

WORLD CRIMINAL JUSTICE SYSTEMS

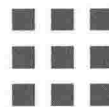
A COMPARATIVE SURVEY



RICHARD J. TERRILL

EIGHTH EDITION

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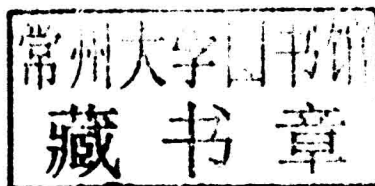


World Criminal Justice Systems

A Comparative Survey

Eighth Edition

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Georgia State University



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Dedicated to
*Bill, Lori, David, Ellen, and
the memory of Jean*



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Preface

Since the publication in 1984 of the first edition of this book, international developments throughout the world have illustrated in a special way the importance of comparative study at the macro level. Many of these events, in particular, point out the significance of comparative and international criminal justice studies. This book was originally conceived and written in the hope that it might be used as a tool to enhance American students' understanding of foreign justice systems. That remains the principal goal.

This edition upgrades materials on the justice systems of the countries presented in the text that appeared in the previous edition, and it includes the addition of a chapter on South Africa. Unfortunately, space required the elimination of the coverage on Sweden, a country that had appeared in all the previous editions (however, the Sweden chapter from the previous edition is available online for classroom use). The format for the coverage of each country essentially remains the same. Each chapter is devoted to a single country and attempts to describe the political, historical, organizational, procedural, and critical issues confronting that country's justice system. This format was originally selected because it is an effective method of introducing people to comparative studies. The acceptance of this book over the years appears to support that judgment.

As was the case with the seventh edition, this edition departs from the aforementioned format with a chapter devoted to Islamic law. Obviously, there has been a heightened interest in Islam in recent years, and a central feature of that attention is with Islamic law in general and the role that it plays in criminal justice in particular. Unlike the other chapters, which focused on a single country and illustrated how a specific legal system contributed to the establishment of its criminal justice system, this chapter was designed to explain the various degrees in which Islamic law has influenced the justice system of a few countries that are associated with Islam. Please note that because there is not one standard method of transliteration of Arabic to English, names and terms often have several different spellings. I have attempted to use a simplified form that is free of many diacritical marks. Any quotations, however, are retained in the original form.

Over the years, I have been appreciative of the many kind words of encouragement from people who have commented on the text. Although this book was designed principally for use in college-level courses created to study foreign justice systems, it also has been utilized in other criminal justice courses and by other disciplines that have a tangential interest in the study of criminal justice. Moreover, it should also prove beneficial to the criminal justice practitioner or the general reader who appreciates the value of considering problems in our justice system from a different cultural and geographical perspective.

Although it is not necessary for the reader to have an extensive understanding of criminal justice, this text assumes some familiarity with the criminal justice system of the United States. This kind of background should facilitate the reader in achieving the following objectives:

1. Recognize the basic governmental structure of each country and its relationship to the criminal justice system.
2. Appreciate the manner in which the justice system of each country has emerged historically.
3. Identify the major components of the criminal justice system of each country.
4. Comprehend the similarities and differences in how each country organizes and administers its justice system.
5. Distinguish the roles that the various practitioners play in each country's justice system.
6. Understand the similarities and differences in how each country perceives the nature of law and the application of legal procedures in the criminal justice process.
7. Discern some of the critical issues that the criminal justice system of each country is confronting.

As is the case with any large project such as this, the author is indebted to a number of facilitators. Appreciation, therefore, is extended to a number of people, too numerous to mention individually, who work for either governmental or nongovernmental justice agencies in the countries that are presented in this book. They were most helpful in sending me information on their justice systems that was not readily available in this country. Much of the information contained in the introduction appeared previously in other formats. Therefore, a special note of thanks is extended to the Academy of Criminal Justice Sciences for permitting me to use my article, "Teaching Comparative Criminal Justice: Some Thoughts and Themes," which originally appeared in Harry R. Dammer and Philip L. Reichel, eds. (1997), *Teaching About Comparative/International Criminal Justice: A Resource Manual*, and to the publisher of the *Criminal Justice Review* for permission to use my 1982 article, "Approaches for Teaching Comparative Criminal Justice to Undergraduates."

I wish to thank Fred B. Rothman for permission to cite the translated laws of France from the American Series of Foreign Penal Codes; the Managing Director of Eibun-Horei-Sha, Inc., for permission to cite translated laws of Japan; Mervyn Matthews, M.E. Sharpe Inc., who publishes Soviet Statutes and Decisions; and Martinus Nijhoff Publishers, who published F. J. M. Feldbrugge's translation of the 1977 Constitution of the USSR, for permission to cite various translated laws of the former Soviet Union.

