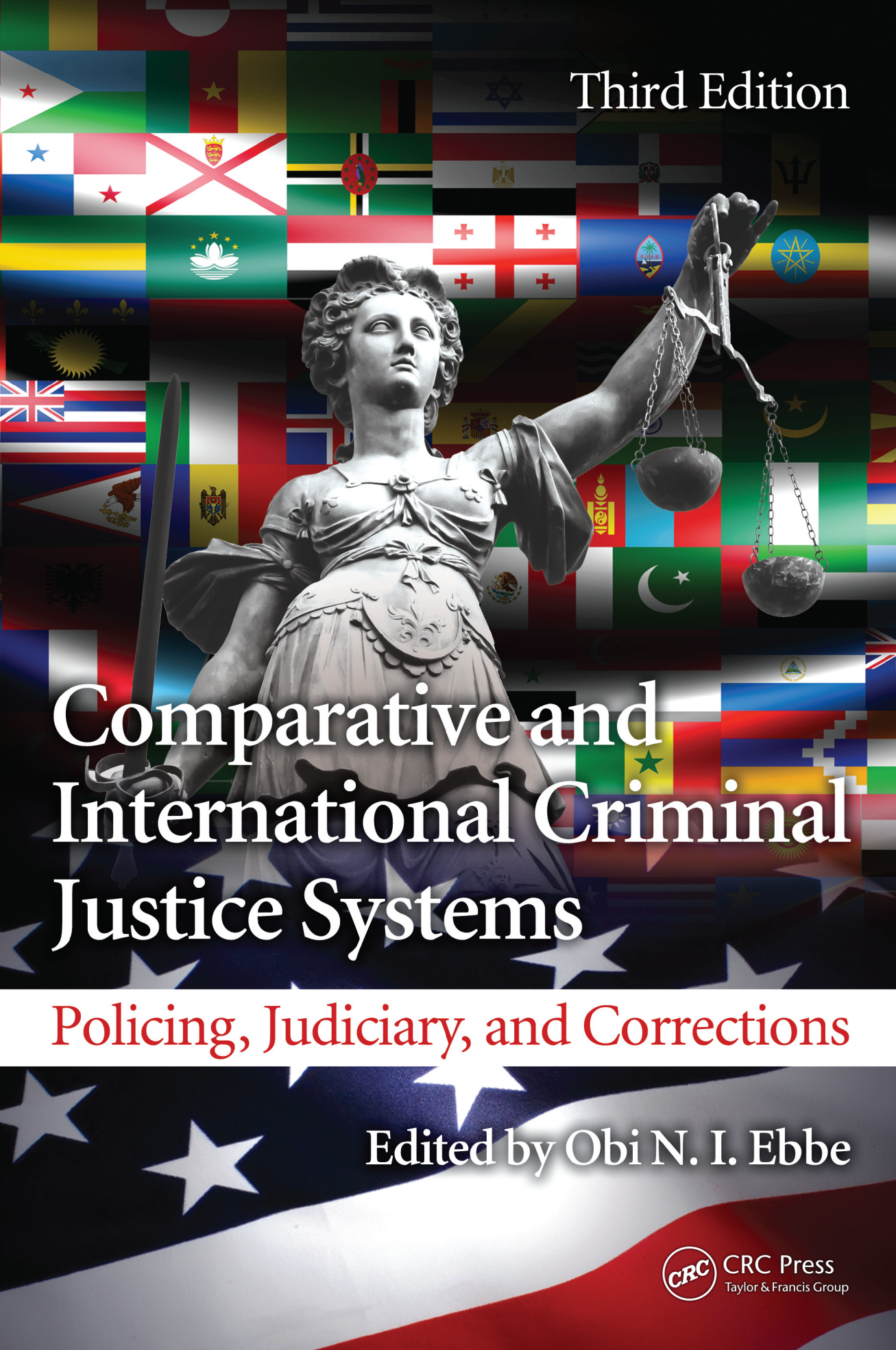


Third Edition



Comparative and International Criminal Justice Systems

Policing, Judiciary, and Corrections

Edited by Obi N. I. Ebbe

Third Edition

Comparative and International Criminal Justice Systems

Policing, Judiciary, and Corrections

Third Edition

Comparative and International Criminal Justice Systems

Policing, Judiciary, and Corrections

Edited by Obi N. I. Ebbe



CRC Press

Taylor & Francis Group

Boca Raton London New York

CRC Press is an imprint of the
Taylor & Francis Group, an **informa** business

CRC Press
Taylor & Francis Group
6000 Broken Sound Parkway NW, Suite 300
Boca Raton, FL 33487-2742

© 2013 by Taylor & Francis Group, LLC
CRC Press is an imprint of Taylor & Francis Group, an Informa business

No claim to original U.S. Government works
Version Date: 20130401

International Standard Book Number-13: 978-1-4665-6034-5 (eBook - PDF)

This book contains information obtained from authentic and highly regarded sources. Reasonable efforts have been made to publish reliable data and information, but the author and publisher cannot assume responsibility for the validity of all materials or the consequences of their use. The authors and publishers have attempted to trace the copyright holders of all material reproduced in this publication and apologize to copyright holders if permission to publish in this form has not been obtained. If any copyright material has not been acknowledged please write and let us know so we may rectify in any future reprint.

Except as permitted under U.S. Copyright Law, no part of this book may be reprinted, reproduced, transmitted, or utilized in any form by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying, microfilming, and recording, or in any information storage or retrieval system, without written permission from the publishers.

For permission to photocopy or use material electronically from this work, please access www.copyright.com (<http://www.copyright.com/>) or contact the Copyright Clearance Center, Inc. (CCC), 222 Rosewood Drive, Danvers, MA 01923, 978-750-8400. CCC is a not-for-profit organization that provides licenses and registration for a variety of users. For organizations that have been granted a photocopy license by the CCC, a separate system of payment has been arranged.

Trademark Notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

Visit the Taylor & Francis Web site at
<http://www.taylorandfrancis.com>

and the CRC Press Web site at
<http://www.crcpress.com>

Dedication

*For my daughters, “JJ” (Njideka Jessica) and
Nneka Ndidiama 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. Haberland 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 Industry	251
	<i>Elmer H. Johnson</i>	

Chapter 20	Treatment of Offenders in Denmark and Brazil	265
	<i>Zelma W. Henriques</i>	

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
	<i>Obi N. I. Ebbe</i>	

Glossary	287
-----------------------	-----

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 (Nuremburg), 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

The University of Tennessee at Chattanooga

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

*The College at Brockport
State University of New York*

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 Lique 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.

Obi N. I. Ebbe

*The College at Brockport
State University of New York*

Acknowledgments

It is my pleasure to acknowledge the support of eminent scholars, such as Emil W. Plywaczewski of the University of Bialystok, Poland; Declan Ihekwoaba Onwudiwe of Texas Southern University, Houston, Texas; Charles Ubah of Georgia College and State University, Milledgeville; Jonathan Odo of Cameron University, Lawton, Oklahoma; Emmanuel Onyeozili of the University of Maryland Eastern Shore, Princess Anne, Maryland; Allison Anadi of Southern University, Baton Rouge, Louisiana; and Oko Elechi of Prairie View A&M University, Houston, Texas, who spurred me to produce this third edition. Furthermore, many thanks to all the professors who adopted the first and second editions and who have been requesting the production of this third edition. Their questions about a possible third edition were an inspiration.

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

Obi N. I. Ebbe, PhD, is a professor of criminology and sociology at the University of Tennessee at Chattanooga. He is a graduate of Western Michigan University and received a PhD in sociology from Southern Illinois University at Carbondale in 1981.

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.

Contributors

Michael Bullock

Gloucestershire Constabulary
Gloucester, United Kingdom

and

John Jay College of Criminal Justice
The City University of New York
New York, New York

Mary Clifford

Department of Criminal Justice
St. Cloud State University
Saint Cloud, Minnesota

Robert Davidson

Criminal Justice Department
Northern Michigan University
Marquette, Michigan

Obi N. I. Ebbe

Department of Sociology, Anthropology
and Geography
The University of Tennessee at Chattanooga
Chattanooga, Tennessee

Yakov Gilinskiy

Institute of Sociology
St. Petersburg, Russia

Maria R. Haberfeld

Department of Law, Police Science and
Criminal Justice Administration
John Jay College of Criminal Justice
The City University of New York
New York, New York

Zelma W. Henriques

Department of Law, Police Science and
Criminal Justice Administration
John Jay College of Criminal Justice
The City University of New York
New York, New York

Sergio Herzog

Faculty of Law
Institute of Criminology
The Hebrew University of Jerusalem
Jerusalem, Israel

Elmer H. Johnson

Distinguished Professor Emeritus
Southern Illinois University
Carbondale, Illinois

Paul Douglas O'Mahony

Department of Psychology
Trinity College
University of Dublin
Dublin, Republic of Ireland

Jonathan Odo

Cameron University
Lawton, Oklahoma

Emil W. Plywaczewski

Dean School of Law
University of Bialystok
Bialystok, Poland

Ruben G. Ruiz de Olano

Cordoba National University
Cordoba, Argentina

Bankole Thompson

Department of Political Science
Eastern Kentucky University
Richmond, Kentucky

John Zheng Wang

Department of Criminal Justice
California State University–Long Beach
Long Beach, California

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.

REFERENCES

- Achebe, C. 1959. *Things fall apart*. New York, NY: McDowell Obolensky.
- Adler, F. 1983. *Nations not obsessed with crime*. Littleton, CO: Fred B. Rothman & Co.
- Adler, F., G. O. W. Mueller, and L. S. Laufer. 1991. *Criminology*. New York, NY: McGraw-Hill.
- Archer, D., and R. Gartner. 1984. *Violence in cross-national perspective*. New Haven, CT: Yale University Press.
- Bossard, A. 1990. *Transnational crime and criminal law*. Chicago, IL: Office of International Criminal Justice (OICJ).
- Chang, D. H. 1976. *Criminology: A cross-cultural perspective*. Durham, NC: Carolina Academic Press.
- David, R., and J. C. Brierly. 1989. *Major legal systems in the world today*. New York, NY: Free Press.
- Day, F. D. 1964. *Criminal law and society*. Springfield, IL: C. C. Thomas.
- Ebbe, O. N. I. 1977. *The seriousness of selected criminal offences: A cross-cultural inquiry*. Kalamazoo, MI: Unpublished master's degree thesis.
- Ebbe, O. N. I. 1988. Juvenile justice system in southern Nigeria. *International Journal of Comparative and Applied Criminal Justice* 12(2): 191–204.
- Ebbe, O. N. I. 1989. Crime and delinquency in metropolitan Lagos: A study of crime and delinquency area theory. *Social Forces* 67: 751–765.
- Ebbe, O. N. I. 2003. Slicing Nigeria's national cake, 137–174. In *Menace to society: Political-criminal collaborations around the world*, edited by R. Godson. New Brunswick, NJ: Transaction Publishers.
- Fairchild, E. 1993. *Comparative criminal justice systems*. Belmont, CA: Wadsworth Publishing Co.
- Grassi, A. 1989. Combating organized crime: The Maxi Trials in Sicily, 37–46. In *Transnational crime: Investigative responses*, edited by H. Smith. Chicago, IL: OICJ.
- Kube, E. 1989. Technological research and international crime, 125–132. In *Transnational crime: Investigative responses*, edited by H. Smith. Chicago, IL: OICJ.
- Martin, J. M., and A. T. Romano. 1992. *Multinational crime: Terrorism, espionage, drug and arms trafficking*. Beverly Hills, CA: Sage.
- Schafer, S. 1976. *Introduction to criminology*. Reston, VA: Reston Publishing Company.
- Stewart, J. K. 1989. International research and the federal role, 1–7. In *Transnational crime: Investigative responses*, edited by H. Smith. Chicago, IL: OICJ.

Section II

Crime and Criminal Law

Global Perspective

2 Crime

International and Comparative

Obi N. I. Ebbe

CONTENTS

The Nature of Crime	11
Theories of Crime: International Perspective, Early Explanations	12
Sociological Explanations	13
International Perspective	13
International Crimes	14
Money Laundering	14
Cyber Crime	15
Genocide	15
Drug Trafficking	16
Maritime Crimes	16
Territorial Jurisdiction of Coastal States under UNCLOS	17
Pirates and Their Maritime Crimes	17
Control of Maritime Crimes	18
Illegal Transportation of Women, Children, Goods, and Services	18
Causes of Illegal Transportation of Women and Children	19
Scope of Illegal Transportation of Women and Children	20
Modus Operandi of the Traffickers	20
Control Strategies in Illegal Trafficking of Women and Children	20
Illegal Immigration	21
Extradition Treaty	21
Comparing Crime Rates	22
Review Questions	23
References	23

THE NATURE OF CRIME

Every society has acceptable and unacceptable behaviors, and some of these behaviors are found in every culture. Culture is created by society, so, in effect, acceptable and unacceptable behaviors are created by society. Therefore, crime is a cultural universal, but what constitutes a crime is not, because values vary.

The concept of crime is a Western or English concept. By Western definition, an act is a crime if it has been so defined in the criminal code of the state where it occurred. The state's criminal code is also expected to prescribe punishments for prohibited acts. Through the criminal code, the state creates criminal law, which defines the concepts of crime and the criminal. Criminal

code, criminal law, crime, and criminal are all social definitions.

Pragmatically, it is not true that without the criminal law, there is no crime. Without criminal law, the act would probably be prohibited by society under a different name, depending on the language of the society. For example, for a person to kill his mother or father among the Igbo in Nigeria, it is called *aru*, which can be defined as a generic concept of an "abomination." Under the English and American legal systems, matricide or patricide is a felonious crime, as specified in the criminal code of the states.

Be that as it may, in some societies, a criminal code is not required to define a behavior as being evil and to

punish it as a felony or as a crime even severer than those behaviors proscribed through the criminal code. In countries such as India, Ghana, Nigeria, Kenya, Sierra Leone, and Malaysia, the criminal code was not the source of law and crime until these countries were colonized by some European countries, so the concept of crime and the society's concept for an evil act such as *aru* are used concurrently. The offender in such countries may face double jeopardy in that the state may apply its punishments based on the colonial-based criminal code, while at the same time, the offender may be excommunicated in his/her community, based on informal customary law.

What constitutes crime is dynamic. It changes over time based on social, economic, and political forces. Some laws of yesteryear criminalize some behaviors that have become normative standards today. For example, a ban on assault weapons in the United States was initiated during President Bill Clinton's administration, but by September 2004, it was no longer illegal, because a new administration did not like the prohibition. Similarly, homosexual behavior, an offense in many U.S. states before 1973, is no longer an offense in most states today.

Crimes are created by the legislature of a state through the passage of bills. The same legislature can revoke its own act and make a prohibited act a legal one. In some countries like the United States, laws that create crimes pass through three branches of the government—the House of Representatives, the Senate, and the president (executive branch)—and these criminalizations become law of the land after receiving the signature of the president or the prime minister. Countries that have these three legislative branches include Nigeria, India, and Sierra Leone. Some countries, such as Kenya, Tanzania, and Zaire, have only one legislative chamber. The bill is introduced in the national assembly or parliament, and, once it passes the assembly, it goes to the head of state for his/her signature. In such systems, opposition parties are destroyed, creating a one-party dictatorship. What becomes a crime, in such regimes, is primarily what is in the interest of the Head of State and his political party.

In dictatorships, such as in Cuba, Gaddafi's Libya, and Nigeria under military regimes (1966–1979 and 1983–1993), laws are made by decrees such as the Nigeria's Decree 419, which prohibits fraudulent activities of all kinds. In effect, crimes are created by decrees. In dictatorships or one-party governments, political opponents are often labeled as threats to national security and thrown in prison without trial.

In colonial regimes, the concept of crime had a lot to do with power relations, where "conduct norms" were criminalized (Sellin 1938; Ebbe 1988, 1996). Conduct norms

are behaviors that are normal in the customs of the natives. But in the eyes of the European colonizers or imperialists, such behaviors are abnormal. For example, polygamy/polygyny is a cherished value of Nigerians, but it was criminalized by the British colonial administration of Nigeria, with a penalty of 7 years of imprisonment. Also, the Spaniards criminalized some matrimonial causes of Mexico such as polygyny and dowry, which were purely conduct norms of the Mexican people (Sellin 1938).

Some behaviors that are regarded as abnormal conduct in post-traditional societies, such as Nigeria, Ghana, Malaysia, Myanmar, and Kenya, do not reach the definitional levels of a crime in pre-colonial times, but are treated and punished as crimes by colonial law. For example, trespassing and picking some oranges, mangoes, or other fruits from a fruit tree belonging to another are not crimes, as long as the intruder is not plucking the fruits for sale and not trespassing for an illegal purpose. These acts are just minor deviances or breaches of folkways. If the owner sees the intruder, he only scolds him, little more than looking askance at a person who breached a folkway.

There are serious crimes (felonies) and nonserious crimes (misdemeanors). The most serious types of crimes are the felonious ones. The crimes that cost a lot to society are property crimes and crimes against persons. Under property crimes, white-collar crime and organized crime are the most costly crimes to society. The most disturbing aspects of white-collar crime and organized crime are the fact that their offenders are less likely to be caught, prosecuted, convicted, and imprisoned. Additionally, both are crimes of greed, crimes by otherwise respectable individuals, crimes of the privileged class, and crimes of the powerful.

THEORIES OF CRIME: INTERNATIONAL PERSPECTIVE, EARLY EXPLANATIONS

There are many assumptions about criminal behavior. Criminal tendency is in every human being, but some human beings have stronger resistance or willpower than others. The explanations for why some people commit crimes while others don't have gone from exclusively individualist to mostly societal factors. Early theories of crime focused on the offender as the source of his criminal behavior. He was assumed to have been possessed by the devil. And when Jesus Christ demonstrated through his miracles that a person could be possessed by the devil, he added some fuel to demonism as a cause of crime. In effect, exorcism was seen as the only remedy.

In the sixteenth century, Sir (Saint) Thomas More (1478–1535) made poverty a very important factor in criminal behavior in England. He told the British Parliament that if a man has determined to be alive but his basic needs are not provided, he must steal. More made this assumption after England executed a man who stole a loaf of bread (More 1516). Since More's assertion, poverty has been claimed by many writers as a factor in criminal behavior (Merton 1968). However, it must be noted that poverty as a factor in crime is not a cultural universal. Some religions of various societies regard poverty as given by God and "that which God has given to you should not be dropped, but rather should be cherished" (Nigerian Islamic society). In effect, among Moslem societies, crime rate is low not because of the severe, Draconian degree of punishment, but because the members are made to believe that with poverty on earth, their kingdom is in heaven. Unmistakably, the northern Nigerian Muslims (over 49 million) transmute poverty and begging as virtues of grace. Poverty, in effect, became a culture of the people. Therefore, poverty as an explanation for criminal involvement is relative to place and religious affiliation.

The Enlightenment (eighteenth-century European philosophical movement) brought rationalism, impetus to learning, and empiricism in social and political thought. The Enlightenment thinkers began to reason beyond demonism as a cause of deviant behavior.

In that same eighteenth century, the Classical School of Criminology emerged under the leadership of Cesare Beccaria with the concept of "free will," still seeking for the cause of criminal behavior in the individual. The classical school asserted that human beings are hedonistic (self-indulgent pursuit of pleasure as a way of life). Therefore, since man has free will, he will choose between pain and pleasure. Then the school came up with the principles of commensurate deserts—let the punishment fit the crime. The classical school postulated that if the pain one will suffer for committing the crime is more than the pleasure he would derive out of committing the crime, he will not commit the crime.

These psychological explanations also concentrated on the individual's mind as a source of good and evil acts.

Additionally, the positive school of criminology under the leadership of Cesare Lombroso emerged as the first approach to scientific study of crime, but also concentrated on the individual as a source of deviant behaviors. For Lombroso, criminals are biological throwbacks; they reproduce the characteristics of their ancestors. In other words, criminal behavior is inherited. Despite subsequent studies by Charles Goring (1913), Goddard (1915),

Earnest Hooton (1939), and William Sheldon (1949), a very insignificant number of criminologists today believe that criminal behavior is inherited.

SOCIOLOGICAL EXPLANATIONS

Better explanations of criminal behavior than the individualistic ones are sociological theories. Sociologists do not regard hereditary and personality traits as causes of criminal behavior. Instead, sociologists seek the causes of criminal behavior in the society. Crime and criminals are created through the operations and functions of society. In this view, sociologists look at social factors such as economic conditions (Bonger 1916), anomie (Durkheim 1933; Merton 1968), cultural conflict (Sellin 1938), ecological determinism (Shaw and McKay 1942), conflict (Chambliss 1974; Quinney 1974), subculture (Cloward and Ohlin 1969), social control (Hirschi 1974), differential association (Sutherland 1949), and societal reaction/labeling (Tannenbaum 1939) as explanations of criminal behavior. In contrast with the individualist theories of crime, sociological explanations assert that criminal behavior is learned and not inherited.

INTERNATIONAL PERSPECTIVE

The preceding individualistic and sociological theories are mostly applicable to Western societies. To what degree are they applicable to societies in Asia, Africa, and the Middle East? Unmistakably, some of the Western theories are culturally specific theories, such as the theory of poverty as a cause of crime.

From an international perspective, crime rates vary not only because theories of crime in various societies vary, but because cultural values also vary. For example, Shaw and McKay's assumption that crime in some areas of Chicago is a product of "ecological determinism" or "cultural transmission" was investigated in Buenos Aires, Argentina, by DeFleur (1967) and in Lagos, Nigeria, by Ebbe (1989), and both found the theories inapplicable to their respective cities. In the same vein, the strain (anomie) theory of Merton (1968), like poverty, is not a universal theory (Ebbe 1977, 1989, 1992; Bassiouni 1982; Cloward and Ohlin 1969; DeFleur 1967; Sutherland 1949).

Crime theories that have international applicability are conflict theory, differential association, social control, and culture conflict. Societal reaction and economic conditions are culturally specific theories. Under the international arena, we have a desire for national security, leading to crimes of national security. Also, there

is a fervent desire for national wealth and wealth accumulation as a source of national power. In effect, we have crimes of primitive accumulation by some nations. Additionally, we have crimes motivated by religious fundamentalism. This is especially true in Islamic countries such as Iran, Nigeria, Iraq, Saudi Arabia, and Indonesia. Finally, differential economic opportunities across nations play a significant role in differential global crime rates.

INTERNATIONAL CRIMES

This jet age is a phenomenal epoch. Advances in technology and navigation instruments have brought the countries of the world into a small global village. Within a period of 18 hours, one can physically be in three consecutive continents (North America, Europe, and Africa). Some people travel that way two or three times in a week. Flying from New York City or Detroit (North America) via London or Amsterdam (Europe) to Lagos (Africa) was my frequent route of travel every year from 1993 through 1999. People travel from all the continents of the world in legal and illegal business trips. In the process, some individuals commit crimes outside their national borders.

An international crime is committed when the act is illegal in one country (or both countries) and the perpetrator (offender) has his victim(s) in another country. Also, a crime is international when the offender has bases in two different countries. In other words, a crime is an international crime when the execution of the act transcends the boundaries of the perpetrator's native country. Additionally, a crime may become international in nature when the act violates an international law. We shall discuss international crimes created by international conventions later in the chapter about international law.

Crimes that frequently cross national boundaries as international crimes are money laundering, cyber crime, illegal drug trafficking, maritime crimes, illegal transportation of women and children, illegal immigration, fraudulent exports, international sabotage, international organized crime, terrorism, international procuring, transnational murder, counterfeiting currency, transnational violence, genocide, slavery, traffic in obscene publications, transnational professional prostitution, illegal transportation and disposal of nuclear waste, international passport racketing, international smuggling of body parts, theft of cultural goods, firearms smuggling, and transnational smuggling of motor vehicles. Next is a short account of some of these international crimes.

Money Laundering

Some commercial banks and illegal underground banking systems in different countries of the world facilitate money laundering (Ebbe 1999, 2003). The bankers "maintain ledgers in code so that no official paper trail is created. The speed, simplicity, and confidentiality of these transactions made them attractive and safe" (Beare 1995, p. 183).

The United Nations Vienna Convention draft against Illicit Traffic of Drugs and Psychotropic Substances, adopted on December 20, 1988, defined money laundering as follows:

The concealment or disguise of the true nature, source, disposition, movement, or ownership of proceeds, including the movement or conversion of proceeds by electronic transmission with the purpose of causing them to appear to be proceeds of licit activities.

Money laundering is handled by private individuals or groups on behalf of criminal syndicates or individuals (Bossard 1990). Corrupt politicians, organized crime syndicates, narcotics drug lords, and top business tycoons who want to evade paying taxes are the clients of these money-laundering agents.

Money laundering has three important elements: the conversion or transfer of the money or property; the concealment or disguise of the origin of the money or property; and a wanton desire to regain possession of the money or property (Bantekas and Nash 2003).

There are offshore companies that are outside the territorial waters of any country. They engage in offshore banking and are in the business of keeping illegal money. They are outside the arms of the law of any country. No country has successfully tried to control offshore banking, because top corrupt government officials and wealthy politicians, organized crime groups, and narcotics dealers illegally bank their money in these banks. Offshore banking is a major means of tax evasion in Europe, Australia, the West Indies, and the United States. Money laundering from narcotics alone in the United States, Canada, and Europe is estimated to be in double-digit billions of U.S. dollars.

Money laundering is a global problem. For example, Nigeria and Ghana in West Africa are poor countries, but why are there more than 200 foreign banks in Nigeria and over 50 in Ghana? Well, the answer is simple. Between 1985 and 1990, a top Nigerian Union Bank (formerly Barclays Bank) official was carrying more than U.S.\$15 million cash and flying to London, United Kingdom. The Nigerian customs officials arrested him and seized the

money. Some hours later, the Nigerian military head of state, General Ibrahim Babangida, ordered customs to free the bank official and release the money. The questions one may ask are, How did the British money get into Nigeria? And why is the money being smuggled back to Britain? The answer is, some Europeans and some Americans hide their legally and illegally acquired money in Third World banks to avoid detection and taxation. Some of the foreign banks in Third World countries are owned and controlled by friends or relatives of those who launder their money in these countries. Many African countries are predatory states, and their heads of state and their cronies very easily launder their stolen money in Europe and America. In effect, controlling money laundering, like controlling offshore banking, is a flash in the pan.

Cyber Crime

The development of new and faster means of computing and communication has brought about easy opportunities for executing various crimes nationally and internationally. Crimes in cyber space include theft of services, marketing stolen goods, receiving services without paying for them, information piracy, counterfeiting telephone cards, unauthorized access to an organization's telephone switchboard, illegal interception of information, electronic eavesdropping from international surveillance to international industrial espionage, counterfeiting currency notes of any country, credit cards, identification cards, driver's license, national passport, immigration visa, identity theft, forgery of signatures, international money order, copyright infringement, CD and album bootlegging, dissemination of offensive materials, racist propaganda, instructions for the fabrication of incendiary bombs and other explosive devices, electronic money laundering, electronic vandalism, and terrorism (Grabosky 2000).

Modern information systems have facilitated transnational illegal drug trafficking, international gambling, international prostitution, money laundering, child pornography, and illegal arms trafficking. According to Peter Grabosky (2000), "hackers were reported to have obtained unauthorized access to the telephone facilities of the Scotland Yard, and made one million U.S. dollars in telephone calls."

Internet technology has facilitated fraudulent marketing and shipments. Additionally, it has facilitated statutory rape, and stealing men, women, boys, and girls and illegally transporting them across international borders.

The most serious problem in controlling crimes in cyber space is the lack of frontiers. Cyberspace crimes know no national boundaries. Yet, overregulation could stifle commerce and technological development (Grabosky 2000).

Cyberspace crimes call for international cooperation for their control. There is a problem of international criminal definition. The United Nations can play an important role in this case. The United Nations needs to hold a convention on controlling crime in cyberspace.

Genocide

The term "genocide" means a calculated, systematic killing of an ethnic group, a nation, or a collectivity on the basis of their ethnicity, nationality, religion, race, or economic and political domination (e.g., Tutsi vs. Hutu in Rwanda/Burundi, 1994; former Yugoslavia [Serbia vs. Croatia, Serbia vs. Bosnia-Herzegovina] 1990s; or the 1966 Hausa pogrom against the Igbo of Nigeria that led to the Nigerian Civil War).

Under international law, genocide is a crime. The term "genocide" was developed by a Polish Jew, Raphael Lemkin, in 1944. In the emergence of the Nazi Holocaust, Lemkin successfully fought for a committee of nations to develop international laws defining and prohibiting genocide. While the systematic massacre of the Armenians by the Turks in 1915 provoked international outrage and condemnation, it did not lead to any criminal proceedings (Darian 1989). However, two decades later, the revulsion precipitated by the Jewish Holocaust led to the response to Lemkin's cry for international action by the adoption of the Genocide Convention in 1948. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide stated categorically that the prohibited acts constitute a crime under international law (78 UNTS 277). Acts II of the 1948 Genocide Convention defines genocide as follows:

[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, such as:

- a) killing members of the group;
- b) causing serious bodily harm or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group;
- e) forcibly transferring children of the group to another group.

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights and the Prohibition of the Crime of Genocide. Since then, many acts of genocide have been perpetrated against various ethnic, racial,

religious, cultural, or political groups with little or no intervention by the United Nations. An exception is the Vietnamese invasion of Cambodia and the conviction of the former prime minister, Pol Pot, by a people's revolutionary tribunal of genocide in absentia. Since then, there have been no other cases of humanitarian intervention to suppress the reoccurrence of genocide (Hannum 1989; Bantekas and Nash 2003). The ground cases of genocide include the Hutu massacres by the Tutsis in Rwanda/Burundi in 1965 and 1972; the Igbo massacre and Pogrom by Hausa-Fulani of Nigeria in 1966; the 1974 Paraguayan eradication of the Ache Indians; the extermination of Bahais in Iran in 1975 and 1978 (UNODC E/CN4, 1985); and the former Yugoslavian conflict (1990–1992).

UN Response to Acts of Genocide 1990–2004

Since the 1990s, the United Nations has responded to calls to intervene in situations of crimes against humanity. In 1993, the Republic of Bosnia and Herzegovina brought a case against the Former Republic of Yugoslavia (FRY) on charges of genocide. This action was precipitated by acute persecution against Bosnian Moslems (Bantekas and Nash 2003). The FRY leaders have been brought to justice at the International Court of Justice (ICJ) in the Hague, Netherlands.

By international law, unaffected states have the right to intervene when an act of genocide is being committed. So far, unaffected states have remained nonchalant. Since the atrocities in Bosnia, Herzegovina, and Rwanda, the United Nations and its organ, the ICJ, have sensitized member states and surviving victims of genocide to bring cases to ICJ.

ICJ, International Criminal Court (ICC), and the International Military Tribunal are discussed in Section V as they relate to preventing genocide.

Drug Trafficking

The concept of drug trafficking relates to illegal drug smuggling across national borders. What we are discussing here is narcotic drug smuggling. Drug trafficking is a transnational crime, a violation of international law. Forms of narcotics smuggled are cocaine, heroin, LSD, opium, marijuana, and methamphetamine. These illegal drugs are smuggled from major producing nations to the major consuming countries. Most narcotic drugs are produced in poor countries and exported illegally to the rich countries of Europe and North America.

There is enormous profit in illegal drug trafficking. In 1982, Canada estimated the value of its illegal drug business to be U.S.\$9.4 billion. In the same year, the U.S. Treasury Department estimated the value of illegal

drug business to be over U.S.\$40 billion (Bossard, 1990). That was over 12 years ago. In 2005, the value of illegal drug trafficking in the United States and Canada has increased by more than 100%.

The enormous amount of money involved in illegal drug trafficking has led to the development of illegal mechanisms, such as money laundering agents, offshore banking, and organized crime/mafia-based banks for hiding the money from government law enforcement and tax agencies.

The solution to the elimination of illegal drug trafficking is to eliminate consumption. If drug addicts and nonaddict users of the drugs are treated and helped to kick the habit, demand will fall. From the basic principles of economics, once demand falls, supply will also fall. But as long as the markets for the narcotic drugs are there, transnational criminals will continue to engage in the illegal trafficking of narcotic drugs, because of the huge amount of money to be made in the enterprise.

MARITIME CRIMES

There are national and international criminals who specialize in sea crimes, otherwise known as maritime crimes. These crimes are committed either at wharves, where ships are anchored, the territorial sea of a country, or on the high seas.

Maritime crime emanates from the laws of the sea—which are customary laws and treaty laws. They are a part of the offense of piracy *jure gentium* specified in Articles 14 and 101, respectively, of the 1958 Geneva Convention on the Law of the Sea (UNCLOS).

The UNCLOS of 1958 and 1982 defined piracy as follows:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed,
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft (*Talbot v. Janson*, 3 US 153 [1795]);
- (c) Any act of inciting or of intentionally facilitating an act described in paragraphs (a) or (b).

In an 1844 case, the U.S. Supreme Court gave a further explanation of piracy in its ruling. The court ruled that piracy is an act of aggression prohibited by the law of nations, being hostile and criminal in character and commission, and without sanction from public or sovereign authority. That's the way it is whether the aim of the perpetrator was plunder, hatred, revenge, or wanton abuse of power (*USA v. Cargo of Brig Malek Adhel*, 43 US 210 [1844]).

Also, there are bilateral and multilateral agreements between and among nations of the different regions of the world on maritime activities and rights.

Territorial Jurisdiction of Coastal States under UNCLOS

Nations have rights and obligations concerning their territorial waters, depending on the maritime belt in which they are situated. UNCLOS determined the various maritime belts. Countries with seashores have defined baselines as provided by UNCLOS. The territorial sea of a country can be as far as 12 nautical miles seaward from the baselines, and all waters landward from the baselines are considered internal waters of the country (Bantekas and Nash 2003). Coastal nations maintain sovereignty in both internal waters and territorial seas, but they have obligations to grant a right of “innocent passage” in the latter for as long as such a passage does not jeopardize the security and territorial integrity of the coastal nation (Bantekas and Nash 2003).

By UNCLOS provision, the territorial sea of archipelagic nations reaches up to 12-mile zones from outermost limits of the outermost islands of the archipelago. Ships of all nationalities have the right of innocent passage on the waters between the islands (UNCLOS 1958, 1982).

Countries situated by seashores have the power to control activities beyond their territorial sea up to 24 nautical miles from their baselines as a means to guard their coastlines through sea police patrol. In the United States, that zone comes under the control of the U.S. Coast Guard.

There is a zone called the exclusive economic zone, which reaches up to 200 miles from a country's coastal baseline. In this zone, the coastal nation maintains sovereign rights but not sovereignty.

Pirates and Their Maritime Crimes

There are national pirates and international pirates. National pirates operate on the territorial waters of their native countries. They operate on a relatively small scale. They steal from ships at anchor in their country's wharves. The personal items of the ship's crew and passengers are targets of theft. Also, the ship's captain's

money for paying his crew, for ship maintenance, port fees, and ship's equipment and cargo are all national pirates' targets.

International pirates operate in the territorial waters of their country of origin and beyond. International piracy involves organized crime syndicates located at different wharves in countries in Africa, Asia, Australasia, Europe, Middle East, and North and South America. While national pirates are virtually persons of the same national origin, international pirates have members from different countries. They have their pirate ship and pirate ship crew. They attack other ships and rob the crew and passengers. They hijack a ship, take its passengers and crew hostage, and steal its cargo. Sometimes these pirates hijack a ship and its cargo and demand ransom money.

In some cases, when pirates hijack a ship, they kill the crew and take over the merchant ship. They repaint, rename, and reregister the ship. With falsified documents or one obtained by bribing government officials, and with a misleading flag, they cruise to another destination and sell the ship at a giveaway price.

There is a tremendous increase in pirate attacks in different parts of the world. The International Chambers of Commerce (ICC) and the International Maritime Bureau (IMB) reported that 370 pirate attacks in 2002 and 445 attacks in 2003 (ICC, 2004). The IMB Piracy Reporting Center in Kuala Lumpur started compiling pirate attacks in 1991. So far, the highest number of attacks (see Table 2.1) was in the year 2000, with a record of 469 incidents.

The IMB piracy and armed robbery report for 2003 shows that 10 seafarers were killed in 2002, while 21 were killed in 2003, and 71 crew and passengers were reported as missing.

TABLE 2.1
IMB Annual Report of Pirate Attacks by Regions in 2002 and 2003

Regions	2002	2003
Africa/Red Sea	78	93
SE Asia/Far East	170	189
Indian subcontinent	52	87
Americas	65	72
Rest of the world	4	5
Total	319	446

Source: Compiled from ICC Commercial Services website.

Most of the pirate attacks occurred in Indonesia, in the Malacca Straits. In the last 6 months of 2003, attacks were reported in Malaysian waters. According to the director of the IMB, Captain Pottengal Mukundan, the absence of attacks in Malaysian waters at the 6-month period was as a result of “constant operations by the relevant Malaysian authorities, particularly the Royal Malaysian Marine Police” (ICC-CSS 2004).

According to an IMB report, attacks using guns increased from 68 in 2002 to 100 in 2003, and hostages taken nearly doubled to 359 seafarers. Also, in 311 instances, ships were boarded, and 19 ships were hijacked. In 2003, Indonesian waters maintained its leadership in piracy attacks with 121 incidents, followed by Bangladesh with 58 attacks and Nigeria with 39. In fact, Nigeria is the most dangerous in Africa for attacks on shipping vessels. In many regions of the world, pirates sometimes attacked ships with a barrage of gunfire in an attempt to force it to stop. The attacks were often carried out with many speedboats firing from different angles. In 2003, attacks on tanks rose by 22% over the previous year.

In maritime crime, pirates may be involved in illegal transportation of women and children, smuggling of migrants, illegal drug trafficking, illegal arms trafficking to totalitarian regimes, offshore banking operations, and illegally providing banned materials to countries sanctioned by the international community.

Control of Maritime Crimes

Every country with a seashore has marine police, called the Coast Guard in the United States. This law enforcement agency watches for national and international pirates. They patrol the territorial waters of the country day and night. Sometimes there were gun battles between the Coast Guards and the smugglers and pirates near the zones of innocent passage. When the pirates are caught, they are tried according to international law and the laws of the country whose territorial sea rights are violated. Some countries have maritime crime courts for trial of persons accused of maritime crimes. But some countries have no maritime courts. In such a case, the pirate is tried in a criminal court of the victimized nation.

Article 100 of UNCLOS empowers any state to seize a pirate ship on the high seas and prosecute its crew according to the state law. Also, states have a right to enter into vessels suspected of engagement in piracy. The state can use warships to affect the seizure of a suspected pirate ship (Table 2.2).

As water mass is larger than landmass on earth, this poses a problem of piracy control. However, modern technology has provided some solutions to alleviate the problem of piracy. Secure-Ship is a nonlethal, electrified fence surrounding the whole ship, adapted specially for maritime use. The fence uses a 9000-volts pulse to deter boarding attempts. Any intruder will receive a non-lethal shock that will make him abandon the boarding attempt. Simultaneously, an alarm will sound, activating floodlights (ICC 2005). Another piracy control device is ShipLoc, which is an antihijacking of a ship's mechanism. ShipLoc is a satellite tracking system, which allows shipping companies, armed with a personal computer with access, to monitor the exact location of their ships. Now, International Maritime Organization regulation adopted in 2002 requires ships of over 500 GT to be equipped with an alarm system to reinforce ship security. Ships are advised to maintain antipiracy watches and report all piratical attacks and suspicious movements of vessels to the IMB.

Finally, maritime crimes may involve governments or corporations. In 1996, a shipload of nuclear material arrived at the coast of Warri, in Nigeria, from Italy. Some of the nuclear materials in drums had already been dumped in a forest inland near Bendel State. The military government of Nigeria at the time ordered the ship's captain to load the drums into his ship and sail back to Italy, and the order was obeyed. Also, pirates may be hired to destroy submarine cables in high seas as an act of sabotage against a country.

Unmistakably, it is very difficult to detect all maritime crimes committed in one year. For instance, we do not know how many persons were brutally murdered and dumped into the high seas. In some countries, missing persons are more than the category of solved cases of murder. Some of the missing persons may have been killed and dumped in the high seas. Pirates are the only ones who can tell the magnitude of maritime crimes.

ILLEGAL TRANSPORTATION OF WOMEN, CHILDREN, GOODS, AND SERVICES

Illegal transportation of women and children from one country to another and from one continent to another has been one of the global transnational crimes since the 1900s. Unfortunately, this illegal transportation of women and children was only recently addressed by some humanitarian and religious organizations on a very limited scale. It was only at the turn of the twenty-first

TABLE 2.2
Piracy-Prone Areas of the World Warnings

SE Asia and Indian continent	Bangladesh	Chittagong at Berth and Anchorage
	India	Chennai, Cochin, and Natuna Balikpapan, Belawan, Dumai, Gasparlbar/Lepliasti, Jekaita (Tg.-Priok) Lawi-Lawi, Pulau Laut, Samarinda, and Vicinity of Bintan Island
	Malacca Straits	Avoid anchoring along the Indonesian Coast of the Straits; coast near Aceh is particularly risky for hijacking.
	Philippines	Malina
	Singapore	Singapore Straits
	Vietnam	Haiphong, Ho Chi Minh City, and Vung Tau
	Gulf of Aden	Gulf of Aden
Africa and Red Sea	Somalian waters	Eastern and northeastern coasts have high risk areas for hijackings. While there have been no recent incidents, ships not making scheduled calls to ports in these areas should stay away from the coast.
	East Africa	Dar es Salaam
	West Africa	Abidjan, Conakry, Dakar, Douala, Lagos, Luanda, Tema, and Warri
South and Central America and the Caribbean waters	Brazil	Belem, Santos
	Colombia	Barranquilla, Buenaventura
	Dominican Republic	Rio Haina
	Guyana	Georgetown
	Jamaica	Kingston
	Peru	Callao
	Venezuela	Guanta, Puerto Cabello, and Sucre

Source: Compiled from ICC Commercial Crimes Services Piracy Report from December 27, 2004, to January 3, 2005.

century that some governments in Europe and the United States started to speak against this mind-boggling enterprise on a national and international scale.

In fact, as far back as 1949, Article 1 of the United Nations “Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949 Convention),” which supersedes many other previous regulations relating to the traffic of women and children (“white slavery”), penalizes any person who, in order to gratify the passions of another:

- (a) procures, entices, or leads away, for purposes of prostitution, another person, even with consent of that person;
- (b) exploits the prostitution of another person, even with the consent of that person.

Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Art. 3 (1) (c), adopted

an action plan to fight illegal and harmful transportation of children for slave labor, prostitution, and pornography.

Causes of Illegal Transportation of Women and Children

There are many factors that led to the emergence of illegal transportation of women and children. Among them are the following:

- Disastrous or catastrophic events such as war, tsunami or floods, famine, and other facts that create refugees
- Bad economic conditions such as abject poverty, unemployment, and unconcerned government policies
- Conservative cultural traditions such as stratification systems that deny some people (outcasts, culturally designated slaves) access to good things of life

- Discrimination against some minorities and religious groups in some countries
- Population explosion with the concomitant large degree of college and high school graduate unemployment
- Corruption among law enforcement agencies by colluding with transnational traffickers
- Emergence of predatory states around the world, where the head of state rules like a mafia boss (Nigeria 1967–2000), and the entire society is socially disorganized

Scope of Illegal Transportation of Women and Children

There are various regions of the world that are known for the illegal transportation of women and children. Some regions are known for supplying women and children for illegal transportation (origination countries), while other regions are known as consumers of this illegal supply (destination countries).

