The Anatomy of Western Criminal Justice: A Comparative Analysis of Criminal Procedure and Police Powers in Eleven Countries

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Abstract

Western democracies share a commitment to fair trials and constrained policing, yet the machinery beneath that commitment varies enormously. This report compares criminal procedure and police–investigative law across eleven countries — the United States, Canada, Australia, New Zealand, the United Kingdom, France, Spain, Germany, Italy, Denmark, and Sweden — element by element: who finds facts (juries, mixed courts, lay judges); the right to silence and against self-incrimination; access to counsel; bail and pretrial detention; exclusionary and evidence rules; double jeopardy; and standards of proof; then the law of policing: stop and arrest thresholds, search and seizure, surveillance and wiretapping, undercover operations and entrapment, use of force, interrogation methods, DNA collection, and oversight. Each element is anchored in leading cases and statutes and summarized in comparison tables, with quantitative indicators (incarceration and remand rates, police killings, DNA database coverage, trial-avoidance rates) presented graphically. Three findings organize the material. First, the classic adversarial–inquisitorial divide still structures who controls evidence and trial, but it no longer predicts outcomes on its own: European systems have converged substantially under the European Convention on Human Rights and EU procedural directives, while the common-law world outside the United States has absorbed inquisitorial-style managerialism. Second, on axis after axis — money bail, jury absolutism, elected prosecutors, dual-sovereignty double jeopardy, deception in interrogation, qualified immunity, police lethality, incarceration scale — the deepest divide runs not between common law and civil law but between the United States and everyone else. Third, a quiet convergence is dissolving the trial itself: in every country studied, most convictions are now produced by pleas, penal orders,

or abbreviated procedures, a transformation with no constitutional moment and profound consequences.

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1 Introduction

Every Western legal system answers the same questions: Who may the police stop, search, wiretap, or deceive? How long may the state hold a person before trial, and on what terms? Who decides guilt — twelve citizens, a professional judge, or some mixture — and by what standard? What happens to evidence the police obtained illegally? May an acquitted person ever be tried again? The answers are supposed to express shared commitments — the presumption of innocence, the rule of law, limits on state power — but the institutional machinery that delivers them diverges to a degree that surprises even lawyers. An American arrested in Stockholm will discover that there is no bail hearing at which to pay his way out; a Swede arrested in Chicago will discover that his release has a price in dollars. A French *avocat* watching an English trial will marvel that the prosecution may not mention the defendant's criminal record; an English barrister watching a French *cour d'assises* will marvel that the presiding judge has read the entire investigative file and does most of the questioning. A German student of *Miranda* will learn that German police must give a nearly identical warning — but that if they deceive a suspect into confessing, the confession is barred by statute, something *Miranda*'s homeland has never required.

This report maps that variation systematically across eleven countries: the United States, Canada, Australia, New Zealand, and the United Kingdom on the common-law side; France, Spain, Germany, and Italy in the continental civil-law tradition; and Denmark and Sweden, whose pragmatic Nordic systems fit neither box comfortably. The comparison is organized element by element rather than country by country, because the interesting action is in the contrasts: each of roughly fifteen doctrinal elements receives its own section, comparison table, and leading cases, followed by a quantitative part that puts numbers — incarceration rates, remand shares, police killings, DNA database coverage, guilty-plea rates — to the doctrinal story.

Three caveats frame the exercise. First, "criminal law" here means criminal *procedure* and the law governing police investigation, not the substantive definitions of offenses; substantive criminal law varies too, but procedure is where the deep architectural differences live. Second, federal and quasi-federal systems resist single descriptions, so a unit-of-analysis rule is applied throughout: "the United Kingdom" means England and Wales, with Scotland — a distinct legal system — shown separately in the Part I tables where its rule diverges materially and noted in prose elsewhere; "the United States" (more than fifty procedure regimes across states, the federal system, DC, territories, and military justice) and Australia are described at the federal-constitutional or dominant-state position, with sub-national variation flagged wherever the national floor would mis-describe practice (bail reform, interrogation recording, deception bans). Third, law on the books and law in action diverge everywhere; where empirical studies document that gap — German plea-bargaining practice, French identity checks, American consent searches — the report says so. A related asymmetry should be owned at the outset: the English-language literature and published statistics run deepest for the American, British, German, and French systems, and thinner for Denmark, Sweden, Spain, and Italy; the load-bearing claims for the smaller systems rest on primary statutes and supreme-court case law, but their street-level volume data are patchier.

The report's contribution is threefold: a synchronic snapshot — no existing source tables these fifteen elements across these eleven systems with the 2023–26 reform wave integrated; a set of quantitative juxtapositions not previously assembled (the parallel Franco-English retreat from lay adjudication, the Commonwealth remand inversion, Italy's joint outlier status on interception volume and trial survival); and a synthesis that tests the standard legal-families map against measured outcomes. The analysis yields three organizing conclusions, developed in Part IV. The adversarial–inquisitorial divide remains real but has been overlaid, in Europe, by a half-century of harmonization under the European Convention on Human Rights and, more recently, EU procedural-rights directives — so that a Danish, German, and English suspect now hear broadly similar warnings and see a lawyer at broadly similar moments. Outside Europe, the deepest and most persistent outlier on nearly every measurable axis is the United States. And across all eleven countries, the full trial — the institution every one of these systems was designed around — is quietly vanishing, replaced by pleas, penal orders, and abbreviated procedures that now produce the overwhelming majority of convictions everywhere.

2 Legal Traditions and System Architecture

2.1 Two ideal types and their corruption

Comparative criminal procedure begins from two ideal types. In the **adversarial** model, criminal justice is a dispute between two parties — prosecution and defense — fought before a passive umpire and, for serious cases, a lay jury; the parties investigate, select, and present their own evidence; truth is expected to emerge from partisan clash; and elaborate exclusionary rules police what the untrained fact-finder may hear. In the **inquisitorial** model, criminal justice is an official inquiry into truth conducted by the state itself; a neutral magistrate (or, today, a prosecutor) assembles a comprehensive written dossier of both incriminating and exculpatory evidence; the trial judge has read the dossier, directs the hearing, and examines the witnesses; professional and lay judges deliberate together and issue a reasoned judgment; and, because the fact-finders are professionals, evidence is evaluated freely rather than filtered.

Damaška (1986) reframed the contrast structurally: adversarial procedure reflects "co-ordinate" authority — power dispersed among lay and local actors, exercised in single continuous events like the trial — while inquisitorial procedure reflects "hierarchical" authority — professional officialdom, written records, and comprehensive appellate review. The framing explains much that otherwise puzzles: why common-law acquittals are final (a jury's unreasoned verdict cannot be reviewed) while civil-law systems allow prosecution appeals as a matter of course (every decision of a subordinate official is reviewable); why the common law obsesses over admissibility (screening evidence from amateurs) while the civil law obsesses over reasoning (auditing the professionals); why plea bargaining arose naturally in party-controlled American procedure and was long considered conceptually impossible in systems where the court, not the parties, owns the truth. Packer (1968)'s two normative models — crime control (speed, finality, administrative efficiency) and due process (obstacle-course safeguards against error and state power) — cut across the structural divide and supply the evaluative vocabulary used throughout this report.

No real system matches either type. England invented the adversarial criminal trial in something like its modern form only in the eighteenth century, when defense counsel were first admitted, and has spent the last four decades managerializing it; France added adversarial elements in 2000; Italy in 1988 adopted a substantially adversarial code outright, the largest legal transplant of the twentieth century (Amodio, 2004); and the Nordic countries, never fully captured by either ideal type, run pragmatic hybrids with free proof, lay judges, and little procedural theology. Goldstein and Marcus (1977) showed long ago that the "judicially supervised" continental investigation is largely a myth — police dominate fact-gathering everywhere — and Langer (2004) showed that when civil-law systems import adversarial institutions like plea bargaining, they translate rather than transplant them, producing hybrids loyal to neither parent. Figure 1 sketches the two architectures and the shortcut procedures that now carry most of the caseload in both.

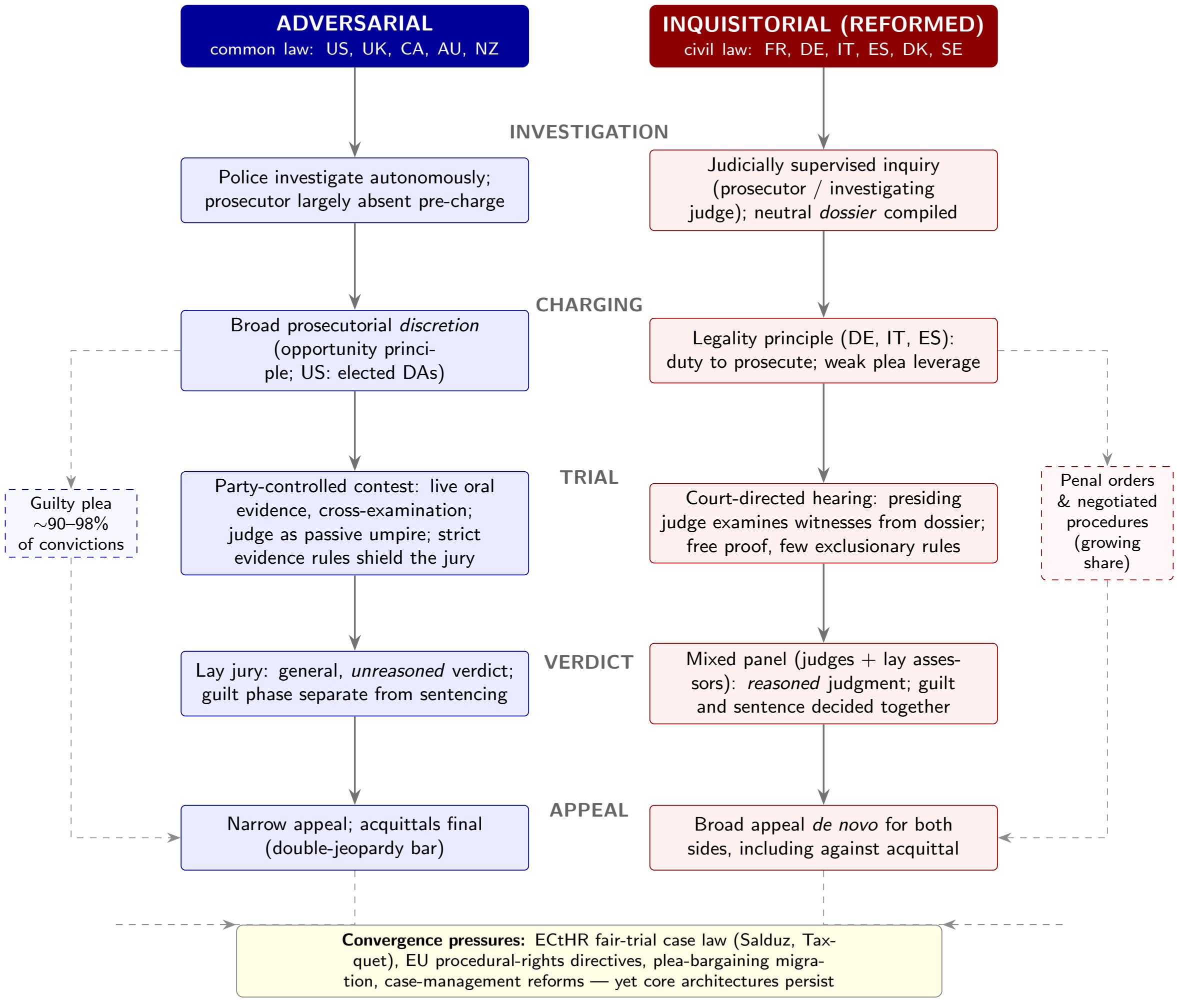

Figure 1: The adversarial and inquisitorial architectures compared, with the mass-disposal shortcuts (guilty pleas, penal orders) that now dominate both. Convergence pressures — ECtHR case law, EU directives, plea-bargaining migration — operate on both models without erasing the underlying division of control over evidence and trial.

2.2 The eleven systems at a glance

Table 1 locates each country on the map: its legal family, the architecture of its criminal process, its constitutional or quasi-constitutional rights instrument, and the supranational layer that binds it. Two structural facts deserve emphasis at the outset because they recur in every section that follows.

First, **the supranational layer**. All seven European countries studied, plus the United Kingdom, are parties to the European Convention on Human Rights and subject to the European Court of Human Rights in Strasbourg, whose Article 5 (liberty), Article 6 (fair trial), and Article 8 (privacy) case law functions as a common constitutional floor — and, as later sections show, has forced specific national reforms: France rebuilt police custody after *Brusco* (European Court of Human Rights, 2010), Scotland admitted lawyers to police interviews after *Salduz* and *Cadder* (European Court of Human Rights (GC), 2008b; UK Supreme Court, 2010), the United Kingdom rewrote DNA retention after *S. and Marper* (European Court of Human Rights (GC), 2008a). The six EU members among them (France, Spain, Germany, Italy, Denmark, Sweden) are additionally bound by the EU procedural-rights directives adopted between 2010 and 2016, which codify rights to interpretation, information, counsel, legal aid, and the presumption of innocence (European Union, 2013, 2016). The United States, Canada, Australia, and New Zealand answer to no supranational court at all; among them, only the United States and Canada have entrenched, judicially enforceable constitutional rights charters, while Australia has no national bill of rights whatsoever — a fact that shapes its heavy reliance on statutory schemes and judicial discretion — and New Zealand and the UK operate "parliamentary" bills of rights that courts may interpret but not enforce against primary legislation.

Second, **who runs the criminal process day to day**. In the United States, an elected local district attorney — a figure without parallel anywhere else in the democratic world — exercises essentially unreviewable charging discretion. In England and Wales, police investigate autonomously and an independent Crown Prosecution Service applies a two-stage code test. In France, Germany, Italy, Spain, and the Nordics, a career-civil-servant prosecution service directs (at least nominally) the police investigation, under either a duty to prosecute all provable crime (the legality principle: Germany, Italy, Spain) or managed discretion (the opportunity principle: France, Denmark; Sweden sits close to legality). France and Spain retain the investigating magistrate — the *juge d'instruction* and *juez de instrucción* — the last living representatives of the classical inquisitorial office, though in France he now touches fewer than 2% of prosecuted cases; Germany abolished its equivalent in 1975, Italy in 1988.

Table 1: The eleven systems at a glance

Country	**Legal family**	**Process architecture**	**Rights instrument**	**Supranational layer**
United States	Common law	Adversarial; jury-centered; 50 state systems + federal	Entrenched Bill of Rights (1791); strong judicial review	None
Canada	Common law	Adversarial	Entrenched Charter of Rights and Freedoms (1982)	None
Australia	Common law	Adversarial; state-based	No national bill of rights; s. 80 constitutional jury guarantee (narrow); some state HR acts	None
New Zealand	Common law	Adversarial	Statutory Bill of Rights Act 1990 (not supreme law)	None
United Kingdom (E&W)	Common law	Adversarial, heavily case-managed	Statutory Human Rights Act 1998 (incorporates ECHR); parliamentary sovereignty	ECHR
France	Civil law (Napoleonic)	Inquisitorial core, adversarial graft (2000–); *juge d'instruction* residual	Constitution 1958 + 1789 Declaration; QPC review since 2010	ECHR + EU directives
Spain	Civil law	Inquisitorial; *juez de instrucción* still standard; jury since 1995	Constitution 1978; *amparo* to Constitutional Court	ECHR + EU directives
Germany	Civil law (Germanic)	Reformed inquisitorial (no investigating judge since 1975)	Basic Law 1949; constitutional complaint to BVerfG	ECHR + EU directives
Italy	Civil law	Adversarial code (1988) on civil-law base; "fair trial" Art. 111 Const. (1999)	Constitution 1948; Constitutional Court	ECHR + EU directives
Denmark	Nordic	Pragmatic mixed; free proof	Constitution (Grundloven) 1849/1953; weak judicial review	ECHR; EU *with justice opt-out*
Sweden	Nordic	Pragmatic mixed; free proof; lay judges throughout	Instrument of Government 1974; traditionally weak judicial review	ECHR + EU directives

Note: Denmark's opt-out from EU justice and home affairs means the EU procedural-rights directives (2010–2016) do not bind it; its supranational procedural floor is the ECHR alone. The UK was bound by the pre-Brexit directives it opted into (e.g., interpretation and information rights) but not the access-to-lawyer directive, from which it opted out even before leaving the EU.