Last, but certainly not least, I appreciate the support and work of my editor, Ellen S. Boyne. Authors of Anderson Publishing texts are fortunate to have her encouragement and expertise behind their projects.

RJT
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Contents

Online Instructor and Student Resources	xi
Preface	xiii
Introduction	1
1. England	17
Introduction	17
Government	19
Police	29
Judiciary	48
Law	64
Corrections	84
Juvenile Justice	106
Summary	119
2. France	121
Introduction	121
Government	123
Police	131
Judiciary	147
Law	162
Corrections	182
Juvenile Justice	193
Summary	199
3. Japan	201
Introduction	201
Government	204

Police	208
Judiciary	221
Law	238
Corrections	251
Juvenile Justice	261
Summary	268
4. South Africa	269
Introduction	269
Government	288
Police	300
Judiciary	311
Law	319
Corrections	326
Juvenile Justice	332
Summary	336
5. Russia	339
Introduction	339
Government	344
Police	355
Judiciary	373
Law	393
Corrections	412
Juvenile Justice	428
Summary	435
6. China	437
Introduction	437
Government	440
Police	455

Judiciary	475
Law	493
Corrections	510
Juvenile Justice	522
Summary	526
7. Islamic Law	529
Introduction	530
Historical Development of Islam	535
Sharia	542
Sharia: Three Contemporary Case Studies	573
Kingdom of Saudi Arabia	575
Islamic Republic of Iran	603
Republic of Turkey	622
Summary	636
Bibliography	639
Subject Index	667
Author Index	719



Introduction

CONCEPTS TO KNOW

Nation State
Monarchy
Oligarchy
Theocracy
Dictatorship
Democracy
Common Law Family
Romano-Germanic Law Family
Socialist Law Family
Islamic Law
Rule of Law
Systems Theory
Crime Control Model
Due Process Model

Criminal justice has emerged as a field of study rather than an academic discipline. In many respects, this approach is analogous to the study of medicine. Medical students must be proficient in chemistry, biology, zoology, physics, and other academic disciplines before they are recognized as medical practitioners. Students of criminal justice also must have an understanding of a number of disciplines prior to considering themselves knowledgeable in their profession. Sociology, psychology, law, and public administration are a few of the more obvious disciplines in which students should possess some proficiency.

Many criminal justice programs are designed to train future practitioners in the techniques of problem solving and in the analysis of issues confronting the system. Among the paramount goals of this educational philosophy is the teaching of techniques for making more meaningful decisions for the system. The ability to understand and to utilize the decision-making process is central to this endeavor. Students are taught that the decision process involves a number of factors: (1) the availability of data on the status quo; (2) the decisionmaker's understanding, albeit a limited one, of the future state he or she wishes to achieve; (3) the comprehension of cost-benefit analyses that determine the direction and processes of moving from the present to the future; (4) the social-psychological makeup of the decisionmaker (that is, biases,

prejudices, priorities, and assumptions); (5) the decisionmaker's understanding of his or her agency's place within the total system; and (6) the decisionmaker's skill at comprehending the environment existing beyond the justice process that enables the system to work. With the utilization of these techniques, significant strides have been made at improving the criminal justice system.

Even so, these processes and the academic field do suffer. They fail to recognize other approaches or points of focus that could improve the decision-making process in particular and benefit the academic field in general. For our purposes, the issue centers on our culturally provincial view of the administration of criminal justice. Criminal justice educators, practitioners, and students have had a tendency to think that the concerns within our system are in some way indigenous to it. Many have not considered the possibility that another country has confronted or may be facing a similar concern and that their means of resolving the issue may be of assistance to us. The technique designed to rectify this oversight is known as the comparative approach.

Comparative criminal justice could prove to be indispensable as a tool for the study of our own system, as it allows us to understand it better. It can play a role comparable to the study of history by giving us the perspective necessary to comprehend the dimensions of our system. It provides us with an associational view of our criminal justice institutions and rules that, without such a comparison, could lead us to a false belief in the necessity and permanency of the status quo. If criminal justice is studied only within the boundaries of our country, without taking into consideration foreign ideas and experiences, it will reduce significantly the knowledge and possible approaches to solving our problems. Therefore, the comparative approach does two things for current and future practitioners of criminal justice: it improves their personal freedom, as things are not absolute, and it permits a broader formulation of a philosophy toward the field of criminal justice.

Comparative Method

The comparative approach is one of the older methods of research and instruction. Since the time of the ancient Greeks, it has been utilized in some format by leading thinkers in the Western world. Aristotle, Machiavelli, Montesquieu, Karl Marx, and Max Weber employed it in some of their more significant works. Today, the comparative approach is used in anthropology, economics, law, history, political science, and sociology.

