Emphasizes difference between law on the books and law in action
  - **Lob**—what the rules say about what is supposed to happen
  - **Lia**—how the law is or is not used in practice
  - If you compare only law on the books you will only see superficial likenesses and differences—the written law itself doesn’t tell the whole story → Lia is an important qualifying factor
    - Rules and safeguards can operate in ways that are the opposite of what are said to be their justifications

Focus on 3 Italian anomalies in criminal justice system
  - The seeming leniency of juvenile justice
    - Most juvenile offenders are not prosecuted or convicted
    - Instead of going to trial juveniles can go through a pretrial education or service commitment
    - Notion of irrelevance—prosecutorial discretion to decide whether a case is irrelevant or not
    - Juveniles are not really getting off they have to finish demanding reintegration programs (education and service)
    - On the books looks more lenient but in practice it is very demands
  - **Obligatory prosecution**
    - Prosecutors have to talk all cases that have evidence
    - Purpose: take out personalistic quality of prosecution
    - Unintended consequence: greater focus on less serious cases that have shorter time limits, inundates courts with minor cases
  - Delays in Italian courts
    - External legal culture does not really find this problematic—culture is one of taking the time to get it done right
    - Efficiency isn’t the highest goal—less emphasis on procedure and more on truth

- Chap 1
  - Any cross cultural comparison emerges from a given cultural context and has to be able to make sense to the audience for whom it is intended
  - Factors that complicate comparative studies:
    - There are considerable political, social, and cultural differences within countries so figuring out what units to compare between cultures can be difficult
- Nelken advocates for states
  - Ethnocentrism—confusing the familiar with the necessary
    - The belief that links we see and the things we do generally apply are universally shared or would in fact be right for everyone else
  - Relativism
    - The claim that we can never truly grasp what others are doing and that there can be no transcultural basis for evaluating whether what they or we do is right
  - Why comparative analysis?
    - Helps us learn from other systems how to improve our own
    - Trying to understand one culture in the light of another allows us to move closer to a holistic picture of how crime and punishment are connected
    - Helps clarify why reforms that are limited to those that emerge from within the same society often tend to reproduce the problems they were meant to solve precisely b/c they came from the same culture
    - Help us escape from self-sealing cultural logics and self-soothing ethnocentricity
    - Helps us transcend relativism—look for "best" practices and adapt them objectively or use them to do an internal critique
- Because criminal justice practices are sites for contesting values, we need to make sense of their normative commitments even when that provides contestable interpretations of their behavior, in order to understand what criminal justice professionals are trying to do
  - The best practice for us to learn from may not always be the best practice as such, but rather that which stretches our imagination about what is possible
  - Need to strike a balance between local and universal, ethnocentric and relative
  - Basically we need to be more cautious and internally critical when undertaking comp analysis because there are many different pitfalls
- Chapter 2
  - Emphasizes the importance of in-depth analysis—thick description
  - Unless we can somehow graph on the ways our cultural assumptions shape our comparative projects we are unlikely to make progress in understanding another society
  - The larger the number of societies being compared the more difficult it will be to formulate variables that are salient cross-
culturally. At the same time too few a number of places compared the more likely you are to be misled by missing the larger picture

- Avoid assuming similarities—local knowledge is important
- Differences can be exaggerated
- Comp work is about discovering similarities as well as unexpected differences
  - Important clue—significant absences
- To compare levels of punitiveness it is not enough to compare merely prison rates—go beyond quantitative measurements
- Disagrees with Black—no reason to believe wider social control is inversely correlated to government social control
  - Ex. China—repressive system and high prison rates
- Relativization motif—we go to study other cultures and understand them on their own terms
  - Aim is objectivity—this is an analytical approach or a means of research

- Chapter 3
  - Interpretative vs. explanative models
    - In interpretive approaches intentional social action is what produces social outcomes
      - Put more emphasis on agency and speak of reasons and motives
    - Explanatory approaches speak of functions and causes to justify outcomes
      - What culture means in problematic
    - Interpretative enquires are preferred option where the aim is to show congruence between meanings and values in criminal justice and the larger culture (weber)
    - The ideal is to use some combination of the two
      - Understanding must come before as well as after explanation
      - Interpretative approach is essential for generating hypothesis and insights, and explanatory approach is the only way to test their applicability to a wider range of cases
    - Ex. independence of judges comparatively
  - Emphasizes that decisions have implications for other sometimes unintended—Rothman’s argument
    - Ex. Purpose of mandatory sentencing laws: keep equality and fairness from court to court
      - Unintended consequence: doesn’t allow for mitigating circumstances and erodes discretion of judge
    - Ex. Purpose of chain of evidence laws: maintain the integrity of evidence
Property division would occur after childrens matters were settled.

More than any other country US has accepted the idea of no-fault no responsibility divorces.

- Accidental—European reforms happen nationwide and thus are intensely discussed and are usually preceded by extensive studies of behavior and opinions.

The imaginative portrayal of family life and ethics in divorce law reaches deeply into our culture.

American story: marriage is a relationship that exists primarily for the fulfillment of the individual spouses. If it ceases to perform this function no one is to blame and either spouse may terminate it at will. After divorce each spouse is expected to be self-sufficient.

American divorce law says to parents especially mothers that it is not safe to devote oneself primarily or exclusively to raising children.

Chapter 3—Why the American Difference

- Bellah—expressive individualism

- American focuses on self reliance, individual liberty, and tolerance for diversity—relatedly selfish indifferent, isolationism, and nihilism

- Toqueville individualism rightly understood

- Individualism—more susceptible to manipulation by a despot and soft tyranny when the ability to think on one’s own is lost

- Influences of Hobbes

- Translated new ideology of tolerance into a posture of legal neutrality with respect to controversial issues because it allowed us to accommodate in the law increasing demands for recognition of our unusual heterogeneity

- Differences between civil law and common law systems

  - Civil law system emphasize social context and individual responsibility
    - Civil codes retain vestiges of the classical view of law that emphasizes laws educational power
    - Legislation plays a greater instructive role (Rousseau)
    - Common law systems emphasize individual rights

- The presence of family policy in western nations and the lack of family policy in the US

  - We have policies that affect families but they are implicit and largely unexamined so family life isn’t sufficiently discussed
  
  - The existence of family policy and of constitutional family protection language keeps families, children, and the future of society constantly in the consciousness of the public and government