The sections that follow work through the elements in two parts — Part I on the trial and the rights of the accused, Part II on police and investigative powers — before Part III turns to numbers and Part IV to synthesis.

Part I

The Trial and the Rights of the Accused

3 The Fact-Finders: Juries, Mixed Courts, and Lay Judges

3.1 Three models of lay participation

Who decides guilt is the most visible difference among the eleven systems, and the answer sorts them into three groups. The five common-law countries use the **classic jury**: twelve (or fifteen) lay citizens deciding guilt alone, separated from sentencing, delivering an unreasoned general verdict. The continental and Nordic countries use **mixed courts**: professional judges and lay assessors deliberating together on guilt *and* sentence and issuing a reasoned judgment — France's *cour d'assises* (three judges, six jurors), Italy's *corte d'assise* (two judges, six *giudici popolari*), Germany's *Schöffengericht* and *große Strafkammer* (one to three judges with two lay *Schöffen*), Denmark's *nævningesager* (three judges, six lay jurors), and Sweden's *tingsrätt* (one judge, three lay *nämndemän*). Spain is the hybrid: a 1995 statute (Reino de España, 1995) created a nine-member lay jury for a short list of offenses — but a jury that, uniquely in the world, must give *reasons* for its verdict. Everywhere, a third fact-finder handles the overwhelming bulk of cases: the professional judge or lay magistrate sitting without any jury at all.

Two structural contrasts deserve emphasis before the table. First, **jury selection**. The United States conducts the world's most elaborate selection ritual: attorney-driven *voir dire*, unlimited challenges for cause, and peremptory strikes constrained (imperfectly) by *Batson v. Kentucky* (U.S. Supreme Court, 1986). England abolished peremptory challenges in 1988 and selects juries by essentially unvetted random ballot; Canada abolished peremptories in 2019 after the Gerald Stanley acquittal, a reform upheld in *R v. Chouhan*; and Arizona in 2022 became the first American state to abolish peremptory strikes entirely. The continental systems select lay judges by lot from electoral rolls (France, Italy, Denmark) or — Sweden's peculiar institution — by nomination of the *political parties* in municipal councils, a practice that recurrently produces scandals when nämndemän are linked to partisan bias. Germany's Schöffen (40,618 currently serving) are chosen by municipal committees for five-year terms; a 2023–24 controversy over far-right extremists seeking Schöffen seats has produced draft legislation, still pending in mid-2026, to require constitutional loyalty.

Second, **the shrinking domain of the jury**. In every common-law country the jury now decides only a residue of cases: roughly 1–3% of criminal convictions in the United States (where 97–98% of federal convictions follow guilty pleas), under 5% in England and Wales (magistrates finish about 95% of cases), and comparable slivers elsewhere. The continental mixed courts are equally marginal in volume: France's assize courts and criminal courts together decide roughly 3,000 cases a year against roughly half a million correctional convictions; Spain's jury tries 600–700 cases a year; Italy's *corte d'assise* decides a few hundred. The difference is that the common law treats its jury as constitutionally sacred while shrinking it in practice, whereas the civil law never sacralized lay participation and can prune it openly — as France did in 2023, transferring most rape trials from jurors to the new all-professional *cour criminelle départementale.*

3.2 Country notes

United States. The Sixth Amendment jury right applies to any offense punishable by more than six months and binds the states (U.S. Supreme Court, 1968a). Juries number twelve federally but may be as small as six in state court (*Williams v. Florida* (1970); five is too few, *Ballew v. Georgia* (1978)); the Court declined to revisit sub-twelve juries in 2022 (*Khorrami v. Arizona*, cert. denied). *Ramos v. Louisiana* (U.S. Supreme Court, 2020) constitutionalized unanimity for serious offenses, ending Louisiana's and Oregon's non-unanimous verdicts — the Louisiana rule an explicit 1898 white-supremacist artifact. The defendant has no unilateral right to a bench trial: jury waiver requires both court and prosecution consent (*Singer v. United States* (1965)). The jury's general verdict is unreviewable in acquittal and effectively shields nullification.

Canada. For most indictable offenses the accused *elects* among provincial judge alone, superior-court judge alone, or judge and jury; murder must be tried by jury unless both accused and Attorney General consent otherwise, and the Charter (s. 11(f)) guarantees a jury where the maximum punishment is five years or more (Government of Canada, 1982). Twelve jurors, unanimity, no reasons, strict deliberation secrecy.

England and Wales. Lay magistrates or a District Judge dispose of roughly 95% of criminal cases summarily; the Crown Court tries indictable and elected either-way offenses with a judge and twelve jurors, with 10–2 majority verdicts accepted since 1967.

Judge-only trial on indictment exists solely for jury tampering (CJA 2003 s. 44; first used in *R v. Twomey*, the 2010 Heathrow robbery trial — the first English non-jury trial on indictment in three and a half centuries). That settlement is now breaking: with the Crown Court backlog at a record 80,203 cases (December 2025), the Leveson Review (July 2025) recommended a judge-plus-magistrates "Bench Division" and removal of the defendant's right to elect jury trial for either-way offenses (Leveson, Sir Brian, 2025); the Government's Courts and Tribunals Bill (February 2026) goes further — a judge-*alone* Bench Division for either-way cases facing up to three years, judge-alone trials for complex fraud, and a permission filter replacing the automatic de novo appeal from the magistrates (UK Parliament, 2026). The Bill passed Second Reading 304–203 and was in committee as of mid-2026: the most significant statutory retrenchment of the English jury since its creation.

Scotland. Fifteen jurors — the largest panel in the study — and, until this year, conviction by bare majority (8 of 15), historically counterweighted by the corroboration requirement and the third "not proven" verdict. The Victims, Witnesses, and Justice Reform (Scotland) Act 2025 abolished not proven and raised the conviction threshold to two-thirds (10 of 15) from 1 January 2026 (Scottish Parliament, 2025); a proposed pilot of juryless rape trials was dropped in 2024 after profession-wide opposition.

Australia. Section 80 of the Constitution requires a unanimous jury for *Commonwealth* indictable offenses (*Cheatle v. The Queen* (High Court of Australia, 1993)) and cannot be waived even by the accused (*Alqudsi v. The Queen* (2016)); but most prosecutions are state matters, where majority verdicts (typically 11–1 after a deliberation period) are broadly available and judge-alone trial can be ordered or elected under state statutes — a patchwork emblematic of Australia's rights-instrument vacuum.

New Zealand. Jury trial is available for offenses punishable by two years or more (raised from three months in 2013, precisely to shrink the jury's domain); 11–1 majority verdicts have been accepted since 2008; long or complex cases can be ordered tried by judge alone.

France. The *cour d'assises* tries the gravest crimes with three judges and six jurors, conviction requiring seven of nine votes (so at least four jurors); on appeal — itself an innovation of 2000, and extended to prosecution appeals of acquittals in 2002 — a differently constituted assize court sits with nine jurors, conviction requiring eight of twelve. Since the 2011 reform responding to *Taxquet v. Belgium* (European Court of Human Rights (GC), 2010b), verdicts must be reasoned on a *feuille de motivation*, extended to sentences by the Conseil constitutionnel in 2018. The structural earthquake is the *cour criminelle départementale* (CCD): five professional judges, no jurors, trying crimes punishable by fifteen to twenty years (predominantly rape), piloted from 2019 and generalized on 1 January 2023 (République française, 2021). By 2024 the CCD decided 1,273 cases — nearly half of all first-instance felony judgments — meaning France, the homeland of the citizen-judge ideal, has quietly transferred most serious sex-offense trials from jurors to professionals; the Conseil constitutionnel upheld the arrangement in November 2023, finding no constitutional principle guaranteeing a jury. A 2026 justice bill proposing further CCD expansion (and a French guilty-plea procedure for felonies) was pending its final vote in July 2026, the felony plea provision having been abandoned under protest.

Germany. No jury since the Emminger decree of 1924. The single judge (*Strafrichter*) hears cases expecting up to two years; the *Schöffengericht* (one judge, two lay Schöffen) covers the two-to-four-year band; the *große Strafkammer* of the Landgericht (three judges — reducible to two — plus two Schöffen, sitting as *Schwurgericht* for homicide) tries serious felonies; state-security cases go to all-professional Oberlandesgericht panels (Bundesrepublik Deutschland, 2026). Every decision unfavorable to the defendant on guilt or sentence requires a two-thirds majority (§ 263 StPO): on the standard five-member bench that means four of five votes, so the two lay judges, if united, can block any conviction — lay power embedded in arithmetic rather than in a separate verdict.

Italy. The *corte d'assise* (two professional judges, six lay judges selected by lot, with modest education requirements) tries murder and a short list of the gravest crimes — a few hundred cases a year against roughly half a million total convictions. Professionals and lay judges vote together by simple majority, the lay judges voting *first* (art. 527 c.p.p.) so as not to be anchored by the professionals; ties resolve for the defendant; the reasoned judgment is drafted by a professional judge — occasionally one who dissented, producing Italy's famous *sentenze suicide*, judgments whose reasoning undermines their own verdict (Repubblica Italiana, 1988).

Spain. The *Tribunal del Jurado* — nine lay jurors presided over by a professional magistrate who does not vote on guilt — tries an enumerated list (homicide dominates) of a few hundred cases a year. Conviction requires seven of nine votes; acquittal five; and, uniquely, article 61 of the jury law obliges the lay jury itself to give "a succinct explanation of the reasons" — a duty that has repeatedly proven too demanding, with appellate courts annulling verdicts for inadequate reasoning (most famously the Wanninkhof murder conviction of Dolores Vázquez, annulled for want of motivation and later exposed as a wrongful conviction) (Reino de España, 1995). Everything else is professional: single-judge *Juzgado de lo Penal* up to five years, three-judge *Audiencia Provincial* above.

Denmark. Serious cases (prosecution seeking four years or more) are tried in *nævningesager* — since 2008 in the district court with three professional judges and six lay jurors, conviction requiring qualified majorities of both groups; ordinary cases use one judge and two lay assessors (*domsmænd*) with simple majority; confessed and minor cases go to a single judge (Kongeriget Danmark, 2026).

Sweden. No criminal jury (the jury survives only for press-freedom prosecutions). The district court sits with one professional judge and three *nämndemän* — lay judges nominated by political parties for four-year terms, an arrangement periodically convulsed by impartiality scandals; the court of appeal adds professionals (three judges, two nämndemän). On a tied vote on the guilt question, the more lenient outcome prevails (Konungariket Sverige, 2026).

3.3 Comparison tables

Table 2: Fact-finders in serious criminal cases

Country	Most serious crimes	Mid-tier	Notes
United States	Judge + 12 jurors (6 permitted in states)	Same (jury right >6 months)	Voir dire + peremptories; no unilateral jury waiver; ~2–3% of convictions by trial
Canada	Judge + 12 jurors (mandatory for murder)	Accused elects judge-alone or jury	Peremptories abolished 2019
England & Wales	Judge + 12 jurors	Either-way: magistrates or Crown Court	Magistrates finish ~95%; judge-alone Bench Division pending (2026 Bill)
Scotland	Judge + 15 jurors	Sheriff + 15 jurors	Not proven abolished, 10/15 threshold from 2026
Australia	Judge + 12 jurors (unanimous for Cth: s. 80)	State judge-alone options	No national rights charter; state patchwork
New Zealand	Judge + 12 jurors	Jury right if max ≥2 years	Judge-alone for long/complex trials
France	Cour d'assises: 3 judges + 6 jurors	CCD: 5 judges, no jury (15–20-yr crimes)	CCD ≈48% of felony judgments 2024; correctional courts: 1–3 judges
Germany	Schwurgericht: 3 judges + 2 Schöffen	Schöffengericht: 1 judge + 2 Schöffen	No jury since 1924; OLG all-professional for terrorism
Italy	Corte d'assise: 2 judges + 6 lay judges	Tribunale: 3 judges or single judge	Lay judges vote first; reasoned judgment
Spain	Jury: 9 lay + presiding judge (listed offenses); else 3-judge AP	Juzgado de lo Penal: 1 judge (≤5 yrs)	Jury must give reasons; ~600–700 jury cases/yr
Denmark	3 judges + 6 lay jurors (≥4-yr sentences)	1 judge + 2 lay assessors	Single judge for confessions/minor cases
Sweden	1 judge + 3 nämndemän (all crime tiers)	Same	Lay judges politically nominated; no jury except press cases

Table 3: Verdict rules: majorities, reasons, and finality

Country	**Conviction majority**	**Reasoned verdict?**	**Key rule / case**
United States	Unanimous (12/12)	No	*Ramos v. Louisiana* (2020)
Canada	Unanimous (12/12)	No	Common law; hung jury → mistrial
England & Wales	10/12 after deliberation	No	Juries Act 1974 s. 17
Scotland	10/15 (was 8/15)	No	VWJR (Scotland) Act 2025
Australia	Unanimous (Cth); 11/12 in most states	No	*Cheatle* (1993)
New Zealand	Unanimous or 11/12	No	Juries Act amendment 2008
France	7/9 first instance; 8/12 appeal	Yes (since 2011)	CPP arts. 359, 365-1; *Taxquet*
Germany	Two-thirds (≥4/5): lay judges can block	Yes	§ 263 StPO
Italy	Simple majority; tie favors accused; lay vote first	Yes	Art. 527 c.p.p.
Spain	7/9 for guilt; 5/9 for acquittal	Yes — by the jury itself	LOTJ arts. 59–61
Denmark	Qualified majority of judges and jurors	Yes	Retsplejeloven
Sweden	Majority; tie favors accused	Yes	Rättegångsbalken ch. 29

Note: The ECtHR requires no jury and no particular verdict form; *Taxquet v. Belgium* (GC 2010) requires only that the accused be able to understand why he was convicted, which common-law safeguards (precise indictment, judicial directions, appeal) satisfy (*Judge v. UK* (dec.) 2011).

4 Standards of Proof

The common law demands proof "beyond a reasonable doubt"; the French tradition asks its judges and jurors a single question — *Avez-vous une intime conviction?* ("Are you inwardly convinced?"); Germany requires the court's "free conviction drawn from the entirety of the proceedings" (§ 261 StPO) disciplined by the unwritten *in dubio pro reo* principle. The formulations sound epistemically different — an objective external standard versus subjective personal certainty — and generations of commentators have claimed *intime conviction* licenses conviction on less. The better view, supported by the convergence of formulations, is that for criminal guilt the operative demand is broadly equivalent: the BGH glosses § 261 as "a degree of certainty, sufficient by the standards of life experience, that silences reasonable doubts"; France's article 353 CPP instructs fact-finders to search their conscience for the impression the evidence has made "on their reason"; and two systems have simply adopted the common-law formula outright — Italy codified "*al di là di ogni ragionevole dubbio*" in 2006 (art. 533 c.p.p., following the *Franzese* judgment of 2002), and Sweden's Supreme Court articulated "*ställt utom rimligt tvivel*" (established beyond reasonable doubt) in 1980 (Clermont and Sherwin, 2002). The real difference is architectural, not epistemic: who must *articulate* the certainty. A US or English jury announces “guilty” and says nothing; a German, Italian, or Spanish court must write reasons that appellate courts audit — and Spain requires reasons even from its lay jurors, with verdicts annulled when the explanation fails.

Doctrinal anchors differ accordingly. In the United States the reasonable-doubt standard is itself constitutionalized (U.S. Supreme Court, 1970b), extended by *Apprendi v. New Jersey* (2000) to every fact raising the sentencing maximum; no canonical definition exists and defining the phrase for juries is discouraged in several jurisdictions (Australia’s High Court forbids elaboration; England now instructs juries simply that they “must be sure”). England’s *Woolmington* “golden thread” fixes the burden on the prosecution throughout (House of Lords, 1935). Canada’s Supreme Court situates the standard “much closer to absolute certainty than to proof on a balance of probabilities” (*R v. Starr* (2000)). Scotland adds a structural safeguard no one else retains: corroboration — the crucial facts must rest on two independent evidentiary sources. France’s *intime conviction* (art. 353 CPP) and free proof for correctional courts (art. 427) (République française, 2026); Germany’s free evaluation with *in dubio pro reo* derived from the Rechtsstaat principle rather than any statutory text (Bundesrepublik Deutschland, 2026); Spain’s enforceable constitutional presumption of innocence (art. 24.2 CE), policed since STC 31/1981 through the requirement of “minimum incriminating evidentiary activity” (Reino de España, 2026); Denmark’s unwritten free evaluation; and Sweden’s judge-made BARD on a free-proof base (RB ch. 35 § 1) complete the map (Konungariket Sverige, 2026).

