increasingly absolute powers.

In the 17th century, the first two Stuart kings, James I and Charles I, tried to do likewise but faced an increasingly assertive Parliament and unhappy populace. After a civil war and the execution of Charles I in 1649, England came under the dictatorship of the Puritan leader Oliver Cromwell—hardly an improvement on the monarchy. The restoration of the Stuart monarchy in the latter part of the 17th century was unsuccessful, again because of power struggles between king and Parliament. The Stuart lineage was permanently ended in 1689 when Parliament asked a Dutch ruler, William of Orange, and his wife, the English princess Mary, to take over the English throne.

A condition of the offer of the English throne to William and Mary was that they accept the Bill of Rights passed by Parliament in 1689. This Bill of Rights is another of the "great charters" of British constitutional development. It proclaimed certain important rights related to criminal procedure and freedom of expression. Although they do not have the force or scope that the U.S. Bill of Rights has today, the English Bill of Rights (1689), as well as the Magna Charta (1215), the Petition of Right (1628), and the Act of Settlement (1701) are of tremendous historical significance in that they all have pioneered a tradition of limited government, with rulers constrained in their actions by a compact with the ruled. Although specific provisions of these great charters have often been superseded by later declarations, laws, and historical developments, they represent major milestones in English constitutional history.

Since the 18th century, Parliament has been the supreme decision-making body in England. Because of the diminished role of the monarch in England, executive functions are performed by the prime minister and the cabinet ministers, who are generally members of Parliament. England has had an independent judiciary, with Parliament also retaining the power to remove judges from office.

Since the rise of the British Empire, many of the legal changes in England have led to the export of English law to the colonies. This export led, in turn, to **legal pluralism**, the mixing of more than one system of law within a particular country or region of a country. Colonies retained many of

their customary laws and dispute-settlement procedures while the English-style courts handled major crimes and civil matters. The breakup of the empire has led to new challenges relating to rights and citizenship status of former colonial subjects (Glendon, Gordon, & Osakwe, 1985). Over the past fifty years, the dismantling of the British Empire, which originally stretched over one-fourth of the world, has led to the formation of separate political entities for Wales, Scotland, and most recently (2010) Northern Ireland.

A significant recent development in English jurisprudence has been the formation of the Supreme Court of the United Kingdom. With the Constitutional Reform Act of 2005, the British formed this 12-person court to serve as the court of last resort for all matters under English law, Welsh law, Northern Irish law, and Scottish law (civil law only). The High Court of Judiciary remains the court of last resort for criminal cases in Scotland. The court also has the power to handle devolution disputes—cases in which the three government entities (executive, legislative, and judicial branches) are questioned. Since the formation of the Supreme Court, the United Kingdom now has a more formal legal separation of powers between judicial, legislative, and executive functions similar to that in the United States.

Technically, England does not have a written constitution that can be read, cited, and interpreted. It does, however, as we mentioned earlier, have a strong constitutional tradition that has evolved over centuries. This phenomenon requires some explanation. Written constitutions as we know them today are essentially compacts between people and their governments. These compacts describe the governmental machinery, the rights of the people, and the obligations and powers of the government. Such compacts for the governance of large nation-states did not exist until the late 18th century. They descend from 18th-century Enlightenment thought, which stressed natural rights, reason, and the idea of a “social contract.” At that time, constitutions were developed in conjunction with revolutionary movements in the United States and France and reflected attempts to solidify and legitimize new systems that represented radical breaks with the past.

England, perhaps because it did not experience such a radical post-Enlightenment break with the past as France and the United States, has never had a comprehensive compact between government and people. Over the centuries, Parliament, especially its lower house, the House of Commons, was the supreme decision-making agency in Britain. With the formation of the new Supreme Court of the United Kingdom there has been an increased governmental supervision of parliamentary supremacy. But the weight of tradition and a sense of practical limits continue to govern parliamentary exercise of power. The so-called Rights of Englishmen, although not set forth in a single document, are as sacred in England as any established rights in countries with written constitutions. The “unwritten” constitution of the British thus includes the charters mentioned earlier, plus organic laws, constitutional traditions, and legal procedures, including Common Law and equity procedures.

The **organic laws** are those laws of Parliament that describe the machinery of government. In the 20th century, for example, a series of laws known as the Parliament Acts gradually reduced the power of the House of Lords, the hereditary upper house of Parliament. Organic laws also govern the electoral process. A good example of a recent organic law is the Human Rights Act (1998). The Act incorporates the European Convention on Human Rights into English law and allows any violations of the convention to be adjudicated in English courts.

English-constitutional traditions are hard to explain to an outsider. Among other things, they cover relations between the monarch and the rest of the government. The king or queen, for example, always asks the leader of the opposition to form a new government after a previous government has failed to get a vote of confidence in the House of Commons. Although no law requires this action, no monarch would fail to respect this tradition. Finally, legal procedures, including common law procedure, evolved within the Common Law as an integral part of the English Constitution so much so that in the United States with its fixed constitutional rights, the rights of the accused in England are subject to revision and have undergone important changes in recent years.

In sum, English government and the English constitution consist of a plurality of structures, laws, and customs tied to certain basic values about representative government and individual rights. Relationships among parts of this whole are often subtle and complex, and the English criminal justice system reflects these complexities. Containing a peculiar mix of amateur and professional elements, it strives to bring justice closer to the people through lay participation at all stages of the process.

Crime

Crime statistics in England are collected and reported by the Research and Statistics Department of the Home Office. There are primarily two kinds of crime data in England and Wales. The first are police data, which are collected and compiled by local police agencies. The second, believed to be more credible, are the data collected by a national marketing firm's systematic victim study, called the British Crime Survey (BCS). This survey asks around 50,000 people aged 16 and over, living in private households, about the crimes they have experienced in the last year. The survey is comparable to the National Crime Victimization Survey (NCVS) conducted in the United States.

Long-term trends show that BCS crime rose steadily from 1981 through the early 1990s. Then, in 1995, crime began to fall sharply, with a more than 55 percent reduction in total violent crime by the year 2012. As a result, violent crime rates in England now reflect numbers similar to those of 1981. Recent data show a 4.2 percent drop in overall reported crime from 2010–11 to 2011–12. Violent crime dropped 7.2 percent during that period alone (Flatley et. al, 2010; Home Office, 2012). Overall, although the crime rate may be too high for many who live in England and Wales, it is low in comparison to other industrialized countries, especially the United States.

In addition to the common crimes that are listed in the British Crime Survey or police statistics, there are other crime concerns in England of a more international scope. England has continued to witness the effects of the illegal drug trade.

Cocaine from Latin America and heroin from Southwest Asia enter there for distribution to the European market, and a cottage industry has developed for the production of various synthetic drugs. Another crime problem related to drug trafficking is money laundering. Because of the large number of financial institutions in England, the country is ripe for this kind of crime. However, it is clear that at least one kind of international crime in England and Wales has abated in recent years—terrorism. The unrest in Northern Ireland that lasted for decades, caused by a conflict between Catholics and Protestants, has slowed considerably since the historic Good Friday Agreement was signed on April 10, 1998. A problem of more of immediate concern for the British is the riots that erupted in August 2011 that were the worst seen there in 30 years. The violence began after the shooting of a man by police in Tottenham and spread to other areas, including London. Some have blamed the riots on frustrations related to economic issues, while the government called it a “criminal spree by opportunistic youths” (Chazan & MacDonald, 2011).

Criminal Law

During the fifth century in England, law developed according to decisions made by judges in individual cases, and the Common Law legal tradition was born. The tradition became stronger after the Norman Conquest in 1066, when judges began to travel around the land ruling on cases as they arose, and these judicial circuit courts survive to the present. However, England and Wales still do not have a unified penal code; rather, the criminal law is a combination of statutes and Common Law practice. Statutes are approved by Parliament, and the Common Law is a body of precedent that has developed over centuries and is written in legal textbooks. The most important offenses, such as murder, are under the Common Law, but their penalties are set by statute. Over time, Parliament has codified other Common Law crimes into statutes.

Since 1967, all crimes in England and Wales are either “arrestable” or “unarrestable” offenses. Arrestable offenses, which include all indictable

offenses, are those that a person commits or attempts to commit and that are punishable by a fixed incarceration term—for example, murder, manslaughter, rape, burglary, and assault with intent to rob. All other offenses are nonarrestable, or “summary”; these include drunk and disorderly conduct, loitering, and most traffic offenses. These crimes are generally tried in magistrates’ court without a jury. Some summary offenses are more serious in nature, such as carrying a weapon or driving while intoxicated, and thus can be indictable and brought before a higher court; these receive a jury trial.

The Criminal Justice System

England and Wales have a long history of allowing local counties and towns to administer and supervise their own affairs. However, the national government remains very active in the administration of justice, and it retains total control of the judiciary. The Lord Chancellor, who is appointed by the prime minister and is a member of the cabinet and the House of Lords, appoints all judges and supervises the court system of England. See Table 4.2 for a summary of criminal justice system information.

Keeping order in England is a shared responsibility between the national and local government. The police are accountable to the Home Secretary, who is also a member of the cabinet. The Home Secretary sets standards and provides the majority of funding for the police, who are then administered on the local level. Yet local governments retain the right to hire employees and must financially contribute to maintaining the local office (Terrill, 2009). The prison service is also under the control of the Home Secretary; however, most administrative power is given to the wardens, who are in charge of the daily operations of the institutions.

Criminal justice in England is strongly influenced by decisions made in Parliament. Each year, Parliament enacts laws defining more offenses, and every few years it develops legislation, called Criminal Justice Acts, that make changes in the system. For example, the Criminal Justice and Police Act (2001) changed how England trained its police, the 2003 Act introduced sentencing guidelines for judges,

and the 2008 Act dealt with immigration issues for those believed to be involved with terrorism.

A further influence on English criminal justice, as well as on Continental justice, has been the gradual “Europeanization” of the separate nations of Europe. England has become part of the European Union (EU) and is thus responsible for developing economic and human rights policies that fit the goals of that organization. Members of the Union must adhere to EU law, which can override English legislation and common law decisions.

Comparisons with the United States

In a review of some key issues concerning the criminal justice systems in England and the United States we can see some striking similarities. England has always been similar to the United States in governmental and cultural traditions, to say nothing of their common language. If we look at English law, we can easily see its strong influence on U.S. law—England and the United States are two of the major Common Law countries in the world today. Relative to the administration of police and municipal government, England and the United States are similar in that they both encourage local administration and funding. Local administration of police, water, and sewage are examples of this administration. Recent crime rates in both countries also seem to be parallel. Although it is clear that the violent crime rate in the United States dwarfs that of Britain, the overall crime in both countries began to dip in the mid to late 1990s. Since that time, the violent crime rate has dropped off in Britain and has continued to drop in the United States. Even though conventional crime has become less of a problem, the media has become obsessed with crime stories in both countries, and as a result the criminal justice systems of both countries have been under scrutiny. The criminal justice systems, or more specifically the elected officials within them, have responded to the scrutiny with a steady stream of legislation by the British Parliament and American Congress to reform criminal justice policies. This trend is sure to continue as “get tough” crime strategies have become commonplace in both countries (Newburn, 2007).

