

Third Edition



Comparative and International Criminal Justice Systems

Policing, Judiciary, and Corrections

Edited by Obi N. I. Ebbe

 CRC Press
Taylor & Francis Group

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Dedication

*For my daughters, “JJ” (Njideka Jessica) and
Nneka Ndidiamaka Ebbe.*

Contents

Preface to the Third Edition	xi
Preface to the Second Edition.....	xiii
Preface to the First Edition	xv
Acknowledgments.....	xvii
Editor	xix
Contributors	xxi

SECTION I The Nature of Comparative and International Criminal Justice

Chapter 1 The Purpose of Comparative and International Criminal Justice Systems	3
<i>Obi N. I. Ebbe</i>	

SECTION II Crime and Criminal Law: Global Perspective

Chapter 2 Crime: International and Comparative.....	11
<i>Obi N. I. Ebbe</i>	

Chapter 3 Criminal Law	25
<i>Obi N. I. Ebbe</i>	

SECTION III Overview of Model Criminal Justice Systems: The United States, Ireland, Israel, Argentina, Sierra Leone, China, Poland, and Russia

Chapter 4 Criminal Justice System in the United States	41
<i>Mary Clifford</i>	

Chapter 5 The Criminal Justice System of Ireland.....	57
<i>Paul Douglas O'Mahony</i>	

Chapter 6 The Criminal Justice System in Israel.....	77
<i>Maria R. Haberfeld and Sergio Herzog</i>	

Chapter 7 The Criminal Justice System in Argentina	97
<i>Obi N. I. Ebbe and Ruben G. Ruiz de Olano</i>	

Chapter 8	The Criminal Justice System of Sierra Leone.....	107
	<i>Bankole Thompson</i>	
Chapter 9	Administration of Justice in Poland	123
	<i>Emil W. Plywaczewski</i>	
Chapter 10	The Criminal Justice System and Police in Russia: General Overview	135
	<i>Yakov Gilinskiy</i>	

SECTION IV Policing: International and Comparative Perspectives

Chapter 11	Interpol and International Police Cooperation.....	151
	<i>Obi N. I. Ebbe</i>	
Chapter 12	Policing and Public Disorder in the United Kingdom	161
	<i>Michael Bullock</i>	
Chapter 13	The Police System in the People’s Republic of China	173
	<i>John Zheng Wang</i>	

SECTION V The Judiciary and International Tribunals

Chapter 14	World Courts of Justice of the United Nations.....	185
	<i>Obi N. I. Ebbe</i>	
Chapter 15	The Judiciary and Criminal Procedure in Nigeria.....	201
	<i>Obi N. I. Ebbe</i>	
Chapter 16	The Islamic Criminal Justice System.....	217
	<i>Obi N. I. Ebbe and Jonathan Odo</i>	
Chapter 17	The Court System in the People’s Republic of China with a Case Study of a Criminal Trial.....	229
	<i>Robert Davidson and John Zheng Wang</i>	

SECTION VI Corrections: United Nations Policy and Correctional Models

Chapter 18	United Nations Provisions for Punishment of Offenders vis-à-vis Punishment of Offenders in History.....	243
	<i>Obi N. I. Ebbe</i>	

Chapter 19 Guided Change in Japan: The Correctional Association Prison Industrial Cooperative (CAPIC) and Prison Industry251

Elmer H. Johnson

Chapter 20 Treatment of Offenders in Denmark and Brazil265

Zelma W. Henriques

SECTION VII Conclusion

Chapter 21 The Unique and Comparative Features of the Criminal Justice Systems, International Law, and the United Nations Criminal Courts: A Synthesis 275

Obi N. I. Ebbe

Glossary287

Index.....291

Preface to the Third Edition

Learning from the experience of other countries is the guiding light of international criminal justice systems. This pivotal assertion in the first and second editions formed the framework of this third edition.

The aim of this edition is to provide a complete and adequate text for comparative and international criminal justice courses. This aim was achieved. As a sound approach to looking at the laws of various nations, international criminal and humanitarian laws, this edition embodies sociological explanations of criminal law and crime. While the first edition (1996) was the third comparative criminal justice systems text on the market and the first to include the rich justice systems of non-Western developing countries, this edition expands to emerging democracies of the former Soviet empire.

Besides, in this edition, you learn in detail about the United Nations courts of justice, Interpol and Europol, the international police cooperations, and about dealing with transnational crimes and the role of the United Nations in the treatment of offenders around the world.

TOPICAL STRUCTURE OF THE TEXT

While the second edition comprising 18 chapters was organized in regions according to the continents of the world, this edition is topically organized into 7 sections of 21 chapters.

Section I is “The Nature of Comparative and International Criminal Justice Systems.” This section comprises only one chapter, namely “The Purpose of Comparative and International Criminal Justice Systems” (Obi N. I. Ebbe) as Chapter 1.

Section II is “Crime and Criminal Law: Global Perspective.” This section comprises two chapters, namely “Crime: International and Comparative” (Obi N. I. Ebbe) as Chapter 2 and “Criminal Law” (Obi N. I. Ebbe) as Chapter 3.

