Criminal Law in Comparative Context

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Introduction

In the first part of this article, I discuss why U.S. criminal law has resisted integrating transnational legal perspectives. I then explain my contextual approach to comparative criminal law. Finally, I discuss some specific examples of how I use comparative materials in criminal law teaching.

Comparative Criminal Law as Oxymoron

Criminal law traditionally has been the most parochial of legal disciplines. The power to punish is closely associated with the power to govern and, in fact, with the very idea of political might. A state without the power to punish lacks sovereignty, the essence of statehood. In U.S. law, the power to punish is thought to derive from the power to police, i.e., the state's power to maximize the welfare of its subjects. The power to police is as broad as it is essential; already the *Slaughterhouse Cases* made clear that the police power

> extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State; … and persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State. Of the perfect right of the legislature to do this no question ever was, or, upon acknowledged general principles, ever can be made.[1]

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This article is based on presentations given at the AALS Workshop on Integrating Transnational Legal Perspectives Into the First Year Curriculum, Washington, D.C., January 4, 2006. I thank the participants in this event for their comments and suggestions. Interactive outlines of the presentations with links to relevant comparative materials are available online at AALS Workshop on Integrating Transnational Legal Perspectives, <http://www.aals.org/am2006/program/transnational/dubber.pdf> and <http://www.aals.org/am2006/program/transnational/dubber2.pdf> (last visited Nov. 19, 2006).

1. 83 U.S. 36, 62 (1872) (*quoting* Thorpe v. Rutland & Burlington R.R. Co., 27 Vt. 140, 149 (Vt. 1854) (Redfield, C.J.)). For further discussion of the police power and its implications for U.S. criminal law, see Markus D. Dubber, The Police Power: Patriarchy and the Foundations of American Government (New York, 2005); Markus D. Dubber and Mark Kelman, American Criminal Law: Cases, Statutes, and Comments 2-3, 78-84, 591-94 (New York, 2005).

As a central aspect of sovereignty, the police power is also deeply discretionary: the state enjoys wide latitude in deciding how—and even whether—to deal with offenses against its sovereignty. The police power is at bottom patriarchal; it is rooted in the householder's power to manage the affairs of his household, including the power to discipline its members. As Blackstone put it in a much-quoted passage, "police" concerns itself with "the due regulation and domestic order of the kingdom: whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners: and to be decent, industrious, and inoffensive in their respective stations."[2]

The police power accounts for the longstanding resistance to placing meaningful constraints on U.S. criminal law, from substantive criminal law (scope of criminal law, definition of offenses, availability and scope of defenses) to police and prosecutorial discretion to the infliction of punishment in our prisons.[3]

A state reasserting its sovereignty in the face of a criminal "offense" has no more patience for comparative analysis of its punitive practices than would a lord disciplining his servant or a master correcting his slave. One sovereign might occasionally glance at another's correctional regime, but to suggest that it was under an obligation to adjust the exercise of its penal power in light of foreign criminal law would constitute an affront to the very sovereignty the criminal law seeks to reflect, and reaffirm, in the first place.

Insofar as comparative law has always had a critical edge, under the police power conception comparative criminal law is a contradiction in terms since criminal law is, in an important sense, beyond critique. Certainly, if one state's criminal law were subject to critique, that critique would have to be entirely internal, i.e., framed in terms of principles, concepts, and practices constituent of the state itself. Any reference to external law would be beside the point at best, offensive at worst.

There are no choice-of-law problems in criminal law because the notion of one sovereign applying the criminal law of another is preposterous. The first sovereign, in the very act of applying the laws designed to reaffirm the sovereignty of another, would negate it instead. Jurisdictional issues likewise don't arise with any frequency; territorial jurisdiction remains the name of the game in Anglo-American criminal law, with no need to investigate the relative effect of a purportedly criminal act on one sovereign or another. Double jeopardy doesn't force the jurisdictional issue either since there is nothing unconstitutional about separate sovereigns reasserting their sovereignty against an act that manages to offend the sovereignty of both (in which case punishing the

2. 4 William Blackstone, Commentaries on the Laws of England 162 (Philadelphia, 1769).