Table 4: Standards of proof and their sources

Country	**Formulation**	**Source / leading authority**
United States	Beyond a reasonable doubt (constitutionalized)	*In re Winship* (1970); *Apprendi* (2000)
Canada	BARD, "closer to absolute certainty"	*R v. Lifchus* (1997); *R v. Starr* (2000)
England & Wales	BARD; juries told "you must be sure"	*Woolmington v. DPP* (1935)
Scotland	BARD + corroboration requirement	Common law; Carloway Review debate
Australia	BARD; judges must not define it	*Green v. The Queen* (1971); *Dookheea* (2017)
New Zealand	BARD with model direction	*R v. Wanhalla* (2007)
France	*Intime conviction*	CPP arts. 353, 427
Germany	Free conviction of the court; *in dubio pro reo*	§ 261 StPO; BGH case law
Italy	"Beyond every reasonable doubt" (codified 2006)	Art. 533 c.p.p.; Cass. SU *Franzese* (2002)
Spain	Presumption of innocence as enforceable right; evidence weighed "in conscience" (*apreciación en conciencia*)	CE art. 24.2; STC 31/1981; LECrim art. 741
Denmark	Free evaluation; in dubio pro reo (unwritten)	Retsplejeloven; doctrine
Sweden	"Established beyond reasonable doubt"	NJA 1980 s. 725; RB ch. 35 § 1

5 Silence and Self-Incrimination

5.1 Three regimes

Every one of the eleven systems recognizes a right to silence and a privilege against self-incrimination; the differences lie in what the police must say about it, and what the silence later costs. Three regimes coexist. The **American** regime is maximal protection loudly announced: *Miranda v. Arizona* (U.S. Supreme Court, 1966) requires the famous four warnings before custodial interrogation, and *Griffin v. California* (U.S. Supreme Court, 1965) forbids prosecutor or judge from inviting any inference from the defendant's silence at trial. The **English** regime, since the Criminal Justice and Public Order Act 1994, is protection with a warning *against* using it: the caution — "it may harm your defence if you do not mention when questioned something which you later rely on in court" — makes England and Wales the only country of the eleven whose police warn suspects that silence has a price (UK Parliament, 1994). Courts may invite juries to draw adverse inferences from a suspect's failure to mention facts later relied on (s. 34), from refusal to testify (s. 35), and from failure to account for objects or presence (ss. 36–37), though no conviction may rest solely or mainly on an inference (s. 38), no inference is permitted where the suspect had no opportunity to consult a solicitor, and Strasbourg polices the boundaries (European Court of Human Rights (GC), 1996a; European Court of Human Rights, 2000a). The **continental** regime is notification-plus-exclusion: France (art. 63-1 CPP, since 2011), Germany (§ 136 StPO), Italy (art. 64 CPP), Spain (art. 520 LECrim), and Denmark (§ 752 Retsplejeloven) all require the suspect to be told of the right to silence before questioning, and sanction the omission by excluding the statement — Germany's Federal Court of Justice reversed itself in 1992 to hold un-cautioned statements inadmissible (BGHSt 38, 214), and Italy's art. 64(3-bis) makes them *inutilizzabili* by statute.

The edges of the American model are rougher than its reputation. Invocation must be unambiguous and waiver can be implied from answering questions (*Berghuis v. Thompkins* (2010)); silence *before* custody can be used against a suspect who fails to expressly invoke the privilege (U.S. Supreme Court, 2013b); a *Miranda* violation supports no damages action (*Vega v. Tekoh* (2022)); and some 80% of suspects waive their rights — the innocent at far higher rates than the guilty, one experimental literature's most disquieting finding. Canada goes further in police-friendliness on one axis: officers may lawfully persist in questioning a detainee who has asserted his right to silence repeatedly — eighteen times, in *R v. Singh* (2007) itself. Meanwhile the English inference model found only one imitator among the eleven: New South Wales copied s. 34 in 2013 (Evidence Act s. 89A), and the transplant failed — because the "special caution" operates only when a lawyer is physically present, and defense lawyers simply stay away, the provision has produced only a handful of reported uses.

Nordic law is the quiet outlier in form: Sweden had no statutory caution requirement at all until the EU information directive forced one in 2014, and its free evaluation of evidence (RB ch. 35 § 1) contains no formal bar on noting a defendant's refusal to explain — the protective substance is conventional rather than codified (Konungariket Sverige, 2026).

5.2 Scope: testimony, documents, bodies, and passwords

All eleven systems confine the privilege to (roughly) testimonial cooperation and carve out the body: compelled blood, breath, and DNA sampling is universal (*Schmerber v. California* (1966); *Saunders v. UK*'s "independent existence" test (European Court of Human Rights (GC), 1996b); § 81a StPO; art. 706-56 CPP — where refusing the DNA swab is itself a crime). The modern frontier is compelled decryption, and here the systems split instructively: American courts are divided over whether producing a passcode is testimonial (Utah and Indiana say yes; Massachusetts and New Jersey effectively no; the Supreme Court has not resolved it), while the United Kingdom simply legislated through the problem — failure to comply with a key-disclosure notice under RIPA 2000 s. 49 is an offense carrying up to two years' imprisonment, five in national-security and child-image cases.

Table 5: The right to silence: warnings and consequences

Country	Warning required	Adverse inference from silence	Sanction for breach / key authority
United States	Yes (*Miranda*, custodial)	No (*Griffin*); but pre-custody silence usable (*Salinas*)	Suppression only (*Vega v. Tekoh*)
Canada	Yes (Charter s. 10 caution)	No (*Turcotte*; CEA s. 4(6))	Exclusion s. 24(2); questioning may continue (*Singh*)
E&W	Yes (PACE Code C)	**Yes** (CJPOA ss. 34–38)	s. 76/78 exclusion; inference limits (*Murray*, *Condron*)
Scotland	Yes (common law)	No	Corroboration rule adds protection
Australia	Yes (statutory cautions)	No (*Petty*); NSW s. 89A dead letter	Evidence Act s. 138 balancing
New Zealand	Yes (BORA s. 23(4))	No (Evidence Act s. 32)	s. 30 balancing exclusion
France	Yes (art. 63-1 CPP, since 2011)	No	Nullité of the statement
Germany	Yes (§ 136 StPO)	No (total silence never usable)	Verwertungsverbot (BGHSt 38, 214)
Italy	Yes (art. 64 CPP)	No; accused may even lie	Inutilizzabilità (art. 64(3-bis))
Spain	Yes (art. 520 LECrim)	Limited corroboration use (STC 202/2000)	Exclusion (art. 11.1 LOPJ)
Denmark	Yes (§ 752 Rpl.)	No formal regime (free proof)	Exclusion by case law
Sweden	Yes (FUK § 12, since 2014)	No formal bar (free proof)	Weight assessment; no comment bar

6 Access to Counsel

The sharpest single axis in this section is not *whether* a suspect may consult a lawyer — everywhere, yes — but whether the lawyer may be *in the room* during police questioning. The answers scramble the legal families. The United States grants presence on request, whereupon questioning must cease until counsel appears (*Miranda*; *Edwards v. Arizona* (1981)) — but four in five suspects waive. Canada, alone among the eleven, affirmatively *denies* any right to counsel's presence during interrogation: *R v. Sinclair* (Supreme Court of Canada, 2010) holds that one initial telephone consultation exhausts the Charter right unless circumstances change, after which police may interrogate for hours. England and Wales make the solicitor's presence routine, free, and non-means-tested at the police station (PACE s. 58 and Code C) (UK Parliament, 1984); Scotland reached the same place only in 2010, when *Cadder v. HM Advocate* (UK Supreme Court, 2010) applied the European Court's *Salduz* doctrine (European Court of Human Rights (GC), 2008b) to strike down six-hour lawyer-less detention questioning, forcing emergency legislation.

France admitted lawyers to the *garde à vue* interrogation room only in 2011, after the Conseil constitutionnel (Conseil constitutionnel, 2010) and Strasbourg (European Court of Human Rights, 2010) condemned the old regime in the same year; since July 2024 questioning cannot begin at all until the lawyer arrives, absent express waiver or a reasoned derogation. Germany — for all its early-warning virtue — guaranteed counsel's presence at *police* (as opposed to judicial) interrogations by statute only in 2017, implementing the EU directive (European Union, 2013). Italy and Spain sit at the mandatory end: Italian law requires a defense lawyer for every accused (*difesa tecnica obbligatoria*) and makes the defender's presence a condition of using any statement the suspect gives police; Spanish detainees cannot waive counsel at all (save minor traffic cases), and the bar association must produce a duty lawyer within three hours — though the private pre-interview consultation arrived only in 2015, and Spain's incommunicado regime for terrorism cases long denied even a chosen lawyer. Denmark and Sweden, the high-trust systems, are laxest in form: questioning without counsel remains lawful and common, drawing repeated criticism from the Council of Europe's torture-prevention committee.

The direction of travel in Europe has been one-way and datable. *Salduz v. Turkey* (2008) announced that Article 6 requires access to a lawyer from the first police interrogation; within three years it had forced reforms in Scotland, France, Belgium, and the Netherlands; the EU then codified and extended the right (Directive 2013/48), driving the German 2017, Spanish 2015, and French 2024 reforms. The ECtHR itself has since softened — *Ibrahim v. UK* (2016) and *Beuze v. Belgium* (2018) subordinate even systematic restrictions to an "overall fairness" review (European Court of Human Rights (GC), 2016b) — a retreat much criticized, but the national statutes it inspired remain.

On funding, the common-law world's constitutional guarantees meet administrative starvation. *Gideon v. Wainwright* (U.S. Supreme Court, 1963a) promised counsel to every indigent American felony defendant; sixty years later Oregon entered 2025 with over 4,000 unrepresented defendants and a federal appellate order requiring release of jailed defendants not given counsel within seven days. England's duty-solicitor corps has shrunk by roughly a third since 2017 under legal-aid austerity. The civil-law systems avoid the crisis form of the problem through mandatory appointment (*notwendige Verteidigung*, § 140 StPO; *difensore d'ufficio*, art. 97 c.p.p.), at the cost of thinner adversarial testing earlier in the process.

Table 6: Counsel at the police station

Country	**Lawyer present during police interrogation?**	**Free early legal help**	**Key authority**
United States	Yes if requested (questioning stops); ∼80% waive	Appointed counsel (underfunded)	*Miranda*; *Edwards*; *Gideon*
Canada	**No right to presence**; one consultation suffices	Duty-counsel phone lines	*R v. Sinclair* (2010)
E&W	Routine presence	Free, non-means-tested at station	PACE s. 58; Code C
Scotland	Presence required unless waived	Duty solicitor	*Cadder* (2010); CJSA 2016
Australia	May attend; rarely does (phone advice typical)	Legal aid commissions	Crimes Act 1914 s. 23G
New Zealand	May attend; not routine	PDLA 24/7 phone scheme	BORA s. 23(1)(b)
France	Yes since 2011; no questioning without lawyer since 2024	Commis d'office	Loi 2011-392; loi 2024-364
Germany	Statutory presence right only since 2017	Mandatory counsel (§ 140 StPO)	§§ 136, 163a StPO
Italy	Mandatory presence for usable statements	Court-appointed (art. 97)	Art. 350 c.p.p.
Spain	Mandatory, essentially non-waivable; duty lawyer ≤3h	Turno de oficio	Art. 520 LECrim (LO 13/2015)
Denmark	Defender may attend; lawyer-less questioning lawful	Court-appointed (§ 731)	Retsplejeloven § 745c
Sweden	Lawyer-less questioning common (CPT criticism)	Public defender if detained	RB 21:3, 21:3a

7 Interrogation: Methods, Deception, Recording, and Custody Clocks

7.1 Two schools of questioning

Interrogation practice divides the eleven countries into two methodological schools with a datable break between them. The **accusatorial school** — the American *Reid technique* and its relatives — treats the interview as a confession-seeking exercise: isolation, confrontation with real or invented evidence, theme development, minimization. Its legal foundation is *Frazier v. Cupp* (U.S. Supreme Court, 1969), which holds that police lies about evidence do not, without more, make a confession involuntary; false-evidence ploys remain lawful against adult suspects throughout the United States, and Canadian law polices deception only at the outer boundary where tactics would "shock the community" (*R v. Oickle* (2000)). The **investigative-interviewing school** was born in England from scandal: after the Cardiff Three tapes revealed oppressive questioning (*R v. Paris* (1993)), England replaced confession-seeking with the *PEACE* model — a non-accusatorial, account-gathering method — in 1992; New Zealand adopted it nationally in the 2000s, Norway built its KREATIV program on it, and the UN's 2021 Méndez Principles internationalized it. Germany goes further than either school by statute: § 136a StPO prohibits deception (*Täuschung*) outright, along with fatigue, threats, and unlawful promises, and excludes resulting statements *even if the accused consents to their use* — the strongest anti-deception rule in the group (Bundesrepublik Deutschland, 2026); Sweden's procedural code likewise bans knowingly false information, promises, and wearing-down during questioning (RB 23:12). The American counter-trend is young and juvenile-only: since Illinois moved first in 2021, ten states have barred police deception in juvenile interrogations, but no US jurisdiction bans lying to adult suspects.

The stakes are documented: false confessions appear in roughly a quarter of US DNA exonerations, and the experimental literature's grimmest regularity — innocent suspects waive their rights far more readily than guilty ones — converts warning regimes into weak protection precisely where protection matters most (Kassin, 2022). The ECtHR's contribution is the absolute floor: *Gäfgen v. Germany* (threats of torture against a kidnapper who had hidden a child) reaffirmed that Article 3 admits no balancing, while splitting on the fruits (European Court of Human Rights (GC), 2010a).

7.2 Recording and the clock

On recording, the surprise is the direction of the gradient. **Australia** imposed the earliest and hardest rule: since *McKinney v. The Queen* (1991) and the ensuing statutes, an unrecorded custodial confession to a serious offense is in practice inadmissible. England has taped interviews under PACE Code E since around 1991; New Zealand videos by default; France has videotaped felony *garde à vue* interrogations since the post-Outreau law of 2007; Italy requires audiovisual documentation of any interrogation of a detained person on pain of unusability (art. 141-bis c.p.p.), extended by the 2022 Cartabia reform; Germany mandated video for homicide and vulnerable-suspect interrogations from 2020. The United States is a patchwork — thirty states plus DC require recording in at least some custodial interrogations, with a federal policy presumption since 2014 — and Canada's mandate is judge-made custom rather than statute. The astonishing cells are Nordic: **Denmark and Sweden — otherwise among the world's most rights-respecting systems — still have no general recording requirement**; the written police summary remains the norm, a nineteenth-century documentary practice surviving inside twenty-first-century procedure.

Custody clocks — how long police may hold a suspect before a judge sees the case — range within a factor of ten (Table 7). The tightest are Scotland (12 hours, extendable once) and Canada and Denmark (24 hours); Germany's constitution requires a judge by the end of the day after arrest; the US benchmark is 48 hours; England allows 96 hours for ordinary crime (14 days for terrorism); France's *garde à vue* runs 24 plus 24 hours (up to six days for terrorism); Italy allows 96 hours to judicial validation; and Spain and Sweden sit at roughly 72–96 hours, with Spain's residual incommunicado regime the sharpest rights-suspension instrument in the group.