The origination countries and regions of the supply of women and children for illegal transportation are as follows:

- The regions of Africa: West, East, North, and South
- Countries of South and Central America and Mexico
- Southeast Asia and China
- Middle East
- Disturbed countries of Central and Eastern Europe: Albania, Bosnia and Herzegovina, the Province of Kosovo, Macedonia, Czech Republic, Moldova, Romania, Ukraine, Croatia, and Bulgaria

In both origination and destination countries and regions of this illegal trade, there are domestic as well as international trafficking.

Modus Operandi of the Traffickers

The traffickers target refugees, poor single women unable to support their children, single young woman with basic skills, prostitutes, “streets boys” or homeless boys and girls, and school dropouts. Some of the women are given fake promises of good jobs as waitresses, storekeepers, salon operators, air hostesses, or domestic workers in destination countries such as the United Kingdom, Germany, France, Austria, the United States, Canada, Spain, Italy, Russia, Belgium, Portugal, Ireland, the Netherlands, and Switzerland.

The traffickers, in many cases, forge immigrant visas and can transimpose photos onto passports and use one

visa to immigrate more than three persons at different times to the same country. These traffickers establish good relationships with different consular officers in embassies of different countries and those of their own countries, so that getting passports and visas becomes an organized criminal enterprise.

Some teenage boys are taken from their parents with the promise of domestic labor as servants or sales assistants in another city or country. A parent with many children is tempted to agree to give up her son with the hope of better opportunities elsewhere. Unfortunately, the boy is usually sold into slavery or killed for his body parts (Ebbe 1999, 2003).

Some young women who were promised positions as waitress, salon workers, or store assistants were handed over to men who had already made an advance payment for a prostitute. These pimps stand by the street-side to collect the money from male clients, while the woman does the sexual act, essentially becoming a sexual slave (Ebbe 1999, 2001). In many cases, the pimps keep the women under control by addicting them to narcotics. In that way, the woman depends on them for regular supply of the drug.

There are wealthy men who purchase illegally transported women to keep as private sex slaves. Some of these women have been rescued by some religious organizations and flown to the United States, where they faced U.S. immigration problems (Ebbe 1999, 2001). If these women escape and find their way back to their countries of origin, they are usually killed within a short time after their return by those who smuggled them out. This is because the traffickers do not want them to reveal the strategies of false promises to other women (Ebbe, 1999, 2001, 2003).

There are women illegally transported out of their countries who survived the ordeal by reaching an agreement with their pimps, whom they serve for a certain number of years and then will be free from. Some of these women, when they became independent of the man who purchased them, started their own illegal trafficking of other women.

Control Strategies in Illegal Trafficking of Women and Children

Many nongovernment organizations, intergovernmental organizations, and religious organizations have mounted rescue strategies to find women and children who are living in some countries and conditions against their will. Also, these organizations have linked themselves with law enforcement agencies of both origination and destination countries for a cooperative fight against this illegal transportation of women and children.

Additionally, the United Nations Working Group on Contemporary Forms of Slavery noted in its reports that “[s]lavery, in all its forms and manifestations, is a crime against humanity” (UNDOC E/CN4/Sub2, 1997) and should be punished as such. All of the 192 members of the United Nations have been charged with cooperative enforcement of laws against illegal transportation of women and children for prostitution and slavery.

ILLEGAL IMMIGRATION

Every sovereign state has laws, called immigration laws, guarding her territorial integrity. The immigration laws of a country control legal and illegal entry, specify when a legal or an illegal alien should be deported to his/her country of origin and when an alien is qualified to be naturalized. This section of a country’s government is handled by different departments in various countries. For instance, an immigration agency can be under the department of foreign affairs, home affairs, justice, internal affairs, or state.

In the United States, immigration matters are handled by the Immigration and Naturalization Service (INS), which is housed under the state department. This is the largest federal agency in the United States, with over 12,400 agents and officers who patrol and protect the U.S. borders against illegal immigration. Within the INS is the Border Patrol Unit (4200 officers). This unit has 145 border stations spread out throughout the major border cities. The U.S. INS handles legal immigration, investigates illegal immigration, and effects deportation orders from deportation officers. Also, INS maintains a Board of Immigration Appeals. An alien who is given a deportation order may appeal to this board, which may overrule the original deportation order and recommend the granting of the (alien) appellant an immigrant status or an extension of stay in the United States.

In the INS court of original jurisdiction, the illegal alien may retain an attorney. The U.S. government does not provide a defense attorney to an alien or illegal alien, if he/she cannot afford one. Cases that reach the INS Board of Appeals are cases in which the alien/illegal alien has a defense attorney.

In the United States, a person is subject to deportation, if he/she entered the United States without a U.S. visa (illegal alien); was convicted of a very serious crime that led to years of imprisonment in a U.S. prison, such as narcotics drug smuggling, counterfeiting currency, organized crime, and so on; violated a duration of stay in the United States as specified in the person’s U.S.

visa; or committed any act that led to revocation of one’s naturalized citizenship status. The above violations are subject to appeal to the INS Board of Immigration Appeals.

EXTRADITION TREATY

Extradition is the surrendering by one country or state to another country or state of a person accused of a crime or crimes committed in the latter, so that he/she may be tried there, pursuant to a treaty signed by the two countries or states.

Extradition treaties can be of two types: bilateral and multilateral. A bilateral extradition treaty is between two sovereign nations or countries, while a multilateral extradition treaty is among countries of the same region or different regions of the world. For example, a bilateral extradition treaty could be one between the United States and Canada or the United States and Israel. Examples of multilateral extradition treaty are as follows:

Economic Organization of West African States (ECOWAS Treaty)

Pact of the League of Arab States. This pact was signed in Cairo on March 22, 1945, by Egypt, Iraq, Trans-Jordan, Lebanon, Saudi Arabia, Syria, and Yemen. Only Egypt, Jordan, and Saudi Arabia ratified the treaty, which became operative on August 23, 1954 (Bassiouni 1982)

European Convention on Extradition. This was signed in Paris on December 13, 1957. The signatories to the 1957 treaty were Austria, Czech Republic, Denmark, France, Germany, Greece, Switzerland, Turkey, Ireland, Israel, Italy, Luxemburg, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom, and Northern Ireland. This treaty became effective on April 18, 1960. On November 17, 1997, the following other European countries signed and ratified the treaty: Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Poland, Rumania, Slovakia, and Slovenia (Newman 1999).

Convention between the United Kingdom, Australia, New Zealand, South Africa, India, and Portugal. This treaty was signed in Lisbon on January 20, 1932, and was supplementary to the extradition treaty of October 17, 1892.

There are many other multilateral extradition treaties in regions of Africa, Asia, and South America.

Extradition treaties are a recourse of two or more countries to resolve crime problems in a situation where a person commits a crime in his own native country and runs to another for refuge, or where an offender commits a crime in a country where he is an alien and goes back to his country of origin. In both situations, the extradition treaty specifies that the government of the country in which the accused is taking refuge should hand him over to the country where he committed the crime for trial.

Extradition treaties may have an enumerative method or a diminutive method. The enumerative extradition treaty method lists only specific crimes for which extradition will be granted. Any crime other than those defined on the list will not be grounds for extradition. The elimination method extradition treaty is a “no list” method of extradition. In the eliminative method, no crime is excluded. What is required is that the crime be an extraditable offense for both countries or all countries party to the treaty. Extraditable offenses are defined in terms of their punishability, according to the laws of the countries that are parties to the treaty, by a minimum standard of severity.

A country may refuse to extradite a fugitive offender to the country where he committed a crime if the penalty for the crime contravenes its national law. For example, in the 1990s, Israel refused to extradite an

American who was accused of murder in the United States, because if convicted in the United States, he could face a death penalty prohibited by Israeli criminal law.

COMPARING CRIME RATES

As noted at the beginning of this chapter, definitions of crime vary from country to country. Also, what constitutes a crime is not a cultural universal. Additionally, the degree of stringent enforcement of the law varies from country to country. More advanced and industrialized countries have more stringent law enforcement agencies than do developing and underdeveloped countries. Furthermore, advanced economies like the United States, Germany, Japan, United Kingdom, France, Canada, and Russia have higher crime rates than developing and underdeveloped countries. This is because a high rate of crime is correlated with high wealth. This hypothesis agrees with the phenomena of urban areas versus rural areas of a country. The crime rate is higher in urban areas than in the rural areas because of the high availability of things to steal in urban areas and concentrated population of unskilled workers and unemployed and semi-employed persons (Table 2.3).

Comparing crime rates, therefore, is a precarious venture. How does one explain the United States having

TABLE 2.3
Number of Thefts/Robberies and Rates (per 100,000) in 1995

Selected Industrialized Countries			Selected Developing Countries		
No. of thefts/rates per			No. of thefts/rates per		
Country	Robberies	100,000	Country	Robberies	100,000
Australia	16,466	92.16	Brazil	225,000	142
Austria	2,118	26.33	Burkina Faso	126	1.2
Belgium	6,240	61.62	Guinea	89	1.2
Canada	30,273	102.96	Jamaica	4,424	179
Estonia	964	46.64	Malaysia	53,861	269
Germany	63,470	77.79	Singapore	789	23.72
New Zealand	1,962	55.10	Tanzania	7,554	25.16
Poland	26,750	69.38	Trinidad & Tobago	3,868	300.54
Spain	94,289	237.94	Tunisia	35,157	384.27
United Kingdom	65,300	115.71	Vietnam	1,944	2.63
United States			Zambia	3,716	45.98

Source: Adapted from Newman, G. (ed.), *Global Report on Crime and Justice*, Oxford University Press, New York, 1999, published for the U.N. Office for Drug Control and Crime Prevention Center for International Crime Prevention.

homicide rates of 9.82 (1974), 8.94 (1978), and 7.89 (1984) per 100,000 population with a population of about 280 million people, while India, with a population of over 1 billion people, in the same years, recorded homicide rates of 3.17, 3.00, and 0.90 per 100,000 population, respectively (Newman 1999)? Furthermore, while India recorded 33.05 thefts per 100,000 population in 1994, the United States recorded 3,613.68 thefts per 100,000 in the same year. As noted above, the degree of stringent enforcement of the law can make a difference in the rates of crime in a country; the ratio of police officers to the general population of the country can make a difference in detection of crime. For instance, while the United States had 300.06 police per 100,000 population in 1994, India had only 134.12 police per 100,000 (Newman, 1999). Therefore, comparing crime rates yields unreliable crime statistics and unreliable conclusions. Table 2.3 shows theft/robbery rates per 100,000, and the number of theft/robberies emphasizes the unreliability of the data when we compare that of industrialized countries with developing countries.

REVIEW QUESTIONS

1. Crime and criminals come from the same source. Discuss.
2. What constitutes a crime is dynamic. Explain.
3. How did Thomas More (1516 AD) try to explain criminal behavior?
4. What are the factors that sociologists consider to be the causes of criminal behavior?
5. Ecological determinism theory of crime and delinquency is a cultural universal. Discuss.
6. What are the three important elements of money laundering?
7. In what ways have modern information systems advanced the perpetration of transnational crimes?
8. Compare and contrast the following: genocide in Nazi Germany, the Rwandan genocide, and genocide in the former Yugoslavia.
9. Maritime crimes are the most difficult transnational crimes to control. Discuss.
10. What are the roles of the IMB and the International Chambers of Commerce?

REFERENCES

- Bantekas, I., and S. Nash. 2003. *International criminal law*, 2nd edition. London, UK: Cavendish Publishing Ltd.
- Bassiouni, C. M. 1982. International criminal law and human rights. *Yale Journal of World Public Order*. 9: 193.
- Beare, M. E. 1995. Money laundering: A preferred law enforcement target for the 1990s, 171–187. In *Contemporary issues in organized crime*, edited by J. Albanese. Monsey, New York, NY: Criminal Justice Press.
- Bonger, W. A. 1916. *Criminality and economic conditions* (translated by Henry P. Horton). New York, NY: Dryden Press.
- Bossard, A. 1990. *Transnational crime and criminal law*. Chicago, IL: OICJ.
- Chambliss, W. 1974. The state, the law, and the definition of behavior as criminal or delinquent, 7–43. In *Handbook of criminology*, edited by D. Glaser. Chicago, IL: Rand McNally.
- Cloward, R., and L. Ohlin. 1969. *Delinquency and opportunity*. New York, NY: Free Press.
- Darian, V. N. 1989. Genocide as a problem of national and international law: The World War I Armenian case and its contemporary legal ramifications. *Yale Journal of International Law*. 14: 221.
- DeFleur, L. B. 1967. Ecological variables in the cross-cultural study of delinquency. *Social Forces*. 45: 556–570.
- Durkheim, E. 1933. *The division of labor in society*. New York, NY: Free Press.
- Ebbe, O. N. I. 1977. The seriousness of selected criminal offenses: A cross-cultural inquiry. Kalamazoo, MI: Unpublished master's degree thesis.
- Ebbe, O. N. I. 1988. Juvenile justice in southern Nigeria. *International Journal of Comparative and Applied Criminal Justice*. 12(2): 191–204.
- Ebbe, O. N. I. 1989. Juvenile delinquency in metropolitan Lagos: A study of crime and delinquency area theory. *Social Forces*. 67: 751–765.
- Ebbe, O. N. I. 1992. Juvenile delinquency in Nigeria: The problem of application of Western theories. *International Journal of Comparative and Applied Criminal Justice*. 16(2): 354–370.
- Ebbe, O. N. I. 1996. The judiciary and criminal procedure in Nigeria, 185–203. In *Comparative and international criminal justice systems: Policing, judiciary, and corrections*, 2nd edition, edited by O. N. I. Ebbe. Boston, MA: Butterworth/Heinemann.
- Ebbe, O. N. I. 1999. Political-criminal nexus slicing Nigeria's national cake: The Nigerian case. *Trends in Organized Crime*. 4(3): 29–59.
- Ebbe, O. N. I. 2001. A sworn affidavit to the U.S. Immigration Court of Appeals on “the fate of an illegally transported woman for prostitution if she is deported to her country of origin from where she was transported. New York, NY: U.S. Immigration Court of Appeals.
- Ebbe, O. N. I. 2003. Slicing Nigeria's national cake, 137–174. In *Menace to society: Political-criminal collaborations around the world*, edited by R. Godson. New Brunswick, NJ: Transaction Publications.
- Goddard, H. H. 1915. *The criminal imbecile*. New York, NY: MacMillan.
- Goring, C. B. 1913. *The English convict: A statistical study*. London, UK: His Majesty's Stationery Office.
- Grabosky, P. 2000. *Crime in cyberspace*. Canberra, ACT: Australian Institute of Criminology.

- Hannum, H. 1989. International law and Cambodian genocide: The sounds of silence. *Human Rights Quarterly*. 11: 82.
- Hirschi, T. 1974. *Causes of delinquency*. Berkeley, CA: University of California Press.
- Hooton, E. A. 1939. *Crime and the man*. Cambridge, MA: Harvard University Press.
- Merton, R. 1968. *Social theory and social structure*. New York, NY: Free Press.
- More, T. 1516. *Utopia*. New York, NY: Appleton-Century Crofts.
- Newman, G. (ed.). 1999. *Global report on crime and justice*. New York, NY: Oxford University Press.
- Quinney, R. 1974. *Critique of the legal order*. Boston, MA: Little, Brown, and Company.
- Sellin, T. 1938. *Culture conflict and crime*. New York, NY: Social Science Research.
- Shaw, C. R., and H. D. McKay. 1942. *Juvenile delinquency and urban areas*. Chicago, IL: University of Chicago Press.
- Sheldon, W. H. 1949. *Varieties of delinquent youth: An introduction to constitutional psychiatry*. New York, NY: Harper.
- Sutherland, E. A. 1949. *White collar crime*. New York, NY: Dryden.
- Tannenbaum, F. 1939. *Crime in the community*. New York, NY: Columbia University Press.

3 Criminal Law

Obi N. I. Ebbe

CONTENTS

The Nature of Criminal Law	26
<i>Actus Reus</i>	26
Legality of the Act.....	26
Harm.....	26
<i>Mens Rea</i> (The Guilty Mind)	26
Concurrence	27
Causation.....	27
Punishment	27
Defenses to a Criminal Charge	27
Insanity	28
Guilty but Mentally Ill	29
Mistake of Fact.....	29
Under Duress.....	29
Self-Defense	29
Defense of Own Property	30
Involuntary Intoxication	30
Infancy.....	30
Weak Defenses	30
Voluntary Intoxication	30
Ignorance of Law or Mistake	30
International Criminal Law	30
Introduction	30
Definition.....	31
Sources of International Criminal Law	31
Enforcement of International Criminal Law	31
Human Rights: International Humanitarian Laws	32
Families of Law	33
Civil Law.....	33
Common Law.....	34
Origins	34
Common Law Legal System	34
Unique Features of the Common Law System	35
Socialist Law	35
Islamic Law	35
Countries Where Islamic Law Is Applied	36
Mix of Islamic Law and Common Law/Customary Law.....	36
Judges in the Islamic Legal System	36
Offenses	36
Punishment	36
Review Questions.....	36
References.....	36

THE NATURE OF CRIMINAL LAW

Criminal law is jurisprudence concerning crimes and their concomitant punishments. Therefore, criminal law creates both the crime and the criminal. A society promulgates laws (civil and criminal) through its legislature, and these laws create crimes. A person who violates a prohibited act gets convicted in a court of law and punished, thereby becoming a criminal.

Hall (1960), in his *General Principles of Criminal Law*, provides seven basic requirements for an act to qualify as a crime:

1. *Actus reus*
2. Legality of the act
3. Harm caused by the act
4. Causation
5. *Mens rea* ("The Guilty Mind")
6. Concurrence
7. Punishment

The following text explains each of the seven requirements and shows how each is linked to the concept of crime.

ACTUS REUS

For a crime to have been committed, there has to be an act or an omission to act (when one has a duty to act, but failed). So, what is this act? An act of crime connotes a voluntary act (*actus reus*), a culpable intent (*mens rea*), and concurrence between the *mens rea* and the *actus reus*, that is, a demonstration that the act was the result of the culpable intent (Emanuel 1979). A voluntary act of crime is distinguished from (1) thoughts, words, states of possession and status, (2) "involuntary acts," such as sleepwalking; and (3) "omissions," such as failure to act when one has no duty to act.

LEGALITY OF THE ACT

The second requirement is explained in the Latin dictum *nullum crimen sine lege*, which means "no crime exists without law." In other words, the act must be prohibited by law for the act to be a crime. Nobody is expected to abide by a law that does not exist.

HARM

For an act to be a crime, it must constitute harm to somebody or to society at large. The law is created to prevent some type of harm being perpetrated to some persons

or society. Crimes against persons, crimes against property, and victimless crimes are criminal behaviors by law because they inflict harm on society and individuals.

MENS REA (THE GUILTY MIND)

The concept *mens rea* means that there must be a "culpable state of mind." That is, there is intent and the offender has knowledge of what he/she was doing at the time of the act. For some crimes, negligence or recklessness replaces *mens rea*. Also, there are some crimes that are strict liability offenses in which *mens rea* is not required. Examples of such offenses are bigamy, statutory rape, etc. Another exception to *mens rea* is the vicarious liability offense. It is legally termed *respondeat superior*, which means "let the master answer." Therefore, the most common type of vicarious liability is a situation in which an employer is liable for the illegal acts committed on the job by one of its employees or agents. A good example is when an employee of a pharmaceutical manufacturing company mistakenly mislabeled bottles of poisonous pills as pain-killing medicine and shipped them to the company's distributors. The pills killed the first person who took one of the mislabeled pills. In this case, the pharmaceutical company is liable, not the employee. Another example of vicarious liability relates to the owner of an automobile. Take, as an example, Jim Jones and Angie, who are in a boyfriend-girlfriend relationship and are students at the same university. One Friday afternoon, Jim Jones borrowed Angie's car to go to a bank near the university to withdraw some money from his bank account. When he got to the downtown bank, he could not find an empty parking space other than a handicap parking spot. He thought for a moment and decided that he could park in the handicap parking space, run into the bank, and come back to the car in five minutes. He forgot that on Friday afternoons, urban banks have long lines of customers waiting to withdraw money for the weekend.

When he returned to the car, a ticket for a parking violation was already resting on the windshield. He picked up the ticket. It specified that the penalty was \$100 if he paid the fine within 10 days. After 10 days, the penalty would be \$250. Jim Jones tore the ticket into pieces, threw the pieces on the ground, and drove back to the university campus. He gave back the car key to Angie but did not tell her that a ticket was issued to the car for a parking violation. Five weeks after the parking violation, Angie got a summons from the City Court for contempt of an order to appear in court on a specified date and answer for the parking violation. The ticket had stated that Angie had the option of paying the fine within the specified dates or appear in court on a

specified date to explain why she should not be issued a ticket for parking violation. But, Angie did not know about the parking violation. Angie slammed the summons down and rebuked the City Court, saying: “I have never parked my car in a handicap parking spot before, and I can’t remember parking my car at the location they claimed that I did. They must be insane.” On the newly designated court date, Angie appeared without a defense attorney. The judge told her that she had failed to appear in court on the appointed date two weeks earlier to respond to the parking ticket violation. Angie replied that she had never parked her car in a handicap parking lot before and that she did not drive to downtown on the day the violation occurred. The judge quoted her license number, her car plate number, and her date of birth, all based on the information gotten through her car plate number. Angie then recollected that her boyfriend, Jim Jones, had driven the car downtown on the day the offense had been committed. Before Angie could make further statements, the judge asked her, “Did you lend your car to somebody that month?” “Yes, to my boyfriend,” Angie replied. The judge then said, “Your boyfriend did not tell you that he parked your car in a handicap parking space and received a ticket. I am going to rescind the charge for contempt of court order. You have five days to pay \$250 to the city. And be careful about the type of person you choose for a boyfriend.”

Angie’s case is another good example of vicarious liability. No intent to violate the law is required on the part of Angie.

CONCURRENCE

The concurrence requirement for an act to be a crime means that there must be concurrence between the *mens rea* and the *actus reus*. The argument is that the “mental state” must cause the act. If, at the time of the act, the required mental state does not exist, there is no concurrence, and there is no crime. For example, Jim stabs Angie with intent to kill her, but he has only wounded her. Thinking she was dead, he throws her into the sea, so drowning is the actual cause of death here (Emanuel, 1979). Also, an offender may have the *mens rea* necessary for one crime while his act meets the requirement for a different crime. For example, Jim intends to commit a simple battery, but the victim turns out to be a hemophiliac and, unforeseeably, bleeds to death (Emanuel 1979).

CAUSATION

Causation refers to the link between the act and the harmful result. In this case, the offender’s act caused

the harmful result. There are two requirements for causation: (1) the act must be the “cause in fact” of the harm, and (2) the act was the “proximate” cause or “legal” cause of the harm. An example of a “cause in fact” is a situation in which two narcotic drugs peddlers (Jim and Angie) confronted a recalcitrant, delinquent, male drug customer named Wonda. Angie shot him and hit a little bit of his right shoulder. The wound was not serious enough to kill him, and Angie walked away. However, shortly after, Jim came along and shot Wonda on the head and the latter died on the spot. In this case, Angie’s act is not a “cause in fact” of Wonda’s death, because Wonda would have died even if Angie had not shot him.

“Proximate” cause is a demonstration that the act and the harm are so profoundly closely related that the act is a proximate or legal cause of that harm (Emanuel 1979).

PUNISHMENT

An act that has the mental state (*mens rea*) is not a crime if the law did not specify a penalty for it. It is the punishment requirement that helps to differentiate between civil and criminal matters. In all the countries in the world, it is the severity of the punishment that determines the classification of an offense as serious or nonserious.

Therefore, all of the seven elements—*actus reus*, legality, harm, *mens rea*, concurrence, causation, and punishment—must be present in an act for the act to be a crime.

DEFENSES TO A CRIMINAL CHARGE

As there are exceptions to *mens rea*, there are also acceptable defenses to charges of crime. The following are defenses against *mens rea*:

Strong Defenses

1. Insanity defense
 - a. Irresistible impulse test
 - b. Durham Rule
 - c. American Law Institute Test
 - d. New Federal Test
2. Guilty but mentally ill
3. Mistake of fact
4. Under duress
5. Self-defense
6. Defense of own property
7. Involuntary intoxication
8. Infancy

Weak Defenses

1. Voluntary intoxication
2. Ignorance of the law or crime committed by mistake

Now let us discuss each type defense.

INSANITY

The insanity defense originated in the case of Daniel M’Naghten’s the “right-wrong” rule of 1843. M’Naghten had an apprehension that the British Prime Minister, Sir Robert Peel, was planning to kill him because of his opposition to Peel’s establishment of the London Metropolitan Police in 1829, when he was the Home Secretary. In effect, M’Naghten decided to kill Sir Robert Peel. To achieve his aim, he traveled to London and went to 10 Downing Street, home of the British Prime Minister. He shot and killed a man whom he thought to be Sir Robert Peel, on January 20, 1843. But, the victim of the murder was not Sir Robert Peel. Instead, he was the Prime Minister’s secretary, Mr. Edward Drummond.

M’Naghten was tried in the House of Lords, England’s highest court. His defense lawyers (provided to him by the state) claimed that he was laboring under the disease of the mind, that he could not recognize who his Prime Minister was and, in effect, killed the wrong man. Therefore, he was insane. The prosecution counterclaimed that M’Naghten was sane. Both parties produced two renowned psychiatrists. The psychiatrist for the prosecution found that M’Naghten was sane, while the psychiatrist for the defense found him insane. In the end, M’Naghten was found not guilty by reason of insanity. On the basis of the findings in the case, the House of Lords formulated the M’Naghten Doctrine as follows:

The jurors ought to be told in all cases that every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to their satisfaction; and that, to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong (Daniel M’Naghten Case, 10 C.F. 200, 210–211, 8 Eng. Rep. 718, 722–723 (1843)). (Adler et al. 1991)

The insanity defense is acceptable in U.S. courts, but it has not been very successful for the defense in

many criminal trials. The last successful use of insanity defense at the U.S. federal level was the case of John W. Hinckley, Jr., who was found “not guilty by reason of insanity,” after he attempted to assassinate President Ronald Reagan. Some U.S. states do not follow the M’Naghten rule.

- a. Irresistible impulse: This is the control of one’s mental faculty. The defendant claims that he/she was in a frame of mind in which he/she could not differentiate right from wrong. Well, if the defendant’s inability to choose right from wrong is as a result of mental illness, then he/she must be insane.
- b. Durham Rule: This is a new insanity defense that emerged in *Durham v. United States* in 1954. The judge in the case ruled that the defendant was to be acquitted if the defendant committed the crime as a result of mental disease or defect. The Durham Rule was generally criticized because it could not be easily determined whether a crime was committed because of mental disease or defect. In *United States v. Brawner*, the District of Columbia Court of Appeals abolished the Durham Test in favor of the American Law Institute (ALI) test [U.S. v. Brawner, 471 F. 2d 696 (D.C. Civ. 1972)].
- c. American Law Institute Test: In 1962, the ALI’s Model Penal Code formulated an insanity defense test that was a combination of the M’Naghten rule and the irresistible impulse test. The Model Penal Code states that “a person is not responsible for criminal conduct if, at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law” (MPC, Sec. 4.01).

The important feature of this combination is that the accused will be acquitted if he lacks “substantial capacity” at the time of the crime, whereas the M’Naghten test was believed to require a “total lack of capacity” (Adler et al. 1991).

- d. The New Federal Test: John W. Hinckley Jr.’s acquittal brought about the new federal test. At the time of Hinckley’s case, the District of Columbia was still using the ALI test. The public outcry against Hinckley’s acquittal by reason of insanity spurred Congress to modify the ALI

test, and it was decided that the accused should be acquitted by reason of insanity if

At the time of the commission of the act, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his act (U.S.C. 17).

What Congress added was that the mental disease or defect be “severe” (Emanuel 1979; Adler et al. 1991). Up to 25 U.S. states apply this rule.

GUILTY BUT MENTALLY ILL

In insanity defense cases, there are three types of verdicts—guilty, not guilty, and not guilty by reason of insanity. A fourth verdict has emerged in some states—guilty but mentally ill, and some states have it as “guilty but insane.” The verdict of “guilty but mentally ill” is delivered when an accused suffers from a mental disease that is not severe enough to warrant acquittal by reason of insanity. This verdict acknowledges the defendant’s guilt but simultaneously “recognizes as a mitigating factor the presence of a significant but not disabling mental disorder” (Adler et al. 1991).

MISTAKE OF FACT

This is a case of “mistake as to consent.” For instance, using Jim Jones and Angie (our fictitious criminology actors), let us say Jim Jones frequents a bar every Friday night in Chicago, where he lives. One Friday night, he went to the bar and saw a beautiful young lady, Angie, sitting by herself at a corner of the bar, slowly sipping her rum and coke mixture. Jim Jones was spellbound by Angie’s beauty. He was too shy to approach her, so he settled with sitting at an angle to Angie’s table and stealing glances at her. At 11:45 pm that night, Angie left the bar, got into her car, and began driving home, where she lived alone. Jim Jones left the bar and followed Angie in his car. Angie did not know that she was being followed by Jim Jones. After Jim Jones saw Angie pull up to a bungalow by the street side, he stopped. He observed that the house was close to the street. He saw Angie through the window, standing in what appeared to be her bedroom after Angie turned on the light. He watched Angie undress herself, put on her nightgown, and go to bed. Then Jim Jones drove back to his apartment a mile away.

Another Friday night, Jim Jones went to the same bar. About 10:00 pm, Angie walked in and took her favorite corner and ordered her favorite rum and coke. At 11:45 pm, she left for her house. Jim Jones followed

her again. When Angie got home, Jim watched Angie from the street until she went to bed. Jim Jones followed Angie at a distance to her house for another two Fridays. Then, on the fifth Friday, Jim Jones followed Angie at a distance to her house once more. After Angie entered her bedroom, put on her transparent nightgown, and lay down on her bed, Jim Jones left his car and tiptoed over to Angie’s window, which was already ajar, because it was a hot summer and Angie had no air conditioner. Jim Jones waited outside the window to see if Angie could see him.

Angie’s boyfriend, Dan, usually comes to see Angie on Friday nights after his work ends at midnight. So, while Jim Jones was by the window, he moved his head sideways continuously, and tried to open the window wider. Angie, who was lying face up in anticipation of Dan’s visit, saw Jim and thought he was Dan. She stretched out her two hands and beckoned Jim Jones to come in. Jim Jones jumped in, and the two engaged in sexual coitus. Before there could be an emission, Angie observed that the man on top of her was not Dan. She yelled and pushed Jim Jones off of her body, grabbed her telephone, and called the police. Jim Jones grabbed his pants and jumped out through the window. He put on his pants by the street and drove away. Before he had gone a block, he was stopped by two police officers, who arrested him for burglary and rape.

On the day of the trial, Angie acknowledged that she was expecting Dan, and when she saw Jim Jones, she thought he was Dan. And Jim Jones said that when Angie beckoned him with two hands, he believed that Angie, who was half nude, wanted him to come in for them to have sex. The court will find Jim Jones not guilty of burglary and rape by virtue of “mistake of fact” (mistake as to consent).

UNDER DURESS

A person accused of a crime can claim that he committed the crime under duress, if he could prove that another person made him do it. There must be evidence of threat by another person; the threat must produce a reasonable fear in the accused; his life must be placed in immediate or imminent danger; and the accused is placed in danger of causing death or serious bodily injury.

SELF-DEFENSE

A notorious rapist-murderer, J, who was released from prison, recently stopped a young woman, Z, by the street-side. With a handgun pointed at the forehead of Z, he ordered her to enter his car. Z recognized J (the man) as the notorious rapist-murderer. She leaned backward and

kicked J hard in the groin. J fell down on the ground and died on the spot. Z ran away and did not tell the police. Later, somebody else stopped at the scene, took the handgun that was lying by the dead body, and went away.

Later, the police found out that Z killed J. Z was arrested and charged with the murder of J. Z was found not guilty of murder. Could a reasonable woman have taken the action Z took? If the answer is yes, then Z is not guilty of murder by reason of self-defense.

The same standard applies when a police officer tries to investigate a person, and the person points a gun (toy or real) at the police officer and says, "Back off." If the police officer shoots and kills the victim in that context, it is not murder. The police officer killed the victim in self-defense.

DEFENSE OF OWN PROPERTY

There is a saying that a man's home is his castle, and a bird is a king in its nest. That means trespassory entry into a person's compound should be resisted with reasonable force. A person has a right to the use of his property. The law requires that if anybody intrudes into another's property or premises, the owner should appeal to the intruder to leave the premises. If the intruder intends to commit a felony on the premises, and if a warning to back off has been issued and ignored, then the owner can use deadly force to achieve his aim.

INVOLUNTARY INTOXICATION

The mind can be disabled by alcohol or any other drug. If a person uses a prescription drug issued to him, and uses it according to the doctor's prescription, and thereafter gets so disoriented and confounded as to lose the capacity to reason or form a criminal intent and commits a crime in that intoxicated state, he/she is not guilty of the crime because there is no *mens rea*. All courts agree that an involuntarily intoxicated person lacks the capacity to form the required guilty mind (Adler et al. 1991; Emanuel 1979).

INFANCY

A defendant is guilty of a crime if evidence proves that he committed the crime beyond a reasonable doubt and he is an adult. If he is a juvenile, then he is not guilty of a crime. He is a juvenile delinquent and not a criminal. A juvenile is under 17 years of age in some states, such as New York, and 18 in others, such as Tennessee. Among the 50 states in the United States, only Wyoming still has 19 years as the starting age of adult responsibility. Most countries in the world use 18 years as the starting point of adult responsibility.

WEAK DEFENSES

Voluntary Intoxication

Any crime committed while voluntarily intoxicated with alcohol or drugs is not a defense in most U.S. jurisdictions. Voluntary intoxication as a defense is available in some states but is not always successful. It can only help reduce the degree of the crime charged against the offender and the severity of the punishment.

Ignorance of Law or Mistake

The ancient maxim of common law is "*ignorantia juris non excusat*," which is translated as "ignorance of the law excuses not." In the same vein, if a defendant claims that his crime was perpetrated by mistake, it will not exculpate him from criminal liability.

INTERNATIONAL CRIMINAL LAW

INTRODUCTION

As criminal law of various nations creates crimes within their jurisdictions, likewise, international criminal law creates international crimes or transnational crimes from a global perspective. This leads to the question—what is international criminal law? How do we define a crime that has no single legislative body, no law enforcement agency, and no penal body? International law does not have one source. It has several sources. Since the beginning of the twentieth century, international criminal law has become a more important feature of the international community than ever before.

However, international criminal law has been with humanity long before modern times. As far back as the year 1268, Conradin von Hohenstafen, the Duke of Suabia, was found guilty of and was executed for the crime of starting an unjust war (Paust 1986; Bantekas and Nash 2003). Also, in 1474, Peter von Hagenbach was found guilty of crimes against "the laws of God and man," murder, and rape, by an international tribunal made up of judges from Alsace, Austria, Germany, and Switzerland, during his occupation of Breisach on behalf of Charles, the Duke of Burgundy (Schwarzenberger 1968). It took another 400 years before a proposal to establish an international criminal court to hear heinous crimes committed during the Franco-Prussian war in 1870 was tabled (Boissier 1985). The international criminal law did not become a consistent and a frequent feature of the international community until after World War II, in the Nuremberg trials.

DEFINITION

An international criminal law is a law that controls any conduct that threatens world order and security, war crimes, genocide, apartheid, terrorism, crimes against humanity, human rights, transnational crimes, and all other crimes against the international community. The definition of international criminal law will be clearer than it is now when we discuss the sources of international criminal law.

SOURCES OF INTERNATIONAL CRIMINAL LAW

There are four sources of international law as provided in Article 38 (1) of the 1945 Statute of the International Court of Justice (ICJ). Among the four sources of international law, three are the sources of international criminal law.

In modern times, the origin and development of a consistent international criminal law can be traced back to the London Charter for the Nuremberg International Military Tribunal (IMT). “The charter defines offenses and set out the parameters for individual criminal responsibility with regard to these offenses” (Bantekas and Nash 2003).

Unmistakably, the statute of the ICJ is an integral part of the Charter of the UN, which was signed on June 26, 1945, in San Francisco, at the conclusion of the UN Conference on International Organization, and came into force on October 24, 1945.

The sources of the international criminal law, as provided by Article 38 (1) of the ICJ Statute are: (1) international conventions, (2) international custom, as evidence of a general practice accepted as law; and (3) the general principles of law recognized by civilized nations. Here, we must add another source of international criminal law, the treaties among nations, which could be among the UN member nations or among regional organizations, such as the European Union (EU), the African Union (AU), the Organization of American States (OAS), or the North Atlantic Treaty Organization (NATO).

Among the three sources of international criminal law of the ICJ Statute are the international conventions. Some of the UN Conventions that have produced international criminal law are as follows:

1. 1931 Geneva Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs
2. 1936 Convention for the Prevention of Illicit Drug Trafficking

3. 1937 League of Nations Convention for the Prevention and Suppression of Terrorism
4. 1945 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis
5. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
6. 1948 Protocol Bringing Under International Control Drugs Outside the Scope of the Convention of July 13, 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol Signed on December 11, 1946
7. 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
8. 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
9. 1949 Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces
10. 1949 Geneva Convention (III) Relative to the Treatment of Prisoners of War
11. 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War
12. UN Convention on the Protection of Human Rights and Fundamental Freedom
13. 1953 Protocol Amending the 1927 Slavery Convention
14. 1961 Single Convention on Narcotic Drugs
15. 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft
16. 1968 United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
17. 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft
18. 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation
19. 1973 Convention on the Prevention and Suppression of Apartheid, etc.

ENFORCEMENT OF INTERNATIONAL CRIMINAL LAW

All crimes are perpetrated by somebody. Under the international criminal law, crimes are committed either by natural persons or state agents or authorities. Criminal liability, therefore, in international law is attributed to persons, state agents, or other legal entities. Most

international crimes are committed by individuals “acting under the guise of or on behalf of state orchestrated policies, whether overtly or clandestinely” (Bantekas and Nash 2003). In cases of individual or group violations of international criminal law, domestic criminal courts of member states take direct enforcement action in a spirit of cooperation. Also, some UN conventions have extradition clauses to make enforcement of violations of international criminal law feasible. All state parties to a UN convention take responsible enforcement action of violations of international criminal law.

Furthermore, Art. VI of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and Art V of the 1973 Convention on the Prevention and Suppression of Apartheid (1015 UNTS 243) led to the establishment of an international penal tribunal with power to try and punish persons, groups, or any state that violated the conventions. Additionally, on the basis of Art 25 of the 1945 UN Charter, Security Council resolutions are binding on UN member states. In this way, the Security Council can impose sanctions against recalcitrant, offending states and force them to abide by the rules of the conventions. Such actions were taken against Libya for state-sponsored terrorism (Libya’s involvement in the PANAM Flight 103 disaster in Lockerbie, Scotland, 1988) and the Iraqi invasion of Kuwait in 1990. Also, the UN could use force to make a state abide by international law (UN sanction of the use of force against Iraq in its Kuwait invasion).

Although the UN has no prison facilities of its own; it uses prison facilities of member states to incarcerate individual offenders.

HUMAN RIGHTS: INTERNATIONAL HUMANITARIAN LAWS

The international humanitarian laws are the offsprings of human rights laws created by the UN through various conventions. On December 10, 1948, the General Assembly of the UN adopted and proclaimed the “Universal Declaration of Human Rights.” A propos of this Declaration, the UN Assembly charged all member states to publish the text of the Declaration and “to cause it to be disseminated, displayed, read, and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories” (Annan 1998).

The Universal Declaration of Human Rights is the first international statement to use the term “human rights.” This concept, its meanings, and its relevance have been adopted by the human rights movement as a charter. The true meaning of human rights is captured

in the introduction to the 1998 preamble to the Universal Declaration of Human Rights pamphlet:

All human beings are born with equal and inalienable rights and fundamental freedoms. The United Nations is committed to upholding, promoting and protecting the human rights of every individual. This commitment stems from the UN Charter, which reaffirms the faith of the peoples of the world in fundamental human rights and in the dignity and worth of the human person.

The international humanitarian rights laws emanate from ten acts of the UN; namely, Universal Declaration of Human Rights; the Convention on Civil and Political Rights; the Optional Protocol to the Convention on Civil and Political Rights, the Convention on Economics, Social, and Cultural Rights; the Convention Against Torture; the Convention Against Genocide; The Geneva Conventions; the Convention on the Rights of the Child; the Convention on Elimination of Discrimination Against Women; and the Charter of the UN. Some of the Human Rights of individuals and nations can be found in the Universal Declaration of Human Rights (UDHR) Articles.

The Convention on Civil and Political Rights outlines in detail the basic civil and political rights of individuals and all nations. Among the rights of nations is the right to self-determination and the right to own, trade, and dispose of their property freely, and not be deprived of their means of subsistence (Art. 102).

Among the rights of individuals are the right to legal recourse, when their rights have been violated, even if the violator was acting in an official capacity; the right to life (Art. 13); the right to equality before the law (Art. 7); the right to presumption of innocence till proven guilty (Art. 11 (1)); the right to appeal a conviction; the right to be recognized as a person before the law; the right to privacy and protection of that privacy by law (Art. 12); freedom of thought, conscience, and religion (Art. 18); freedom of opinion and expression (Art. 19); and freedom of assembly and association (Art. 20).

The Universal Declaration of Human Rights forbids torture and inhuman or degrading treatment (Art. 5), slavery or involuntary servitude (Art. 4), arbitrary arrest and detention (Art. 9), and debtor’s prisons. The text of the Universal Convention on Civil and Political Rights was negotiated and an accord reached on it in 1966. Ten years later, in 1976, the required 35 states ratified it, and it became international law.

The protocol brought legal support to the Convention on Civil and Political Rights by authorizing the Human Rights Commission to investigate and adjudicate complaints of

human rights violations from individuals and countries that are signatories to the Convention.

The Convention on Economic, Social, and Cultural Rights describes the basic economic, social, and cultural rights of individuals and nations. These include the right to self-determination; wages sufficient to support a minimum standard of living; equal pay for equal work; equal opportunity for advancement; form trade unions; strike; paid or otherwise compensated maternity leave; free primary education and accessible education at all levels; and copyright, patent, and trademark protection for intellectual property. Additionally, this convention forbids the exploitation of children. The text of this convention came into force in 1966.

The first Geneva Convention concentrated on the rights of individuals—combatants and noncombatants—during wartime. It also covered the treatment of prisoners of war or enemy captives.

The Convention Against Genocide bans acts committed with the intent to destroy, in whole or in part, a nation, ethnic, racial, or religious group. This convention declares genocide a crime under international law, whether committed in wartime or peacetime. Signatories to the convention are required to take steps to prevent and punish any act of genocide committed within their territorial integrity. The convention declares genocide itself, conspiracy or incitement to commit genocide, and attempt to commit or complicity in the commission of genocide all to be illegal under international law. Persons suspected of acts of genocide may be tried by a national tribunal or criminal court in the territory where the acts were perpetrated or “by a properly constituted international tribunal whose jurisdiction is recognized by the state or states involved.”

