

COMPARATIVE CRIMINAL JUSTICE SYSTEMS

A Topical Approach

Philip L. Reichel

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Prentice Hall Career & Technology
Englewood Cliffs, New Jersey 07632

Library of Congress Cataloging in Publication Data

Reichel, Philip L.

Comparative criminal justice systems: A topical approach/Philip L. Reichel
p. cm.

Includes bibliographical references and index.

ISBN 0-13-151937-9

1. Criminal justice, Administration of—Cross-cultural studies.

I. Title

HV7419.R45 1994

364—dc20

93-4493

Acquisitions Editor: ROBIN BALISZEWSKI
Acquisitions Editorial Assistant: ROSE MARY FLORIO
Marketing Manager: RAMONA BARAN
Supplements Editor: JUDITH CASILLO
Cover Design: MIKE FENDER
Prepress Buyer: ILENE LEVY SANFORD
Manufacturing Buyer: ED O'DOUGHERTY
Production Editor: PATRICK WALSH



© 1994 by Prentice Hall Career & Technology
Prentice-Hall, Inc.
A Paramount Communications Company
Englewood Cliffs, New Jersey 07632

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Printed in the United States of America

1 2 3 4 5 6 7 8 9 10

ISBN 0-13-151937-9

Prentice-Hall International (UK) Limited, *London*
Prentice-Hall of Australia Pty. Limited, *Sydney*
Prentice-Hall Canada Inc., *Toronto*
Prentice-Hall Hispanoamericana, S.A., *Mexico*
Prentice-Hall of India Private Limited, *New Delhi*
Prentice-Hall of Japan, Inc., *Tokyo*
Simon & Schuster Asia Pte. Ltd., *Singapore*
Editora Prentice-Hall do Brasil Ltda., *Rio de Janeiro*

Preface

In 1986, the Commission on the Role and Future of State Colleges and Universities reported concern about the deficiency of American students' knowledge of world affairs, of America's role in the international scene, and of other nations' cultures. The Commission recommended that our educational system incorporate a strong international dimension at all levels, from grade school through graduate school. The dramatic political and economic changes occurring around the world, as the final decade of the twentieth century began, suddenly gave the Commission's plea a concrete dimension for anyone who may have viewed it as academics simply crying wolf.

This text is an effort to respond to the concerns expressed in that report. The text is organized in ten chapters that reflect the material and order of presentation typically found in introductory books on the American system of criminal justice. That is, arrangement proceeds from concern with criminal law through examination of police, courts, and corrections. This organization distinguishes the text from other comparative criminal justice books that present detailed information on five or six specific countries. This text contains less detail on the criminal justice system of particular countries, but it provides greater appreciation and understanding of the diversity in legal systems around the world.

A benefit of using the same countries for each chapter would be a sense of consistency and depth in the text. However, not every country offers the same level of contrast in all aspects of its criminal justice system. For example, describing German and French policing results in interesting and specific contrasts. But if the same countries are used to contrast the trial procedure, their similarity makes us less aware of the variation occurring in that process when other countries are considered.

Luckily, there is an alternative means for presenting information on law, police, courts, corrections, and juvenile justice. The organization used in this text follows the belief that comparison relies on categorization. That is, to best understand and explain similarities and differences among things, one must start by categorizing them.

The first chapter provides the rationale for studying other systems of justice and sets down the specific approach used in this text. The second chapter reviews crime as a world problem and sets the stage for consideration of the different ways justice systems are organized in attempts to respond to the crime problem. Chapter 3 presents traditional material on American criminal law so that the reader has a familiar and common base to use in the following chapters. Chapter 4 presents the four contemporary legal traditions and outlines the basic features of each. Chapter 5 continues material in Chapters 3 and 4 by looking at substantive and procedural criminal law in each of the four legal traditions.