T A B L E 4.2 Selected Criminal Justice System Information for Model Countries

Selected Legal Information	United States	China	France	Germany	Saudi Arabia	United Kingdom	Japan
Legal System	Common Law (Unitary)	Socialist and Civil Law (Unitary)	Civil Law (unitary)	Civil Law (federal)	Islamic law (non-constitutional monarchy)	Common Law (unitary constitutional monarchy)	Hybrid; mostly Civil Law (unitary)
Criminal Data Sources	Uniform Crime Reports, self-reports, and victim surveys	China Statistical Yearbook, China Law Yearbook, victim surveys, self-reports	Annuaire statistique de la justice, victim surveys	Criminal Federal Police	Ministry of Justice	British Crime (victim) statistics and police data (Home Office)	Ministry of Justice in White Paper on Crime
Responsibility for Criminal Justice Administration	Police: local and state govt. Corrections: local and state govt. and Federal Bureau of Prisons Courts: county, state, and federal structures	Police: Minister of Public Safety Corrections: Ministry of Justice Courts: Ministry of Justice	Police: Minister of Interior and Minister of Defense Corrections: Minister of Justice Courts: Minister of Justice	Police, Courts, and Corrections: Länder (states)	Police: Ministry of Justice and Director of Public Safety Corrections: Bureau of Prisons Courts: Minister of Justice	Police: Home Secretary Corrections: Home Secretary Courts: Lord Chancellor	Police: National Police Safety Commission and the National Policy Agency Corrections and courts: federal court structure
Crime Issues	Illicit drugs, high violent-crime rates	Illicit drugs, corruption and fraud, human trafficking, civil unrest	Illicit drugs and trafficking, civil unrest, terrorism	Illicit drugs and trafficking, hate crimes	Unknown	Illicit drugs and trafficking, money laundering	Youth crime, organized crime, theft

FRANCE

Overview

The name "France" comes from the Latin word *Francia*, which means "country of the Franks." The Franks were a German tribe in the third century that lived along what is now the Rhine River. The pagan Franks, living in the region called Gaul which consisted of large parts of Northern Italy, Switzerland, Germany, France, Belgium and the Netherlands, were governed by the rule of Clovis I. Clovis was the first Germanic conqueror to convert to Catholicism in around 500 AD. As a result, the Franks would turn primarily Catholic and begin a long succession of kings that would affiliate with that Church.

France has been a center of cultural creation for centuries. Many French artists have been among the most renowned of their time, and France is generally recognized in the world for its rich cultural life and traditions. Among the most famous French painters are those that developed new styles of impressionism painting in the 19th century, including Manet, Monet, Renoir, and later Cezanne, Gauguin, and Toulouse-Lautrec. The museums in France are world renowned, especially the Louvre in Paris. Paris is where the French proudly display their French (gothic) architecture, and it is home to one of the most visited tourist attractions in the world, the Eiffel Tower. The French language is the official language in 29 countries, and it is one of the six official languages of the United Nations. One only needs to visit France, and to order food in English, to learn how important the country feels it is to retain the language as an essential element of preserving their unique and outstanding culture.

The French Republic, with a population of over 65 million, is divided into 22 administrative regions. The French also retain control over 11 regions outside metropolitan France. France boasts one of the four strongest Western European economies, mainly because of its fertile farmland and highly developed industrial sector. In addition to being the leading agricultural producer in Western Europe, France also is a major producer of steel, chemicals, electronics, and nuclear energy. For a summary of more demographic information about France, see Table 4.1.

Like England, France is a unitary state that has always prized a highly centralized form of government in which all major decisions are made through a national bureaucracy situated in the capital city of Paris. Parisians distinguish between Paris and the rest of the country, with the implication that anything that is not Parisian is provincial in the sense of being somewhat backward and lacking in sophistication. France also maintains a strong **republican government** style, in which a president heads the government but the main power remains in the hands of citizens, who vote for representatives who are then responsible to the electorate.

France's 22 administrative regions are further divided into 96 provinces that act as conduits to the central government. Each province is administered by a *prefect* selected by the government to enforce the laws of the nation. During the early 1990s, the government proposed modifying the 200-year-old system of total centralization. Legislation has decentralized authority, giving a broad range of powers to local elected officials. The prefect still retains general power over law and order, but local governments can now hire their own officers, including some local police officers (Terrill, 2008).

France has modified its constitution 15 times since 1789. The constitution of the Fifth Republic, formed in 1958, provides for an independent elected president who is the chief of state. Duties of the president include presiding over the cabinet, which is called the Council of Ministers, and selecting the prime minister, who is the actual head of the government. Like England and the United States, France has a two-house legislature consisting of the National Assembly (lower chamber) and the Senate (upper chamber). Although the constitution calls for an independent judicial system, France does not have an equivalent of the U.S. Supreme Court to consider the constitutionality of cases. Instead, it has a Constitutional Council that gives advisory opinions about legislation that has been passed but has not yet gone into effect.

Historical Development

Over the past 500 years, France has been a major world power with strong influence in Europe.

around the world. During the 17th and 18th centuries, France colonized great parts of North America and Southeast Asia. During the 19th and early 20th centuries, France built a large colonial empire that included large portions of Africa and Southeast Asia, as well as many Caribbean and Pacific Islands.

In the centuries prior to the 1789 revolution, France was ruled by a series of Bourbon kings, the most famous of whom was Louis XIV. Under Louis XIV, who ruled from 1643 to 1715, royal power in France became increasingly strong and centralized. His successors, however, were unable to deal with the economic and social change that characterized the 18th century. After borrowing heavily to finance France's wars with England, the monarchy collapsed under the pressure of internal revolutionary forces. King Louis XVI and his wife, Marie Antoinette, were executed in 1792, and the 1790s remained a period of turmoil.

From the standpoint of governmental philosophy, the passage of the Declaration of the Rights of Man and of the Citizen by the French parliament in 1789 was a defining moment in the revolutionary period. The declaration asserted the right to resist oppression, the rights to both liberty and equality, and the need for separation of powers to avoid a tyrannical government. Although not primarily concerned with the administration of justice, 3 of the 17 articles addressed this subject. Most importantly, the declaration asserted the right to a presumption of innocence and to freedom from arbitrary detention.

The republican spirit in France was marred by the excesses of the Reign of Terror that followed the Revolution. This was brought to an end by a renewed absolutism, that of Napoleon Bonaparte, a general in the French army who seized power in 1799. Napoleon's dictatorship brought about major changes in the French government, especially in the administrative and legal structures. In 1804, Napoleon declared himself emperor, and France became an empire. In that same year, the French Civil Code, or Napoleonic Code (described in Chapter 3), went into effect.

After a series of wars that involved most of Western Europe and part of Eastern Europe,

Napoleon himself met final defeat in 1815 at the Battle of Waterloo. The rest of the 19th century was characterized by successive attempts at renewed monarchy, republican governments, and even another empire under a nephew of Napoleon. In 1875, following a period of turmoil that included war with Germany and the revolutionary Paris Commune movement in 1871, France again established a republic. This Third Republic lasted until World War II, although the average life of a ruling parliamentary coalition during that time was only six months. Following the postwar downfall of the Vichy government, which had collaborated with the Germans, the Fourth Republic was established. In 1958, the Fourth Republic gave way to the Fifth Republic, a brainchild of the military and political leader Charles de Gaulle (1890–1970). General de Gaulle became prime minister in June 1958, became president later that year, and remained in office until 1969.

Crime

Crime statistics in France have traditionally been derived from the office of the Directory of Justice statistics and are called the *Annuaire statistique de la justice*. These data, describing crimes reported to the police, showed a relatively stable or even slight decrease in crime during the 1990s (Entorf & Spengler, 2002). However, more recent data reported by the French National Monitoring Centre on Crime reflect a significant increase in crime. Recent data show a 24.5 percent increase in crime between 2002 and 2007 as reflected by the number of total indictments brought to French courts, not counting traffic offenses. However, newly developed victimization surveys show only a slight increase in violent crime (1.5 percent) and fraud (3.4 percent), while thefts reported to police dropped 7.3 percent during that same period (Crime in France, 2008). One kind of crime that has shown a steady increase since the early 1980s is simple drug use, more specifically personal use of marijuana. The years 2000 to 2006 saw an increase in arrests from 93,000 to over 142,000. Since 2009 there has been a drop to below 138,000 arrests (National Report, 2010).

Like the English, the French must deal with problems related to drugs, immigration, and terrorism. Like England, France is both a transshipment point for and consumer of South American cocaine and Southwest Asian heroin. With the collapse of its North African colonial empire, France has experienced a large immigration of Arabs from the former colonies of Algeria, Tunisia, and Morocco. Reports of hate crimes and discrimination against these immigrants, racial tension, and cultural conflict have resulted, with attendant problems for law enforcement and judicial operations. With the largest Jewish population in Western Europe, France has also experienced an increase in the number of verbal and physical attacks on Jews.

Terrorism is a concern because France is a crossroads for terrorist activity, from both internal and external sources. As we mentioned in the opening of this chapter, politically motivated acts of violence are a major concern, with many of the problems stemming from labor unions' protests against government cutbacks to services and benefits. Several violent riots have taken place recently, and attacks on police officers and other public officials are not uncommon. Islamic terrorism also remains a concern for the French. With a large Muslim population of over 5 million, rioting by Islamic youths has been a significant problem, especially in housing projects located on the fringes of large cities such as Paris.

France is also a human trafficking destination country for men, women, and children from Eastern Europe, West Africa, and Asia, as well as the Caribbean and Brazil. These persons are subjected to forced prostitution and forced labor and forced domestic servitude. Often their "employers" are diplomats who enjoy diplomatic immunity from prosecution, including those from Saudi Arabia. The Government of France estimates that the majority of the 18,000 women in France's commercial sex trade are likely forced into prostitution (U.S. Department of State, 2010).

Criminal Law

The basic principles of criminal law in France come from the 1789 Declaration of the Rights of Man

and of the Citizen. The first penal code was devised in 1810, but it has been revised many times, most recently in 1994. The penal code distinguishes crimes based on their seriousness, from serious felonies, to less serious felonies and misdemeanors (called *delits*), to violations (called *contraventions*). These categories are important because they determine in what court the case will be heard and the kind of punishment that will be implemented.

The French penal code is divided into five books. Book I explains the general provisions of the penal law, including criminal liability, responsibility, lengths of sentences, and kinds of punishments. Book II describes crimes (felonies and *delits* (serious misdemeanors) against persons, including crimes against individuals and against human rights. Book III deals with crimes and *delits* against property. Book IV is devoted to crimes and *delits* against the nation, the government, and public order. Book V addresses other crimes and *delits* not associated with categories included in the other books. The new penal code also distinguishes between completed and attempted crimes; addresses recent issues such as corporate crime, alternatives to incarceration, and punishment for serious offenders; and defines new crimes such as ecological terrorism, sexual harassment, crimes against humanity, and genocide (Borricand, 1994).