The Convention Against Torture (1985) bans torture under all circumstances and established the UN Committee Against Torture. The convention requires nations to take effective legal measures and other steps to prevent torture. The convention declares that neither a state of emergency nor other external threats, orders from a superior officer or authority, may be used to justify torture. It is a violation of this convention if a refugee is returned to his/her country of origin, if there is a reason to believe that he/she will be tortured in his/her native country. This convention requires all nations to make torture illegal and provide severe penalties against violators.

The Convention on Elimination of Discrimination Against Women prohibits discrimination against women.

The Convention on the Rights of the Child prohibits discrimination against children and provides special protection and rights appropriate to minors.

Finally, the UN Charter contains some very important human rights provisions. The charter also contains the framework for the organization as a whole. Among other things, the charter carries the Statute of the ICJ and the Purpose and Principles of the UN.

In conclusion, the profound concern among the international community about the preservation of fundamental human rights spurred the UN, human rights organizations, and charitable organizations to support the creation of the Permanent International Criminal Court (ICC) in 1998 (The Rome Statute).

FAMILIES OF LAW

CIVIL LAW

Civil law, otherwise known as Roman law, is influenced by the Draconian Code of the Greek laws as formulated by Solon in 403 BC. These Draco-Greek laws have their biggest impact in the law of the Twelve Tables (The Twelve Tables of Roman Law). The early Roman law contributed to the legal system of the Roman Empire. The legal system of the Roman Empire profoundly influenced the legal system of continental Europe, including the European criminal justice system.

Civil law is the legal system of most of the countries in the world. In addition to most continental European countries, other civil law countries can be found in Latin America; in African countries that were dependencies of France, Belgium, Spain, and Portugal; Asian countries that were colonies of the Dutch; Japan; and to some extent, South Africa and China.

Motivated by the Age of Enlightenment, attempts to codify the civil law began during the second half of the 18th century. Civil codes with a lasting influence were made only after the French Revolution in jurisdictions such as France, Austria, Quebec, Spain, the Netherlands, and Germany. Unmistakably, codification is not a characteristic of a civil law system. For instance, the civil law systems of Scandinavian countries remain, in the main, uncoded.

In civil law countries, legislation is the primary source of law. By default, courts base their judgment on the provisions of codes and statutes from which solutions in particular cases are to be derived. Courts thus have to reason extensively on the basis of the general principles of the code, or by drawing analogies from statutory provisions to fill the lacunae.

Stare decisis is not the norm in civil law countries but is a characteristic of common law. However, case law or

jurisprudence plays a great role in virtually all civil law countries, even though it is not formally recognized.

Civil law countries may differ in their legal methodologies from common law countries. Generally, legal opinions in civil law countries are usually very short and formal in nature. This principle is very true in France, where judges cite only legislation, but no prior case law. But, court opinions in German-speaking countries can be as long as in common law countries, such as the United States, and German-speaking countries normally discuss prior cases and academic legal writings extensively.

Another unique aspect of the civil law system is that the civil law judges are usually trained and promoted separately from attorneys, compared to the common law system, where judges are usually selected from among accomplished and reputable attorneys. The influence of academic writings by law professors on case law tends to be greater in civil law than in common law systems.

Comparative law scholars and economists promoting the legal origins theory subdivided civil law into three distinct subgroups:

1. French Civil Law:

This is found in France, the Benelux countries, Italy, Spain, Portugal, and former colonial dependencies of these countries;

2. German Civil Law:

This is practiced in Germany, Austria, Switzerland, Japan, South Korea, and the Republic of China (Taiwan);

3. Scandinavian Civil Law:

This is practiced in Denmark, Sweden, Finland, Norway, and Iceland.

According to the legal origins theory, civil law countries tend to emphasize social stability, while common law countries focus on the rights of an individual.

COMMON LAW

Origins

Prior to the Norman conquest of England, before the institutional stability imposed on England by William the Conqueror in 1066, English people were ruled by local customs that varied from community to community and were enforced arbitrarily. For instance, at that time, courts consisted of informal public assemblies that weighed conflicting claims in a case and, if unable to reach a decision, might require an accused to be tested for guilt or innocence by carrying a red-hot iron or snatching

a stone from a cauldron of boiling water or some other test of veracity (trial by ordeal). If the defendant's wound healed within a prescribed time, he was set free as innocent; otherwise, he was executed (Achebe 1959).

When Henry II became the first Plantagenet King in 1154, he institutionalized common law by creating a unified system of law "common" to the whole country through incorporating and elevating local custom to the entire nation. By doing so, he ended local control and peculiarities, thereby eliminating arbitrary remedies and reinstating a jury system of citizens sworn on oath to investigate reliably criminal accusations and civil claims. The jury reached its verdict through evaluating common local knowledge, not necessarily through the presentation of evidence.

Henry II's unification of the court system did not please the Church of England's canonical courts. By the 15th century, litigants who felt that they were cheated by the common law system of justice petitioned the king in person. It was often complained that the award of damages under common law was not sufficient redress for a trespasser occupying their land, for example, and instead it was requested that the trespasser be evicted. This argument brought about the system of equity, which is administered by the Lord Chancellor in the Court of Chancery. By their nature, equity and law were often in conflict, and this conflict often lasted for many years, even though it was settled by the 17th century that equity should prevail.

In England, courts of law and equity were combined by the Judicature Acts of 1873 and 1875, with equity prevailing in case of conflict.

In the United States, parallel systems of law (providing money damages) and equity (fashioning a remedy to fit the situation) survived well into the 20th century in most jurisdictions. In the federal courts, there is no separation between law and equity; the state of Delaware still has separate courts of law and equity. In many states, there are separate divisions for law and equity within one court.

Common Law Legal System

The English common law tradition was practiced in its entirety in some countries that were once British colonial dependencies, and partially in some of them.

Common Law Countries

1. England and Wales
2. Republic of Ireland
3. Australia
4. New Zealand
5. Canada (except Quebec)
6. United States (except Louisiana)

7. Singapore
8. Hong Kong

Common Law–Civil Law Mixed Jurisdictions

1. South Africa and Namibia
2. Scotland
3. Quebec
4. Louisiana

Common Law Countries Mixed with Customary Law or Islamic Law

1. Nigeria
2. Kenya
3. Malaysia
4. Uganda
5. Ghana
6. Tanzania
7. Gambia
8. Malawi
9. Sierra Leone
10. Zambia
11. Zimbabwe

The Republic of India has English common law mixed with Hindu law and tradition.

UNIQUE FEATURES OF THE COMMON LAW SYSTEM

Common law jurisdictions codified some of their laws more often than civil law systems, for example, the U.S. Uniform Commercial Code. In the common law system, case law, and not statutes, is a pivotal source of law, because statutes are interpreted very narrowly. By contrast, in the civil law system, legislation is the primary source of law. Also in common law countries, judges are seen as balancing the power of the various branches of government.

In criminal cases, under the common law tradition, there is presumption of innocence, and the burden of proof is on the prosecution (adversarial system). In contrast, in civil law systems, the burden is on the defendant (inquisitorial system).

SOCIALIST LAW

The legal system of communist countries is referred to as socialist law. This system is based on the civil law system, but there are some modifications from Marxist-Leninist ideology. This Marxist-Leninist approach provides for the state to be the sole owner of agricultural cooperatives. In the socialist legal system, there are special courts and laws for state enterprises.

The Socialist legal system was widespread in all of the territories of the Soviet Union and the Republic of China. Since the collapse of the Soviet Union, some of its former dependencies have withdrawn from the socialist legal system.

The People's Republic of China recently modified the socialist legal system to accommodate its capitalist market-oriented economic changes and is gradually leaving Marxism. However, the state still owns all land but, often, not the structures that sit on the land. In the agricultural sector, the village committee owns the land and gives the right to use the land to individual farmers. If any farmer is not doing well in his farm work, he could give the land back to the village committee without any penalty. And he could get back the land from the village committee any time he wants.

Socialist law criminal courts are like ad hoc committees in some states and may be permanent committees in others. A single judge in a criminal case is not always the norm in most socialist legal systems. Some socialist states follow the civil law principles and rules of establishing the truth in a case.

ISLAMIC LAW

The Islamic legal system is based on Sharia, “the Sacred Law of Islam.” Sharia law is based on the principles of law, justice, and morality (Kusha 2002). The Islamic, Sharia legal system is found in Iran and in the Kingdom of Saudi Arabia. Iran, Saudi Arabia, some other Middle Eastern countries, Indonesia, and Myanmar (Burma) are Islamic law countries, with some modifications in the law to suit modern times. These modifications have become a source of conflict among adherents to Islam in the Middle East. In fact, the secularization or modification of Sharia law created two types of Islam—the Sunni and Shiite Muslim. Within each type of Islam, there are extremist Muslims. These Muslims fall into three categories—traditionalists, fundamentalists, and reformists.

The Islamic traditionalists and fundamentalists want a return to a certain period in Islamic history, when the status of women was almost like that of a slave, and the punishment for sin or crime was draconian. The Islamic reformists want Islamic law modified to suit modern civilization and Western influence. They want Islamic laws to be like the modified constitutional laws of Western society, which are able to resolve the social, economic, and political conflicts that confront modern nations (Kusha 2002).

Countries Where Islamic Law Is Applied

Saudi Arabia, Iran, Iraq, Qatar, Yemen, Syria, Jordan, Lebanon, Kuwait, Algeria, Libya, Egypt, Sudan, Morocco, Senegal, Niger, Indonesia, Malaysia, and Myanmar

Mix of Islamic Law and Common Law/Customary Law

Nigeria, Chad, and Cameroon

Judges in the Islamic Legal System

Judges in the Islamic legal systems are trained in Sharia law. They must be reputable, highly experienced in the application of Sharia law, and conversant with the Arabic language, even in territories outside the Middle East.

Offenses

What constitutes a crime in the Iranian Shiite Islamic legal system could be regarded as merely a violation of a city, county, or state regulation in the Western system of criminal justice. According to Lessaem (1976) and Kusha (2002), in the Iranian Shiite Islamic legal system, the following constitute criminal offenses under the Islamic code:

- offenses against the state, the person of the sovereign, the constitution and the government;
- offenses against public order and security;
- offenses against public property and/or state officials;
- offenses against a person's physical well-being, followed by those committed against a person's freedom;
- offenses against children and the deceased;
- offenses against family and public norms of morality;
- offenses that injure the public's sense of fiduciary trust and responsibility, such as lies and perjury;
- offenses against private goods, or the individual's right to private ownership;
- alcohol- and drug-related offenses; and
- rural offenses.

The above criminal cases may be tried in ordinary courts or in special courts (Kusha 2002). There are five ordinary courts—the Police Courts, the House Equity, the Arbitrarians Councils, the Criminal Court, and the Assize Courts.

The special courts are the military tribunals, the Juvenile Courts, the Criminal Court of Government Officials, and the Financial Courts (Kusha 2002).

Punishment

Some Islamic law countries in the Middle East still amputate body parts from thieves and robbers, as was prescribed in the Quran, the sacred book of Islam. The Quran prescribes retribution or blood money for murder; public flogging of the man and the woman for adultery; public flogging for both male and female homosexuals; and public flogging for drinking alcoholic beverages, bearing false witness, and using mind-altering substances. Some Islamic law jurisdictions state that a woman may be stoned to death, hanged, or publicly executed for adultery or fornication (Northern Nigerian Case of 2002), as is observed in Afghanistan under Al Qaeda.

In conclusion, in the Islamic legal system, there is no plea-bargaining, and in some jurisdictions, the offender may not be represented by a defense attorney. However, there is no presumption of innocence in the Islamic criminal justice system.

REVIEW QUESTIONS

1. What are the seven general principles of criminal law? Discuss each one of them in detail.
2. What are some of the defenses to a criminal charge in the U.S. criminal justice system?
3. What is international criminal law?
4. What are the sources of international criminal law?
5. Explain international humanitarian laws in detail.
6. Compare and contrast civil law and common law.
7. Which are the civil law and common law countries?
8. What is Sharia law? How do Sharia laws differ from common law?
9. Compare and contrast socialist law and Islamic law.
10. Compare and contrast punishment of offenders in the Islamic criminal justice system and the common law criminal justice system.

REFERENCES

- Achebe, C. 1959. *Things fall apart*. New York, NY: McDowell Obolensky.
- Adler, F., G. O. W. Mueller, and L. S. Laufer. 1991. *Criminology*. New York, NY: McGraw-Hill, Inc.
- Annan, K. 1998. *Introduction to Universal Declaration of Human Rights*. New York, NY: United Nations Department of Public Information.
- Bantekas, I. and S. Nash. 2003. *International criminal law* 2nd edition. London, UK: Cavendish Publications Limited.

- Boissier, P. 1985. *From Solferino to Tsushima: History of the international committee of the Red Cross*. Geneva: Durant Institute.
- Emanuel, S. L. 1979. *Criminal law*. New Rochelle, New York, NY: Emanuel Law Outlines.
- Hall, J. 1960. *General principles of criminal law* 2nd edition. Indianapoli: Bobbs Merrill.
- Kusha, K. R. 2002. *The sacred law of Islam*. Burlington, VT: Ashgate Publishing Co.
- Lessaem, G. 1976. On the legal system in Iran. In *Human rights and the legal system in Iran*, edited by W. Butler and G. Lessaem. Geneva: International Commission of Jurists.
- Paust, J. J. 1986. Aggression against Authority: The Crime of Oppression, Politicide, and Other Crimes Against Human Rights. *Case Western Reserve Journal of International Law*. 18: 283–284.
- Schwarzenberger, G. 1968. *International law as applied by courts and tribunals*. London, UK: Stevens.

Section III

Overview of Model Criminal Justice Systems

*The United States, Ireland, Israel, Argentina,
Sierra Leone, China, Poland, and Russia*

4 Criminal Justice System in the United States

Mary Clifford

CONTENTS

General Overview	42
Brief History.....	42
Legal System.....	42
System of Government.....	43
Crime.....	43
Classification of Crime.....	43
Classification of Illegal Possession of Narcotic Drugs	44
Crime Statistics	44
Crime Regions.....	45
Victims.....	46
Police.....	46
Administration.....	46
Resources.....	47
Technology	47
Training and Qualifications	48
Discretion	48
Accountability	49
Prosecutorial and Judicial Process	49
Rights of the Accused.....	49
Criminal Procedures	49
Pretrial Incarceration	50
Judicial System.....	50
Administration.....	50
Special Courts	50
Judges.....	50
Penalties and Sentencing.....	50
Sentencing Process	50
Types of Penalties.....	51
Prison.....	51
Description	51
Administration.....	52
Conditions	52
Discussion	53
Notes	54
Review Questions.....	54
References.....	54

GENERAL OVERVIEW

BRIEF HISTORY

The contemporary American system of criminal justice is a result of centuries of evolution and social change. American colonists settling in the New World brought the criminal procedures, courts, and crime definitions of the English common law traditions along with them (Henderson 1985). This tradition originally did not define crimes or their remedies as public matters, but rather considered them to be private matters between the individual who was wronged and the wrongdoer (Siegel 1992). Later, the concept of public crime developed, but it was confined to acts committed against the king, with individuals and their families left to resolve their own disputes. Church representatives handled those acts considered to be sinful, and local courts dealt with most secular violations. Because royal administrators were not constantly present in each community, a system was developed for holding court sessions in each county several times a year. The royal administrator, or judge, used local customs and rules of conduct as a guide for determining an appropriate sentence for an offender (Siegel 1992). The structure and content of this English system was modified to meet different community needs and geographic circumstances in the New World (Chapin 1983).

Early in the development of the American system of justice, the framers of the U.S. Constitution (1787) gave Congress considered latitude to “establish inferior courts, to define crimes and stipulate punishments, and to provide for modes of process and procedures to be used in the courts” (Henderson 1985). According to the Constitution, Congress must “set up all tribunals (federal courts) inferior (lower in rank) to the Supreme Court” and legislate “to decide which acts that take place at sea are piracies (thefts) or felonies (serious crimes such as murder), to make laws to punish these crimes, and crimes against international law” (Cullop 1984, p. 4). Response to the original draft of the Constitution resulted in the passage of several amendments known as the Bill of Rights, adopted in 1791. The Bill of Rights includes 10 amendments identifying personal liberties (individual rights) not listed in the Constitution, but which people had come to believe were their rights as citizens of the United States (Cullop 1984).

Several provisions within the Bill of Rights are of particular importance in the U.S. system of justice. The Fourth Amendment prohibits unreasonable search and seizures. The Fifth Amendment requires an indictment

to be held on a capital offense; no double jeopardy (i.e., only one trial per offense); no compulsion to be a witness against one’s self; and no deprivation of life, liberty, or property without due process. The Sixth Amendment assures that one accused of a crime will have a speedy trial, the right to confront adverse witnesses, and the assistance of counsel. The Seventh Amendment guarantees the right to a trial by jury. The Eighth Amendment prohibits both excessive bail and cruel and unusual punishment.

The Constitutional provisions, the adoption of the Bill of Rights, and the Crimes Act of 1790 formed the initial structure of the federal criminal justice system (Henderson 1985). The Crimes Act of 1790 defined 17 crimes ranging from obstruction of process to treason. Death by hanging was the penalty for six crimes: treason, murder, piracy, accessory to piracy, forgery, and rescue of a person found guilty of any capital crime. Henderson (1985) argues that the crimes listed in the Act of 1790 were consistent with the constitutional authority of Congress and reviews several additions that followed the initial provisions, including the Judiciary Act, the Neutrality Act, the Sedition Act, and the Logan Act.

LEGAL SYSTEM

The American legal system, reminiscent of the legal system the Puritans left behind in England, mandated courts similar to English courts (Stucky 1986), which employed the “trial by adversary” process (Weston and Wells 1987). In this process, legal counsel represents both parties involved in a case. It is believed that such partisan advocacy develops the best possible arguments for the guilt or innocence of the parties involved.

Also significant in the American legal system is the concept of “due process.” Due process assures the accused of basic individual rights and freedoms in the United States. The tenets of due process are outlined in the Fifth Amendment (Kolasa and Meyer 1987). Due process of law assures the accused that he/she will receive a fair hearing and that the provisions in the Constitution and the Fourth through Eighth Amendments will be followed. At all levels of justice proceedings, however, implementation of due process can be difficult. Social, economic, and political factors often influence outcomes of legal actions in this and other areas of the justice system (Kolasa and Meyer 1987).

American law has developed along two lines: (1) a civil law system and (2) a common law system. The operation of the judicial process is the primary difference

between the two systems (Kolasa and Meyer 1987). Adjudication under civil law is made by the judge who follows an existing or an established set of laws. Common law, on the other hand, develops through the decisions of judges applying prior court decisions to the current case (Kolasa and Meyer 1987).

Since the passage of the Constitution, Congress has made several changes to the structure and organization of various courts. The number of Supreme Court justices has been changed, as have the number and forms of the lower courts (Vito and Holmes 1994). Most states have created their own systems of specialized lower courts. Usually these courts hear civil cases, divorces, cases of property, and wills. Criminal courts address felonies and misdemeanors.

SYSTEM OF GOVERNMENT

The three branches of government outlined in the U.S. Constitution (the legislative, executive, and judicial powers) divide governing power into three segments capable of functioning together effectively (Weston and Wells 1987). Article I of the Constitution establishes the legislative powers (Cullop 1984). Article II establishes the executive powers, and Article III establishes the judicial branch of government. This structure provided a system of checks and balances, with each branch of government being allowed to operate independently but in relation to the other branches. While federal laws usually take precedence over state laws, states and local communities establish their own priorities in their own legislation, design the structure of their court system, and may identify specific acts as priorities at local community levels.

CRIME

Classification of Crime

In the U.S. system of justice, before a crime is said to have been committed, there must be (1) a law that defines the crime; (2) an act or an omission by the accused, called *actus reus*; (3) a guilty state of mind, also called intent (*mens rea*); (4) a joining of the act and the intent to act; (5) harm that affects the society or a person; (6) a casual relationship between the act or mission and the harm caused; and (7) a punishment as stated in the criminal code (Cole 1986). English law classified crimes into three categories: treason, felonies, and misdemeanors (Lindquist 1988). Felonies were “common law” crimes—that is, crimes that the people defined through traditional ways of living rather than through statute. Reid (1994)

argues that there were very few common law felonies: murder, manslaughter, sodomy, larceny, robbery, arson, and burglary. The misdemeanor classification developed much later than that of felony, emerging in the sixteenth century. Before that time, individuals were fined, but the offenses were not considered crimes (Walsh 1932). The misdemeanor category emerged from the notion of trespass (Lindquist 1988) and was regarded primarily as a means of raising money for the Crown.

Felonies have been distinguished from misdemeanors using two traditional terms, *mala in se* (acts that are inherently wrong; i.e., felonies) and *mala prohibita* (acts that are wrong because they are prohibited by law; i.e., misdemeanors); this description, however, has been called into question by several scholars. Inciardi (1984) argues that “the felony/misdemeanor classification goes beyond the *mala in se*/*mala prohibita* distinction since a number of felonies fail to reflect moral turpitude.” All such dispute is actually irrelevant in the United States, where all crimes are defined arbitrarily and conventionally by political apparatus (Michael and Adler 1971).

Because state laws define felony and misdemeanor crimes, both vary from state to state (Lindquist 1988). As a consequence, it is important to look at the statute in each state, not only to determine which acts are classified as misdemeanors or felonies but also to understand how local law defines the terms. Length of sentence and where the sentence is served generally distinguish misdemeanors from felonious offenses. Generally, misdemeanors are defined as offenses punishable by no more than a year in local jail and/or a fine.

Sheley (1995) identifies four factors that can be used successfully to avoid being classified a criminal in the legal system: self-defense, action under duress, insanity, and age. In self-defense, the amount of force used must not exceed the amount of threatened harm. Furthermore, if one could have avoided the danger by flight, the defense cannot be used. Self-defense can be used only when no other avenue existed to protect one’s self from deadly and imminent bodily harm. Another way to avoid criminal classification is the insanity defense. In the U.S. court system, “insanity” is a legal, not a medical, concept. One who uses the insanity defense argues that he/she could not avoid committing the crime in question because of a mental defect. Definitions of insanity vary by court systems. About a third of states use a formula based on the M’Naghten Rule, a definition of insanity established in England in 1843, for determining whether the accused may use the insanity defense at trial.

The duress defense against criminal classification is available when the defendant is forced by means of a deadly force to break the law or to help another break the law. For example, a criminal gang might enter a bank manager's house at night and enjoin him or her under gunpoint to go to the bank and open the bank vault. If the bank manager were to obey and later accused as an accomplice, he/she could claim to have acted under duress.

The final defense against criminal classification is the age of criminal responsibility. Juveniles who commit specific acts are treated differently from adults in the U.S. system of justice. "The term 'juvenile delinquency' or a 'delinquent act' is a non-criminal classification for acts done by (usually under age 17 or 18 depending on the state) that would otherwise be a violation of federal or state criminal law, or local ordinances. In about half the states, it should be noted, this terminology of delinquency extends to non-criminal offenses (status offenses) to include: unruly children, truancy, incorrigibles, and youngsters beyond the control of parents" (Weston and Wells 1987).

Classification of Illegal Possession of Narcotic Drugs

The classification of illegal possession of narcotic drugs changed from misdemeanor to felony during the twentieth century (Jones, Shainberg, and Byer 1979). Siegel (1992) reviews several of the laws introduced to regulate drug use in the United States. The Pure Food and Drug Act (1906) required manufacturers to list the amounts of habit-forming drugs on the labels of products but did not restrict their use. In 1914, the Harrison Narcotics Act restricted the importation, manufacture, sale, and dispensing of narcotics. "Narcotics" were defined as any drug that produces sleep and relieves pain, such as heroin, morphine, and opium. In 1922, the act was revised to allow the importation of opium and coca leaves (cocaine) for qualified medical practitioners. The Marijuana Tax Act of 1937 required registration and tax payment from all persons who imported, sold, or manufactured marijuana. Because marijuana was classified as a narcotic, people who registered were subject to criminal penalty.

Many drug statutes include specific penalties for violating federal drug laws. The Boggs Act of 1951 provided mandatory sentences for violations of federal drug laws. The Durham-Humphrey Act of 1951 made it illegal to dispense barbiturates and amphetamines without a prescription. The Narcotics Control Act of 1956 increased penalties for drug offenders.

Drugs of Abuse (DEA 1985), a Drug Enforcement Administration publication, references the Comprehensive Drug Abuse Prevention and Control Act of 1970,

which regulates drugs at the federal level and classifies drugs into five schedules according to their abuse potential. Since 1970, a variety of federal laws have attempted to limit the manufacture and sale of new drugs. The Controlled Substances Act of 1984, the Anti-Drug Abuse Act of 1986, and the Anti-Drug Abuse Act of 1988 identify types of illegal drugs and penalties for violations of drug laws and set up programs for addressing the drug problem. For the most part, state laws mirror federal statutes (Siegel 1992).

The classification of drugs as legal or illegal is at present a rather tricky business. Alcohol, tobacco, and caffeine are currently legal drugs in the United States. These substances, however, have not always been legal (Brecher 1972). At present, the legal status of marijuana varies by state. Between 1973 and 1978, 11 states decriminalized marijuana. One of these states, Alaska, has recriminalized marijuana, but the decision is under appeal and the law is not yet enforced (Sheley 1995).

Crime Statistics

Two primary sources exist for the collection of statistics on crime in the United States: the Uniform Crime Reports (UCR) of the Federal Bureau of Investigation (FBI) and the National Crime Victimization Survey (NCVS) of the Bureau of Justice Statistics (BJS). More specific attention will be given to the NCVS in the section on Victims. Because they differ in methodology and crime coverage, these two sources of data are not necessarily comparable; however, they can be used as complementary sources that together expand our understanding of the crime problem. It should be noted that the UCR program is expanding to become a more comprehensive and detailed reporting system called the National Incident-Based Reporting System (NIBRS), which will provide detailed information about each criminal incident and an expanded category list of offenses (FBI 1994, p. 385).

Ever since 1929, the UCR has collected and reported information on all crimes reported to law enforcement agencies, whether or not there is further action on the case (Reid 1994). The data are compiled from monthly law enforcement reports submitted directly to the FBI, and they reflect active law enforcement agencies from approximately 95% of the total U.S. population. Covered crimes include homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson—eight crimes known as Index Crimes or Part I Crimes. A crime is classified as an Index Crime based on a combination of three factors: (1) high degree of seriousness of the offense, (2) high degree of reportability of the offense, and (3) high degree of occurrence of the offense.

Serious offenses such as white-collar crime, organized crime, and narcotics drug smuggling lack one or more of the three factors and are therefore not included.

Various factors affect the volumes and types of crime from place to place and from year to year. Factors identified in the UCR include population density; urbanization; variations in population (particularly youth); stability of population; available modes of transportation; economic conditions; cultural factors; educational, recreational, and religious characteristics; family conditions; climate; strength of law enforcement; administrative and investigative emphasis of law enforcement; policies of other components of the criminal justice system; citizens' attitudes toward crime; and crime-reporting practices of the citizenry (FBI 1994).

All of these factors must be taken into consideration as one reviews and analyzes the data reflected in the UCR. Here, we will treat the UCR definitions and statistics for four crimes: murder, serious property offenses, forcible rape, and drug offenses.

For murder and nonnegligent manslaughter, the definition is "the willful (non-negligent) killing of one human being by another" (FBI 1994). The classification of this offense, and all other crimes in the UCR, is based solely on police investigation, not on the determination of a court, medical examiner, coroner, jury, or any other judicial body. The total number of murders in the United States in 2008 was 14,180, and in 2010, the number was 14,748. The 2011 FBI report showed that in the past 5 years, the total number of murders has been decreasing. Since 2007, the murder rate per 100,000 population has been decreasing: 5.7 in 2006, 5.6 in 2007, 5.4 in 2008, 5.0 in 2009, and 4.8 in 2010 (FBI 2011). Also, violent crime rates and property crime rates per 100,000 population were decreasing since 2007: for violent crimes 473.6 in 2006, 466.9 in 2007, 457.5 in 2008, 431.9 in 2009, and 403.6 in 2010; while property crimes were 3,334.5 in 2006, 3,263.5 in 2007, 3,211.5 in 2008, 3,036.1 in 2009, and 2,941.9 in 2010 (FBI 2011).

The crime of robbery is a serious property offense, defined by the UCR as "the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force of violence and/or by putting the victim in fear." The UCR estimated the volume of robberies in 1993 at 659,757 offenses. The national robbery rate in 1993 was 256 per 100,000 people, 3% lower than in 1982. Despite the fact that U.S. population has been growing, the robbery rate in 1993 of 256 per 100,000 population was too high compared to the rates in the past 10 years. The robbery rate per 100,000 in 2003 was 142.5, and the robbery rate in 2010 was 119.1.

And from 2003 to 2010, the highest rate of robbery was recorded in 2006 with 149.4.

Forcible rape is defined as "carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are also included; however, statutory rape (without force) and other sex offenses are excluded." In 1993, an estimated 104,806 forcible rapes were reported to law enforcement agencies in the United States. This figure was down 4% from the 1992 volume and showed the first decline in forcible rape since 1987. Rape is also decreasing in this twenty-first century compared to the rates in the 1990s. In 2008, the rate was 29.7 per 100,000 population—a drop from the previous year—29.1 in 2009, and 27.5 in 2010.

Drug abuse violations are state and local offenses relating to "the unlawful possession, sale, use, growing, and manufacturing of narcotic drugs" (FBI 1994). They can include any of the following categories of drugs: opium or cocaine and their derivatives (morphine, heroin, and codeine), marijuana, synthetic narcotics, manufactured narcotics that can cause true addiction (meperidine and methadone), and dangerous nonnarcotic drugs (barbiturates and amphetamines). In 1993, drug abuse violation arrests were up 4% from the 1992 level; they were 14% lower than in 1989, but 56% higher than in 1984. Of total drug arrests in 1993, 29.7% were for sale/manufacture, and 70.3% were for possession (FBI 1994, p. 216). Drug arrests in 2005 were 1,654,600 adults and 191,800 juveniles; in 2006, arrests were 1,693,100 adults and 196,700 juveniles; and in 2007, arrests were 1,645,500 adults and 195,700 juveniles.

In addition to drug abuse violations, drug abuse has often been associated with involvement in other serious crimes. The *Sourcebook* (BJS 1991, p. 457) reports that 67% of arrested men and 66% of arrested women tested positive for some type of drug abuse.

Crime Regions

For the purposes of FBI statistics, the United States is divided into regions, divisions, and states. Further breakdowns are based on population figures and proximity to metropolitan areas—that is, community type (FBI 1994, p. 362). There are four regions: Northeastern states, Midwestern states, Southern states, and Western states. These four state-based regions are further divided into nine divisions within each region.

The UCR are presented in aggregations representing three types of communities: (1) metropolitan statistical areas (MSAs), (2) cities outside MSAs, and (3) rural counties outside MSAs. Each MSA includes a central city of at least 50,000 suburban counties. Non-MSA

areas include cities outside metropolitan areas and rural communities. As a general rule, sheriffs, county police, and state police report crimes committed within the limits of the counties, excluding the city limits, while the local police report crimes committed within the city limits.

Victims

The second primary resource for reviewing crime statistics in the United States is the NCVS. Beginning in 1973, the NCVS has collected information from the victim's point of view on the frequency and nature of the crimes of rape, personal robbery, aggravated and simple assault, household burglary, personal and household theft, and motor vehicle theft. It does not measure murder, kidnapping, and "victimless" crimes (public drunkenness, prostitution, and drug abuse) (BJS 1994d). Because the NCVS gathers data directly from crime victims, it can provide information on both reported and unreported crimes. When an act of victimization is reported, the most severe act is classified: for example, if a victim is raped and robbed, the rape is recorded. The NCVS documents crime data according to four regions defined by the Census Bureau: Midwest, Northeast, South, and West.

According to the Department of Justice statistics, 20% of all of the crimes committed in 1992 were violent crimes (BJS 1994d). These include rape, robbery, and assault and are considered the most serious offenses by the NCVS. Personal/household larceny made up 60% of offenses in 1992. Household burglary and motor vehicle theft accounted for the last 20% of victimizations. The level of violent crime did not differ from 1981, which was a peak year for violent offenses. This breaks down into 6.6 million violent victimizations, 12.2 million personal thefts, and 14.8 million American households victimized (BJS 1994d p. 10).

Blacks are more likely to be victims of violent crime than whites. People under the age of 25 have a higher victimization rate than older persons. Households with lower incomes are more likely to be violent crime victims than household with higher incomes. The statistically overrepresented victims of street crimes are male, young, poor, and black (Sheley 1995, p. 122).

Historically, the victim of a criminal act was not represented in the adversarial process. Victims would sign the complaint that sets the justice process in motion and would be brought into courtrooms to serve as "evidence" and to testify for the prosecution (Sheley 1995, p. 161). In 1982, Congress enacted standards for the fair treatment of victims and witnesses, and throughout the 1980s, states granted to victims greater opportunities to participate

in decision-making within the criminal justice process. But there is no penalty against a state that fails to allow victim participation in decision-making in the criminal justice process (BJS 1991).

The National Victim Center of the victim's rights movement has outlined a model amendment for state constitutions that reads, "The victim of crime or his or her representative shall have the right to be informed of, to be present at, and to be heard at all criminal justice proceedings at which the defendant has such rights, subject to the same rules which govern defendants rights." See Austern (1987, pp. 23–27) for a listing of victim/witness assistance units by state.

POLICE

Administration

The American system of policing was modeled after the London Metropolitan Police, formed in 1829 by Sir Robert Peel (Reid 1994, p. 505). According to the FBI, the public law enforcement community services a population of over 224 million and employs 553,773 officers and 212,353 civilians (FBI 1994, p. 288). This number stood at 683,396 officers and 120,000 personnel in 2006 making a total of 800,000 law enforcement personnel in the United States (FBI 2011). Unlike countries such as Kenya, Nigeria, and China, the system of policing in the United States is decentralized, having separate systems at the local, state, and federal levels of government. An additional police agency that is becoming more popular is called the private or special-purpose police (Langworthy and Travis 1994, p. 118).

Police agencies are organized bureaucratically (Reiss 1992, p. 69). Municipal police organizations are structured in different ways, but the accepted model in the United States is the bureaucratic pyramid, with the chief of police at the top, management (reflecting specializations within the department) in the middle, and patrol officers at the bottom (Langworthy and Travis 1994, p. 143). Historically, metropolitan police organization was borrowed from the military model in England in 1829 (Skolnick and Fyfe 1993, p. 117). Using the military model helped to combat traditional British mistrust of official authority and made it easier to convince the skeptical British public that a new sort of official was needed to address social disorder and crime. In 1838, Boston, Massachusetts, introduced the London Metropolitan System of policing to help the night watchmen of Boston, and the New York City followed in 1845.

Rural, county, and municipal police agencies are found at the municipal or local level (Reid 1994). Local police

agencies are relatively small organizations, and little is known about municipal operations (Langworthy and Travis 1994). State and federal police agencies emerged as a response to a perceived lack of effectiveness in local police, with state-based policing developing as a hybrid between the federal and local experiences. All states except Hawaii have a statewide police or highway patrol. Policing at the state level is divided into state police and state patrol officers, with patrol officers responsible for traffic control, and state police enforcing certain regulations (Reid 1994). Today, American police are predominantly associated with local government (Sheley 1995). Most crimes committed in the United States are state crimes, but the FBI may, when requested, assist state and local enforcement agencies in solving a state crime, in addition to attending to federal crimes such as bank robbery, explosive trafficking, bombing of public buildings, and counterfeiting currency.

At least 63 distinct federal agencies exercise police powers or serve police functions (Langworthy and Travis, 1994:99). Four commonly known agencies are the FBI; the U.S. Marshals; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and the Drug Enforcement Administration. Their primary functions as federal police agencies are specific and clearly defined, with detection and investigation being their primary responsibilities.

Resources

According to a 1993 BJS study of state and local law enforcement units, state and local governments funded 17,358 police and sheriff's departments, including 12,502 general-purpose local police departments, 3,086 sheriff's departments, 49 primary state police departments, and 1,721 special police agencies. These agencies employed approximately 604,000 full-time sworn officers with general arrest powers and 237,000 non-sworn civilian personnel (1993). The U.S. Department of Justice (BJS 1991) reports that \$60,980,334,000 was spent at all levels of government in the criminal justice system. At the federal level, the expenditures were \$7,794,136,000. At the state levels of government, the total expenditures were \$19,279,179,000. Local expenditures were \$33,907,019,000, including municipal expenditures of \$19,533,908,000 and country expenditures of \$14,373,111,000.

For police, these expenditures included \$27,955,660,000 for all levels of government. This breaks down to \$3,555,248,000 at the federal level for police and \$4,513,297,000 at the state level; for rural, county, and municipal police, the expenditures for police protection

are \$10,332,148,000, \$4,015,310,000, and \$5,539,657,000, respectively (BJS 1991, p. 2).

Police jurisdictions differ across the country. In addition to the 49 primary state police departments, the 1993 study included 12,502 general-purpose local police departments operated 59 of these local departments and municipalities. The study reflected 3086 and independent cities and 1721 special police agencies. Included in the latter category were 751 county constable officers in Texas and 970 state and local agencies with special jurisdictions or specific enforcement responsibilities.

Sheley (1995) argues that policing has been dominated by white males who have modest amounts of formal education and training. In addition, certain ethnic and racial groups have not been well represented in policing, particularly African-Americans, Asians, and Hispanics. Women are clearly underrepresented in the American police forces. According to the 1993 UCR information, males made up 91% of all sworn employees both nationally and in cities, 93% of those in rural counties, and 88% of those in suburban counties.

Technology

Police have implemented innovative technology at various levels. Computer-aided dispatch, computerized record-keeping procedures, and radio communication have become standard features in modern police departments; in some jurisdictions, video technology and computer terminals are used in patrol cars. Computers now allow information to be exchanged between dispatch and the police officer on patrol without tipping off the criminal (Newcombe 1993). Technologies such as fingerprinting, DNA testing, and voice identification technologies are being used and perfected (Jasanoff 1989) to aid in investigations (Sessions 1992) and convictions.

Although police and other criminal justice officials have found innovative technologies useful throughout the adjudication process, such innovations have also provoked significant public attention and intense debate. In New Hampshire, police have been criticized for using high-tech thermal imaging devices to find marijuana-growing operations (West 1992). Stephens (1990) argues that police surveillance (audio and video) technology devalues individual rights.

The videotaped brutal arrest of Rodney King in Los Angeles in 1991 resulted in a highly public denunciation of the police and the arrest process (Skolnick and Fyfe 1993). This negative publicity has prompted police to employ "less than lethal force" (Edwards 1995), subduing offenders and technologies such as foams and pepper sprays.

In order to better understand how technologies can be used by the police in enforcing the law, the National Institute of Justice is developing the National Law Enforcement Technology Center and the regional law enforcement technology centers (NIJ 1995). Some technologies explored at the Technology Center are geared toward ensuring police officer protection: for example, the development and use of soft body armor and videotaped interrogations (Geller 1992). Standards for use and manufacture of soft body armor, vehicle tracking, security systems, pistols, and other innovative technologies continue to be examined at the Technology Center (NIJ 1995).

Training and Qualifications

Few police departments require a college education to enter the force or to be advanced within the ranks, although college education can be important in promotion decisions (Carter, Sapp, and Stephens 1989). Since 1967, most states have mandated minimum entry-level training standards, and many departments require much higher levels (Ostrom, Parks, and Whitaker 1978). This trend toward professionalism in policing has resulted in departments requiring more formal training and education from their personnel. Reid (1994) cites the President's Commission on Law Enforcement and Administration of Justice report (1967), which identified "intelligence, education, tact, sound judgment, physical courage, honesty" as important qualities in a police officer; she also finds psychological factors, such as the ability to handle racial tension, important factors. Because earlier research findings reported police to be emotionally maladjusted, extremely cynical and authoritarian, and impulsive risk takers, she argues that temperament and personality should be important in qualifying to be a police officer (Reid 1994, p. 514).

Discretion

Police are expected to detect crime, to investigate how a particular criminal act happened, and then to make arrests when necessary. But because circumstances can vary in the arrest process, no aspect of police function is entirely predictable. Ultimately, individual officers must decide whether to arrest or to release a suspect. Studies of officer training and officer action are focusing increasingly on these discretionary powers.

Sworn police officers have the authority to make an arrest. In most cases, the arresting officer will have a warrant. Officers are required to give an individual being arrested "adequate notice," which includes outlining the intention to arrest, the cause of the arrest, and the authority

to make the arrest (Weston and Wells 1987, p. 25). A law enforcement officer also has the right to stop and frisk a suspect "when she/he observes unusual conduct which leads the officer to reasonably conclude, in the light of... experience, that a criminal activity may be in progress, and that the person involved may be armed and presently dangerous; when, in the course of investigating this behavior, she/he is identified as a police officer and makes reasonable inquiries; and when nothing in the initial states of the encounter serves to dispel reasonable fear for the officer's or others' safety" (Kolasa and Meyer 1987).

Although police are trained to use no more force than necessary, encounters with alleged law violators can result in the most extreme use of force—deadly force. The use of deadly force is governed by the criminal laws of individual states, which authorize officers to resort to this level of coercion in the imminent defense of their own lives or the lives of others (Skolnick and Fyfe 1993). Because language permitting the use of deadly force can be vague in criminal law, well-run police departments generally supplement these laws with administrative guidelines and policies.

Brown v. Mississippi was a landmark case concerning the actions of police in securing a confession from an accused offender (Skolnick and Fyfe 1993). In *Brown v. Mississippi* (1936), the issue was whether convictions that rest solely upon confessions shown to have been extorted by officers of the state by brutality and violence are consistent with due process of law required by the Fourth Amendment of the Constitution of the United States. The Federal Court of Appeals reversed the Mississippi Court conviction (Perkins and Boyce 1984). Many court cases have since considered what actions are appropriate or acceptable in police interrogations. In many cases, misrepresentation of information by the police in an interrogation has been considered acceptable.

Manning (1989) identifies several issues associated with police decision-making: uncertainty, mutual dependence, autonomy, and authority. Police are confronted with many issues that are not openly expressed. Furthermore, they are constantly relying on other officers to help them fend off physical, emotional, and career threats. Police officers treasure their ability to exercise judgment independently, and they consider this privilege essential.

Although scholars have given little attention to how police officers exercise their discretion, several note that departments give substantial leeway when they determine whether certain police actions are required or unnecessary. This would imply that the issue of police discretion and accountability needs increased attention.

Accountability

Reiss (1992) identifies a number of institutions intended to influence police practice and to limit the authority of the department hierarchy. These external bodies to which police are accountable include mayors, city managers, civil service boards, civilian review boards, police unions, prosecutors, the judiciary, labor relations boards, and various other federal and state regulatory agencies. Lobbyists or other community groups can also affect how police are held accountable for their actions on the job.

Because of concern about the rights of individuals arrested by police, the Supreme Court ruled in *Miranda v. Arizona* (1966) that procedural safeguards should be in effect to inform an accused person of his/her right of silence. The Miranda warning states that the individual has the right to remain silent and that any statement made can be used as evidence against him or her in a court of law. The accused is also informed of his or her right to an attorney, either retained by the accused or appointed by the court (Reid 1994, p. 473). This Supreme Court decision has proven to be extremely controversial and has resulted in extensive litigation.