Table 7: Interrogation rules at a glance

Country	**Method school**	**Deception of suspects**	**Recording mandate**	**Police custody before judge**
United States	Reid (accusatorial)	Lawful (*Frazier*); 10 states ban for juveniles	30 states + DC (partial)	48h benchmark
Canada	Reid-influenced	Lawful unless "shocks community" (*Oickle*)	Customary, not statutory	24h
E&W	PEACE (since 1992)	Excluded via PACE ss. 76/78 (*Mason*)	Code E audio since ∼1991	24/36/96h; terror 14d
Scotland	PEACE-style	Excluded (fairness)	Standard practice	12h (+12h)
Australia	Mixed	Constrained by s. 138 balancing	Mandatory for confessions (1991–)	4–12h investigative time
New Zealand	PEACE (2007–)	Constrained (s. 30)	Video default	Prompt presentation
France	Judicial tradition; loyauté	Barred (loyauté des preuves)	Video for felonies (2007)	24+24h; terror to 144h
Germany	Non-accusatorial	**Banned by statute** (§ 136a)	Video: homi-cide/vulnerable (2020)	End of next day
Italy	Non-accusatorial	Banned (arts. 64(2), 188)	Detainee interrogations (141-bis)	96h to validation
Spain	Judicial tradition	Excluded (art. 11.1 LOPJ)	No general police mandate	72h; terror 120h
Denmark	Nordic pragmatic	Banned (§ 752(3))	**None** (written summaries)	24h (+72h judicial)
Sweden	Nordic pragmatic	**Banned by statute** (RB 23:12)	**None** (encouraged 2022)	∼96h to hearing

8 Bail and Pretrial Detention

8.1 Money and its absence

Nowhere is American exceptionalism more literal than in bail. The United States (with the Philippines) is one of only two countries on earth that permit a *commercial* bail-bond industry — roughly a two-billion-dollar-a-year business of bondsmen posting release for a nonrefundable premium, backstopped by insurers and enforced by bounty hunters. None of the other ten systems prices pretrial liberty this way: financial sureties exist on paper in England, Canada, France (*cautionnement*), Germany (§ 116a StPO), and Spain (*fianza*) but are marginal in practice; Canada's Supreme Court has held cash bail must be a last resort set within the accused's means (Supreme Court of Canada, 2017); Italy's 1988 code contains no money-bail mechanism at all; and Sweden simply has no bail institution — release is unconditional or with reporting duties, full stop. The doctrinal foundation of the American system was laid in *Stack v. Boyle* (1951) (bail higher than needed to assure appearance is "excessive") and *United States v. Salerno* (U.S. Supreme Court, 1987), which upheld preventive detention on dangerousness with the famous assurance that "in our society liberty is the norm" — an assurance the jail statistics have long outrun: some 450,000 unconvicted people sit in American jails on a given day, most because they cannot pay.

The American reform wave of 2017–2023 — New Jersey's near-elimination of cash bail (2017), New York's 2019 statute (partially rolled back three times), and Illinois's Pretrial Fairness Act (September 2023, the first outright abolition of money bail, upheld in *Rowe v. Raoul*), while California's replacement scheme was rejected by referendum in 2020 — produced large jail-population declines with no measurable crime increase in the evaluations to date; it collided in August 2025 with a federal executive order threatening funding to "cashless bail" jurisdictions, leaving American bail policy in open federal–state conflict as of mid-2026.

8.2 Who is detained, for how long, and under what conditions

Continental systems never had money bail to abolish; their instrument is judicially ordered remand (*détention provisoire*, *Untersuchungshaft*, *custodia cautelare*, *prisón provisional*, *varetægtsfængsling*, *häktning*) on enumerated grounds — flight, evidence-tampering, reoffending, and in France and Denmark an explicit public-order ground foreign to the others. The deep contrasts are three.

First, **time limits**. Italy caps total pretrial custody by statute — two, four, or six years depending on offense gravity (art. 303 c.p.p.), with automatic release on expiry; France's ceilings run to four years eight months for terrorism; Spain's to four years; Denmark presumptively caps remand at six months or a year (§ 768a); Sweden — notoriously limitless for adults until reform on 1 July 2021 — now has presumptive caps of nine months (adults) and three months (minors), leaky in practice. **Germany has no absolute cap at all**: only the six-month review by the Oberlandesgericht (§§ 121–122 StPO) and a sternly enforced constitutional acceleration principle. Neither does the US (speedy-trial clocks operate instead), Canada (90-day reviews per *R v. Myers* (2019)), or Australia. England's custody time limits (56 days summary, 182 days Crown Court) are renewable and were stretched in the backlog era.

Second, **who is actually inside**. The shares are counterintuitive (Figure 4): the highest remand *shares* of prison population are not American but Commonwealth — Canada 49.6%, Australia 42.2%, New Zealand 40.3% — against continental Europe's 17–31% and England's 18%. In Canada's provincial jails the inversion is total: roughly three-quarters of provincial inmates (85% in Ontario) are legally innocent remand prisoners, outnumbering the sentenced since the mid-2000s. But scale transforms the picture: multiplied by its incarceration rate, the United States detains about 138 people per 100,000 pretrial — more than seven times Germany's 18 — so the "middling" American share conceals by far the largest pretrial population in the group (Institute for Crime & Justice Policy Research, 2026).

Third, **conditions**. The Scandinavian systems, mildest on paper, run the harshest remand *regimes*: Swedish prosecutors impose *restriktioner* (isolation from other prisoners, censored contact) on 77–79% of remand detainees — 96–98% of detained children — and Danish remand practice has drawn decades of criticism from the Council of Europe's anti-torture committee for de facto solitary confinement, even after statutory caps cut formal isolation to a handful of cases a year. Southern Europe's problem is crowding: the ECtHR's pilot judgments in *Torreggiani v. Italy* (2013) and *J.M.B. v. France* (2020) condemned structural overcrowding concentrated in remand houses and expressly told France to curb pretrial detention; France nonetheless set an all-time population record (88,829) in June 2026 at 139% density. The ECtHR's doctrinal floor — reasons "relevant and sufficient" from the very first detention decision (European Court of Human Rights (GC), 2016a), no automatic detention categories (European Court of Human Rights (GC), 2000) — now shapes every European system's black-letter law, if not its cell counts.

The politics of 2023–2026 ran the other way in the common-law world: Canada's Bills C-48 (2024) and C-14 (2026) expanded reverse-onus detention; Victoria's Tough Bail Act 2025 abolished remand-as-last-resort for children; New South Wales and Queensland tightened youth bail; and England's remand population hit a fifty-year record. Bail is where the report's convergence story runs backwards.

Table 8: Pretrial detention frameworks

Country	**Money bail**	**Decision-maker**	**Absolute time cap**	**Remand share / rate per 100k**
United States	Commercial bond industry (unique)	Judge; schedules common	None (speedy-trial clocks)	25.5% / 138
Canada	Cash disfavored (*Antic*)	Justice within 24h	None (90-day reviews)	49.6% / 49
E&W	Recognizance rare	Magistrates	CTL 56/182 days (renewable)	18.3% / 25
Australia	Sureties, no industry	Magistrates; show-cause offenses	None	42.2% / 72
New Zealand	None in practice	Judge	None	40.3% / 85
France	Cautionnement marginal	JLD (since 2000)	4y8m max (terror)	31.0% / 40
Spain	Fianza modest	Investigating judge, on party request	4y max	17.6% / 21
Germany	§ 116a security rare	Ermittlungsrichter	**None** (6-month OLG review)	26.6% / 18
Italy	None	GIP on PM request	2/4/6y by gravity	23.4% / 26
Denmark	Virtually never	Judge within 24h	6m/1y presumptive	31.3% / 22
Sweden	**No bail institution**	Court $\leq$4 days after arrest	9m/3m presumptive (2021)	26.9% / 29

Note: Remand shares and rates from World Prison Brief country pages (2023–26 reference dates). Canada's national share masks provincial custody that is roughly three-quarters remand.

9 Evidence: Exclusionary Rules, Hearsay, and Disclosure

9.1 What happens to illegally obtained evidence

Ask each system what a court should do with reliable evidence the police obtained unlawfully, and the answers span the full spectrum from automatic exclusion to near-total admission — and the spectrum does not track the common-law/civil-law line.

At the **mandatory** end sits the United States: *Mapp v. Ohio* (U.S. Supreme Court, 1961) imposed the Fourth Amendment exclusionary rule on the states, and *Wong Sun* extended it to derivative evidence — the "fruit of the poisonous tree" (U.S. Supreme Court, 1963b). But five decades of deterrence-only reasoning have carved the rule hollow: good-faith reliance on defective warrants (*United States v. Leon* (U.S. Supreme Court, 1984)), attenuation, inevitable discovery, standing, and impeachment exceptions mean the American rule is now categorical in rhetoric and porous in application. Italy runs the strongest statutory rule in Europe: art. 191 c.p.p. declares evidence acquired in violation of legal prohibitions *inutilizzabile* — unusable at any stage, a status courts must notice on their own motion (Repubblica Italiana, 1988). Spain's art. 11.1 LOPJ (1985) likewise excludes evidence obtained "directly or indirectly" in violation of fundamental rights — textually the fruit doctrine — though the Constitutional Court has narrowed derivative exclusion through the "connection of unlawfulness" doctrine (STC 81/1998), and the Supreme Court's *Falciani* judgment (2017) admitted a stolen Swiss bank list because the thief was a private party pursuing his own ends.

The **discretionary middle** belongs to the Commonwealth. Canada's Charter s. 24(2) excludes evidence whose admission "would bring the administration of justice into disrepute," operationalized by *R v. Grant*'s three-line inquiry (seriousness of the state conduct; impact on the accused; society's interest in adjudication on the merits) (Supreme Court of Canada, 2009) — exclusion is routine but never automatic. Australia's *Bunning v. Cross* public-policy discretion (High Court of Australia, 1978), now codified as Evidence Act s. 138, and New Zealand's Evidence Act s. 30 balancing (New Zealand Parliament, 2006) are cousins. England is stingier: PACE s. 76 excludes confessions obtained by oppression or in circumstances of unreliability *automatically*, but everything else passes through s. 78's fairness discretion, and English law never adopted a fruits doctrine — s. 76(4) expressly saves physical evidence found via an excluded confession (UK Parliament, 1984).

At the **admissive** end, Germany and the Nordics. German law has no general exclusionary rule: *Beweisverwertungsverbote* are recognized case by case through a balancing doctrine, with absolute exclusion reserved for § 136a violations and core-privacy intrusions, and derivative-evidence exclusion (*Fernwirkung*) generally rejected — a hierarchy on display in *Gäfgen*, where the threat of torture excluded the stationhouse confession but not the evidence it led to (European Court of Human Rights (GC), 2010a). France polices its investigators through procedural *nullités* and the judge-made *loyauté des preuves* principle — which binds only public authority: illegal recordings made by *private* parties are admissible, weighed freely. Denmark and Sweden barely exclude at all: Sweden's *fri bevisprövning* (RB ch. 35 § 1) admits virtually everything, including unlawfully obtained evidence, which affects weight rather than admissibility (Konungariket Sverige, 2026). The ECtHR blesses this pluralism: there is no Convention-wide exclusionary rule (*Schenk*, *Khan v. UK* (European Court of Human Rights, 2000b)); only Article 3 torture evidence is absolutely barred (*Jalloh*, *Gäfgen*), with *Salduz*-breach confessions close behind.

Table 9: Exclusion of illegally obtained evidence

Country	**Rule type**	**Fruits excluded?**	**Leading authority**
United States	Mandatory + many exceptions	Yes (attenuated)	*Mapp* (1961); *Leon* (1984)
Canada	Discretionary (disrepute test)	Case-by-case	*R v. Grant* (2009), s. 24(2)
E&W	Confessions automatic (s. 76); else discretion (s. 78)	**No** (s. 76(4))	PACE 1984; *A and others* (torture bar)
Australia	Balancing	Case-by-case	*Bunning v. Cross* (1978); s. 138; *Kadir* (2020)
New Zealand	Balancing	Case-by-case	Evidence Act 2006 s. 30
France	Procedural nullities; loyauté (state only)	Via nullité chains	Cass. Ass. plén. 2015; private recordings admissible
Germany	Case-by-case balancing; § 136a absolute	Generally **no**	BGHSt 38, 214; *Gäfgen*
Italy	**Statutory unusability**	Broad	Art. 191 c.p.p.
Spain	Constitutional exclusion incl. indirect	Narrowed since 1998	Art. 11.1 LOPJ; STC 81/1998; *Falciani* (2017)
Denmark	Free proof; rare exclusion	No	Case law
Sweden	**Free proof; essentially no exclusion**	No	RB ch. 35 § 1

9.2 Hearsay, character, and the dossier

The remaining evidence law divides on a single structural fact: whether the fact-finder is a shielded amateur or a professional reading a file. Common-law systems screen: hearsay is presumptively excluded (FRE 802; now heavily gatewayed in England by the CJA 2003 (UK Parliament, 2003)), and the American confrontation right bars testimonial statements of absent witnesses outright (*Crawford v. Washington* (U.S. Supreme Court, 2004)). The transatlantic collision came over "sole or decisive" hearsay: Strasbourg's *Al-Khawaja* rule (European Court of Human Rights (GC), 2011) met the UK Supreme Court's refusal in *R v. Horncastle* (UK Supreme Court, 2009), ending in a rare negotiated compromise — decisive hearsay is admissible with counterbalancing safeguards. Civil-law systems, trying facts before judges who have read the complete investigative dossier, never developed a hearsay rule; their control is the immediacy principle (*Unmittelbarkeit*, § 250 StPO) and, in Italy's 1988 adversarial code, a genuine confrontation guarantee written into the Constitution in 1999 (art. 111: guilt may not be established on statements by a witness who has freely evaded cross-examination) — the closest European analog to

Crawford. Character evidence splits the same way: American and (more loosely, post-2003) English law filter propensity evidence from the jury, while in France, Germany, or Sweden the defendant's criminal record sits openly in the file and is read out at trial — unthinkable in Chicago, unremarkable in Lyon. Disclosure divides inversely: the civil-law defense reads the *whole* dossier as of right, while common-law disclosure is a party obligation that fails recurrently — *Brady* violations in the United States, the English disclosure crisis of 2017–18.

10 Double Jeopardy and the Finality of Acquittals

Every system forbids trying a person twice for the same crime; almost none of them means the same thing by it. Three variables generate the disagreement: (1) when finality attaches (before or after appeals); (2) whether the *prosecution* may appeal an acquittal; and (3) whether a final acquittal can ever be reopened.

The **United States** is absolutist in one dimension and permissive in another. Once jeopardy attaches, an acquittal is untouchable: no prosecution appeal however egregious the legal error (*United States v. Scott* (1978); *Evans v. Michigan* (2013)), no retrial after acquittal, ever. Yet the same person may be prosecuted twice for the same conduct by state and federal governments under the dual-sovereignty doctrine, reaffirmed in *Gamble v. United States* (U.S. Supreme Court, 2019) — a structural double prosecution no European system tolerates internally (and which EU law forbids even *across* member states under Article 54 CISA and Article 50 of the Charter). The **civil-law** systems invert the American structure: prosecution appeals are ordinary — France extended full appeal to assize acquittals in 2000–2002 (exercisable by the *procureur général*); Germany's § 296 StPO gives the prosecutor symmetric appeal rights (exercisable even in the defendant's favor); Spain and the Nordics likewise — because in Damaškian terms every subordinate decision is reviewable; but once the judgment is final, *ne bis in idem* bites hard. How hard, Germany demonstrated in 2023: the Bundestag's 2021 amendment allowing reopening of final *acquittals* for murder on compelling new evidence (§ 362 no. 5 StPO) was struck down by the Federal Constitutional Court as violating Article 103(3) Basic Law, which the court declared *abwägungsfest* — immune from balancing: the constitution deliberately chose legal certainty over substantive justice (Bundesverfassungsgericht, 2023).

The **English-speaking middle** has moved the other way. England abolished absolute finality with the Criminal Justice Act 2003: for some thirty grave offenses, the Court of Appeal may quash an acquittal on "new and compelling evidence" — the reform that convicted Stephen Lawrence's killers in 2012, after *R v. Dunlop* (Court of Appeal (England and Wales), 2006) inaugurated the procedure; Scotland followed in 2011, Australia's states after *The Queen v. Carroll* (High Court of Australia, 2002), New Zealand in 2011. Canada occupies a middle position of its own: the Crown may appeal acquittals on questions of law — including jury acquittals — with a new trial (never a substituted conviction) as remedy. Italy's twenty-year oscillation is the richest single case study: the 2006 Pecorella law barred prosecution appeals of acquittals; the Constitutional Court restored them in 2007 as a matter of parity of arms; the Cartabia reform (2022) and Nordio law (2024) re-narrowed them for lesser offenses; and in April 2026 the Milan Court of Appeal referred the Nordio restriction back to the Constitutional Court, where it was pending as this report closed. Layered over the European systems is a Strasbourg-driven safeguard the common law never needed: an appellate court may not convert an acquittal into a conviction without re-hearing the decisive witnesses itself (*Dan v. Moldova* (2011); Italy's *Dasgupta* (2016); Spain's STC 167/2002 and art. 792.2 LECrim, which allow annulment-and-retrial but never direct appellate conviction).