The Criminal Justice System

Through all the political instability of the last 200 years, French administrative structures have provided an element of continuity that has helped hold the country together. The French bureaucracy has a reputation for being extremely powerful, bound, and inaccessible. Within criminal justice, particularly in the court system, France has developed a highly sophisticated (and complicated) system of administrative courts to oversee the legislature, address citizen complaints. In short, the administrative courts supervise the government. The two most influential administrative courts are the Constitutional Council and Council of State.

The Constitutional Council Court (*Conseil Constitutionnel*) reviews legislation proposed by

legislature, prime minister, or president and determines whether it comports with the constitution. The Council of State (*Conseil d'Etat*) is the supreme administrative court. Originally set up to aid the rulers in their contacts with citizens, it has become a leading advocate of citizens' rights in dealing with the government. The Council of State has been especially valuable since the French Constitution makes no provision for challenging the constitutionality of government action, and only in recent years has the Constitutional Council Court extended its mandate to some cases of human rights abuses.

In addition to administrative courts, France has a number of ordinary courts that deal with civil and criminal law cases, the highest of which is the Supreme Court of Appeals (*Cour de Cassation*). A unique feature of the French legal system is the unity of the civil and criminal courts—the same court can hear both criminal and civil cases.

The police in France are generally divided into two bodies: the Police Nationale and the Gendarmerie. Over the last 15 years, smaller cities and towns have been allowed to form their own municipal police, although most still rely on either the Police Nationale or Gendarmerie. Correctional services in France are under the supervision of the Ministry of Justice. It is possible that, in light of the historical and political forces that are present in the country, the criminal justice system in France will change considerably in the next few decades. France historically has had an unstable political environment and has been prone to revolution. Ideological debates over the importance of individual rights versus community interests remain heated. Rising immigration rates and their concomitant problems, along with attempts to decentralize governmental authority, have added to the instability.

Comparisons with the United States

The governments of France and the United States are similar in that they both were developed after a revolution, are republican in style, and are rooted in a written constitution. Although France has moved to enhance the role of local systems of government,

these systems remain embedded in a centralized form of government. The United States, through a system of federalism, allows states and local jurisdictions to handle almost all of their own day-to-day functioning. Much of the criminal justice system of France is a highly centralized bureaucracy. Although local police are permitted, most jurisdictions still rely on one of the two national police forces, while courts and corrections remain centralized. Like the United States, France had a stable or declining crime rate for most of the 1990s. But recent French crime statistics reveal an upswing since 2002, especially in violent crime, personal drug use, economic crimes, and inner-city youth crime. Terrorism, a concern in France for decades due to considerable political and economic turmoil, is now a major concern for both countries. And much like the United States and England, increases in various forms of crime have prompted a call for "get tough" and "zero tolerance" measures by French politicians.

GERMANY

Overview

The English word *Germany* derives from the Latin word *Germania*, which is believed to have come into use after it was adopted by Julius Caesar, who used it to describe the people of who lived east of the Rhine River during around 60 BC. The formal name of Germany remains the Federal Republic of Germany, or Bundesrepublik Deutschland. Germany has over 81 million people occupying an area about the size of California. The location and size of Germany are unique in that it is surrounded by nine different countries and is the most densely populated country in Europe. Because it is located at the center of Northern Europe, Germany has a long history of being involved in conflicts and invasions from within and from neighbouring tribes.

Through the centuries, Germans have made major contributions in religion, science, philosophy, literature, and music. For example, Martin Luther challenged the Roman Catholic Church in 1517, leading to the Protestant Reformation. Figures such

as Albert Einstein, Johannes Gutenberg, the Brothers Grimm, Bach, Beethoven, and Karl Marx have greatly influenced how the world lives and enjoys life on a daily basis. After a tumultuous 20th century in which it became involved in and lost two world wars, Germany has now joined European and transatlantic partners in championing peace, democracy, and human rights the world over.

By any measure, Germany is one of the richest nations of the world. However, high taxes, high wages, increased immigration, growing unemployment, costs associated with rebuilding the former East Germany, and the recent financial crisis in the European Union, have caused some economic strain in Germany. For a summary of more demographic information on Germany, see Table 4.1. The country is divided into 16 states, called *Länder* (singular Land), and as discussed in Chapter 3, the Civil Law legal tradition is strongly entrenched. Germany is a federal republic in which power is distributed between the federal government and state (*Länder*) governments. The government contains executive, legislative, and judicial branches, much like the United States. However, the presidency is largely a ceremonial post, and true executive power lies in the hands of the chancellor (the leader of the party that gained the largest number of votes in the most recent elections) and his chosen cabinet. Generally, no party wins a majority of seats, so the cabinet is usually a coalition; that is, it contains both members of the chancellor's party and some members of at least one other party that joins with the chancellor's party to create a majority in the legislature.

Germany has a bicameral (two-house) legislative branch that contains a lower house and principal chamber, known as the *Bundestag*, and an upper house or federal council, called the *Bundesrat*. The federal constitutional court, the *Bundesverfassungsgericht*, stands at the apex of a hierarchy of state and lower federal courts. Half of its judges are elected by the *Bundestag* and half by the *Bundesrat*.

Historical Development

The nation of Germany actually did not exist until 1870, when most of the German states in Central

Europe were unified in a federation under Emperor William I. Otto von Bismarck, who became chancellor of the new nation, was the architect of German unification. Like Napoleon in France, Bismarck left his imprint on the German administrative apparatus. During Bismarck's tenure as chancellor, Germany was experiencing a late industrial revolution and adjusting to centralized governmental power. Bismarck was careful to involve the German nobility in administration at the state level even as he was consolidating policy-making power at the central level. The structure of a strong, elite civil service that was established through these actions survives to this day in Germany. This civil service includes the personnel of all police, judicial, and sanctioning agencies in Germany.

As we learned in Chapter 3, one of the important changes in German law in modern times was the German Civil Code, developed under Bismarck. This code of laws helped to consolidate and legitimize the new state. Imperial Germany lasted only until 1918, when, following the country's defeat in World War I, a federal republic and a model democratic constitution was established. This republic was known as the Weimar Republic after the city where its constitution was promulgated. The Weimar Republic was short-lived, ending with the ascent to power of Adolf Hitler. The National Socialist, or Nazi, party in 1933. Nazis abolished federalism and made Germany centralized, absolutist, and essentially arbitrary and lawless state.

Hitler restored Germany's economic and military strength, but his nationalist themes and aggressive policies, most notably the attempt to eliminate the Jewish population in Europe, led Germany into World War II. The war led to the political and economic destruction of Germany, which was ordered unconditionally in May 1945. At the Potsdam Conference in 1945, Germany was split among the "big three" allies of the war: the United States, Britain, and the Soviet Union. The Soviet Union assumed control over the eastern half of Germany while the western half came under the supervision of Britain and the United States. The city of

although it was within the Soviet territory, also was divided up among the three powers. This situation remained until October 1990, when the nation of Germany was reunited after 45 years of postwar division.

The former East Germany was a communist state with a Socialist Law orientation. Since reunification, the nation has operated under the constitution of the former West Germany. This constitution, called the Basic Law, was first promulgated in May 1949. The constitution's framers tried to avoid some of the weaknesses of the earlier constitution that made the Weimar Republic unstable and unable to deal effectively with radical opposition. One of these changes was the establishment of a lawmaking constitutional court, such as exists in the United States, to settle disputes and establish the parameters of power between state and federal governments and between the government and the people.

The Basic Law, which contains 146 articles, describes the composition and functions of the various organs of government, including the system of checks and balances, the distribution of power between the federal government and the Länder, the administration of federal law, government finances, and government administration in emergency conditions. The first 17 articles spell out the rights of Germans. Some of these rights are familiar, such as freedom of religion, freedom of speech and press, and freedom from unreasonable searches and seizures. Other rights, such as the right to "free development of ... personality," the provision of special state protection for families and illegitimate children, and the right to choose one's own trade or profession, are different from the rights enumerated in the U.S. Constitution, although they are certainly amenable to interpretation as being implied in the Bill of Rights.

Crime

A perusal of German crime statistics (*Polizeiliche Kriminalstatistik*), which are collected by the Criminal Federal Police (*Bundeskriminalamt*), reflects that in the first few years following reunification, the country experienced a sharp increase in crime.

This increase abated, however, and between 1995 and 2004 Germany experienced an overall drop (1.6 percent) in total crimes per 100,000 population. During the same time period, the homicide rate in Germany declined 41.2 percent (Aromaa & Heiskanen, 2008). More recently, between the years 2009 and 2010, overall crime in Germany decreased 2.0 percent, with drug crimes and violent crimes also declining 2.1 percent and 3.5 percent, respectively (Police Crime Statistics, 2010).

As in much of the Western world, drug offenses have become a major problem in Germany, and they account for the significant increase in the incarceration rate since 1991. Drugs are a problem because Germany is a source of chemicals for South American cocaine processors and a transshipment point for and consumer of Southwest Asian heroin and hashish, Latin American cocaine, and European-produced synthetic drugs (CIA, 2012).

The problem of drugs and crime, the extensive immigration from bordering countries, and the related ethnic violence are three of the most important contemporary influences on the criminal justice system in Germany. Immigrants from the former Yugoslavia, Greece, Italy, and Turkey, as well as a new wave of ethnic German immigrants from neighboring countries, have strained the German capacity to assimilate new people. The attendant problems of economic disparity, culture clash, discrimination, and even overt racism are creating cleavages in the formerly homogeneous German society, and these problems carry over into the criminal justice process. Because of economic uncertainty, some right-wing extremist groups have blamed their own hardships on foreigners. Harassment and violence towards foreigners, conducted by a small minority of Germans, has increased in the incidence of hate crimes in Germany.

Since 1990 the number of violent offenses recorded by police as having xenophobic or right-wing connections has risen. In 2008, the police registered nearly 14,000 cases with right-wing or extremist characteristics, including 735 crimes of violence. German human rights advocates have estimated that 136 people have been killed by right-wing violence between 1990 and 2005 (Feltes, 2009).

Criminal Law

In earlier times, German criminal law was a combination of Common Law principles and local indigenous law. In the late 17th century, criminal law became codified in most territories, and in the late 19th century, under Bismarck, a unified criminal code was enacted. This code, called the *Reichsstrafgesetzbuch*, has generally remained in effect despite the many changes that have taken place in Germany over the past 125 years.

German law is a combination of statutes (*Gesetz*), ordinances and administrative rules (*Rechtsverordnung*), and customs (*Gewohnheitsrecht*). Two kinds of statutes comprise the largest portion of German law. The first, called *Bundesgesetz*, are federal statutes enacted by the Bundestag. The second are state (Länder) laws, called *Landesgesetz*, which are enacted by state legislators. Ordinances are issued by the federal government, federal ministers, or state governments. Customs are not considered a formal source of law, but for centuries they provided direction in legal matters because they were habitually practiced and informally acknowledged as having the rule of law.

