1. Introduction

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This chapter will provide a general introduction to global and European Union criminal justice governance frameworks, before explaining the aims and objectives of the book and providing a brief summary of each of the chapters in this volume. Section 1.1 focuses on the multi-level governance and institutional fragmentation in the global criminal justice landscape. Section 1.2 discusses public participation in criminal proceedings, one of the cornerstones of participatory governance in criminal justice systems. Section 1.3 provides an overview of the governance of criminal justice systems in the European Union from institutional and constitutional law perspectives. Section 1.4, the last section of this chapter, provides a gateway to the book and each of its chapters.

1.1 GLOBAL CRIMINAL JUSTICE: MULTI-LEVEL GOVERNANCE AND INSTITUTIONAL FRAGMENTATION

The individual failure of nation states to combat crime (in particular transnational crime) has led to the adoption of international, regional and bilateral legal frameworks for police and judicial cooperation in criminal matters between states (for example, international and regional agreements on extradition and mutual assistance on criminal matters¹). It is widely recognized that transnational criminal activities weaken the ability of states to maintain security within their own boundaries. Yet whilst there are fairly well-established legal frameworks for interstate criminal-law cooperation, there are ongoing debates over how to improve the governance of criminal justice and security institutions, in particular to improve transparency in decision-making,

¹ See e.g., the 1957 European Convention on Extradition, ETS 24, 359 UNTS 273; 1959 European Convention on Mutual Assistance in Criminal Matters, ETS 30; 1972 European Convention on the Transfer of Proceedings in Criminal Matters, ETS 73, 72 UNTS 185.

accountability in relation to the implementation of policies adopted and public participation in criminal proceedings.

‘Global governance’ refers to the various forms of regulation of interdependent states as well as the relationship between state and non-state actors in the international system in the absence of a formal overarching global political authority.² Whereas a government is defined by the institutional embodiment of a ruling body ordinarily within a territorially bounded state, global governance came to refer to a broader range of strategies for exercising governmental power and control, often outside the framework of a state.³ In this context, the terms ‘global governance through crime’⁴ and ‘global crime-governance’ have been used to describe a form of global social organization that is conceptually and institutionally structured around crime control.⁵ It is thus suggested that global crime-governance directs the conduct of state and non-state actors within and between states, mobilizing political action and framing an array of social concerns in terms of crime, prosecution, and punishment.⁶

The emergence of global multi-level governance in the field of transnational crime poses significant challenges for justice and the rule of law.⁷ It has been suggested that the system of governance established in particular by informal networks and global administrative law raises major questions concerning

² See Allegra M. McLeod, ‘Exporting U.S. Criminal Justice’ (2010) 29 *Yale L. & Pol’y Rev.* 83–164.

³ See also, Anne-Marie Slaughter, *A New World Order* (2004); Robert Latham, ‘Politics in a Floating World: Toward a Critique of Global Governance’, in Martin Hewson and Timothy J. Sinclair (eds) *Approaches to Global Governance Theory* (1999), 23, 25; James N. Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (1997). See also, Ursula Schroeder, *The Organization of European Security Governance: Internal and External Security in Transition* (Routledge, 2011).

⁴ See generally, Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (2007).

⁵ McLeod, note 2.

⁶ Ibid.

⁷ See Valsamis Mitsilegas, ‘The Global Governance of Transnational Crime: Implications for Justice and the Rule of Law’, in Mikkel Jarle Christensen and Ron Levi (eds) *International Practices of Criminal Justice: Social and Legal Perspectives* (Routledge, 2017). See also, V. Mitsilegas, ‘The European Union and the Global Governance of Crime’ in V. Mitsilegas, P. Alldridge and L. Cheliotis (eds) *Globalisation, Criminal Law and Criminal Justice: Theoretical, Comparative and Transnational Perspectives* (Oxford: Hart, 2015). See generally, S. Cassese, *Research Handbook on Global Administrative Law* (Edward Elgar, 2015) and B. Kingsbury, N. Krisch and R.B. Stewart, ‘The Emergence of Global Administrative Law’ (2004–05) 68 *Law and Contemporary Problems* 15.

democratic representation, transparency, accountability and participation in the process of global norm-making in transnational criminal law.⁸