Section III is “Overview of Model Criminal Justice Systems: The United States, Ireland, Israel, Argentina, Sierra Leone, China, Poland, and Russia.” This section has the following chapters: “Criminal Justice System in

the United States: General Overview” (Mary Clifford) as Chapter 4; “The Criminal Justice System of Ireland” (Paul Douglas O’Mahony) as Chapter 5; “The Criminal Justice System in Israel” (Maria R. Haberfeld and Sergio Herzog) as Chapter 6; “The Criminal Justice System in Argentina” (Obi N. I. Ebbe and Ruben G. Ruiz de Olano) as Chapter 7; “The Criminal Justice System of Sierra Leone” (Bankole Thompson) as Chapter 8; “Administration of Justice in Poland” (Emil W. Plywaczewski) as Chapter 9; and “The Criminal Justice System and Police in Russia: General Overview” (Yakov Gilinskiy) as Chapter 10.

Section IV is “Policing: International and Comparative Perspectives.” This section comprises three chapters: “Interpol and International Police Cooperation” (Obi N. I. Ebbe) as Chapter 11; “Policing and Public Disorder in the United Kingdom” (Michael Bullock) as Chapter 12; and “The Police System in the People’s Republic of China” (John Zheng Wang) as Chapter 13.

Section V is “The Judiciary and International Tribunals.” This section comprises four chapters, namely “World Courts of Justice of the United Nations” (Obi N. I. Ebbe) as Chapter 14; “The Judiciary and Criminal Procedure in Nigeria” (Obi N. I. Ebbe) as Chapter 15; “The Islamic Criminal Justice System” (Obi N. I. Ebbe and Jonathan Odo) as Chapter 16; and “The Court System in the People’s Republic of China with a Case Study of a Criminal Trial” (Robert Davidson and John Zheng Wang) as Chapter 17.

Section VI is “Corrections: United Nations Policy and Correctional Models.” This section comprises three chapters: “United Nations Provisions for Punishment of Offenders vis-à-vis Punishment of Offenders in History” (Obi N. I. Ebbe) as Chapter 18; “Guided Change in Japan: The Correctional Association Prison Industrial Cooperative (CAPIC) and the Prison Industry” (Elmer H. Johnson) as Chapter 19; and “Treatment of Offenders in Denmark and Brazil” (Zelma W. Henriques) as Chapter 20.

Section VII is “Conclusion.” The final section has “The Unique and Comparative Features of the Criminal Justice Systems, International Law, and the United Nations Criminal Courts: A Synthesis” (Obi N. I. Ebbe) as Chapter 21.

MAJOR CHANGES IN THIS EDITION

The first and second editions had 16 and 18 chapters, respectively. This edition has 21 chapters. There are nine new chapters in this edition. Some chapters in the second edition were eliminated because their data could not be updated. And some of the eliminated chapters have been replaced in this edition with chapters that cover the same corresponding countries of origin.

Furthermore, previous editions did not deal with the international criminal law, the theoretical explanations of crime from the international perspective, the United Nations criminal courts, the role of the United Nations in treatment of offenders, the Islamic system of criminal justice, the Interpol and Europol—the international police cooperation—or the criminal justice systems of Poland and Russia.

UNIQUENESS OF THE THIRD EDITION

Unique to the third edition is the in-depth analysis of the United Nations International Court of Justice, the International Military Tribunal (IMT): The Post-World

War II Criminal Trials (Nuremberg), the IMT for the Far East (Tokyo Trials), the United Nations International Criminal Tribunals (ICT) for the Former Yugoslavia (ICTY) and Rwanda (ICTR), and the emergence of the United Nations permanent International Criminal Court (ICC). Also unique to this edition is a thorough, unbiased study of the Islamic justice system. In fact, the Islamic justice system has a lot to offer non-Islamic states in the areas of judicial process and criminal procedure.

Beyond doubt, this edition highlights the recent truth that no national leader can, any more, trifle with international law since the emergence of the ICTY, ICTR, and the permanent ICC.

Obi N. I. Ebbe

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Preface to the Second Edition

Spanning the globe of continents and nations from the West to the East, observing the policing, judicial, and penological models of different countries, the tourist is amazed by the ingenious dynamics in the construction and execution of criminal justice among nations. This second edition of *Comparative and International Criminal Justice Systems* takes you on this amazing journey.

This edition has more comparative and contrasting features than the first edition. The first edition covered eight countries and one region; this second edition covers twelve countries and one region. The four countries added are Ireland (Europe), Israel (Middle East), Hong Kong (Asia), and Argentina (South America). These four countries are added because of their historical evolution, which affected their present criminal justice systems. Such evolutionary histories have much to tell scholars and students about the nature of law and justice. Additionally, the enormous interest in the study of comparative criminal justice systems in recent years calls for expansion of the first edition by including more comparative and contrasting systems. Furthermore, in this edition, we have developed more comprehensive review questions at the end of each chapter than in the first edition.

