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What is "transnational" criminal law? One possibility is *foreign criminal law*, meaning the scope and substance of what is deemed criminal behavior in other lands and the theories that ostensibly justify punishing for such behavior, indeed deeming it criminal in the first place. Another is *foreign criminal procedure*, the "how" of foreign criminal law's "what" and "why": the rules and practices of investigating crime, prosecuting suspected criminals, and adjudicating criminal cases in other lands or systems. More common meanings, judging from articles in U.S. law reviews, are *comparative criminal law* and *comparative criminal procedure*, though these might differ from their foreign-law counterparts only in that they add discussion of the law and practice of another land—typically our own—to the discussion of a foreign land or system. Equally common meanings are *international criminal law* and *international criminal procedure*: those species of wrongdoing that a group of nations collectively condemns and judges via tribunals whose jurisdiction and authority transcend national boundaries (plus, again, the theories that underlie this collective criminalization and punishment), and the rules for investigating such wrongdoing and prosecuting and adjudicating in these tribunasl. And it can also mean *extraterritorial aspects* of national criminal law or procedure, such as the criminalization of conduct committed abroad, or the means of securing witnesses, tangible evidence, or defendants themselves from locations abroad for prosecutions at home.

Each of these meanings was invoked by one or more of the six Criminal Law and Procedure panelists at the January 2006 AALS Workshop on Integrating Transnational Legal Perspectives Into the First-Year Curriculum. The remarks of four of those panelists are published here. Markus Dubber focuses on *comparative criminal law*. Starting from the premise that criminal law and procedure are "the most parochial of legal disciplines," Dubber considers American exceptionalism in the field and points out that a comparative approach is already inherent in the typical first-year criminal-law course, since it addresses criminal statutes from various states, the Model Penal Code, and common-law doctrines and definitions. Distinguishing this "internal" comparative approach from the "external" approach of comparing our criminal law to foreign or

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international criminal law, Dubber offers several examples of the latter—in theories of jurisdiction and sentencing, for instance, and doctrines of mens rea, accomplice liability, and various defenses—and his examples only begin to show how much such comparison can enrich the first-year course.

Ellen Podgor then shows how considering *extraterritorial aspects* of our criminal law and procedure can similarly enhance the first-year course. When does a criminal statute reach conduct committed abroad, and under what authority? How does (and should) our Constitution constrain searches, seizures, and interrogations that U.S. law-enforcement officers conduct beyond our shores? What role do international treaties play in facilitating our access to defendants or evidence located abroad? These questions and more arise from the specific examples of extraterritorial matters Podgor presents, and their importance particularly in a post-September 11 world hardly needs emphasis.

The remaining two essays turn the lens to *comparative criminal procedure*, presenting examples of topics in criminal investigation, prosecution, and adjudication that yield fruitful comparisons, along with methods for conducting these comparisons. Christopher Slobogin, focusing on police practices, walks us through specific foreign rules of search and seizure and interrogation and shows how adopting some of these rules would expand existing U.S. constitutional protections while adopting others would contract them. He also shines a foreign light on our overall approach to regulating the police, noting distinctions in structure and theory between our law-enforcement bodies and those of other lands, and closes with sample problems and questions through which specific comparative matters can be taught in the first-year course.[1] Stephen Thaman then addresses matters covered in the typical "bail to jail" course, and some police practices as well, but first steps back to discuss the common origins and development of the world's systems of criminal procedure. Like Dubber, Thaman points out the already-comparative dimension of the American topic itself, though by this he means the Supreme Court's references to foreign law in deciding the reach and ramifications of some of our own constitutional provisions. He also notes the influence our constitutional rules of criminal procedure have had abroad. Thaman goes on to suggest analytical categories through which one might teach comparative matters—the rules that apply *in flagrante delicto* cases versus those for so-called victimless crimes, for example—and then presents several discrete topics of comparison, including plea bargaining, the presumption of innocence, and jury trial, along with comments and questions for addressing each in class.