The notion of multi-level governance of criminal justice systems in the European Union has been linked to the emergence of theories of multi-level governance in the EU in the early 1990s. In 1992 Gary Marks used the term multi-level governance to capture developments in EU cohesion policy.⁹ Subsequently, Marks and others drew on the multi-level governance approach for application to EU decision-making more broadly.¹⁰ Multi-level governance theorists claimed that competences of national authorities had ‘slipped away from central states both up to the supranational level and down to the subnational level’.¹¹ Yet some scholars are critical of the suggestion that multi-level governance – first developed to explain how the EU was directly implicated in the emergence of regional politics through the distribution of structural funds and cohesion policies¹² – was suitable to explain developments concerning the governance of criminal justice systems.¹³ Indeed, it has been suggested that in the field of criminal justice there seems to be no such connection between the supra and sub-national levels of governance.¹⁴

It should be noted that the localization of criminal justice governance is implemented as a crime prevention strategy in a number of countries. For example, the localization of crime governance happened in the United Kingdom with the increased role of local authorities in criminal justice governance.¹⁵ In the 1980s there was reluctance by the Conservative Party

⁸ Ibid.

⁹ G. Marks, ‘Structural Policy in the European Community’ in A. Sbragia (ed) *Euro-Politics: Institutions and Policymaking in the ‘New’ European Community* (Washington, D.C.: Brookings Institution 1992) 191–224. See further, Ian Bache, ‘Multi-Level Governance in the European Union’ in David Levi-Faur (ed) *The Oxford Handbook of Governance* (Oxford, 2012).

¹⁰ G. Marks, L. Hooghe and K. Blank, ‘European Integration from the 1980s: State-centric v. Multi-level Governance’ (1996) 34 *Journal of Common Market Studies* 341–78; See further Ian Bache, ‘Multi-Level Governance in the European Union’ in Levi-Faur, *ibid.*

¹¹ Ibid., at 167.

¹² I. Bache and M. Flinders (eds) *Multi-level Governance* (Oxford: Oxford University Press, 2004).

¹³ Barry Vaughan and Shane Kilcommins, ‘The Governance of Crime and the Negotiation of Justice’ (2010) 10(1) *Criminology & Criminal* 59–75.

¹⁴ Ibid.

¹⁵ Mark Button and Barry Loveday, ‘Direct Elections and the Local Governance of Crime in the United Kingdom: A View from the Ground’ (2010) 12(3) *Crime Prevention and Community Safety* 156–75. However, they note that the proposal for direct elections to Crime and Disorder Reduction Partnerships (CDRP) was ultimately rejected as there was a fear among many respondents that the introduction of direct

government to engage with largely Labour Party-run local councils in the direct provision of crime prevention, and the government side-stepped local authorities through initiatives such as Safer Cities.¹⁶ Yet in 1991 the Morgan Report was published recommending that local authorities should have joint responsibility with the police for community safety.¹⁷ This has led to the adoption of the Crime and Disorder Act 1998 – and subsequently the Police Reform and Social Responsibility Act 2011 – which established a completely new framework for the governance of crime, central to which was the creation of local statutory partnerships known as Crime and Disorder Reduction Partnerships (CDRPs) in England and Community Safety Partnerships (CSPs) in Wales, and from 2010 known as Community Safety Partnerships (CSPs) in both England and Wales.¹⁸ The CSPs brought the police and local authorities together with other relevant state agencies, non-government organizations and community groups to develop a crime and disorder strategy at a local level under a unitary local authority.¹⁹

There is a notable interplay between the work of supranational, national and local authorities in the context of certain crimes. For example, Chloé Brière in Chapter 6 of this volume discusses multi-level governance as underlying the development of anti-human trafficking initiatives. She notes that as part of the development of a new ‘administrative approach to crime prevention’, administrative actors, especially those active at a local level, are encouraged to contribute within their scope of competences to crime prevention. Therefore, public administrations, and more particularly local authorities, were given more responsibilities in order to help fight transnational human trafficking. The successes of those national and sub-national practices tend to influence developments in the European Union. As discussed by Brière, the EU has

elections to CDRPs would inevitably lead to greater partisan politics intruding into their proceedings.

¹⁶ Ibid. See also B. Loveday, ‘Government Strategies for Community Crime Prevention Programmes in England and Wales: A Study in Failure’ (1994) 22(4) *International Journal of the Sociology of Law* 181–202.