Table 10: Double jeopardy and prosecution appeals

Country	Prosecution appeal of acquittal	Reopening final acquittal	Signature rule / case
United States	Never	Never — but dual sovereignty allows second prosecution	*Scott* (1978); *Gamble* (2019)
Canada	On questions of law (new trial only)	No	Criminal Code s. 676
E&W	Terminatory rulings only	**Yes**: new & compelling evidence, ∼30 offenses	CJA 2003 Pt 10; *Dunlop*; Lawrence retrial
Scotland	References on law only	Yes (2011 Act)	Double Jeopardy (Scotland) Act 2011
Australia	Limited	Yes (state reforms post-2003)	*Carroll* (2002)
New Zealand	Limited	Yes (CPA 2011)	ss. 151–156
France	**Yes** (procureur général, since 2002)	No (after finality)	Art. 380-2 CPP
Germany	**Yes** (§ 296 StPO, both directions)	**No — constitutionally barred**	BVerfG 2 BvR 900/22 (2023)
Italy	Restricted for minor offenses (2024), contested	Narrow revision only	Corte cost. 26/2007; legge Nordio
Spain	Yes, but no appellate conviction without rehearing	No	STC 167/2002; art. 792.2
Denmark	Yes (full appeal)	Limited (new evidence, serious crimes)	Retsplejeloven ch. 86 (§ 976)
Sweden	Yes (full appeal)	Extraordinary review (resning)	RB ch. 58

Note: "Prosecution appeal" refers to ordinary appeal before finality; civil-law systems treat this as unremarkable hierarchical review, which is why their strong ne bis in idem attaches only to final judgments. The UK has never ratified Protocol 7 to the ECHR (whose Art. 4 guarantees ne bis in idem); Germany signed but never ratified it.

Part II

Police and Investigative Powers

11 Stops, Identity Checks, and Arrest

Street policing runs on suspicion thresholds, and the thresholds are surprisingly comparable in formulation — "reasonable suspicion" for brief stops, "probable cause"/"reasonable grounds" for arrest — while diverging enormously in scale and control. The American framework descends from *Terry v. Ohio* (U.S. Supreme Court, 1968b): a stop-and-frisk on reasonable articulable suspicion, married to *Whren v. United States*' blessing of pretextual traffic stops (U.S. Supreme Court, 1996), produced urban policing regimes whose racial geography ended up in federal court — *Floyd v. City of New York* (U.S. District Court (S.D.N.Y.), 2013) found the NYPD's 4.4-million-stop program unconstitutional as applied; stops collapsed by over 95% thereafter (crime fell anyway), before partially rebounding in the 2020s under continuing federal monitorship. Arrest requires probable cause, with a judicial check within 48 hours (*Gerstein*; *McLaughlin*).

England and Wales regulate the same practices through PACE: stop and search on reasonable grounds (s. 1), arrest on reasonable grounds plus a necessity test (s. 24), and — the controversial residue — suspicionless search under s. 60 authorizations, after the broader terrorism power fell in Strasbourg (*Gillan v. UK* (2010)). Ethnic disparity is the permanent wound: Black people in England and Wales are searched at several times the white rate, a figure that has survived every reform cycle. France's *contrôles d'identité* (art. 78-2 CPP) are the loosest power in the group — identity checks requiring no individualized suspicion in broad zones — and the most heavily litigated: the Cour de cassation held the state liable for discriminatory checks in 2016, and in 2023 the Conseil d'État, on a class action, acknowledged that discriminatory identity checks are "not limited to isolated cases" while declining to order systemic remedies. Germany's counterpart (§ 163b StPO and police-law station checks) generates its own racial-profiling litigation; Denmark authorizes time-boxed suspicionless search zones (*visitationszoner*); Canada's provinces have banned or regulated street "carding"; New Zealand stands out for having no general stop-and-search power at all outside statutory grounds. Across systems, the pattern is one-directional: the street power is easiest to grant, hardest to supervise, and everywhere the primary site of documented discrimination.

Table 11: Stop and arrest thresholds

Country	Street stop / search	Arrest threshold	Distinctive feature
United States	Reasonable suspicion (*Terry*); pretext stops OK (*Whren*)	Probable cause; judge $\leq$48h	Stop-and-frisk litigation (*Floyd*)
Canada	Investigative detention (*Mann*)	Reasonable grounds	Provincial carding bans
E&W	s. 1 PACE reasonable grounds; s. 60 suspicionless zones	Reasonable grounds + necessity	Persistent ethnic disparities
Australia	State powers; consorting laws	Reasonable suspicion	No national charter constraint
New Zealand	**No general stop power**	Good cause to suspect	Search and Surveillance Act 2012
France	Identity checks without suspicion (art. 78-2)	Flagrance / plausible reasons	*Contrôle au faciès* litigation
Germany	§ 163b identity checks; station controls	Dringender Tatverdacht (warrant)	Racial-profiling case law
Italy	Identification powers	Flagranza / fermo	Validation within 96h
Spain	Identity checks (LO 4/2015)	Judicial or flagrancia	Broad identification and station-transfer powers
Denmark	*Visitationszoner* (suspicionless zones)	Reasonable suspicion	Zone searches since 2004
Sweden	Police-law powers	Probable cause (häktning grounds)	Prosecutor-led custody

12 Search and Seizure

All eleven systems begin from the same premise — homes are inviolable absent authorization — and diverge on the two questions that matter: *who* authorizes, and *how much* escapes authorization. The United States pairs the strongest rhetoric (the Fourth Amendment's warrant preference, probable cause found by a neutral magistrate) with the largest exception structure: consent (the workhorse of American searching), vehicles, search incident to arrest, plain view, exigency. Its digital-era course corrections are the world's reference points: *Riley v. California* required a warrant for arrestees' phones (U.S. Supreme Court, 2014), and *Carpenter v. United States* put historical cell-site location data behind a warrant, cracking the third-party doctrine (U.S. Supreme Court, 2018). Canada's *Hunter v. Southam* presumptive-warrant standard (Supreme Court of Canada, 1984) is textually similar but diverges on phones: *R v. Fearon* (Supreme Court of Canada, 2014a) permits warrantless phone searches incident to arrest under conditions — the mirror image of *Riley*, decided the same year. England, characteristically, empowers more and litigates less: alongside s. 8 warrants, PACE ss. 17, 18, and 32 authorize substantial warrantless entry and search after arrest.

On the Continent the judicial-authorization principle is formally stronger and practically leakier. Germany requires a judicial order for home searches (§§ 102, 105 StPO) and its Constitutional Court in 2001 sharply narrowed the "danger in delay" exception that had swallowed the rule; France distinguishes flagrance searches (broad police power) from preliminary-investigation searches (consent or judicial authorization) and preserves the old rule that homes are not searched at night; Spain's constitution (art. 18.2) requires consent, flagrancy, or a judicial order; Italy demands validation of police-initiated searches; Denmark defaults to a court order. Sweden is the outlier the comparative literature keeps rediscovering: *husrannsakan* is ordinarily authorized by the **prosecutor** (or even senior police), not a judge — ex ante judicial control of searches barely exists, a striking inversion of Sweden's rights reputation and a reminder that Nordic procedure trusts institutions where Anglo-American procedure distrusts them (Konungariket Sverige, 2026).

Table 12: Search of premises: authorization

Country	Default authorizer	Main exceptions	Digital landmark
United States	Judge (warrant, probable cause)	Consent, vehicle, SITA, exigency	*Riley* (2014); *Carpenter* (2018)
Canada	Judge (*Hunter*)	Exigency; phones on arrest (*Fearon*)	*Fearon* contrast with *Riley*
E&W	Magistrate (s. 8)	Broad post-arrest powers (ss. 17/18/32)	EncroChat admissibility litigation
Australia	Magistrate	Statutory variants	Data disruption warrants (2021)
New Zealand	Judge (SSA 2012)	Statutory exigency	Consolidated 2012 code
France	JLD / juge d'instruction	Flagrance regime; night-search bar	Loi narcotrafic 2025
Germany	Judge (§ 105)	Gefahr im Verzug (narrowed 2001)	Online-search powers (§ 100b)
Italy	Judicial; validation of police searches	Flagranza	Trojan (captatore) case law
Spain	Judge (art. 18.2 CE)	Consent, flagrancia	LECrim 2015 tech code
Denmark	Court order	Urgency with report-back	Logging-judgment fallout
Sweden	**Prosecutor** (weak ex ante judicial role)	Police in urgency	Hemlig dataavläsning (2020)

13 Surveillance and Interception

13.1 Regimes

Electronic surveillance is where the eleven systems differ by *orders of magnitude*, not degrees (Figure 7). The United States runs the most demanding warrant regime and the smallest program: Title III's 1968 "super-warrant" (necessity, minimization, judicial findings) yielded just 2,297 authorized intercepts nationwide in 2024 — foreign-intelligence surveillance under FISA being a separate, classified world. Italy sits at the other extreme: roughly 84,000 intercepted targets a year at a state cost near 200 million euros — per capita about two hundred times the American rate — reflecting a legal culture in which the *intercettazione* is the ordinary investigative tool for organized crime, and a recurring political battlefield over leaked transcripts. Germany (about 16,000 orders) and France (about 46,000 judicial interceptions, plus a separate administrative-intelligence system supervising some 24,000 people a year under the 2015 intelligence law) occupy the middle. The United Kingdom is structurally unique twice over: the Investigatory Powers Act 2016 authorizes interception through ministerial warrants "double-locked" by judicial commissioners, and includes the bulk-collection powers litigated in *Big Brother Watch v. UK*, where the Strasbourg Grand Chamber accepted bulk interception in principle while demanding end-to-end safeguards (European Court of Human Rights (GC), 2021; UK Parliament, 2016); and, alone in the group, the UK forbids using intercept product as *evidence* — wiretaps are for intelligence only (IPA s. 56), which is why the EncroChat prosecutions that filled English courts relied on material hacked by *French* authorities and imported as foreign evidence. Australia legislated the most aggressive computer powers in the democratic world in 2021 — "data disruption" and account-takeover warrants; Sweden's gang crisis produced preventive interception without concrete criminal suspicion (2023); and Denmark spent years out of compliance with EU data-retention jurisprudence before revising its logging law.

Above the national systems sit two supranational disciplines with opposite vectors. The ECtHR line from *Klass* through *Zakharov* to *Big Brother Watch* and *Centrum för Rättvisa* (a parallel Swedish bulk-interception judgment) constitutionalizes *procedure*: independent authorization, necessity, notification, oversight. The CJEU line — *Digital Rights Ireland* (2014), *Tele2* (2016), *La Quadrature du Net* (2020), *SpaceNet* (2022) — has repeatedly struck down blanket telecommunications *data retention*, keeping most member states' retention laws in permanent legal limbo; in the EncroChat aftermath (2024) the Court largely left admissibility of cross-border hacked evidence to national law. Germany's Federal Constitutional Court supplies the richest national jurisprudence: from the 1983 census judgment's "informational self-determination" to the 2008 invention of a "fundamental right to the confidentiality and integrity of IT systems" constraining state trojans — doctrine with no American analog.

13.2 The EncroChat case study

The 2020 French hack of the EncroChat encrypted-phone network — malware placed on tens of thousands of devices, over a hundred million messages harvested — is the clearest single demonstration of the systems' divergent evidence cultures under identical facts: the same dataset produced thousands of convictions across Europe while being tested under English law (admissible: intelligence-vs-evidence line held), German law (admissible after the BGH balanced, over a Berlin court's referral), French *nullité* doctrine, and Swedish free proof (admissible almost by definition). A single supranational investigation, eleven different admissibility answers — the exclusionary-rule table of Section 9 enacted in real time.

14 Undercover Operations and Entrapment

14.1 Five doctrines for one problem

When police manufacture the opportunity for a crime, five distinct legal technologies process the result. The **American subjective test** asks about the defendant: entrapment is a jury defense established where government agents induced the offense and the defendant lacked predisposition — predisposition that, after *Jacobson v. United States* (U.S. Supreme Court, 1992), must predate the government's attentions and be proved beyond reasonable doubt. Because predisposed targets always lose, American sting culture is the world's most expansive: ATF "stash-house" reverse stings (fictitious drug robberies whose racial targeting produced federal litigation and the tactic's quiet abandonment in Chicago), FBI terrorism stings (informant-driven plots in roughly a third of post-9/11 terrorism prosecutions, per Human Rights Watch), and mass online child-exploitation operations — including the FBI's two-week stint *operating* a seized dark-web abuse site to deliver malware to its visitors. The residual "outrageous government conduct" due-process defense is nearly extinct.

The **Canadian objective test** asks about the police: under *R v. Mack* (Supreme Court of Canada, 1988), providing an opportunity without reasonable suspicion (or outside a bona fide inquiry), or moving from opportunity to inducement, is entrapment regardless of predisposition, remedied by a stay of proceedings. The Supreme Court has updated the framework for dial-a-dope (*R v. Ahmad* (2020): suspicion must attach to the phone line before the offer) and for online spaces (*R v. Ramelson* (2022): a "sufficiently precise" virtual space can ground a bona fide inquiry). **England** recognizes no defense (*R v. Sang* (1980)) but stays prosecutions as abuse of process where police did more than provide an "unexceptional opportunity" (*R v. Looseley* (House of Lords, 2001)); the doctrine's real-world stress test was the "spycops" scandal — some 140 undercover officers infiltrating over a thousand political groups across four decades, deceiving more than sixty women into relationships and borrowing dead children's identities — now in its eleventh year of public inquiry, whose interim verdict was that the unit "should have been disbanded" in the 1970s. Parliament's response ran the other direction: the CHIS (Criminal Conduct) Act 2021 placed *authorized criminality* by informants on a statutory footing with no express offense limits. **Australia** likewise recognizes no defense: *Ridgeway v. The Queen* (High Court of Australia, 1995) answered police-procured crime with evidentiary exclusion, promptly displaced by "controlled operations" statutes that authorize the illegality ex ante.

The **continental** systems converge on a distinction between provoking *evidence* of ongoing crime (lawful) and provoking the *crime itself* (unlawful), under ECtHR discipline: *Teixeira de Castro v. Portugal* (European Court of Human Rights, 1998) holds that conviction on police-incited crime violates Article 6, *Ramanauskas* puts the burden of disproving incitement on the prosecution, and *Furcht v. Germany* (2014) declared sentence discounts insufficient — incited-crime evidence must be excluded or the proceedings ended. *Furcht* forced the most dramatic doctrinal shift in the group: Germany's Federal Court of Justice abandoned its sixty-year "sentencing solution" in 2015 in favor of a procedural bar (*Verfahrenshindernis*) — state-provoked crime now ends the prosecution, extended in 2021 even to indirectly provoked co-defendants after *Akbay v. Germany.* France polices provocation through *loyauté de la preuve* nullities (its leading cases include convictions annulled because the child-abuse forum that snared the defendant was created and run by the NYPD), with statutory no-incitement clauses rewritten in the 2025 anti-narcotrafficking law, which also introduced civilian infiltrators. Italy channels everything through its statutory undercover regime (art. 9, legge 146/2006, extended to corruption stings by the 2019 *spazzacorrotti*) plus art. 191 unusability; Spain requires judicial or prosecutorial authorization for its *agente encubierto* (art. 282 bis LECrim) and treats the *delito provocado* as unpunishable; Denmark's agent rules are the strictest statutory design (court order, serious-crime threshold, and a flat statutory bar on enlarging the offense's "scope or gravity"); Sweden ran on unwritten principles — improper provocation defeats prosecution per *NJA 2007 s. 1037* (the stolen-Rembrandt sting), otherwise mitigation — until a 2025 inquiry proposed the first statute, in force no earlier than 2027.

The forensic set-piece is the **"Mr Big" technique** — an invented criminal organization that recruits a murder suspect and demands a confession as the price of membership. Canada invented it, and Canada's Supreme Court finally regulated it: *R v. Hart* (Supreme Court of Canada, 2014b) makes such confessions presumptively inadmissible. Australia's High Court admitted them (*Tofilau v. The Queen* (High Court of Australia, 2007)); New Zealand's Supreme Court split 3–2 in favor of admission (*R v. Wichman* (2015)), with the collapse of the David Lyttle prosecution keeping the controversy alive. The same technique, three admissibility answers — entrapment doctrine in microcosm.