The criminal codes are carefully integrated bodies of general principles arranged in a highly systematized manner and phrased in abstract language. This enables lawyers and judges to liberally apply the principles of the law to assist them in resolving particular cases. Previous court decisions are used not as sources of law, as in Common Law countries, but as guides by lower court judges, and so they have an influence on legal norms (Herrmann, 1987). The German criminal code distinguishes between felonies and misdemeanors. Felonies (*Schwerverbrechen*) are punishable by imprisonment of at least one year; misdemeanors (*Vergehen*) are punishable by a fine or a shorter minimum prison term.

Even though Germany is a federal republic that allows individual Länder to attend to their own criminal court matters, almost all criminal and procedural laws are subject to federal legislation. In practice, this means that federal law is applied to the state courts.

The Criminal Justice System

Because Germany is a federalist country, it generally allows individual Länder to handle their own affairs

related to policing, corrections, and lower administration. For example, Article 30 of the federal Basic Law provides legal authority for Länder over police matters within their own territory. However, this does not mean that the Länder may do whatever they please in the administration of justice; rather, their decisions must be in accordance with the provisions stated in the federal Law. For example, the (federal) Prison Act of 1976 identifies rehabilitation as a major philosophical principle in German penal law and correctional practice. Even though the individual Länder are allowed to administer their own correctional facilities, they must adhere to the major principles of the Prison Act (Dammmer, 1996).

The criminal justice system of Germany reflects the influence of both the Civil Law tradition and the Common Law tradition as it was applied during the occupation after World War II. Like the Supreme Court, the German Federal Constitutional Court has been active in defining the balance of powers between states and the federal government. It also has interpreted the constitutional provisions included in the Basic Law. Criminal procedure practiced in Germany reflects some U.S. influence, but it is still largely a Civil Law process.

Comparisons with the United States

Similar to the United States, Germany has a republic system that distributes power between federal and state governments. As a result, in Germany the Länder can administer police, courts, and corrections as long as policies and procedures are not contrary to the Basic Law. In this way the German Law performs like the U.S. Constitution. Contrary to the U.S. practice, Germany is strongly dominated by the Civil Law tradition, and all laws are made in codes that are arranged in a highly systematized manner and phrased in language that enables lawyers and judges to apply the law. The crime rate in Germany is much like that in the United States, has dropped since the mid-1990s. Crime rates have dropped in Germany related to violence, drugs, and human trafficking over the past five years. He

drug-related offenses remain a serious problem in both countries. Hate crimes, which have apparently been fueled by immigration and the unification with former East Germany, have risen considerably in recent years and are a major concern to the German government.

CHINA

Overview

China is the world's most populous nation and one of the world's oldest civilizations with thousands of years of continuous history. The word *China* was actually popularized by 13th-century explorer Marco Polo, and the roots of the word are believed to come from Sanskrit and Hindu scriptures. To the Chinese it is called *Zhongguo*, which literally means middle or central kingdom. What is now China was inhabited by the first known erect man, called *homo erectus*, who is believed to have migrated to China from Africa more than 1.2 million years ago. Because of its land size, people, and climate, it is difficult to make general statements about China. China has a population four times that of the United States; it possesses large bustling cities and even bigger expanses of arid hills and desert where one can roam for days without seeing a soul. Although over 60 percent of the population claim Han Chinese as their ethnicity, there are an additional 55 other recognized minority groups (Saich, 2011). In addition, the tremendous changes that the country has seen in recent years related to the economy and politics make it a difficult country to categorize and understand in any simple fashion. An example of the complexity can be seen by how China has invested in improving its global image through increasing the use of electronic media. At the same time, the Chinese have often moved to control the media and even to limit or shut down usage if the information that is being transmitted is critical of the government. One specific example was in October 2010, when author Liu Xiaobo received the Nobel prize for literature but the Chinese government blocked new programs and Internet portals announcing the news.

Liu received the news himself while in jail, where he was interned for his writings in 2009, which were viewed by the government at slander and unpatriotic (Weston and Jensen, 2012).

China, the third-largest country in the world after Russia and Canada, is only slightly larger than the United States, with a geographic area of about 3.7 million square miles. Primarily a peasant-based society throughout history, China has made efforts over the last 30 years to modernize in the areas of agriculture, science and technology, and national defense. As of 2011, the population of China was above 1.3 billion, which makes it more populous than Europe, Russia, and the United States combined. For more demographic information on China, see Table 4.1.

China is a unitary, multinational socialist country with 23 provinces (including Taiwan), 5 autonomous regions (including Tibet), and 4 municipalities directly under the authority of the central government (Beijing, Chongqing, Shanghai, and Tianjin). The country is also divided into over 115 autonomous prefectures, 476 cities, 1,894 counties, and 650 districts (Terrill, 2009).

The primary organs of governmental power in China are the presidency, the State Council, and the **National People's Congress (NPC)**. The NPC, theoretically the most powerful, meets annually to review and approve the budget and major new policy directions, laws, and personnel changes. However, in reality, all levels of the Chinese government are subordinate to the Chinese Communist Party (CCP), so the real role of government is to implement party policy. For example, all initiatives proposed by the NPC must be previously endorsed by the CCP's Central Committee.

In the years following the Communist takeover in 1949, the government essentially owned all industry and commercial land holdings. Since 1979, China has sought to convert its economy from a Soviet-type centrally planned economy to a socialist market-based one. What this really means is that China is trying to adapt modern economic practices while retaining the right to oversee policies so they meet Communist ideology. Reforms have included reducing the role of the government

in economic policy, promoting household responsibility in agriculture, increasing the power of local officials in industrial plant management, and introducing small-scale enterprise in the service and light manufacturing areas. These reforms worked very well into the 1980s, spurring tremendous growth in agricultural and industrial output. However, problems with inflation have caused public officials to retighten central controls of the economy.

The growth rate of the 1980s has slowed, and unemployment in China has reached over 13 million according to official figures, with a 2011 unemployment rate of 6.5; some even suggest that those numbers only reflect urban areas of employment and that the real number is perhaps twice that high (CIA, 2012; Fang, 1999, p. 35). With the shift from a purely socialist to more eclectic economic system, China has encountered some of the problems associated with such a change, including an overall increase in crime.

Historical Development

The Chinese traditionally have struggled with the formulation of their law and criminal justice system. A succession of dynasties ruled during most of China's 4,000-year-long history, with various systems of bureaucratic controls. The last dynasty, the Qing, reigned from 1644 through the first decade of the 20th century. Some of the more enduring written laws and statutes that surfaced during these times were the Yuxing criminal laws of the Xia dynasty, the Hanlu laws of the Han dynasty, and the Daqing Luli criminal code of the Qing dynasty. In reality, however, the codes of laws developed during dynastic rule were no more than rules implemented to protect the totalitarian governments in place at the time (Terrill, 2009).

Because the concept of equal rights before the law for all persons was absent, disrespect for the law was commonplace, and there was minimal acceptance of any formal codes proposed by the ruling class. What resulted was the adoption of an informal social control system, rooted in Confucian and Taoist thought, that began to take hold in China during the Han dynasty (206 BC–220 AD).

Confucius (551–479 BC) was a philosopher who believed that social order can be achieved through moral and political reforms and humans are by nature good or capable of goodness. What is essential is that individuals treat another with kindness and propriety. When individuals act contrary to these virtues, they bring harm to themselves, family, and friends. Thus, the group consciousness or collectivity is the main motivating people to avoid illegal or immoral activity. In **Confucian thought**, written laws and formal social control may be important, but they are not nearly as important as strong individual virtue. As Confucius stated, "The superior man is concerned with virtue; the inferior man is concerned with law" (Confucius, 1989).

Taoist philosophy, which was developed in Asia a century after the introduction of Confucianism, proposed that all forces of nature are connected and that it is necessary for individuals to be in harmony or "oneness" with those forces. If a person is in disharmony with those forces, then the person will cease to exist. Together, Confucian and Taoist thought have permeated Chinese society, with the goal of getting citizens to be in consonance with those around them, to be in harmony with nature and the rules of society. It was believed that the way to accomplish this was through social control and informal social control. Informal social control mechanisms include family members, neighbors, and fellow workers, as well as town, city, or countywide boards that police deviant behavior and provide sanctions. The ideals of Confucian and Taoist thought have often rejected legalism and require mediation and compromise to settle disputes. In fact, under Confucianism people are discouraged from using litigation to protect themselves or their rights.

For thousands of years, this informal social control dominated in China's vast territory. Between 1911 and 1949, the democratic Republic of China attempted to install a legal system in six basic written laws. However, efforts to formalize the legal system were often subverted by civil unrest, invasions from Japan, and continuing

chaos. The mentality of distrust of formal law also continued into the 20th century, serving as a catalyst for the reconstruction of the law and social order under the Communist Party of the People's Republic of China. From 1949 through 1979, the Chinese government developed a Soviet-style criminal justice system, with overall control in the hands of the Communist Party. Meanwhile, all formal criminal law codes were rejected, and all forms of written codes of law were eliminated. Instead, a series of edicts, rules, and regulations based on the ideals of the ruling party were used to control behavior and punish deviance. These documents were highly politicized, based as they were on the edicts of the CCP. The goal of the Communist law was to destroy economic classes and construct a social order based on the rule of the people rather than the rule of law. The belief was that formal written laws served only those in power and the bureaucracy; the latter was abhorred by Chairman Mao (1893–1976) and the Communist Party.

However, a shift away from total acceptance of unwritten codes and informal social control mechanisms occurred as a result of a series of events that began in 1966. In that year, Mao tried to reform the party, which he saw as becoming “old in thought, culture, customs, and habits.” This reform period, called the **Cultural Revolution**, lasted until 1976. Mao and his followers encouraged direct opposition to those in power—most notably, the police and any person who was considered bourgeois—and bands of young supporters called the Red Guard were formed to implement and oversee the reform policies. The goal was to move Chinese society from socialism to a purer form of communism. But the Cultural Revolution was a significant failure. Economic, political, and social institutions were seriously disrupted throughout China. The police, procuracy, and courts were often simply handed over to political activist organizations as tools to harass and arrest those opposed to Mao and his followers. The public order was disrupted, and crime and violence became so prevalent that the army was called in to restore order. By 1976, the year Chairman Mao died, the government was able to declaw supporters of the

Cultural Revolution and bring some semblance of order to China.

Under the leadership of Deng Xiaoping (1904–1997), the government sought to promote law as part of an ordered society, in contrast to the chaotic environment of the Cultural Revolution (Lawyer's Committee, 1994, p. 5). Under Deng, the Chinese changed from their previous ideals of the “rule of man” to the principles of the “rule of law.” The movement toward a more formal legal system with codified laws was also necessary to Deng's goal of modernizing the economy and increasing contact with the outside world. The current Chinese government, headed by President Hu Jintao and Premier Wen Jiabao, must face many social issues, including rapid modernization and liberalization, severe unemployment, increasing crime, and corruption.