¹⁷ See Home Office (1991) ‘Safer Communities – The Local Delivery of Crime Prevention through the Partnership Approach’. London: Home Office. Department of Communities and Local Government.

¹⁸ Ibid.

¹⁹ Following the 2010 election, the coalition government reviewed CSPs and found that they were effective in reducing crime and giving priority to the interests of local communities. The Police Reform and Social Responsibility Act 2011 gave a clear legal basis to the relationship between CSPs and incoming Police and Crime Commissioners. See ‘Community Safety Partnerships: Briefing from the LGA for Prospective Police and Crime Commissioners’, available at <https://www.local.gov.uk/sites/default/files/documents/community-safety-partners-dcf.pdf> (accessed on 25 May 2020).

been particularly active in supporting the development of the administrative approach to crime prevention supported by local actors, and especially the Council of the EU has mentioned it several times in its conclusions.²⁰

Institutional Governance and Fragmentation of Criminal Justice Policies

The multi-level governance of criminal justice systems is underpinned by the emergence of transnational criminal justice and security institutions and treaties. Although traditionally criminal justice governance has been a key prerogative of the sovereign state, the drive to respond to transnational crime effectively has led to the development of proactive strategic responses by international institutions, such as the United Nations (UN)²¹ and the Council of Europe,²² which complement and help to coordinate national and subnational responses to crimes and other common security threats. The different levels of governance of crime in the EU (international, national and local) as initially established under an inter-governmental framework for interstate cooperation in criminal matters following the adoption of the Maastricht Treaty (1993) to eventually being consolidated under a supranational governance framework following the ratification of the Lisbon Treaty in 2009.

Valsamis Mitsilegas has criticized the governance of global security organizations noting that notwithstanding attempts to improve procedures at the Financial Action Task Force (FATF) and UN Security Council, a plethora of global enforcement standards are being depoliticized and produced behind closed doors by experts from a select group of states – and are then presented as an orthodoxy for the whole world to adopt.²³ He further argues that ‘[f]undamental rule of law requirements and the impact of these measures and transnational criminal law on individual rights makes this form of governance increasingly untenable’.²⁴ Some of the challenges to the rule of law posed by

²⁰ See further, Council of the EU, *Council Conclusions on the new EU Strategy towards the Eradication of THB 2012–2016*, 3195th Council meeting, Luxembourg, 25 Oct. 2012, p. 4. See also Council of the EU, *Council Conclusions on the Administrative Approach to Prevent and Fight Serious and Organised Crime*, 3473rd JHA Council meeting, Luxembourg, 9 and 10 June 2016, p. 14.

²¹ See in particular the work of UN Office on Drugs and Crime (UNDOC) and the UN Convention against Transnational Organized Crime (adopted on 15 November 2000, in force 29 September 2003).

²² See e.g., the 1957 European Convention on Extradition, ETS 24, 359 UNTS 273; 1959 European Convention on Mutual Assistance in Criminal Matters, ETS 30; 1972 European Convention on the Transfer of Proceedings in Criminal Matters, ETS 73, 72 UNTS 185.

²³ Mitsilegas, ‘The Global Governance of Transnational Crime’, note 7.

²⁴ Ibid.

the production of norms by international institutions have been addressed by the European Court of Justice (ECJ) in the *Kadi* litigation. In *Kadi I*, the ECJ stressed the requirement for the EU to comply with fundamental rights in the implementation of the Security Council Resolutions and found that the EU institutions could not automatically and uncritically implement Security Council Resolutions as that would run contrary to the right to judicial protection as enshrined in the EU legal order, hence upholding the principle of autonomy of the EU constitutional order.²⁵ Therefore ensuring democratic legitimacy and accountability over the implementation of criminal justice policies adopted by transnational criminal justice institutions remain significant challenges, in particular when they impact on fundamental rights. In response to those challenges, there have been some positive developments aimed at streamlining participatory governance in international institutions. Frank Fischer notes that in the past few decades participatory governance has been introduced into practices of a significant spectrum of political organizations, both national and international.²⁶ Generally advanced as a response to ‘democratic deficit’ criticisms levelled at contemporary political institutions, mechanisms and processes aimed at enhancing participatory governance have been implemented by major organizations such as the World Bank, the US Agency for International Development, UN Habitat and the European Union (EU).²⁷

