

Comparative Criminal Law in the First-Year Curriculum:

The How

(Panel 2)

[Markus Dubber](#), SUNY Buffalo

Introduction: Comparative/Contextual Method [with links/cites to [Dubber/Kelman, American Criminal Law](#) (© Foundation Press 2005)]

- external and internal (see Panel 1)
 - internal (same old, same old)
 - states
 - federal
 - military
 - Native American
 - Model Penal Code
 - draft codes
 - sentencing guidelines [pp. [445](#) (attempt), 467-68 (abandonment), 528-29 (self-defense), 560 (necessity), 609 (duress), 641-42 (insanity), 861 (murder)]
 - non-criminal (alternatives to criminal law)
 - tort [pp. [59](#) (battery, false imprisonment), 223-24 (voluntary act), 287 (intent), 328 (recklessness), 956 (negligence)]
 - contract [pp. [971](#) (larceny by false promise), 997 (mail fraud)]
 - victim compensation (Uniform Victims of Crime Act) [pp. 68-69 (alternative sanctions), [507-08](#) (defenses)]
 - other aspects of penal law
 - procedure (consent, use of force in law enforcement, possession)
 - external
 - codes, not cases
 - connect the dots: comparison, not confusion
 - Germany, Israel, others
 - preliminary, general part vs. special part

1. Preliminary

- Jurisdiction
 - territorial-personal-protective-universal [pp. 154, [158-60](#), 165, [167](#), 169]
 - Uniform Code of Military Justice 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 International Criminal Court arts. 1, 5, 8

- Legality
 - compulsory prosecution (German Crim. Proc. Code §§ 152, 153, 153a) [pp. [103-04](#)]
 - legislativity
 - common law defenses (Draft Canadian Criminal Code § 17) [p. [115](#)]
 - analogy (German Penal Code (1935) § 2) [p. [123](#)]
 - publicity (Israel Penal Law § 3, Standard Penal Code for Latin America arts. 8, 9) [p. [149](#)]
- Sentencing
 - death penalty
 - sentencing guidelines
 - punishment vs. measure (German Penal Code §§ 46, 62, 66, 67d, 67e) [pp. [75-77](#)]
 - incarceration rates [p. 34]
 - day fines (Scandinavia, Germany) [p. [39](#)]
 - mediation (German Penal Code § 46a) [p. [66](#)]
 - correctional/execution law
 - purposes of punishment (South African Correctional Services Act of 1998 § 2, German Code of Punishment Execution §§ 2, 3) [p. [30](#)]
- Structure/Analysis
 - common law vs. Model Penal Code vs. German three-step analysis [pp. 186-89]
- Codes
 - comprehensiveness (Germany) [p. 178]
- Process
 - case selection (Germany) [p. 89]
 - plea bargaining (Germany) [pp. [99-100](#)]

2. General Part

- Actus reus
 - voluntary act (Israel Penal Law § 34G) [p. [224](#)]
 - omission (German Penal Code §§ 13, 323c, 330c) [pp. 248, [252](#)]
 - possession (Proposed New Federal Criminal Code § 301, German Penal Code (not defined)) [p. [258](#)]
- Mens rea
 - intent, negligence (German Penal Code § 15, German Penal Code (Alternative Draft) §§ 17, 18, Israel Penal Law § 20) [pp. [286](#), 315]
 - intoxication (German Penal Code § 323a) [p. [386](#)]
 - mistake/ignorance (German Penal Code §§ 16, 17, Israel Penal Law § 34A) [p. [380](#)]

- Inchoate Crimes
 - conspiracy (German Penal Code § 129 (also Nuremberg)) [pp. [695-96](#)]
 - renunciation (German Penal Code § 129(6)) [p. 699]
 - attempt (German Penal Code §§ 23(1), 24) [p. [444](#)]
- Corporate Liability (Germany) [p. 753]
- Necessity/Duress (German Penal Code §§ 34, 35, Israel Penal Law §§ 34K, 34L, 34O) [pp. 148, 558, [560-61](#), 608-09]
- Self-Defense (German Penal Code §§ 32, 33) [p. [536](#)]
- Superior Orders (Israel Penal Law § 34M(2)) [p. [622](#)]
- Insanity (German Penal Code §§ 20, 21) [p. [641](#)]
- “Cultural Defense”
 - provocation (Jordanian Criminal Code art. 340) [p. [948](#)]

3. Special Part

- breach of the peace (German Penal Code §§ 123, 125, 126) [p. [536](#)]
- sex offenses (German Penal Code ch. 13) [pp. 596, [817](#)]

Bibliography

- 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](#) (collection of materials and websites on comparative penal law)
- Dubber/Kelman, [American Criminal Law: Cases, Statutes, and Comments](#) (2005) (casebook with extensive comparative materials) (for examples, see above)
- Fletcher, *Basic Concepts of Criminal Law* (1998) (introductory textbook with broad comparative perspective)
- 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)
- Lowenstein, *Materials on Comparative Criminal Law as Based Upon the Penal Codes of Ethiopia and Switzerland* (1965)