The next four chapters cover the topics of policing (Chapter 6), the judiciary (Chapter 7), corrections (Chapter 8), and juvenile justice (Chapter 9). Countries representing Europe, Asia, North and South America, Latin America, Australia, and Pacific islands are included in the coverage. Some make frequent appearances (for example, Australia, France, Nigeria, and Saudi Arabia), while others are less recurrent (for example, Canada, Denmark, Mexico, and Fiji). The text concludes with a concentrated look at the criminal justice system of Japan. This country was chosen for special consideration because it has a history of borrowing from other countries (a point encouraged by comparative studies) and has what many consider to be a very effective criminal justice system. Also, ending the text with an in-depth look at a particular country provides an opportunity to tie together some of the topics and items presented in earlier chapters.

Comparative criminal justice is still in its infancy, but increasing numbers of academics and practitioners are coming to realize that it is a field whose time has come. As more and more textbooks begin to appear, more scholars attempt cross-cultural research, and more practitioners share ideas, comparative criminal justice will advance to levels we cannot yet appreciate. I hope you will find this book to be a positive contribution toward the advancement of this important field of study.

ACKNOWLEDGMENTS

I would like to acknowledge the support I have received from colleagues, both here and abroad, in my attempt to expand my knowledge about comparative criminal justice. At Warsaw University Andrzej Rzeplinski, Monika Platek, and Zbigniew Lasocik provided me with valuable information and kindly arranged tours of Polish prisons and police agencies while I visited their wonderful country. Kurt Neudek at the United Nations International Center in Vienna provided me with United Nations publications that were of great benefit. The opportunity offered me by Al Coox at San Diego State University to participate in the Japan Studies Institute inspired the detailed look given Japan in Chapter 10. At the University of Northern Colorado Lucille Schweers and her staff in the Inter-Library Loan department were able to handle my requests for both easily available and difficult to find publications with speed, efficiency, and friendliness.

The staff at Regents/Prentice Hall has also been wonderfully easy to work with. Editor Robin Baliszewski not only expressed interest in my proposal but was very supportive of the direction I wanted the book to take. The patience shown by Production Editor Patrick Walsh as he walked me through the various stages was greatly appreciated.

Finally, acknowledgment also goes to the reviewers who kindly assisted in the evaluation of the manuscript. The following people gave their valuable time and assistance in helping this book come to publication in a better form than was first submitted. The remaining weaknesses, of course, are my responsibility. Thank you to:

David Neubauer, Ph.D., *University of New Orleans*

Robert J. Homant, Ph.D., *University of Detroit*

Joan Luxenburg, Ed.D., *University of Central Oklahoma*

Joseph W. Lipchitz, Ph.D., *University of Massachusetts at Lowell*

Jan K. Dargel, M.A., J.D., *University of Tampa*

William D. Hyatt, J.D., LL.M., *Western Carolina University*

C. Ray Jeffery, Ph.D., *Florida State University*

*To my wife Eva
and our sons, Scott and Matt*

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Chapter 1

Taking an International Perspective

KEY TOPICS

- Reasons for studying foreign legal systems
- How an international perspective can benefit our own legal system and the world at large
- International efforts in law enforcement and adjudication
- Three ways to study foreign criminal justice systems
- Two ways to explain how criminal justice systems work in different countries
- Classification strategies
- How this book is structured

KEY TERMS

authentic strategy	functions/procedures	nonfinancial bail
cash deposit bail	descriptive approach	political approach
classification	historical approach	recognizance
commercial bail	institutions/actors	synthetic strategy
criminalization		

COUNTRIES REFERENCED

Australia	France	Panama
Belgium	India	Russia
China	Japan	South Africa
England	Mexico	United States

The 1981 best-selling novel *Gorky Park*, by Martin Cruz Smith, began with the arrival of Soviet police (militia) at a place in Moscow's Gorky Park, where an officer found three bodies lying in the snow. Chief Investigator Arkady Renko was the head of the Homicide Department of the Moscow Town Prosecutor's office. Upon his arrival, Arkady " . . . suspected the poor dead bastards were just a vodka troika that had cheerily frozen to death. Vodka was liquid taxation, and the price was always rising. It was accepted that three was the lucky number on a bottle in terms of economic prudence and desired effect. It was a perfect example of primitive communism" (Smith, 1981, p. 3).