Reid (1994) identified several methods to control police discretion. The exclusionary rule says that if police violate the rights of individuals accused of committing a crime by illegally seizing evidence, the evidence so obtained cannot be used at trial. This rule is not found in the systems of criminal justice of Nigeria, Sierra Leone, China, or Japan; particularly in Japan, society's rights take precedence over individual rights. Police officer misconduct can also be controlled by holding individuals accountable for their actions (traditionally, the police department has been held accountable for a police officer's action). Civil suits brought by individuals who argue that they have been harmed by a police officer's action are becoming more common, and some have succeeded. In contrast, bringing a court action against a police officer in African and Asian countries is rare, and the few actions attempted have failed.

PROSECUTORIAL AND JUDICIAL PROCESS

Rights of the Accused

According to Nagel (1972), the specific rights of someone who has been accused of committing a crime can be divided into four segments: rights prior to the first court appearance, rights from first court appearance to trial, rights during the trial state, and posttrial rights of the defendant. Prior to the first court appearance, a suspect can be arrested or searched only if there is a probable cause, and the suspect is protected against

self-incrimination or giving involuntary confessions. Once the accused has made his or her first court appearance, he or she is assured release pending a speedy trial, the right to hire or be provided with counsel, and a formal notice of the charges against him or her. Once at trial, the defendant is guaranteed an impartial jury and the right to cross-examine and subpoena witnesses. After the trial, the defendant can neither be subjected to excessive fines or punishment nor be denied the right to appeal, and he or she cannot be placed in double jeopardy—that is, tried again for the same allegations.

Criminal Procedures

The standard processing of an accused offender through the system includes the officer making an investigation prior to an arrest, which includes (among other things) interviewing witnesses and checking for evidence. The arrest is followed by the “booking” of the accused, which includes logging the name of the suspect and the location, time, and purpose of the arrest. The accused may then have an initial appearance and preliminary hearing where all of the evidence against him or her is considered. The suspect will then be presented for “information” or before a grand jury to determine whether there is enough evidence to warrant a hearing. At the arraignment, the defendant is formally presented with the charges, and he/she may enter a plea. It is at this time that plea bargaining might be arranged. If there is no agreement, the defendant then appears at trial. If found guilty, he or she will be sentenced (Reid 1994).

Being arrested and charged with a crime does not make it certain that one will appear in court. Because of the large number of initiated cases, certain informal measures have been taken, which are not included in the formal court process. One of these efforts to reduce court overload is plea bargaining, where a prosecutor accepts a plea of guilty from the accused in exchange for a lesser sentence. By providing this “deal” to the accused, both the prosecution and the defense are saved the time and expense of a formal court proceeding (Kolasa and Meyer 1987). In minor criminal cases, plea bargaining is the preferred outcome. In more serious cases, negotiations take much longer: the more serious the case, the less concessions will be offered by the prosecution, and the weaker the case, the more concessions will be offered (Sheley 1995).

Another common practice to reduce the burden of the courts is to “funnel the offender away from the criminal justice system” (Reid 1994 p. 649) by placing the offender in a diversion program. This may include an acceptable program for rehabilitation such as supervised probation

(Kolasa and Meyer 1987). Much of the decision to pursue a specific case at this point depends on the prosecutor's determination of the likelihood of conviction at trial. In more recent years, the use of arbitration, mediation, and other forms of alternative dispute resolution has been accepted as standard practice for first offenders or minor offenses (Fox and Stinchcomb 1994).

Pretrial Incarceration

Most people assume that all people in jails are convicted, but this is not necessarily true. Fox and Stinchcomb (1994) argue that only 49% of the total jail population have actually been convicted of wrongdoing. The other 51% are awaiting trials. While the primary justification for detaining the accused is to ensure his/her presence at trial (Weston and Wells 1987), about 63% of all felony defendants were released (on bond or otherwise) before court disposition, and some did commit crimes while on pretrial release. Among those defendants already on pretrial release when arrested, 56% were released once again (BJS 1994a). About 1 in 12 defendants released by state courts absconded before their trials and were still missing a year later (BJS 1994a).

Efforts have been made to reduce the number of people being detained before trial by using diversion programs (Fox and Stinchcomb 1994). In these, persons awaiting trial are kept apart from convicted and sentenced offenders; this helps the detainees to reconstruct events for use at their trial (Weston and Wells 1987). The rights of pretrial detainees are controversial because the individual being detained has yet to be convicted and is presumed innocent until proven guilty. Most of the court decisions dealing with rights of detainees have ruled that any restrictions on individual rights are for jail security and not intended to punish the detainee (Weston and Wells 1987, p. 53).

Bail may be granted to an accused offender for release prior to trial, except in the case of crimes punishable by death where bail is at the discretion of the court. The institution of bail derives from the basic presumption of innocence upon which our system of criminal justice is founded. While release on bail is a right at the federal level, it is not delineated as a right at the state level (Weston and Wells 1987).

JUDICIAL SYSTEM

Administration

Court proceedings for federal cases start at federal district courts. In larger states, there may be more than one federal district court in the state. Appeals from federal

district court decisions go to the U.S. Court of Appeals, and appeals from decisions of the U.S. Court of Appeals go to the U.S. Supreme Court (Kolasa and Meyer 1987). The United States is divided into 11 federal judicial circuits. Each has a Court of Appeals known as the U.S. Court of Appeals for that circuit. The U.S. Courts of Appeals are intermediate appellate courts created by Congress in 1891; they were known until 1948 as U.S. Circuit Courts of Appeals (Black 1979).

At the state level, cases begin at the trial court of limited jurisdiction. This court handles less serious criminal cases and misdemeanors, such as traffic or prostitution law violations. The next level of state courts is the trial court of general jurisdiction where felony cases or major civil disputes (e.g., domestic violence and wills) are adjudicated. The next level of courts found in about half the states is the intermediate appellate court. The highest state court is the appellate court of last resort or the state supreme court. Cases appealed from the state appellate courts of last resort or the state Supreme Court may be heard by the U.S. Supreme Court.

Special Courts

The U.S. system of justice includes several specialized federal courts. Below the Supreme Court are the U.S. Courts of Federal Claims, U.S. Court of International Trade, Special Court Regional Rail Reorganization Act of 1973, a Judicial Panel on Multidistrict Litigation, the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Veterans Appeals (Brownson 1994).

Judges

The function of the judiciary in the judicial process is responsible supervision. They oversee the work of the police, the prosecution, the opposing counsel, and the jurors, and they preserve due process of law throughout the procedure (Weston and Wells 1987). At the federal level, judges are chosen by the president of the United States with the advice and consent of the Senate. At the state level, many systems choose judges through bipartisan nominations and special bar association advisory committees, whereas in some states they are elected. In 1989, the number of federal judges was 1035 (BJS 1991). At the state level, the number of judges varies, depending on the number of courts and the population of the state.

PENALTIES AND SENTENCING

Sentencing Process

For the purpose of sentencing, all crimes are classified into categories reflecting substantial differences in the gravity

of the offense. Sentencing is a two-step decision process. The first decision is whether to release a convicted offender to a community correctional program, and the second is determining the length of probation or imprisonment to be imposed (Weston and Wells 1987). The judge, in most situations, has wide discretionary power over the severity of sentence to be imposed (Kolasa and Meyer 1987). In some jurisdictions, the judge will delay sentencing until he/she receives advice from a behavioral clinic or similar group of professional evaluators of behavior, if there is some doubt about the kind of sentence that will best achieve the goals of the criminal justice system.

Terms of sentence vary from state to state and may be determinate or indeterminate. Determinate sentences send a convicted offender to prisons for a specific number of years. In indeterminate sentences, the offender receives minimum and maximum terms of imprisonment. At a later date, the case is reviewed to determine the convict's parole worthiness and final release date. Mandatory sentences call for the sentencing judge to impose certain terms of imprisonment, as they have been outlined by the legislature (Weston and Wells 1987).

Types of Penalties

Penalties for commission of a criminal offense vary dramatically depending on the type of crime committed. Sentencing alternatives include fines, probation with or without supervision—which reserves decision on a sentence until a time when (if) the offender is arrested and prosecuted again—commitment to a local jail for a short term, commitment to a state prison for a more lengthy term, and in some states, the death penalty (Weston and Wells 1987).

This issue of capital punishment remains a constant controversy in the U.S. criminal justice systems. It is used in some states, but only for the most serious crimes. BJS (1994c) states that 10 states executed 38 prisoners in 1993, and a total of 2716 prisoners are on death row in various states. Only 6% in federal custody are on death row (1994c). In 1991, 10,354 inmates in federal and state facilities were sentenced to life in prison (BJS 1991, p. 625).

PRISON

Description

According to the 1990 BJS Census of State and Federal Correctional Facilities (1992b), of the 1207 states and 80 federal correctional facilities, 234 were maximum security, 403 were medium security, and 650 were minimum security. Maximum and medium security facilities are

the most secure prison structures, typically surrounded by high walls or fences, secured with razor wire, and watched by armed correctional officers in observation towers (Reid 1994, p. 610). Minimum security facilities are surrounded by fences with barbed wire, but may or may not have armed correctional officers present. The total number of prisoners under the jurisdiction of the federal or state correctional authorities at the end of 1993 reached a record high of 948,881, with the states holding 859,295, and the federal jurisdiction holding 89,586 (BJS 1994a).

The most recent information out of the U.S. Department of Justice identifies males as 92% of the federal prisons population, with females comprising 8% of the population (BJS 1994a). For federal prison inmates, the median age is 36; 38% are white, 30% black, 28% Hispanic, and 4% other races; 38% are married, 30% are divorced or separated, and 33% have never been married; 77% have at least a high school education; and 18% are foreign nationals.

At the state level, males comprise 95% and females 5% of the prison population. Median age for state inmates is 30; 35% are white, 46% are black, 17% are Hispanic, and 2% are other races; 18% are married, 27% are widowed, divorced, or separated, and 55% have never been married; and only 4% are citizens of other countries.

The average daily population of jail inmates in 1990 was 408,075. This breaks down to 368,091 adult males, 37,844 adult females, and 2,140 juveniles (BJS 1991). The ethnic breakdown of jail inmates in 1990 included 46% white males, 5% white females, 43% black males, 4% black females, and 2% male and 1% females others (Native Americans, Aleutians, Asians, and Pacific Islanders).

When considering the types of crimes committed, which resulted in the individual's incarceration, BJS (1994a) reports that 17% committed violent offenses, 10% property offenses, 58% drug offenses, 12% public order offenses, and 2% other offenses. BJS studies show that 47% of state inmates are incarcerated for violent offenses, 25% for property offenses, 21% for drug offenses, 7% for public order offenses, and 0.4% for other offenses. The 2010 BJS record shows that 743 adults per 100,000 population in the United States were in prison in 2009, and a total of 2,266,800 adults were incarcerated in the U.S. federal and state prisons and county jails in 2010. Furthermore, a total of 4,933,667 adults were on probation or parole. On the whole, 7,225,800 adults in the United States were under correctional supervision (probation, parole, jail, or prison) in 2009 (BJS 2011).

Administration

Each correctional institution within a state is headed by an administrator, whose title is typically a chief warden or a superintendent. Their responsibilities are coordination of administrative divisions; establishment of institutional policies and procedures; personnel decision-making; preparation of the facility's budget; and development of external relationships with civic groups, professional associations, and the like (Fox and Stinchcomb 1994).

Expenditures for a correctional facility depend on factors such as where the prison is located, the number of inmates, the number of personnel needed to staff the facility, the level of security, the number of programs, and the number of inmates who received medical treatments. Because the state level of government is responsible for the majority of prison operations in the United States, the states bear the primary financial responsibility. Fox and Stinchcomb (1994) state that about 28.6 cents of every "justice dollar is spent on corrections," and break this total down: the federal government spends 1.5 cents or 5%, the state government spends 17.7 cents or 62%, and local governments spend 9.4 cents or 33% of overall corrections funding.

Using BJS, Fox and Stinchcomb (1994) reviewed construction costs for new facilities ranging from over \$70,000 per bed for maximum security state prisons to just under \$30,000 per bed for minimum security facilities, to approximately \$26,000 per bed for juvenile institutions. Operating costs vary from almost \$6,000 to more than \$23,000 per inmate. Fox and Stinchcomb observed in their review that the cost of keeping someone in prison has increased to \$14,000, but other studies placed the range much higher, at \$30,000–\$60,000.

Correction-officer training has come a long way, and it had a very dubious beginning. Lombardo (1989) suggests that early prison training programs were run by the inmates. Because experienced officers were reluctant to instruct new correctional officers, new officers had to turn to the inmates they were supervising for advice. At present, the American Correctional Association's training standard for officers call for a minimum of 40 hours of orientation prior to job assignment, followed by 120 hours within the first year of employment (along with an additional 40 hours each year thereafter).

According to the *BJS Sourcebook*, state correctional personnel in adult systems includes 160,115 white men and 58,814 white women; 36,117 black men and 19,526 black women; and 10,953 Hispanic men and 3,720 Hispanic women; all other races comprise 7,302 men and 3,131 women (BJS 1991). At the federal level, correctional

personnel includes 10,128 white men and 3,136 white women; 2,270 black men and 1,125 black women; and 1,030 Hispanic men and 247 Hispanic women; with all other races including 272 men and 76 women.

Conditions

The "crisis in corrections" has been synonymous with conditions of overcrowding. Gottfredson and McConville (1987) suggest that in addition to overcrowding, many prisons and jails are old and rotting; they are often inadequately staffed, lacking in medical care, and cannot adequately protect inmates from physical abuse. Although not as bad as Brazilian and Sierra Leonean prisons (see Chapters 8 and 20), conditions in prisons in the United States have been controversial. As indicated above, overcrowding has remained a constant problem. In 1993, according to the BJS report, 13 states reported they were operating at 99% of their highest capacity. Federal prisons were estimated to be operating at 36% above their capacity. At the state level, 22 jurisdictions reported that a total of 50,966 state prisoners were held in local jails or other facilities because of overcrowding in state facilities.

Overcrowded conditions have caused some prisons to resort to early release programs. Some argue that early release programs are related to the rehabilitative functions of the prison systems. Prisoners can "earn" reduced sentences for "good time" (Thomas 1987). However, many argue that the inmate should serve the time sentenced. This ongoing debate among criminal justice officials is commonly referred to as "truth in sentencing."

Inmates are often allowed to work within the prison system. Institutional programs for inmates include basic education, computer instruction, college education courses, vocational training, library services, and recreation. Unfortunately, the prison industry of the Chinese, Danish, and Japanese corrections (see Chapters 19 and 20) is not used currently in America.

The seven areas of inmate complaints that have been most frequently litigated by the courts in recent years are the use of force, mail and visitation rights, isolated confinement ("keep-locked"), disciplinary proceedings, religious rights, legal services, and parole issues (Palmer 1973). Three additional issues that have caused controversy are the right to treatment (see *Holt v. Sarver*, *Jones v. Wittenberg*, and *Rouse v. Cameron*), the right to medical aid, and the right to life (see *Furman v. Georgia*) (Palmer 1973, pp. 126–131).

In recent years, the Texas prison system has been regarded as an example of how bad prison conditions have become in the United States. Martin and Ekland-Olson

(1985) submitted that the Texas system has allowed “an agency with conglomerate business, agricultural, medical, and educational activities to escape accountability for its fiscal mismanagement, illegal operations, and the dehumanization of persons under its control.” In what became the largest prisoner’s rights lawsuit in the history of American jurisprudence, David Ruiz filed a prisoner petition in June 1972 oppressive, brutal, and in violation of the Eighth Amendment (prohibition against cruel and unusual punishments). An agreement was reached in 1985 by a court order, but the Texas Department of Corrections (TDC) failed to comply. Consequently, on December 31, 1985, the TDC was held in contempt of court order and threatened with fines as high as \$24 million per month if it did not comply with the 1985 settlement agreement.

While the actions of the Texas prison system are not representative of all state and federal prison systems, many express concern over the deterioration of prisons and jails in the United States. Recent years have witnessed unprecedented prison population growth and acute violence among inmates (Sheley 1995). Prison populations are soaring, while budgets are being reduced (Reid 1994). Reid argues that some difficult decisions need to be made by the public and by legislators to determine what we want our prisons to do for inmates.

DISCUSSION

The U.S. criminal justice system has been organized around the notion of protecting the rights of the accused, while preserving the welfare of the public. This can often prove to be a difficult and delicate balance. Because this system fundamentally presumes that the accused is “innocent until proven guilty,” it has been argued that the adjudication process should consider the rights of the accused before the rights of the victim(s). More and more provisions, therefore, protect the rights of criminals, yet the public is confronted with rising crime rates, drug abuse, and violence. Sometimes it can seem that this system of justice benefits criminals rather than the noncriminal public.

The system of justice in the United States can at times be a long, drawn-out, tedious process. China allows a maximum of 3 days for an appeal, and Nigeria, Ghana, and Sierra Leone require that an appeal be filed within 30 days. In the United States, however, filing an appeal can take 6 months or longer. This aspect of the criminal justice system in the United States places an unacceptable burden on the overall working of the system. Efforts to

protect individual rights, one might argue, have resulted in a system of justice that is at best inefficient and at worst ineffective.

The American system of criminal justice has also targeted by a debate over the role that wealth and positions of power can play in securing one’s defense or innocence. Sometimes the rich and famous prove to be beyond incrimination. Critics argue that large sums of money can buy enough “reasonable doubt” to result in an acquittal. If one has the funds to secure the most powerful legal minds or the best team of investigators, it may be practically impossible to convict him/her. On the other hand, if you lack sufficient funds and are accused of a crime that you did not commit, you may be found guilty despite your court-appointed defense attorney because of inadequate legal support.

Some have also said that the present criminal justice system was designed to combat “street criminals” and does not adequately address other types of crime. The public fears street crimes, and the criminal justice system has attempted to respond to this increasing concern. It has not, however, responded effectively to several new and possibly more destructive criminal enterprises of the privileged class, such as white-collar crimes, corporate crimes, computer crimes, and environmental crimes. Although some legal scholars identify such actions as criminal, “legal loopholes” presently allow individuals (when and if arrested) to escape conviction. Furthermore, when one of the privileged class is actually convicted, punishment is usually quite lenient when compared to that meted out to “street criminals.”

The American people are concerned about protecting themselves from criminals. They are disturbed by early release programs and other actions taken to address prison overcrowding problems, and they have grown skeptical of the system’s ability to protect the public. This concern, in conjunction with the prevalence of drug abuse and misuse and the availability of guns to every sort of person in the society, poses a significant problem for the entire criminal justice system and the American public.

Innovative programs have been established in an effort to address these and other concerns about the criminal justice system in the United States. The revised data collection process of the FBI provides one good example of such efforts. Better information on criminal acts, victimization, the role of drugs, and other related factors will aid the attempts at all levels of the criminal justice system to determine how to address criminal actions effectively. Focusing public attention on problems caused by crimes

of all types—both those committed on and those committed off the street—will provide a context for public reexamination of “victim’s rights” and increase popular awareness of how one can avoid being a victim in high places.

Finally, it must be admitted that defense lawyers and the U.S. criminal justice system have focused their attention on preserving the rights of the offender to the detriment of the safety and interests of the masses. Until our social control agencies make the safety and interests of the public central in their adjudication and disposal of offenders, our criminal justice system will continue to be a toothless bulldog.

NOTES

1. This chapter follows an outline for writing about criminal justice systems developed by Professor Graeme Newman of the State University of New York at Albany.

REVIEW QUESTIONS

1. What are the provisions of the following in the U.S. Constitution?
 - a. The Fourth Amendment
 - b. The Fifth Amendment
 - c. The Sixth Amendment
 - d. The Seventh Amendment
 - e. The Eighth Amendment
2. What were the provisions of the Crime Act of 1790?
3. What is meant by the English common law tradition?
4. What is “due process of law?”
5. What is the adversarial system of criminal justice?
6. What do you understand by *mala in se* offenses and *mala prohibita* offenses?
7. How did misdemeanor crimes come about?
8. Briefly explain the following:
 - a. *Mens rea*
 - b. *Actus reus*
 - c. Offense committed under duress
 - d. M’Naghten Rule
 - e. UCR and NCVS (NCS)
 - f. Miranda rule
 - g. Exclusionary rule
 - h. Double jeopardy
 - i. Determinate and indeterminate sentences
 - j. Death row
9. What is mandatory sentence?
10. Which are the two states in the United States where the Court of Appeals is the highest appellate court for criminal matters?
11. What is “double jeopardy” in the U.S. criminal justice systems?
12. In the U.S. system of criminal justice, what are the seven determining factors that a crime has been committed?
13. Differentiate between “statutory law” and “common law.”
14. In the American system of criminal justice, what four factors could exculpate an accused person from criminal liability?
15. What are the provisions of the following acts?
 - a. The Harrison Narcotics Act of 1914
 - b. The Pure Food and Drug Act of 1906
 - c. The Marijuana Tax Act of 1937
 - d. The Narcotics Control Act of 1956
 - e. The Boggs Act of 1951
16. What factors are identified in the UCR?
17. Compare and contrast the UCR and NCVS.
18. Why was Sir Robert Peel an important figure in the nineteenth-century American system of policing?
19. What was the issue in *Brown v. Mississippi* (1936)?
20. What was the U.S. Supreme Court ruling *Miranda v. Arizona* (1966)?

REFERENCES

- Austern, D. 1987. *The crime victim’s handbook*. Harrisonburg, VA: R. R. Donnelly and Sons Company.
- BJS. 1991. *Criminal victimization in the United States*. Washington, D.C.: U.S. Department of Justice.
- BJS. 1992. *A national report: Drug crime and the justice system*. Washington, D.C.: U.S. Department of Justice.
- BJS. 1994a. *Recidivism of prisoners*. Washington, D.C.: U.S. Department of Justice.
- BJS. 1994b. *Corrections report*. Washington, D.C.: U.S. Department of Justice.
- BJS. 1994c. *Criminal victimization in the United States: arrests*. Washington, D.C.: U.S. Department of Justice.
- BJS. 1994d. *Criminal victimization in the United States: corrections*. Washington, D.C.: U.S. Department of Justice.
- BJS. 2011. *Crime reports*. Washington, D.C.: U.S. Department of Justice.
- Black, H. C. 1979. *Black’s law dictionary*, 5th edition. St. Paul, MN: West Publishing Company.
- Brecher, E. M. 1972. *Licit and illicit drugs*. Boston, MA: Little, Brown, and Company.
- Brownson, A. 1994. *Judicial staff directory*. Mt. Vernon, VA: Staff Directories Ltd.

- Carter, D., A. Sapp, and D. Stephens. 1989. *The state of police education*. Washington, D.C.: Police Executive Research Forum.
- Chapin, B. 1983. *Criminal justice in colonial America, 1606–1660*. Athens, GA: University of Georgia Press.
- Cole, G. F. 1986. *The American system of criminal justice*. Monterey, CA: Brooks/Cole Publishing.
- Cullop, F. G. 1984. *The constitution of the United State: An introduction*. New York, NY: Penguin Books.
- Drug Enforcement Agency (DEA). 1985. *Drugs of abuse*. Washington, D.C.: U.S. Department of Justice.
- Edwards, T. 1995. University of Louisville Justice Administration. Phone conversation with author. April 7.
- Federal Bureau of Investigation (FBI). 1994. *Uniform crime reports for the United States-1993*. Washington, D.C.: U.S. Department of Justice.
- Federal Bureau of Investigation (FBI). 2011. *Uniform crime reports for the United States*. Washington, D.C.: U.S. Department of Justice.
- Fox, V. B., and J. B. Stinchcomb. 1994. *Introduction to corrections*. Englewood Cliffs, NJ: Prentice-Hall.
- Geller, W. A. 1992. *Deadly force: What we know, a practitioner's desk reference on police*. Washington, D.C.: Police Executive Research Forum.
- Gottfredson, S. D., and S. McConville. 1987. *American's correctional crisis: Prison populations and public policy*. Westport, CT: Greenwood Press.
- Henderson, D. 1985. *Congress, courts, and criminals: The development of federal criminal law, 1801–1829*. Westport, CT: Greenwood Press.
- Inciardi, J. A. 1984. *Criminal justice*. New York, NY: Academic Press.
- Jasanoff, S. 1989. Science on the witness stand. *Issues in Science and Technology*, 6(1), pp. 80–87.
- Jones, K., L. Shainberg, and C. Byer. 1979. *Drugs and alcohol*. New York, NY: Harper and Row.
- Kolasa, B., and B. Meyer. 1987. *The American legal system*, 2nd edition. Englewood Cliffs, NJ: Prentice-Hall.
- Langworthy, R. H., and L. Travis III. 1994. *Policing in America: A balance of forces*. New York, NY: MacMillan Publishing Company.
- Lindquist, J. H. 1988. *Misdemeanor crime: Trivial criminal pursuit*. Newbury Park, CA: Sage.
- Lombardo, L. X. 1989. *Guards imprisoned: Correctional officers at work*. Cincinnati, OH: Anderson Publishing Company.
- Manning, P. K. 1989. The occupational culture of the police. In *The encyclopedia of police science*, edited by W. G. Bailey. Dallas, TX: Garland Press.
- Martin, S. J. and S. Eklund-Olson. 1985. *Organizational compliance with court-ordered reform*. New York, NY: NYU Press.
- Michael, J., and M. Adler. 1971. *Crime, law, and social science*. Montclair, NJ: Patterson Smith.
- Nagel, S. S. 1972. The rights of the accused: Overview, effects, and causes, 13–24. In *The rights of the accused*, edited by S. Nagel. Beverly Hills, CA: Sage.
- Newcombe, T. 1993. High-tech tools for war on crime. *Governing*, August 20–21.
- National Institute of Justice (NIJ). 1995. *NIJ research plan: 1995–1996*. Washington, D.C.: U.S. Department of Justice.
- Ostrom, E., R. Parks, and G. Whitaker. 1978. *Patterns of metropolitan policing*. Cambridge, MA: Ballinger.
- Palmer, J. W. 1973. *Constitutional rights of prisoners*. Cincinnati, OH: Anderson Publishing Company.
- Perkins, R. M., and R. N. Boyce. 1984. *Criminal law and procedure*. Mineola, NY: The Foundation Press.
- Reid, S. T. 1994. *Crime and criminology*. Orlando, FL: Harcourt Bruce and Company.
- Reiss, A. 1992. Police organization in the twentieth century, 51–97. In *Modern policing*, edited by M. Tonry and N. Morris. Chicago, IL: University of Chicago Press.
- Sessions, W. E. 1992. Image technology: Enhancing investigative capability. *Vital Speeches of Day*, 59(9), pp. 624–626.
- Siegel, L. J. 1992. *Criminology: Theories, patterns, and typologies*, 4th edition. St. Paul, MN: West Publishing.
- Sheley, J. F. 1995. *Criminology: A contemporary handbook*, 2nd edition. Belmont, CA: Wadsworth Publishing Company.
- Skolnick, J. H., and J. Fyfe. 1993. *Above the law: Police and excessive use of force*. New York, NY: MacMillan.
- Stephens, G. 1990. High-tech crime: Fighting the threat to civil liberties. *Futurist*, 24(4), pp. 20–25.
- Stucky, G. 1986. *Procedures in the criminal justice system*. Columbus, OH: Charles E. Merrill.
- Thomas, C. 1987. *Corrections in America: Problems of the past and the present*. Newbury Park, CA: Sage.
- Vito, G., and R. Holmes. 1994. *Criminology: Theory, research, and policy*. Belmont, CA: Wadsworth.
- Walsh, W. F. 1932. *A history of Anglo-American law*, 2nd edition. Indianapolis, IN: Bobbs Merrill.
- Weston, P. B. and K. M. Wells. 1987. *The administration of justice*. Englewood Cliffs, NJ: Prentice-Hall.

5 The Criminal Justice System of Ireland

Paul Douglas O'Mahony

CONTENTS

Introduction.....	57
The Irish System of Government.....	59
A Brief History of the Irish Criminal Justice System.....	59
The Legal System in Ireland.....	62
The Nature of Crime in Ireland.....	62
The Police in Ireland.....	64
Administration and Organization.....	64
Resources, Technology, and Training of Personnel.....	65
Garda Síochána and Community Relations.....	66
The Courts, Judiciary, and Legal Profession.....	66
The Courts.....	66
Administration and Organization.....	66
Special Courts.....	67
The Judiciary and the Legal Profession.....	68
Prosecutorial and Judicial Process.....	69
The Legal Aspects of Offender Prosecution.....	69
Rights of the Accused.....	69
Criminal Procedure.....	70
Penalties.....	71
The Prisons.....	72
Description, Administration, and Organization.....	72
Discussion.....	74
Review Questions.....	75
References.....	75

INTRODUCTION

Ireland is a small island of about 5.2 million people with an area of 32,000 square miles situated on the Atlantic seaboard of northwestern Europe, just to the west of the island of Great Britain. Since 1922, the Ireland has been divided into two separate jurisdictions. One was originally termed the Irish Free State, but since the introduction of the 1937 Constitution of Ireland, has become known officially as Ireland (or “Eire,” in the Irish language). The other, Northern Ireland, is a constituent part of the United Kingdom of Great Britain and Northern Ireland. This division was, at the time, thought necessary in some quarters, especially the Westminster government, because a substantial majority of the people of Ulster, the northwestern province of Ireland, who were

largely Protestants, fervently desired to remain under British rule.

The partition of Ireland in 1922 has immense consequences for Irish political, social, and economic life down to the present day. The signing of the Anglo-Irish Treaty, establishing partition, provoked a short, but bloody and bitter, civil war within the Irish Free State between those who accepted and those who rejected the Treaty (Department of Foreign Affairs 1995). Even today, the two main political parties in Ireland trace their roots to the opposing sides in that war.

Since 1969, there has been a violent terrorist campaign in Northern Ireland waged by nationalist organizations, such as the IRA, seeking the reunification of Ireland. This, in turn, has led to a counter movement

of violence by loyalist terrorists, seeking to maintain the links with the British Crown and Westminster. In the last few years, there has been a concerted effort on the part of both the British and Irish governments to broker a lasting peace agreement between Dublin and London, and the unionist and nationalist communities in Northern Ireland. With considerable assistance from the U.S. administration by way of mediation, these efforts have resulted in the Good Friday agreement of 1998, a very hopeful step that has created new structures of local self-government for Northern Ireland, with intrinsic mechanisms for power-sharing across the sectarian and unionist/nationalist divide. A very significant aspect of this process has been the willingness of the Irish government and people (by way of a referendum) to amend the constitutional claim to the territory of the whole island. This formerly absolute claim has now been made subject to the democratic will of the people of Northern Ireland, but has led to their substantial diminution.

This chapter will focus on the criminal justice system of the state known as Ireland, although it is necessary to acknowledge the continuing influence of the partition of the island even on the internal workings of the criminal justice system of Ireland. Ireland, described here for judicial purposes, is an independent state with a population of almost 3.8 million, occupying 26,000 square miles, or 26 of the total 32 administrative counties of the island of Ireland (Department of Foreign Affairs 1995). Dublin, a city of about 1 million people, is the capital. It is the political, administrative, legal, and economic hub of the country and the only large city. The next largest city, Cork, has a population of about 200,000. The centrality of Dublin is indicated by the fact that it has about 60% of all reported crime occurring in the country.

Ireland is a relatively young, modern, independent state, founded in 1922, but it is also an ancient nation with a long and troubled history, which, for the past 800 years, has been inextricably interwoven with the history of the neighboring island. Contemporary Ireland can only be understood against the background of its history, namely (1) the struggle over centuries for its independence; (2) the experience, by the majority of the population for most of the time, of almost total exclusion from the processes of government; and (3) the savage trauma of the terrible famines of the 1840s. Over just a few years, famine led to the loss, through starvation, disease, and emigration, of a quarter of the then-population of over 8 million. The population has never recovered its pre-famine level. Indeed,

even after independence, Ireland was a country noted for its exportation of people. For most of the twentieth century, the Irish economy has been based mostly on agriculture and has experienced low levels of growth that have totally failed to provide sufficient employment. Several million people born in Ireland now live and work in Britain, the United States, Australia, and elsewhere. Until recently, Ireland has tended to be a conservative and inward-looking country in social and political matters, whose state of affairs has been linked to the powerful positions of the Roman Catholic Church in Irish society (Lee 1989).

In recent years, the political and social influence of the church has greatly declined. There has also been remarkable growth in the economy, leading to the provision of 250,000 new jobs in the mid-1990s, and a newfound dynamism in almost all areas of Irish life. There has been an associated rapid development of the national infrastructure, in terms of roads, buildings, telecommunications, etc. Much of this economic progress is linked to membership of the European Community since 1973, which has been very beneficial for Ireland in terms of economic support and increased opportunity for development. In the late 1990s, the pattern of migration was even reversed for the first time since the Famine. Presently, more immigrate into the country than emigrate from it.

Rapid economic development has entailed rapid and momentous social change. Indeed, Ireland's experience of industrialization and urbanization and its opening up to the powerful influence of the global media, international market forces, and the values of consumerism, individualism, and materialism have been particularly intense and concentrated. This is very devious in the criminal justice area, where the past few decades have seen a rapid growth in crime rates and the emergence of certain types of crime, and related problems such as drug abuse, which were formerly almost unknown in Ireland.

Recent years have, therefore, been an especially challenging period for Irish criminal justice institutions and traditions. Many of these have been found to be wanting and in need of modernization (O'Mahony 1996). For most of the twentieth century, perhaps reflecting the stagnant state of the economy, the high level of emigration of young people, and the highly conservative social milieu, crime was not a serious problem in Ireland. This meant that the criminal law and institutions, such as the courts and the prisons, changed very little. They tended to be backward-looking and inflexible and so ill-equipped to deal

with the very much greater and more complex demands suddenly placed on them in the last quarter of the twentieth century.

THE IRISH SYSTEM OF GOVERNMENT

Ireland is a parliamentary democracy with a written constitution, a president as head of state, and a bicameral parliament (Chubb 1970). The constitution establishes, on the model of the United States, the doctrine of separation of powers as between the executive, the legislature, and the judiciary. The national parliament, which is commonly known, both in English and in Irish discourse, by its Irish name—*Oireachtas*—consists of the president (in Irish, an *tUachtarán*) and two houses—a House of Representatives (*Dáil Éireann*) and a Senate (*Seanad Éireann*).

The president, whose term of office is seven years, is a figurehead because he/she does not have executive powers. The president is elected by the direct vote of the people and may be reelected for a second term for up to a maximum period of office of 14 years. On the nomination of the *Dáil Éireann*, the president appoints the *Taoiseach*, that is, the head of government (prime minister). On the advice of the *Taoiseach* and with the prior approval of the *Dáil Éireann*, the president appoints the members of the government. The president also appoints the judges, on the advice of the government.

The president is not merely a ceremonial head of state and titular supreme commander of the defense forces, but has certain limited, yet significant powers that, in effect, make him or her the guardian of the Irish Constitution. Before a bill can become a law, it must be signed by the president. However, the president also has the discretionary power, after consultation with the Council of State (an advisory body to the president), to refer any bill to the Supreme Court for a ruling as to whether it contains anything repugnant to the Constitution. The president also has the option to accede to a petition from a majority of the *Seanad* and no less than a third of the *Dáil* and refuse to sign a bill, because it involves matters of such national importance that it should be subject to the direct democratic will of the people by means of a referendum. Finally, the president has the absolute discretion to refuse to dissolve the *Dáil* on the advice of a *Taoiseach* despite the fact that the *Taoiseach* no longer retains the support of a majority in the *Dáil*.

Representatives, who are titled *Teachtaí Dála*, but almost invariably referred to as TDs, are directly elected by the people. The country is divided into 41 multiseat constituencies, which return three, four, or five members,

depending on their population. Elections to the *Dáil* take place at least every 5 years. Resident citizens over 18 years of age are entitled to vote, as are British citizens living in Ireland. Voting is by secret ballot. The electoral system is proportional representation by means of a single transferable vote. The voter, in effect, rank orders the candidates, placing the numeral “1” against the name of the first choice candidate, “2” against the second choice candidate, and so on.

The second chamber, the *Seanad*, has 60 members. Eleven of these are nominated directly by the *Taoiseach* (the prime minister) of an incoming government; three are elected by the graduates of the National University of Ireland, and three by the remaining 43 members are elected from five panels of persons with specialized knowledge and experience representing various social, cultural, and economic interests.

The sole power of making laws for the state is vested in the *Oireachtas*. Government policy and administration may be critically examined in both the *Dáil* and the *Seanad*, but according to the Constitution, the government is responsible and accountable to the *Dáil* alone (Doolan 1991). The *Dáil* also has superior powers in respect of lawmaking, and indeed the amendment or repeal of a past legislation. An ordinary bill passed by the *Dáil* is sent on to the *Seanad*, which has 90 days to consider it (the role of the *Seanad* in money bills is more restricted). The *Seanad* may suggest amendments or even reject a bill, but if, after a period of 180 days, the *Dáil* wishes to proceed with the bill in its original form, it may resolve to do so and declare the bill to have passed both houses of the *Oireachtas*. In this event, if the majority of the *Seanad* and a third of the *Dáil* agree that a matter of national importance is at issue, they may petition the president not to sign the bill and to refer the matter to the people by way of a referendum. The *Seanad* has, in fact, never exercised this power. The Constitution is the basic law of the country. It may only be amended by means of a referendum, that is, by a majority vote in favor of amendment by the people of Ireland. Bills to amend the Constitution can only be initiated in the *Dáil*.

A BRIEF HISTORY OF THE IRISH CRIMINAL JUSTICE SYSTEM

The history of the Irish criminal justice system is, like Irish political history, intimately linked with that of Britain. The current Irish system is the direct successor to the English legal system, which from 1169, the date of the Anglo-Norman invasion led by “Strongbow,”

the Earl of Pembroke, began to be imposed on the then-prevailing native system of law known as Brehon law. The Brehon system was based on custom and is named after the traveling justices of the Celtic Christian period, who were called Brehons (Byrne and McCutcheon 1996). The Brehons are thought to have undertaken a similar social role to the pre-Christian Celtic druids. Brehon law was a fairly extensive, well-developed, and sophisticated body of law, which as far back as the seventh and eighth centuries, was carefully documented in the Irish language. There has been a recent publication, in six annotated volumes (Binchy 1978), of all the extant Brehon laws.

Within the island, there was a long period of coexistence, but not commingling, of English and Brehon law. This period began at the King's Council of 1171 at Waterford, when the feudal Anglo-Norman King, Henry II, asserted his overlordship over the territory of Ireland and proclaimed that "the laws of England were by all freely received and confirmed." However, it was more than 400 years before this over-optimistic claim became a reality. Brehon law persisted in many areas and was active and influential, particularly in the north and west, until the early seventeenth century, when it was finally supplanted by English law throughout the land. The extension of the writ of English law and its ultimate dominance mirror the development of the English colony in Ireland. The original wave of Anglo-Norman invaders never established their dominion over the whole island and in fact, over the course of a few generations, began to be assimilated into the native Irish culture. Some of them adopted the Irish language and local customs, including in some cases, Brehon law. In this way and through intermarriage with the native Irish noble families, they became, in a famous phrase, "more Irish than the Irish themselves."

Poyning's Law, which dates from 1494, was clearly designed to address the growing tendency for the colonists and native Irish alike to assert more and more autonomy from the English Crown by means of legislation at local Irish parliaments. Poyning's Law curtailed the powers of Irish parliaments, in effect establishing the precedence of English legislation over Irish legislation and affirming the supremacy of English law in Ireland (Byrne and McCutcheon 1996). Even then, English law only held sway within the Pale, the eastern part of the country, and scattered areas of the south and the Midlands, which were all under close control of the English. Elsewhere, Brehon law was still predominant. This situation prevailed until the Tudor monarchs finally extended and consolidated English hegemony over the whole island.

Henry VIII was the first English monarch to declare himself King of Ireland in 1541, but it was not until the 1800 Act of Union that Ireland was fully absorbed into the Westminster political system under the British Crown and became an integral part of the United Kingdom of Great Britain and Ireland. Indeed, from 1783 to 1800, Ireland enjoyed an unprecedented period of autonomy, prosperity, and rapid development under what is known as Grattan's Parliament. For this period, Poyning's Law was repealed, in effect meaning that Westminster renounced its claim to legislate for Ireland. Ireland's own House of Commons and House of Lords sat in Dublin.

However, this form of parliamentary independence, though beneficial in its effects for the country as a whole, was extremely limited in respect of its representation of the population at large. It was a parliament of and for the Protestant minority, and in particular, the members of the established Church of Ireland. It essentially excluded the interests of the large Roman Catholic majority and the smaller, but substantial group of dissenting Protestants concentrated in Ulster, the northeastern province. Indeed, legislation known as the penal laws, which discriminated against Roman Catholics and limited their civil and religious rights, was in force throughout this period and was only slowly modified and abolished throughout the nineteenth century (Cullen 1976).

The rebellion of the United Irishmen in 1798, which resulted in the loss of more than 30,000 lives, along with, for the British government, the fearsome examples of the American and French revolutions, led to a change of attitude on the part of Westminster toward a possibly too successful Irish Parliament. With the Act of Union, the Dublin Parliament was dissolved and Westminster became the sole legislative authority for Ireland.

Until 1922, then, Ireland was an integral part of the United Kingdom, sending its own representatives to Westminster. The Irish criminal justice system was therefore, in this period, no more than a regional branch of the general British system. The court and legal systems were largely similar to those of the English, with some local modifications that reflected the political and social realities on the ground. For example, it was considered useful to have a corps of salaried professional judges called "resident magistrates" in the lower courts in Ireland rather than to rely on the English system of nonprofessional local magistrates. Policing, however, was more distinctive. There was a separate police authority for Dublin, but otherwise, a national armed police force called the Royal Irish Constabulary. As Rob Reiner (1992), a leading British authority on policing, tells us, the concept of the unarmed, courteous English policeman was born out

of the need to persuade and appease British voters, who were not too sure that they required to be policed at all, while “a more militaristic and coercive model was from the outset exported to the colonial situation, including John Bull’s other island (i.e., Ireland).” Indeed, as Brogden (1987) has pointed out, the Royal Irish Constabulary was the explicit model for most of the colonial police forces of the British Empire.

By and large, exactly the same laws applied in Ireland and England, and consequently, Ireland did benefit to a degree from the important improvements to the general legal framework for the protection of the rights of the individual introduced in this period in the United Kingdom. Most notable of these advances, perhaps, was the adoption by the Westminster government of a new, more enlightened approach to prisons. The 1842 prison rules, promulgated for the new penitentiary at Pentonville in London, for the first time, placed explicit legal constraints on prison authorities as well as on prisoners. These rules, which substantially advanced the human rights of prisoners (Ignatief 1978), were also applied in Ireland.

The English philanthropist, John Howard, was the outstanding penal reformer of the era who was responsible for the radical improvements in the conditions of imprisonment. Howard was mainly responsible for raising public awareness of the appallingly harsh, chaotic, and disease-ridden conditions in the prisons of his time. Howard played a very significant role in Ireland, visiting and publishing reports on almost every prison establishment in Ireland. Doorley (1987) reports that Howard described even the newly constructed Newgate Prison in Dublin in 1781 as “the reverse of every idea that I can form of a perfect and well-regulated prison.” It was also Howard who publicized the fact that, in 1783, 15 prisoners in Newgate and 16 in Kilmainham (both prisons in the Dublin area) were being held indefinitely by the chief warder for nonpayment of various fees, sometimes including a special release fee, even though they had been acquitted at trial of all the crimes with which they had been charged (Anonymous 1856). The growing awareness of these kinds of injustices provided a powerful impetus for reform.