1.2 PARTICIPATORY GOVERNANCE IN CRIMINAL PROCEEDINGS

Even though there are concerns over democratic representation in transnational criminal justice and security institutions, public participation in criminal proceedings is regarded as a crucial element of procedural fairness and the right to a fair trial. In fact, public participation in the proceedings could be considered to be not only an element of procedural fairness, but also an aspect of the effectiveness of the proceedings.²⁸ Criminal proceedings have an additional guarantee which is the possibility of public participation in court proceedings,²⁹ which is a fair trial requirement under Article 6 of the European

²⁵ Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission*, [2008] ECR I-6351.

²⁶ Frank Fischer, ‘Participatory Governance: From Theory To Practice’, in Levi-Faur, note 9.

²⁷ Ibid.

²⁸ D.J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures* (Clarendon Press Oxford, 1996) at 123.

²⁹ See Milieu and Huglo Lepage ‘Summary Report: Study on Measures other than Criminal Ones in Cases where Environmental Community Law has not been Respected

Convention on Human Rights (ECHR). Closed proceedings lack the necessary transparency required in criminal prosecutions. In the case of corporations, who are particularly sensitive to naming and shaming, closed criminal proceedings would diminish their incentive for compliance. Indeed, the stigma of the offender, one crucial element in the deterrence theory, is absent when the public is not able to participate in the proceedings or when judicial decisions are not given the necessary publicity.³⁰

In some jurisdictions, for example England and Wales, individuals may start a criminal prosecution.³¹ This does not apply only to specific crimes but is a general feature of the criminal procedure of those countries.³² In contrast, in Denmark, Germany, Italy and the Netherlands the public prosecutor is in principle the only competent authority to bring a criminal prosecution. Despite recognizing in principle the right to private prosecution, some countries only allow the *victim* of a crime to bring a prosecution. This approach has the significant disadvantage of preventing NGOs from starting a criminal prosecution for the protection of collective interests, such as health and safety standards or environmental values. Yet it should be noted that in some countries, including the UK, NGOs such as the Royal Society for Prevention of Cruelty to Animals (RSPCA) may start prosecutions. In this connection, public participation in criminal proceedings was endorsed by Resolution 24 of the XVth international congress of penal law (Rio de Janeiro, 4–10 September 1994) in the context of environmental crime (see also, Chapter 9 by Ricardo Pereira in this volume). This resolution calls on states: '[w]ithin the framework of the constitution and the basic law of the national legal systems, [to adopt] legislation [which] should *facilitate the participation of citizens in the initiation of investigation and prosecution of alleged crimes against the environment*' (emphasis added).³³

The goal of securing effective participation of victims of crimes in criminal proceedings is a significant aspect of modern criminal justice governance.

in the EU Member States', 20 September 2004 (B4-3040A/2003/369724/MAR/A.3) at 58.

³⁰ R. Pereira, *Environmental Criminal Liability and Enforcement in European and International Law* (Brill, 2015).

³¹ Michael Faure and Gunter Heine, *Criminal Enforcement of Environmental Law in the European Union* (Kluwer Law International, 2005).

³² *Ibid.*, at 45.

³³ Resolution 24 of the XVth international congress of penal law (Rio de Janeiro, 4–10 September 1994). See also Principle 10 of the Rio Declaration on Environment and Development (1992) and the UNECE Aarhus Convention, to which the Community and the Member States are parties. Concluded on behalf of the EC by Decision 2005/370 OJ 2005 L 124/I (see Directive 2003/4 which replaced Directive 90/313 as from 14 February 2005).

This is recognized in the EU instruments including the Directive 2012/29/EU on victims of crime and directive on procedural safeguards for suspected or accused children (Directive (EU) 2016/800),³⁴ as discussed by Wendy de Bondt and Heleen Lauwereys in Chapter 11 of this volume. According to Wendy de Bondt and Heleen Lauwereys, some of the challenges in securing child participation in criminal proceedings include defining how much weight should be attributed to the child's best interests depending on the specific circumstances of the case, the seriousness of the offence and the sentencing goals.