Crime

It is difficult to assess long-term crime rates in China because for the first 30 or more years of Communist rule, crime statistics were rarely available and even less reliable. Since the late 1970s, the Chinese have regularly provided crime data in two forms: the *China Statistical Yearbook* and the *China Law Yearbook*. More recently, the Chinese have developed other kinds of crime data similar to those of the United States, including victimization studies and self-report studies (Liu, 2008).

These data have revealed that over that last 30 years China has experienced at least three crime waves (Ma, 1995; Liu & Messner, 2001; Terrill, 2009). In response to crime increases, the Chinese government initiated different anticrime crackdowns or “Strike Hard” campaigns (called *Yanda*). The most recent of these campaigns took place in June 2012, when the Chinese government arrested over 10,000 persons who allegedly committed Internet crimes such as fraud, spreading pornography, and hacking into personal and government web pages. In addition, over 600 criminal gangs were infiltrated, 62 websites closed, and 30 Internet providers fined (English News, 2012). It is not clear whether these *yanda* campaigns have managed to

reduce crime. In fact, some evidence exists that the crime rate actually increased during such reforms (Bakken, 2005; Shenghui & Oberwittler, 2009).

Inspection of long-term crime rates in China reflects an increase in a number of crimes from 1978 to 2003. During that period of time, the homicide rate doubled, rape increased 30 percent, assault 7.5 percent, robbery 4.5 percent, larceny by a factor of 8, and fraud by a factor of 14 (Zhang et al., 2007). After some decline in subsequent years, it has been reported by the Chinese Academy of Social Sciences (CASS) that violent crime and property crimes rose dramatically (15 percent) in 2009 (People's Daily, 2012).

In addition to violent crimes, other major crime concerns for the Chinese are drugs and the growing variety of economic crimes. Drug abuse and drug trafficking in general have increased since the late 1970s, with China a major transshipment point for heroin produced in the Golden Triangle region of Thailand, Laos, and Burma. The Chinese have acknowledged that drug abuse is a serious problem and that the number of addicts in the country has risen significantly (Chang, 2004). Efforts have been made to address the problem as a medical issue through the formation of rehabilitation clinics. With the development of a market economy, economic crimes such as bank, credit card, and check fraud have plagued China. Also, with the rise of privatization and increased economic interactions between the public and private sectors, corruption of public officials has become widespread in China.

Although the growing crime rates in China are a concern, what is even more troubling is that many of the most common crimes, called public order crimes, are not consistently reported. Among the crimes that are handled unofficially or administratively by local police and court officials are theft, assault, gambling, and vandalism. It is clear that if those crimes were reported as they are in most other countries, the Chinese crime figures would be much higher (Liu, 2008).

There has been considerable speculation as to why the crime rate has increased in China. Recently, the CASS claimed that the deteriorating

economy has caused people to commit violence crime (People's Daily, 2012). In the past, it has been explained by the fact that cities become crowded with people who migrated from rural areas looking for work, meaning a diminished capacity for social control. In some cases, individuals have turned to crime because they are frustrated that they cannot obtain the wealth and prosperity of others around them (Ma, 2009). Many people in China, especially the young, have become cynical about the politics of the Communist Party while becoming infatuated with capitalism and the idea of individual wealth (Rojek, 2009). As a result of this cynicism, the Chinese have experienced a significant rise in the number of demonstrations, protests, and riots. In 2005, over 87,000 demonstrations were recorded, a 6-fold increase from 10 years earlier (Zhang, 2010). Reports by the CASS state that recent unrest is the result of political and economic policies that leave many people without the benefits derived from economic development. The gap in living standards between urban and rural residents, unbridled industrial development, and pollution of the environment have exacerbated the situation (AsiaNews.it, 2009).

It appears that the political, economic, and social changes in China have begun to move Chinese society away from the long-standing Confucian ideals that permeated Asian culture for centuries (Sheptycki, 2008). As we progress into the 21st century, it will be interesting to see how China deals with economic and political problems and the larger social problems associated with this significant change.

Criminal Law

In 1979, the Second Session of the Fifth National People's Congress adopted codes of criminal law and procedure, as well as other laws. The criminal law, which took effect in January 1980, consists of 192 articles divided into two sections—general (*zongze*) and special (*fenzze*) provisions. The provisions gave the basic principles underlying the application of the criminal law. The

provisions included chapters addressing eight classes of offenses: (1) counterrevolutionary offenses, (2) offenses endangering public security, (3) offenses against socialist economic order, (4) offenses infringing upon the personal and economic rights of citizens, (5) offenses of encroachment of property, (6) offenses against public order, (7) offenses against marriage and the family, and (8) dereliction of duty and corruption (Lawyers Committee, 1998).

In 1997 the criminal law of the People's Republic of China received a major overhaul. The new law is significantly larger than the old law, with 452 versus 192 articles, and in general is broader in coverage and contains more specific definitions of crimes. An attempt has also been made to unify the criminal law, depoliticize the correctional system, and lessen discretion for officials (Lawyers Committee, 1998). At first glance, it might seem that the Chinese government is "softening" to the idea of increased individual rights for citizens. However, the law still neglects to include provisions for some basic human rights enjoyed by citizens in many other countries, such as freedom of speech and freedom of association. The impact of the new criminal and procedural laws will only be determined over time. And even with the new emphasis on the rule of law in China, the Communist Party remains the major decision-making body in the country, and the government is still unrestrained by the rules of law—unlike the situation in most Civil and Common Law legal systems.

The Criminal Justice System

China's centrally monitored criminal justice system has four components: police, procuratorate, courts, and corrections. Each operates under the guidance of its respective national agency while maintaining offices on numerous levels, including provinces, regions, prefectures, counties, and municipalities.

The Ministry of Public Security is responsible for the police, while the correctional system is under the direct supervision of the Ministry of Justice. The courts are two-tiered (People's Courts and Special People's Courts) and hierarchically

organized. The highest court is the Supreme People's Court of China, which oversees both tiers and deals with matters of national importance (Terrill, 2009). The majority of criminal cases are dealt with at the county level under the auspices of the Basic People's Court. The procuratorate, directed by the Supreme People's Procurate, is responsible for supervising criminal justice throughout the country, including investigating and prosecuting crimes and overseeing the courts, police, and correctional facilities (Jiahong & Waltz, 1995).

In theory, the Chinese criminal justice system has a built-in system of checks and balances to curb abuses of power. Arrests by police are approved by the local procurators, and prosecution can be deemed unnecessary by the courts. However, in practice, the courts and procuratorate are typically in collaboration with local political leaders and will generally operate to meet the ideals of the Communist Party.

In addition to the formal system outlined here, China operates an extensive informal system of justice. This informal system supplements the formal system with political, economic, educational, cultural, and judicial methods to help keep social order. Informal justice in China depends on an ancient system devised for different county and municipal agencies to act as social control agents, including neighborhood public security committees, people's mediation committees, and the numerous security departments within businesses, schools, and public agencies (Situ & Liu, 1996). We will discuss more about Chinese informal social control mechanisms in Chapter 9.

Comparisons with the United States

China is a unitary socialist government and thus contrary to the United States, which is categorized as a federalist democratic government. And although China has set up a government bureaucracy with built-in checks and balances much like the United States, all arms of the government are in reality subordinate to the Chinese Communist Party.

One of China's unique features is the way that systems of informal social control permeate the legal

culture. These systems, which surfaced from distrustful dynastic rule and were fueled by the core principles of Confucianism and Taoism, have remained despite an effort to modernize the system and strengthen the rule of law.

Understanding crime and crime statistics in China has improved in recent years, although China still chooses to not officially record a number of very common crimes. We do know that contrary to crime in the United States, crime in China has risen considerably of late. Crime statistics show a tripling of crime over the last 30 years. Drug crimes and economic crimes are the most prevalent crime problems. Chinese criminal justice officials have responded with a flurry of Strike Hard campaigns, which are similar to the goals of the “get tough” crime legislation in the United States.

JAPAN

Overview

The country of Japan, in Japanese called *Nippon*, is an archipelago of almost 7,000 islands, with the largest four comprising 97 percent of the land area. The island Honshu includes Tokyo, the largest metropolitan area in the world. We know from archaeological research that people lived in Japan as early as 30,000 BC, and Chinese historical documents dating back to first century AD spoke of the area now called Japan. We also know that the first recorded contact with the West occurred in about 1542, when a Portuguese ship, blown off its course to China, landed in Japan. During the next century, traders from Portugal, the Netherlands, England, and Spain arrived, as did Jesuit, Dominican, and Franciscan missionaries. Because **shoguns**—military rulers who exercised absolute rule in Japan—were fearful about the influence of these interlopers, in around the year 1600 they forced all foreigners to leave and strictly limited contact with the West for over 200 years.

Japan is slightly smaller in area than California but has a population of over 127 million. The country is divided into 47 administrative divisions, called

prefectures. Japan is one of the most homogeneous countries in the world, with over 99 percent of the people being native Japanese. It is the only Western industrial giant in the world. Excellent government–industry cooperation, a strong work mastery of high technology, and a small defense budget have enabled Japan in the years following World War II to become the second most powerful economy in the world. Its industries are among the world’s best and most technologically advanced. From the 1960s through the 1980s, the country was a model for other capitalist economies. However, beginning in and since the early 1990s, the economy has slowed considerably, and a recession dulled the enthusiasm of investors at home and abroad. To make matters worse, on March 11, 2011, a 9.0-magnitude earthquake struck Japan’s eastern Sanriku coast, generating an enormous tidal wave that left 310,000 people homeless, 23,000 dead or missing, and a cluster of unstable nuclear reactors. Estimates of the direct cost of the damage—rebuilding homes and factories—range from \$235 billion to \$310 billion (CNN International 2011). For a summary of additional demographic information on Japan, see Table 4.1.

The Japanese legal tradition is modeled after European Civil Law, but it is influenced by English–American legal traditions. The constitution of Japan after World War II resulted in a constitution that mandated three branches of government. Legislative government in Japan is based on a bicameral legislature called the *Diet*, which includes a House of Representatives and a House of Councilors. An executive branch consists of the prime minister, a cabinet that is appointed by the prime minister, and a hereditary emperor. Because the emperorship is primarily a ceremonial position, Japan is technically a constitutional monarchy. The judicial branch is headed by a Supreme Court whose members are appointed by the emperor. Like France and Britain, Japan is a unitary system; is, it does not have a federal system of government with division of powers between states and the central government. Most of the 47 prefectures are under the central government for financial sub-

Historical Development

Japanese legend maintains that Japan was founded in 600 BC by the Emperor Jimmu, a direct descendant of the sun goddess and ancestor of the present ruling imperial family. In about 405 AD, the Japanese court officially adopted the Chinese writing system. Together with the introduction of Buddhism in the sixth century, this event revolutionized Japanese culture and marked the beginning of a long period of Chinese cultural influence. As mentioned earlier, an important peculiarity of Japanese history is the period of isolation from other cultures that started in 1603 and lasted until 1867. During that time, the warlord (shogun) family of the Tokugawas ruled Japan from what is now Tokyo. The emperors, who lived in the holy city of Kyoto, were venerated as deities but had little real power. The Tokugawa shoguns, alarmed by the increasing influence on Japanese society of missionaries and traders from the West, closed the entire country to outsiders during these years. They allowed only a small amount of trade with Dutch merchants in the port of Nagasaki, and missionary efforts to penetrate Japanese society were ruthlessly suppressed. Thus, at a time when other countries were going through a major period of exploration, invention, and international interchanges, Japan was entering a period of introspection and cultural inertia. Prior to this time of isolation from foreign influence, Chinese civilization represented the major external influence on the Japanese. Much of Japanese civilization today, including the writing system, the Buddhist religion, and general social values, is adapted from the Chinese. The Chinese influence was even greater in the years before Western ideas were introduced into Japan. The years of isolation allowed for a strengthening and consolidation of Japanese culture and mores that would keep the culture distinct even after outside ideas began to penetrate the country.