The first Director of Irish Convict Prisons, Sir Walter Crofton, was appointed in the 1850s and proved to be a progressive and innovative thinker. He introduced the intermediate prison system, which has become Ireland’s chief claim to fame in the annals of penal methods. Many features of what became known as the “Irish system” were adopted by reformatories in the United States in the late nineteenth century, and the Irish system and the

subsequent U.S. modifications to it “had great impact on European correctional practices.”

The system was essentially a matter of progressive stages in imprisonment, involving decreasing levels of control (O’Mahony 1994). The convict was held in the penitentiary for the first 9 months of his sentence in the kind of solitary confinement prescribed by the “silent and separate system.” The second stage saw the convict, while still housed in the penitentiary, involved by day in hard labor, usually on major public building and engineering works outside prison. This stage was of variable length and permitted a degree of association between prisoners. Finally, in the months running up to release, the convict was held at an “intermediate prison” at a rural location. Here, the prisoners worked on land reclamation and slept in specially erected iron huts. There were no walls and the guards were unarmed. Prisoners were, it was claimed, given sufficient freedom and responsibility to test their fitness to be released. A contemporary description (Anonymous 1858) tells us that “as the convict’s moral progress advances, his state of duress becomes less vile; and at last he is treated as a man and trusted as such.”

In general, following the course of development in Britain, the criminal justice system in Ireland in the nineteenth century and the early twentieth century evolved slowly without dramatic or sudden change. On the other hand, more and more specific legislation was passed by Westminster, defining and setting out penalties for criminal behavior, and thus limiting the scope of the common law. However, it is important to remember that in Ireland, there was considerable additional tension on top of the pressure on the criminal justice system, because the system was very frequently used to suppress nationalist activists, landless peasant agitators, and the victims of famine and extreme poverty. The courts, the police, and the penal system continued to be perceived by large sectors of the population as the coercive arm of an alien colonial power.

The present criminal justice system, described below, has evolved over the years since independence. By and large, there has been a remarkable continuity with the British era in Ireland, and although distinctive structures and legal frameworks have emerged, there is still a strong similarity to the British system. Many of the innovations introduced in Ireland—for example, the penalty of a community service order—have been modeled on similar initiatives previously undertaken in Britain. One interesting historical note is that during the War of Independence, between 1920 and 1922, the revolutionary government set up its own courts, called the Dáil courts. This led to

a brief, partial revival of Brehon law, because in a highly symbolic gesture, clearly signaling an ardent desire to reject everything associated with the colonial past and the imperial masters, English law textbooks were not to be cited in the Dáil courts. Brehon and European civil law decisions, on the other hand, could be used as persuasive precedents. However, this experimental attempt to resurrect the ancient native Irish system of law was short-lived. After the Treaty of 1922, establishing the Irish Free State, the Dáil courts were abolished and the court system reverted to its previous form. Brehon precepts and rules have no place in the contemporary Irish legal system. Indeed, it is one of the ironies of the modern, independent state of Ireland that some Westminster legislation of the late century is still law, although the same legislation has long ago been repealed or revised in England and Wales.

THE LEGAL SYSTEM IN IRELAND

The Irish legal system is firmly rooted in the English common law tradition, and many statutes passed by the British Parliament before 1921 continue to have the force of law, because they have not been repealed by the Irish Parliament. Nonetheless, the current Irish legal system has been termed by Rottman and Tormey (1985) as “a hybrid, combining basic features of both the American and the British models as well as some distinctive native innovations.”

The common law as the source of law has been described by Byrne and McCutcheon (1996) as “consisting of the hundreds of thousands of decisions which have been delivered by the courts over the centuries and which, by virtue of the demands of the doctrine of precedent, enjoy binding force of law...To this day significant areas of Irish law are governed by common law rules unaffected by rules derived from other sources.” The principal, further sources of Irish law are legislation and the constitution of 1937, and these take precedence over common law. Indeed, the provisions of the Constitution supersede both the common law and legislative rules. It is with respect to the central role of the Constitution that the Irish system can be described as having a strong affinity to the American model. Since the function of interpreting the provisions of the Constitution, which is the basic law of the country, is entrusted by the Constitution itself to the courts, the judiciary has come to play a major role in defining the actual operation of the criminal justice system (Doolan 1991).

There is a growing body of Irish criminal law legislation and an accumulation of constitutional law rulings

by the Supreme Court that have given a distinctive shape both to the criminal law and the courts, police, and penal procedures. The Irish legal system, then, can be seen to be growing ever more distinct from the British system, despite the shared legacy of common law.

There is one major source of Irish law that, in its quite circumscribed area of competence, takes precedence over the common law—that is, Irish legislation and even the Irish Constitution. This is European community law. The Court of Justice of European Communities, sitting in Luxembourg, presides over this legal system and takes precedence over national law, both as a matter of Community law and national law. On Ireland's accession to the membership of the European Community in 1973, an amendment to the Irish Constitution acknowledged this precedence. The European Court of Justice (ECJ) is mainly active in the economic and social areas—for example, in the establishment of a free market within the European Union (EU) and of sexual equality in matters of pay and social welfare. The European Court of Human Rights (ECHR), sitting in Strasbourg under the aegis of the Council of Europe, has heard a number of significant Irish cases and has, arguably, had a profound, liberalizing effect on Irish social life and attitudes. For example, rulings of the ECHR have led to decriminalization of homosexuality and the provision of free legal aid in civil and matrimonial matters.

Since the criminal law creates both the crime and the criminal, we are now going to look at the nature and incidence of crime in Ireland.

THE NATURE OF CRIME IN IRELAND

There is little by way of a criminological tradition in Ireland, as is clear from the lack of a department of criminology at any of the Irish universities and of either public sector or independent institutes for criminological research. Although scattered scholars and researchers from a variety of disciplines have begun to build a body of useful texts and research findings over recent decades, there remain numerous gaps in or knowledge and understanding of crime in Ireland.

The most reliable source of information on the nature and extent of crime is the Annual Crime Report of the Garda Síochána. This report gives a statistical accounting of indictable, more serious crimes, broken down into the following categories: offenses against the person, such as murder, rape, and assault; offenses against property with violence, such as arson, robbery, and burglary; offenses against property without violence, such as petty larceny, embezzlement, and forgery; and a fourth catch-all

category, covering miscellaneous offenses, such as indecent exposure, misuse of drugs, and poaching. The Crime Report chronicles, in less detail, non-indictable, summary offenses, which normally number about 500,000 in a year. These offenses are police-defined, in the sense that they are only recorded if a culprit is caught and proceeded against. The majority of summary are traffic acts offenses, such as speeding, drunken driving, and driving an automobile without insurance. However, the category also covers a large variety of criminal offenses, such as minor assaults, taking a car for the purpose of joy-riding, and public order offenses.

In 1947, when the Annual Garda Report on Crime was first published, crime was at a very low level. In that year, there were a total of 15,000 indictable crimes recorded (429 crimes per 100,000 population). By 1970, this figure doubled to a total of 30,000 indictable crimes and the following decades have seen an even more rapid increase in crime. The figures for 1983 were more than three times greater than those for 1970. Indeed, the increase in indictable crimes in the one year from 1980 to 1981 was greater than the total figure of 15,000 for 1947. In 1995, indictable crimes reached an historic peak of 102,000 (2,684 per 100,000 population), but declined in both 1996 and 1997.

However, even the peak figures for Ireland suggest that it is, comparatively speaking, a low-crime country. The Irish crime rate is about half of that for the United States (5060 per 100,000) (FBI 1992) and a third of that for both England and Wales (9620 per 100,000) (Home Office 1995) and Denmark, a similarly sized Northern European country (9960 per 100,000) (Danish Statistical Abstract 1995). However, there are inevitably definitional and equivalence problems with such comparisons.

Indictable crimes in Ireland are, furthermore, overwhelmingly dominated by property crimes. The largest single category is burglary, which normally accounts for about 30% of all crimes. Larceny accounts for a further 55% of all indictable crimes, with larceny from unattended vehicles the single largest category in this group (17,000 in 1996). Robbery is also a relatively common crime, accounting for about 3% of the total, but armed robbery and armed aggravated burglary are relatively rare, numbering about 550 in 1996.

The most serious crimes are offenses against the person, and these are also relatively rare. In 1996, there were 1500 such crimes, but this figure included almost 500 less serious assaults. In 1996, there were 46 homicides, which is a rate of about 12 per million. This represents a recent increase from a fairly constant average of about 9 per million over the previous 20 years. Thus, the Irish

homicide rate is currently at about the same level as that in England and Wales (Home Office 1995) and can be regarded as very low by international norms. By comparison, the Italian rate is close to 30 per million (Dooley 1995) and the U.S. rate is about 98 per million (FBI 1992).

One area that has seen dramatic increases in the level of reported crime is that of rape and other serious sex assaults (Department of Justice 1997). In the 1980s, there were an average of about 60 reports of rape per annum and an average of about 160 other serious sex assaults. In 1996, the figures were 180 for rape and 620 for other serious sex assaults (47 and 166 per million, respectively). This marked increase is thought to be mainly due to changing attitudes and a greater willingness to report such crime. However, according to evidence from rape crisis centers, even now, as few as 20–30% of rape victims report the crime to the police. The current Irish figures for reported sex crime are, nonetheless, still low by international comparison. For example, in the United States, there are annually more than 400 reported rapes per million of population (FBI 1992), and in England and Wales, more than 100 per million (Home Office 1995).

A very significant development in Irish criminal justice since 2004 is the exposure of a hitherto unacknowledged level of child sexual abuse by people in positions of trust, such as parents, clergy, sports coaches, and care workers. Revelations in this area, often relating to offenses dating back several decades, have led to many trials, convictions, and long prison sentences. Public, institutional, and criminal justice attitudes have been profoundly influenced by these revelations.

Current Irish crime rates are not high by international comparison; however, the Irish public's perception of the crime problem does not, by any means, reflect this relatively favorable position. In 1983, American criminologist Freda Adler included Ireland in her study of 10 nations around the world with particularly low crime rates. She called this study *Nations Not Obsessed with Crime* (Adler 1983). This title now appears ironic since, in recent years, the Irish media and general public have become greatly preoccupied with what they believe to be a severely deteriorating crime situation. The political response to crime, driven by public perceptions of crime, has arguably been overheated and disproportionate. For instance, the 1997 general election campaign made crime the number one issue, and the victorious political parties in that election are thought to have gained a considerable advantage at the polls by promising to introduce a "zero tolerance" policy on crime and to almost double the number of available prison places. Many of the recent reforms

and much new legislation in the criminal justice area has been inspired by a hard-line, “get tough” ideology.

The fear of crime is somewhat exaggerated in Ireland and has itself become a social problem (McCullagh 1996). There are nonetheless, a number of reasonable grounds for the intensified public concern about crime. Understandably, Irish attitudes and expectations are shaped mainly by consideration of internal social change rather than by statistical comparison with other countries. In this regard, the past 20 or 30 years have seen a very dramatic decline in the average Irish person’s sense of personal security and interpersonal trust, related to the greatly increased crime rate.

Another factor is that there is controversy about the reliability of official statistics. Indeed, there have been studies (McCullagh 1996) indicating that a large amount of crime goes unreported and a sizeable amount goes reported, but unrecorded. However, much of the intense public concern is driven less by statistical data than by the conviction that the quality of crime has worsened and, in particular, that crime is now more vicious and more frequently accompanied by excessive, gratuitous violence.

The recent exposure of previously hidden crime, such as child sex abuse, rape, and white-collar crime, at all levels of society has certainly had a deleterious effect and fueled public disquiet. However, another major influence has been the role of drug abuse in crime. Heroin and other hard drug use was almost unknown in Ireland before 1979. However, there are now about 10,000 heroin addicts in the socially deprived areas of Dublin, and a recent study (Keogh 1997) indicated that heroin addicts are responsible for about two-thirds of all indictable crime in Dublin.

The advent of serious levels of drug abuse has affected the nature of crime in various ways. Individual addicts, who finance their habit through crime, tend to be reckless, desperate, and indifferent to victims. This has translated into a growth in violence of crime and in the breaking of previously well-established taboos against victimizing the vulnerable. Old people and women have been targeted to an unprecedented degree, including cases of torture and the murder of old people in isolated rural areas. Another new phenomenon is robbery using a syringe as a weapon. This involves the direct threat of infection with AIDS or hepatitis, which are rife among the drug-using population. In 1996, there were 1,100 such robberies in Dublin (and these were, incidentally, not categorized as offenses against the person).

The involvement of organized criminal gangs in the importation and distribution of drugs has also had a major

negative effect. These gangs have made huge illegal profits and introduced a climate of violence and intimidation that is new to the Irish crime scene. In June 1996, one such gang organized the murder of a well-known investigative journalist, Veronica Guerin, who was working to expose their operations. There was a huge public outcry at this killing, and it led directly to a period of more resolute policing and intense legislative activity. By 1998, most of those involved in the killing had been identified and arrested. However, in the year before Guerin’s murder, there were 12 gangland assassinations of criminally involved victims. None of these cases has been solved.

Finally, although recent changes in the Irish crime scene do justify public concern, it can be argued that the small size of the Irish community and its still considerable level of interconnectedness play a powerful role in amplifying the climate of fear about crime. Saturation coverage in the media of gruesome murder cases or ghastly sex crimes resonates throughout Irish society and often provokes an enormous amount of interest and intense emotional reaction in the general public. The fear mongering tone and selective emphasis of the media on crime issues is undoubtedly influential. The media are centered in Dublin, the one large city, which has about 60% of all indictable crime in the country. The understandable focus of the media on Dublin means that the whole country is very familiar with the situation in the most crime-ridden area and tends to take this situation to be the norm—despite the fact that, in some areas, the crime rates are one-sixth or less of the Dublin rates.

THE POLICE IN IRELAND

ADMINISTRATION AND ORGANIZATION

The Garda Síochána is the national police force, dating from the foundation of the state in 1922. There are no separate police forces, whether local or auxiliary, with the exception of very small groups of airport and harbor police, who exercise limited powers. A commissioner, who is appointed by the government and reports to the minister for justice, has responsibility for the general direction and the day-to-day management of the police. The Garda Síochána is (apart from a number of specialized units) an unarmed police force and aspires, in the words of its first commissioner, to succeed “not by force of arms or numbers, but by the moral authority as servants of the people.” For most of their history, they have been a highly respected force, enjoying the broad support of the population and

operating within a relatively crime-free environment that has been termed a “policeman’s paradise” (Brady 1974; Reiner 1992).

Rapid social change and the growth of lawlessness and drug abuse in socially deprived urban areas have challenged this happy position in recent decades. There is currently considerable tension between the police and some sectors of the population and a clear need for more proactive community policing and bridge-building with certain alienated, socially deprived groups in Irish society. A special challenge has been liaison with local community groups in drug-infested areas, which in the mid-1990s, engaged widely in vigilante-type actions that threatened to usurp the role of the police.

At the close of 1996, the strength of the Garda Síochána was 10,817, just over 6% of whom were women. In addition, the force employed 1,576 civilian ancillary staff. This is a rather small civilian support staff by comparison with other jurisdictions—for example, in Britain; civilian staff working for police forces make up about 40% of the numbers of policeman.

Recent years have been a time of rapid development for the force (Garda Síochána). An international advisory group has examined the efficiency and effectiveness of the force and made recommendations for change, and a strategic management initiative is ongoing to oversee the restructuring and reform process. There have been many positive developments, including at the introduction of new technologies, training methods, and operational systems. Management has been regionalized in order to enhance operational effectiveness, with the country divided into six regions, each headed by an assistant commissioner.

At the same time, a number of centralized, specialized bureaus and units have been set up to handle specific areas of crime. The National Bureau of Criminal Investigation, set up in 1997, assists the local police in the investigation of all serious crimes, such as murder. They put their specialist forensic skills at the disposal of the local force, manage and control incident room procedures, and prepare files for the director of public prosecutions. Other new units include the National Drug Unit, the National Crime Prevention Unit, and the National Bureau of Fraud Investigation. The last, which was initiated in 1995, has had a significant impact and, in 1996, had a caseload of 1344 major cases of money-laundering, commercial fraud, and check and computer fraud. The National Drug Unit has also had considerable success in intercepting and seizing consignments of illegal drugs valued at hundreds of millions of pounds.

The Garda Síochána also have a responsibility for national security. In this regard, there is a Special Detective Unit dedicated to national security duties and, in particular, to antiterrorist measures. There is also an Emergency Response Unit, which is highly trained and effectively armed in order to “resolve any situation where armed resistance is known or anticipated.” In the 1970s and 1980s especially, a great deal of police resources were committed to antiterrorist activity. In this period, there were many politically motivated armed robberies and a considerable number of outrages, involving explosions, kidnapping, and murders.

Perhaps the most noteworthy new development in policing is the Criminal Assets Bureau, which was set up in October 1996. This bureau is a significant innovation in Irish terms, not only because it identifies and then proceeds to freeze or confiscate the criminally derived assets of offenders, most especially drug dealers, but also because it involves a multiagency approach. It is staffed by gardaí and officers and officials from the Department of Social Welfare and the revenue commissioners (both taxation and customs and excise wings). This bureau has already had some notable successes and confiscated well over 10 million pounds’ worth of assets. It is credited with the disruption of a number of major criminal gangs and the flight from the country of leading criminal figures.

RESOURCES, TECHNOLOGY, AND TRAINING OF PERSONNEL

There has also, in recent years, been major investment in new technology for the Garda Síochána. A new computerized information and records system is being developed, which will provide access to a comprehensive national database for all garda stations in Dublin and all divisional and district headquarters throughout the country. Other initiatives in the area of new technology include a new radio communications system; the expansion of CCTV systems in urban areas; a new computerized national database for fingerprints with a much improved automated system for fingerprint identification; the introduction of high-tech computer and photographic equipment to tackle speeding offenses; and a new air support unit with both a fixed wing aircraft and a helicopter.

The Training College at Templemore has been put on a new, highly professional footing as third-level institution, providing a 2-year course for recruits that covers such subjects as social science, communication, law, and police studies, interspersed with on-the-job, apprenticeship-style training.

The college also offers a wide variety of in-service training for gardaí at various stages of their careers. A newly established Garda Research Unit is based at the college. Two distinctive features of the Irish system are that recruitment into the force is under the control of the Civil Service Commission, rather than the police themselves, and that all higher ranks up to and including that of commissioner are filled only by people who have risen through the ranks.

GARDA SÍOCHANA AND COMMUNITY RELATIONS

Notwithstanding the many positive developments in Irish policing and, since 1996, several years of declining rates and improving detection rates, the Garda Síochana face their share of serious problems. The need to develop more successful and vigorous community policing and partnership approaches has already been mentioned. There are large, socioeconomically deprived and, often, drug-infested areas of the cities, where much of the population, especially the youth, are disaffected and harbor antagonistic attitudes toward the police. The police have begun a process of consultation with local community representatives and have initiated youth diversion programs and other crime-preventive schemes, but much work still needs to be done in this area. The gathering strength of the victim support movement has also meant that the Garda Síochana are required to show more awareness of the plight of victims and more sensitivity in their dealings with them.

The 1990s have seen a series of incidents, mainly arising from rank and file policemen's concerns about pay and conditions, which have indicated a serious problem with morale and seriously damaged the Garda Síochana's previously very positive public image. The most obvious problem was a highly acrimonious split within the Garda Representative Association, the body that represents the ordinary-level gardaí. At one stage, there were three bitterly opposed organizations claiming to represent the gardaí, and the minister for justice had to threaten legislation to restore order. These bodies had reunited by 1998, but then began pressing for increased pay with a campaign of unprecedented boldness. The Garda Síochana are forbidden by law to strike, but in 1998, they instituted a new form of protest in which many thousands of them telephoned in, on a specific day, to say they were sick. This form of protest became known popularly as "the blue flu" after the color of the police uniform. The government soon settled the pay claims of the gardaí, but not before considerable damage was done to the public reputation of the force.

Another vitally important area in which the Garda Síochana are open to severe criticism is their handling of civil liberties and basic human rights. In particular, there

appear to be problems surrounding the methods of interrogation, the holding of suspects, and the management of prosecutions and evidence. Uncorroborated confessions can lead to a conviction in Ireland, and in recent years, a number of cases have been exposed in which the police have been shown to have extracted confessions from innocent people. The most notorious of these was the Kerry Babies Case (O'Mahony 1992), in which a whole ordinary farming family falsely confessed in considerable detail to the murder of a baby. Despite recommendations to do so from a public commission, the Garda Síochana have yet to introduce automatic video and audio recording of interrogations.

THE COURTS, JUDICIARY, AND LEGAL PROFESSION

THE COURTS

Administration and Organization

In accordance with the constitution of 1937, justice in Ireland is administered in public in courts established by law. In serious criminal matters, there is, with a few notable exceptions, a constitutional right to trial by jury. Judges are appointed by the president on the advice of the government and are invariably senior practicing members of the legal profession. Under the constitutional doctrine of the separation of powers, the judiciary is guaranteed independence in the exercise of its functions. A judge can be removed from office only for misbehavior or incapacity, and removal can only be achieved by resolution of both houses of the Oireachtas (i.e., the Dáil and the Seanad).

There are four levels of ordinary courts, including, in order of importance, three courts of first instance (the district court, the circuit court, and the high court), and one court of final appeal—the Supreme Court. The high court has original and full jurisdiction in criminal and civil matters, and also has the power to rule on the constitutionality of legal rules. The high and circuit courts hear appeals from lower courts. The Supreme Court does not have original jurisdiction, but exercises appellate and consultative jurisdiction, most significantly on constitutional matters. The high and Supreme Courts, therefore, play an immensely important role in shaping the legal framework of Irish life and, in particular, in deciding criminal justice principles and procedures.

With respect to criminal jurisdiction, there are currently five separate courts in operation (Byrne and McCutcheon 1996)—the district court, the circuit court, the central criminal court (by which name the high court is known when dealing with criminal cases), the court of criminal appeal, and the special criminal court.

The lowest court in the system and the court of summary jurisdiction is the district court. There are 50 judges of the district court, including the president of the district court, and these judges serve in 23 different districts, covering more than 200 different district courts. A district court judge presides alone without a jury both to arrive at a verdict and to hand down a sentence. However, the district court is severely restricted, both in the cases over which it can exercise jurisdiction and in its sentencing powers.

The district court tries all minor, summary, criminal offenses with regard to which the accused does not have a right to jury trial. However, some accused charged with indictable offenses, which do confer a right to a jury trial, may waive that right and opt for trial before the district court. This decision is not the sole prerogative of the accused, as the district judge has the discretion to refuse to hear the case and return it for trial to the circuit court on the grounds that it is not minor. The director for public prosecutions has a similar discretion. The district court also undertakes a preliminary examination of a case that is being returned to a higher court and, in this respect, has substituted for grand juries, which no longer exist in the Irish system. There are currently proposals by the government to abolish this function of the district court.

The district court has powers to impose fines of up to £1000 or prison sentences up to a maximum of 2 years, or both. The district court also handles minor civil cases and family law cases and occasionally sits as a children's court dealing with criminal and child protection matters. The district court, in fact, handles the huge bulk of criminal offenses, and the majority of these involve guilty pleas.

The next higher court is the circuit court. There are 25 circuit court judges, who operate in the eight different circuits into which the country is divided. In criminal matters, the circuit judge sits with a jury of 12 ordinary citizens, who are the sole arbiters of fact and arrive at a verdict. Sentencing is the prerogative of the judge. In recent years, the law has been changed to allow majority jury verdicts. Those convicted at the district court have an absolute right of appeal to the circuit court, and when the appeal is of conviction rather than of severity of sentence solely, there is a full rehearing of the case by the circuit court.

The circuit court can try all more serious criminal cases except murder, treason, piracy, genocide, and a small number of other offenses, which are regarded as the most serious of offenses and are reserved for trial by the central criminal court (the high court). There are 22 high court judges, but very few of them would be involved in

criminal cases at any one time. Like the circuit court, the central criminal court is presided over by a single judge sitting with a jury of 12 ordinary citizens.

The court of criminal appeal sits to hear certain appeals of both sentence and conviction from the circuit court, the central criminal court, and the special criminal court. There is no full rehearing of the case, and the appeal is based on the transcript of the evidence given at the trial (Doolan 1991). The court is composed of one Supreme Court judge and two high court judges. A majority of the judges decides the issue, and only one judgment is given. There are currently proposals by the government to abolish the court of criminal appeal and have its functions undertaken instead by the Supreme Court.

Special Courts

The special criminal court is a rather anomalous court in the context of the Irish Constitution and is quite controversial. The special criminal court is contentious because it is a nonjury court that tries serious criminal cases despite the general provision in the constitution that the accused should have the right to trial by jury.

The special criminal court was set up in 1972 by proclamation of the government, invoking the Offences Against the State Act of 1939 and as envisaged by the constitution at Article 38.3.1, which allows for the establishment of nonjury special criminal courts whenever the government deems that the "ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order." The relatively serious political terrorist problem in 1972, which spilled over from Northern Ireland was the spur for the establishment of the special criminal court. Defendants charged with offenses scheduled under the Offences Against the State Act (including membership of illegal organizations, handling of explosives, and possession of firearms) were to be tried by a nonjury court composed of three judges, one each from the district, circuit, and high courts. However, there is also a provision for the director of public prosecutions to have the accused persons tried before the special criminal court on charges relating to nonscheduled offenses—that is, ordinary, nonpolitical criminal offenses. In recent years, this has resulted in the use of the special criminal court to try a number of defendants charged with involvement in organized crime, especially drug-related crime. Some critics of the system (O'Mahony 1998) consider that the current level of political unrest and terrorist danger no longer justify the continuation of a special criminal court and that accused persons are unnecessarily being deprived of their constitutional right to a jury trial. The

main argument for continuation of the special criminal court and its extension to cover non-terrorist cases centers on the serious danger of intimidation and subornation of witnesses and jury members in cases involving organized criminal gangs.

The Offences Against the State Act is part of permanent legislation and has been referred to the Supreme Court and found by them to be consistent with the constitution. It is, therefore, highly significant, in addition to providing an instrument for the setting up of the special criminal court. It provides for the suspension of certain normal legal safeguards in the area of police detention and admissible evidence.

The high court has struck down as unconstitutional one section of the Act, which provided that anyone convicted before the special criminal court could be barred from public service employment for a seven-year period. However, Section 52 of the Offences Against the State Act, which requires persons to account for their movements and so is a clear infringement on the right to silence, and Section 12, which permits possession of a pro-IRA poster to be used along with the word of a senior police officer to convict a person of IRA membership, and so breaches the normal precepts of admissible evidence, have both received the seal of approval of the Supreme Court. Challenges to the constitutionality of the special criminal court itself and of the powers of the director of public prosecutions to refer non-subversive offenders to it have failed.

If the involvement of the judiciary in the special criminal court is the most controversial aspect of their activities, in general, it can be said that the judiciary is widely respected in Ireland for its independence, professionalism, and genuine concern for the protection of civil rights. Indeed, the high and Supreme Courts, in exercising their interpretative powers, have fleshed out the Constitution, which is not particularly expressive or detailed in the area of criminal justice procedures. The judiciary has "read into" the Constitution a whole set of safeguards, which came close to the American Bill of Rights in content and comprehensiveness.

Judicial interpretation and argument, leaning on and elaborating articles of the Constitution, have led to the doctrine of unenumerated rights through which certain rights, such as rights of access to the courts, to privacy, to bail, to legal counsel, and to fair procedures in decision-making, have been granted constitutional status (Forde 1987). In this way, the framework of constitutional safeguards has been extended and reinforced to an extent that might make the scant provisions in the actual Constitution appear irrelevant.

THE JUDICIARY AND THE LEGAL PROFESSION

The Irish judiciary is an appointed body of men and, increasingly, women, who all have a background in professional law. There is no lay magistracy, as in England and Wales, and there is no form of election to the judiciary, as in parts of the United States. Judges are appointed by the government, but, since 1995, this is done on the advice of a Judicial Appointments Board, which is chaired by the chief justice and has representatives from the judiciary, the legal professions, and the lay public. This new procedure, which even entails newspaper advertisements for judicial positions, including membership of the Supreme Court, was prompted by a newfound concern in Irish society for transparency and accountability. Previously, judicial appointments were highly politicized. As one commentator, drawing attention to the dangers of the old system, put it, "alliance with a particular political party can almost certainly bring political favor, possibly resulting in a judicial appointment" (Houlihan 1986). The current system is not immune to political favoritism, but it introduces a strong component of peer review and extends the scope of scrutiny over the appointment process. Generally, it can be said that the judiciary, although overwhelmingly middle-class and often from a legal family background, have tended to include strong representation of minorities. For example, the present Supreme Court includes Jewish and Protestant members, though the country is 84.2% Catholic as of 2012.

The legal profession from which the judiciary is recruited is dual in nature, being divided into solicitors and barristers. Solicitors deal with non-contentious legal issues, such as conveyancing of property and with the preparation of cases for court. Barristers deal with the preparation of cases for court, but are also specialists in advocacy before the courts. Barristers have no direct contact with the public and are hired by a solicitor on behalf of his or her client.

The Law Society of Ireland and the Honorable Society of King's Inns, respectively, control the systems of professional education and internal discipline for solicitors and barristers. These institutions, which are housed in historic buildings in Dublin, have overseen a huge increase in the size of their professions in recent decades, with solicitors increasing from 1300 in 1960 to more than 4000 in 1995, and with barristers increasing from about 200 in 1968 to more than 900 in 1996 (Byrne and McCutcheon 1996). As in Britain, senior barristers may "take silk"—that is, rise to the rank of senior counsel, the equivalent of the British Queen's counsel. The two professions are steeped in tradition and tend to be conservative in outlook.

Barristers, when attending court, still wear gowns, wing-collared shirts, tabs, and often wigs, although the last are no longer obligatory. Trainee barristers must still attend the King's Inns for dinner on 10 occasions in each of their 2 years of study. Barristers are not organized in chambers, as in Britain, but all belong to the Law Library, which has a strongly collegiate ethos. The Law Library is based at the Four Courts, Ireland's main legal center.

The dual nature of the legal profession in Ireland has come under attack in recent years, and there have been important reforms arising from the *Report into Restrictive Practices in the Legal Profession* (1990). However, the report did not recommend a unified profession, as in the United States, but was content to recommend increased rights of audience before the courts for solicitors and the opening up of judgeships at the circuit court to them.

Indeed, in recent years, the whole court system has been examined with a view to radical overhaul of the way the system is managed. In the early 1990s, there was growing concern among the judiciary, the public, and politicians alike that the physical and organizational structures and staffing and resource provision of the courts system were inadequate to deal with the greatly increased demands now being placed on them. In six reports to date, the Denham Commission on the Courts (1996–1998) has produced an incisive and thorough critical analysis of the problems of the system. A political commitment has been made to the setting up of a properly resourced Independent Courts Service, which for the first time would take control of the courts out of the hands of the Department of Justice. The Denham Commission reports have delineated the problems of the system, such as dilapidated court buildings, lengthy delays to trial, and lack of information technology and a comprehensive database. They have also put in place a rational and credible framework for remedying some of these problems. The Denham Commission has recently (1998) recommended the establishment of "Drugs Courts" in Ireland along the model of those in Miami-Dade County, Florida. If this recommendation is implemented, it will mean that minor property offenders who are drug addicts can be sentenced directly to treatment rather than correctional custody. This would be a major innovation in the Irish context.

PROSECUTORIAL AND JUDICIAL PROCESS

THE LEGAL ASPECTS OF OFFENDER PROSECUTION

The prosecutorial process starts with the police arrest of the offender. Under the common law, a Garda (police-man or woman) may arrest a person on the reasonable

suspicion that the person has committed a felony. A private citizen has similar rights of arrest, but such an arrest is lawful only when the felony has actually been committed. Generally, in other circumstances, the Garda must have a warrant of arrest issued by a judge, although a number of statutes grant specific rights of arrest without a warrant. The person effecting a lawful arrest may use reasonable force, but excessive force is unlawful.

The common law does not permit detention without a charge, for example, for questioning or for helping the police with their inquiries. But, statutory law provides some exceptions to this rule. The Offenses Against the State Act of 1939 permits detention for up to 48 hours on suspicion of having committed a range of specified offenses, particularly offenses involving firearms or explosives or paramilitary activity. The Criminal Justice Act of 1984 permits detention for up to 12 hours of persons suspected of having committed an offense that carries a sentence of 5 years' imprisonment or more.

RIGHTS OF THE ACCUSED

The Garda must inform an arrested person, without delay and in an ordinary language, of the charge against him/her. He/she has the right to consult a solicitor (lawyer) and the right to have a person, reasonably named by him/her, informed of his/her arrest. The charged person must be brought before a court as soon as is practicable.

Article 38 of the Irish Constitution provides that no person should be tried on a criminal charge except "in due process of law." In practice, this basic constitutional principle has translated into a set of procedural and evidential rules aimed at the protection of individuals charged with criminal offenses (Forde 1987). For example, the accused must be furnished in advance of the trial with the evidence to be used by the prosecution—in form of what is called the book of evidence. The accused also has the right to cross-examine prosecution witnesses, call their own witnesses, give evidence themselves, and address the court. Since 1976, there has been recognition for the right of an impecunious defendant to free legal representation, funded by the state.

Until recently, the right to bail, that is, the right to liberty in the period of awaiting trial, has been recognized. The Supreme Court had consistently vindicated this right, arguing that the basic test for granting bail is the probability of the accused evading justice by leaving the country or otherwise failing to appear for trial. Denying bail on the grounds that an accused might interfere with witnesses or commit another offense was rejected by the Supreme Court as "a form of preventive justice which has no place in our legal system."

In contemporary Ireland, it has become a commonplace assumption of political and public discourse that some aspects of the criminal law, especially those dealing with criminal justice procedures, are antiquated and inappropriate to modern circumstances. Dominant public and political attitudes today depict the legal system as burdened by the accumulation, over centuries, of a complex, unwieldy, and confusing set of legal rules, which have resulted in a system weighted in favor of defendants rather than crime victims or society at large. This view, which would probably not withstand a robust critical analysis, has nonetheless translated into pressure on the established tradition of legal procedures and principles, such as the right to bail, which were often expressly designed to protect civil liberties, particularly the civil liberties of criminal defendants. The most obvious example of Irish public and political zeal for radical legal reform, usually repressive in tone, is the bail referendum of November 1996 in which an amendment to the constitution was passed by a three-to-one majority, allowing the refusal of bail on the grounds that there is reasonable suspicion that the suspect would commit an offense while free on bail. The referendum is a rare, but interesting example of the people, at the initiative of the government, deciding to overrule the Supreme Court in its interpretation of the Constitution. There have been other examples where politicians, in response to the perceived seriousness of the crime problem and public concern about it, have introduced relatively harsh legislative measures in the certainty of wide popular support. Recent innovations include the introduction of seven-day detention without charge for alleged drug dealers and the curtailment in certain circumstances of the "right to silence," also in the case of those suspected of drug-dealing.

Also reflecting more punitive attitudes, the right of the state to appeal the leniency of a sentence has been recognized and sentence lengths for certain offenses have been increased by legislation, including the introduction of life sentences for serious drug and sex offenders. Some legal commentators (Fennell 1993) have held that this avalanche of populist legislative reform, aimed at the repression of criminals, has damaged due process, seriously eroded the role of the fundamental principle of the presumption of innocence in the Irish criminal legal system, and increased the likelihood of conviction of innocents.

CRIMINAL PROCEDURE

The actual business of prosecution is, in the case of jury trials and the special criminal court, the responsibility of the director of public prosecutions. This office dates

from 1974 and was established primarily to protect the prosecution process from extralegal influences, particularly political interference. The office of the director of public prosecutions is independent and has absolute discretion to decide whether or not there is sufficient evidence to prosecute an indictable case. A notable feature of the Irish system is that at the level of summary offenses before the district court, prosecutions are handled by the Garda Síochána (in English, Guardians of the Peace)—that is, by members of the national police force. However, in the event of such a case proceeding to a higher court, the director of public prosecutions, after consideration of the available evidence, has the discretion to enter a "nolle prosequi," thus terminating the prosecution on indictment that arrived from the district court at the initiative of the Garda Síochána or some other agent.

The office of the official state solicitor and local state solicitors assist the director of public prosecutions by implementing his or her instructions and by preparing the case for court, including the compilation of the Book of Evidence. Advocacy of a prosecution at trial is handled, on the other hand, by a barrister in private practice, hired for that purpose by the director of public prosecutions. Unlike in Britain and the United States, there is no corps of salaried lawyers in state employment dedicated to the prosecution process. There is, in Ireland, no explicit system of plea-bargaining, but analogous negotiation between the prosecutor and defendant does occur in an informal and limited way. This would usually involve a promise by the prosecution to drop certain charges in exchange for a guilty plea to another lesser charge.

The Irish trial process, as in all common law jurisdictions, is based on an accusatory system. The prosecuting authority accuses the defendant and has an adversarial relationship with him or her. The district court judge or special criminal court judge assess, in a neutral fashion, the relative merits of the prosecution and defense cases and arrive at a verdict. At the circuit and central criminal courts, the jury performs this role, but is instructed by the presiding judge, who oversees the fairness of procedures and rules on matters of law. As in the U.S. system, a guilty verdict should only be declared when proof is found to be "beyond a reasonable doubt." In every court, it is the judge, or a panel of judges, who decides on the appropriate penalty in the event of a conviction, customarily after hearing pleas in mitigation and, when relevant, victim impact statements and police information on the past criminal conduct of the convicted person.

The Constitution of Ireland created the office of the attorney general. The attorney general is not a member of the government, but attends cabinet meetings and acts

as the chief legal advisor to the government. The attorney general is appointed by the president on the advice of the Taoiseach (the prime minister) and must resign with the Taoiseach.

The office of the Director of Public Prosecutions (DPP), created by statute in 1974, has assumed most of the responsibilities formerly held by the attorney general in relation to criminal prosecutions. The attorney general, however, has a role in litigation because he/she is the forensic representative of both the government and the public. Today, the role of the attorney general in criminal justice is in the area of law reform, such as advising the government on the constitutionality of proposed changes to the criminal law and in the drafting of new statutes.

Finally, approximately, half a million summary offenses are recorded each year, and almost 90% of these arise under the Road Traffic Acts. In the last few years, between 90,000 and 100,000 indictable crimes have been recorded per annum. There are no statistics held on arrests, but a study in the 1980s indicated that the Garda made about 40,000 arrests each year. Crime rates at that time were similar to the present, so it is reasonable to suggest that arrests are currently running at about 40,000 per annum.

At present, statistics focused on reported indictable crimes as the unit of analysis rather than individual offenders. Approximately one-third, or 30,000, of the reported indictable offenses led to criminal proceedings. These, however, refer to an estimated 18,000 different individuals who are proceeded against for indictable crimes. Most of these offenders (more than 90%) do not opt for their right to a jury trial and are proceeded against at the district court-level. About 500 indicted suspects go forward for a jury trial, either because they opted for it or, in serious cases, on the instruction of the director of public prosecutions.

Nearly half of the half-million summary offenses led to a conviction. In the vast majority of these cases, the sanction is a fine. The Garda claimed that 43% of the 90,000 indictable crimes were solved in 1997. Out of that number, only 16,000 offenders were convicted or had the charges proved for indictable offenses.

PENALTIES

The sentencing process in Ireland is quite complex, involving a wide range of options (Law Reform Commission 1993). The least severe sentencing option, open only to the district court, is a discharge under the 1907 Probation of Offenders Act. This, in effect, is a decision not to impose a sanction and not to record a conviction, although the case against the accused is deemed to have been proved.

A fine is by far the most common sanction, the punishment for the vast majority of summary offenses. When provision for a fine for a particular offense is laid down by statute, there is always a related period of imprisonment, which will be imposed if the convicted person defaults on fine payment. In recent years, up to 35% of people committed to prison on conviction have been fine defaulters.

The 1907 Probation of Offenders Act also allows for a system of probation whereby a convicted person can be sentenced either to a period of probation under the supervision of a probation and welfare officer or to a period of probation under recognizance, when the offender promises to abide by certain conditions laid down by the court.

Since 1983, the courts have been empowered to impose a community service order as a direct alternative to imprisonment. Such orders can only be imposed on offenders over 16 years of age and for offenses that would normally be sanctioned by a prison sentence. The community service order entails that the offender undertake up to 240 hours of unpaid work under the supervision of a probation and welfare officer.

The courts quite frequently resort to both deferred sentences and adjourned sentencing. In the first case, a custodial sentence is imposed but, at the judge's discretion, the warrant for its execution is not issued for a period. If the offender is of good behavior in this period and complies with the wishes of the court, for example, by undergoing treatment for drug abuse, then the sentence will be deemed to have been administered; otherwise, the court may proceed to enforce the custodial sentence. Adjourned sentencing is similar, except that no sentence is imposed in advance of the testing period of supervised release. The eventual decision on sentencing will depend very much on a probation and welfare officer's report on the conduct of the offender in the testing period.

Another option available to a judge is the suspension of a custodial sentence or part thereof. The offender will be bound to keep the peace and be of good behavior for a period and may also be subject to further conditions, such as a treatment program. Compliance with these conditions will ensure that the offender does not have to serve the suspended custodial sentence. A variant on this sentencing option, whereby the judge imposes a relatively long custodial sentence, but sets a date, usually after 3 years of custody, for judicial review of the sentence, has become quite popular with the judiciary in recent years. The remainder of the sentence will be suspended if, on review, it is found that the offender has been of good behavior in prison and has made rehabilitative progress. This option is often used with drug addict offenders to encourage them to undergo drug therapy and stay drug-free in prison.

Deprivation of liberty is the most severe sanction available to the Irish courts. It is also very frequently the automatic sanction for failure to comply with the conditions of less severe sentences, such as fines or community-based sanctions. Maximum prison sentence lengths are set by statute, but minimum and mandatory prison sentences are rare in the Irish system. There is, however, a minimum and mandatory life sentence for murder, and a minimum, mandatory sentence of 10 years has recently been introduced for certain drug-dealing offenses. The death penalty for murder was abolished in 1964 and for capital murder (the killing of a policeman, a prison officer, and such categories) in 1990. However, there has been no judicial execution in Ireland since 1958. The sentence for capital murder is a minimum "life sentence" of at least 40 years.

Life sentences in Ireland do not literally mean life, and in the 1980s were, in fact, averaging less than 10 years. The life sentence offender can be released "on licence," meaning that he can be recalled to prison on suspicion of misconduct without further judicial process. The average life sentence is presently a little longer than 10 years, although a few offenders serve very much longer terms. All prison sentences, apart from a life sentence, are subject to automatic remission of 25% of sentence length, in the case of males, and 33% in the case of females.

The position of the insanity defense to murder has long been under examination in Ireland, but as yet, the laws in this area have not been modernized (McAuley 1993). A successful insanity defense leads to a verdict of "guilty but insane," which, despite the terminology, is regarded in law as an acquittal. It can, however, lead to an order that the accused be held in a secure psychiatric hospital at the pleasure of the government. This can be regarded as, in effect, an indeterminate sentence. There is, then, no concept of "diminished responsibility" due to mental illness in the Irish legal system, although there is considerable support for its introduction.