1.3 MULTI-LEVEL GOVERNANCE OF CRIMINAL JUSTICE IN THE EUROPEAN UNION

Participatory governance in the context of EU criminal justice is also inherently linked to more general questions of governance in EU criminal justice. Core ideas on the role and limits of criminal law find specific expressions in the EU.³⁵ They may nevertheless remain intrinsically linked to diverse national practices.³⁶

Nulla poena sine lege, the basic idea underpinning criminal law that there should be no punishment without prior criminal legislation,³⁷ is arguably linked not only to abstract notions of the right and obligation to know the law,³⁸ but exists also to ensure the possibility of examining and contributing to the legislative process through which the EU criminal justice system is constructed.³⁹ Even this very core principle of criminal law remains, at European level, defined by national and international law, to the exclusion of a *sui generis* European manifestation.⁴⁰ The governance of EU criminal justice remains more generally rooted in national laws and practices. Although the Lisbon Treaty did much to improve democratic accountability in the governance of the EU's criminal justice system, the changes were effected through a combi-

³⁴ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132/1 (hereafter Directive (EU) 2016/800 on procedural safeguards for children).

³⁵ See Chapter 5 in S. Miettinen, *Criminal Law and Policy in the European Union* (Routledge, 2012).

³⁶ See Colson and Field, Chapter 5 in this volume.

³⁷ Charter of Fundamental Rights (CFR), Art 49(1).

³⁸ C-2/19 *A. P. v Riigiprokuratuur*, Opinion of AG Bobek, 6.2.2020, para 95.

³⁹ See e.g., T395/13 *Miettinen v Council* and the contribution of Petri Freundlich in Chapter 10 of this volume.

⁴⁰ Art 49(1) of the EU Charter of Fundamental Rights (CFR) tellingly refers to criminal offences in 'national' and 'international' law.

nation of empowering national actors and increasing the role of the European Parliament and, to a lesser extent, of judicial review at EU level.⁴¹

The power of EU criminal justice measures remains closely connected to, and legitimated by, the nation states that are responsible for implementing EU law and executing Union policies. According to Article 83 TFEU, substantive criminal law measures must be implemented by Member States. Previous attempts to base criminal law powers on other Articles of the TFEU to harmonize EU criminal law and which could potentially enable adoption of directly applicable EU criminal law in the form of Regulations⁴² are, for the time being, opposed by a unanimous Council.⁴³ The political nature of this choice is generally seen as decisive when the legal basis can be subject to judicial review.⁴⁴

Previous attempts to create more centralized executive agencies were also met with reluctance or outright opposition. The principle of subsidiarity and the post-Lisbon *early warning mechanism* might be represented as weak or even ineffectual checks on centralization.⁴⁵ However, subsidiarity has its advocates as a tool for governance and one of the few ‘yellow cards’ issued by national parliaments relates to the proposal for a European Public Prosecutor’s Office.⁴⁶ As discussed by Lingenfelter in Chapter 4, in 2017 a majority of Member States adopted Council Regulation (EU) 2017/1939 establishing the European Public Prosecutor’s Office.⁴⁷ The EPPO process illustrates how some of the most ambitious proposals find a more muted final expression.

⁴¹ H. Labayle, ‘The Institutional Framework’ in V. Mitsilegas, M. Begström and T. Konstantinides (eds) *Research Handbook on EU Criminal Law* (Edward Elgar, 2016) 29–48.

⁴² See the original Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union’s financial interests by means of criminal law, COM(2012) 363 final, based on Art. 325(4) of the TFEU.

⁴³ Compare Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law OJ L 198/29 and the original Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union’s financial interests by means of criminal law COM/2012/0363. See further, S. Miettinen, ‘Implied Ancillary Criminal Law Competence’ (2013) 3 *European Criminal Law Review* 194. See also Chapter 7 by Christopher Harding in this volume.

⁴⁴ A. Engel, *The Choice of Legal Basis for Acts of the European Union* (Springer, 2018) 95–6. See also, Annegret Engel’s Chapter 3 in this volume.

⁴⁵ I. Wiczeorek, ‘The Principle of Subsidiarity in EU Criminal Law’ in C. Brière and A. Weyembergh (eds) *The Needed Balances in EU Criminal Law* (Hart, 2018) 71.

⁴⁶ J. Öberg, *Limits to EU Powers* (Hart, 2017) 133–86.

