

Springer Series on
Asian Criminology and Criminal Justice Research

Jianhong Liu
Max Travers
Lennon Y.C. Chang *Editors*

Comparative Criminology in Asia

 Springer

Springer Series on Asian Criminology and Criminal Justice Research

Series Editor

Jianhong Liu
Department of Sociology
University of Macau
Taipa, Macao, China

The series publishes both theoretical and empirical work in Asian Criminology, with a focus on research-level monographs and edited volumes. It aims to cover three main themes: the adaptations and elaborations of established theories and research models (mainly by Western scholarship) to Asian contexts; an introduction of innovative concepts, theories and policies originating in Asian societies to Western audiences; and in-depth studies of particular Asian countries, as they reflect local traditions and cultures on the one hand, and a general understanding of criminal behavior or criminal justice, on the other. It will feature authors from any country of origin doing research about or pertaining to Asian countries.

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Editors

Jianhong Liu
Department of Sociology
University of Macau
Taipa, Macau, China

Max Travers
School of Social Sciences
University of Tasmania
Hobart, TAS, Australia

Lennon Y.C. Chang
School of Social Sciences
Monash University
Clayton, VIC, Australia

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We have included three reprints in the collection. We would like to thank Edward Elgar for permission to abridge Michael McConville's chapter "Comparative empirical co-ordinates and the dynamics of criminal justice in China and the West" first published in M. McConville and E. Pils (eds.) *Comparative Perspectives on Criminal Justice in China* (2013). We would like to thank Springer for permission to reprint the chapters by Steven F. Messner and Julia Wardhaugh that were first published in the *Asian Journal of Criminology* (full details are in the chapters).

There are many textbooks and collections that discuss comparison and use examples from a wide range of countries. This collection fills a gap by publishing comparative research about Asia. It is also unusual in focusing on methodological issues, and in some chapters advancing an Asian viewpoint in criminology. We hope that the book will interest area specialists, but also assist those teaching comparative criminal justice.

Jianhong Liu
Max Travers
Lennon Y.C. Chang

About the Editors

Professor Jianhong Liu is a Professor at the University of Macau. He is the winner of the 2016 American Society of Criminology's "Freda Adler Distinguished Scholar Award" and the author, editor-in-chief, or co-editor of about 30 books. He has published 100 papers including journal articles and book chapters. He is currently the elected President of the Scientific Commission of the International Society for Criminology (since 2014), the chairman of the General Assembly of the Asian Criminological Society (2016-), and a member of the steering committee of the Campbell Collaboration's Crime and Justice Group (since 2009). Professor Liu was the Founding President of the Asian Criminological Society (from 2009 to 2015). He is also the editor-in-chief of the *Asian Journal of Criminology* (Springer Publishing), the editor of the "Springer Series on Asian Criminology and Criminal Justice Research", and a member of the editorial boards of more than 20 international academic journals, including the *British Journal of Criminology*.

Max Travers is a senior lecturer in the School of Social Sciences at the University of Tasmania. Max qualified as a solicitor in the United Kingdom in 1988, before completing a PhD in sociology at the University of Manchester. He lectured in sociology and criminology at the University of Plymouth, and Buckinghamshire New University, before moving to the University of Tasmania in 2003. His doctoral research, published as *The Reality of Law* (1997), was an ethnomethodological investigation into the practical work of defence lawyers. He has published studies about the work of judicial officers in immigration appeals tribunals and children's courts, and is currently researching bail decision-making. He has written textbooks on qualitative research methods and sociology of law, and a monograph about the rise of quality assurance as a new form of regulation.

Lennon Y.C. Chang is a lecturer in Criminology in the School of Social Sciences at Monash University. Dr. Chang is interested in researching crime and the governance of cyberspace – cybercrime, cyber terrorism and cyber warfare. He is particularly interested in the regulation and governance of cyberspace in the Asia-Pacific region. His book *Cybercrime in the Greater China Region: Regulatory Responses and Crime Prevention* (2012) is about the nature and range of responses

to cybercrime between China and Taiwan. His professional interest in China continues and he is currently researching on-line vigilantism in China. He has also undertaken research into cybercrime and cyber deviance among Hong Kong juveniles. Dr. Chang was awarded his PhD by the Australian National University. He has a Masters in Criminology and Bachelor in Law degrees from National Taipei University, Taiwan.