Comparative research involves the study of similarities and differences in cultures, societies, and institutions. The value of this kind of research may include one or more of the following purposes: to test generalizations based on data collected from a single unit of analysis, such as one society; to replicate the findings from one study, which centered on a single unit of analysis, with other studies that focused on similar units of analysis; and to determine under which conditions the conclusions of one study may be valid in the analysis of other studies that are similar.

As such, the comparative approach is not a true method of analysis. Rather, it is a particular approach that is dependent upon an established method of analysis. For example, if one

decides to compare the sociological characteristics of two societies, we would expect the researcher to utilize a method compatible with the kinds of information necessary for comparison. Sociologists often employ the following methods: descriptive survey (questionnaire or interview), analytical survey (statistical), or experimental design (pretest/posttest or experimental/control group design) to achieve such ends. Thus, the methodological problems found in comparative studies are similar to any research endeavor utilizing some of these standard analytical tools. The problems are often compounded, however, because of the emphasis placed on studying more than one unit of analysis cross-culturally.

Comparative Criminal Justice

There are a number of approaches or models that are available when one embarks on the study of criminal justice from a comparative perspective. These models are borrowed from the more traditional academic disciplines that have been involved in comparative study for some time. There are at least five approaches to comparative criminal justice that are readily accessible at this time.

Anthropological-Historical Approach

Many criminal justice courses are guilty, by commission or omission, of portraying criminal justice as a static science. Students, however, should be prepared to expect change in the social ideas they are grappling with and with the institutions they will encounter professionally. If this is not achieved, students may be guided by dated or faulty theories of the past. Advocates of the anthropological-historical approach argue that the study of criminal justice emphasizes the present and future, with little regard for the past. They contend, therefore, that the future decisionmakers of the system lack a clear understanding of the system's past. An understanding of the evolutionary nature of society, its institutions and professions, and its philosophies is essential. The anthropological-historical approach prepares students to be part of a world of change. If this approach has value for the student studying his or her own criminal justice system, surely it is useful for understanding foreign justice systems.

Institutional-Structural Approach

Here the central goal is to acquaint the student with a panoramic view of a country's justice system. Proponents of this approach argue that students should be cognizant of the institutions, policies, and terms that give structure to a system. Just as students of one's own system need this kind of introduction, this is also true of the student of the comparative approach. Thus, this approach is directed at presenting organizational profiles of various foreign institutions in criminal justice.

Political-Legal Approach

Politics and the law are significant factors in our own justice system. Both go a long way toward explaining how and why we treat and process those individuals who have been characterized

as deviant by our society. Proponents of this approach argue that the study of foreign criminal justice systems must also be placed in the realm of politics and the law. What is the role of government in relation to the justice system? What type of legal system exists in a country? These are two of the kinds of questions raised by this approach.

Social-Philosophical Approach

This approach places emphasis on the need to understand a society's consensus—or lack of consensus—regarding its criminological perspective. What are the prevailing views regarding the causes of crime and deviancy in a society? What are the philosophical approaches to resolving or coping with these views in the penal setting? The value of this approach rests on the idea that students should be introduced to the criminological perspectives of foreign countries. In the context of criminal justice, it provides an opportunity to examine the translation of these perspectives into policies adopted by the various components of the system. This approach also enables students to think through their own tentative views on criminal justice with this added dimension. If students are not exposed to different criminological views and policy implications, they will be limited in their attempts to offer solutions to problems in our society.

Analytical-Problems Approach

This final approach emphasizes the development of theory (be it organizational, legal, or criminological) and the testing of such theories with problems associated with the justice system. The analytical-problems approach defines problems, identifies goals, determines possible solutions, and considers the consequences of those solutions. This approach, more than any of the others mentioned, is future-oriented in terms of the state of the system.

Because this book is a survey of select criminal justice systems in the world, it would be inappropriate to focus solely on one of the aforementioned approaches. It would also be impossible to give equal weight to each. Thus, this text is designed to synthesize the significant benefits derived from each view.

Frame of Reference

Before one begins the study of the criminal justice systems presented in this book, one caveat is in order. Although this text purports to be a comparative study of foreign justice systems, some purists might take issue with this liberal use of the term “comparative.” This book is not an in-depth narrative comparison among these countries. Its purpose is to survey foreign justice systems. Thus, the format is similar to an introductory text on the criminal justice system of the United States. Also, many books of a comparative nature tend to include a chapter on the United States. The United States is not included here because there are a sufficient number of books published that introduce the reader to that system. It is assumed that the American reader who is interested in learning about the justice systems of other countries has already acquired at least a survey knowledge of the United States' system.