⁴⁷ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Spain and Slovenia; the Netherlands and Malta joined in 2018 (see Decision (EU) 2018/1094 of the Commission of 1 August 2018, OJ L 196, and Decision (EU) 2018/1103 of the Commission of 7 August 2018, OJ L 201).

That legislative process saw, as compared to the original proposal, a shift to enhanced cooperation, thus limiting the geographic scope of the EPPO to participating Member States, and a final structure that relies on national procedural rules and nationally appointed European delegated prosecutors.⁴⁸ Despite the significant unease by some Member States with the proposal for adoption of the EPPO, the EPPO will have a limited competence, at least initially, to assist Member States in conducting criminal procedures for offences impacting the Union's budget. As the assistance of the EPPO would be decentralized, the creation of the EPPO is arguably coherent with the principles of subsidiarity and proportionality.

In sum, whilst the Lisbon Treaty brought criminal justice more clearly into the centre of EU governance, claims of increased supranationalism should be accompanied with robust evidence that traces where and by whom legislative and executive powers are ultimately exercised. Criminal justice in the EU remains, in many cases, a markedly national affair. An overall trend can, however, be discerned: like integration more generally, the megatrend is one of evolution rather than devolution. Even where the pace of change is slow, it is difficult to find counterexamples to Europeanization other than cataclysmic events such as Brexit or Treaty-level institutional compromises of the opt-in and opt-out for Ireland and Denmark.

1.4 INTRODUCTION TO THE BOOK

The book aims to assess the institutional and constitutional boundaries, interactions and tensions between the different levels of governance of EU criminal justice (transnational, national and local) and whether there are solid conceptual and theoretical bases for the EU institutions to address transnational crime. Despite the attempt under the Lisbon Treaty to ensure a more coherent and effective framework for criminal justice cooperation in the European Union, the reforms introduced under the Treaty still allow for a certain level of fragmentation and differentiation in implementation by the Member States.⁴⁹ For example, although all EU criminal policies are now subject to the CJEU jurisdiction, opt-in/opt-out arrangements still apply to Ireland and Denmark. Another innovation of the Lisbon Treaty in the context of criminal law is the 'emergency brake' procedure when a legislative proposal would bring about fundamental changes to a Member State's national criminal justice system.⁵⁰

⁴⁸ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') OJ L 283/1.

⁴⁹ See Chapter 4 by Kerttuli Lingenfelter in this volume.

⁵⁰ See further, Chapter 3 by Annegret Engel in this volume.

This can lead to the start of a process of ‘enhanced cooperation’ among at least nine Member States, which has been criticized for creating a ‘two-speed’ Europe. This picture of fragmentation and differentiation in EU criminal law governance is further complicated by Brexit which calls into question the basis for future cooperation between the EU and the UK in criminal matters. In this context, the book will assess possible options for criminal-law cooperation between the European Union and the United Kingdom post-Brexit and how far they could represent enhanced mechanisms for the governance of transnational crimes and common security threats.

Moreover, the book aims to assess whether more effective mechanisms for public participation in the governance and design of EU criminal law are necessary to ensure better transparency, accountability and democratic controls over the policies adopted, including through the establishment of procedural rights for citizens, national parliaments and victims of crimes to participate in the governance of EU criminal law.

The book further aims to analyse key practical challenges to the governance of EU criminal law in the context of specific crimes, such as human trafficking, financial crime, cybercrime and environmental crime. The contributors will scrutinize the reasons for certain crimes being prioritised by EU policy makers and the implications of EU criminal law for the governance of crime at the transnational, national and local level.

Part I

Part I of the book discusses the constitutional dimensions of multi-level governance of criminal justice in the EU: national legal traditions, competence boundaries and differentiated methods for criminal justice cooperation. The common theme of the chapters under this part is the flexibility within the EU criminal legal framework which takes due account of the differences between Member States’ laws in this area.