Arkady was soon given reason to believe that this was not an ordinary case involving equal doses of vodka, jealousy, boredom, and despair:

Lights appeared from the opposite side of the clearing, shadow trees sweeping the snow until two black Volgas appeared. A squad of KGB agents in plainclothes were led from the cars by a squat, vigorous major called Pribluda.

The militia—the police arm of the MVD—directed traffic, chased drunks and picked up everyday corpses. The Committee for State Security—the KGB—was charged with grander, subtler responsibilities, combating foreign and domestic intriguers, smugglers, malcontents, and while the agents had uniforms, they preferred anonymous plainclothes. Major Pribluda was full of rough early-morning humor, pleased to reduce the professional animosity that strained cordial relations between the People's Militia and the Committee for State Security . . ." (From *Gorky Park* by Martin Cruz Smith, © 1981 by Martin Cruz Smith. Reprinted by permission of Random House, Inc., pp. 3–4).

After completing his initial investigation of what turned out to be a gruesome triple homicide, the Chief Investigator typed his preliminary investigation report and took it to the prosecutor's side of the building.

A prosecutor was a figure of unusual authority. He oversaw all criminal investigations, representing both state and defendant. Arrests had to meet the prosecutor's approval, court sentences came under his review and appeals came from his initiation. A prosecutor entered civil suits at his pleasure, determined the legality of local-government directives and, at the same time, decided the million-ruble suits and countersuits when one factory delivered nuts rather than bolts to another factory. No matter how great or small the case, criminals, judges, mayors and industrial managers all answered to him. He answered only to the prosecutor general (Smith, 1981, p. 17).

Today, the republics of the former Soviet Union have modified versions of the system described in *Gorky Park*. The KGB was succeeded by new organizations like the Russian Agency for Federal Security, but the basic structures and procedures in Russian criminal justice were little changed. American readers of mystery/detective novels set in other countries are still presented characters in jobs different from what we understand to be the role of police and prosecutors.

We would find it hard to believe a story where the CIA "assists" the New York Police in investigating a Central Park murder. We can handle English investigators from Scotland Yard who seem to have more prosecutorial power than we understand, but they are not really different from our image of detectives. Similarly, stories of French police who seem able to enforce laws throughout the country without regard to city or county boundaries may make them appear a bit presumptuous to the American reader.

A goal of this text is to lessen the likelihood that you will be surprised by criminal procedures in other countries as they become known to you. This is not so that you may enjoy a greater variety of mystery/detective novels, but instead supports the increased need for citizen understanding and appreciation of foreign legal systems.

WHY STUDY THE LEGAL SYSTEM OF OTHER COUNTRIES?

Because an international perspective is still unique in American criminal justice curricula, it is important to spend time showing its value. We begin with the premise that contemporary technology has provided a global communications network serving to shrink the world from the perspective of its people. It is a "small world" in terms of common problems! There is every reason to believe that the citizens of the world, through their respective governments and businesses, will become increasingly interdependent. As a result, an international perspective has both provincial and universal benefits. We will discuss these as they relate to criminal justice and from the viewpoint of Americans.

Before continuing, a few words regarding the use of the terms America and American are in order. Some authors are troubled by the use of those terms in sole reference to the United States and its citizens. Such concerns are well founded, since the North American continent is comprised of Canada, Mexico, and Central America, as well as the United States. Further, since the term America does not distinguish either the northern or southern continent, the citizens of South American countries could also be the subjects of conversation. However, despite the insensitivity its usage may encourage, I will use America as specifically referring to the United States. Citizens of other North and South American countries are more easily, and more correctly, identified with reference to their specific country. While the names Canadians, Peruvians, Mexicans, and Panamanians allow us to place a citizen with a particular country, a term like United Statesian does not roll off the tongue so easily. With apologies to our North and South American neighbors, this book uses America and Americans to refer to the United States of America and her citizens.