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Contributors

Monica Barry School of Law, University of Strathclyde, Glasgow, Scotland, UK

Kerry Carrington School of Justice, Faculty of Law, Queensland University of Technology, QLD, Australia

Lennon Y.C. Chang School of Social Sciences, Monash University, Clayton, VIC, Australia

Arinori Kawamura Faculty of Maritime Police, Japan Coast Guard Academy, Hiroshima, Japan

Jianhong Liu Department of Sociology, University of Macau, Taipa, Macau, China

Mike McConville City University of Hong Kong, Kowloon Tong, Hong Kong, SAR

Steven F. Messner University at Albany, State University of New York, Albany, NY, USA

Daniel Pascoe School of Law, City University of Hong Kong, Kowloon Tong, Hong Kong, SAR

Max Travers School of Social Sciences, University of Tasmania, Hobart, TAS, Australia

Julia Wardhaugh School of Social Sciences, Bangor University, Bangor, UK

Seong-Jin Yeon International Strategic Research Centre, Korean Institute of Criminology, Seoul, Republic of Korea

Chapter 1

Introduction

Jianhong Liu, Max Travers, and Lennon Y.C. Chang

The increasing pace of globalization means that criminologists can no longer ignore the legal systems and the work of legal practitioners outside their own countries (Larsen and Smandych 2008). For the most part, comparative research has mainly been conducted by researchers from English-speaking countries with the aim of reflecting on how their own criminal justice systems have developed. They have made comparisons with criminal justice systems in other Western countries (Nelken 2010), but have also conducted research in non-Western countries such as Japan (e.g., Johnson 2002). More recently, globalization has arguably changed the nature of comparative research. In the case of Asia, criminologists trained in graduate programs in the USA or the United Kingdom often draw on universal theories and models from Western countries. But these criminologists increasingly acknowledge the importance of cultural differences (Cao 2004; Messner 2015). One could even argue that a global criminology is developing that is sensitive to local cultural and institutional differences (Beirne and Nelken 1997; Karstedt 2009; Liu 2009).

As one might expect, much of this literature is quite general, and normally not grounded in how criminologists or practitioners in any part of the world understand their own activities. There are very few references to Asian countries, with the exception of Japan, which is often used to illustrate that some Asian countries have lower rates of crime than in the West. Comparison, especially cross-cultural comparison, raises some difficult practical methodological issues. How easy is it for a

J. Liu (✉)

Department of Sociology, University of Macau, Taipa, Macau, China
e-mail: Jliu@umac.mo

M. Travers

School of Social Sciences, PB22, University of Tasmania, Hobart, TAS, 7001, Australia
e-mail: max.travers@utas.edu.au

L.Y.C. Chang

School of Social Sciences, Monash University, Clayton, VIC 3800, Australia
e-mail: lennon.chang@monash.edu

Western researcher to understand what is taking place in criminal justice in, say, the People's Republic of China (PRC) without learning Mandarin and spending a lot of time in that country? How should we understand the purpose of comparative research? What methods should we use? How should we obtain and understand comparative findings?

Our aim in this collection is to address these issues from an Asian perspective, drawing on criminologists associated with the Asian Criminological Society. This society was formed in 2006 to link criminologists working in the region, and has held annual conferences in the People's Republic of China (PRC), Hong Kong, Japan, Taiwan, Korea and India (Liu 2009). Although it would be fair to say the centre of gravity is East Asia, given the more developed university systems in countries such as the PRC and Japan, members come from different countries across Asia. The Asian Criminological Society also provides a home for researchers from Western countries who have conducted or wish to conduct research in Asia, including theorists who are interested in globalization and comparative sociology.

The reason why this project is possible is because this regional association conducts its academic discussions of criminology in English. It also publishes the *Asian Journal of Criminology*. The information available in English to Western researchers or to Asian comparativists necessarily conveys only a limited insight when compared to the much larger number of papers published in local languages in professional and academic journals.¹ English as a common language could be viewed as an imperialistic imposition by dominant powers. But it also makes possible international scientific exchanges.

In addition to publishing the *Asian Journal of Criminology*, the society has published a handbook that gives an overview of the criminal justice systems in different countries, and examines regional issues such as people trafficking and cybercrime (Liu et al. 2012). But conducting research in Asia has never been simply an exercise in collecting empirical data. Local academics have looked to the West for theoretical models they can use. And some researchers have questioned the dominance of such models in a globalizing world.

