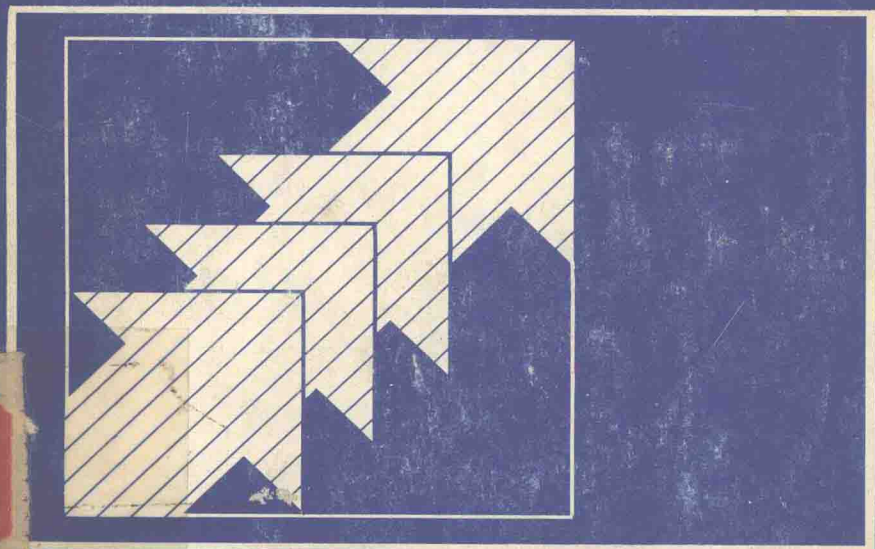


MAJOR CRIMINAL JUSTICE SYSTEMS

Edited by
George F. Cole
Stanislaw J. Frankowski
Marc G. Gertz



A SAGE FOCUS EDITION

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Foreword by GERHARD O. W. MUELLER



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FOREWORD

A book on major criminal justice systems would have been an impossibility a generation ago. The term “criminal justice,” by itself, would not have been properly understood. When used at all, it was used in reference to the juridical apparatus with jurisdiction in criminal matters. The use of the term “systems” in reference to criminal justice would have prompted a blank stare, because the various agencies concerned with crime prevention and control were not viewed as parts of an interdependent system. Comparison was in its infancy—at least as far as crime prevention was concerned—and was restricted to law comparison. Yet even there the systematic, dogmatic, and political differences were regarded as so overwhelming as to cause many scholars to regard comparative studies in criminal law as esoteric and virtually fruitless.

All this has changed in a single generation, largely due to the efforts of a handful of scholars, at a few research centers, in a few countries mostly in the northern tier of the world. Today, thanks to the phenomenal growth of scientific criminology, criminal justice has become a political reality that encompasses all of society’s attempts to come to grips with the crime problem. The agencies of criminal justice are now being viewed as parts of a system, an entire sector of public—and, to some extent, private—endeavor to deal with unacceptable deviance in a humane yet effective and efficient manner. Above all, the value of comparison has been discovered and is being appreciated. Social, economic, ideological, or political differences are no longer being viewed as an obstacle to comparison. On the contrary, they are seen for what they are: variables worthy of analysis in an effort to determine why countries have such widely varying crime problems—ranging from insignificant to catastrophic.

A whole new methodology for the comparative study of criminal justice systems, all their component parts and all their strategies, had to be created. The interaction of the criminal justice sector with all other sectors of public life began to be investigated in an effort to turn criminology, as the science of criminal justice, from a theoretical discipline into a practical tool of social

engineering. It is at this point that the United Nations has entered the picture. The world organization, having achieved virtual universality of representation with its 151 member states, is deeply committed to the proposition that all nations should be able to enjoy the benefit of the experience of all other nations. In the field of crime prevention and criminal justice, for which the Crime Prevention and Criminal Justice Branch is the Secretariat's administrative organ, this means that the aggregate of world experience must be presented in a meaningful and comparable manner so that each nation can profit from the success—and failures—of all other nations, so that no nation need repeat the costly mistakes made elsewhere. Experience does show that, on the natural path of socioeconomic development, crime becomes a problem whenever crime prevention and the criminal justice system are not built into the overall national development effort.

The United Nations' first world crime survey, with the participation of 66 states, has been approvingly received by the General Assembly (A/Res/32/60). For the first time nations can gauge their own position on the region-by-region charts showing both the extent of criminality and the investment in personnel devoted to crime prevention. The General Assembly has also adopted the first international plan of action, for the remainder of the twentieth century, which is calculated to guide international and national efforts for efficient crime prevention and criminal justice administration (A/32/58, adopting E/CN.5/536, annex IV).