Provincial Benefits of an International Perspective

To understand better one's own circumstance it is often beneficial to have a point of contrast and comparison. LePaulle noted that there is a tendency to view the

law of one's own country "... as natural, as necessary, as given by God" when it is more accurately the result of "... historical accident or temporary social situations" (quoted in Cole, Frankowski, and Gertz, 1987, p. 19). Such a view makes the system seem uninteresting and not worthy of scrutiny. After all, why should we need to examine and appreciate what amounts to the only game in town?

When we realize that the American legal system is not the only game, it becomes more interesting and more important to scrutinize that system. For example, the rather passive role of a judge in the American trial process takes on new meaning when contrasted with the very active judge under a civil legal system. When we read of socialist civil legal systems making use of private citizens as lay judges, it puts the use of citizens on American juries in a new perspective. In this manner, a knowledge of alternative systems of justice provides a point of contrast. That, in turn, allows the student and scholar a means and reason to gain new insight into a procedure or structure previously viewed as uninteresting and ordinary. A comparative view of legal systems allows us to understand better the dimensions of our own system. "Without such a comparison, we could be led to a false belief in the necessity and permanency of the status quo" (Terrill, 1982, p. 23).

Besides providing new insight and understanding of our system of justice, an international perspective can furnish ideas to improve that system. A technique used in one country to combat crime might be successfully adapted for use in another country. For example, a key ingredient of Japan's police system is the *koban*, or police box. Since policing in Japan is considered to be very effective and efficient, it has been studied and written about in many countries. Some researchers and practitioners have argued that the *koban* system's community-wide deployment of police would be effective in the United States. And, as Chapter 10 discusses at length, some American cities are finding *koban*-like strategies to be very useful.

No society can incorporate another culture's legal system in its entirety and expect it to work. Yet certain aspects of another system—modified to account for cultural differences—may operate successfully in a new setting. It is important to note that potentially transferable ideas come not only from countries at similar levels of development. For example, Americans are becoming increasingly interested in mediation to settle a variety of legal disputes. As anthropologists remind us, mediation and dispute resolution have a long and distinguished tradition at the tribal and village levels in, for example, African countries. To ignore the experiences of those systems is imprudent and elitist.

Universal Benefits of an International Perspective

As we exit the twentieth century, rapid travel and communication are making us painfully aware that crime no longer is confined by the geographical boundaries of individual countries. In the new age of crime, Fooner (1989) sees common murderers and thieves as comparatively less troublesome to society than terrorists, drug dealers, arms merchants, and money launderers. Further, criminality in

the twenty-first century seems less apt to prey on private citizens and more likely to victimize communities, governments, and even entire nations.

Such transnational crimes as terrorism, air and sea hijacking, and drug smuggling are serious concerns that beg for a cooperative international response. Inter-nation collaboration is occurring, but the needed action requires a level of teamwork that countries of the world are only beginning to consider. Understandably, cooperation often begins with neighboring countries, since their common border not only presents the problem of intercountry crime, but also provides both reason and opportunity to do something about it. Consider, for example, arrangements between the United States and Mexico, and the bilateral agreements of Belgium.

In 1990, the United States announced guidelines permitting Mexican police to operate in the United States while American drug agents work in Mexico ("Mexico cops . . .," July 1, 1990). Under this reciprocal arrangement, the Mexicans could send into the United States the same number of police the Americans have operating in Mexico. Even that minimal level of cooperation served to raise additional problems regarding the form such inter-nation policing should take (see Lenhard, 1990). For example, should "guest" police be allowed to carry weapons in each others' country? Must pursuing police be uniformed, or can they be plainclothes detectives? Should police be allowed to cross borders only in search of suspects in certain types of crimes? How far into the host country can foreign police proceed? The questions are many and difficult.