To assist the reader in making comparisons among the countries presented in this book or between a particular country and that of the United States, a strategy is needed to provide an appropriate frame of reference. At least five concepts come to mind that should provide the reader with that strategy. One or more of these concepts should facilitate a method of analysis that enables both a breadth of comparison and an opportunity to assess particular issues in greater depth. The five concepts suggested as points of reference are the nation state, the legal system, democracy, rule of law, and systems theory.

Nation State

The concept of the nation state emerged in the eighteenth century and has been a significant political unit of analysis since that time. A number of characteristics are associated with the nation state. First, a nation state is an organization with its principal mission being to perform political activities. Second, a state occupies and has exclusive control over a specific territory. Third, a state is also sovereign, which means that its authority is not derived from nor shared with any other entity. Sovereign authority is illustrated by the power to make laws, the right to declare war and to make peace, and the power to grant pardons and appoint people to important governmental positions. Fourth, the population of a state often shares certain common societal features that facilitate a bonding of the people. These features may include language, religion, and a shared cultural or historical experience. The collective distinctiveness of the people helps establish a sense of belonging among the population. Fifth, the institutional development of a nation state has often placed a good deal of emphasis on law, because law has usually played a significant role in establishing various legitimate political processes. Finally, all states have developed bureaucracies that are designed to regulate and control and to provide various services.

The vehicle that enables the state to exercise several of the aforementioned characteristics associated with authority and development of the political process is the government. Forms of government have often been divided into at least five categories. One of the oldest forms is that of monarchy. Monarchy is technically government by a single person, such as a king or emperor. While this method of government declined significantly by the twentieth century, there are some monarchies still in existence. In the case of the United Kingdom and Japan, each has a constitutional monarch, but the principal function of the monarch in this context is to serve as a symbol of national unity for the country. In the case of the Kingdom of Saudi Arabia, however, the monarch presently exercises a good deal of actual political authority as the head of state and head of the government. England, which is part of the United Kingdom; Japan; and the Kingdom of Saudi Arabia are examined in the book.

A second form of government is that of oligarchy or government by a few people. In modern times, oligarchies have often taken one of two forms. There are totalitarian regimes that are associated with government administered by a small group that adheres to a state ideology, such as the National Socialist movement in Germany under Adolph Hitler, or countries that have or continue to adhere to a communist ideological agenda. The People's Republic of China continues to embrace communism and is presented in the book. The other form of oligarchy

is an authoritarian regime, which is generally characterized as not having a distinct state ideology, but rather is interested in maintaining political power and economic enrichment at the expense of the country and the people, such as the current case of Robert Mugabe's regime in Zimbabwe.

Theocracy is another form of government. Its distinct characteristic is that it is government by religious leaders who claim to interpret the word or wishes of God, often associated with or found in ancient religious texts. A modern example of this form that has several theocratic tendencies is the Islamic Republic of Iran, which is examined in the book.

A dictatorship is the fourth category of government. It is government by people, often associated with the military of a country, who have seized power by force. In the twentieth century, Turkey is an example of a country that has seen its military seize power but then relinquish it after introducing what it considered necessary political reforms. The impact of military coups in the Turkish context is covered in the book. Some military dictators seize power and then create an authoritarian regime for purposes of maintaining their political power and economic enrichment. Examples of this in the latter part of the twentieth century included Manuel Noriega in Panama, Muammar Gaddafi in Libya, and the military regime in Myanmar.

The final category of government is that associated with democracy. The ancient Greek definition of democracy simply meant rule by the people. Today, the definition has been refined to encompass good governance that is in the public interest. Frequently good governance has been translated to include such features as a constitution that guarantees basic personal rights (such as freedom of speech and religious liberty) and political rights (for example, freedom for all citizens to vote). Other rights under this governmental system would include freedom for the media, free elections, and independent courts of law. The actual form that a democratic government takes varies. To illustrate, the United States (a federal republic), France (a republic), and England and Japan (both parliamentary democracies) have long been associated with this form of government. Since the 1990s, Russia (a federation) and South Africa (a parliamentary democracy) have each made varying strides toward embracing this kind of government. All of these aforementioned countries are covered in the book.

As the twentieth century came to a close, the boundaries of the nation state were breaking down as a useful unit of analysis when studying issues like economics and business. That traditional perspective had been altered by the global economy. There remain instances, however, in which the nation state is an appropriate frame of reference. Criminal justice is one of them, in spite of the emergence of international crime cartels. As indicated earlier, the principal goal of this book is to introduce the American reader to justice systems of other countries in order to reduce our provincialism and expand our choice of action in resolving problems confronting our justice system. With the exception of the chapter on Islam, the countries selected for this book are considered powerful nation states, although the kind of power, level of industrialization, and degree of modernization varies among them. There are also differences in the nature of the crime problems confronting these countries. Nevertheless, an extensive and experienced bureaucracy has been established to address the issues of crime and justice that confront each country.