Table 13: Entrapment doctrines

Country	Test	Remedy	Leading authority
United States	Subjective (predisposition)	Acquittal (jury defense)	*Sorrells* (1932); *Jacobson* (1992)
Canada	Objective (police conduct)	Stay of proceedings	*Mack* (1988); *Ahmad* (2020)
E&W	No defense; abuse of process	Stay; s. 78 exclusion	*Looseley* (2001)
Australia	No defense; discretion + statutes	Exclusion	*Ridgeway* (1995)
New Zealand	Abuse of process / s. 30	Exclusion / stay	*Police v. Lavalle* (1979)
France	Provocation à la commission barred	Nullité of proceedings	Cass. crim. 2006–08; Ass. plén. 2019
Germany	Rechtsstaatswidrige Tatprovokation	**Procedural bar** (since 2015)	BGHSt 60, 276; *Furcht* (ECtHR 2014)
Italy	Disvelamento vs. determinazione	Inutilizzabilità + agent liability	Cass. 12204/2020; art. 9 l. 146/2006
Spain	Delito provocado unpunishable	Acquittal / nullity	STS 204/2013; art. 282 bis LECrim
Denmark	Statutory agent rules	Sentence mitigation	Rpl. §§ 754a–e; U 2002.340 H
Sweden	Brottsprovokation improper	No prosecution (extreme cases)	NJA 2007 s. 1037
ECtHR	Incitement vs. passive investigation	Exclusion or equivalent	*Teixeira* (1998); *Furcht* (2014)

15 Use of Force

15.1 Two standards

The doctrinal divide is clean. American law asks whether force was *objectively reasonable* from the perspective of an officer on the scene, without hindsight (*Graham v. Connor* (U.S. Supreme Court, 1989)), deadly force against fleeing suspects requiring probable cause of dangerousness (*Tennessee v. Garner* (U.S. Supreme Court, 1985)). European law asks whether force was *absolutely necessary* — ECHR Article 2's strict proportionality, which additionally audits the *planning and control* of the whole operation, not just the trigger moment: *McCann v. UK* (European Court of Human Rights (GC), 1995) found the Gibraltar SAS shootings unlawful for planning failures even while excusing the individual soldiers, and *Nachova v. Bulgaria* holds that lethal force against non-dangerous fleeing suspects can never be absolutely necessary — the Strasbourg *Garner*, but stricter. Between the standards sits accountability architecture: the American qualified-immunity doctrine (*Harlow*; *Pearson*) shields officers from damages absent "clearly established" law, survived the post-2020 federal reform attempt (the George Floyd Justice in Policing Act died in the Senate), and has been abolished as a state-law defense only in Colorado, New Mexico, and partially elsewhere. European systems have no analog — but produce almost no prosecutions either: England's first manslaughter conviction of an on-duty officer in a generation came in 2021, and roughly 1–2% of American fatal shootings lead to murder or manslaughter charges.

15.2 Two realities

The numbers dwarf the doctrine (Figure 5). American police killed 1,365 people in 2024 (about 40 per 10 million inhabitants; shootings alone about 34 per 10 million); German police shootings killed 22 (2.6 per 10 million) — a post-reunification record year, driven by mental-health-crisis encounters; England and Wales, where only about 4–5% of officers carry firearms, recorded *two* fatal police shootings (0.3 per 10 million); Denmark and Sweden recorded zero in 2024 — Sweden's gang-war era notwithstanding. France is the instructive middle case: a 2017 statute added a vehicle-flight scenario (*refus d'obtempérer*) to the lawful-force list, and deaths at traffic stops promptly rose, culminating in the 2023 killing of Nahel Merzouk and nationwide riots; in June 2026 the Cour de cassation revived the murder qualification against the officer. The transatlantic gap — roughly two orders of magnitude between the US and England on fatal shootings per capita — reflects gun prevalence, deployment doctrine (armed-response units versus routinely armed patrol), and legal standards together; no single variable explains it. Post-Floyd American reform went both directions at once: some states tightened statutes to necessity standards (California AB 392, Washington I-940) while the federal consent-decree program was dismantled in 2025, with the Minneapolis and Louisville decrees dismissed and pattern-or-practice findings against six agencies retracted.

Table 14: Use of lethal force: standards and scale

Country	Legal standard	Killings /10M (latest)	Accountability note
United States	Objective reasonableness (*Graham*)	∼40 (all); ∼34 (shootings)	Qualified immunity; ∼1–2% of fatal shootings charged
Canada	s. 25 Criminal Code proportionality	∼25 (all deaths)	Independent investigation units
E&W	Reasonable force; honest belief	0.3	Kaba case: acquittal, anonymity law 2026
Australia	State statutes	3.3	Mandatory coronial inquests
New Zealand	Statutory defense	∼5.6 (tiny base)	Mostly unarmed police
France	2017 law incl. vehicle flight	3.9	Refus d'obtempérer deaths; Nahel case pending
Germany	Strict proportionality (UZwG)	2.6	∼2% of force investigations charged
Italy	Proportionality; torture offense only 2017	∼0.5 (est.)	Cucchi convictions 2022
Spain	Proportionality	∼0.5	Transparency criticized
Denmark	Proportionality	0 (2024)	Last fatal shooting 2023
Sweden	Proportionality	0 (2024)	Zero police killings amid gang war
ECtHR	**Absolutely necessary** (Art. 2)	—	Planning/control audited (*McCann*)

Note: categories differ — US and Canada figures count all police-related killings; others count fatal police shootings; Spain and Italy lack systematic official counts (estimates). Sources: Mapping Police Violence (2024), CILIP, IOPC, IGPN-based press tallies, AIC, national police reports.

16 DNA Collection and Retention

16.1 Who gets swabbed, and how long the state remembers

Forensic DNA databases sort the eleven countries into philosophies of memory. The **expansive** pole is Anglo-French. The United Kingdom built the world's first national DNA database (1995) and still runs the most comprehensive per capita: some 6.15 million distinct individuals — roughly 9% of the population — are profiled, a legacy of the pre-2008 policy of keeping everyone ever arrested, forever. That policy fell in Strasbourg: *S. and Marper v. UK* (European Court of Human Rights (GC), 2008a) held blanket, indefinite retention of unconvicted people's profiles incompatible with Article 8, forcing the deletion regime of the Protection of Freedoms Act 2012 (and later cases — *Gaughran* (2020) — extended review requirements even to convicts' profiles). France's FNAEG grew by mission creep from a 1998 sex-offender register to nearly all offenses: 7.4 million profiles covering about 4.4 million people (∼6.4% of the population), three-quarters of them mere suspects, and refusing the swab is itself a criminal offense — a design Strasbourg condemned in *Aycaguer v. France* (2017), producing gravity-graduated retention by decree. The United States collects from all convicts and, since *Maryland v. King* (U.S. Supreme Court, 2013a) (5–4, over Scalia's "genetic panopticon" dissent), from arrestees in 34 states plus the federal system: the national index holds over 19 million offender and 6 million arrestee profiles.

The **restrictive** pole is German-Canadian-Italian. Germany requires, for database entry, an offense of substantial significance *plus* an individualized prognosis of future offending, judicially ordered (§ 81g StPO) — yielding under one million person records (∼1%), no arrestee collection, and a judicial ban on familial searching (BGH 2012). Canada's data bank is conviction-only (∼497,000 profiles, 1.2%); an expansion bill died in the Senate. Italy, which legislated its database only in 2009 (to join the EU's Prüm exchange) and loaded its first profiles in 2017, holds barely 114,000 profiles — one-fiftieth of British coverage per capita. Between the poles: Australia (∼4.6%), Sweden (1.7%, three registers), Denmark (charged persons for 18-month-plus offenses; retention after acquittal a running controversy), Spain (∼0.9%).

16.2 The genetic-genealogy frontier

The Golden State Killer arrest (2018) — built by uploading crime-scene DNA to a consumer genealogy site — opened investigative territory no legislature had imagined: police searching the relatives of everyone who ever bought a DNA test. The regulatory responses again span the spectrum: the US runs on a non-binding DOJ interim policy plus a state patchwork (Maryland's 2021 statute, requiring judicial authorization and case-type limits, remains the world's reference regulation; hundreds of cases solved); Sweden ran Europe's first genealogy case in 2020 (the Linköping double murder) and legislated in 2025 — prosecutor-authorized, gravest crimes only, consent-based databases only; France legalized the technique in its 2026 justice bill; Denmark was drafting legislation as of mid-2026. Phenotyping — predicting appearance from crime-scene DNA — splits similarly: Germany authorized eye/hair/skin color and age prediction in 2019 while pointedly excluding biogeographic ancestry; France's Cour de cassation blessed the "genetic photofit" in 2014; the UK simply never prohibited it. Meanwhile the EU's Prüm II regulation (2024) extends automated cross-border exchange from DNA and fingerprints to facial images — the quiet construction of a continental biometric infrastructure that no single national debate ever approved.

Table 15: DNA database regimes

Country	Collection threshold	Coverage (% pop.)	Signature rule / case
UK	Arrest (recordable offense); post-2012 deletion rules	∼9.0%	*S. and Marper* (2008)
United States	Conviction (all states); arrest (34 states + fed.)	∼7.5% (profiles)	*Maryland v. King* (2013)
France	Suspicion for most offenses; refusal criminal	∼6.4%	*Aycaguer* (2017)
Australia	State thresholds (serious offenses)	∼4.6%	Model-bill patchwork
Denmark	Charge, offense ≥1.5y	∼2.2% (2018)	Post-acquittal retention contested
Sweden	Conviction (non-fine) + suspects register	∼1.7%	First European FGG case (2020)
Canada	Conviction only (judicial order)	∼1.2%	*R v. Rodgers* (2006)
Germany	Conviction/suspect + recidivism prognosis, judicial	∼0.9%	§ 81g StPO; no familial search (BGH 2012)
Spain	Serious offenses, consent or court order	∼0.9%	LO 10/2007
Italy	Arrest/custody for serious intentional crime	∼0.2%	L. 85/2009; operational 2017

Note: coverage figures mix distinct-individual counts (UK, France, Sweden) with profile counts inflated by duplication (US); see Figure 6. New Zealand omitted: no dated official figure; its 1995 DNA statute was declared unfit for purpose by the Law Commission in 2020 and remains unreplaced.

17 Oversight and Accountability

Who investigates the police? The architectures differ more than any other element in this report, and the differences track national administrative traditions rather than legal families.

The **independent-investigation model** is a Commonwealth invention. Ontario's Special Investigations Unit (1990) was the world's first civilian agency investigating police deaths and serious injuries with power to lay criminal charges; every Canadian province now has an equivalent. England and Wales built the closest thing to a comprehensive national regime: the Independent Office for Police Conduct receives mandatory referrals of all deaths and serious injuries following police contact, investigates with police powers, and can direct forces to bring misconduct proceedings — criticized simultaneously by families (slow, timid) and by the Police Federation (biased against officers), which is roughly what an umpire should expect; Scotland runs its own commissioner (PIRC), investigating deaths and serious incidents under the direction of the prosecution service. New Zealand's IPCA is genuinely independent but toothless — it cannot prosecute or discipline, and a 2025 scandal (its findings of serious misconduct against the Police Commissioner himself over suppressed complaints) has fueled proposals for an Inspector-General. Australia routes police misconduct through state anti-corruption commissions that investigate only a sliver of complaints themselves (~2% at Victoria's IBAC), backstopped by mandatory coronial inquests. The United States, with its 17,500 fragmented agencies, has no national body at all: internal affairs, roughly 200 mostly advisory civilian review boards, § 1983 damages suits filtered through qualified immunity, a decertification index — and the federal pattern-or-practice program, the one systemic instrument, dismantled in 2025.

The **internal-plus-prosecutor model** governs most of continental Europe, with well-documented consequences. France's IGPN — the "police des polices" — remains inside the police hierarchy; the external Défenseur des droits can only recommend (its requests for disciplinary proceedings since 2017: followed zero times); post-Nahel demands for an independent authority produced nothing structural. Germany relies on prosecutors and internal units: roughly 2% of investigations into unlawful police force lead to any charge, and only about half the Länder (plus, since 2024, the federal level) have created even ombudsman-style police commissioners. Italy is the outlier's outlier: no independent complaints body *and* no identification numbers on riot police — a Genoa G8 legacy that parliament has declined to fix for two decades; Italy criminalized torture only in 2017, and the convictions for Stefano Cucchi's death in custody took thirteen years. Spain couples internal affairs with a general ombudsman while its "gag law" fines the citizens who film officers. The **Nordic hybrid** is cleaner: Denmark's Independent Police Complaints Authority (2012) investigates police criminality independently (with charging decisions left to prosecutors); Sweden's Special Investigations Department is organizationally separated but sits *within* the Police Authority — "independent-ish," as its critics note — supplemented by the Parliamentary Ombudsman tradition and a dedicated board auditing covert surveillance.

Table 16: Police oversight architectures

Country	Principal body	Independent of police?	Powers / gaps
United States	None national; ~200 local boards; DOJ suits	Varies	Consent-decree program dismantled 2025
Canada	SIU (Ont.) + provincial siblings; federal PCRC pending	Yes	SIU can lay charges (world first, 1990)
E&W	IOPC	Yes	Directs misconduct proceedings; cannot sanction
Australia	State integrity commissions	Yes	Investigate ~2% themselves; coronial inquests
New Zealand	IPCA	Yes	Cannot prosecute or discipline
France	IGPN/IGGN (internal); Défenseur des droits	**No** (inspectorates)	DDD recommendations followed 0/36
Germany	Prosecutors + internal; Polizeibeauftragte (~9 Länder + Bund)	Partly	~2% of force cases charged
Italy	**None**; internal + prosecutors	No	No riot-police ID numbers; torture crime only 2017
Spain	Internal affairs + Defensor del Pueblo	No	Gag-law fines for filming police
Denmark	DUP (2012)	Yes	Low substantiation rates (~4%)
Sweden	SU (within police) + prosecutors; JO; SIN	Partly	Head appointed by government; inside police

Part III

The Systems in Numbers

18 Quantitative Comparison

Doctrine describes what systems permit; the numbers describe what they do. Six indicators, assembled from official statistics (World Prison Brief, national justice ministries, oversight bodies, and academic counts; see the data files accompanying this report), organize the comparison.

Incarceration (Figure 2). The United States imprisons 542 per 100,000 — roughly eight times Germany (69) or Denmark (70), four times England and Wales (136), and three to five times everyone else. The time series (Figure 3) shows this is historically recent: in 1980 the US (220) was merely double Europe; the quadrupling to circa 700 by 2000 is the policy artifact comparativists call mass incarceration. Two European movements deserve notice: Germany's quiet decline to its lowest modern level, and Sweden's sharp break — flat around 55–75 for forty years, then a surge to 106 by 2025 as gang-crime politics rewrote Swedish penal policy.

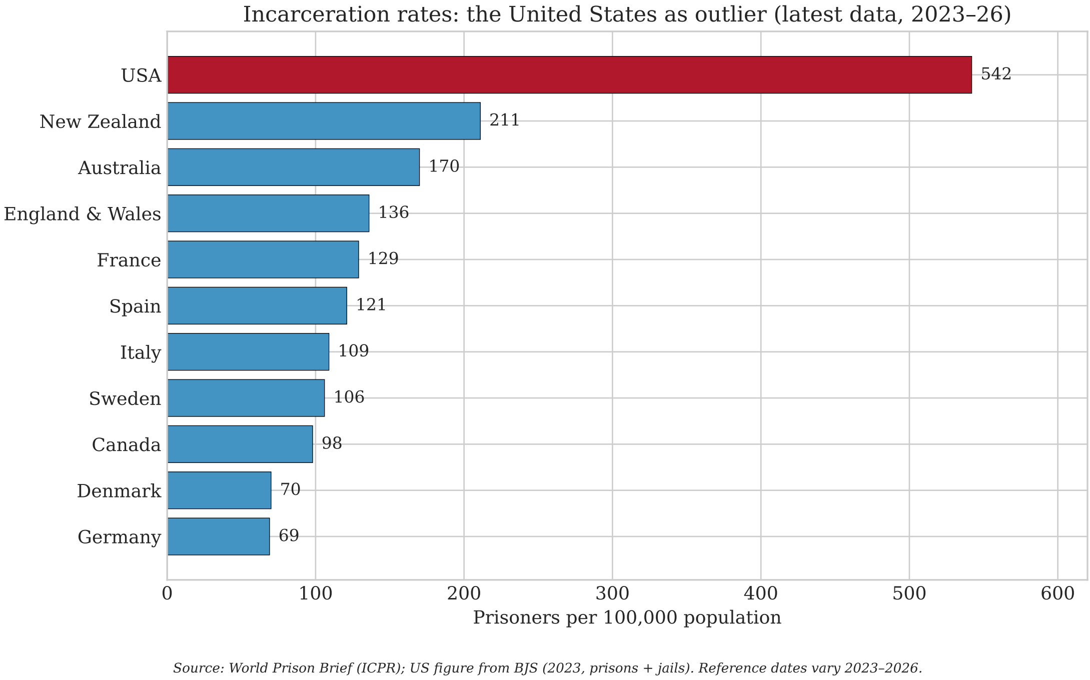

Figure 2: Prison population rates per 100,000 (World Prison Brief, latest national data 2023–26).