An example of the complexity occurred in 1992, when the United States Supreme Court ruled that the U.S. government may kidnap people from foreign countries to stand trial in the United States (*United States v. Alvarez-Machain*, 60 LW 4523). The Drug Enforcement Administration (DEA) believed that Mexican physician, Humberto Alvarez-Machain, was a participant in the torture of DEA agent Enrique Camarena-Salazar. The DEA arranged to have the doctor forcibly abducted from his Guadalajara office and flown to El Paso, Texas, where DEA agents arrested him. Mexico was especially upset by the American actions, since the United States and Mexico have an extradition treaty presumably for just such purposes. But Chief Justice William Rehnquist found nothing in that treaty prohibiting the forcible abduction of people from the territory of the other nation.

The Canadian government, which also has an extradition treaty with the United States, filed a brief supporting Mexico's position in the case. Both countries believed the American actions went against fundamental principles of justice and violated international law. After the Supreme Court's decision was announced, Mexico banned all activities by DEA agents in Mexico. Cooperative efforts were resumed (on what Mexican officials called a temporary basis) a few days later, after American officials assured Mexico that no more suspects would be seized across the border. However, the increasing internationalization of criminal behavior suggests that the three largest North American countries will continue to have their cooperative efforts tested as each combats crime within and across its borders.

European countries have an older but still elementary level of cooperation among law enforcement officials. Belgium, for example, has bilateral agreements on limited cross-border powers for national police forces with France (since 1919), Luxembourg (since 1920), the Netherlands (since 1949), and Germany (since 1989). The arrangements fluctuate from providing official sanctioning of regular contacts between police in the two countries to allowing police carrying out their duties in the other country to wear uniforms and service weapons (Geysels, 1990).

As if worrying about national borders were not enough, technology is presenting new challenges to the cooperative spirit of nations. The new Channel Tunnel (Chunnel) between England and France introduces unique concerns for the police in each country. Under a 1992 pact, French and British police will be able to arrest Chunnel travellers in each other's country. Officials in both countries will be able to investigate passengers while the Chunnel trains are moving, but Britain did not agree to let French police carry guns on the trains ("Chunnel Patrol," 1992).

Political changes in central and Eastern Europe will likely increase the ability of people (including criminals) to move more freely from country to country. Lenhard reacts to the opening of European internal borders with the warning that "it is preposterous to allow criminals free passage throughout Europe while pursuing police forces must stop at the border" (1990, p. 3). Major Frans Geysels of the Belgium Gendarmerie would likely agree. He relates the story of former Belgian Prime Minister Paul Vanden Boeynants, who was kidnapped in January 1989. Soon after Vanden Boeynants's release in February 1989, French police arrested the internationally wanted criminal Bajrani Basri. The arrest occurred after detectives had tailed Bajrani's wife from the Netherlands, via Germany, Belgium, and Luxembourg, to France (Geysels, 1990). The ability to trail a wanted criminal through a variety of legal jurisdictions becomes increasingly necessary as criminals become more mobile.

Efforts to open the borders of European Community member countries are being closely watched by various police forces, who express both concern and confidence that security can be maintained. In the former West Germany, for example, over sixty percent of all drug seizures took place at the country's borders. Relaxing border controls means that European police forces must engage in a careful collaboration to compensate for the reduced security accompanying the newly open borders (Rupprecht, 1990). A necessary step in achieving such cooperation in Europe, and among the other countries of the world, is an increased understanding of criminal justice systems in the various nations. In this manner, taking an international perspective toward criminal justice will have definite universal benefits.

APPROACHES TO AN INTERNATIONAL PERSPECTIVE

An author's goal typically instructs the approach used to convey information. A police officer writing her report of a recent arrest tells the story by referring to