3. See generally Markus D. Dubber, Policing Possession: The War on Crime and the End of Criminal Law, 91 J. Crim. L. & Criminology 829 (2002).

act twice would not amount to placing the perpetrator twice in jeopardy "for the same offense").[4]

In the United States criminal law parochialism has been turned into something of a virtue. U.S. exceptionalism in criminal law is as often celebrated as it is bemoaned. To many, that the United States is the only Western democracy that still practices capital punishment, competes for the world's highest incarceration rates, and disenfranchises millions of convicted persons manifests fierce independence: no coddling criminals here.

There are two possible responses to this state of affairs. One is to say that comparative criminal law in the United States is a pointless, hopeless endeavor best left for occasional journalistic reports from far away places, for the edification of interested readers at home. Another is to say that no country needs comparative perspectives on criminal law more desperately than does the United States.

The Spirit of Comparative Criminal Law

Traditionally, comparative law is thought to require comparing one country's law with that of another. In this, *external*, version, comparative criminal law compares U.S. criminal law with foreign criminal law, or perhaps with international criminal law. Here one might compare the common law approach to criminal law with the civil law approach, with the United States (along with the United Kingdom) representing the former and, say, Germany (along with France) representing the latter. One might note the influence of English criminal law throughout the common law world (composed of countries once under English rule) and the influence of German criminal law among civil law countries (including much of Latin America, Europe (except France), Japan, Korea, and Taiwan).[5]

External comparison of this type even has some doctrinal payoffs. Besides its obvious relevance in the emerging field of international criminal law, transnational, transsystemic, and even transcultural comparison informs the doctrine of cultural defenses in domestic U.S. criminal law, and—less directly—questions of mistake or ignorance of law, the de minimis defense,[6] and provocation in the law of homicide, and most broadly the exploration of reasonableness (which pops up not only in the law of mens rea but also in any defense that is framed in terms of a reasonable belief regarding the presence of defense elements, including self-defense).

4. On this point, see Markus D. Dubber, Toward a Constitutional Law of Crime and Punishment, 55 Hastings L. J. 509 (2004).

5. See Markus D. Dubber, The Promise of German Criminal Law: A Science of Crime and Punishment, 6 German L. J. 1049 (2005), available at <http://www.germanlawjournal.com/article.php?id=613> (last visited Nov. 13, 2006).

6. See, e.g., In State v. Kargar, 679 A.2d 81 (Me. 1996) (discussed in Dubber and Kelman, American Criminal Law, *supra* note 1, at 372-73).

External comparative criminal law, however rewarding, can be quite daunting. International comparison is tricky across barriers of language, system, culture, and style. Here it's useful to keep in mind that comparison need not be external. "American criminal law" for decades has been a species of *internal* comparative criminal law.[7] More than four decades after the completion of the Model Penal Code, and the reform of criminal codes throughout the United States (with notable exceptions such as California and federal criminal law), criminal law in the United States can no longer be regarded as a common law subject. The monolith of "common law" (which itself was an increasingly curious mixture of English law and the expanding body of criminal jurisprudence arising in the various states, and eventually federal law as well) has been thoroughly and irrevocably replaced by a set of fifty-two independent and comprehensive systems of criminal law, with their own criminal codes and corresponding bodies of jurisprudence interpreting these codes.[8]

It's high time the study and teaching of "American criminal law" be recognized as a type of comparative criminal law. The leap to external comparative criminal law appears far less perilous and extravagant once the comparative nature of the all-too-familiar enterprise of first-year "Criminal Law" is acknowledged.

Comparative criminal law is best thought of as a spirit, an approach, an attitude, rather than as a formal discipline or even a serious commitment to the exploration of the details of foreign criminal law (just what is the Dutch position on assisted suicide?).[9] In this critical comparative spirit, any transjurisdictional comparison, domestic or foreign, internal or external, promises a fresh perspective. So does *transdisciplinary* comparison, locating criminal law in relation to other fields of law, most notably torts, contracts, and property, but also—perhaps less obviously—the law of crime victim compensation (set out, for instance, in the Uniform Victims of Crime Act).[10] Victim compensation law concerns itself with the same questions as does criminal law, only upside down (in an effort to assess victimhood, rather than

7. See generally Markus D. Dubber, Comparative Criminal Law, *in* Oxford Handbook of Comparative Law 1287 (2006); Markus D. Dubber, Reforming American Penal Law, 90 J. Crim. L. & Criminology 49 (1999).