There are a number of other sanctions available to the judiciary in certain circumstances, which include the compensation order, which forces an offender to compensate a victim for personal injury or loss, and a confiscation order, which provides for the forfeiture of ill-gotten gains. Juveniles are a special case and, while the age of criminal responsibility is 7 and about to be raised 10, it is not permitted by law to imprison anyone under the age of 15. Children, however, may be sent to a reformatory or an industrial school operated under the auspices of the Department of Education. It is also possible for a judge to commit a child offender to the care of a relative or other fit person or to levy a fine, costs, and damages from the parent of a young offender. Children that have reached

15 years of age may be sent to prison, but only if a court issues a certificate that the young person is "unruly or depraved"; this is a relatively rare event. There is one pre-prosecution diversion scheme in the Irish system, aimed specifically at juvenile offenders under 18 years of age. This is run by the Garda Síochána and involves a formal or informal caution and a period of supervision, but it is conditional on the offender admitting the offense and on a degree of cooperation from the offender's family. This scheme has grown greatly in recent years—in 1997, there were 12,000 cautions, up from about 3000 in 1990.

THE PRISONS

At present, approximately, 6000 persons are committed to prison on conviction each year. Another 4000 convicted offenders receive a probation order, broken down into about 1000 probation orders, 1750 community service orders, and 1250 supervisions during deferment of penalty. The remaining 6000 offenders receive other sanctions, such as a fine or a suspended sentence, or, in a number of cases (approximately 500), they have the charge proved, but order made without conviction.

DESCRIPTION, ADMINISTRATION, AND ORGANIZATION

Like other sectors of the criminal justice system, the Irish prison system has experienced immense change in recent decades but, unlike other sectors, it still faces the need for major, fundamental reform. In 1961, the daily average number of prisoners in the country, including unconvicted remand prisoners, was only 447. In the following two decades, as a consequence of large increases both in the length of prison sentences, especially for drug and sex offenses, and in the number committed to prison, the Irish prison population more than quintupled. Ireland, among the Council of Europe countries, has the most rapid growth in its prison population in the 17-year period to 1987 (Tournier and Barre 1990). The number of Irish prison cells increased by 156%, compared to an increase of only 19.8% in the United Kingdom, which suffered even greater increases in crime over the relevant period.

This rate of numerical growth has not been matched by an equivalent growth in facilities, services, and regimes. Indeed, the current prison system still, in the main, relied on old Victorian prisons, which are grossly overcrowded, often unsanitary, and totally inadequate to fulfill the functions of a modern penal institution. Many hundreds of Irish prisoners are doubled up in single cells without sanitation. The custom of "slopping out" of night waste buckets is still a feature of some older prisons.

There is, however, a considerable range of different types of prison and regime. There are presently 15 different institutions, including two medium-sized modern facilities with satisfactory facilities; three small open prisons; a training prison with special work and training facilities; a prison for young offenders; a women's prison; a high-security prison, used to hold subversive or political terrorist prisoners; two long-stay prisons, which hold sex offenders and murderers and similar categories; and four older prisons, which in fact handle the majority of prisoners passing through the system and have, by far, the worse conditions.

In 1998, the total number of prisoners stood at about 2500. Today, there are 14 prisons. The daily average number of prisoners in custody in 2009 was 3881. On January 25, 2011, the prison inmate population stood at 4541, and on December 4, 2012, the prison inmate population was 4275; the rate of imprisonment in May 2012 stood at 96 per 100,000 people (Irish Penal Reform Trust 2012). One planned prison of 400 cells is specifically for remand prisoners and is necessitated by the recent change in the bail laws allowing preventative detention. Principally, the building program is an effort to solve the problem of overcrowding and to end the policy of wholesale early release of prisoners, presently caused by lack of prison accommodation. At present, many hundreds of prisoners are released early because of overcrowding. They, in effect, serve their sentences at liberty and without supervision. This highly undesirable situation not only undermines the deterrent effect of a prison sentence and brings the criminal justice system into disrepute, but also affects the morale of the prison system and creates difficulties for the planning and organization of rehabilitative services, since the turnover of prisoners is rapid and unpredictable.

In the larger Dublin prisons, more notably Mountjoy, the largest and most important committal prison in the country (750 prisoners), poor prison conditions are exacerbated by the fact that the majority of the prisoners are heroin addicts, many of who maintain their addiction in prison. AIDS and hepatitis are common among drug-abusing prisoners. Idleness and long periods of lock-up are also features of these prisons, because there is a chronic lack of work, educational, and recreational facilities.

Throughout the system, there is a shortage of rehabilitative services. However, some progress has been made in this area in recent years. There is a substantial educational service, but it manages to affect only a minority of prisoners. A new sex offender treatment program is in place, but it processes less than 10% of the large group of sex offenders passing through the system. There is a new detoxification center for the treatment of addict prisoners, but this has only 12 cells. One prison of about 100 cells

has recently been designated as a drug-free prison, but large numbers of inmates are returned to the mainstream prisons from this center after failing urine analysis tests.

In general, it can be said that the Irish prison population is highly homogeneous, with few foreign prisoners, and is characterized by a background of marked socioeconomic deprivation, educational failure, and lack of vocational training. It is overwhelmingly male and young (under 30 years), with only about 80 women prisoners (3% of the total prison population). In addition, many prisoners have alcohol, addiction, or psychiatric problems, and a large number come from disturbed family backgrounds. In many of the larger prisoners, medical, social work, and psychiatric services appear to be overwhelmed by the problems they face.

There are some interesting, highly distinctive features of the Irish prison system. For example, Ireland spends far more money than most other countries on prison officers. This is chiefly because of a very high prison officer to prisoner ratio (1.1 prison officer to every prisoner). Ireland also has, in European terms, a very high proportion of prisoners who are under 21 years of age. About a third of Irish prisoners are under 21, while many European countries have less than 10% of their prisoners in this age category. The recidivism rate among Irish prisoners is also extraordinarily high, by international comparison. A recent survey of Mountjoy prisoners (O'Mahony 1997) showed that the vast majority (almost 90%) had been in prison before and that, on average, they had been imprisoned following conviction on 10 separate occasions.

One of the most significant features of the Irish penal system is the fact that Ireland tends to send to prison a greater proportion of its citizens than any other country in the Council of Europe (Council of Europe 1992), and about 75% of these have been convicted of nonviolent crimes. This is to say, when one focuses on the numbers sent to prison (the imprisonment rate) rather than on the numbers held in prison at any one time (the detention rate), the use of incarceration by the Irish courts is found to be extremely high. Looking at committals under conviction only, we find that the Irish imprisonment rate in 1992 was 174 per 100,000. This compared with only 34 per 100,000 in France, 24 in Italy, 12 in Portugal, and 90 in the Netherlands. These are remarkable differences and demonstrate a comparatively heavy use of the sanction of imprisonment by the Irish courts. The importance of this finding is underlined by the fact that the crime rate is considerable lower in Ireland than in most of the other European countries that use imprisonment far less. This anomaly has not received the attention it deserves, mainly because the Irish detention rate is quite low by European

standards. There are several reasons why the detention rate does not fully reflect the very high imprisonment rate. Most importantly, the current policy of early release to ease overcrowding artificially lowers prison population numbers. However, it is also the case that an unusually large proportion of Irish sentences to prison are for very short periods. In particular, about 35% of committals to prison are for failure to pay a fine. Such prisoners, whose offenses were originally considered by the court not to merit imprisonment, spend only a short period in prison, but extend the resources of the system. The use of short sentences and of the early release mechanism also helps explain the very high recidivism rates in Ireland.

The Irish imprisonment rate will inevitably rise when the planned new prison places are completed. This will provide an opportunity for deeper reflection on the use of imprisonment by the Irish courts. This may lead to more resources being devoted to the small Probation and Welfare Service, which supervises the alternative, community-based sanctions, such as probation and community service orders. At present, the Probation and Welfare Service, with a staff of about 150, supervises about 4000 offenders per annum, but there is clearly great potential for the expansion of these alternative approaches.

An important new development in the penal system has been the commitment by government to the establishment of an Independent Prisons Board, along the lines of the Independent Courts Service. This will take the day-to-day running of the system out of the hands of politicians and the Department of Justice. It will also present a real opportunity for a more accountable system, characterized by goals and performance-driven management, and for the requisite renewal of reformist energy and resolution. An independent inspectorate of prisons, which would have an important role in informing the public about the realities of prison life, has also been proposed.

DISCUSSION

Ireland is a good example of a small jurisdiction, which has faced, in the last quarter of the twentieth century, many new challenges and pressures for change across its whole criminal justice system. Chief among the challenges has been an ongoing campaign by political subversives seeking the reunification of Ireland by violent means, and a marked deterioration with respect to both the quantity and quality of ordinary crime. Among the impotent influences on the latter are increasing affluence and urbanization, the spread of consumerist lifestyles, the decline of the extended family, the adoption of mores and moral standards from cinema and television and other global mass

media, increased social competitiveness, rapid secularization, and the advent of a serious level of heroin abuse. The old restraining bonds of family, church, and community have weakened everywhere in Ireland, but in terms of crime, this is most obvious at the deprived margins of urban society, where a criminal subculture has always existed and epidemic levels of drug abuse now flourish.

The different parts of the Irish criminal justice system have responded to the new challenges with varying levels of speed, efficiency, and effectiveness. The Garda Síochána have readily grasped the opportunities provided by new technology, but still face major challenges in the area of community relations. Their formerly highly respected position in society and the model of consensus policing, while still in place in mainstream Irish society, are in some jeopardy in the marginalized communities that produce most of the visible crime. The prison system has been least effective in adjusting to new conditions and, particularly with respect to unplanned early release, physical conditions, and lack of rehabilitative programs, can be described as inadequate and chaotic. A waiting list system for prison, as adopted in Denmark, would surely have been preferable to the Irish reliance on unsupervised early release, but it has never been seriously considered. The court system has also been under considerable strain, but this is currently being addressed with some hope of success. Although the political system has stood up well to the stresses of recent decades, legislators can be faulted for lack of vision in the area of criminal justice. There has been a rash of new legislation, but it has lacked cohesion and any sense of an informed, well-thought-through program. There has been a dearth of research and analysis, and much new legislation seems to have been driven by a populist agenda and to have been concerned with symbolic gestures to convince the electorate that politicians are tough on crime, rather than with a serious engagement with the task of fundamental reform. As a consequence, resources have been squandered in some areas, while other areas are starved of funds. Culturally inappropriate models from abroad, such as "zero tolerance," have been overly influential and, along with the crime-obsessed media, have helped obscure the basic fact that Ireland has a relatively moderate and manageable crime problem.

Many of the criminal justice problems faced in Ireland closely mirror those of other jurisdictions, large and small. Although Ireland can now be considered a relatively wealthy, developed nation, its process of social and economic progress has been compressed into a short period, and the price paid in increased criminality parallels that experienced in rapidly modernizing nations in the developing regions of Africa and Asia. The process

of the differentiation and growing distinctiveness of the Irish legal system, within the common law tradition, also has parallels in developing nations, especially other former British colonies. Finally, similar to the situation in many other countries, such as Cyprus and Belgium, the presence of two opposed cultural identities on the island of Ireland continues to be a source of civic unrest, and so, a major influence on the criminal justice system, both in Ireland and Northern Ireland, as well as a core and urgent challenge for political leaders.

REVIEW QUESTIONS

1. Discuss the similarities and differences between the role played by the British legal model in Ireland and in other former British colonies such as Nigeria and Sierra Leone.
2. In what ways do Irish experiences since 1922 mirror American legal development within the English common law tradition?
3. Discuss the importance of a written constitution and the doctrine of separation of powers to the Irish criminal justice system.
4. Discuss, in the context of the fate of African customary systems of law, whether the attempt to reintroduce the traditional Brehon law system in Ireland in 1920–1922 had any realistic chance of success.
5. Compare the role of drug abuse in crime in the United States and Ireland.
6. How can Ireland be said to overuse imprisonment when its detention rate is only a small fraction of that in the United States?
7. Can the policy and practice of New York-style zero tolerance have any relevance with its own distinctive pattern of crime problems?
8. Discuss how a relatively severe political terrorism problem can adversely affect the criminal justice system of a small, but fundamentally stable, nation such as Ireland.
9. How can economic progress and liberalizing social change lead to significant increases in crime?
10. Discuss the pernicious effects of unrealistic fear of crime and how such fear can be generated.
11. Why would it be a mistake for police forces to overemphasize the role of new technology and advanced equipment in the fight against crime?
12. Discuss the direct and indirect influences of the European Community on the criminal justice systems of small member states, such as Denmark and Ireland.
13. Are the Irish judicial practices of adjourned sentencing and suspension of all or part of a prison sentence useful measures for combating crime?
14. Are there meaningful parallels between the overrepresentation of African Americans in the U.S. prison system and that of socioeconomically deprived people in Irish prisons?
15. Ireland has a centrally organized, unarmed national police force. Is this model suited only to small jurisdictions?
16. Compare and contrast prison inmates' daily life in Ireland and Japan.
17. European community law takes precedence over national laws of member nations. Is national sovereignty sacrificed? Discuss.
18. Compare and contrast the structure and role of the following criminal justice systems of their nations: the district attorney (DA), the director of public prosecutions (DPP), and the procurator-general (PG).
19. The Irish president, like the contemporary British monarch, rules, but does not reign. What do you understand by that statement? Discuss fully.
20. What is the difference between probation and community service orders in the Irish criminal justice system?

REFERENCES

- Adler, F. 1983. *Nations not obsessed with crime*. Littleton, CO: Fred B. Rothman.
- Anonymous. 1856. Irish crime and prison statistics. *Irish Quarterly Review* 4: 559–568.
- Anonymous. 1858. Irish convict prisons. Dublin: *University magazine* 51: 166–172.
- Binchy, D. 1978. *Ancient Irish law extracts*. Dublin: Institute of Advanced Studies.
- Brady, C. 1974. *Guardians of the peace*. Dublin: Gill and MacMillan.
- Brogden, M. 1987. The emergence of the police: the colonial dimension. *British Journal of Criminology* 27: 1.
- Byrne, R., and P. McCutcheon. 1996. *The Irish legal system*. Dublin: Butterworth.
- Chubb, B. 1970. *The government and politics in Ireland*. Oxford, UK: Oxford University Press.
- Council of Europe. 1992. *Penological Information Bulletin, No. 17*. Strasbourg: Council of Europe.
- Cullen, L. 1976. *An economic history of Ireland since 1660*. London: Batsford.
- Danish Statistical Abstract. 1995. Copenhagen: Government Publications Office.
- Department of Foreign Affairs. 1995. *Facts about Ireland*. Dublin: The Stationery Office.

- Department of Justice. 1997. *Tackling crime: A discussion paper*. Dublin: The Stationery Office.
- Doolan, B. 1991. *Principles of Irish law*. Dublin: Gill and MacMillan.
- Dooley, E. 1995. *Homicide in Ireland 1972–1991*. Dublin: Department of Justice.
- Doorley, B. 1987. Newgate prison. In *The gorgeous mask: Dublin 1700–1850*, edited by D. Dickson, 121–131. Dublin: Trinity History Workshop.
- Federal Bureau of Investigation (FBI). 1992. *Crime in the United States 1991*. Washington, DC: U.S. Government Printing Office.
- Fennell, C. 1993. *Crime and crisis in Ireland: Justice by illusion*. Cork: Cork University Press.
- Forde, M. 1987. *Constitutional law of Ireland*. Cork: Mercier Press.
- Home Office. 1995. *Digest 3: Information on the criminal justice system in England and Wales*. London, UK: HMSO.
- Houlihan, M. 1986. *The relevance of the courts in anti-social behavior*. Limerick: Mid-West Regional Development Authority.
- Ignatief, M. 1978. *A just measure of pain*. London, UK: Penguin Books.
- Irish Penal Reform Trust. 2012. Facts and figures. Retrieved from <http://www.iprt.ie/prison-facts-2>
- Keogh, E. 1997. *Illicit drug use and related criminal activity in the Dublin metropolitan area*. Dublin: Garda Headquarters.
- Law Reform Commission. 1993. *Constitution paper on sentencing*. Dublin: The Stationery Office.
- Lee, J. 1989. *Ireland 1912–1985: Politics and society*. Cambridge, UK: Cambridge University Press.
- McAuley, F. 1993. *Insanity, psychiatry and criminal responsibility*. Dublin: Round Hall.
- McCullagh, C. 1996. *Crime in Ireland: A sociological introduction*. Cork: Cork University Press.
- O'Mahony, P. D. 1992. The Kerry babies case: Towards a social psychological analysis. *Irish Journal of Psychology* 13(2): 223–238.
- O'Mahony, P. D. 1994. The Irish psyche imprisoned. In *The Irish Psyche*, special comme morative edition of the *Irish Journal of Psychology* 13(2): 456–468.
- O'Mahony, P. D. 1996. *Criminal chaos: Seven crises in Irish criminal justice*. Dublin: Round Hall Sweet and Maxwell.
- O'Mahony, P. D. 1997. *Mountjoy prisoners: A sociological and criminological profile*. Dublin: The Stationery Office.
- O'Mahony, P. D. 1998. The constitution and criminal justice. In *The evolving Irish constitution*, edited by T. Murphy and P. Twomey, 183–197. Oxford, UK: Hart.
- Reiner, R. 1992. Fin de Siecle: The police face the millennium. *Political Quarterly* 63(1): 37–49.
- Report into Restrictive Practices in the Legal Profession. 1990. Dublin: The Stationery Office.
- Rottman, D., and P. Tormey. 1985. Criminal justice system: An overview. In *The Report of the Committee of Inquiry into the penal system*, edited by P. A. Mahoney. Dublin: The Stationery Office.
- Tournier, P., and M. Barre. 1990. A statistical comparison of European prison system. In *Prison Information Bulletin No. 15*. Strasbourg: Council of Europe.

6 The Criminal Justice System in Israel

Maria R. Haberfeld and Sergio Herzog

CONTENTS

Introduction.....	77
Israeli Legal System.....	78
Laws of Israel.....	78
Crime and Deviance.....	79
Types of Statistics.....	79
Drugs.....	79
Organized Crime.....	79
Juvenile Delinquents.....	80
Victims and Issues in Victimology.....	80
Police.....	82
General Overview.....	82
Community-Oriented Policing.....	83
Image and Accountability.....	84
Technology and Budget.....	84
Prosecutorial and Judicial Process.....	85
Pretrial and Preventive Detention.....	86
Judicial System.....	87
Magistrate's (or Peace) Courts.....	87
District Courts.....	87
The Supreme Court.....	87
Penalties and Sentencing.....	88
Rules of Evidence.....	88
Sentencing.....	88
Prison System.....	89
Administration and Organization.....	89
Prisons and Jails.....	89
Prison Population.....	90
Miscellaneous Services.....	92
Extradition Procedures and Treaties.....	93
Conclusion.....	93
Review Questions.....	94
References.....	95

INTRODUCTION

The state of Israel has been shaped by ancient and modern history, and so have its laws. The laws of modern Israel are derived from many diverse sources, including Israeli legislative acts, British mandate law, Ottomans, and religious laws. The nation's criminal justice institutions trace their origins to the period that preceded the establishment of the state. Israel proclaimed its independence on May 15, 1948.

This ended the British jurisdiction in Palestine, which originated with the defeat of the Ottoman Empire in World War I. Having conquered Palestine in 1918, Britain was granted a mandate by the League of Nations over Palestine in 1922. During the period of British hegemony and the official mandate (1918–1948), the foundations were laid for Israel's criminal justice institutions (Bensinger 1998).

Today, Israel is a democratic republic with a parliamentary system of government. It has a strong cabinet, a multiparty system with two major parties (although this situation is changing because of the direct national election of the prime minister, since 1996), and a marked tendency toward political and administrative centralization. Israel does not have a formal written constitution. The foundation on which the system of government has been built is composed of legislation, administrative acts, and parliamentary practice. The Knesset, or Israeli National Assembly, is a 120-member, single-chamber legislature whose members are elected every 4 years. The president, who is the head of state, is elected by the Knesset for a 5-year term, which can be renewed once. The president has neither executive nor veto powers. He exercises only ceremonial functions. The cabinet is the main policy-making body. The prime minister is the leading figure in the cabinet and in the government. The population of Israel in 1997 was estimated at 5,652,000 people residing in an area of 7,846 square miles, not including territory occupied in the June 1967 War (Encyclopedia Britannica 1998).

Since Israel has no constitution or bill of rights, Israeli law is derived from statutes passed by the Knesset, including the Judges Law (1953), the Rabbinical Court's Jurisdiction (Marriage and Divorce Law [1953], the Courts Law [1957], the Criminal Code [1956], and the 1977 Penal Law). The principle of separation of powers is maintained in Israel, with three branches of government: the legislative (the Knesset), the executive (the government of Israel), and the judiciary (Israeli courts do not have the power of judicial review). However, Israel's Supreme Court can suggest the desirability of legislative changes and can rule on constitutional and administrative matters. The criminal justice system is adversarial in nature; in criminal hearings, the state is represented by district attorneys who work in the state attorney's office. In magistrate courts, the state is also represented by police prosecutors who normally do not prosecute felonies (Bensinger 1998).

ISRAELI LEGAL SYSTEM

The only formal body entitled to pass any law in Israel is the Knesset (the Israeli Parliament). The Parliament consists of 120 members who are nationally elected every 4 years. There are two types of proposals (bills) that can be promulgated into the law of the country. The first is a private legislative bill that is introduced by a single member of the Parliament or a group of the members.

The second type, called a governmental legislative bill, is introduced by the government or one or a group of the government ministers. Each proposal is brought for a preliminary reading before the Knesset, and a parliamentary discussion is conducted on the bill. A vote is taken either for or against the new law. If the majority of the members of the Parliament vote against the proposal, it is dismissed and for a period of time, at least 6 months, neither the original proposal nor one similar to it can be brought back for discussion. If the majority of the members vote for the proposed new legislation, it is transferred to one of the Knesset's subcommittees (one that is most relevant to the newly proposed law) to be formally defined as a new piece of legislation. Upon completion of the subcommittee's work, the newly defined bill is brought back to the Knesset for a second vote. The vote is accompanied by a discussion and possible amendments are recommended.

Finally, the proposed new legislation, together with any amendments, is brought to the Knesset for a third vote. If the majority of the members present in the Parliament vote for the new legislation, it becomes a new law of Israel. This new law becomes formalized when it is published by the Knesset in the Law Ordinance.

LAWS OF ISRAEL

Israeli law is based on English law. The definition of particular behavior or conduct as criminal is based on the principle of *nullum crimen, nulla poena, sine lege*, which means that not every act that appears to be repulsive or deviant is automatically defined as a crime; for an act or behavior to become a crime, it has to be specifically defined as such in the Israeli Criminal Code (of 1977). The Criminal Code clearly defines the prohibited behavior and/or the circumstances under which such behavior is prohibited. Additionally, the Code specifies the punishment attached to the violations. Based on this principle, an act or behavior becomes a crime only when the judge or judges who have the jurisdictional authority to preside over the criminal trial decide that the behavior or act is indeed criminal. This decision must be based on the evidence and the testimony of witnesses presented to the judge or judges. The evidence and the testimony of witnesses must be sufficient to enable the judge to reach the decision, beyond a reasonable doubt, that the defendant engaged in a behavior or an act defined as criminal in the Israeli Criminal Code, and that the behavior or act was included in the original indictment submitted at the initial stage of the prosecution.

CRIME AND DEVIANCE

Crimes in Israel are classified into three categories: crimes (equivalent to an American felony), *avonot* (equivalent to an American misdemeanor), and *chataim* (equivalent to an American administrative violation).

TYPES OF STATISTICS

The major source of criminal statistics in Israel is the statistics branch at the Israeli National Police (INP) headquarters. The police compile the daily number of complaints registered (either by citizens or by various police stations) and transfer the data tapes to the Central Bureau of Statistics (CBS), which publishes them monthly. The data tapes are then kept at the CBS and are used for the calculations of the annual summaries.

These annual summaries are published regularly in the statistical abstracts and the statistical monthly. Every now and then, based on budgetary considerations, the CBS also publishes a special issue in the special series publications. So far, these series include reports for most years since 1956. There are also special issues on juvenile delinquency, court statistics, and victimization surveys (Rahav 1998a).

DRUGS

The drug problem in Israel began after the Six-Day War in 1967, but heroin did not enter the Israeli drug market until the latter half of 1975. Prior to 1979, most of the heroin in Israel was either Mexican or Asian, but since 1980, the more potent Turkish heroin has been smuggled into the country, first from Turkey and since

1988 from Lebanon. Lebanon has become the major source of hashish and heroin smuggled into Israel. More recently, the INP has become more concerned about drug trafficking across the border with Egypt (Bensinger 1998). Table 6.1 presents the demographic distribution of drug offenders in 1996 (Israel National Police 1998).

ORGANIZED CRIME

The roots of organized criminal activity in Israel can be traced to the establishment of the country in 1948. It was only in the 1960s, though, that organized criminality emerged as a serious problem. Mostly reported were robberies, burglaries, sale of stolen goods, and smuggling of highly taxable goods. It involved some persons known to the police, primarily groups of Israeli-born young men, or those whose parents immigrated to Israel, mainly from Muslim countries.

New immigrants from the Republic of Georgia, who arrived in Israel by the thousands in the mid-1970s, contributed to the birth of a new era in organized crime. In 1980–1982, it appeared repeatedly in the media and in police statements that among the Georgian Jews were found a “special” type of criminals, engaged in “big and serious” crimes. They specialized in large-scale theft of passengers’ luggage at Ben Gurion International Airport, theft from warehouses, sophisticated frauds, theft of religious objects and diamonds, counterfeiting of money, large-scale fencing operations, and smuggling. A new phase in the existence of organized crime in Israel emerged with the arrival, between 1988 and 1993, of about 500,000 immigrants from Russia and other states of the former

TABLE 6.1
Drug Offenders^a—Demographic Distribution by Age and Gender (1996)

Type of Offense	Total Number of			Age 22+	Males	Females
	Offenders	Age 12–17	Age 18–21			
Drug use	7108	479	1700	4929	6287	821
Trafficking, import, and export	1732	160	265	1307	1610	122
Growth, production, and distribution	184	10	27	147	162	22
Possession (not for personal use)	3726	157	569	3000	3333	393

Source: Israel National Police, Annual report 1998, Ministry of Internal Affairs, Jerusalem, Israel, 1998.

^a Each offender is represented only once per year, based on the most severe offense committed.

Soviet Union. Many arrived with forged documents that either falsified their Jewish status for the sake of receiving preferential treatment as Jewish immigrants or forged certificates about professional status to qualify for highly skilled positions. The Russians formed organized gangs that are active in various areas of crime through the use of violence.

Some continue their criminal connections with their accomplices in Russia or with those who immigrated to the United States. They brought with them their expertise in extortion, forgeries, counterfeiting, group violence in the service of extortion, loan sharking, organized prostitution, and smuggling of women and contraband goods. Some groups enter the drug-dealing market in Israel and thus come in contact with "native" organized crime groups. The beginning of cooperation between them can already be seen in distribution of drugs and some joint ventures in grand theft and fraudulent schemes in Israel and in Russia, in unlawful gambling where the Russians serve as financiers, and in enforcement tasks. The tendency of the Russians to resort to violence added more acts of violence in cases of group competitions and rivalries (Amir 1995). As of today, the INP does not have enough resources or man power to pose any serious threat to the phenomenon of organized crime in Israel (Haberfeld et al. 1998).

JUVENILE DELINQUENTS

The Hebrew terminology does not distinguish among juvenile offenders, delinquents, or juvenile criminals. Status offenses hardly exist in Israel. Thus, juvenile delinquency is actually defined by the special institutions for handling young offenders: the juvenile court, the juvenile units of the police, the juvenile probation service, and to some extent, penal and treatment institutions for juveniles. Under the British mandatory government law of 1937, a person less than 9 years old is not legally responsible for his or her acts. Children between the ages of 9 and 12 could be held legally responsible, but the prosecution has to prove that the child could know that he or she should not have behaved as he or she did. Under the new Israeli law, this situation changes; the minimum age was raised to 14 and then lowered again to 12. The maximum age under Israeli law was raised to 18 (from 16, under the British mandatory government law), first for females, and later on for males as well. The following changes, over the years, affect, necessarily, the delinquency rates: 9–16 [9–18 for girls] (1948–1977), 9–18 (1977–1978), 13–18 (1978–1984), and 12–18 (since 1984).

The critical age is the age at the day of prosecution. However, in some instances, when the act was committed before age 18, a case may be submitted to the youth probation service even if the case was prosecuted past this age (Rahav 1998b). There are three main youth laws pertaining to juvenile delinquents. The first is the Youth Law 1960 (treatment and supervision), which deals mainly with nondelinquent minors who require protection. Underage (e.g., for legal responsibility) minor delinquents are handled by welfare officers and not by correctional officers.

The second is the Probation Ordinance 1969 (new version), which details the operating procedures and authority given to probation officers (Hassin and Horovitz 1998); the third is the Youth Law 1971 (trial, punishment, and modes of treatment), which deals solely with juvenile delinquents.

Table 6.2 presents the demographic distribution of offenders by age, sex, and religious affiliation (Israel National Police 1998).

VICTIMS AND ISSUES IN VICTIMOLOGY

Israel has played quite a significant role in the development of victimology as an independent scientific field of inquiry. Today, victimology is taught in all major Israeli universities and a growing number of scholars devote their research efforts to this field.

Some unique features related to Israel's history and political situation (the Holocaust victims and the security tensions) are also reflected in the victimological research in Israel (Landau and Sebba 1998). In recent years, however, no victimization survey has been conducted in Israel (Landau and Sebba 1998).

As of 2000, only four national victim surveys had been conducted in Israel, in 1979, 1981, 1986, and 1990. However, these surveys, which comprised representative samples of about 5000–6000 Jewish households each, cannot be seen as representing the total population, as they excluded the Israeli Arab population (within the pre-1967 borders). Approximately one-sixth of the Israeli population within the Green Line (excluding the administered territories) is Arab. There is no evidence of a high degree of criminal victimization on the part of this group, although there is little direct documentation of this, as the victimization surveys did not include the Arab population in their ambit. Agencies dealing with special categories of victims, such as battered women and sexually abused children, report a relatively low representation of the Arab population, but this may be

TABLE 6.2
Offenders: Demographic Distribution—Age, Sex, and Religious Affiliation

Year	Total	Juveniles ^a	Adults	Males	Females	Jews	Non-Jews
1991	64,659	6163	58,496	56,153	8506	46,292	18,367
1992	70,863	6194	64,669	61,749	9114	49,546	21,317
1993	74,598	6225	68,373	65,064	9534	51,306	23,292
1994	75,789	6477	69,312	65,994	9795	50,868	24,921
1995	82,683	6514	76,169	72,314	10,369	52,952	29,731
1996	88,695	7226	81,469	78,220	10,475	55,421	33,274

Source: Israel National Police, Annual report 1998, Ministry of Internal Affairs, Jerusalem, Israel, 1998.

^a Juveniles between ages 12 and 17 years.

due, at least in part, to a reluctance to report such acts to the authorities (Landau and Sebba 1998). Ethnic differences between Arabs and Jews with regard to the decision to close juvenile criminal files rather than to prosecute were recently studied by two Israeli sociologists (Mesch and Fishman 1998), in an attempt to find patterns of differential outcomes in the criminal justice system.

The findings of their study provided evidence that different criteria are indeed applied to different ethnic groups in the decision-making process to close a file. Previous criminal involvement influences the decision to terminate a file for both Jews and Arabs. However, age and juvenile occupation are found to apply only to Jewish juveniles, resulting in a higher likelihood of closing files of Jews than of Arabs. The authors caution, however, that the findings are limited to less serious crimes only (property offenses). In an earlier study, Fishman and Rattner (1997) examined the effect of legal and extralegal variables on record closing and convictions, focusing on differences in dispositions between Jews and Arabs. Their findings confirmed, at least partially, the hypothesis that Arabs have a greater chance of being discriminated against as their cases move along in the criminal justice system. However, the impact of nationality on record termination was very small. In the conviction phase, the proportion of records attributed to Arabs was higher; however, the information regarding previous convictions raised some statistical questions regarding the final interpretation of the data.

Two unique aspects of the victimological research in Israel focus on the victims of terrorism and the

Holocaust. Research studies of survivors of major terrorist incidents found out the long-lasting experience of significant negative feelings and thoughts related to the hostage incident, some clearly experiencing posttraumatic stress disorder.

An extensive body of literature has developed on the traumatic effects of the Holocaust experience on survivors, including second and third generations of survivors. Many of the studies report long-range detrimental effects of the Holocaust on the survivors or on the second and third generations. Empirical evidence shows that children of Holocaust survivors tend to internalize feelings of anger and aggression and have problems in their ability for direct expression of these impulses (Landau and Sebba 1998).

Friedmann (1998), in his discussion of Landau and Sebba's extensive research in the field of victimology, summarizes the three "profiles" of victimization, in Israel, which include both research and political activism in the area. The first is "moral crusader," where research focuses on particularly sensitive topics such as the elderly, women, and children. The second, unique to Israel, is "national political," with the ethnic, religious, and community cleavages, terrorism, and the Holocaust. Finally, the third, "mundane," deals with issues such as victim compensation, or notification of proceedings against the suspect. (An example of the last can be found in the study conducted by Mesch and Fishmann 1998.) Finally, it could probably be stated that the victims have no place in the criminal process, except for submitting complaints and giving testimony in the police investigation and/or the trial.

POLICE

GENERAL OVERVIEW

The INP, from its inception in 1948, has been a national, highly centralized force, commanded and managed by a commissioner (known as the inspector general) from INP headquarters in Tel Aviv (and from Jerusalem since the Six-Day War). The country was divided into districts and subdistricts, each commanded and controlled by a local commander, operating from his own sub-headquarters. Careful lines of command and control were designed to facilitate the control ability of commanders and headquarters on different levels. In terms of structure and management, the INP followed a centralized military and tightly controlled example set by the British colonial police, and also by the military, from where many of the first top police officers were recruited. The military nature of the INP was further facilitated by the organizational climate: a predominately authoritative leadership style, tight control over officers' professional discretion, strictly enforced discipline, and carefully maintained distance between commissioned officers and rank-and-file. Over the past four decades, the force went through three major reforms, culminating in the recent orientation toward the philosophy of community-oriented policing (Shadmi 1998).

Today, the INP is one national police service, under the charge of the minister of public security. The force is commanded and directed, operationally and organizationally, by its commissioner, who is appointed by the minister, almost invariably from INP ranks. This national force, with its headquarters in Jerusalem, is organized geographically into 6 regions or districts and 13 subdistricts and delivers its services to the public from 67 local police stations. The budget for the INP comes from central government revenue, excluding municipal taxes. Its commanding officials are selected by national and regional headquarters (town mayors or other heads of locally elected council have no say whatsoever in these appointments).

A unified, unitary police service of this type permits rapid national response and deployment anywhere in the country, whether in response to terrorist attacks or to public order disturbances. Israel's long-standing security situation has led it to set up a network of strong national and regional service units to defend its internal security: special antiterrorist and bomb disposal units, the Border Guard (or the Border Patrol Police), and the special patrol units. All this has demanded massive investment of man power, money, material, and

other resources subtracted from investment in the local police stations that supply the greater part of services to the public. It is common for local station officers to be deployed elsewhere, wherever, and whenever the need arises. Such circumstances inadvertently weaken the local stations and impair service to citizens (Israel National Police 1996). Police roles and responsibilities, according to Article 3 of the INP Manual (new version, 1971), include the following:

- Prevent crimes
- Discover and investigate crimes
- Apprehend criminals and carry out criminal prosecution
- Enforce traffic laws
- Secure public safety and property
- Provide a secure environment for prisoners and detainees
- Secure internal peace (Israel National Police 1998)

The last function is a direct outcome of the Yom Kippur War and the terrorist events that followed thereafter. In 1974, the Israeli government imposed the responsibility for preserving internal peace on the INP. This extraordinary heavy burden took its toll on effective and efficient policing in the area of traditional police functions (Haberfeld et al. 1998).

The Border Patrol function is an operational and professional unit of the INP, among other responsibilities, in the area of internal security and the war against terrorism. It can be compared, as far as its internal structure, to what is known in other countries as the *gendarmarie* (France, Cameroon, etc.).

The officers have the same authority as regular police officers; however, tactically, they are deployed in a semi-military manner. Their function is unique and complex. They fight, protect, secure peace, and serve the public in various civilian service capacities—their functions and overall performance depend on specific needs and situational necessities.

In 1998, the INP was composed of 25,700 police officers, including Border Patrol Unit. Female officers constituted about 20% of the force (Israel National Police 1998). Table 6.3 presents crimes recorded by the INP in 1997 and provides an illustration of the heavy burden of preserving internal peace.

Tables 6.3 and 6.4 show that property crimes, as in the United States and other countries studied, outnumber crimes against persons.

COMMUNITY-ORIENTED POLICING

In 1994, having analyzed the needs of the INP and its public, the decision to make the transition to community-oriented policing was made. To carry forward this organizational change and realize the improvement in policing required by it, the Community Policing Unit (CPU) was inaugurated in December 1994. Directly answerable to the commissioner, the CPU has as its chief function to lead this organizational change process and assimilate the new approach into the INP's operational reorientation of police stations and their local communities. Community policing is now

the focus of INP's work and it has surfaced throughout the municipalities in the country (Amir, Weisburd, and Shalev 2002). Today, more than 50 cities in Israel are undergoing a change to community policing. Under the direction of the CPU staff, the police station and mayor in a given city are approached and asked if they are willing to undertake the change to community policing. The enthusiasm is usually great. Most of the mayors have immediately grasped the potential of such a change. As a first step, the police officers and the community leaders meet and are introduced to the working principles of this philosophy. The CPU works with steering committees, training them in problem-oriented analysis techniques, providing them with ideas and tested crime prevention partnership models, referring them to other cities where similar problems have been tackled, and assisting them in the evaluation processes. Seven cities going into their second year of implementation have, together with the local partners, reached a second stage of goal-setting—coordination with senior level management. During the first year of implementation, the commissioner decided that those implementing community policing (the station commanders) would be rewarded by a trip abroad to see how things are done in countries that have implemented the process. Not only was this a significant incentive, but it also allowed the commanders to see how their counterparts in countries such as the United Kingdom and Holland had implemented community policing.

Community Policing Centers, “mini-stations,” are being set up within neighborhoods to decentralize services and to help focus on local needs and problems. The neighborhood community police officer, who has been

TABLE 6.3
Crimes Recorded by the Police in 1997

Type of Crime	1997
State security	1042
Public order	28,882
Against human life	2986
Against human body	26,958
Sexual offenses	3098
Moral offenses (included drugs)	14,546
Property	268,967
Fraud	11,635
Other	8168
Total	366,282

Source: Israel National Police, Annual report 1997, Ministry of Internal Affairs, Jerusalem, Israel, 1997.

TABLE 6.4
Incidence of Property and Personal Crimes—Based on the Number of Criminal Investigations

Files (INP Annual Reports 1991–1996)^a

Year Crimes	Breaking and Entering	Violent Crimes ^b	Serious Crimes ^c	Sex Crimes	Drug Crimes	Drug Crimes—Personal Trafficking not for Use	Drug Possession—Personal Use
1991	44,741	14,512	5526	2232	7528	2386	4
1992	51,939	16,725	6554	2544	6581	3529	4
1993	47,879	18,842	7123	2752	6842	2345	2358
1994	44,421	18,809	6686	2825	6594	2033	2801
1995	47,739	22,415	7646	2904	7476	1821	2985
1996	51,621	24,445	7362	3001	8821	2038	3677

^a Some of the crime incidents are included in a number of categories.

^b Included are murder and attempted murder, rape, sexual molestation, assault, aggravated assault, and robbery.

^c Included are murder and attempted murder, rape, sexual molestation, robbery, blackmail, bribery, and arson.

^d This offense in 1991 and 1992 was classified either as personal use or trafficking.

taken out of the main police station staff, collaborates with residents and local agencies and mobilizes volunteers to help implement crime prevention activities. Within the main police stations, a "Service Center" has been set up to provide citizens with "one-stop" response to all their requests and needs, from filing reports to receiving application forms for the licensing of personal weapons. The initial results seem promising (at least according to the INP official sources). More and more police officers are reporting a difference in the way they provide services, allowing them to target their services according to the needs of their specific communities. These officers have an increased level of satisfaction and the hope that the new working methods will bring about real crime prevention in the long run.

Resource sharing has already produced increased police activity in areas that, until now, have been untended, especially with respect to at-risk groups and enforcement of quality-of-life offenses. The officers are also reporting that in their newly formed neighborhood centers, an increased public cooperation with the police is noticeable (Geva 1998).

IMAGE AND ACCOUNTABILITY

Despite the efforts of the CPU, the overall public image of the police, at least as portrayed by the media, is very low. Prior to 1992, all complaints against police officers were handled internally by the police department itself. During the past decades, this system came under criticism for being inappropriate and for its lack of objectivity and professionalism (Herzog 1998). Following public pressure and a gradual change in the attitudes of the Israeli police administration, especially with regard to the issue of accountability, the external civilian Department for the Investigation of Complaints against Police Officers (known in Hebrew as *Machash*) was established in 1992, under the auspices of the Ministry of Justice. Less serious cases continue to be dealt with the internal investigations unit within the Israeli police department. The role of *Machash* is to investigate every police officer suspected of committing offenses involving the illegal use of force as well as criminal offenses punishable by over 1 year of imprisonment. It also decides on whether a complaint is sustained or not. The board is headed by an attorney, but all of the investigators are police officers who were once part of the regular police force (Herzog 1998). In 1994, the numerous allegations about excessive use of force by the police led to the establishment of the Kremnitzer Committee to investigate such abuse. The Kremnitzer

Committee was the third public committee established to investigate police misconduct. Previous committees included the State Comptroller's Committee and the Ministry of Police Comptroller's Reports. The major recommendations of the committee were to speed up the process of investigation by investigating the complains in the civil court, to discharge police officers even if the evidence does not warrant a criminal process, to enforce the standards of selective recruitment, to extend the probationary period from 1 to 2 years, to discharge officers who show violent propensity during the probation period, to recruit more women, to prevent officers with a record of disciplinary violations from being promoted, and to photograph the investigative process (Haberfeld et al. 1998). The committee cited the positive changes that had been adopted by the police to ensure more successful treatment of police violence.

However, it also warned against "misunderstandings" stemming from clear messages on the declarative level rather than the operational level. It was the committee's opinion that the covert messages conveyed to lower rank officers became manifest in the field because of the police administration's emphasis on, or pressure toward, producing concrete results. These pressures bring about a disregard for declarative rules and regulations and a tendency to resort to various illegal means (Herzog 1998). The chief of police agreed to adopt all the recommendations. However, the media continues to portray a grim picture by reporting, almost on a daily basis, about instances of abuse of power and authority, problems with integrity, and police corruption. A recent survey of public opinion revealed that about half of the citizens of Israel do not have confidence in the abilities and effectiveness of the INP. However, at least as far as the use of excessive force is concerned, the public seems to be mistaken, as the INP proudly presents its recent statistics—citizen complaints against the excessive use of force went down, from 300 officers who faced indictment in 1995 to 220 in 1997 (Haberfeld et al. 1998).