Through focusing on Asia, we will make a distinctive contribution to the wider literature on comparative criminology that is often light on detail about criminal justice in specific countries or regions. However, in doing so, we cannot claim to be providing a comprehensive history or guide to criminal justice in different Asian countries; and we cannot avoid engaging with wider theoretical problems and questions about comparison. In this introduction, we will introduce and problematize the concept of Asia as a unitary region, and acknowledge the difficulties in doing justice to the history of criminal justice systems. We will also consider critically the current debates in Western criminology about the direction of the subject in a globalizing world. Although there are many ways of presenting research about crime and criminal justice in Asia, we have chosen to organize this volume around the topic of comparative criminology: the comparisons made by Western and Asian criminolo-

¹The same problem arises when conducting comparative research in Europe.

gists when they consider institutional and cultural differences; the theoretical approaches and methodologies used in comparison; and the comparisons Asian criminologists make between Asian countries.²

Crime and Criminal Justice in Asia

Asia is a massive part of the globe geographically, spanning from the Middle East to Indonesia. It is often presented in international handbooks, used by organizations such as the United Nations, as comprising four regions. These are: South Asia (India, Bangladesh, Pakistan); North Asia (Siberia, Eastern Russia); West Asia (the Middle East); East Asia (Japan, PRC, Taiwan, Korea, Vietnam, Cambodia, Thailand). South-east Asia is a further region, indicating the limitations of geographical descriptions (Malaysia, Singapore, Indonesia). This summary only lists the largest or best-known countries in each region.

Countries vary considerably in their paths to economic development. Japan underwent industrialization and urbanization in the early twentieth century, whereas the PRC has only developed a manufacturing export economy in the last 30 years. India has also made great economic advances, and will be a superpower like the PRC in the twenty-first century. The four 'Asian tigers', Hong Kong (now a special economic zone in the PRC), South Korea, Taiwan and Singapore experienced a rapid transition to high technology, advanced industrial economies during the 1990s. These economically successful economies can be contrasted to those that have still developing or even undeveloped economies. Pakistan, Burma and the Philippines are very different societies, but have a much lower gross national product per capita than Japan or South Korea.

There are also substantial differences in political organization across Asia. There are long-standing democracies, established through occupation by Western powers, in Japan and the Philippines, and in India through an independence movement against colonial rule whose leaders and intellectuals, such as Mahatma Gandhi and Rabindranath Tagore, were influenced by Western ideas (Parekh 2001). Elsewhere, democracy has often struggled. In countries like Pakistan, South Korea, Taiwan, Thailand, Singapore and Indonesia, there has been a gradual spread and strengthening of democracy, but also a sliding back into military or authoritarian rule. Myanmar is an example of a country that has only recently established a democracy, after the detention of the British-educated leader of a democratic movement for many years. The largest and most powerful country in Asia, the PRC, is a one-party state that has been ruthless in crushing internal opposition.

²There are alternative ways of pursuing a research agenda on globalization through the study of transnational crimes such as drug and sex trafficking. Critical researchers have also attempted to broaden the definition of crime to include responses to migration and crimes committed by states and corporations. For discussion on the relationship between globalization and comparative criminal justice, see Nelken (2011) and Pakes (2013).

There are also inevitably many differences at what some sociologists call the ‘meso’ and ‘micro’ levels of society between institutions and institutional practices. The criminal justice system is a complex institution that, as the German sociologist Niklas Luhmann might have put it, develops through internal debates and processes, as much as through its interactions with other social institutions (Luhmann and Gilgen 2012). It is important to admit from the start in this collection that these processes in Asian countries have not been studied in much detail by either Asian or Western researchers. Almost nothing has been published in English about the history of the police, or the criminal law, or prisons in any of these countries, with the exception of Hong Kong in which there have been some good local studies (e.g. Jones and Vagg 2006).³ One process one might expect to find, in industrializing countries, is a growth of state institutions as communities and families become weaker. Families in the PRC are split as children move to the cities. Or, to put this differently, one might expect that individualism will result in a rising crime rate. Emile Durkheim (2014/1893) wrote about these processes in nineteenth-century Europe. No Asian sociologist has so far written in a similar way about the effects of industrialization and urbanization. Moreover, it would be difficult to obtain the statistics about changing patterns of crime that could answer this criminological question (although see Liu et al. 2001). All one can say is that the crime rate is increasing, but often varies between Asian countries, just as in Europe and other regions of our globalized world (Bennett 2004).