Valsamis Mitsilegas starts off with a discussion of Brexit and the options for reframing cooperation between the EU and the UK in criminal matters (Chapter 2). His central argument is the paradoxical situation the UK would find itself in after Brexit, having to accept more integration than during the time of its EU membership if it wishes to participate in certain mechanisms, such as the European Arrest Warrant. This paradox is illustrated by various examples of the UK’s core interests in relation to tackling international crime as evidenced by its participation in European agencies and initiatives to foster cooperation between the Member States. The author stresses that the loss of a critical partner will also impact negatively on quality control and scrutiny of European criminal law post-Brexit. The author concludes that certain ‘dynamic alignment’ between the EU and the UK will be crucial in order to

achieve the aims of cooperation both sides have expressed in their Political Declaration to the Withdrawal Agreement.

Annegret Engel examines in Chapter 3 the EU's variable geometry in the Area of Freedom, Security and Justice, in particular in relation to the key distinguishing feature of opt-outs and the role of EU-skeptical Member States, such as the UK. The author discusses the normative conflict between intergovernmental cooperation and supranational harmonisation under EU law which is illustrated by three concrete examples from legal basis litigation, highlighting the retained features from the previous pillar structure in this area as well as the continued encroachment on Member States' competences. The chapter stresses the need for clearer delimitation of competences in this area and argues in favour of introducing a safeguard mechanism for particularly sensitive provisions which could otherwise be jeopardized by merely applying the 'centre of gravity' theory in legal basis conflicts. The chapter touches upon 'external' cooperation with third countries by means of international agreements as well as participation in European agencies, providing evidence of the benefits of flexible cooperation and fragmentation as a means to export European values beyond its Member States.

In Chapter 4, Kerttuli Lingenfelter discusses the evolution of boundaries between the EU and Member States' competences in criminal matters since the introduction of the Lisbon Treaty. The author describes key milestones in the development of the EU's criminal competences, with a particular focus on those that remain relevant in light of current developments such as the establishment of the European Public Prosecutor's Office (EPPO). The chapter further highlights the limits of EU competences in this area due to the continued intergovernmental influence and retained Member States' competences. The resulting fragmentation of laws between Member States is only partially mitigated by certain mechanisms in place, such as mutual recognition. The author exemplifies this with CJEU cases involving violations of fundamental rights as well as addressing topical issues connected to the backsliding of the rule of law in certain Member States. The chapter draws attention to the current shortcomings of intergovernmentalism and the most recent challenges the Union faces due to the lack of further supranational competences in criminal matters.

Renaud Colson and Stewart Field discuss in Chapter 5 the diversity of legal cultures in Europe and the impact this has had on the development of EU criminal law and its procedures. The chapter illustrates how differences between national legal cultures in Europe create tensions in specific contexts, highlighting the limits of harmonization in the area of EU criminal law and demonstrating influences on domestic criminal law enforcement. The authors argue that these tensions are fully embedded in judicial, police and institutional practices at national level which reflect differences in the Member States' legal

cultures. The chapter also compares the differences between the inquisitorial (traditionally predominant in the Member States of mainland Europe) and the adversarial systems (Member States with common law jurisdictions) in Europe. The authors suggest that the latter's influence as well as their ability to resist harmonisation in EU criminal law will be significantly weakened after the UK's withdrawal from the EU, which could reduce the overall cultural diversity and tensions around criminal justice.

Part II

Part II of the book covers different models for criminal justice cooperation and the governance of specific crimes. The chapters in this Part look at particularly important areas of criminality in Europe – such as human trafficking, cybercrime, financial and environmental crime – and analyse transnational responses and their practical challenges posed to the EU's system of multi-level governance.

The first chapter under this Part – Chapter 6 by Chloé Brière – discusses transnational responses to human trafficking in Europe and possible models for more inclusive governance mechanisms. In her chapter, Chloé addresses the topic from different perspectives of the various actors involved (local and private) in combatting such crimes and the legal, political and social constraints limiting the efficiency of their actions. In particular, the author considers the extent to which human trafficking is prioritised by the EU policy makers, the interactions and tensions between the different levels of governance (international, national, regional and local) of anti-trafficking initiatives, and the merits and shortcomings of existing mechanisms allowing for public participation in anti-trafficking initiatives. The chapter concludes by highlighting some of the challenges still to be faced alongside some recommendations for legislative action aimed at remedying the current shortcomings of existing instruments and mechanisms as well as a greater support for and involvement of civil society organisations.