8. Fifty-two if one counts federal criminal law—including the shadow federal criminal code, the federal sentencing guidelines—and the District of Columbia; fifty-three if one counts military criminal law and more still if one counts the various criminal laws of Native American tribes. See, e.g., Dubber and Kelman, American Criminal Law, *supra* note 1, at 445 (attempt), 467-68 (abandonment), 528-29 (self-defense), 560 (necessity), 609 (duress), 641-42 (insanity), 861 (murder).

9. For further elaboration of this comparative-contextual approach to criminal law teaching, see Dubber and Kelman, American Criminal Law, *supra* note 1, at v-xi.

10. See, e.g., Dubber and Kelman, American Criminal Law, *supra* note 1, 59 (battery, false imprisonment), 68-69 (alternative sanctions), 223-24 (voluntary act), 287 (intent), 328 (recklessness), 507-08 (defenses), 956 (negligence), 971 (larceny by false promise), 997 (mail fraud).

offenderhood) so that what is a ground for criminal liability (offenderhood) in one is a ground for criminal compensability (victimhood) in the other.[11] Here too doctrinal significance isn't hard to find—consider merely the problem of distinguishing between criminal and tort law approaches to questions of negligence, causation, defenses (privileges), and corporate liability or the parallel between crimes and (intentional) torts (assault, trespass, etc.).[12]

Comparative Criminal Law in Action

Opportunities for comparative analysis can be found in all aspects of U.S. criminal law, including foundational and systematic issues (often classified as "preliminary"), general principles of criminal liability (the "general part"), and specific offenses (the "special part"). I will mention just a few.[13]

Preliminary

Jurisdiction

U.S. criminal law continues to adhere to the principle of territorial jurisdiction, even though other bases of criminal law jurisdiction have made some inroads.[14] The orthodox view that criminal jurisdiction is determined by the *locus criminis* is intimately connected to the traditional conception of criminal law as grounded in the quasi-patriarchal power to police, a central component of state sovereignty, which is limited only by its territorial reach (originally, the boundaries of the household). Comparative analysis reveals other bases of criminal law jurisdiction that may point to other conceptions of criminal law. The reach of the Uniform Code of Military Justice for instance is not defined by territory, but by the offender's membership in a given community (the U.S. military). Other criminal law systems illustrating *active* (i.e., offender-based) personality jurisdiction include those of various Native American tribes and German criminal law. (Note that active personality jurisdiction is not necessarily inconsistent with the police power view of criminal law insofar as

11. See Dubber and Kelman, American Criminal Law, *supra* note 1, at 68-69 (overview), 189-91 (analysis), 507-08 (defenses), 970 (larceny); see generally Markus D. Dubber, Victims in the War on Crime: The Use and Abuse of Victims' Rights pt. II (2002) (exploring parallels between criminal law and victim compensation law).

12. See *supra* note 10.

13. The following examples are drawn from Dubber and Kelman, American Criminal Law, *supra* note 1. A summary outline, along with links to illustrative casebook excerpts is available online at Markus D. Dubber, Criminal Law and Procedure, AALS Workshop on Integrating Transnational Legal Perspectives Into the First-Year Curriculum, available at <http://www.aals.org/am2006/program/transnational/dubber2.pdf> (last visited Nov. 17, 2006).

14. Dubber and Kelman, American Criminal Law, *supra* note 1, at 154, 158-60, 165, 167, 169 (excerpting, e.g., Uniform Code of Mil. J. arts. 2, 5; Confederated Tribes of the Colville Reservation Code § 1-1-430; Poarch Band of Creek Indians Code § 4-1-2; German Penal Code § 3, 5, 6, 7; Rome Statute of the Intn'l Crim. Ct. arts. 1, 5, 8).

the offender's act can be interpreted by the sovereign as an offense even if it does not cause harm to the household.) The German criminal code also provides convenient illustrations of *passive* personality (which turns on the victim's status, rather than the offender's), the *protective* principle (harm against the polity itself, rather than one of its members), and—along with the Rome Statute of the International Criminal Court—the idea of *universal* criminal jurisdiction for offenses against persons simply viewed as humans, rather than as members of this or that political community with its attendant sovereignty.