Finally, there are differences in cultural values and practices. One would expect that traditional values would have some influence on legal institutions, even after a deliberate attempt to modernize through introduction of rational codes and procedures. Cultural values will also influence perceptions and understandings of crime. One interesting aspect of conferences of the Asian Criminological Society held in China to criminologists visiting from Western countries is that there are sometimes speakers from Confucian institutions who talk about crime in moral terms. This might be equivalent, perhaps, to a Christian minister giving a talk at a criminology conference in a Western country. This would not happen because the church has lost its intellectual influence over how we understand crime in Western countries after 200 years of industrialization. Confucianism is only one voice, or what Western sociologists might call a discourse, within the PRC. There are other cultural or religious beliefs that influence how elites in Asia understand crime, including different varieties of Islam in Pakistan and Indonesia that exist alongside secular or modernizing views.

When comparisons are made between Asian countries and the West, differences in economic and political history, or between particular institutional and cultural differences, tend to be elided or overlooked. Moreover, few have considered institutional differences between criminal justice systems in different Asian countries.

³It seems likely that there are larger literatures in local languages. However, criminology is not taught at universities in most Asian countries, so one cannot assume that there are always academic studies.

When a comparative study is published, such as Johnson and Zimring (2009) on political debates about the death penalty across Asia, it is possible to see that a great deal is happening inside different legislative assemblies and agencies, even though we learn relatively little about each country. The contributions to this collection by Asian and Western criminologists can also be criticised for only giving a taste of different issues that arise in some Asian countries. However, this collection goes further than many discussions in the field of comparative criminology in examining how Asian, and also Western, criminologists engage in making comparisons.

This approach is helpful in recognizing diversity, and also combatting stereotypes such as the assumption that these must be exotic societies very different to the West. In fact, there are many similarities between, say, the professional work of prosecutors or prison officers internationally, as well as institutional and cultural differences. This is partly because the development of criminal justice systems in regions such as Asia has been shaped by periods of colonial occupation or contact with Western countries. There are also debates within developing countries on the extent to which the West should be a model, so this adds another layer of complexity to comparative research.

Developments in Western Criminology

Those looking from Asia at Western countries, particularly the USA and the United Kingdom, are often impressed by the diversity and richness of criminological research, as well as the resources available to criminal justice institutions. The discipline of criminology developed during the Enlightenment period as a science concerned with identifying the causes of crime, and establishing a rational legal system based on proportionality in punishment for individuals who are viewed as responsible for their actions. Occupations such as law, social work and policing were established and professionalized during the nineteenth century. Since the 1960s, mass higher education has resulted in the growth and institutionalization of criminology as an academic discipline. This does not simply teach practical techniques or serve the criminal justice system instrumentally. It is also a site for scientific discussion, and philosophical debate, about the nature of crime (see e.g. Cullen et al. 2011).

One continuing debate in Western criminology that reflects assumptions of the major parties that contest elections is whether individual deviance or unequal social structures should be held responsible for offending. All modern criminologists have, broadly speaking, a sociological view of crime in that individual actions are understood as shaped or determined by social groups, as opposed to individual wickedness or biological defects. The consensus tradition, represented in different ways by Durkheim, Merton and control and strain theorists today, sees offending as arising from dysfunctions in society that can be corrected by reform measures such as strengthening socialization and law enforcement. The conflict tradition, advanced by Marx and different traditions in critical criminology and also by labelling theo-

rists, argues that crime arises as a reaction of subordinate groups to structural disadvantage and economic exploitation. These criminologists would argue that mainstream criminology, in accepting the state view of crime and giving uncritical support to agencies such as the police and prisons, is not addressing the underlying causes of crime.

The ideological nature of these debates continues to inform criminology as a discipline in a politically pluralist, democratic society. However, one might also argue that the various theories have been undercut by recent economic and political changes associated with neoliberalism. To summarize this briefly, criminology grew and diversified in Western societies during the second half of the twentieth century due to the growth of the welfare state that has also funded the expansion of universities. There are large bodies of specialist literature about policing, criminal law and corrections and on different types of offenders and victims. There has also been considerable interest in marginal or minority groups, as part of a commitment to liberalism, human rights and democracy. There are, for example, sub-literatures on gender, and race and ethnicity, in relation to crime and criminal justice.