Christopher Harding provides in Chapter 7 a critical discussion of the control of financial crime in the European Union, including a strong historical background to and a highly contextualized analysis of the development of EU law in the field of financial crimes and the different agencies involved in the fight against financial crime at EU level. The author argues that despite striving for 'effectiveness', EU criminal law instruments are not able to significantly impact on national law enforcement choices, which is also reflected in the diversity of the legal cultures of the Member States, and criticizes the reactive and circumstantial dynamic in this area of law. In line with the central theme of the book, the chapter addresses some of the main tensions and interactions between the different levels of governance of EU criminal law, par-

ticularly as they relate to the control of financial crime. The chapter concludes by suggesting a return to the drawing board clarifying the appropriateness and workability of criminal law and overall structure of legal control in the area of financial crime.

Chapter 8 on cyber security, written by Audrey Guinchard, analyses whether the EU cybercrime Directive 2013/40/EU and the Council of Europe Convention n.185 on cybercrime should be amended in order to offer a public interest defence to security for researchers, whistle blowers and journalists. In particular, the chapter demonstrates how security research, if legitimized, pushes for the scrutiny of governmental practices of mass-surveillance by exploiting vulnerabilities of the technical infrastructure and thus contributes to democratic accountability. The application of the convention as well as the directive to whistle blowers and journalists has never been analysed before and thus make a significant contribution to the academic debate on criminalization of newsgathering practices by cybercrime laws. The author identifies a number of flaws in the current legal framework, both at international and national levels, which would enable the prosecution of those actors in the event of the lack of a public interest defence for the disclosure of the information. The author argues that this breaches human rights laws and could potentially lead to the undermining of democracy by means of limiting freedom of expression and other forms of press freedoms.

In Chapter 9, Ricardo Pereira discusses the development of environmental criminal law enforcement in the EU, including an evaluation of the pertinent institutional fragmentation, inter-agency coordination, participatory governance in criminal proceedings and the implications of Brexit for environmental law enforcement in the UK. In particular, it highlights specific regulatory gaps in the fight against environmental crime and the resulting deficiencies in both European and national law enforcement. As such, it considers mechanisms for improvements with a view to strengthening the involvement of European agencies, such as Europol and Eurojust, as well as the role of public participation in the governance of environmental crime. The chapter further looks at the implementation of the Environmental Crime Directive in the UK and the implications of Brexit for UK environmental law enforcement. The author argues that the UK's withdrawal from the EU could lead to a decriminalization of environmental offences in the UK, ultimately placing the latter in a much weaker position in enforcing environmental law as compared to its European counterparts.

Part III

Part III of this book considers procedural rights advancing participatory governance of EU criminal law. The chapters in this Part are key examples

of the assertion of participatory procedural rights in different contexts and at different levels of the multi-level governance framework in the EU.

Petri Freundlich explains in Chapter 10 the Union's policy on access to documents and provides commentary of the legal provisions in place at EU level concerning access to legislative documents in the Area of Freedom, Security and Justice. The author argues that these rules are rather simple, however they are being complicated by numerous exceptions and their interpretation by the courts with the result of an overall complex picture in practice, negatively impacting on the efficiency of the whole framework. As an alternative to the judicial route, the chapter highlights the importance of the European Ombudsman and its role in increasing transparency. The examples of the many practical obstacles to public access to documents discussed in this chapter demonstrate the shortcomings of the current legislative framework. The author therefore recommends that Regulation 1049/2001 be revised in order to include and codify more recent case law in this area and avoid further fragmentation of the rules applicable to EU agencies and offices.

In the last chapter of this volume, Wendy de Bondt and Heleen Lauwereys examine in Chapter 11 children's participatory rights in criminal proceedings in the EU. The chapter is presented from three different perspectives: children who are suspects or are accused of a criminal offence, children as victims of crime and children who are affected by criminal proceedings instituted against their parents or guardians. It is evident from the authors' analysis that there is a variety of international and European instruments offering protection to children's participatory rights in criminal proceedings and that there is a strong complementarity between those instruments. The authors also illustrate a rather fragmented picture in the protection of children's rights. In particular, the authors make reference to the UN Convention on the Rights of the Child, the Council of Europe Convention on Human Rights, recent EU directives and the EU Charter on Fundamental Rights. The chapter illustrates the difficulties surrounding child participation in criminal proceedings under the current legal framework and recommends more child-friendly proceedings which should be tailored better towards the interests of the child.