The period during which Japan was opened to Western ideas and trade was called the Meiji Restoration, named after the emperor at that time. Meiji was the winner in a power struggle with the last of the Tokugawa shoguns, and the imperial family ostensibly resumed the leadership of Japan

that it had relinquished about a thousand years earlier. In reality, however, a military junta ruled Japan in the 20th century until the end of World War II, with the emperor serving as a father figure and national idol but hardly a strong ruler. Following Japan's defeat of Russia in the Russo-Japanese War of 1904–1905, Japan became increasingly imperialistic and militaristic, hoping to establish Japanese hegemony over all of East and Southeast Asia. Japan's defeat in World War II brought about a major change in Japanese government and society. Japan lost all of its overseas possessions, and the victorious Allies gained full control of the government. Only with the 1972 reversion of the island of Okinawa to Japanese control were the full powers of governing returned to Japan. Since World War II, industrial development has replaced militarism as the chief driving force in the new Japan. Japan's new constitution, called the Showa Constitution, took effect in May 1947. It is modeled after the U.S. Constitution and mandates a parliamentary system similar to Great Britain's. It includes a bill of rights similar to that in the United States and provides for a Supreme Court with the right of judicial review.

Crime

By any standard, crime rates in Japan are remarkably low compared to crime rates in other industrial countries. Crime statistics in Japan are compiled by individual criminal justice agencies and then summarized by the Ministry of Justice into a statistical yearbook called the *White Paper on Crime*. In the decades following the war, the Japanese crime rate dropped considerably to as low as 1,100 per 100,000 in 1975 (Reichel, 1999). After a significant increase from 1974 until 2003, there has been a decline in crime over the last 10 years. The most recent crime data available—for 2009–2010—reflect that the overall reported crimes known to police in Japan dropped 6.9 percent with almost all categories of crime declining, including homicide (–2.5 percent), larceny (–6.6 percent), and cybercrime (–30 percent). The latter was a growing

problem in the early years of this century, but it appears that new laws and restrictions on computer use have mitigated the problem. The only crime category that rose was arrests related to use of the drug methamphetamines. Many of the drug arrests of this type have previously been attributed to visitors to Japan. However, even that category—that is, arrests of foreign visitors with drugs—declined in 2009, albeit slightly (National Police Agency, 2010b). Unlike the situation in the United States and Western Europe, the illegal sale and use of other kinds of drugs, such as cocaine and heroin, has not reached serious proportions in Japan.

Organized crime, or **Boryokudan** in Japanese, is known to be a crime problem in Japan and was a main reason for crime increases in recent years. However, the 2010 data reported a 3.2 percent drop in overall offenses committed by the Boryokudan (National Police Agency, 2010b). Organized crime groups are heavily involved in the production and distribution of amphetamines and in a plethora of other illegal activities. Their activities include extensive and violent infighting, many violations of gun laws, gambling, loan-sharking, prostitution, and trafficking in guns and human organs (Bayley, 1996). Recent organized crime concerns center on the growing number of foreign organized gangs, mostly Chinese, that have infiltrated Japanese society (Onishi, 2003).

There are many cultural reasons for Japan's low crime rate, and much has been written on the subject (Bayley, 1996; Komiya, 1999). However, understanding Japanese culture and the effect it has on crime and criminal justice is not an easy task. Japanese culture has many subtleties and contradictory elements that make it difficult for outsiders to understand. The Japanese have traditionally valued harmony, group loyalty, and conformity as opposed to individualism and individual rights. Harmony, conformity, and loyalty are feudal characteristics that contribute in a relatively benign fashion to a cohesive and homogeneous culture void of serious crime problems. Additional factors that may contribute to the low crime rate include a low unemployment rate, lack of urban ghettos, a strong family structure, and strict gun control laws.

Keep in mind, however, that the low crime rate comes with concomitant social costs. One could argue that a darker side of this culture manifested in the suppression of individuality, ordination of women, and suspicion toward Japanese people—even those who have lived in Japan for generations. In addition, Japanese society is changing, just as China is changing, and generalizations based on Asian cultural patterns of even a few decades ago may not be as relevant today (Sheptycki, 2008).

Criminal Law

Attempts to develop a code of laws in Japan can be traced back as far as 604 AD with the Seven Maxims of Prince Shotoku, and to the 700s with the Code of Taiho and the Code of Yoro (Wilentz, 1936). Chinese law had the most influence on the Japanese system prior to the closing of Japan in 1603. Much of the subtlety of the Japanese approach to conflict, as well as much of Japanese adversarial formal legal processes, can also be found in Chinese society. The two social orders have much in common, even though the Chinese civilization is more ancient than that of Japan.

But since the 1800s, Japan has developed highly structured legal codes that have been influenced by French, German, Chinese, and U.S. law. At the time of the Meiji Restoration in 1868, Japan adapted the French Penal Code for its criminal justice transactions. In the late 19th century, after the Germans developed their comprehensive civil code, Japan adopted many of the elements of the German code. Even today, the Japanese code is predominantly German in character. The adoption of much of U.S. criminal procedure. Many Japanese legal scholars, especially in the older generation, have spent time studying German law.

U.S. law has influenced Japan with respect to constitutional and human rights law. The 1946 inspired Japanese Constitution, with its listing of constitutional rights and its provision for a Supreme Court to secure these rights, has introduced a new

into Japanese justice, an element that is becoming more influential as time goes on.

The Japanese criminal code actually consists of three integrated codes: (1) the penal code, which defines crimes and punishments; (2) the code of criminal procedure, which sets legal standards for prosecution and sentencing; and (3) prison law, which regulates correctional matters. In many ways, the criminal code articulates a great number of the same basic principles as in the criminal and prison law code that were developed in 1907.

The penal code is divided into two books. The first deals with general provisions such as criminal intent, age of responsibility, and types of sanctions; the second lists the major crimes and the elements of those crimes. Interestingly, the Japanese penal code makes no formal distinction between felonies and misdemeanors, although there is a body of laws that pertain to minor offenses, called the Minor Offense Laws. Instead, crimes are divided into three categories: (1) crimes against the state (such as bribery and crimes against the imperial family); (2) crimes against individuals (such as homicide, assault, bodily injury, rape, indecent assault, kidnapping, theft, fraud, robbery, and embezzlement); and (3) crimes against society (such as indecent behavior in public, arson, and gambling).

The Criminal Justice System

The use of the law or the criminal justice system to settle disputes between individuals in Japan is minimal in comparison to most other countries, especially those with a developed economy and legal structure. In Japan, dispute settlement processes emphasizing compromise, mediation, and consensus are the norm. Further, informal procedures used by police, neighbors, or families are preferred to formal criminal processes for dealing with offenders.

This does not mean, however, that the Japanese lack a formal and organized system of justice. In fact, Japanese criminal justice is largely centralized and in many cases tightly controlled by the national government. The Ministry of Justice generally oversees the correctional system, including the Prison Bureau, which is the primary agency

responsible for juvenile and adult correctional facilities. The courts in Japan are hierarchical in nature, with two appellate courts and two trial courts. The Supreme Court is the highest-level appellate court, above the high courts. District courts and summary courts are the trial courts, each with jurisdiction in its own prefecture.

The two national police organizations are the National Police Safety Commission (NPSC) and the National Police Agency (NPA). The NPSC is the administration arm that makes national policy decisions and administers all police affairs, including police education, communications, and criminal statistics. The NPA actually runs the police through the **prefectural police (PP)**, autonomous agencies that carry out police duties within the boundaries of the 47 prefectures.

Ultimately, Japanese law and criminal justice is hybrid, having borrowed from the Chinese, the French, the Germans, and the Americans. The final product, however, is peculiarly Japanese and certainly not analogous to any of the systems of origin. Thus, understanding Japanese justice is a real challenge to the student of comparative justice.

Comparisons with the United States

Japan is unique in that it is a constitutional monarchy with an emperor who has little power and whose position is primarily ceremonial. The prime minister is far more integral to the functioning of the government, with such responsibilities as appointing members of the cabinet. In this way, the prime minister is much like an American president. Possessing a unitary government versus the federalist approach used in the United States, Japan's central government provides direction and financial support to all 47 prefects. One example of the highly regulated unitary approach in Japan is the use of two national police forces to handle the criminal order and deviance order police functions.

Much has been written about the comparisons between crime and criminal justice in Japan and the United States (Parker, 2001; Johnson, 2002). Because of their defeat in World War II, the Japanese were forced to adopt a number of

American legal principles, such as a written constitution, a hierarchical court system, and extensive criminal procedure laws. However, even though Japan utilizes many Common Law ideas, they have also borrowed from the Civil Law traditions of France, Germany, and China. As a result, they can be said to be closer to a hybrid tradition rather than a primarily Common or Civil Law legal tradition. Japan has developed an extensive formal criminal justice system that is tightly controlled by the federal government. At the same time, an informal system of dispute resolution, mediation, and consensus building is implemented when conflicts arise between individual citizens and to handle crimes of a nonserious nature.

Even with some increases in crime during the last quarter of the 20th century, the crime rate in Japan pales in comparison to the crime rate in the United States. There are numerous hypotheses as to why Japan has such a low crime rate in comparison to other industrialized and modernized countries. None have been empirically verified, and it is most likely that a combination of factors accounts for this phenomenon. As in the United States, public officials in Japan have recently expressed concern about the rise in drug crimes and overall issues of public safety in light of the events of terrorism around the world. Also similar to the United States, Japanese politicians have adopted "tough" crime policies that clearly reflect their lack of tolerance toward isolated crime incidents reported in the media (Hamai & Ellis, 2006).

SAUDI ARABIA

Overview

Saudi Arabia is mostly uninhabited desert, about one-fifth the size of the United States, with a population of approximately 26.5 million people. Prior to the 1960s, most of the population was nomadic or seminomadic, but due to rapid economic growth and urbanization, most of the population is now settled. The country's economy is based primarily on oil. Saudi Arabia has the second-largest reserves of petroleum in the world, after Venezuela, and

ranks as the world's largest exporter of oil, accounts for a large percentage of government revenues. As a result of the riches produced, Saudi Arabia has formed a **welfare** approach; that is, the government plays a key role in the protection and promotion of the economic and social well-being of its citizens.