Since the 1980s, there has been a recognition by governments, at least at an ideological level, that it is necessary to reduce spending on the welfare state, partly in order to remain economically competitive after removing barriers to international trade. In the United Kingdom, there have been sustained efforts by governments to remove welfare benefits, where this is politically possible, or at least to make the welfare state more efficient. There has been the introduction of market competition in many areas of the public services, including the criminal justice system. There is also a greater emphasis on useful, empiricist research that assists governments in targeting and evaluating programs.

This makes the kind of theoretically informed research conducted by centre-left or centre-right criminologists seem increasingly irrelevant to government. Even before the global financial crisis, criminology was already in a weak position as an applied discipline seeking funding from governments because the various theories have never resulted in practical research or initiatives that have reduced the rates of crime. Today, many complain about the fragmentation of the discipline (Bosworth and Hoyle 2012). Different theoretically informed agendas exist, and there is business as usual in assisting agencies. But criminology no longer promises a scientific or political solution to the crime problem in Western countries, and has perhaps lost its cutting edge.

This may, however, be too pessimistic a view of Western criminology, in that there is considerable potential for renewed expansion and theoretical development, especially since we live in a globalizing world. This is partly because students from all over the world come to the USA and the United Kingdom to learn criminology, and bring back Western theories and approaches to their own countries. More positively, for most countries globalization means economic and political modernization. There is a real sense in which most countries in the world are becoming modern, industrialized societies with welfare states and democratic systems of government. (The PRC is an important exception.) This opens a way for criminology to offer itself as a non-ideological tool to enable countries with different institutions

and values to combat crime using scientific methods. Lawrence Sherman (2005), for example, offers an optimistic vision that we can reduce crime through adopting similar measures, developed and tested through social experiments, in different countries.

There has also been an interesting development on the left of criminology in advancing what has become known as Southern Criminology (Cunneen 2011; Carrington et al. 2015). The global South includes ex-colonies of Western powers, or those who have been exploited economically (confusingly, it includes some countries in the northern hemisphere). This could be viewed, perhaps cynically, as an attempt by leftists to revive the critical project overseas at a time when there appear to be few prospects for structural changes, and a reduction of inequality, in Western societies. However, it can also be seen as response to globalization.

A central objective is to extend the concept of crime so that it includes the acts of violence committed against those living in the global South during colonization by Northern countries. Instead of focusing on state law, critical criminologists should listen to the voices of marginalized and oppressed groups. They should also take seriously how local cultures, including those of Indigenous peoples (those who have lost most from colonization), understand and respond to crime. These oppressed or economically exploited groups are often presented as morally superior to those in the North. It is also suggested, even more controversially, that the cultures and intellectual resources in non-Western societies (to revert to the old terminology) offer a means of combating positivism and science. Many in the critical tradition see the modern state as problematic because it cannot be separated from industrialization, now seen as a primary cause of climate change. Yet, ironically, those building criminal justice institutions in Asian countries often look to Western models.

A Comparative Approach

How to get some purchase on the complex developments in Asian countries and Western criminology reviewed in this introduction? We will not be offering a thorough account of crime and criminal justice in different Asian countries. There is, arguably, a need for a systematic country-by-country account that goes further than presenting statistics and outlines of institutions and processes, to complement the *Handbook of Asian Criminology* (Liu et al. 2012).⁴ Nor will we be offering a review of regional issues, as one finds in some excellent collections on globalization. Instead, this collection will mainly be concerned with comparison, but in a way that goes further than some handbooks and studies in acknowledging and problematizing different theories and methodologies, and in using Asian examples.

⁴Another idea would be a thematic book about stages of the criminal justice process across Asia. Thanks to Susyan Jou for this suggestion.

Comparative law was taught in universities in Western countries long before criminology and sociology were established as disciplines (Clark 2012). It obtained a poor reputation as a field of inquiry: drawing eclectically on legal texts from around the world, and also from the observations of legal anthropologists, it could appear mainly to involve collecting interesting and unusual facts without any theories or methods of analysis. Nevertheless, it should be remembered that this kind of analysis can take one a long way if it is not possible to conduct lengthy fieldwork or the systematic analysis of a corpus of texts.

Today, the comparative method is taken most seriously in sociology, a discipline that has always engaged in critical reflection on methodological issues. There are at least four theoretical viewpoints, each understanding comparison differently (see Chap. 13). Researchers in the Durkheimian tradition are committed to developing and testing universal theories employing quantitative methods. Interpretivists, who include sociologists and anthropologists, employ qualitative methods in addressing meaning. Critical sociologists advance a political viewpoint through identifying realist mechanisms that explain variation and processes. Poststructuralists seek to question science and representation.⁵ Criminologists have drawn on each of these theories in conducting comparative research.