The reference to the German criminal code and the Rome Statute illustrates three points about the use of comparative materials in criminal law teaching. First, it makes sense to focus on one or two foreign jurisdictions, rather than assembling a bouquet of foreign laws for various issues. That way students may be able to compare systems, and general approaches, rather than specific rules taken out of context. Second, codes work better than cases. Translating court opinions is very hard—though Stephen Thaman does an excellent job of it in his innovative book on comparative criminal procedure.[15] Court opinions contain lots of irrelevant and confusing procedural detail, and differences in style (e.g., referring to defendants only by the first letter of their last name, citing to statutes rather than to cases, shorter statements of fact, more technical lingo) can generate interesting comparative discussions, but not about substantive criminal law. Finally, international criminal law is a rich source of comparative material that will only grow in importance as international criminal jurisprudence continues to evolve.

Legality

Comparative analysis reveals that different criminal law systems have a different view of the principle of legality. In Germany, for instance, the principle of legality (*Legalitätsprinzip*) is thought to imply a principle of compulsory prosecution—a radical attempt directly to eliminate police and prosecutorial discretion altogether.[16] In the United States, of course, discretion in law enforcement is thought to require no constraints, but is celebrated as an essential requirement of a legal system dedicated to the protection of individual liberty in the face of rigid abstract rules of laws.

On closer inspection, it turns out that in Germany the principle of compulsory prosecution itself is subject to a principle of appropriateness (*Opportunitätsprinzip*), which permits prosecutors (but not police) to refrain from pursuing certain minor cases in the interest of public policy.[17] What's

15. Stephen C. Thaman, Comparative Criminal Procedure: A Casebook Approach (Durham, N.C, 2002).

16. Dubber and Kelman, American Criminal Law, *supra* note 1, at 103-04 (excerpting German Crim. Proc. Code §§ 152, 153, 153a).

17. For further comparative materials on legality, see Dubber and Kelman, American Criminal Law, *supra* note 1, at 115 (legislativity and common law defenses; excerpting Draft Canadian

more, discretionary informal disposition mechanisms like plea bargaining—once said to be limited to the United States—have long since become widespread in German criminal courts.[18]

Sentencing

The law of punishment offers many opportunities for comparative reflection. The absence of capital punishment in other Western democracies has already been mentioned. Some comparative statistics on incarceration rates might further illustrate the unique harshness of U.S. punishment.[19] Some reference to the day-fines systems in place in many European countries (where fines have replaced imprisonment as the paradigmatic criminal sanction) might also be useful.[20] Many Western countries have begun to formalize victim-offender mediation as a mode of disposition.[21] Rehabilitation continues to be endorsed as the dominant rationale for imprisonment, as codified in various codes of punishment execution.[22] Detailed and comprehensive (and, until recently, mandatory) sentencing guidelines remain a phenomenon largely limited to U.S. law, as the continued commitment to rehabilitation in other systems goes hand in hand with the familiar preference for discretion in matters of sentencing.

The distinction between (primarily deontological) punishments and (primarily consequentialist) measures, which has been a staple of many criminal law systems for some time, is not formally recognized in the United States. It might be helpful, however, in discussing recent U.S. innovations such as Sexually Violent Predator statutes and sexual offender registrations laws, which eschew punitive labels in favor of regulatory ones and as a result escape serious constitutional scrutiny.[23]

General Part

Moving on to criminal law doctrine, comparative analysis might begin with the structure of the analysis of criminal liability. Here the common law approach (which distinguishes roughly between actus reus and mens rea, with an ill-defined role assigned to defenses) can be contrasted with the Model Penal Code approach (with its differentiation among objective and subjective of-

Crim. Code § 17), 123 (legislativity and the principle of analogy; excerpting German Penal Code § 2 (1935)), 149 (publicity principle as illustrated by Israel Penal Law § 3 and Standard Penal Code for Latin America arts. 8, 9), 178 (comprehensiveness of criminal codes).

18. *Id*. at 99-100; see generally Markus D. Dubber, American Plea Bargains, German Lay Judges, and the Crisis of Criminal Procedure, 49 Stan. L. Rev. 547 (1997).

19. *Id*. at 34; see also James Q. Whitman, Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe (New York, 2003).

20. Dubber and Kelman, American Criminal Law, *supra* note 1, at 39.

21. *Id*. at 66 (excerpting German Penal Code § 46a).

22. *Id*. at 30 (excerpting South African Correctional Services Act of 1998 § 2; German Code of Punishment Execution §§ 2, 3).