The culture of Saudi Arabia is derived from Arab tribal traditions and from the Wahhabism of Islam that evolved in the 18th century. Wahhabism is a fundamentalist interpretation of Islam that places strict limitations on behavior and including no drinking of alcohol. Public expression of opinion about domestic political or social issues is also discouraged. There are no organizations as political parties or labor unions that may contradict government and religious teachings. Each Muslim is called to pray five times a day, and Friday is the holiest day for Muslims, and celebration of public nonreligious holidays is prohibited except for the 23rd of September, which commemorates the founding of Saudi Arabia as a kingdom.

Thirteen provinces, called *mintaqah* (singular *minatqa*), make up the country's administrative divisions. Each of the provinces is run by a governor who is under the responsibility of the minister of the interior, but in practice the governors report directly to the king. Saudi Arabian government is characterized as a nonconstitutional monarchy. The king is the chief of state and head of government, and he rules with the help of a 25-member Council of Ministers, chosen by him. The council serves as an advisory panel, assisting the king in bureaucratic and policy matters. Many high officials in Saudi Arabia, including the highest in the police and judiciary, are related to the king.

Saudi Arabia is not a democracy and does not have a system of election and representation, so there is no legislative branch. Legislation is enacted by royal decree of the Council of Ministers and ratified by royal decree. In 1992, however, the king made some concessions to the westernized element of his population by providing for a new Consultative Council, appointed by him, to advise the king on laws and decrees. The Consultative Council, called the *Majlis al-Shura*, is now a 150-member advisory body.

legislative functions, although it can propose new or amended legislation. On September 25, 2011, King Abdullah announced that women will be able to participate in municipal elections in 2015 and become members of the consultative Shura Council (Human Rights Watch, 2011).

The country plays a leading role in the Organization of Petroleum Exporting Countries (OPEC), which regulates the flow and price of oil in the Middle East and elsewhere. Because of its heavy reliance on oil, Saudi Arabia has been highly affected by the fluctuation in oil prices. In the late 1990s, with the increase in the number of oil fields around the world and the general decrease in the demand for oil, the economy faltered and budgetary problems arose. As a result, the Saudi government has begun efforts to diversify the petroleum economy, mined other natural resources, and encouraged private economic activity, especially in agriculture and manufacturing. The Saudis have also taken advantage of a strong economy to expand education and improve public health. These factors have played a role in creating and sustaining a conservative yet modern Islamic society. For more demographic information on Saudi Arabia, see Table 4.1.

Historical Development

The modern nation of Saudi Arabia dates back only to 1926. However, the territory of present-day Saudi Arabia includes the holy cities of Mecca and Medina, where the Prophet Muhammad lived, and thus has been central to Islam ever since its founding in the seventh century AD. This territory was ruled by Islamic caliphs until the rise of the Ottoman Empire in the thirteenth century. The empire, headquartered in modern Turkey, lasted until the end of World War I, but Islamic law became much attenuated during the nineteenth century, when Ottoman rulers began to integrate European codes into the legal system.

In the period following World War I, the Arabian peninsula, and indeed most of the Middle East, went through a period of turbulence, with the British, the French, and local hereditary rulers vying for power. The kingdom of Saudi Arabia resulted

from the conquest of warring factions by Sheikh Abdul Assiz with the support of the British. Since his death in 1953, a succession of Saudi kings has ruled the nation. Prior to the discovery of large oil deposits in 1932 and their major development after World War II, Saudi Arabia was a poor country populated largely by nomadic tribes. Its economy revolved in large part around the pilgrims who traveled to Mecca and Medina, and it spent a good deal of its scarce revenues providing facilities for these pilgrims, restoring the holy places, and protecting them from environmental and human damage.

Oil has been both a blessing and a curse to Saudi Arabia. On the one hand, it has become a rich nation, and its people are extremely prosperous. On the other hand, it has struggled to maintain the degree of Islamic piety that its position in the heart of Islam and its historical legacy demand. The corruption of wealth, the importation of large numbers of foreign workers (not only for the oil fields but also for most hard labor), and the problems attendant upon industrial development have all clashed with Islamic fundamentalism as oil production has come to dominate the economic, social, and even political life of the kingdom. Further, the fields of Saudi Arabia, which produce a large proportion of the world's oil, have become a military target of powerful Middle Eastern rivals.

Because the country is governed according to the Shari'a, there is no separate and formal constitution, although some Saudis consider the Qur'an, the holy book of Islam, to be the constitution. In 1993, a document called the Basic Law of Government (*nizam*) was introduced; it articulates the government's rights and responsibilities. Although not a formal constitution and lacking some of the basic principles of other nations' constitutions, such as the rights of assembly and diverging religious expression, it fulfills many of the same purposes of such a document and some consider it to be a constitution in practice if not in name.

Crime

It is somewhat difficult to summarize the nature and extent of crime in Saudi Arabia. Ali (1985) and

Souryal (1987) identify at least two difficulties in comparing crime statistics for Saudi Arabia with those for other countries. First, crime is often underreported in Saudi crime statistics because the Shari'a promotes informal and nonlegalistic responses to criminal behavior. As a result, fewer cases are handled by the police and courts (Souryal, 1987). Second, there is the problem of determining crime rates over the course of the calendar year. The Arabic lunar calendar is based on the Islamic year, which has only 354 days rather than the Gregorian standard of 364. This slight difference over time makes crime comparisons problematic (Ali, 1985). In addition, much of what goes on in the area of social policy and government in Saudi Arabia is not always released as public information.

Yet, in spite of the obstacles to measuring crime in Saudi Arabia, we can still state with confidence that it is very low in comparison to most countries. Even in comparison to other Islamic countries, Saudi Arabia has a minuscule crime rate.

The most recent crime statistics available for Saudi Arabia reveal a homicide rate of less than 1 (0.71) per 100,000 population. Rape, robbery, and auto theft are also rare occurrences in Saudi Arabia, with rates of 0.14, 5.3, and 76.2 per 100,000, respectively. Even Japan, with its extremely low homicide and robbery rates, ranks higher (Interpol, 2003). The reasons for the low crime rates in Saudi Arabia, as in other countries with low rates, are probably related to a combination of factors. Harsh punishments for drug traffickers, including the death penalty, may help to control the drug problem. At the same time, the low crime rate likely reflects the way the Islamic religion, most notably the Shari'a, permeates every aspect of society. The Shari'a prescription of both prosocial behaviors and strict punishments has helped make Saudi Arabia create a "spiritual and peaceful" society (Souryal & Potts, 1994).

The two issues of concern related to crime in Saudi Arabia are terrorism and human trafficking. Terrorism in Saudi Arabia revolves around religious factionalism. This should come as no surprise in a country where religion and religious orthodoxy are major preoccupations. In recent years, the most serious acts of terrorism in Saudi Arabia have

taken two forms. The first are attacks clearly directed at the United States. The second are isolated terrorist attacks aimed at Saudi institutions and governmental offices (U.S. Department of State, 2008a). For the Saudi people, terrorism and extremism have existed as threats dating back for several decades. The most recent problems surfaced in the 1990s when the Saudis moved to freeze the assets and rescind the citizenship of Osama bin Laden. Soon after the bombing of the U.S.S. Cole in Yemen in 2000 and the attacks of September 11, 2001, Saudi Arabia intensified its efforts to fight terrorism. A series of bombings and kidnappings in Saudi Arabia by Al-Qaeda in 2003 resulted in a new and concerted effort to dismantle that terrorist network in Saudi Arabia. Working with international partners, the Saudis have been able to increase domestic security and reduce considerably the number of terrorist events in the country (Royal Embassy of Saudi Arabia, 2011). In fact, during 2010 there were no successful attacks in Saudi Arabia and over 100 arrests of suspected terrorists (U.S. Department of State, 2011).

Another crime that is known to occur in Saudi Arabia with some regularity and in violation of international law is human trafficking. Saudi Arabia is a destination country for men and women traffickers. Men and women voluntarily come from numerous countries in Asia and Africa to Saudi Arabia for the purposes of gaining employment as domestic servants or other low-skilled laborers, but what results is involuntary servitude, commercial sexual exploitation, restrictions on movement, withholding of passports, threats, physical or sexual abuse, and nonpayment of wages. The government of Saudi Arabia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The government continued, in a limited fashion, to prosecute and convict trafficking offenders under a 2009 trafficking law. The government made minor efforts to improve its response to the vast human trafficking problem in Saudi Arabia by training government officials on victim identification and intervention, and worked to improve victim protection services (U.S. Secretary of State, 2012).

Criminal Law

The Saudi government has not published or disseminated a penal code, code of criminal procedure, or code of judicial procedure, and only a limited number of other laws exist in published form. Any legal decision must be made under the auspices of Islamic law, and all are subject to the approval of government-appointed religious leaders. Recall from Chapter 3 that the Shari'a is the totality of law that results from the Qur'an, the Sunnah, and other traditional sources from the early centuries of the Muslim faith. Of the four major schools of Islamic jurisprudence that developed at that time, the Hanbali school is the most strict in its efforts to return to pure Qur'anic principles. It is to this school that the Wahhabi sect favored by Sheikh Abdul Assiz adhered, and thus Saudi Arabia's law is based on the Hanbali version of Islamic law.

Under the influence of modern development, for which no clear Hanbali precedent exists, Saudi Arabia allows for some variation on the texts. These variations are based first on the precepts of other schools of Islamic jurisprudence and second on the reasoning of contemporary jurists (Amin, 1985b, p. 314). A Judicial Council, including large elements of religious leaders, reconciles conflicts between traditional Islamic law and modern requirements. In addition, the king may supplement Shari'a through decrees when conditions require such extension.

Although Islamic law is the basis for criminal law in Saudi Arabia, commercial transactions are based on laws that were largely put into effect after World War II. In addition, laws regarding civil service, social insurance, mining, labor relations, and various other social and economic issues form part of the whole of Saudi law. A Board of Grievances acts as a supreme administrative court to hear cases against administrative agencies and state officials (Nader, 1990, p. 4).

In each case, the issuance of new codes and royal decrees to meet the challenges of commerce and industry was not undertaken lightly and without concern for reconciliation with Shari'a. When rules for incorporating companies were issued, the Ministry of Commerce and Industry explained in some depth that, although modern development in Saudi Arabia required such rules regarding

establishment, dissolution, and conduct of business, these companies were in keeping with the tradition of the Sunnah, in which the Prophet spoke about having partners and allowed companies that existed to continue. Further, according to this directive, "Any such rules or provisions [regarding companies] as were inconsistent with the orthodox Shari'a were excluded, and due regard was given to the various forms of companies established by Muslims in the past" (Amin, 1985b, p. 317). Again, we see the pervasiveness of Shari'a influence in Saudi law.