The challenge in this field is often to move from general discussions about comparison and to make some insightful comparative observations about the differences and similarities between social institutions and practices in different countries. It is also practically difficult, given the comparativist is based in one country, and often can only make comparisons on the basis of second-hand knowledge. David Nelken, a British researcher who lives in Italy and has compared criminal justice in that country with the United Kingdom, offers a frank admission of the difficulties:

Classifications can be controversial, descriptions deceptive, explanations erroneous, interpretations interminable, translations twisted and evaluations ethnocentric... collecting data on legal rules, procedures and distinctive institutions... is certainly a valuable first step, and one that is demanding and time-consuming, not least because of linguistic and conceptual difficulties... [But] if we were to set out only to provide descriptions our task would never finish (Nelken 2010, pp.397–8).

How can criminologists make insightful observations that involve more than description? And how can we make comparative observations without being able to spend large amounts of time in different countries? The solution in this volume has been to bring together a group of criminologists who are already engaged in comparison, despite the many conceptual and practical difficulties. Unusually in such collections, some contributors are from Asian countries, and others are from Western countries. They are all engaged, in different ways, in making comparisons. We hope that, through engaging critically with the different views and approaches, the reader will learn something about crime and criminal justice in Asia, and also about comparison in criminology.

⁵One way to understand Southern Criminology is that it combines elements of the critical tradition and poststructuralism in challenging the cultural dominance of Western criminology.

The Structure of this Collection

This book has four parts, each of which starts with an introduction in which we comment on some issue relating to comparison and introduce the papers. Part I is the broadest section and contains four statements that raise the issue as to why people engage in comparison, but also raise questions on how to do comparison, and the nature of different theoretical traditions. Chapter 2 by Jianhong Liu offers an overview of how criminology has developed in Asia and what he describes as the “new Asian paradigm” or “relational approach”. Liu recognizes that Asian countries, taken as a whole, are culturally distinctive, and this has implications for criminology as a scientific discipline and for criminal justice policies. Chapter 3 by Max Travers employs an interpretive approach in looking at how some Asian intellectuals have understood the crime problem. This, to some extent, complements Liu’s argument in recognizing that there is a distinctive Asian culture despite the many differences in the region. Travers also suggests that Asian countries may be changing in conditions of globalization and urbanization. There are fears of a dilution or breakdown of Asian values by traditionalists.

In Chapter 4, Mike McConville offers a comparative perspective on criminal justice in China. He conducted critical socio-legal research in the United Kingdom before moving to a law school in Hong Kong: making possible critical reflections about similarities and differences. Then to add to this mix of viewpoints, there is a short statement in Chapter 5 by Kerry Carrington, a critical criminologist reflecting on the international research agenda known as Southern Criminology, and how this is relevant to Asia.

In Part II, we look at a theoretical statement by Steven F. Messner (Chap. 6) and a review by Seong-jin Yeon and Steven F. Messner (Chap. 7) of research in the quantitative tradition conducted in South Korea. We are hoping that this collection will be helpful, especially to postgraduate students, in allowing a critical appreciation of methodological issues in different traditions. Part III offers an introduction to interpretive work through presenting and discussing research by two British researchers: Julia Wardhaugh, an anthropologist who spent time in rural India (Chap. 8); and Monica Barry, a criminologist who conducted interview studies about youth offending in Scotland and Japan (Chap. 9).

Part IV presents comparative studies by Asian researchers about the differences in crime or criminal justice systems between different Asian countries. In Chapter 10, Lennon Y.C. Chang provides a comparative analysis of cybercrime as a cross-Asia issue. Chapter 11 by Arinori Kawamura offers a cross-cultural view of restorative justice. Chapter 12 by Daniel Pascoe compares practices relating to the death penalty in Singapore and Thailand.

Since this is a new field of inquiry, we have concluded the book with some reflections on comparison (Chap. 13). This chapter reviews the practical difficulties and political challenges, and summarizes a study by Setsuo Miyazawa on the reception of research by Asian criminologists in Western journals. It also invites participation by criminologists in conducting research on crime and criminal justice in Asian

countries. There is always potential for misunderstandings or for ideas to get lost in translation in these discussions. Despite these difficulties, we hope this collection demonstrates the value of asking comparative questions, even if there are different theoretical agendas, and many practical challenges.

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