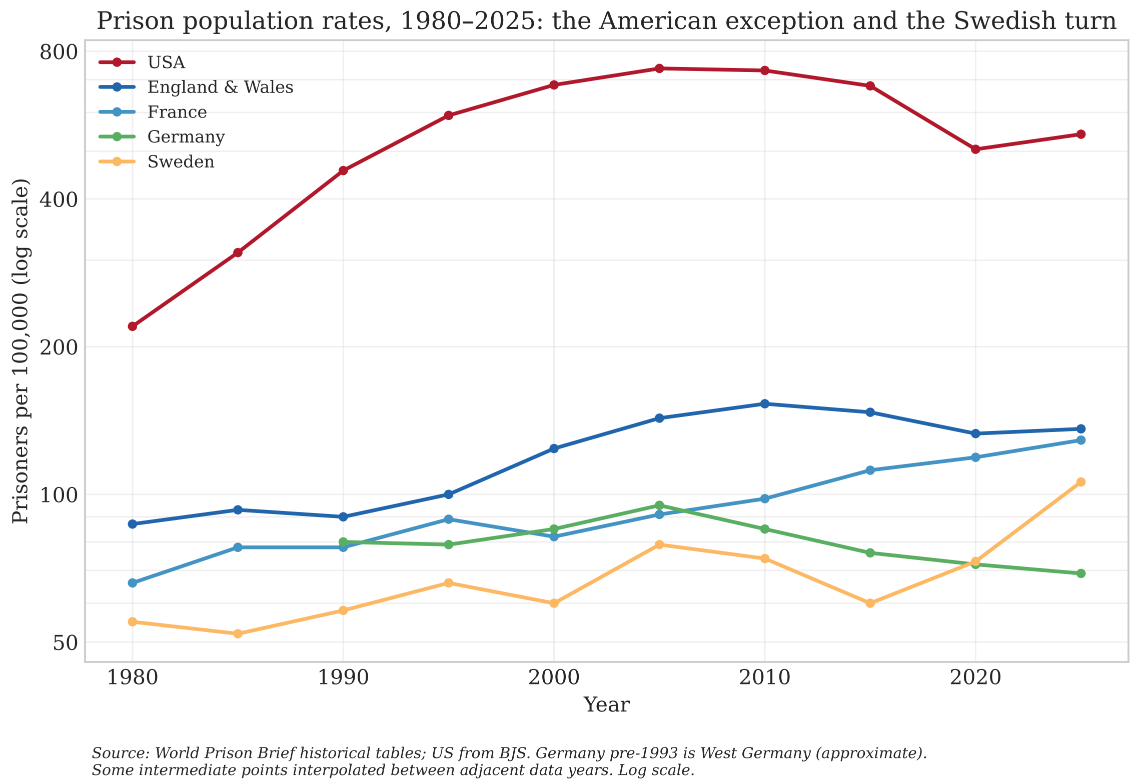

Figure 3: Prison population rates 1980–2025 (log scale). The American ascent and partial descent; Sweden's recent punitive turn.

Pretrial detention (Figure 4). The share and the scale tell opposite stories. The highest *shares* of unconvicted prisoners are Commonwealth: Canada 49.6%, Australia 42.2%, New Zealand 40.3% — systems whose bail law has tightened while sentencing stayed moderate. The American share (25.5%) is unremarkable; multiplied by the world's largest prison system it still yields 138 pretrial detainees per 100,000 — five to eight times European rates.

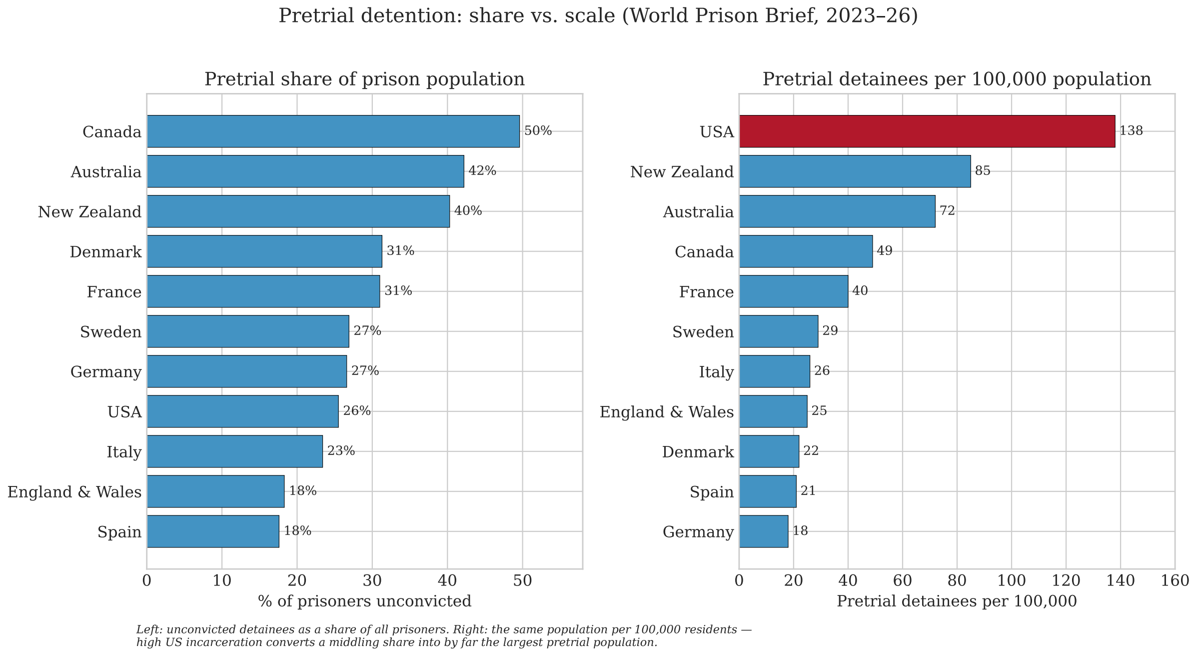

Figure 4: Pretrial detention: share of prison population versus population rate.

Police killings (Figure 5). The gradient runs two orders of magnitude: about 40 per 10 million in the United States (1,365 deaths in 2024) to 0.3 in England and Wales (two fatal shootings) and zero in Denmark and Sweden. Germany's record year (22 deaths) still leaves it fifteen times below the American rate.

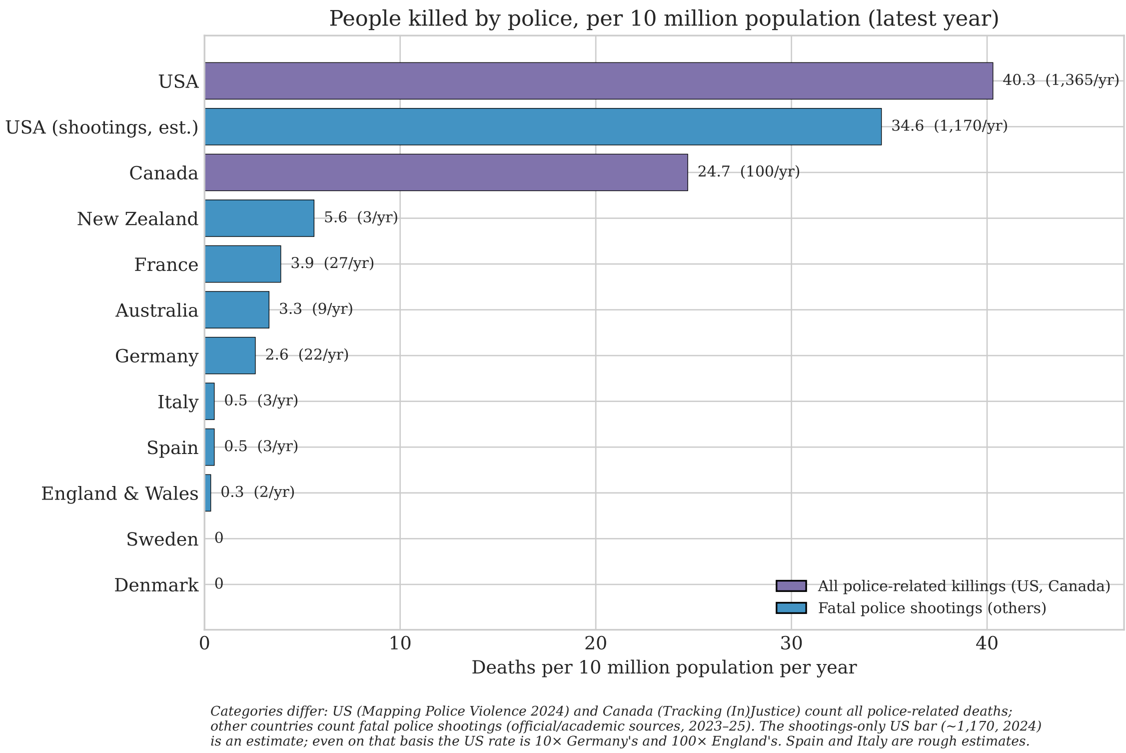

Figure 5: People killed by police per 10 million population, latest available year. Category definitions differ (see note in figure).

DNA databases (Figure 6). Coverage tracks collection philosophy, not crime: the UK (∼9% of population) and France (∼6.4%) lead because they collect from suspects; Germany (∼1%) and Italy (∼0.2%) trail because they require convictions plus prognosis, or started late.

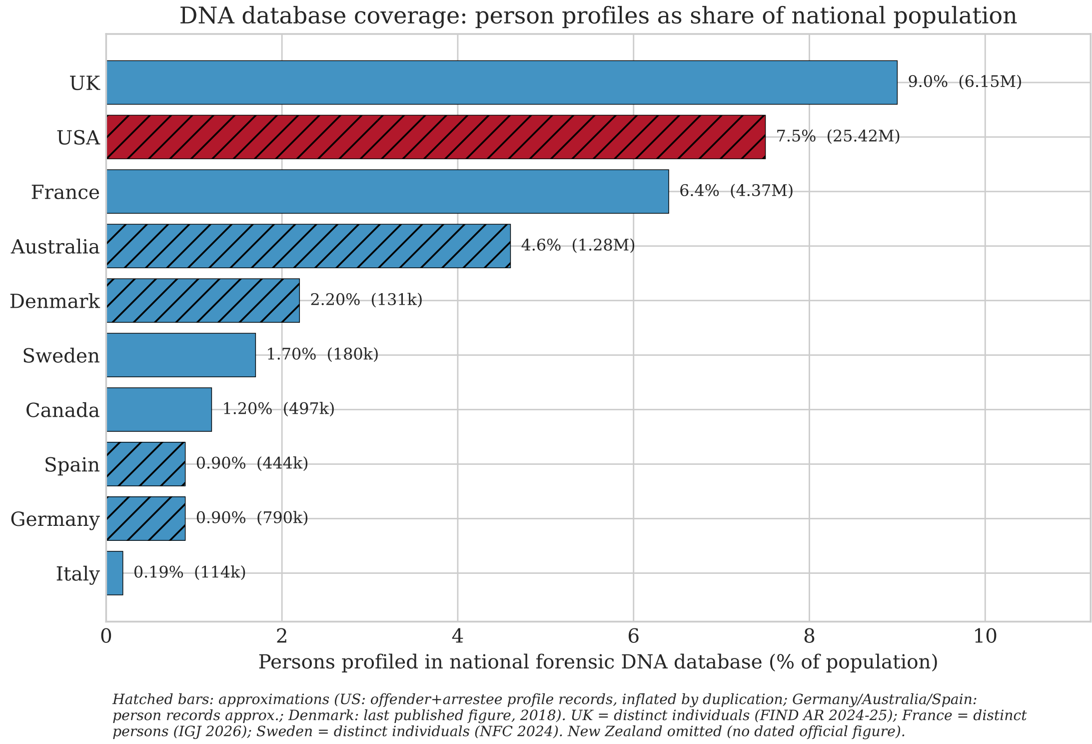

Figure 6: National forensic DNA database coverage as a share of population.

Interception (Figure 7). Italy's ∼84,000 intercepted targets per year (142 per 100,000) versus 2,297 American Title III orders (0.7 per 100,000) is the single most extreme contrast in this report — a ∼200× per-capita gap between two democracies' embrace of the same tool, driven by Italy's anti-mafia investigative culture and the United States' super-warrant regime.

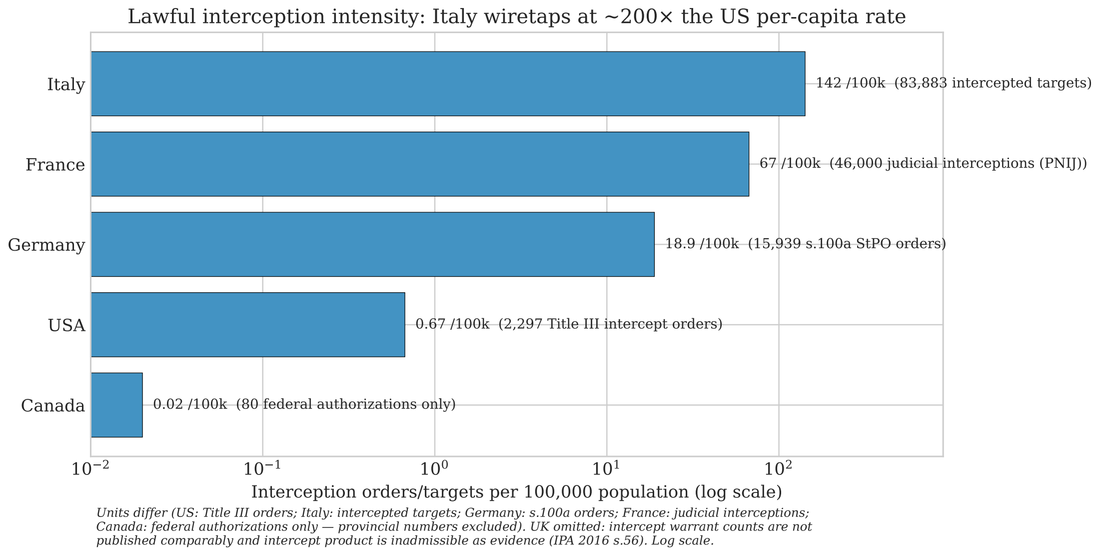

Figure 7: Lawful interception intensity per 100,000 (log scale; units differ by country as labeled).

The vanishing trial (Figure 8). Measured as the share of convictions produced without a full contested trial — guilty pleas in the common-law world, penal orders and negotiated procedures on the Continent — every system except Italy lands high: US federal 97%, Canada ∼90%, Germany ∼80% (penal orders), Australia ∼75%, Spain ∼70% (conformidad), England's Crown Court ∼66% (magistrates higher), France ∼52% and rising. Italy's ∼30% is the exception that proves the mechanism: its constitutional mandatory-prosecution principle and low plea uptake preserve the trial — and produce Europe's most notorious case backlogs.