One of the most difficult aspects of economic development to reconcile with Shari'a is that pertaining to banking. The Qur'an explicitly forbids the charging or paying of interest on money loaned to others. Despite this fact, the Saudis allow traditional banks to exist, and according to some observers, they may avoid the proscription against interest by adding a charge equivalent to interest to financial transactions. However, the Saudis have also developed an Islamic banking system that concentrates on developing aid for the poor through investment (in keeping with the religious duty to devote a portion of one's income to the poor and needy) and providing interest-free loans for various purposes, including the stimulation of agriculture and the building of private homes (Amin, 1985b, pp. 318–319).

Why has Saudi Arabia followed Islamic law since its establishment in 1926, while other Muslim territories at that time adopted a hybrid of European and Islamic law? To understand this, we need to look at the father of Abdul Assiz, Muhammed ibn Saud. This earlier Saudi sheikh, who ruled in the nineteenth century, came under the influence of a fundamentalist Islamic sect known as the Wahhabis. The Wahhabis were devoted to a return to pure Islamic principles and the purging of Western influences from Islamic society. One of the reasons King Abdul Assiz was successful in his campaign to unite the Bedouin tribes of the territory and drive out some of the other claimants to the land was his piety and general nobility of character. He lived modestly and adhered strictly to religious practices and principles.

Thus, Islam was at the foundation of the modern Saudi state. Since Saudi Arabia does not have representative government but is ruled by royal

decrees of the king and his advisors, the religious hegemony in government is not likely to change without a major upheaval. In any case, the piety of the rulers reflects the strong faith of much of the population (Al-Farsy, 1986).

The Criminal Justice System

Islamic law as laid out in the Shari'a is the basis for all criminal justice functions in Saudi Arabia. The Ministry of Justice presides over the Shari'a-based judicial system. The system is administered according to the Shari'a through religious courts whose judges are appointed by the king on the recommendation of the Supreme Judicial Council, which is composed of 12 senior jurists. The independence of the judiciary is protected by law. The king acts as the highest court of appeal and has the power to pardon. However, with the reforms during 2007–2009 to reorganize the judicial system, the Saudis have implemented a new judicial arrangement that has abolished some courts and added others, including a new high court much like the U.S. Supreme Court called the High Judiciary Council.

Saudi Arabian police are also highly centralized. Police are under the authority of the director of public safety, who is supervised by the minister of the interior. The minister controls all police forces throughout the kingdom. Local police are commanded by the provincial governors, who answer to the director of public safety. The correctional system in Saudi Arabia is also under the authority of the director of public safety within the office of the Bureau of Prisons (Murty, Roebuck, & Almolhem, 1991).

Comparisons with the United States

The Saudi Arabian law and criminal justice system is unique in many ways and cannot readily be compared to those of England, France, Germany, Japan, China, or the United States. The primary difference is that Saudi Arabia is one of the few countries in the world that emphasizes the Sacred Law legal tradition. In this tradition, there is no clear distinction between religious influence and governmental decision making. This is clearly different from the United States and most other

secular legal traditions, where there is a clear separation of church and state in all aspects of the legal justice system and in government.

Saudi Arabia is a nonconstitutional monarchy. However, many Saudis consider the Shari'a the relatively new Basic Law as the written constitution. Much like the president's cabinet in the United States, the Saudi Arabian council of ministries consists of those that will run the various aspects of the criminal justice system. But unlike in the United States, decisions made by judges and other criminal justice officials are closely scrutinized by the government-appointed religious leaders of the country.

There are at least three characteristics of the criminal justice system that Americans would find peculiar. First, in the Saudi court system we find that the king is the highest court of appeal in the land and can overturn lower court rulings within the bounds of Islamic law and distribute pardons. Second, police in Saudi Arabia are highly centralized and are under the complete control of the minister of the interior. In the United States, this would be as if the director of the Justice Department advised federal, state, and local police on how to organize and perform their duties. Third, unlike the United States and many other countries with extensive written codes of criminal and civil laws, Saudi Arabia formally publishes only the written laws beyond the Shari'a.

Like the United States, Saudi Arabia is one of the countries in the Middle East that has been heavily affected by terrorism. While Saudi Arabia is a strong ally of the United States, economic and political ties with individuals and groups associated with terrorism have caused both countries to question the Saudi and American interests in the region. Saudi Arabia has taken a number of steps to improve national security and support the fight against terrorism.

Even with the many difficulties in assessing crime statistics in Saudi Arabia, by any measure the crime rate is minuscule in comparison to the United States. As in Japan, there appear to be many reasons to explain the difference. Among the most commonly accepted reasons for low crime in Saudi Arabia are harsh punishments, relative homogeneity, economic prosperity, and most notably the way religious values permeates all levels of society and culture.

SUMMARY

Out of a total of 196 independent states in the world (including Taiwan, the Vatican, and Kosovo, none of which is a member of the United Nations) six countries may not seem like a very large sample. However, each of the six was chosen for inclusion in this book because it clearly represents one of the different legal traditions present in the world today. We have provided for each of the model countries a demographic and historic overview and a summary of the criminal law, the criminal justice system, and the current

concerns related to crime. Also, we have given a summary of how each model country now compares with the United States.

It is clear that this book does not contain a model country within each continent. Africa and Latin America are surely continents that demand further study. While the nations of Europe are Civil Law nations and base their legal systems on the traditions of that family, there are differences in style and substance that may make these nations

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 to make the subject matter connections to comparative criminal justice.

Crash (2006)

Paul Haggis, Director

Winner of an Academy Award for Best Picture, *Crash* is a movie about prejudice based on race, nationality, and ethnicity. Set in Los Angeles, a multicultural city, the story begins with a multiple-car accident. A flashback takes us to the day before the crash, and we see the problems of those involved. An LAPD cop (Matt Dillon) tries to get medical help for his father but has problems with a black health insurance clerk over paying for a second opinion, so he takes out his frustration on a black couple during a traffic stop. A socialite (Sandra Bullock) and district attorney (Brandon Fraser) are carjacked at gunpoint by two black teenagers, and she takes out her anger on a Mexican locksmith changing the door locks to their home. Later, the locksmith is disrespected again by a Persian store owner.

A black detective speaks about the need for people to crash into each other. A Latino woman in the driver's seat of the car says they were hit from behind, and she blames the driver, an Asian woman, making racial jibes.

At a gun shop, an Iranian man and his daughter buy a handgun, but the shop owner gets upset because

the Iranians are speaking Farsi. Two young black men leave a restaurant claiming they were victims of racism and poor service. Then they see a white couple walk down the sidewalk displaying fear towards them; the two black men take this as a racial slight and suddenly draw handguns and steal their car. These interlocking stories (and others) unfold throughout the movie, exploring racism and ethnic hatred, with people sometimes rising above it but often succumbing to it. The consequences of these attitudes in producing sometimes random and abusive behaviors illustrates the impact of negative mindsets in creating bad conduct. It is frustrating to see how these attitudes prevent people from seeing the person in front of them for what he or she is, instead of a symbol for something else.

Questions

1. In this chapter, we discussed the backgrounds and legal systems of the six model nations. In each case, the countries pursue justice cases from different traditions, cultures, and legal systems. Why do you believe that people sometimes see their own legal systems as superior to others, when they are all pursuing the same objective?
2. In this film, the characters "crash" into one another, provoking behavior that expresses strong attitudes but is out of context with the current situation, resulting in discriminatory and sometimes violent behavior. Are there ways to promote mutual respect for the beliefs of those of other nationalities, ethnicities, and races?

distinctive. In Africa, we find many examples of legal pluralism, in which local customary laws coexist with those derived from the colonial powers that once ruled. The traditional conflict resolution mechanisms are particularly functional in small villages and rural areas. They are a kind of arbitration process that tends to keep minor cases out of the formal, westernized legal system.

A student of comparative law and justice should take the time to explore other criminal justice systems in addition to those covered in this book. The richness of those that are included, as explained previously, is that they exemplify broad kinds of legal practice within different cultural settings. Each is a model system that can be used as a reference for comparison with other systems throughout the world.

Critical Thinking Exercise

Critical thinking requires the ability to evaluate viewpoints, facts, and behaviors objectively to assess information and methods of argumentation in order to establish the merit of an action, law, policy, or procedure. Please evaluate this scenario objectively, applying your knowledge of comparative criminal justice to the facts of the case presented, and answer the questions that follow it.

Oil Industry Faces Trial on Rights Abuses

Royal Dutch Shell appeared in federal court to answer charges of crimes against humanity in connection with the execution of the Nigerian author and activist Ken Saro-Wiwa by Nigeria's former military regime. It was alleged that Shell sought the aid of the former Nigerian regime in silencing Mr. Saro-Wiwa, an outspoken critic, and that Shell paid soldiers who committed human rights abuses in the Niger Delta where its oil operations occurred and a pipeline was to be built.

This case is one of a series of cases involving allegations of misconduct in developing countries by multinational oil companies. The companies have been sued for environmental damage, collusion with oppressive governments, and in aiding human rights abuses. In one case, Chevron faced up to \$27 billion in penalties for pollution of the jungle in Ecuador. Exxon Mobil was sued by Indonesian villagers claiming human rights violations by soldiers hired to guard a natural gas plant. These legal problems have occurred at the same time the oil industry is looking for new sources of petroleum.

Shell was the most prominent case of this kind, and it led to major protests against Shell, already under criticism for its environmental record in the Niger Delta. Although civilian rule has returned to Nigeria, violence has escalated, fueled by widespread poverty and corruption. The civil suit against Shell was brought by relatives of Saro-Wiwa and other victims of Nigeria's former military regime, following a U.S. Supreme Court decision that gives foreign victims of human rights

abuses access to American courts. Shell has said the allegations are "false and without merit," but oil companies in general have been under growing pressure to follow international and national laws, while operating in countries with poor human rights records, and effective government oversight.

The case against Shell suit was brought under the Alien Tort Claims Act, a law originally passed in 1790 to fight piracy, but it is increasingly used for lawsuits alleging human rights violations that occurred overseas. In this case the plaintiffs did not trust they could sue Shell in Nigerian courts. The U.S. Supreme Court ruled in 2009 that foreigners could use American courts in limited circumstances, such as cases involving crimes against humanity or torture. While countries themselves can be sued, American courts have held that corporations can be sued for their actions in foreign countries.

These suits have brought some results. In 2005, a California oil company agreed to compensate villagers who were used as slave labor in the construction of a pipeline in Burma. In 2008, Chevron was cleared of wrongdoing by a jury when it was accused of involvement in the shooting of Nigerians who occupied an offshore oil barge to protest Chevron's environmental record and hiring practices.

Questions

1. Multinational corporations often do business in developing and post-conflict nations where the rule of law is not always enforced. Under such conditions *should* an American company be liable for its conduct overseas?
2. What do you believe is the justification for allowing alleged crimes occurring outside the United States to be tried in U.S. courts?

SOURCE: The New York Times Jad Mouawad, "Oil Industry Faces Trial on Rights Abuses," *The New York Times*, May 22, 2009.