Rounding out the discussion of comparative criminal procedure at the workshop, though not published here, was Jacqueline Ross's presentation, "Transnational and Comparative Undercover Policing," which contrasted German and American rules governing covert police operations—the use of

1. As the reader likely knows, the first-year criminal-law course at some U.S. law schools addresses procedural as well as substantive matters; other schools require a separate course in procedure.

informants, electronic surveillance, and the like. Political and cultural factors as well as legal context account for the differences, Ross explained, and that is only one of the features that makes the topic well-suited for comparative study.[2] *International criminal law and procedure* were also addressed, primarily by Diane Marie Amann in her presentation, "Cross-Border Currents in Criminal Justice." Amann sketched a panorama of transnational issues that highlighted, *inter alia*, the significance of instruments and institutions of international human rights—*e.g.*, the Geneva Conventions, the Convention Against Torture, the International Criminal Court—and if regional bodies such as the European Court of Human Rights and *ad hoc* tribunals such as the International Criminal Tribunal for the former Yugoslavia.[3]

These presentations and papers do not, of course, exhaust the possibilities for integrating transnational matters into the first-year criminal curriculum; they but illustrate some of its promise. Nor are they the sole sources of inspiration and guidance in such an endeavor.[4] Institutional support for the effort may also be needed, and speakers at the workshop's plenary sessions shared ideas about how to build that support. For now, we hope the insights and suggestions that follow encourage teachers of first-year criminal law and procedure to make the effort and aid them in it.

2. An outline of Ross's presentation is available at <http://www.aals.org/am2006/program/transnational/Rossoutline.pdf> (last visited Nov. 10, 2006). See also Jacqueline E. Ross, Impediments to Transnational Cooperation in Undercover Policing: A Comparative Study of the United States and Italy, 52 Am. J. Comp. L. 569 (2004); Valuing Inside Knowledge: Police Infiltration as a Problem for the Law of Evidence, 79 Chi.-Kent L. Rev. 1111 (2004); Tradeoffs in Undercover Investigations: A Comparative Perspective, 69 U. Chi. L. Rev. 1501 (2002).

3. An outline of Amann's presentation, with links to the websites of these courts and conventions and a comprehensive list of pertinent organizations and publications, is available at <http://www.aals.org/am2006/program/transnational/Amannoutline.pdf> (last visited Nov. 10, 2006). See also Diane Marie Amann, Guantanamo, 42 Colum. J. Transnat'l L. 263 (2004); The United States of America and the International Criminal Court, 50 Am. J. Comp. L. 381 (2002); Group Mentality, Expressivism, and Genocide, 2 Int'l. Crim. L. Rev. 93 (2002); Message as Medium in Sierra Leone, 7 ILSA J. Int'l & Comp. L. 237 (2001); Harmonic Convergence? Constitutional Criminal Procedure in an International Context, 75 Ind. L. J. 809 (2000); The Rights of the Accused in a Global Enforcement Arena, 6 ILSA J. Int'l & Comp. L. 555 (2000); A Whipsaw Cuts Both Ways: The Privilege Against Self-Incrimination in an International Context, 45 UCLA L. Rev. 1201 (1998).

4. See also, e.g., Franklin A. Gevurtz et al., Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum, 19 Pac. McG. Global Bus. & Dev. J. 1, 38-43 (2005); Erik Luna, A Place For Comparative Criminal Procedure, 42 Brandeis L. J. 277 (2004); Arturo López Torres and Mary Kay Lundwall, Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching, 35 Gonz. L. Rev. 1, 20-21 (2000); Albert W. Alschuler, Adding a Comparative Perspective to American Criminal Procedure Classes, 100 W. Va. L. Rev. 765 (1998); Richard S. Frase, Main-Streaming Comparative Criminal Justice: How to Incorporate Comparative and International Concepts and Materials into Basic Criminal Law and Procedure Courses, 100 W. Va. L. Rev. 773 (1998).