The structure of this edition is different from the first. This edition is organized by topic and not by continents as in the first edition. This is done to help professors and students to easily find the topic they are looking for in the book.

This edition is divided into six parts. Part I is “Comparative and International Criminal Justice.” This part answers the question, “Why do we have to study the criminal justice systems of other countries or cultures?” Part II is “Overview of Criminal Justice Systems and Policy.” This part presents seven chapters involving the criminal justice systems of the United States of America, Ireland, Israel, Argentina, Sierra Leone, Hong Kong,

and China, in that order. The United States’ criminal justice system is presented ahead of others, because it is the point of comparison. The other countries follow in a comparative and contrasting order. Part III is “Comparative Policing.” In this part we discuss policing in the United Kingdom and China. (There are two chapters on policing in the United Kingdom.) Part IV is “Comparative Judicial Systems.” This part presents the judiciary and criminal procedure in Nigeria and the court system in China. Part V is “Comparative Corrections.” In this part we consider corrections in Japan (Chapters 14 and 15), West African regions (Chapter 16), and treatment of offenders in Denmark and Brazil (Chapter 17). The last part, Part VI, is “Synthesis of the Criminal Justice Systems.” This chapter makes an in-depth critique of all criminal justice systems in light of the criminal justice system in the United States.

This second edition is by far stronger and better than the first edition, because this edition studies more countries, adds more chapters (including the synthesizing chapter), and is more topically structured than the first edition.

This book is intended for both undergraduate and graduate students in criminal justice, criminology, law, political science, and sociology. Students will see similarities and dissimilarities in the criminal justice systems among nations and can observe how their own country’s system of justice compares and contrasts with other systems. Although there are many disturbing operating approaches in the policing, judiciary, and correctional sectors of various nations, there are many good systems of justice to be copied from among the nations.

Obi N. I. Ebbe

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Preface to the First Edition

Comparisons, an adage has it, are odious; but this is not the case in *Comparative Criminal Justice Systems*. Reading this book, you will find that in the criminal justice system of some nations, normative standards and punitive measures emanate from traditional religions. However, in the process of time, industrialized and nonindustrialized nations, in their march to civilization, learned various aspects of criminal justice from each other. The following scholarly essays describe diverse justice systems that provoke tears of pain and smiles of joy.

Sociocultural philosophies of a society set the tone for its reaction to the deviant. Whether you approve or disapprove of a justice system of a country, do not forget the people involved. The American social philosophy says, "Do your own thing and go your own way." The tolerance for social control in this individualist philosophy has weakened the reintegration model of corrections in the American criminal justice system. One might weigh the American social philosophy against that of the Japanese, which says, "Find your own group and belong to it. You and your group will rise or sink together. Without belonging you will be lost in the wilderness. Apart from dependence there is no human happiness" (Ozaki, 1978:183 cited in Elmer H. Johnson, Chapter 14 in the first edition and Chapter 20 of the current edition: "Guided Change in Japan: Correctional Association Prison Industrial Cooperation [CAPIC] and Prison Industry"). The humane Japanese approach to policing and correction reflects Japanese social philosophy. Certainly, such philosophy influences a society's attitudes toward offenders; this is evident in all eight countries and regions studied in this text.

Every topical study presented in this book is in its original form. The scholarly analyses and the comparative structure of the text will be particularly useful for courses in comparative and international criminal justice and criminology. Only in this book are criminal justice systems of all major continents (Africa, Asia, Europe, and the Americas) represented. Policing, judiciary, and corrections in industrialized and nonindustrialized countries are presented side by side, giving faculty, students, and practitioners diverse perspectives from which to compare and contrast the characteristics and changes in criminal justice systems today.

This text can be useful to undergraduate and graduate students in criminal justice and criminology, enabling them to compare and contrast their own systems of justice with those of other countries. It will also help clarify why some countries copied the policing and correctional methods of others. It can be used as the major text in comparative criminal justice courses, or as a supplement to other texts.

There are four sections in this book. Section I deals with the nature of comparative and international criminal justice. Section II treats America and Europe, Section III Africa, and Section IV Asia. Countries studied include Brazil, China, Denmark, Japan, Nigeria, Sierra Leone, the United Kingdom, and the United States. There is a regional chapter on West Africa. The first section includes an essay on "The Purpose of Comparative and International Criminal Justice Systems," provided in order to answer an important question: Given differences in customs, traditions, standards, values, and criminal law across cultures, why should we study comparative criminal justice systems? It is hoped that this essay will provide a convincing answer and also arm the student and the instructor with knowledge to comprehend the diverse systems presented in subsequent sections.

After justifying the need for the study of comparative and international criminal justice systems in Section I, American and European criminal justice are analyzed in Section II, thus forming grounds for comparing them to the criminal justice systems of African and Asian countries, described in Section III and IV, respectively. The criminal justice system of the United States is the first presented in this section and in this book, because most of the students and instructors using this book will be in the United States. Starting from the known and proceeding to the unknown will make comparisons and contrasts flow more smoothly.