TECHNOLOGY AND BUDGET

The Israeli police are considered to be technologically up-to-date in comparison with their counterparts in the West. Among other technological inventions, the force uses video motion detection, digital traffic stop cameras, portable laptops in patrol cars, the Automated Fingerprint Identification System, and DNA technology based on the polymerase chain reaction. Table 6.5 presents police budget distribution for 1996.

TABLE 6.5**Police Budget and Its Distribution (1996; 1 U.S. \$ > Approximately 4 Israeli Shekels)**

Direct budget	2,070,635	551,273	44,259
Expenses dependent on income	109,033	103,019	14,523
Other government offices	140,586	95,548	39,868
Total	2,320,254	749,840	98,650

Source: Israel National Police, Annual report 1996, Ministry of Internal Affairs, Jerusalem, Israel, 1996.

PROSECUTORIAL AND JUDICIAL PROCESS

At the end of the police investigation, the investigative files are transferred to the prosecutorial authorities of the state, which represent the people as the accuser in the criminal violation (article 11 of the Law and Criminal Procedure, hereafter referred to as “the Law”). The prosecutorial branch is headed by the attorney general to the government, and the state and district attorneys serve as deputies to the attorney general. Police prosecutors are allowed to represent the prosecution in misdemeanor cases.

The duties and responsibilities of the attorney general are rooted in the period of British rule in Palestine. However, contrary to the current situation in the United States and in England, where the attorney general is a political figure who serves also as a member of the government, in Israel the office of attorney general is a public office of high status. As such, it is not subordinate to the other branches of government in regard to the decision-making process. In addition to serving as the head of the prosecutorial process, the attorney general’s duties include the following:

- To represent the state in courts at all the judicial processes
- To serve as a legal counsel to the government and to other governmental branches (including preparations for new legislation)
- To represent the people’s interest

When the police investigative files are received, the prosecutor invokes the process of indictment and decides what criminal charges the suspect is going to face. Until the court hearings commence, the trial prosecutor has the right to amend/change the charges, and from that moment, this right is transferred to the court (articles 91 and 92 of the Law). However, the prosecution is entitled to its own professional opinion, and therefore, it is allowed not to indict the suspect in one of the following instances:

- When it appears from the investigative files that there is not enough evidence to achieve indictment
- When the prosecutor decides that the evidence is not reliable (does not meet the desired standards)
- When the chances for a guilty verdict are low (the Israel High Court of Justice, 3846/91)

No public interest will be served by the indictment—here the legislators aimed at a desired balance between the indictment of the defendant and the public interest in a case of no indictment (see the High court of Justice 935/89).

During the entire prosecutorial process, the prosecutor has the right to offer a plea bargain to suspect or his or her attorneys. If the plea bargain is accepted, the defendant (whether free or already incarcerated) pleads guilty to all or some of the charges included in the indictment and faces either a set of newly amended charges or a plea for a reduced sentence. Since its introduction, the plea bargain arrangement has been severely criticized, especially by the Israel High Court of Justice, because it is not secured by the Law of Criminal procedure and the proceedings of the arrangement are regulated in case laws. For example, it was decided that it is appropriate for the parties involved in the process to bring the written plea bargain agreement to the court and attach it to the investigative files, but the court does not have to pass its judgment based on the specific plea bargain.

Furthermore, the court is not tied to the agreement or any part of it (criminal request no. 523/71). However, during the past few years, the plea bargain arrangement has acquired some legitimacy, and, to a certain degree, even some enthusiasm among prosecutors and attorneys (Shacher 1994).

In Israel, every criminal suspect or accused has the right to choose an attorney who will represent him or her. However, in reality, there is a major economic obstacle to this right, because a private counsel or attorney can be very expensive. Because of this obstacle, the court has the right, based on the defendant’s request or its own initiative, to appoint an attorney (not only for the defendant/accused but also for the free or already detained suspect), if the case involves an impecunious defendant (article 15(c)(d) of the Law). In other cases, if the defendant is not represented, this right of the court to appoint an attorney, free of charge, becomes mandatory (articles 21a and 15a of the Law) under the following circumstances:

- When the accused is brought to a hearing for a request of preventive detention until all the proceedings are over
- When the crime of which he or she is accused is first-degree murder, or the sentence for the

crime committed is a death penalty or life sentence, or minimum sentence for the crimes is set at 10 years of imprisonment or more

- When the accused is less than 16 years old and is brought to a court other than Juvenile Court
- When the accused is mute, deaf, or blind, or there is a reason to believe that he or she might be mentally insane or retarded

In 1996, because of the problems associated with finding an adequate number of attorneys who would volunteer to serve as public defenders, the office of public defender was established. The office employs both in-house and private attorneys. The main purpose of the office is to provide assistance in criminal cases, in cases in which the Law mandates the appointment of a public defender, and in cases in which the accused is an indigent person and cannot afford a private attorney.

PRETRIAL AND PREVENTIVE DETENTION

According to the new Criminal Procedure Law (Law Enforcement and Incarceration Rights—1996), the police have to bring the arrested suspect in front of a judge (regardless of whether or not a warrant was issued) in order to extend the arrest warrant. If a suspect is an adult, this has to be done no later than 24 hours after the initial arrest was executed. If the suspect is a juvenile, he or she has to be brought in front of a judge no later than 12 hours after the initial arrest. During the hearings, the judge has two options as to how to proceed (article 17 of the Law):

1. The judge can extend the arrest warrant, for not more than 15 days, providing that two cumulative circumstances are present:
 - There is an evidential basis to assume that the accused is guilty as charged.
 - There is a reason to justify the extent of his or her incarceration (that compromise the outcome of the investigation, public safety might be in danger, and/or the seriousness of the crime committed).
2. The judge can release the accused and not extend the warrant, in an absolute manner, and also release the accused on bail, with or without additional limitations (e.g., by preventing the accused from leaving the country and taking away his or her passport). The amount of the bail set does not necessarily reflect the damage caused or the profit gained from the crime; it is aimed at securing the appearance of the accused

for the follow-up investigation, the trial itself, or part of the punishment (article 43 of the Law). If the conditional release is violated in any way, the accused is arrested or the bail money is forfeited to the state.

In two instances, the judge does not have the authority to prevent the pretrial arrest:

1. When the accused is a fleeing felon (article 17a of the Law)
2. When the accused is suspected of committing a crime for which the mandatory sentence is either death penalty or life sentence or was involved in one of the following crimes: prostitution, drug-related crimes, or blackmail (articles 34 and 35 of the Law)

When the indictment is submitted, the accused can be detained only on the basis of preventive detention that has been issued for the duration of all the proceedings, until the judicial verdict (articles 21a and 27a of the Law). If a person is arrested as a suspect and the prosecution does not request from the judge a preventive detention warrant, the suspect must be set free. As mentioned previously in this subsection, when the prosecution requests such a warrant, the accused must be represented by an attorney, unless he or she gives up this right.

Unless the accused is represented, the judge cannot issue this warrant for the duration of the proceedings, and a warrant can be issued for a limited period, not exceeding 30 days, each time.

Similar to the procedure followed during the extension of the pretrial arrest warrant, the preventive detention warrant can be issued while both the cumulative conditions are present:

- Apparent evidence is present in order to prove the accusation.
- There is a reason for incarceration (as pointed out previously in this subsection).

However, the law specifies that the accused should not be preventively incarcerated if either of the following is true:

- If more than 60 days have passed from the initial indictment to the beginning of the trial
- If more than a year has passed from the beginning of the trial to the time the verdict was issued (articles 52 and 53 of the Law)

JUDICIAL SYSTEM

The Israeli regular judicial system (as opposed to the religious/rabbinical system) is adversarial in nature, with judicial proceedings and legal jurisdiction in the hands of professional judges only. The origin of the criminal court system can be traced to the British court model, during the British Mandate in Palestine. The system is composed of a three-tier court: magistrates' courts, district courts, and the Supreme Court. Each tier has a different jurisdiction over criminal matters.

MAGISTRATE'S (OR PEACE) COURTS

The magistrates' courts exercise criminal jurisdiction in crimes punishable by no more than 7 years of imprisonment or fine (article 521 of the Courts law). This upper limit is subjected to constant increases due to case overload. Until 1957, the upper limits rose from no more than 1 year of imprisonment to 3 and 5 years, and finally the limit reached 7 years in 1992 (Shacher 1994). There are 28 magistrates' courts throughout Israel. Most of the proceedings in these courts are conducted before a single judge.

DISTRICT COURTS

The district courts have a dual function: they deal with all criminal cases beyond the jurisdiction of the magistrates' courts and also serve as appellate courts for magistrates' court decisions and other judgments.

These courts do not have discretion to reject appellate cases from the lower courts. During the appellate proceeding, the courts can exercise the following rights: to deny the appeal; to amend the judgment of the lower court or to render a new judgment; or to return the appeal to the lower court with instructions as to the proceedings. There are five such courts in Israel. A three-judge panel is appointed in the following trials:

- When the crimes are punishable by death penalty (capital cases) or 10 years of imprisonment or more
- In appeals in which the final decisions are of severe nature

THE SUPREME COURT

Israel's Supreme Court exercises jurisdiction over the district courts' decisions. Usually a case is decided by the chief justice and the number is uneven. In special requests, there are instances when the Supreme Court consists of a

single justice. In addition, similar to the English system, this court serves as the state's High Court of Justice.

In principle, in most of the hearings of the Israeli Supreme Court, three judges are present based on the personal decision of the supreme justice. Exceptions to this rule are made, for example, during additional hearings on cases that were previously decided by the Supreme Court. Also, depending on the importance of the specific hearing, the supreme justice has the authority to increase the number of judges (more than three, but always an odd number). However, section 26 of the Court Law (1984) states that there are three types of hearings in which a single judge can preside over the Supreme Court:

1. Hearing on interim warrants, temporary warrants, and requests for suspended warrants.
2. Hearings on appeals of the district courts' interim decisions, district courts' verdicts reached by a single judge, verdicts or decisions of the municipal courts.
3. Hearings held prior to the appeal.

The Israeli High Court of Justice, known as *Bagatz*, functions as an administrative law court to provide judicial review of official administrative actions. The grievances against a government authority can be brought by citizens or organizations. The significance of the Israeli High Court of Justice has grown in recent years: on one hand, defending the rights of the citizens against the state's actions and the state's involvement, when their basic rights are apparently violated by the government; on the other hand, intervening in constitutional, political, and even religious issues. This phenomenon has been referred to as "judicial activism" and has vigorous opposition by the orthodox religious parties.

The judges in Israel are elected by a public committee composed of representatives from the Supreme Court, the government, and the representatives of the bar. Overall, judges in Israel command the respect of the whole country. However, the judicial system in general is characterized by case overload, which leads to significant delays in the hearings and rendering of judgments. The deficiencies are caused mainly by inadequate number of justices in comparison to the rising number of hundreds of thousands of cases currently processed by the magistrates' and district courts. Table 6.6 presents the distribution of criminal cases in the three courts between 1995 and 1997.

This grim situation has brought about the establishment of a public committee headed by the Supreme Court Justice to review the court system in Israel, in an attempt to streamline and modernize its functions (1997). The

TABLE 6.6**The Distribution of Criminal Cases According to the Various Israeli Courts, 1995–1997^a**

Court/Situation	Magistrate Courts			District Courts			Supreme Courts		
	1995	1996	1997	1995	1996	1997	1995	1996	1997
Submitted	208,173	221,234	235,634	15,500	16,724	18,123	2116	2603	2198
Closed files	201,677	209,143	233,228	14,848	16,824	17,811	2061	2608	1963
Open files	96,634	111,132	114,841	5194	5131	4698	1028	996	1015

Source: Israeli Central Bureau of Statistics (1998).

^a The number of files closed and open each year represents a total number of files dealt with in a given year, including files that were submitted in prior years.

main recommendation was to change the present structure of the judicial system based on redesigning of all the three courts and their hearing jurisdictions. The recommendation is still pending the government's approval.

PENALTIES AND SENTENCING

The criminal process in Israel is composed of two stages: the trial and the sentencing process. During the first stage, the evidence is gathered and brought together with the witnesses, in front of the judge by the two sides and the cross-examination takes place. The judge is also entitled to cross-examine and ask questions; however, this right is rarely exercised. Upon the completion of the first stage, the judge ultimately decides whether the accused is found guilty or innocent, based on the indictment and the material evidence. The witnesses are not sworn, but are warned against committing perjury. The accused, who serves as the first witness, is not obligated to testify and is allowed to remain silent. Despite the fact that this right to remain silent is perceived as an attribute for the prosecution, the guilty verdict cannot be based solely on the silence of the accused; additional and independent proof is required. Every individual is eligible to serve as a witness and it is his or her duty to serve as such (with exceptions for immediate family members, who cannot be called as the prosecution witnesses). If an individual fails to appear in court as a witness, the judge issues a bench warrant against him or her and can impose a prison sentence or a fine (as in the case of "hostile witnesses"). With regard to the mentally ill, their ability to testify is judged based on the capacity to understand parts of the events and the ability to recall and convey. For the underaged, their ability to testify is based on their understanding of the need to testify truthfully. Hearsay testimony is not admissible in criminal cases.

RULES OF EVIDENCE

The statement or admission of guilt given to the police by the accused is admissible in court, provided it was given out of a person's free will. However, a person cannot be found guilty based solely on his admission of guilt, additional and independent proof is required. If the defense team claims that the admission of guilty was forced and not given out of the suspect's free will, a subtrial is set in motion to investigate the claim. In general, the rule of evidence in Israel allows all other types of evidence to be introduced in court and deems them admissible, unless the judge finds otherwise, based on the severity of the offense and the potential harm to the accused. During the past few years, a gradual tendency to accept the legal doctrine of "exclusionary rule" has been noticed.

SENTENCING

If the accused has been found guilty, the hearing about the severity of the sentence commences. Additional witnesses are allowed to testify for both parties as to the character of the accused and to provide additional information to the judge for sentencing consideration. At this point, the judge has the right to and must (if the accused is less than 21 years old) ask a probation officer for a report, which includes the social and personal background of the accused, as well as a recommendation for the sentence. In most instances, the judges accept the recommendations included in the report (Fishman et al. 1982). Each side is entitled to an appeal (for both the guilty verdict and the sentence itself), which has to be submitted in less than 45 days from the sentencing day. However, the appellate courts tend not to annul or even intervene in the lower courts' decisions.

A great deal of individualization is allowed in the sentencing process, predominantly because the criminal law determines only the upper range or limit of the

punishment, expressed by maximum years of imprisonment (with the exception of the crime of murder, where since 1954 the mandatory punishment has been life imprisonment). In light of this situation, the judge is allowed to sentence the accused to any length of sentence, as long as it falls below the maximum limit. The judge may also impose a more lenient alternative to imprisonment, such as one of the following:

1. *Open imprisonment*: In 1987, the criminal law was amended and the judge was allowed to substitute the prison sentence up to 6 months of imprisonment by sentencing the accused to open imprisonment with community service in various public organizations.
2. *Fine*: Various levels of fines are possible, depending on the offense committed, and the judge has the right to impose a fine up to four times higher than the original amount of damage caused to the victim or profit from the offense.
3. *Suspended sentence*: This can be imposed for periods between 1 and 3 years of imprisonment, with the conditions broadly or specifically defined.
4. *Probation*: The boundaries are set between 6 months and 3 years; the judge is not limited by the type of the offense committed or by the prior record of the offender.
5. *Community service*: This sentencing option is exercised when the probation office is convinced that the public and the offender will benefit from it in a more significant way than from the actual imprisonment. (The community service must be performed without any compensation, during free time, must be well structured, and cannot exceed a period of 1 year.)

Death penalty or capital punishment as a punishment for first-degree murder was in existence during the British Mandate and even after the establishment of the State of Israel. However, in 1954, it was abolished and replaced by a life sentence, without parole. Presently, the death penalty appears as a possible punishment in crimes such as treason during wartime, crimes against humanity and accompanying offenses, and terrorism. To date, the only person executed has been Adolf Eichmann, in 1965, for his crimes against humanity and Jewish nation. Moreover, a number of times military judges imposed the death penalty on convicted felons in cases of terrorist attacks. However, the policy of the various Israeli governments is not to demand the death penalty, and in all these cases of exceptions, the death penalty was replaced with

life imprisonment (Sheleff 1998). More recently, opinions have been voiced on both political and public fronts demanding the implementation of capital punishment.

PRISON SYSTEM

ADMINISTRATION AND ORGANIZATION

As with the police force, there is only one national prison system: the Israel Prison Service (the IPS). According to the formal policy of the IPS, its principal role is safe incarceration of inmates and prevention of inmates from causing harm to the society. The IPS also claims to have a role in the rehabilitation of the incarcerated population (Israel Prison Service 1971). It is headed by the prisons commissioner, who is appointed by the minister of interior security, based on the consent received from the government. From the organizational standpoint, the national prison system has a pyramidal (hierarchical) structure, similar to the military organization, and includes three tiers:

- Main headquarters of the Israeli Prison System, which serves as a professional center, running the prisons throughout the country.
- Three territorial, regional headquarters (North, Center, and South), which serve as the middle link between the territorial headquarters and the field officers in charge of overseeing the effective management of the field units. Field offices are outposts and subsidiaries of the regional headquarters operating units designed for community policing.

PRISONS AND JAILS

There are 15 prisons (including two jails for pretrial detainees) and a national medical center. Table 6.7 portrays the main characteristics of prisons and jails (detention centers).

Table 6.7 indicates that only five of the prisons were built with the specific goal of incarceration of inmates and pretrial detainees. The remaining seven are located in former British fortresses (known as *Tegarts*) and three in other sites that were not intended to serve as detention centers either.

Three of these facilities house more than 800 inmates; four, 600–800; four, 500–600; and three, fewer than 500. The security levels differ. Two-thirds are designated as maximum security prisons, three are medium security, and two are minimum security. A number of

TABLE 6.7
Characteristics of Prisons and Detention Centers in Israel

Sector	Name	Original	Year	Security	Population	Special Divisions	Capacity	Area per Structure	Prisoner
								Level	
North	Damon	Stables	1953	Medium	Light	Terrorist	517	2.7 s/f	Convicted
	Kishon	New	1983	Maximum	Detained		90	3.3 s/f	
	Shata	Tegart	1953	Maximum	Convicted	Rehabilitation	806	3 s/f	Terrorist
	Ashmoret	Tegart	1962	Maximum	Convicted	Drugs clean	383	3.2 s/f	Detained
	Carmel	Tents	1985	Minimum	Light convicted	—	520	2.5 s/f	
	Tzalmon	New	1996	Medium	Convicted	Drugs clean	720	5.7 s/f	
	Sharon	Tegart	1953	Medium	Convicted	Juvenile	525	4.2 s/f	
	Ayalon	Tegart	1950	Maximum	Convicted, isolation, religious		571	3.5 s/f	Security danger
Center	Mahasiah	Shacks	1956	Minimum	Light convicted	Rehabilitation	891	3.2 s/f	
	Neve Tirza	Ayalon	1968	Maximum	Women (convicted/ detained)	Rehabilitation	217	3.8 s/f	
	Nitzan	Ayalon	1978	Maximum	Convicted/ detained	Classification	739	3 s/f	Terrorist
	Medical Center	Ayalon	1990	Maximum	Ill	—	114	4.8 s/f	
South	Eshel	New	1970	Maximum	Convicted	Rehabilitation	914	3 s/f	Security
	Kidar	New	1984	Maximum	Detained	—	631	3.2 s/f	
	Shekma	Tegart	1968	Maximum	Security		693	2.5 s/f	Terrorist
	Nafchah	New	1980	Maximum	Security	Terrorist, workers	702	3.5 s/f	

Source: Israel Prison Service, Characteristics of prisons and detention centers in Israel, Ministry of Internal Affairs, Jerusalem, Israel, 1998.

prisons are intended to serve special populations: Neve Tirza for female prisoners and detainees only; Sharon for juvenile delinquents; Ashmoret and Eshel for prisoners who require special security measures to protect them from other inmates; Ayalon, which includes psychiatric wards and special religious wards, to separate and isolate the religious wards, to separate and isolate the religious prisoners; and a medical center intended to house sick inmates. Sharon and Eshel also offer special treatment wards for addicted inmates for drug treatments; Damon, Shata, Nitzan, Shekma, and Nafcha house inmates from the occupied territories who are serving time for terrorist activities against the State of Israel.

One of the characteristics of the prison system in Israel is severe overcrowding, except for the newly built Tzalmon, which was built according to modern, Western standards (about 5.7 m², and Sharon (4.2 m²). An adult inmate in an

Israeli prison has, on the average, an accommodation of about 3 m² only (about 9 ft²). The size of the accommodation is far below the standards set by the United Nations (12 m²) and is also below American standards (5.7 m²) (Shavitt 1998). Furthermore, the ratio between number of inmates and number of cells is very high in most of the facilities, with the exception of Tzalmon, in which the ratio is 1.4 inmates per cell. In 8 facilities, the ratio varies from 3 to 5 inmates per cell; in 5 facilities the ratio varies between 5 and 9; and in the Carmel prison, it reaches an enormous high of 18.5 inmates per cell.

PRISON POPULATION

Out of 8683 inmates incarcerated in prisons and detention centers throughout Israel in 1998, three-quarters are residents of Israel, and the rest Palestinians from

the territories (most of them males), two-thirds from the West Bank, and one-third from the Gaza Strip. The Palestinians are subject to Israeli military law and are incarcerated predominantly for security offenses and various terrorist acts.

The Israeli inmates are predominantly adult males (87.3% of the prisoners and 12.6% of detainees in preventive detention), 3.2% females, and 2.2% juveniles.

Table 6.8 shows the distribution of the incarcerated population during the recent years.

Based on the analysis of trends in the incarcerated population between 1987 and 1998, it is possible to identify two main theses:

1. Up to 1993, the incarcerated population increased steadily (an increase of 18%), especially because of a gradual growth in the number of Israeli inmates (an increase of 46%).
2. Up to this year, practically very little has changed. The number of incarcerated Palestinians did not change during those years.

From 1993, a steady decrease in the number of incarcerations and detentions (about 14%) can be observed. One possible explanation can be found in the parallel decrease in the number of Palestinians arrested and detained, an outcome of the peace treaties signed with the Palestinian Liberation Organization and the establishment (in 1995) of the Palestinian Authority (decrease of 44%).

The ratio of Israeli inmates per 100,000 citizens, during recent years, is similar. The same trend can be

observed for an increase in the number of inmates until 1993, followed by a steady decrease. In comparison with other countries around the world, Israel occupies a place in the middle, similar to the ratios acceptable in other modern, democratic countries (Kuhn 1998).

The most common way of easing the pressure of prison overcrowding seems to be the "early release" system, which is administered through an early release committee. Eligible inmates are those sentenced for a minimum of 6 months, after serving two-thirds of their sentence. The early release committee is composed of a district judge, representative of the prison systems (usually a high-ranking social worker), and a physician, representing the Ministry of Health. In addition, the district attorney's office and the probation board are also entitled to representation. The committee bases its decision on the outcome of an interview with the inmate and the report submitted by a social worker.

These early release options vary, depending on the length of the original sentence. For inmates serving sentences up to 2 years of imprisonment, the release is unconditional, in contrast to inmates serving prison terms that exceed 2 years of incarceration. For the latter, the two conditions are as follows: (1) the individual must not commit a crime, and (2) he or she must report once a month to a local police station for a follow-up report. In 1997, about 7400 inmates appeared before the committee, and only about 36% were released.

For inmates serving sentences of 3–6 months, the early release is conditioned only upon receiving an administrative warrant from the prisons commissioner, after the inmate has served two-thirds of the initial

TABLE 6.8
Prisons' and Detention Centers' Population in Israel, 1987–1997

Year	Israelis Convicted	Rate per 100,000 Citizens	Israelis Detained	Palestinians Convicted	Total Imprisoned and Detained in Israel
1987	3914	88.80	586	4049	8549
1988	4290	95.80	682	4082	9054
1989	4589	100.49	1026	4034	9649
1990	4981	103.23	936	3914	9831
1991	5133	101.22	924	4053	10,110
1992	5715	109.79	395	4008	10,118
1993	5785	108.34	395	3868	10,048
1994	5790	105.78	627	2940	9357
1995	5743	102.17	467	2965	9175
1996	5260	89.41	1055	2225	8540
1997	5704	96.00	727	2252	8633

Source: Israel Prison Service, Characteristics of prisons and detention centers in Israel, Ministry of Internal Affairs, Jerusalem, Israel, 1998.

sentence. Inmates who were sentenced for less than 3 months of incarceration are not entitled to early release. It is important to mention that in addition to the early release program granted by the committee or through the administrative warrant, the president of the State of Israel has the right to grant clemency both for early release and for a decrease in the original length of a prison sentence. This decision becomes valid after a recommendation is received from the minister of justice.

Table 6.9 presents the main characteristics of the incarcerated population: recidivism rate, length of sentence, and type of offense committed.

TABLE 6.9
Characterization of the Convicted Population in Israel in 1997 (in Percent)

Variable	Values	Israeli Convicted	Palestinian Convicted
Recidivism (imprisonment)	First time	32.6	55.3
	Second time	19.4	27.6
	Third time	13.3	9.5
	Fourth time	10.4	3.8
	Fifth time	8.7	1.8
	Sixth time or more	15.6	2.0
Prison time (in years)	Less than 1	10.0	18.9
	From 1 to 2	17.9	10.5
	From 3 to 5	22.7	9.9
	From 5 to 10	17.4	14.7
	More than 10	9.9	15.6
	Life sentence	5.0	23.0
Type of actual offense	Property	32.2	13.4
	Public order	13.1	3.2
	Security	8.6	66.9
	Human life	5.6	9.2
	Drugs	18.5	Included in other
	Human body	8.4	Included in other
	Sex	6.2	Included in other
	Fraud	3.8	Included in other
	Other	3.6	7.3

Source: Israel Prison Service, Characteristics of prisons and detention centers in Israel, Ministry of Internal Affairs, Jerusalem, Israel, 1998.

In 1997, 3527 correction officers were employed by the prisons system. Almost 80% of the positions are filled with correction officers who secure and serve the inmate population. The remaining 20% represent the command staff and various administrative functions. About 1000 staff positions are filled by commissioned officers, two-thirds males and one-third females. The overall budget for the year 1998 was set at 618 million Israeli new shekels (about U.S.\$150 million). The budget is allocated for salaries (a little over one-fourth) and inflation (about 5%). In addition, the Ministry of Internal Defense allocated an additional 105 million Israeli new shekels (about U.S.\$25 million) to build new facilities and improvement of the existing infrastructure.

MISCELLANEOUS SERVICES

1. *Health:* General medical services, including dental treatment, are offered to the inmates in each facility. In addition, general practitioners visit the facilities on a daily basis and psychiatrists once a week. The medical center in the Ayalon Prison houses a number of medical units: general, X-ray, operating room, and specialist unit. The medical services are rendered to all the inmates and detainees.
2. *Treatment of drug addicts:* About half of the prison population in Israel either uses various illegal substances or is already in the stage of addiction. The trend is on the rise. In 1997, about 2700 inmates participated in programs targeted at the addict populations. About 1500 of the latter were housed in special wards, for inmates not affected by drug addiction.
3. *Social services:* Each facility has its own team of social workers, who are supposed to maintain direct contact with each and every prisoner and to provide group sessions in various topics. Because of the inadequate number of positions, the social workers suffer from a very heavy work overload.
4. *Education:* In each facility, there are a number of educational programs offered to inmates, including formal programs, such as basic skills classes and supplementary educational classes, and informal lectures and special sessions.
5. *Work programs:* According to the rules and regulations of the prison system, every inmate must work. However, in reality, more than half of the inmate population is not employed, especially the ones with medical problems who are kept in

solitary confinement, those serving time for terrorist activities, and those who refuse to work (Wozner 1998). Approximately half of inmates are employed in the service areas of the facilities, and the salary range is 10–40% below the average salary in Israel. In addition, some special training/vocational courses are offered to the inmates.

6. *Leaves*: After serving one-fourth of the original sentence, inmates are allowed a leave. The duration of the leave varies from 24 hours to 4 days, depending on the severity of the offense and prior criminal record.
7. *Religious services*: The prison system provides religious services to all inmates, regardless of their religious affiliation (Jews, Arabs, or Christians). There is a separate ward for the religious Jews, and the opportunity to rehabilitate through various religious activities is also possible and offered, both inside and outside the prison facility.

EXTRADITION PROCEDURES AND TREATIES

The extradition laws and treaties in Israel are codified in the Extradition Law enacted in 1954. These laws define conditions and procedures to be followed while extraditing people from and to the State of Israel. In 1978, these laws were amended, and Israeli citizen cannot be extradited from Israel to another country, regardless of the offense committed, unless this offense was committed prior to him or her becoming a citizen of Israel (article 1a of the Law). This amendment presents a significant limitation on the ability of the state to extradite suspects, accused, and convicts to another state. According to the Law, the State of Israel is allowed to extradite a person (who is not an Israeli citizen) if two of the following, cumulative conditions are present (article 2 of the Law):

1. If there is an extradition agreement between Israel and the country that requests the extradition, and this agreement binds both countries.
2. If the accused is charged with committing a crime in a foreign country and this crime is also defined as crime in the State of Israel; if the punishment for the crime committed is the death penalty; or if the punishment is set for 3 years (and above) of imprisonment (with exceptions defined in the Law).

In a case in which both of these conditions are present, the minister of justice is allowed to order that the accused be brought in front of the district court to establish

whether or not he or she can be extradited (if extradition conditions are met), and to establish if there is enough evidence to bring him or her to justice in Israel (articles 3 and 9 of the Law). If the accused is pronounced as extraditable, he or she will be extradited to the country requesting the extradition, together with all the documents and other evidence that can be used against him or her in the court of law (article 21). However, articles 8, 10, and 17 of the Law specify and define the circumstances under which the accused cannot be extradited to the requesting country. These five conditions are as follows:

1. The accused was already brought to justice in Israel for the specific crime and was found not guilty.
2. Alternatively, the accused was found guilty and has already served the sentence.
3. The statute of limitation can be applied to the crime or the punishment.
4. He or she received clemency for the crime committed.
5. The district court that handled the extradition request has found reasonable grounds to believe that the nature of the crime committed was political and/or the extradition request is motivated by racial or religious prejudice.

If the extradition treaty does not provide sufficient assurance that the accused will not be subjected to death penalty or any punishment contrary to Israeli law or double jeopardy, the Israeli government will reject the original extradition requested.

CONCLUSION

As we enter the twenty-first century, it appears that the criminal justice system in Israel faces numerous problems that are partially universal and partially unique to this state. An attempt to form a modern, democratic state based on the Western European model in the midst of the absolute monarchies of the Middle East was an experiment doomed to face not only challenges but also inevitable failure. Historically, since the criminal justice system is rooted in the hegemonies of the Ottoman and British Empires, these challenges and obstacles cannot be understated. Both empires were governed by sets of powerful legal systems that influenced heavily the newly formed State of Israel. The process of transformation of the entire legal foundation and structure from the English-based model to Israeli laws that reflect the realities of life in Israeli society and its current needs has not yet been

completed. Much has been accomplished; however, the task is not finished. In addition, the influx of population from all over the world, labeled as “Jewish” but nevertheless worlds apart, as well as constant external and internal threats (the internal ones predominately from the social unrest cultivated by diverse ethnic and religious backgrounds), did not provide solid grounds for experimentation. A closer look at each branch of the criminal justice system reveals the omnipresent struggle with soaring crime rates; high representation of juvenile delinquents, especially in drug-related offenses; new forms of organized crime and upward trend in violent crimes; and prison overcrowding.

Furthermore, it is important to recognize the significance of two very different issues of the criminal justice system, such as commitment to the Law, normative and nonnormative behavior, and the legitimacy of the criminal justice in general (as opposed to other forms of social control).

These diametrically different views are held by the very different demographic groups in the Israeli society: religious versus secular; Arabs versus Jews; Ashkenaz versus Jews; new immigrants versus native-born; conflicting political factions; and so on.

Additionally, a particular and unique aspect of the system can be observed in the area of policing. Since INP was charged with securing internal peace, which practically reordered its priorities and budget and man power allocation, what emerged was an unusual law enforcement body that had to operate based on a double standard. The INP had to operate in a situation in which enforcement of the “traditional” criminal laws was either impossible or ineffective. A country that has the same, if not higher, crime rates as its Western counterparts deserves a full allocation of resources to traditional policing.

When the resources have to be divided among two main priorities, effectiveness of law enforcement response diminishes significantly. This effectiveness suffers even further when paired with differential response to two sets of populations. One set is represented by traditional criminals; the second is composed of terrorists, both Arab and Jewish. Illegal force is employed quite routinely, during arrests while dispersing demonstrations, in criminal investigations, and even in traffic control situations.

The INP seems to be suffering from a low public image based on its ineffective response to traditional criminality and various abuses of the rights of the office, such as excessive use of force and corruption for gain. The corrupt and ineffective behavior appears to be an outcome of a number of factors. First, since the INP was

heavily involved in securing internal peace (serving more as a military force than a traditional law enforcement body), it had to give up, at least partially, the “war” on traditional crime.

Furthermore, while fighting the “war” on the traditional crime front, it had to rely on nonnormative and unethical means (such as excessive use of force) in order to show some efficiency. This reliance on illegal means was a direct result of its military, rather than traditional law enforcement, role.

Second, because the INP served as a military entity, the “real” enemy was the Arab/Palestinian terrorist, while Israeli criminals were treated with relative leniency, which allowed a certain degree of “street justice.” This “relative leniency” is lenient only in comparison to the way the “real enemy” is treated. Overall, the Israeli criminals are treated in a rough and ruthless manner. Unmistakably, the degree of “street justice” is probably higher than the one exercised by other democratic police forces. As soldiers—figuratively, fighting the war for internal peace, and practically, as the vast majority of the INP officers are former soldiers (army service is mandatory in Israel)—they were allowed to use force against the enemy. The practical questions emerge: how does one differentiate between the political enemies and the criminals? How can the military training be obviated, and its orientation toward the state enemy replaced with an orientation toward control of traditional crime and criminals? The inevitable consequence is that all suspects, regardless of their ethnic, religious, or political affiliations, are treated more or less as “public enemies” from a very militaristic perspective.

Finally, it can be stated that the “war zone” generates corruption among the military, the masses, and the political ruling class. It remains to be seen how the Israeli criminal justice system in general, and the INP specifically, will walk this complex and problematic path created by political necessities and internal and external pressures. The future of effective law enforcement is inevitably tied to a peaceful solution to the internal and external conflicts brewing in, and around, the state of Israel.

REVIEW QUESTIONS

1. How do acts of Israeli Parliament become laws of Israel?
2. When does an act or behavior become a crime in Israel?
3. When is a single judge required in the Israeli Supreme Court?

4. Since Israel, like Great Britain, has no written constitution or bill of rights, where are the Israeli laws derived from?
 5. Compare and contrast organized crime in Israel and the United States.
 6. What are the similarities and dissimilarities between community-oriented policing in Israel and the United States?
 7. What are the advantages and disadvantages of centralized and decentralized systems of policing?
 8. What are the differences between the “blue” and the “green” (border patrol) police? What do you think about the cross and overlap between the military and police functions?
 9. What are the major problems facing the INP in the new millennium?
 10. The State of Israel has been shaped by the ancient and modern history. Discuss how the Israeli criminal justice system has been influenced by the various changes in the country’s history.
 11. What are the advantages and disadvantages of a country not having a written constitution?
 12. What is judicial activism? Do we have such a phenomenon in the United States?
 13. What is an adversarial judicial system?
 14. Compare and contrast the prison systems in the United States and Israel.
 15. How are crimes classified in Israel?
 16. Israeli prisons are overcrowded. Compare the Israeli overcrowding with that of the United States.
 17. What are the miscellaneous services offered to inmates in Israeli prisons?
 18. Discuss the extradition procedures and treaties in Israel.
 19. Name at least five countries that have extradition treaties with the United States or your own country.
 20. What is the place of Israeli women in the INP?
- REFERENCES**
- Amir, M. 1995. Criminal Justice in Israel: An Annotated Bibliography. In *Criminal Justice in Israel*, edited by R. R. Friedman. Westport, CT: Greenwood Publishing.
- Amir, M., D. Weisburd, and O. Shalev. 2002. Community policing in Israel: resistance and change. *Policing: An International Journal of Police Strategies and Management*, 25(1): 80–109.
- Bensinger, G. J. 1998. Criminal Justice in Israel. In *Crime and justice in Israel*, edited by R. Friedmann, 43–64. Albany, NY: State University of New York Press.
- Encyclopedia Britannica. 1998. *Book of the year 1998*. Chicago, IL: Encyclopedia Britannica, Inc.
- Fishman, G., V. Kraus, and H. Lever. 1982. Factors affecting juvenile court decisions in Israel: A multivariate approach. *Sociological Inquiry* 52(4): 292–305.
- Fishman, G. and A. Ratner. 1997. The Israeli criminal justice system in action—Is justice administered differently. *Journal of Quantitative Criminology* 13(1): 7–28.
- Friedmann, R. R. 1998. Assessing the knowledge-base toward the twenty-first century. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 391–418. Albany, NY: State University of New York Press.
- Geva, R. 1998. Community policing in Israel: Planning, implementation, and organizational change. *The Police Chief*, 65(12): 77–82.
- Haberfeld, M., S. Kutnjak Ivkovich, and C. K. Klockars. 1998. The measurement of police integrity in Israel. Unpublished paper presented at the 50th annual meeting of the American Society of Criminology, Washington, D.C.
- Hassin, Y., and M. Horovitz. 1998. Juvenile and adult probation in Israel. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 316–336. Albany, NY: State University of New York Press.
- Herzog, S. 1998. Police violence in Israel: The complaints against police officers. Unpublished doctoral dissertation. The Hebrew University of Jerusalem, Israel. Paper presented at the 50th annual meeting of the American Society of Criminology, Washington, D.C.
- Israeli Central Bureau of Statistics. 1998. Criminal Cases in Israel 1995–1997. (Accessed online February 14, 2013).
- Israel National Police. 1996. Annual report 1996. Jerusalem, Israel: Ministry of Internal Affairs.
- Israel National Police. 1997. Annual report 1997. Jerusalem, Israel: Ministry of Internal Affairs.
- Israel National Police. 1998. Annual report 1998. Jerusalem, Israel: Ministry of Internal Affairs.
- Israel Prison Service. 1971. The prisons ordinance. Jerusalem, Israel: Ministry of Internal Affairs.
- Israel Prison Service. 1998. Characteristics of prisons and detention centers in Israel. Jerusalem, Israel: Ministry of Internal Affairs.
- Kuhn, A. 1998. Overview of the differences in prison population around the world. Unpublished paper presented at the 12th International Congress on Criminology, Seoul, Korea.
- Landau, S. F., and Sebba. 1998. Victimological research in Israel: Past and current perspectives. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 359–387. Albany, NY: State University of New York Press.
- Mesch, G., and G. Fishman. 1998. Entering the system: Ethnic differences in closing juvenile criminal files in Israel. Unpublished paper presented at the annual meeting of the American Society of Criminology, Washington, D.C.

- Rahav, G. 1998a. Criminal statistics. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 65–78. Albany, NY: State University of New York Press.
- Rahav, G. 1998b. Juvenile delinquency. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 76–96. Albany, NY: State University of New York Press.
- Shacher, L. 1994. Criminal procedure. In *Yearbook on Israeli law 1992–1993*, edited by A. Rozen-Tzvi. Tel-Aviv, Israel: Faculty of Law of the Tel-Aviv University.
- Shadmi, E. 1998. Police and police reform in Israel: The formative role of the state. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 207–241. Albany, NY: State University of New York Press.
- Shavitt, G. 1998. The Israeli prison system. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 275–314. Albany, NY: State University of New York Press.
- Sheleff, L. 1998. Punishment, prisoner's rights and pardons. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 245–274. Albany, NY: State University of New York Press.
- Wozner, Y. 1998. Rehabilitation efforts in the state prison service. In *Crime and criminal justice in Israel*, edited by R. Friedmann, 337–355. Albany, NY: State University of New York Press.

7 The Criminal Justice System in Argentina

Obi N. I. Ebbe and Ruben G. Ruiz de Olano

CONTENTS

Introduction and Brief History	97
Early History	97
Contemporary History	98
The Legal System.....	98
System of Government.....	99
How Laws Are Made or Revoked	99
The Crime Problem in Argentina	100
Police.....	101
The Role of the Police	101
The Judiciary	102
The Supreme Court	102
Federal District Courts	102
Provincial Courts.....	102
Prosecutorial and Judicial Process	103
Penalties and Sentencing.....	103
Types of Penalties in Argentine Penal Code	104
The Prison System	104
Discussion	105
Review Questions.....	105
References.....	106

INTRODUCTION AND BRIEF HISTORY

EARLY HISTORY

Prior to the advent of the Europeans in South America, the territory that we call Argentina today was inhabited entirely by Indians, otherwise called Native Americans. They subsisted on agriculture in the coastal lands of their great rivers, such as the Colorado, Rio Negro, and Rio Salado, and on some hunting on the pampas. On the pampas were nomadic and marauding Indian tribes with their livestock. Kingdoms and leadership structures were maintained among the Indian tribes.

As in traditional Africa, the native Indians abhorred the presence of strangers within their territories, as was the practice worldwide throughout the Middle Ages and the early modern times. In effect, the Native

Americans resisted foreign penetration into their towns and kingdoms. The family played a pivotal role in social cohesion and harmony within each tribe. Social order was maintained through immemorial customs, traditions, and ancestral religious practices in which the earth, the stars, the moon, and the sun were used as intermediaries between humanity and the Supreme Being (God). Intertribal conflicts were rife, but there was relative peace and tranquility in the region compared to what was to unfold after the coming of the Europeans.

In 1615 AD, the first European expedition commanded by Juan Diaz de Solis landed in Argentina at the northern bank of the Rio de la Plata estuary (Sobel 1975). Shortly after their arrival, de Solis was killed by a Native American. Between 1615 and 1807, many other European nations, in addition to Spain,

wanted a piece of the agricultural and maritime wealth of Argentina. After many battles to ward off the invasion of other European imperialists, Spain established itself as the colonial master of Argentina despite native opposition. Spain colonized Argentina in the sixteenth century. Argentina was then ruled as a dependency of the Viceroyalty of Peru until 1776, when the Viceroyalty of Rio de la Plata was established (Sobel 1975). The last attempt to take Argentina from Spain was made by the British in 1806. British forces entered Buenos Aires in 1806 and occupied it in an attempt to oust the Spaniards, but were defeated in battle by the combined forces of the Spanish militia and the native Indians in May 1807. In accordance with the peace treaty of September 9, 1807, the British left Argentina.

By 1800, Europeans had occupied most parts of Argentina. Many native Indians had been massacred in struggles for their land and resistance to colonization by a foreign monarchy. In the process of colonization, European missionaries were used to change the ancestral religious beliefs and values and replace them with European religious values, norms, and laws. The European religion was Christianity, particularly Roman Catholicism, which spread in the region like an autumn burn fire in a savannah region. By this period (the 1800s), most Argentine citizens were descendants of European immigrants. The spirit of nationalism had begun to germinate in the minds of many Argentines. In effect, the period 1810–1816 marked an era of Argentine independence revolution against Spanish hegemony. It was also a period of emancipation from the clutches of colonialism. Undeniably, the movements for Argentine liberation and independence from Spain were motivated by the North American and French revolutions.