The experiences in crime prevention and control, criminal justice, offender treatment, and criminal policy are now being widely distributed through the quinquennial world congresses of the United Nations; through the work of the interregional and regional institutes in Europe, Asia, and Latin America; through the publications of the Secretariat—including the international *Review of Criminal Policy*—and through regional and interregional meetings of experts. Technical assistance, providing for a transfer of technology, strategy, and experience in the field of crime prevention and control, is now available to all governments requesting it. In sum, the academic discipline of comparative criminology has become the practical intergovernmental and governmental instrument of crime prevention and control.

It is most timely, therefore, that a group of distinguished scholars from countries which played a leading role in the field—in theory and in practice—have pooled their efforts in the production of this important volume on comparative criminal justice systems. It is my fervent hope that through this volume the expertise necessary for improving national criminal justice systems by comparison may be more widely spread. I wish the

authors every success in their contribution to the important world effort to reduce the human and material waste and suffering which criminality brings with it.

Gerhard O. W. Mueller
Chief, Crime Prevention and
Criminal Justice Branch
United Nations

PREFACE

As events of recent decades have demonstrated, the world is a small space in which travel and communication make it possible for important events to transcend national and even regional concerns. The simple fact that more than 150 countries belong to the United Nations indicates that Earth is comprised of an interdependent network of nations where no one country stands completely alone. This is a dramatic change from just 50 years ago, when many nations followed isolationist policies, believing that they could remove themselves from the problems of other states. Only in recent decades has it been recognized that most of the pressing social matters on the contemporary scene—pollution, resource allocation, poverty, and crime—are universal problems.

During the past decade scholarly activity with regard to crime and the administration of justice has greatly increased. Responding to the growth of crime, a concern that affects all developed countries, scholars have conducted research examining the causes of crime, the treatment of offenders, and, as indicated in the foreword by Professor Mueller, such a volume would have been an impossibility a generation ago.

As Mueller also notes, the United Nations “is deeply committed to the proposition that all nations should be able to enjoy the benefit of the experience of all other nations.” This international perspective is the basis upon which this book is organized. We all need to know the experiences of other countries with regard to their criminal justice system so that we can better understand our own approach to the problem of crime. This concern for an international perspective on criminality has been demonstrated by the increase in the number of courses on comparative criminal justice that are now being offered in universities throughout the world. Unfortunately, there does not seem to be a comprehensive book that adequately deals with a representative cross-section of the criminal justice systems of the international community. We hope that *Major Criminal Systems* will help to fill this void.

The book was designed primarily to introduce American students of crime to the criminal justice systems of some of the major countries of the

world. It is intended to be introductory and descriptive, in keeping with what we believe is the level of theory and evidence currently available on criminal justice in most countries. Each chapter was written by a distinguished scholar who describes the administration of criminal justice in his native land. The book is organized into three parts that correspond to the major legal systems, and the chapters are grouped so that comparisons can be made among the countries of a particular family of law and then among these families.

Anthologies using multiple authors often run the risk that each chapter will be written along different lines and thus the opportunities for comparisons are reduced. We hope we have solved this problem by presenting eight chapters which follow a common outline. On the assumption that the book will be read principally by Americans who know about their own criminal justice system, the chapter on the United States was written in a different style so that it can serve as a benchmark for comparative purposes.

Some may question our choice of countries for inclusion. Certainly it would increase the value of the book if selections were included from countries subscribing to Islamic law, those in Africa and South America, and the world's most populous nation, The People's Republic of China. Unfortunately, we were unable to solicit chapters from scholars in these areas. As will be discussed in the Introduction, many of the countries in the Third World have legal systems that are based on procedures brought by colonial powers which have been adopted to contemporary local and political conditions. We hope that this fact will help to alleviate this lacunae.

Readers may find that some of the authors have written chapters that do not comply with the dominant scientific paradigms of the West. It is important that these chapters not be dismissed but studied so that it will be possible for the student to understand the author's perspective and the assumptions concerning law and justice in that country. It is our thesis that despite ideological, socioeconomic, and cultural differences, which in the final instance determine the methods and functions of each criminal justice system, there exists at least one common denominator which makes our attempt as editors meaningful; the administration of justice in every country is supposed to protect the set of social relationships and values, the maintenance of which seems desirable for those holding power. As such, the criminal law is used to protect these values and to prohibit, under the threat of penalty, the commission of certain forms of behavior perceived as dangerous.

As noted above, we hope that readers will become more acquainted with the criminal justice systems of a variety of countries and that the book will help to foster an international and comparative perspective among students

of criminology. It is also our hope that this volume will serve as a first step toward the development of such an international approach to the problems of crime and justice.

G. F. C.

S. J. F.

M. G. G.