Europe and America are presented in the same section, because of the profound affinity between European laws and American laws; indeed, English law formed the basis of American law.

Section III, on Africa, is presented just after America and Europe, because the laws of the African countries studied are also based on the English law, as the countries are former British colonies. The United States, Great

Britain, and the African countries studied belong to the English common law tradition.

The last section, on Asia, is present after Africa, because African and Asian countries have many common cultural beliefs and standards. Both the African and the Asian countries presented in this book use village councils and lay judges in their criminal justice systems; both also hold entire communities or villages responsible for the crimes committed within a community or by village members; and both have dual systems of criminal justice—formal and informal.

The chapters have been arranged in a logical order, with those dealing with a complete criminal justice system preceding those dealing with an agency of the system at issue. Chapters dealing with policing, therefore, come before chapters on courts, and chapters on courts before chapters on correction.

I have developed discussion and review questions at the end of each chapter to help both student and instructor in their readings. Also, at the end of the text, I have developed a glossary of terms used in various chapters, including foreign terms. Teachers have additional recourse to the accompanying instructor's manual and test bank, which I developed based on my thorough study of the chapters.

This is the first book of readings ever published in comparative and international criminal justice systems.

My profound regards to the late Harold Smith, of the OICJ at the University of Illinois at Chicago, who encouraged me in 1988, during the Academy of Criminal Justice Sciences (ACJS) annual meeting in San Francisco, California, to compose a book of this nature. Also, my thanks to all the international contributors who submitted articles (both those whose papers fit and those whose papers did not fit the focus of this book), for without their interest, getting a book of this nature together would have been a wild goose chase. I am also highly indebted to the following reviewers whose suggestions helped enormously: Robert McCormack, Trenton State College; Gregg Barak, Eastern Michigan University; and Liqun Cao, Eastern Michigan University.

I am also very much obliged to Laurel DeWolf and her associates at Butterworth-Heinemann Publishers for their interest in this topic. Finally, I say gracias to the Director of Document Preparation at the State University of New York at Brockport, Jeanne Saraceni, and her team of keyboard specialists.

While every contributor is responsible for the facts and figures presented in each chapter, I am entirely responsible for any editorial inadequacies.

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Furthermore, I am very thankful to the contributors without whose willingness to contribute to this text, a third edition would have not been possible. In fact, I owe enormously to Emil W. Plywaczewski and Yakov Gilinskiy (Russia) for their special contributions on

their countries, as well as David Ebizie (Boeing, Seattle, Washington) who freely supplied me with a copy of Field Marshal General Rommel's *Infantry Attacks* (1937), newly introduced in 1990 by Manfred Rommel, in which he wrote how Adolf Hitler poisoned his father. His account helped me in writing about the crimes of heads of state in Chapter 18. I accord profound indebtedness to all the reviewers: Allison Anadi, Jonathan Odo, Charles Ubah, and Oko Elechi, whose critical reviews and suggestions helped to shape up this edition. I thank my typist, April Matthews, of the University of Tennessee at Chattanooga, Institutional Research Office, who has the patience to figure out my cobweb-like handwriting.

Finally, as William Shakespeare would put it, "that which touches us most will be last served." Taylor & Francis acquisitions editor, Carolyn Spence, the production coordinator, Laurie Schlags, the production project editor, Robert Sims, and diacriTech project coordinator Leah Wohl-Pollack, put elbow grease into expediting the production of this edition. I am very much obliged to them.

Editor

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Dr. Ebbe has published numerous articles in refereed journals. He has published many books, including *Comparative and International Criminal Justice Systems: Policing, Judiciary, and Corrections* (Butterworth-Heinemann, 1996 and 2000 editions); *Global Trafficking in Women and Children* (Taylor & Francis, 2007); *Criminal Abuse of Women and Children: An International Perspective* (Taylor & Francis, 2009); *Broken Back Axle:*

Unspeakable Events in Biafra (Xlibris Publishing House, 2011); and some monographs.

Dr. Ebbe is a recognized expert in political criminology and international criminal justice systems. He is a member of the American Society of Criminology and the Academy of Criminal Justice Sciences. He has received certificates from Oxford Round Table, University of Oxford, England (2006); Harvard University Continuing Education Department (1993); and University of London, England (1966/1967). He is also a consultant of the International Scientific and Professional Advisory Council of the United Nations crime prevention and criminal justice programs from 1998 to the present.

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Section I

The Nature of Comparative and International Criminal Justice

INTRODUCTION

The study of the criminal law and constitutional law of a country is the foundation of the understanding the operation of its criminal justice agencies, and what happens to the accused from the time of his arrest to the disposal of the case. Comparative criminal justice studies built on such knowledge, including the investigation of similarities and dissimilarities in the structure and operation of the criminal justice agencies of various nations, will strengthen international law enforcement efforts. There are several factors that make two different countries have similar or dissimilar methods of handling offenders, including religious beliefs; customs and traditions; historical experiences such as civil war, international war, ethnic or racial conflicts; economic structure; and political organization. In this book, we will examine the parts played by these factors when we look at the model criminal justice systems of selected countries.