23. *Id*. at 75-77 (excerpting German Penal Code §§ 46, 62, 66, 67d, 67e).

fense elements and a less well developed distinction between justifications and excuses) and the German-influenced civil law system (with its rigid separation between three levels of the analysis of criminal liability: objective and subjective offense elements, justification, and excuses).[24]

A comparative look at actus reus reveals considerable consensus across systems.[25] There is also not much variation in the treatment of omission liability, though other criminal law systems are more likely to criminalize failures to aid even absent more specific interpersonal duties. The origins of the oft-cited German omission statute in National Socialist criminal law, however, raises interesting questions about the view of the function of criminal law that underlies general omission statutes.[26] Criminal possession liability is not limited to U.S. criminal law, but nowhere else is possession criminalized as broadly or as severely.[27]

There are also remarkable similarities in the law of mens rea. The Model Penal Code scheme in many respects resembles the civil law distinction between purpose, knowledge, *dolus eventualis*, and negligence—though recklessness and *dolus eventualis* refuse to match up exactly. At the same time, civil law continues to build on a general concept of intent (*dolus, Vorsatz*) that can profitably be compared with the old common law concept of intent that the Model Penal Code rejected as unworkably vague.[28]

It's no surprise that U.S. law on intoxication is—at least on its face—stricter than other criminal law systems. While not declaring intoxication irrelevant for certain purposes (e.g., to disprove recklessness or perhaps even any type of mens rea, see *Montana v. Egelhoff*[29]), German criminal law criminalizes the intoxication itself and punishes it generally at the level of the offense against which the intoxication was raised as a defense.[30] Civil law systems are also more likely to recognize a general good-faith (unavoidable) ignorance-of-law defense, without requiring—as does U.S. criminal law—reliance on an official misinterpretation of the legal norm in question.[31]

Among inchoate crimes, the U.S. law of attempt does not differ dramatically from that in other jurisdictions, though the Model Penal Code treatment of attempt is far more detailed than that found in other criminal codes (as is the case with quite a number of doctrinal issues).

24. *Id*. at 186-89.

25. *Id*. at 224 (excerpting Israel Penal Law § 34G).

26. *Id*. at 248, 252 (German Penal Code §§ 13, 323c, 330c).

27. *Id*. at 258; see also Dubber, Policing Possession, *supra* note 3.

28. *Id*. at 286, 315 (excerpting German Penal Code § 15; German Penal Code (Alternative Draft) §§ 17, 18; Israel Penal Law § 20).

29. 518 U.S. 37 (1996).

30. *Id*. at 386 (excerpting German Penal Code § 323a).

31. *Id*. at 380 (excerpting German Penal Code §§ 16, 17; Israel Penal Law § 34A).

The U.S. law of conspiracy is framed broadly; the Nuremberg trials exposed wide differences in the conception of conspiracy liability among common law (United States, United Kingdom) and civil law countries (France, the Soviet Union). Under the Model Penal Code (as opposed to the common law), however, the law of conspiracy is not significantly wider than it is under German criminal law, which in effect covers much the same inchoate conduct under the law of attempt and complicity.[32]

Despite apparent differences, U.S. and German law do not differ radically in their approach to the problem of imputing one person's conduct to another, most commonly through the mechanism of accomplice liability. While the Model Penal Code scheme is less differentiated than the German scheme (and, for that matter, the common law scheme of principals and accessories of various degrees and types), both assess liability to each actor based on her individual culpability, rather than to the principal and her accomplice or accomplices *en masse*. The German criminal code, however, generally discounts punishments for facilitators vis-à-vis both principals and solicitors or instigators.[33]

German criminal law continues to deny the possibility of corporate criminal liability.[34] Corporations are said to be incapable both of engaging in criminal conduct and of forming a mental state. Still, even German law permits the imposition of stiff "fines" on corporations for "transgressions"[35] codified in a code of transgressions rather than the criminal code.

Taking a comparative view of the law of defenses suggests important structural similarities and specific differences. The conception of necessity and duress in civil law resembles that in the Model Penal Code without, however, necessarily excluding the possibility of circumstantial duress. German criminal law, moreover, categorically denies the possibility of quantifying the value of human life, thus precluding the use of the necessity defense in homicide cases.[36] Self-defense and insanity in German criminal law are handled much the same way as they are in the Model Penal Code, while eschewing the level of detail found notably in the Model Code's self-defense

32. *Id*. at 695-96 (excerpting German Penal Code § 129). On attempt see *id*. at 444 (excerpting German Penal Code §§ 23(1), 24); see also *id*. at 699 (renunciation; excerpting German Penal Code § 129(6)).