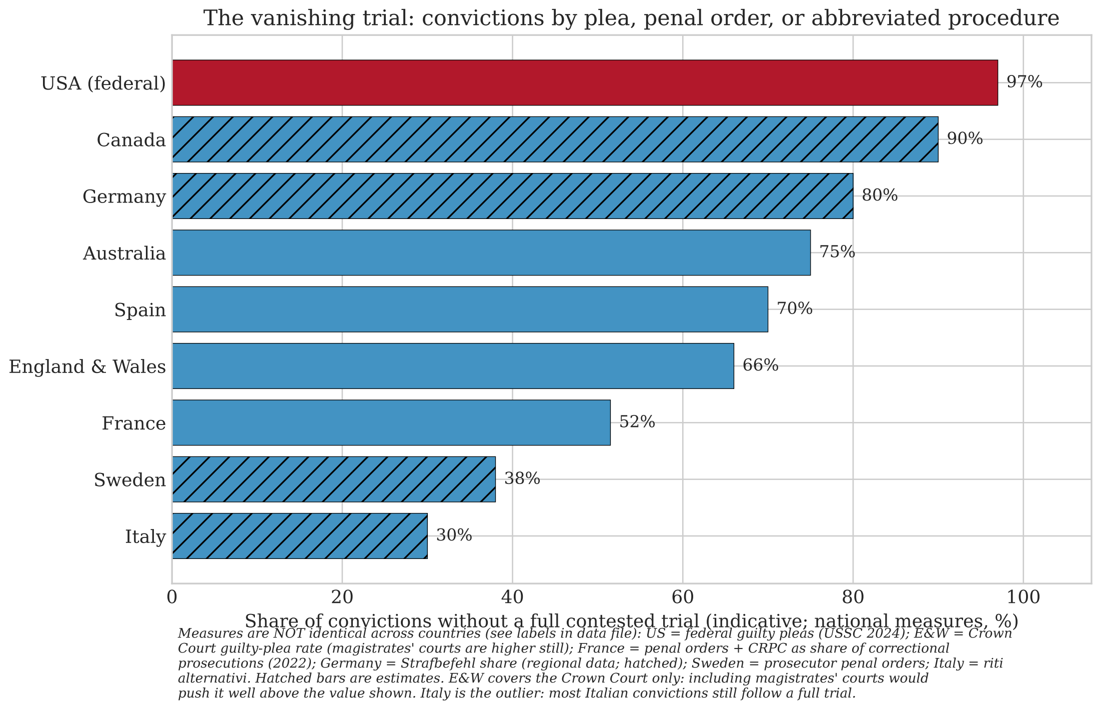

Figure 8: Indicative share of criminal convictions without a full contested trial. National measures are heterogeneous (see Appendix A); hatched bars are estimates. The England & Wales bar covers the Crown Court only — including the magistrates' courts, where most convictions occur, would raise it substantially, so the chart likely *understates* England.

Part IV

Cross-Cutting Structures and Synthesis

19 Prosecutors, Pleas, and Victims

19.1 Who decides whom to prosecute

Beneath every doctrinal element sits the prosecutor, and the eleven systems distribute prosecutorial power on two axes: discretion and accountability. The **legality principle** — a duty to prosecute every provable crime — formally governs Germany (§ 152(2) StPO), Italy (art. 112 Constitution), and Spain; the **opportunity principle** — managed discretion — governs France, Denmark, and the common-law world. In practice the poles converge: Germany's diversion provisions (§§ 153–153a StPO, dismissal against conditions) swallow much of the legality rule, while Italy's parliament now sets prosecution priority criteria (2022) — a constitutional heresy a generation ago. What does not converge is *accountability*: the American elected district attorney has no counterpart in any other democracy studied; every other system runs career civil-service prosecution under hierarchical or judicial control. The election of prosecutors — and of many judges — gives American criminal policy its distinctive electoral volatility, visible in both the progressive-prosecutor wave and its backlash. France and Spain retain the investigating magistrate for a shrinking residue of grave cases (under 2% in France); Spain's perpetual draft reform to move investigations to prosecutors remained unenacted as of mid-2026. England preserves a curiosity with teeth: the private prosecution — which the Post Office deployed to convict hundreds of innocent subpostmasters on faulty Horizon accounting data, a scandal so complete that Parliament in 2024 quashed the convictions en masse by statute, the strongest recent argument that prosecutorial power without a public monopoly needs auditing too.

19.2 The migration of the guilty plea

Plea bargaining is the American institution that conquered the world — Langer's "legal translation," adopted everywhere with local accents (Langer, 2004). The American original is the purest market: charge and sentence bargaining with essentially no judicial role, blessed by *Brady v. United States* (U.S. Supreme Court, 1970a) and *Bordenkircher v. Hayes* (U.S. Supreme Court, 1978) (threatening life imprisonment to induce a plea to a five-year offense is constitutional), producing 97%+ plea rates federally and a documented "trial penalty" (National Association of Criminal Defense Lawyers, 2018). England formalized discounts (one-third for early pleas; the Leveson Review proposed 40%) while forbidding American-style charge bargaining; Canada polices joint submissions deferentially (*R v. Anthony-Cook* (2016)). The continental translations are instructive: Italy's 1988 code imported *patteggiamento* and abbreviated trials by design — and Italians largely declined to use them. Germany's trial judges invented informal *Absprachen* illegally; the legislature codified them (§ 257c StPO, 2009); the Constitutional Court then held the statute constitutional only under strict transparency limits while finding widespread judicial non-compliance (Bundesverfassungsgericht, 2013) — yet Germany's *real* mass-disposal instrument is the humbler *Strafbefehl*, a written penal order issued without any hearing, which accounts for roughly four-fifths of convictions in the Länder that publish figures (no national share is published). France stacked instruments — penal orders, *CRPC* guilty pleas, corporate settlement agreements — until they carried most correctional prosecutions; an attempt to extend guilty pleas to *felonies* in the 2026 justice bill was abandoned mid-debate, French legal culture drawing its line at negotiated verdicts for *crimes*. Spain's *conformidad* quietly became the workhorse nobody theorizes: roughly 70% of single-judge criminal judgments (over 150,000 in 2024) are consented convictions, with an automatic one-third discount in fast-track proceedings. Sweden — long the world's leading refusenik, on legality-principle grounds — introduced crown-witness cooperation discounts only in 2022. The cross-national constant is the direction; the variable is the destination: nowhere has fully resisted, and only Italy has kept the contested trial as the modal route to conviction, at ruinous cost in delay. The ECtHR has blessed the whole development, requiring only knowing consent and judicial review (*Natsvlishvili v. Georgia* (2014)) — the fair-trial guarantee reconceived as a right most defendants are paid to waive (Fair Trials, 2017).

19.3 Victims: party or witness

The victim's position is the one element where the civil law is unambiguously more generous. France's *partie civile* may not only join the prosecution but *trigger* it, forcing an investigation the prosecutor declined; Germany's *Nebenklage* gives victims of serious crimes party status with counsel and questioning rights; Italy's *parte civile* litigates damages inside the criminal trial; Spain goes furthest of all with the *acusación popular* — any citizen may prosecute in the public interest, an institution both celebrated (private groups prosecuted Franco-era and corruption cases) and abused. The Nordic systems provide victims' counsel at state expense (*målsägandebiträde*, *bistandsadvokat*). The common law, structurally, offers the victim a witness box and, since the 1990s, an impact statement at sentencing (*Payne v. Tennessee* (1991) reversed the brief constitutional bar); England's Victims and Prisoners Act 2024 strengthened service entitlements without touching party status. The EU's Victims' Rights Directive (2012) set a floor for the member states (European Union, 2012); New Zealand's contribution is restorative — family group conferences that most systems now imitate at the margins.

20 Convergence and Divergence

20.1 The harmonization machinery

European criminal procedure has spent fifty years converging under two engines. The **ECtHR** works by lightning strike: *Salduz* (2008) put lawyers in police stations from Scotland to France within three years; *Taxquet* (2010) made France reason its jury verdicts; *S. and Marper* (2008) rewrote British DNA retention; *Furcht* (2014) ended Germany's sentencing solution for entrapment; the Article 3 pilot judgments police Italian and French prison overcrowding. The **EU** works by directive: the 2009 Roadmap produced binding minimum rights to interpretation (2010), information (2012), counsel (2013), presumption of innocence and silence (2016), children's safeguards and legal aid (2016), plus a European Public Prosecutor (2021) and the Prüm biometric-exchange architecture. The result is a genuine *ius commune* of suspects' rights across the seven continental systems studied — with the instructive exceptions proving the mechanism: Denmark, exempt from the directives by its justice opt-out, lags precisely where the directives bind others (no recording mandate, lawyer-less questioning); the UK, post-Brexit, retains the ECHR floor while shedding the EU layer.

Convergence also runs *within* traditions. The civil law has adversarialized: Italy's 1988 code and 1999 fair-trial amendment, France's 2000 presumption-of-innocence law and contradictoire reforms, Spain's endless prosecutorial-investigation drafts. And the common law has managerialized in ways Damaška would call hierarchical: sentencing guidelines, statutory disclosure duties, case-management rules with an "overriding objective," plea discounts calibrated like tariffs — and now, the sharpest single development in this report, the *retreat from lay adjudication for efficiency*: France's five-judge CCD absorbed nearly half of felony trials within two years of generalization, and England's 2026 Courts and Tribunals Bill would create judge-alone Crown Court trial for a broad either-way band — the two oldest jury cultures in Europe converging on the same professionalizing fix for the same backlog disease, within thirty-six months of each other.

20.2 The American exception

Against this, the United States diverges on nearly every axis this report has quantified or tabulated: the only commercial bail industry; the only elected prosecutors; the only absolute bar on prosecution appeals *combined with* dual-sovereignty double prosecution; the only jury unanimity requirement wrapped in a 97% plea rate; the strongest exclusionary rhetoric with the deepest exceptions; qualified immunity; police lethality and incarceration an order of magnitude above the group; no supranational court, no binding international floor, and — since 2025 — a dismantled federal oversight program. None of this follows from the common law: Canada, Australia, New Zealand, and England share the legal family and sit with Europe on almost every measure. The divide that organizes Western criminal justice in 2026 is not adversarial versus inquisitorial; it is the United States versus the rest (Vogler, 2005; Hodgson, 2020).

Why is a question this report can pose but not settle, and the comparative-penology literature offers three non-exclusive hypotheses. Whitman (2003) locates the difference in status history: continental punishment "leveled up" toward the dignified treatment once reserved for high-status offenders, while American punishment, lacking an aristocratic template to generalize, leveled down toward degradation. Garland (2010) emphasizes radically localized democracy — criminal justice run by elected county officials, exposed to popular passions and racial politics that insulated European bureaucracies filter out. Lacey (2008) ties penal moderation to political economy: consensus democracies with coordinated economies (Germany, the Nordics) sustain long-horizon, expert-driven penal policy, while majoritarian, first-past-the-post systems reward outbidding on toughness. All three mechanisms operate through the institutional facts this report has documented — elected prosecutors, referendum-driven bail policy, politically appointed lay judges being the exception that tests the rule. Two cautions attach. First, this report's procedural lens captures only part of the incarceration gap: sentence *severity* — substantive law, mandatory minimums, release policy — is a co-driver at least as large as any procedural variable, and it lies outside our scope. Second, the outlier pattern is a correlation across institutions, not a demonstrated causal chain; what the evidence here rules out is only the simplest story, that legal family determines outcomes.

20.3 The preventive counter-current

The last convergence is the newest and least liberal. In the 2020s every system studied has shifted weight from responding to crime toward preempting it: Sweden's preventive wiretapping without criminal suspicion and visitation zones; Denmark's gang packages; Australia's youth-bail crackdowns and world-first data-disruption warrants; Britain's protest-policing statutes and informant-crime authorizations; France's administrative-intelligence boxes and AI video surveillance; Canada's reverse-onus expansions; American pretrial risk algorithms. The scholarly label is the "preventive turn" (Zedner, 2007); the comparative fact is that it is happening everywhere at once, in systems whose trial-stage protections this report has shown to be robust — power flowing to the investigative and pre-trial stages, precisely where the comparative safeguards are thinnest.

21 Conclusion

This report compared eleven Western criminal-justice systems across some fifteen doctrinal elements and six quantitative indicators. Three conclusions organize what the tables show.

First, the classic map still describes the terrain but no longer predicts the weather. Who controls evidence and trial — parties or court — still separates adversarial from inquisitorial architecture, and explains durable differences: unreasoned jury verdicts versus motivated judgments, exclusionary rules versus free proof, final acquittals versus prosecutorial appeals, victims as witnesses versus victims as parties. But on the questions citizens actually encounter — will I see a lawyer tonight, can the police lie to me, how long can they hold me, who is watching my phone — the variance *within* each family now rivals the variance between them. Germany bans deception the United States blesses; Sweden lets prosecutors order searches that England reserves to magistrates; Canada denies the interrogation-room lawyer that France mandates.

Second, the deepest divide runs between the United States and everyone else. Money bail, elected prosecutors, dual sovereignty, qualified immunity, incarceration at 542 per 100,000, police killings at forty per ten million, two million people processed by plea — the numbers separate the American system from its common-law siblings as sharply as from the Continent. American procedure remains the world's most protective on paper at the moment of trial; the trial is the moment American procedure has most completely abandoned.

Third, the trial itself is the vanishing point of Western criminal procedure. Across ten of eleven systems, most convictions are now produced administratively — pleas, penal orders, negotiated procedures — and the eleventh, Italy, demonstrates the alternative's price in decade-long proceedings. The institutions this report spent its first half comparing — juries and lay judges, proof standards, confrontation, exclusionary rules — govern a shrinking ceremonial core, while the operative decisions migrate to police stations, prosecutors' offices, and plea negotiations. The convergence that matters most is not between legal families but between all of them and a common administrative future; the comparative question for the next generation is whether the safeguards built for the courtroom can be rebuilt for the corridor.

A Appendix: Data and Definitions

The quantitative indicators in Part III harmonize national statistics that do not share definitions, reference dates, or counting units. This appendix consolidates the caveats. The underlying data, with per-cell sources and estimate flags, accompany this report as CSV files (`data/`), and the source-by-source research notes are in `data/research/`.

Reference dates. Prison and pretrial figures are World Prison Brief country-page values whose national reference dates span 2023 (US) to April–June 2026 (England & Wales, France, Italy, New Zealand); Germany, Spain, Denmark, and Sweden report via the Council of Europe feed (31 January 2025). Cross-sectional comparisons therefore carry up to a $\sim$2.5-year spread; none of the report's order-of-magnitude claims is sensitive to it.

Citation conventions. Authorities cited in the prose carry full bibliography entries; the comparison tables additionally name leading cases and statutes by court and year without separate entries, as is conventional for tabular apparatus.

Table 17: Indicator definitions and known incomparabilities

Indicator	Definition and known incomparabilities	Sources
Prison rate (Fig. 2)	Prisoners per 100,000 incl. pretrial; US includes local jails (BJS 2023). Single consistent backbone; strongest indicator in the set.	World Prison Brief; BJS
Pretrial (Fig. 4)	Unconvicted (incl. convicted-unsentenced in some systems) as % of prisoners and per 100k (computed). Canada's national share masks provincial custody ≈3/4 remand.	World Prison Brief; MoJ/StatCan notes
Police killings (Fig. 5)	US and Canada: *all* police-related deaths (NGO counts; no official US total). Others: *fatal police shootings* (official or academic counts). Spain and Italy: rough estimates — no systematic official series. A shootings-only US bar (∼1,170, 2024, est.) is charted alongside the all-methods bar.	MPV; Tracking (In)Justice; IOPC; CILIP; IGPN-based tallies; AIC; national police
DNA coverage (Fig. 6)	Distinct individuals where published (UK, FR, SE, CA, IT); *profile* counts inflated by duplication for the US (offender + arrestee records); person-record approximations for DE, AU, ES; DK figure is the last published (2018). NZ omitted (no dated official figure).	FBI NDIS; FIND AR; IGJ/FNAEG; BKA/BfDI; ACIC; NFC; RCMP; ministries
Trial avoidance (Fig. 8)	Heterogeneous by construction: US = guilty pleas among sentenced federal defendants; CA = cited estimate; DE = penal-order share in reporting Länder; AU = higher-court pleas; ES = conformidad share of single-judge judgments; E&W = Crown Court guilty-plea rate (magistrates excluded ⇒ understatement); FR = penal orders + CRPC as share of correctional *prosecutions*; SE = penalty-order share of sanction decisions; IT = riti alternativi share. Directional claim (trial marginal everywhere but Italy) is robust; bar ordering under full harmonization is not.	USSC; CPS/MoJ; Fiscalía; Ministère de la Justice; Brå; Destatis-Länder; Min. Giustizia
Interception (Fig. 7)	Units differ: US = Title III *orders*; IT = intercepted *targets*; DE = § 100a *orders*; FR = judicial interceptions (PNIJ); CA = federal authorizations only (provincial excluded). UK omitted (warrant counts not comparably published; intercept not evidence). Even generous re-basing leaves Italy ∼two orders of magnitude above the US per capita.	AO Wiretap Report; Min. Giustizia; Bundesjustizamt; Cour des comptes; Public Safety Canada
Time series (Fig. 3)	WPB historical tables; Germany pre-1993 is West Germany (approximate); several intermediate points interpolated between adjacent data years.	World Prison Brief; BJS

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