Studies of international criminal justice systems focus on a country's criminal law, criminal procedure, and penology; what happens when the accused is a foreigner; and when the criminal law and penology of the home country of the accused differ from the criminal law and penology of the country in which the crime was committed. For example, the United States and Singapore do not agree on the appropriate punishment for vandalism.

When Michael Fay vandalized a car in Singapore with graffiti in 1994, Singapore prescribed 90 days in jail and 24 lashes. The United States would have disposed of such an offense with probation, warning, or reparation.

International criminal justice also addresses the attempts of two countries to resolve a crime incident where citizens of one country victimize those of another, as when Singapore and the United States debated over Michael Fay. Such situations may be resolved by deporting the offender and allowing the trial to take place in the offender's country, or by getting the victim's country to reduce the severity of the crime's penalty.

International criminal justice also includes the administration of extradition agreements between nations, and criminal laws and court procedures in communities of nations that have agreed that legal violations by their citizens will all be treated in a certain way.

This part of the book descriptively analyzes the systems of comparative and international criminal justice, highlighting important features of comparative criminal justice. It is intended to arm the student and the instructor with the ability to understand and consider the various ways of handling offenders in different countries, and assumes the perspective of one who has basic knowledge of the American system of criminal justice.

1 The Purpose of Comparative and International Criminal Justice Systems

Obi N. I. Ebbe

CONTENTS

Introduction.....	3
Varied Political History of Nations	4
International Character of the Modern Crime Scene	4
Varied Social Control Mechanisms and Learning from Others' Experiences	5
Philosophical and Utilitarian Ideals That Propel the Criminal Justice Goals of Various Nations	5
Provision of Bases for Research and Comparisons	5
Acquaintance with the Nature and Dynamics of the Criminal Law of Nations	5
Provision of a Source for Governmental Policy Modifications in Criminal Procedures, Law Enforcement, and Corrections	6
Acquaintance with the Structure, Organization, and Operation of the United Nations World Courts of Justice (ICJ, IMT, ICT, and ICC) vis-à-vis the National Criminal Justice Systems.....	7
Summary.....	7
Notes	7
Review Questions.....	8
References.....	8

INTRODUCTION

This chapter answers the question, “Why do we study comparative and international criminal justice systems?” Some scholars have wondered why some countries have very low crime rates, while others have very high rates. Some studies have shown that the procedures and mechanisms for handling offenders may contribute to high crime and delinquency rates (Ebbe 1988, 1989). While certain mechanisms for handling offenders in a given culture are very effective, others are criminogenic.

It is crucial that there be a text that provides both students and scholars with an opportunity to know how criminal justice systems vary across cultures and that enumerates the good reasons for engaging in comparative studies of criminal justice systems. The study of comparative and international criminal justice systems sharpens our awareness of the ubiquitous operational dynamics in criminal law and of the variety of cultural concepts that brought different criminal justice systems into being.

In the process of studying the ways social order is achieved and maintained across nations, we learn how to modify our own society, bearing in mind that what works for one country may not work for another. Cultural values define behavior as good or bad and also determine the mechanisms for offender disposal. However, cultural values can change through international or inter ethnic relations. For example, persons found guilty of crimes of “abomination” (such as incest or murder of a kinsman) in precolonial Southern Nigeria were dedicated to the gods as outcasts or untouchables.¹ This mechanism of offender disposal, however, became obsolete when English laws and cultural values overtook most of Nigerian society and condemned the outcast-disposal mechanism. Today, the holy shrines to which the outcasts were dedicated are still in existence, but they are no longer used as offender-disposal mechanisms.

Furthermore, the use of halfway houses in the United States to reintegrate an offender who has spent some years in prison, and has one year or less before final release, was borrowed from European correctional methods,

particularly from Scandinavia (Sweden, Norway, and Denmark) and the Netherlands. The interdependency of countries today and the globalization efforts of industrialized nations enable various cultures to learn from each other's ways of life, including their social control methods.

To answer the question, "Why do we study comparative and international criminal justice systems?", I postulate eight motivating approaches to studies in comparative and international criminal justice systems: (1) the varied political history of nations; (2) the international character of the modern crime scene; (3) the usefulness of "varied social control mechanisms and learning from others' experiences" (Fairchild 1993); (4) the philosophical and utilitarian ideals that propel the criminal justice goals of various nations; (5) the provision of bases for research and comparisons; (6) acquaintance with the nature and dynamics of the criminal law of other nations; (7) the provision of a source of governmental policy modifications in criminal procedures, law enforcement, and corrections; and (8) acquaintance with the structure, organization, and operations of the United Nations (UN) World Courts of Justice and how the national criminal justice systems and the UN courts complement each other in the international community.

VARIED POLITICAL HISTORY OF NATIONS

Criminal justice systems reflect a nation's government (e.g., unitary, federal, or confederate) and its politics (e.g., democratic, socialist, or communist), and therefore reflect a nation's political history. Consequently, criminal justice systems vary both within continents and between continents.