33. See Markus D. Dubber, Criminalizing Complicity: A Comparative Analysis, ___ J. Int'l Crim. Just. ___ (special issue on Individual Criminal Responsibility in International Criminal Law) (forthcoming 2007).

34. Dubber and Kelman, American Criminal Law, *supra* note 1, at 753.

35. See Markus D. Dubber, Theories of Crime and Punishment in German Criminal Law, 53 Am. J. Comp. L. 679 (2006); Dubber, The Promise of German Criminal Law, *supra* note 5.

36. Dubber and Kelman, American Criminal Law, *supra* note 1, at 148, 558, 560-61, 608-09 (excerpting German Penal Code §§ 34, 35; Israel Penal L. §§ 34K, 34L, 34O).

provisions.[37] Treatments of the superior order defense in Israeli criminal law[38] and of provocation in Jordanian criminal law[39] may add further context to the discussion of an understudied topic in the former case and an all-too-familiar one in the latter.

Special Part

Comparative analysis of specific offenses is trickier than that of general principles of criminal liability. It's easy enough to line up different definitions of, say, larceny in various jurisdictions. But little would be gained by cataloging differences and similarities, a task complicated by the need to consider differences in statutory context, categorization of offenses, general definitions, and style of codification. Comparison at the level of specific offenses makes for a good exercise in the careful reading of statutes, but yields limited insights into substantive criminal law.

Issues that might be worth exploring comparatively, however, might include the scope of the special part and, more generally, the foundation and limits of the state's power to punish, thus returning class discussion to questions raised earlier on, in the "preliminary" portion of the course. Here one might point out, for instance, that many Western countries decriminalized consensual homosexual sex long before the United States Supreme Court decided *Lawrence v. Texas*,[40] on the ground that the criminal prohibition of consensual homosexual sex does not protect a relevant legal interest.[41]

Conclusion

Using comparative materials in teaching U.S. criminal law requires some work. But it's worth the trouble as tired discussions of standard topics in U.S. criminal law are enlivened by adding comparative perspective and context, whether from within or from without. If U.S. criminal law is to break out of its parochial exceptionalism, we criminal law teachers need to expose ourselves and our students—future prosecutors, defense attorneys, judges, legislators, and law professors—to a broad range of approaches to common problems. Having a look around will reveal not only differences, but also a great many similarities, especially on the level of criminal law doctrine, rather than in matters of broad penal policy. The Model Penal Code in particular need not fear comparison with the most advanced systems of criminal law elsewhere. Comparative criminal law is not a one-way street; at its best, it involves the

37. *Id*. at 536 (self-defense; excerpting German Penal Code §§ 32, 33); 641 (insanity; excerpting German Penal Code §§ 20, 21).

38. *Id*. at 622 (excerpting Israel Penal L. § 34M(2)).

39. *Id*. at 948 (excerpting Jordanian Crim. Code art. 340).

40. 539 U.S. 558 (2003).

41. For critical analysis of this argument in terms of "protected legal interests" (*Rechtsgüter*), see Dubber, Theories of Crime and Punishment, *supra* note 32.

exchange of ideas in a spirit of mutual curiosity.[42] A rule or an approach is neither better nor worse simply because it is foreign.

In closing, here are some resources that the criminal law professor might consult as she considers integrating transnational perspective into her teaching, and perhaps her research as well:

American Series of Foreign Penal Codes (English translations of foreign criminal codes, now published by W.S. Hein)

Buffalo Criminal Law Center, Criminal Law Resources on the Internet, available at <http://wings.buffalo.edu/law/bclc/> (last visited Nov. 18, 2006) (collection of materials and websites on comparative penal law)

Markus D. Dubber and Mark G. Kelman, American Criminal Law: Cases, Statutes, and Comments (2005), available at <http://www.dubberkelman.com> (last visited Nov. 18, 2006) (casebook with extensive comparative materials)

Markus D. Dubber and James Q. Whitman, Comparative Perspectives on Criminal Law (forthcoming 2007) (textbook on comparative criminal law)

George P. Fletcher, Basic Concepts of Criminal Law (New York, 1998) (introductory criminal law textbook with broad comparative perspective)

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)

42. On the general project of comparative criminal law, see generally, Dubber, Comparative Criminal Law, *supra* note 7.