Given the changes that have occurred in governments in Africa, Asia, the Middle East, and South America, the criminal justice systems of countries in those parts of the world clearly will reflect their political evolution. The dynamics in the various criminal justice systems of African and Asian countries may demonstrate developments that might be useful to both industrialized and unindustrialized countries' systems of criminal justice. The historical backgrounds of various criminal justice systems enable us to pose and answer important questions: Do countries with similar historical experiences have similar systems of justice? If not, why not?

In the historical dimension, we must note that political systems, economic systems, religious beliefs, traditions, and customs all determine the criminal justice system of

a country and its unique position in international criminal justice.

INTERNATIONAL CHARACTER OF THE MODERN CRIME SCENE

Criminal victimization has taken on an international character. We have seen this especially in the areas of terrorism, moneylaundering, cyber crime, illegal trafficking of women and children, illegal immigration, illegal transportation of nuclear materials, and narcotics drug trafficking (Stewart 1989; Bossard 1990; Adler et al. 1991; Ebbe 2003). The existence of the international police organization INTERPOL for many decades now shows the international nature of some crimes since the Age of Discovery (AD 1400–1700), when people began to trespass to others' territories.

Because crime has become a worldwide social problem, the need for research in comparative and international criminal justice systems is more pressing today than ever before. The destruction of the World Trade Center in New York City on September 11, 2001, by Islamic fundamentalists shows that no part of the world is immune from international criminal victimization. There are crimes perpetrated today in both Western and non-Western countries that have foreign origins, including acts of terrorism, industrial burglary to steal manufacturing secrets, industrial sabotage, organized crime, counterfeit currency trafficking, narcotics drug trafficking, moneylaundering, computer fraud, and transnational trafficking of women and children for prostitution and slavery (David and Brierly 1989; Grassi 1989; Kube 1989; Stewart 1989; Bossard 1990; Martin and Romano 1992; Ebbe 2003). Criminals have found international crime to be a very lucrative enterprise (Chang 1976). The rewarding nature of international crimes has attracted the officials of numerous governments, leading to wholesale official corruption, such as the Iran-Contra affair in the United States, the Noriega drug hysteria in Panama, General Abacha of Nigeria and his assassination of military and political enemies, the illegal moneylaundering in Great Britain by Umaru Diko of Nigeria, and the looting of the Ugandan and Philippine treasuries by Idi Amin and Ferdinand Marcos, respectively. The large amounts of money involved in narcotic drug trafficking and illegal arms trafficking have caused them to develop into "multinational systemic crimes" (Martin and Romano 1992). Whenever the UN imposes economic sanctions against an offending country, there are multinational syndicated criminals ready to provide that country with the needed

goods, as seen in Saddam Hussein's regime in Iraq. These multinational syndicated criminals have formed a transnational criminal cartel to provide necessary information and other needs to their members in various continents.

Unless comparative and international criminal justice systems are studied, the effective control of national and international crimes will continue to be a wild goose chase. Presently, very few attempts are being made to study international crimes. Comparative and international criminal justice studies will help identify the various crimes in each country, determine those that are international in execution, and suggest solutions for their control through international cooperation. The high human toll taken by international crimes and transnational crimes strongly justifies comparative criminal justice studies, which can be applied to shore up legitimate governments and fend off threats to the lives of innocent citizens.

VARIED SOCIAL CONTROL MECHANISMS AND LEARNING FROM OTHERS' EXPERIENCES

Industrialized and unindustrialized nations around the world use various mechanisms of social control. While industrialized nations have very formalized social control systems, the unindustrialized nations often depend on informal control mechanisms.

Unindustrialized countries generally have lower crime rates than industrialized nations (Adler 1983; Archer and Gartner 1984). These lower crime rates may result from the unindustrialized countries' frequent use of informal criminal justice methods. If this is true, one should ask, In what ways can the industrialized nations apply both formal and informal methods of criminal justice, as is the case in civil cases in the State of New York and other parts of the United States? In New York, a state court is allowed to submit a civil case, such as a divorce, to a third-party mediator, who meets with the parties in an informal setting. Most divorce cases in the State of New York are settled in this manner; and in most of the unindustrialized world, this is how most criminal cases are settled. The third party could be an individual (an elder), a chief, a council of chiefs, or a council of elders. This is typical of African and Asian societies, in both property and personal crimes. Third-party mediation in criminal matters in the State of New York certainly would eliminate the use of incarceration for some minor property and personal crimes. One of the advantages of using informal control mechanisms in the criminal justice systems of industrialized countries would be the reduction of prison overcrowding.

PHILOSOPHICAL AND UTILITARIAN IDEALS THAT PROPEL THE CRIMINAL JUSTICE GOALS OF VARIOUS NATIONS

Whenever there is a unique system of social control, there must be some philosophical and functional thrust behind it. If such a unique social control mechanism is effective, such as the Maxi Trials or Bunker Courts in Italy (Grassi 1989), other nations may learn from those philosophies and ideals.

I strongly agree with Pope Clement VI that any punishment that makes the offender not commit a crime again is worth administering; and a punishment that does not correct should not be given (Schafer 1976).

Comparative and international criminal justice studies, therefore, should evaluate the offender disposal mechanisms of various cultures for their effectiveness and the worthwhile philosophies that may lie behind their use.

PROVISION OF BASES FOR RESEARCH AND COMPARISONS

Studies of the criminal justice systems of various nations have the potential for stimulating similar studies in other countries. In the process of accumulation of criminal justice data, interest in international comparison is aroused. For example, a study of the crime rate in Tokyo, Japan, and the number of police officers per 100,000 population can trigger similar studies in large cities of other industrialized countries. When special tribunals are used in Nigeria for the trials of persons accused of armed robbery, narcotics drug possession and trafficking, and counterfeit-currency trafficking, a foreigner may ask how these tribunals work, how they differ from the regular criminal courts, and why the government uses special tribunals. Such questions are grounds for empirical research. Nonparticipant observation of a Maxi Trial or a special tribunal trial of an armed robber can be very beneficial to comparative criminal justice.

ACQUAINTANCE WITH THE NATURE AND DYNAMICS OF THE CRIMINAL LAW OF NATIONS

By studying the criminal justice systems of various countries, we become aware of the nature of their laws. Also, we may start to understand why certain forms of behavior are criminal in one country but not in another.

Criminal law, belonging as it does to the social sciences, is dynamic rather than static. As a nation grows and becomes more complex through urbanization and

industrialization, new laws are created to meet the exigencies of that difficult period. Again, under the heterogeneous social conditions of urban areas, values may change as time passes, rendering old laws obsolete. Comparative criminal justice therefore amounts, in many cases, to studying how the criminal laws of nations change.

Part of the study of comparative criminal justice includes the study of criminal codes and penal codes of countries (Stewart 1989; Bossard 1990). Such studies emphasize the diverse features of those codes and the similarities and dissimilarities between Western and non-Western criminal codes—the distinctive features of codes in countries where common law, civil law, Islamic law, or socialist law prevail.

The development of a nation's criminal law has always paralleled its political history and development; therefore, such developments vary from society to society. Among the factors that influence the development of criminal law are war, coup d'état, technological innovations, migration and immigration, urbanization, industrialization, religious conflict, national economic disaster (e.g., depression, recession), large-scale terrorist attacks, colonization, international trade and transportation, interethnic conflict, multiethnicity, and increase or decrease in political power. Among these factors, we can trace those that played a part in the enactment of various laws in a country. Generally, countries with similar political experiences have come under the same groups of laws, as we see in the similar historical backgrounds of the common law, civil law, socialist law, and Islamic law countries.

Study of the criminal codes or penal codes of nations is essential, because different codes often mandate different penalties for the same offenses. The criminal code is determined by substantive criminal law—the law of crimes and penalties (Day 1964). For instance, the Netherlands' permissive policies toward the use of cannabis "contributed to the emergence of Amsterdam as an important transit place for narcotic drugs in the 1970s" (Bossard 1990). Furthermore, one must keep in mind that a criminal code does not contain all the criminal laws of a country. Students of comparative and international criminal justice must also study statutory law, applicable "judge-made laws" (*stare decisis*), and law reports and arguments of university legal scholars, which are accepted by courts in some countries, such as France and Nigeria, as sources of law (Day 1964). To understand criminal justice, one must comprehend and compare the systems of criminal law in all their complexity. Transnational crimes influence legislation, and very often, contemporary criminal court judges are confronted with situations

neither covered by the criminal code nor by statutory law. In these cases, judges effectively create new laws through their own discretionary power, basing their decisions on the circumstances of the case and on other exigencies of the situation.

PROVISION OF A SOURCE FOR GOVERNMENTAL POLICY MODIFICATIONS IN CRIMINAL PROCEDURES, LAW ENFORCEMENT, AND CORRECTIONS

There is no aspect of the criminal justice system of any country more volatile than criminal procedure, law enforcement, and correctional mechanisms. Almost all nations are uncomfortable with these three aspects of the criminal justice system. The global increase in crime rate, resulting from the global increase in population, immigration, and urbanization, has rendered some old methods of offender disposal obsolete or inadequate. Consequently, many countries are initiating new methods of handling offenders.

The United States, for instance, is one of the non-European countries that has copied the practices of halfway houses, day fines, and prison structures from Sweden and the Netherlands. Governments are eager to copy what works in other countries for social control.

Of course, there are some pitfalls in comparative studies that should be guarded against, such as ethnocentrism in the gathering and interpretation of foreign-based data, and the effects of governmental corruption on the reliability of official data from developing countries.

Also, comparing arrest, prosecution, conviction, and incarceration rates across cultures may yield little or no reliable evidence, because many developing countries, such as India, Nigeria, Ghana, and Kenya, have resorted to static law enforcement systems in which the police do not routinely patrol the neighborhoods, watching for lawbreakers, but rely instead on victims and concerned citizens to report crimes to their nearest police station. Not every victim and not every concerned citizen will report a crime to the police; and, even if reporting were dependable, many developing countries have not adopted systematic record-keeping of criminal justice data. In short, countries with a static law enforcement system may have lower arrest rates than countries where the police routinely patrol the neighborhoods, but the comparison is not sound. Similarly, comparing prosecution, conviction, and incarceration rates is not wise, because perception of seriousness of criminal offenses varies from culture to culture (Ebbe 1977).

ACQUAINTANCE WITH THE STRUCTURE, ORGANIZATION, AND OPERATION OF THE UNITED NATIONS WORLD COURTS OF JUSTICE (ICJ, IMT, ICT, AND ICC) VIS-À-VIS THE NATIONAL CRIMINAL JUSTICE SYSTEMS

Many students do not know that the UN legislates through conventions for the international community. Students need to know the processes by which UN Conventions arrived at the laws they made. Unmistakably, by studying the UN convention that led to the creation of the permanent International Criminal Court (ICC), students will learn that the processes of creating an international law is almost similar to a national legislative process. For instance, to establish the ICC and its subject matter jurisdiction, the UN arrived at its goal in six stages: First, the International Law Commission (ILC) was set up by the General Assembly to study the viability of an ICC. Second, a committee was created to prepare a proposed draft statute. Third, an ad hoc committee on the establishment of the ICC was established. Fourth, a preparatory committee on the establishment of the ICC was set up. Fifth, the General Assembly set up a diplomatic convention for finalizing the statute in a treaty form and for its subsequent adoption by the international community. Finally, ratification of the treaty by a certain percentage of the member countries of the UN was sought. Then, it became the law of the UN or an international law.

Furthermore, students will learn the difference between the structure, operations, goals, and power of the UN courts and the UN tribunals. Also, since the UN has no prisons of its own, students will learn how persons convicted at a UN criminal court are incarcerated in the prisons of member states. Finally, students learn how national criminal courts work hand in hand with the UN courts and tribunals.

SUMMARY

Comparative and international criminal justice studies provide nations with an opportunity to understand and learn from the offender disposal mechanisms that are effective in other countries. By studying comparative and international criminal justice, we learn about the varied political history of nations, the international character of the modern crime scene, the varied social control mechanisms of nations and the possibilities of learning from the experiences of others, and the philosophical and utilitarian ideals that propel the criminal

justice goals of various countries. We are also able to provide bases for research and comparison of results, to get acquainted with the nature and dynamics of the criminal law of nations, to provide a source for governmental policy modifications in all aspects of the criminal justice system, and finally, to acquaint students and scholars with the structure, operations, and goals of the UN World Courts and Tribunals.

Before we present model criminal justice systems in Section III, we present Section II, which has two chapters: Chapter 2, “Crime: International and Comparative,” and Chapter 3, “The Criminal Law.”

NOTES

1. The outcast or untouchable institution was a status created in pre-colonial Southern Nigeria, prevalent among the Igbos, for disposing of offenders who committed an abomination, such as incest, murder of a kinsman, or a son having sexual relations with one of his father’s wives when his father was still alive. The individual was ostracized, dedicated to a god, and he subsequently became an untouchable. The Holy Shrine grove, the home of his god, was his abode. His only companions were a few other untouchables. He was proscribed from shaving his hair or taking a bath (Achebe 1959). He was dehumanized. Worst of all, the status was inherited. However, in 1955, the Eastern Region Government of Dr. Nnamdi Azikiwe abolished the untouchable institution by a law. But the abolition did not stop discriminative attitudes toward the descendants of untouchables; throughout Igboland, the descendants of untouchables are still not allowed to take the ozo title. (The ozo title is a cultural initiation taken only by the sons of nobles or aborigines of a town. Women do not take the title. Only when a man takes the title does his wife become an adjunct—a lolo-ozo—to the title.)

Now, why should anybody suffer the consequences of a crime committed by another, especially when the person who committed the crime died centuries ago? Yet, the Nigerian government is doing nothing to remedy the situation, mainly because the descendants of untouchables do not want to go through the trouble of identifying themselves to solve the problems society imposed on them.

REVIEW QUESTIONS

1. What factors determine the nature of the criminal justice system of a country?
2. What are the eight motivating approaches to the study of comparative and international criminal justice systems?
3. Give at least eight examples of international crimes.
4. What is a multinational systemic crime? Give two examples of such crimes.
5. What are the merits and demerits of using a third-party mediation or arbitration in a criminal case?
6. What did Pope Clement VI recommend regarding punishment?
7. Name at least three different classes of law in the Western world.
8. What factors lead to the development of criminal law?
9. What is substantive criminal law?
10. Can criminal court judges create crimes? If yes, how?
11. What are some of the pitfalls in comparative criminal justice studies?
12. What is a static law enforcement system?
13. What is the legislative procedure of the UN General Assembly?
14. Should the UN legislate for the whole world? Discuss and comment.

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