On July 9, 1916, a congress of representatives of the La Plata Provinces took place in Tucuman and a declaration of total independence from Spain was issued (Levene 1937; Sobel 1975).

Spain mustered its forces and fought back to retain control of Argentina, but was crushed by the Argentine forces under the command of San Martin, who proceeded at the same time and liberated Chile from Spain on February 12, 1817, at the battle of Chacabuco (Levene 1937; Sobel 1975; Newton 1977).

Although the independent republic of Argentina was declared in 1816, political instability gripped the region and continued for a long time. It was only in 1853 that a constitutional presidency was established in the Argentine nation (Levene 1937).

CONTEMPORARY HISTORY

Today, Argentina is a multiethnic society, with 86.4% of the population being persons of European descent (Hoffman 1990).

Citizens of Spanish and Italian origin predominate. Other European—Argentine nationals include English, German, French, and other East and West European descents. Among other ethnic groups are Japanese, Jews, Mestizos, American Indians, and Arabs. The official language is Spanish. Other languages spoken are English, French, Italian, and German.

Per the 2010 census, Argentina had a population of 40 million, and Buenos Aires is the federal capital with a population of 3.6 million. But, Greater Buenos Aires, with 10 large cities, has a population of 9.8 million. It is fitting to say that Argentina is the eighth largest country in the world, and the second largest country in South America with respect to population as well as land mass (Sobel 1975). Ninety-four percent of the population is Catholic.

Argentina has experienced many upheavals in the political, economic, and social spheres. Its people have seen a series of dictatorships and totalitarian regimes. However, after many years of the totalitarianism of Peron and the military dictatorships after him, Argentina returned to democracy in 1983.

THE LEGAL SYSTEM

The Constitution of 1853 still forms the basic laws of Argentina. The penal law of the country does not find antecedents in aboriginal (American Indian) laws and customs. Instead, it evolved through various periods of foreign administration—the offspring of European-imported legislation and doctrines. One of the most important manifestations is the Penal Code of Baviera (1813), which formed the bulwark of the Argentine Criminal Code. This code originated from the old, repressive German law.

The Constitution of 1853, which was amended in 1994, gives the national congress exclusive power to make laws for the country, covering criminal, civil, maritime, and commercial matters, and each provincial legislature has the power to make laws specific to the welfare of the members of each province. Suffice it to say that Argentina's legal system is almost entirely Roman law with some influence of German law, especially in the areas of criminal law. Since the Europeans exterminated most of the American Indian tribes, the informal criminal justice system died with the natives and has no place in present-day Argentina. The territory's legal system is

based on European norms, values, and standards, with the European constitutional principle that all citizens are equal before the law. In Argentina, therefore, resolving a criminal act outside the confines of the European-based courts is a crime.

The nomadic and marauding tribes of the pampas of Argentina undoubtedly have their traditional norms and customs as well as an informal justice system. Unfortunately, virtually no one has investigated their structure and place in Argentine criminal justice system.

There are also laws for certain categories of government institutions. One is the military penal law, which is a kind of criminal law to be applied to the military for military crimes. In this situation, a military penal code that applies to some specific situations is used, and the accused is tried by a military tribunal. Another law pertains to the Islas Malvinas, the lands situated between territorial Argentina and Argentina's Antarctic region, known as the Falkland Islands. They have been occupied by the United Kingdom since 1833. The United Kingdom does not recognize Argentina's sovereignty over the islands called Kelpers. However, the inhabitants do not consider themselves to be British citizens or subjects. They prefer to live and die as Argentine citizens; hence, Argentina's special laws prevail over the inhabitants of the Islas Malvinas.

SYSTEM OF GOVERNMENT

Today, Argentina is a democratic republic. The government is made up of a bicameral national congress and an executive president. The national congress is made up of 69 senators and 243 members of the Chamber of Deputies (House of Representatives). The senators are elected by the members of each provincial legislature, at least two from each province and the Federal District. The senate members from the Federal District are elected by direct vote. The members of the Chambers of Deputies are directly elected, one for each 85,000 inhabitants in the provinces and the Federal District (Newton 1977; Sobel 1975).

The Constitution of 1853, with articles similar to the U.S. Constitution, still governs the people of Argentina. Like Nigeria, Argentina is a federation. There are 22 provinces and the Federal District that together make up the Argentine Federation. Each province has its own legislature, led by a provincial governor. The provincial governors and the provincial legislatures serve as "regents of the Federal Government for the execution of the Constitution and the law of the nation" (Newton 1977; Sobel 1975; Whitaker 1956).

The executive president of Argentina is elected by popular vote for 4 years and may not seek reelection

immediately after his/her term. As in the United States, the president appoints the cabinet ministers, and he/she is the Commander in Chief (CIC) of the armed forces. The president of Argentina can introduce a bill in the national congress and has veto power. He appoints the members of the judiciary, and he has the right—subject to senatorial confirmation—to grant pardon or commute sentences. Additionally, the president has the authority to declare a state of emergency or siege and "suspend constitutionally granted civil rights" (Sobel 1975; Whitaker 1956; Newton 1977). It is noteworthy that Argentina is the first country in the Western Hemisphere to have a female executive president and head of state.

Members of the Argentine national congress have immunity from arrest, but this privilege can be revoked by a two-thirds majority vote of the House members against a member. Interestingly, the constitution empowers the president or the national congress to remove any provincial governor or other provincial official from his/her post for some constitutional violation, and replace him/her with a federal intervener who must be responsible to the federal authority that appointed him/her.

HOW LAWS ARE MADE OR REVOKED

The simplest process for making or revoking a law in Argentina is known as *ordinary* and goes from the initiation of a bill, called a *project*, to its publication as a law. This process is regulated by the Constitution, which established the ability of congress to legislate for the whole country. Synthetically, a project of law (the beginning of the process of promulgating a law) can be introduced by: (1) any legislator in his/her own Camera (the Senate or the Chamber of Deputies) or (2) the executive in either of the two Cameras (Article 52, Constitution of 1853). The Camera where the bill is first initiated is called the "Camera of origin." The other Camera will act as a revisory Camera. The project (bill) is dealt with by a commission, depending on the subject, and then, an official writ of commission is produced, counseling the approval or rejection of the bill. If the bill is approved, it goes to the alternative Camera, where each article of the bill is discussed in general and in specifics, and then voted on one by one. If, after the debate, both the Cameras pass the project, they sanction it as a law and send it to the executive president. If the president (executive) expressly approves it, or does not return it by a total or partial veto in 10 working days, it is then promulgated and published as the law of Argentina. Uniquely, in Argentina, any law can be in force before its publication, a way to oblige citizens to know about it.

Graphically, the process of making a law in Argentina is demonstrated in Figure 7.1. There are four ways in which a bill can become a law of Argentina. (See Figures 7.1 through 7.4).

Figure 7.1 shows the ordinary process. If the revisory Camera passes the project, but has modified it, two alternatives are possible, as shown in Figures 7.2 and 7.3. In case of partial veto from the president (executive), the process shown in Figure 7.4 applies.

If neither of the Cameras attains a two-thirds majority vote to override the veto, the project cannot be sanctioned and cannot be dealt with again during the current year. If the veto is partial, the rejected part may be sanctioned as law, if it is not contrary to the spirit of the original bill, and if it still keeps its autonomy.

THE CRIME PROBLEM IN ARGENTINA

As in the United States, poor integration in a multiethnic, capitalist society breeds all kinds of property crimes

and crimes against persons (Merton 1968). Additionally, Argentina is highly urbanized, with a multicentricity of ethnic Europeans, Mestizos, and Native Americans. This multiethnic structure brings with it its own cultural conflicts, leading to conflicts of norms and to crime (Sellin 1938). Despite an overpopulation of people of European origin in Argentina, the country is a poor nation. Buenos Aires has a high concentration of poor people, just like Mexico City and New York. Crime is a fact of life in the slums of large cities in Argentina, such as the Federal District of Buenos Aires (pop. 30,344,268), Buenos Aires (pop. 9,774,529), Córdoba (pop. 2,177,132), Santa Fe (pop. 2,518,586), Mendoza (pop. 1,026,178), Entre Rios (pop. 914,469), and many other cities with over half a million population.

In every city in Argentina, there are large populations of both the haves and the have-nots. Widespread corruption in the governments of Juan Peron, Isabel Peron, and the military regimes that followed, coupled with ruthless murders and assassinations of innocent citizens in the military regimes, provided unemployed Argentine

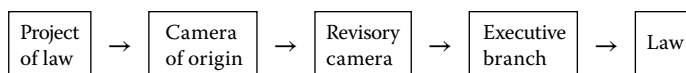


FIGURE 7.1 Process of how an unopposed bill becomes a law of Argentina.

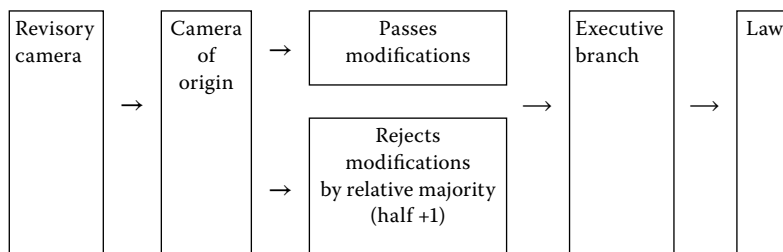


FIGURE 7.2 A bill modified by a revisory Camera that becomes a law of Argentina.

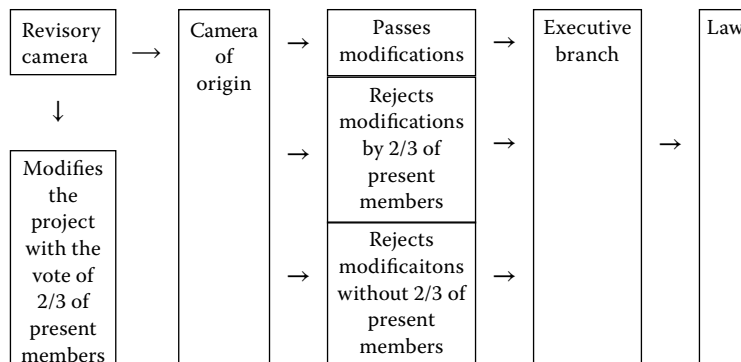


FIGURE 7.3 Another method of how a modified bill could become a law in Argentina.

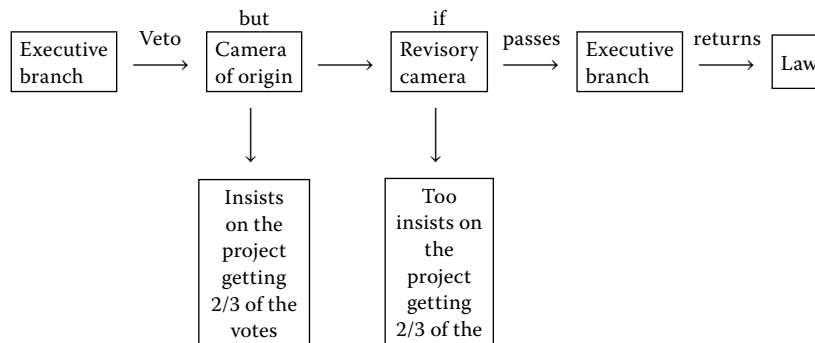


FIGURE 7.4 How a bill introduced by a legislator can become a law of Argentina after presidential veto.

youths with a rationale for engaging in armed robbery, hired killings, gang burglary, drug trafficking, and rape. The military regimes also increased the operation of organized crime in Argentina. With a large expanse of Argentine coastline, international smuggling of contraband goods is very easy to accomplish, and the poor economic conditions that gripped Argentina throughout the military regimes and Isabel Person's era made crimes of all types—including narcotics drug smuggling—a way out of abject poverty and perpetual indigence among the underclass.

Throughout the major cities of Argentina, property offenders cause problems for both the police and the courts. There are many cases of crimes against persons, but property crimes by far outnumber these.

Crime has always been an instrument for diverting the attention of the elite from national crises in Argentina, then blaming the criminals. The fear of crime in society is about the violent offender(s). Politicians use the offender to divert attention from the issues most important to the community. In other words, crime is used to distract attention from priority subjects and create an irrational fear of defenseless minorities. In reality, when it comes to crime, the police have their hands full. However, white-collar crime and organized crime, as in other capitalist democracies of the Western world and Africa, cost Argentina 50 times more in monetary terms than the terrifying street crimes.

POLICE

Argentina, like the United States, has a decentralized police system. There is an Argentine federal police, and every province has its own police force. The federal police force is under the Ministry of the Interior, with headquarters in Buenos Aires. There is a detachment of the federal police in every province as far as

administration is concerned. The provincial police force is under a different ministry, according to the order of the provincial cabinet. Commonly, provincial security institutions, including the police force, are under a ministry of a provincial government, but the hierarchical order is determined by the executive. In Córdoba Province, for example, the provincial police force is under the Ministry of Institutional Affairs.

Unmistakably, the administration and operations of the police forces (both federal and provincial) are managed by the executive through its political organs and functionaries. Interestingly, it is not necessary, in Argentina, for the chief of police to be a member of the police force. The law empowers the governor to designate any person from his political party to take the position of chief of police for the province, and the appointment will be made by the president (the executive). However, a high-ranking person in the political arena is always appointed by the executive.

THE ROLE OF THE POLICE

The police concentrate much of their efforts on crime prevention and control. The main function of the police is national security and the protection of the lives and property of citizens. The police have the role of assisting the judiciary in bringing offenders to the attention of the courts and the prosecution of cases. The police ensure that the criminal procedure is followed and the rights of offenders is respected.

Functions assigned to the police to control crime depend on three factors:

1. Ideas, images, and concepts about crime and delinquency
2. The model of intervention or control chosen
3. The police force's own concept of its function

In a modern industrial society, the police have many responsibilities. The nature of their function has made the agency the most visible in the whole legal system, converting it into a symbol of law and order. The discretionary powers of the police, their authority to arrest and question suspects, and their legal bearing and carrying of firearms make them celebrities in the eyes of the citizen and the press in Argentina. However, the complex strategies employed by the police for social control have also stigmatized the police and have contributed to the recent interest in studying police operations in the country. In the process, it has been shown that the police are selective and discriminatory in their law enforcement operations. Primarily, the police are influenced more by social class and ethnic factors than by the objective merits of their goals.

There is an organic and juristic debate regarding the organic and functional dependency of the police on state powers. The first phase of the debate deals with the idea of professionalism—the necessity to endow, equip, and train police functionaries, and to structure the force in accordance with modern technological changes. The second phase is an ideological or political debate, and it is about the nature and function of the police. It is concerned with the possible abusive exercise of discretionary powers—corruption, control over political dissidents, and insensitivity to social changes. The third phase includes all concerns about the effectiveness of police operations and the outcomes of police functions. The fourth phase responds to the interaction between the police and the community (society)—the citizens' image of and attitudes toward the police; how to reorient the police to meet the community's demands; and getting the police and the community to have a common interest in the maintenance of order.

Unfortunately, in Argentina and throughout Latin America, the role of the police primarily relates to behavior control, and their interaction with the citizens is considered secondary or minor. Thus, the police force, as an armed instrument of the state, finds open challenges and major resistance from individuals, consequently generating a high degree of ambiguity and uncertainty in their daily operations. This kind of situation frustrates the police, leading to their use of excessive physical force.

In Argentina, the state is manifested as overdeveloped, interventionist, authoritarian, omnipresent, and serving foreign interests. In effect, the police are repressive, protecting an international order of the division of labor for capitalist production. The Argentine people have experienced a time in recent years when the police concentrated on the arrests of males in rural populations because of the official perception that this category of citizens support

insurgent *caudillos*, who threaten the elite groups in whose hands the control of the state machinery lies.

THE JUDICIARY

The judiciary in Argentina, like its police system, and as in Nigeria and the United States, is decentralized. There are federal courts and provincial courts. Above all of these lower courts is the Argentine Supreme Court. The Supreme Court and the federal district courts are at the federal level.

THE SUPREME COURT

The Supreme Court of Argentina is the final court of appeal in the country for both criminal and civil matters. The Supreme Court is composed of five judges. It has original jurisdiction only in constitutional matters. Appeals come to the court from the federal district courts. According to the Argentine Constitution, to be a judge of the Supreme Court, a lawyer must be at least 30 years old, must have been a citizen of Argentina for 6 years, and must have 8 years of professional experience as a practicing lawyer. Until 1994, federal judges were appointed by the president with the approval of the Senate. There were no safeguards on the independence of the judiciary. In effect, the judiciary did not like the constitutional provisions for the appointment and dismissal of federal judges. Consequently, the 1994 Constitutional Amendments provided some safeguards against the arbitrary appointment and dismissal of federal and provincial judges. The revised Constitution provides bylaws related to the judiciary and safeguards to ensure the independence of judges. The revised constitution created some special courts for matters involving the dismissal of judges and public officials.

FEDERAL DISTRICT COURTS

Below the Supreme Court are federal district courts located in every province of the country and the Federal Capital District. They are courts of original jurisdiction for all criminal and judicial matters. One justice is assigned to each federal district court. The judges of the federal district courts have privileges similar to those of the Supreme Court judges.

PROVINCIAL COURTS

Each province has its own court system. The provincial courts are called ordinary justice.

The provincial courts handle cases of crimes committed in the province that are violations of provincial laws. Crimes committed in each province that are violations of federal law go to the federal district court in that province. The judges of the provincial courts are appointed by the governor of the province. The 1994 Constitutional Amendments provided the provincial court judges protection against arbitrary dismissal similar to that accorded to judges of the federal courts.

PROSECUTORIAL AND JUDICIAL PROCESS

Both the federal and ordinary courts have an attorney's office headed by a prosecutor who has served in the judiciary as a judge's or prosecutor's secretary. He or she must have accumulated much knowledge, experience, and practice in criminal/penal cases. Additionally, there is a general prosecutor for the federal government and for each provincial government. The general prosecutor is a political appointment. The general prosecutor is a link between the judiciary and the executive.

There are certain distinctions to be made in Argentine criminal law:

- *Material Penal Law* (or *Substantive Law*). This is the branch of Argentine law that defines crime and its consequences (e.g., criminal participation or gang membership).
- *Adjective Penal Law* (or *Processal Law*). These are legal rules imposed for penal law violations. They regulate the way court judges determine the criminal responsibility of the accused. Basically, the steps are as follows: accusation (charges); evidence (demonstrated); defense; and sentence.

Thousands of incidents and circumstances complicate the process of determining the material truth of the offense with which the accused was charged—to know whether the crime existed and to determine who committed it, fundamentally guaranteeing “the right of defense” to the accused.

The main expressed guarantees are in the Constitution (Article 33). The rights of the accused are perfectly established in the penal code. For example, in the case of pretrial detention, the code orders the judge to apply the law that is more convenient to the accused. Let us use a hypothetical situation to explain this judicial process: A murder is committed, and six months later, a man is charged with it; as a murder is a crime without bail, he goes to prison for pretrial detention. A year later, he is judged,

found guilty, and sentenced to 20 years of imprisonment. But, suppose that at the time he committed the crime, the law was in effect; then he was charged while he was under pretrial detention; and was charged one more time two years after he was sentenced. Well, as a general principle, the Argentine Penal Code establishes that the most benevolent law must be applied to the offender without considering which portion of the process he was in when he was charged, judged, or sentenced. However, in this case, the law must be entirely analyzed by the judge to determine if it is really benevolent to the offender. That means, while one law may favor the offender's pretrial detention, a different one may favor his sentence, and both of them have to be applied. If the trial leads to a conviction, it is so declared; the next step is called the “execution penal law,” in which the convict gets a prison term, and he is taken care of by the state.

The country has a federal penitentiary law that regulates a prisoner's life (to apply the law allows determination of the *modus vivendi*). The state diagnoses the offender's personality and the cause of his criminal behavior. After that, an internal criminological council studies case by case to establish an adequate treatment (education, acquisition of positive habits, etc.). The treatment meted out to the convict is decided according to his behavior, disciplinary sanctions, and others. By this approach, the state is able to determine if the sentence objective is positively carried out to support conditional freedom of the offender.

PENALTIES AND SENTENCING

Penalty in Argentina is not reparative, but retributory (it is retribution against the guilt of the offender and is non-transferable). It has both specific and general deterrent effects. It socially deters the offender from committing a crime again. The general effect aims at deterring the rest of the society from engaging in a similar act.

There are some constitutional guarantees with respect to punishment. Under no circumstances should a citizen of the nation be punished without a finding of guilt based on the law in force before the offense, and the case must be adjudicated in a court of law. If the offense is administrative, the executive branch has a tribunal for administrative offenses. A person accused of an administrative offense is given a fair trial and sentenced according to administrative law. All sentences must be legally founded and cannot consist of corporal punishment, such as in Singapore. The crime of treason against the nation is determined by a special law and a tribunal that have to be legally determined by the congress.

The Penal Code (Article 58) established the unification of penalties in different sentences to the same offender even though the cases were adjudicated in different jurisdictions. Two cases exemplify this situation, but we will develop only the first one because the second one requires extensive knowledge of Argentine jurisprudence.

If, after a stable sentence, the same person had to be tried for a different crime while serving a prison term, the rule requires the following:

- The condemnatory sentence must allow for an appeal.
- The person must be sentenced to serve the sentence in an unconditional, effective manner.
- The crime with which the offender is charged must derive from the previous offense that led to the present sentence.
- The sentence must not have been served.
- The new sentence (punishment) must be unified with the previous one, as decided by the judge of the present case.

As for the second case, we simply remark that this situation takes place if some articles of the Penal Code (Articles 55, 56, and 58) were violated when two or more stable sentences were prescribed, and the rule is applied only if there is an interest in its unification. The judge (federal or ordinary) who sentenced the offender in the first case is the same judge who must adjudicate in the new unified sentence.

TYPES OF PENALTIES IN ARGENTINE PENAL CODE

Penalties include the denial of freedom (imprisonment, confinement) and fines (forfeiture, confiscation of property). In decreasing order of severity, the penalties are death penalty, confinement, prison, forfeiture, and disablement.

Perpetual penalties means life imprisonment, while other penalties are temporary. The maximum punishment is imprisonment and seclusion for 25 years. The minimum imprisonment is 4 days, and 3 months for seclusion.

It is only in the military justice code that death is in force as a penalty. The death penalty can be invoked if the facts developed during a national emergency, when a person may be executed after a brief trial for treason or other crime against national security. In peacetime, all procedural guarantees are observed, including for capital offenses. Capital punishment was revoked for political crimes, but it was in force in the nineteenth century during the periods of tyrannical government.

THE PRISON SYSTEM

The prisons of the nation will be healing and cleanly, for security and not for corporal punishment of persons detained in them. They must not aggravate the harm inherent in the penalty (Article 18 of the Argentine Constitution).

The preceding statement portrays the ideas of the nineteenth-century framers of the Argentine Constitution—a more humane approach than the conceptions of the elite of twentieth-century North and South America. Certain factors, however, impinge upon the smooth running of Argentine prisons today. Stalking, laziness, industrialization, over-urbanization, modernization, immigration, alienation, social disorganization, and badly trained and paid personnel add up to frustrate the smooth rehabilitation of offenders. Consequently, it becomes very difficult for a prisoner to bear punishment with so many unnecessary inconveniences, such as the lack of adequate space to keep different types of criminals, and inadequate and uncomfortable surroundings for visits by relatives of inmates. Additionally, Argentine prisons do not provide vocational training to help an inmate to secure a job after the period of incarceration. Worst of all, prisons in Argentina do not have adequate medical, psychological, and social assistance. In short, there is no professional staff for the meticulous monitoring of the criminal's behavior during and after incarceration.

Drugs and violence, discrimination and apathy, prison gangs and mafias, and more are the common codes of conduct in both the federal and provincial prisons. There is a move to build new prisons, but building new prisons is not a panacea for long and persistent correctional problems. For instance, to support a prisoner per year in Argentina costs at least three times more than the support for a prisoner in the United States, which runs from \$36,000 to \$45,000 per year.

Argentina has a decentralized prison system, just like the United States. There are federal prisons and provincial prisons. The federal prisons are located in different provinces, but there is only one director of all federal prisons. Each province has its director of all provincial prisons in the province. Prisons are classified, as in the United States, as maximum-, medium-, and minimum-security prisons.

The prisons in Argentina need reorganization and restructuring. Recidivism is high. To reduce recidivism, inmates must be rehabilitated before they leave the prison, so that they do not come back again. The problem with prison reform, however, is that the prisoners,

including those who work in the prisons, do not constitute a political force. Consequently, they do not draw the attention and interest of politicians. The politicians do not see what they could gain by reducing recidivism. Instead, they see that they could gain from contractors by building new prisons. This is unhealthy for society.

DISCUSSION

Argentina has a good body of penal laws. But, we can find some structural failures in this system of laws. Philosophically and theoretically, the laws are based on the interests of the nineteenth-century elites of Argentina. The laws are well developed according to the origin, customs, and social morality of society in the nineteenth century. Technically, there appears a kind of breakdown when the laws are applied to certain situations because of various factors, such as lawmakers not being in a close relationship with one another and with the executive (president), who has the duty of regulating the rule to establish how it will work. Unfortunately, neither the lawmakers nor the executive have in mind the concrete resources the law needs for its efficacy and efficiency. Consequently, the law fails.

Argentina needs fewer, but more effective, laws. Rosy, declamatory, but dictatorial laws give neither the correct nor the necessary answers to the economic problems of an organized, technocratic society. Rules have to be born through scientific discussions and measured by the guiding principles of criminal policy, indicating to the legislature how the penal law should be stated; rules should also be in agreement with the society's historical evolution. Additionally, if we recognize that crime is not an isolated thing, but a complex phenomenon, we therefore have to consider criminology and criminologists to be very important parts of the social and legal systems, who have to indicate the necessity of regulating a human subject. Legislation must be congruent with reality and social change.

Argentina still suffers from too much judicial insecurity. If good penal law reflects only a very small portion of the judicial insecurity, then comparing criminal justice systems between the developed and developing countries can be an arduous task, because a criminal law that works perfectly in one system may not be successful in another. For example, Argentina copied the institution of probation and laws against drug trafficking entirely from the United States. But they turned out to be irrelevant for Argentina. A country should not import laws that do not suit the values of the society. Foreign legal systems can

be used as a model and modified to suit the borrowing society's system of laws. Unmistakably, in every modern society, criminal law reflects the ideas and interests of the ruling class. Suffice it to say that a good legislative exercise is a coordinated work toward a body of laws that can be perfected.

REVIEW QUESTIONS

1. A society's cultural legacy can philosophically influence its criminal law. How?
2. What are the key factors in Argentina's success in its war of independence?
3. To what extent are American Indian norms and values embodied in contemporary Argentine criminal law?
4. What are the sources of law in Argentina?
5. Somebody broke into an interprovincial bank in the province of Córdoba. Which type of court will try the case in Córdoba?
6. How does the constitution of 1994 differ from that of 1853 with regard to the independence of the judiciary in Argentina?
7. Critically evaluate Argentina's legislative process.
8. Compare and contrast the appointment of the attorney general and the Supreme Court judges in Argentina and the United States.
9. Indicate five unique features of the criminal justice system in Argentina.
10. What do you understand by a bicameral legislature? Name four countries with bicameral legislatures. What are their local/national names?
11. What are the advantages and disadvantages of decentralized and centralized systems of policing? In what system of government is the decentralized system of policing most suitable?
12. Worldwide, women are underrepresented in national police forces. Is it an international conspiracy? Analyze in detail.
13. Criminal law is dynamic. What does that mean? Explain fully.
14. What is "material penal law" in Argentina?
15. What is meant by "adjective penal law" in Argentina?
16. Argentina practices "retributive justice." What does that mean?

17. Compare and contrast specific deterrence and general deterrence.
18. What are some of the features of the U.S. Constitution that can be found in the Argentine Constitution of 1853?
19. In your opinion, why did Argentina decide to make some amendments to their Constitution of 1853 in 1994? What are some of the amendments to the Argentine criminal justice system?
20. Ebbe and Olano criticize the prison system in North and South America as not being rehabilitative. Give at least 10 solutions for prison reform in order to reduce recidivism in your country's prisons.

REFERENCES

- Hoffman, M. S., ed. 1990. *The world almanac and book of facts*. New York, NY: World Almanac Books.
- Levene, R. 1937. *A history of Argentina* (translated by William Spence Robertson). New York, NY: Russell and Russell.
- Merton, R. 1968. *Social theory and social structure*. New York, NY: Free Press.
- Newton, R. C. 1977. *German Buenos Aires 1900–1933: Social change and cultural crisis*. Austin, TX: University of Texas Press.
- Sellin, T. 1938. *Culture, conflict, and crime*. New York, NY: Social Science Research.
- Sobel, L. A. 1975. *Argentina and Peron 1970–1975*. New York, NY: Facts on File, Inc.
- Whitaker, A. P. 1956. *Argentina Upheaval: Peron's fall and the new regime*. New York, NY: Praeger.

8 The Criminal Justice System of Sierra Leone

Bankole Thompson

CONTENTS

Introduction.....	107
Brief History	107
Crime Profile.....	108
Organization and Functioning of the Criminal Justice System.....	112
The Police.....	112
Criminal Courts	113
Local Courts	114
Magistrates' Courts	114
High Court.....	115
Court of Appeal	116
Supreme Court	116
Prison System.....	117
Juvenile Justice.....	118
Conclusion	119
Review Questions.....	121
References.....	121

INTRODUCTION

From an American perspective, this study concerns one foreign criminal justice system, providing some knowledge about the practices of the West African state of Sierra Leone. The main motives for comparative and international criminal justice have been mentioned in Chapter 1. To this account, one might add that scholars have identified at least five possible models for studying criminal justice from a comparative perspective. These are (1) the anthropological-historical approach, (2) the institutional-structural approach, (3) the political-legal approach, (4) the social-philosophical approach, and (5) the analytical-problems approach (Terrill 1984). Each model has its own strengths, and the nature of any particular criminal justice system may lend itself more easily to treatment by one of these models than by another. The socio-philosophical model, for example, would resolve such questions as the following: What are the prevailing views about the causes of crime and deviancy in a society? What philosophical

approaches are used to resolve or cope with these views in the penal context? The institutional-structural approach, on the other hand, would seek a panoramic view, exploring the institutions, policies, and processes that give structure to a country's criminal justice system and surveying the organization, structure, and function of the police, the courts, the correctional services, and the juvenile justice process. It is this approach that we will take in examining Sierra Leone. Key features and elements of both substantive criminal law and criminal procedure in that country will be highlighted, providing grounds for a summary critique of its administration of criminal justice.

BRIEF HISTORY

Sierra Leone is a relatively small West African country with an area of 27,925 square miles and a population of 3.7 million people. It is bounded on the west and north by Guinea and on the east by Liberia. The country is made up of many ethnic groups such as the Mendes, Ternnes,

and Limbas. Most of the remaining population is composed of the Krios, or Creoles, who are largely Western in culture and still legally classified as “nonnatives.” The indigenous peoples are designated as “natives.”

Throughout its modern history, and despite its British occupation, the country has retained the name Sierra Leone, thereby preserving its historical link with the Portuguese sailor Pedro da Cintra, who sailed into a huge bay on the west coast of Africa in 1462 and named the surrounding country for the mountain ranges above the bay, which he believed resembled lions. Like most African countries, Sierra Leone blends Western cultural values derived from its British heritage with indigenous African norms. Part of its history is enmeshed in the slave trade that attracted sea captains to the west coast of Africa in the sixteenth and seventeenth centuries. By 1792, the British government had established a settlement in Sierra Leone, and Lieutenant John Clarkson had become the first governor of Freetown. The little settlement was administered by the Sierra Leone Company, which was formed in 1791.

In 1808, the settlement was taken over by the British government as a crown colony. The new colony became a base for the Act of Parliament (1807) abolishing the slave trade, with a naval squadron court set up in Freetown to try slave traders. After the Napoleonic Wars, the other European nations agreed to abolish the slave trade, and the naval squadron court was supplemented by Court of Mixed Commission. Thousands of slaves were freed as a result of these events, and most chose to settle in Sierra Leone. These liberated Africans—Krios or Creoles, as they were called—came from all parts of Africa. By 1861, through treaties of cession, the colony had been extended to include the whole of the Sierra Leone peninsula, Sherbro Island, and various other small islands. In 1896, the surrounding territory was declared a British protectorate (Fyfe and Jones 1968; Kaplan 1976).

Sierra Leone's blend of cultures and historical background have enormous significance and implications for the present organization of its legal system, and for its criminal justice system in particular. One important result has been the country's dual system of justice, British-oriented general law courts on one hand and local or customary law courts on the other. We will examine the organization, structures, and functions of these courts later in the chapter (see subsections Criminal Courts, Local Courts, and Magistrates' Courts).

CRIME PROFILE

Constructing crime profiles for most developing nations in Africa is, without exaggeration, a Herculean task. Many

of these countries do not have accurate or reliable means to measure the amount of crime committed within their borders (Clinard and Abbott 1973). This is true of Sierra Leone, where the only official source of indirect crime information is the Annual Statistical Digest. The Digest aims to present in one volume statistical data of interest to general users of official statistics, but while it covers a wide range of subjects, it does not give priority to factual crime reporting. No edition has ever reported crime facts. Other than information on road traffic accidents and casualties, the Digest does not provide data on numbers and types of crimes committed in Sierra Leone. Even in relation to road traffic accidents and casualties, there is some duplication of reporting. For example, the 1989 edition provides figures on one subject for the period of 1983–1987, whereas the 1990 edition, evidently attempting to consolidate data, covers that same subject for the period 1979–1988.

On the rare occasion when statistical data relating to crime are reported in the Annual Statistical Digest, the method of compilation is penological, focusing on the number of persons committed to prison annually rather than on the number of crimes occurring yearly. The analysis proceeds on three levels. The first level enumerates (a) the number of inmates on remand and (b) the number of persons sentenced to imprisonment. Category (a) is broken down separately for each sex into those awaiting trial, those convicted but not sentenced, and others; category (b) is broken down separately for each sex into those sentenced to imprisonment without option of a fine, those in default of payment of a fine, and those sentenced to death (Table 8.1).

The second level enumerates persons sentenced to imprisonment, classifying them by (i) sex and (ii) duration of sentence (see Table 8.2). The third level itemizes separately for each sex and year the number of previous convictions of person sentenced (see Table 8.3). The Digest's penological approach to crime reporting has the serious limitation of not revealing either the seriousness of crime in Sierra Leone or its demographic and ecological distribution.

Some criminologists doubt that the best available indices of crime rates are “crimes known to the police” (Hagan 1987; Siegel 1989), and the state of affairs in Sierra Leone would thoroughly justify this doubt. Poor police community relations and a lack of adequate resources for the detection and investigation of crime allow numerous crimes to go unreported and undetected. In addition, strong sociocultural attitudes and beliefs in traditional indigenous culture militate against the reporting and detection of crimes such as ritual murder and cannibalism. In the case of white-collar and economic crimes, crime reporting and detection are constrained by political

TABLE 8.1
Persons Committed to Prison During the Year

Type of Inmate	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
On remand awaiting trial										
Male	16,373	8119	16,578	21,367	18,188	16,887	18,286	17,358	14,357	8409
Female	400	335	217	297	397	364	475	411	498	320
Convicted unsentenced										
Male	3187	2835	2821	4150	2788	4868	4561	4418	4286	4251
Female	61	32	69	45	31	35	100	84	76	86
Other										
Male	52	52	294	1456	377	392	38	59	66	38
Female	1	2	—	3	9	1	—	3	6	2
Sentenced to imprisonment without option of fine										
Male	18,554	17,232	17,956	22,194	19,990	20,643	16,830	21,198	18,425	17,549
Female	386	311	220	286	363	303	383	299	311	267
Default of payment of fine										
Male	1002	842	752	549	384	308	303	350	324	346
Female	27	13	21	15	13	20	12	17	20	37
Sentenced to death										
Male	2	—	—	—	9	4	3	2	12	—
Female	—	—	—	—	1	—	—	—	—	—

Source: Prisons Department, Freetown. Extracted from the 1990 edition of the Annual Statistical Digest.

TABLE 8.2
Persons Sentenced to Imprisonment Analysis by Sex and Duration of Sentence

Duration of Sentence (Months)	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
Less than 3										
Male	553	513	419	411	210	131	146	131	138	173
Female	14	4	12	13	2	1	—	—	3	13
Three and less than 6										
Male	569	523	467	551	363	445	140	165	166	332
Female	14	5	19	6	9	10	6	3	3	15
Six and less than 12										
Male	624	610	681	664	619	665	331	240	256	266
Female	14	10	17	11	2	11	3	6	6	7
Twelve and less than 18										
Male	618	508	468	517	466	634	325	278	259	811
Female	12	5	6	4	6	13	5	2	6	5
Eighteen and less than 24										
Male	404	311	270	266	363	458	297	225	184	209
Female	9	3	4	6	—	6	3	4	4	3

(Continued)

TABLE 8.2 (Continued)**Persons Sentenced to Imprisonment Analysis by Sex and Duration of Sentence**

Duration of Sentence (Months)	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
Twenty-four and above										
Male	376	222	288	278	349	488	470	367	325	363
Female	8	3	5	2	3	1	5	5	28	11
Sentenced to death										
Male	2	—	—	—	9	4	3	2	12	—
Female	—	—	—	—	1	—	—	—	—	—

Source: Prisons Department. Extracted from the 1990 edition of the Annual Statistical Digest.

TABLE 8.3**Persons Sentenced to Imprisonment Analysis by Sex and Duration of Sentence**

No. of Previous Convictions	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
Males										
None	137	187	384	966	1046	1333	1510	1174	1385	1026
1–2	1300	900	1124	2924	1202	2718	3221	2336	1960	2917
3–5	800	900	925	1046	596	1061	479	933	924	327
6–10	641	700	587	640	308	143	250	34	76	19
11 and over	361	200	95	30	13	5	36	—	7	—
Females										
None	20	14	25	25	30	27	87	76	74	79
1–2	26	20	44	23	10	9	13	11	8	9
3–5	16	—	—	—	—	—	—	—	—	—
6–10	—	—	—	—	—	—	—	—	—	—
11 and over	—	—	—	—	—	—	—	—	—	—

Source: Prisons Department, Freetown. Extracted from the 1990 edition of the Annual Statistical Digest.

influence, status, power, and affluence. Another real constraint is fear of retaliation or reprisal by the offender in such cases as rape, incest, and assault with intent to ravish. Furthermore, many in Sierra Leone believe the police force to be one of the most corrupt institutions in the country, and this can influence both how the police report crime and how they record it. Police have been accused of underreporting of crime and of deliberately obliterating evidence that a report was made and recorded.

Because of these constraints, this crime profile has been based largely on the ethnographic observations and perceptions of the author as a member of Sierra Leone society and a former judge of that country's High Court. It

will interpret empirical indicators such as media accounts of crime, government releases on the crime problem, public concern over crime, and pressures for legislative reform of the criminal law. Ethnographic observational data gathering is, of course, subjective, but such qualitative research can be used to substantiate criminological explanations for the causes and incidence of crime.

It is both fair and accurate to say that crime continues to escalate in Sierra Leone. The trend goes back to the late 1960s and derives mainly from the major socioeconomic changes that have taken place in that country since independence. Conventional crimes continue to be highly visible and are committed by both adults and juveniles.

Specifically, one sees significant acceleration in murder, manslaughter, rape, wounding with intent, causing grievous bodily harm, child abuse, robbery with aggravation, robbery with violence, simple larceny, and receiving stolen property. Since the 1970s, the rise in violent crime has generated much anxiety, fear, and insecurity in the Sierra Leone population.

Any criminological inquiry into criminal behavior and tendencies in contemporary Sierra Leone, especially any dealing with personal or property crimes, must take into account the key role of socioeconomic factors. Crime rates in Sierra Leone have no consistent correlation with punishment, whether viewed from a retributive, a deterrent, or a rehabilitative perspective. The level of criminality can be better explained and understood in the context of whether people (1) protect, or have the means to protect, themselves from felonious acts and (2) secure, or have the means to secure, their property from damage or loss.

Crime rates may also have escalated in Sierra Leone because local government authorities are not able to provide the basic infrastructural security facilities that would allow citizens to go about their daily business without threats to their life, liberty, and property. Other factors include the lack of discipline at home and at school, unemployment, and housing conditions.

In the mid-1970s, armed robbery, robbery with aggravation, and robbery with violence reached peak levels in Sierra Leone and caused such widespread panic that the government resorted, for the first time in its history, to enacting the death penalty. Armed robbery and robbery with aggravation became offenses punishable by death, but the wording of the statute became problematic in application, with much legal controversy over its legislative intent—specifically, over whether the prescribed penalty of death by firing squad was mandatory or discretionary. Sentences imposed by the courts varied between these two schools of thought, and the matter was never judicially settled. Many of these crimes were perpetrated by two notorious youth gangs that acted under such names as “The Black December” or “The Black September.” These gangs especially perpetrated felony murders, and two cases in particular provoked much public revulsion and made national headlines: the Wellington Street murder case and the Mammy Yoko street murder case. After full-scale police investigations, no effort was spared in bringing the perpetrators to justice.

Another personal crime rampant in some parts of the indigenous communities in Sierra Leone is ritual murder. From the author’s knowledge (having himself successfully prosecuted charges of ritual murder), this type of

homicide is committed out of some strong sociocultural misperceptions that ritual killings promote the welfare of the group, family, clan, or community and are instrumental in gaining power and leadership. Two recent and notorious cases of ritual murder in Sierra Leone were *State v. Alimamy Khazali* and the Bureh Town ritual murder Case.

In addition to the increase in conventional crime, white-collar, corporate, and economic crimes predominate in Sierra Leone today, although statistics, as usual, are hard to come by. “White-collar crime” refers to offenses committed by individuals for self-enrichment in the course of their occupations and to offenses of employees against their employers. In this sense, the term is being used synonymously with “occupational crime” (Hagan 1987); “corporate crime,” on the other hand, consists in offenses by the corporation itself. “Economic crime” refers to any nonviolent, illegal activity that principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention (Clifford 1974). Empirical indicators show that white-collar crimes became noticeable after independence, escalated in the 1970s, and reached crisis proportions in the 1980s.

Specifically, over the past two decades, there has been a marked rise in crimes committed within and against the bureaucracies of Sierra Leone. Such crimes have especially detrimental effects on allocation and utilization of public resources, derived from both internal and external sources, and on socioeconomic development, particularly in relation to agriculture, housing, trade, health, education, and similar projects. In the recent past, such funds have been embezzled practically into nonexistence. White-collar and economic criminality reached epidemic proportions in the late 1970s and early 1980s and culminated in the unearthing by the police of a huge fraud conspiracy within the civil service, later described as the Vouchergate Fraud Cases.

It would be an oversimplification, then, to explain crime in contemporary Sierra Leone by reference to a single cause theory. Patterns of criminal behavior in that country rather seem to reflect a peculiar combination and interaction of these six factors: (1) the process of modernization and its socioeconomic dislocations, (2) traditional cultural attitudes and beliefs, (3) social ties and networks based on the extended family system (these account in part for the high level of white-collar-type criminality), (4) the inefficiencies of the criminal justice system, (5) non-legitimacy and political manipulation of the British style legal system, and (6) lack of knowledge and interest in criminology as a social science.

ORGANIZATION AND FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM

In Sierra Leone, the task of preventing and combating crime is assigned to three institutions that together constitute the criminal justice system. They are the police, the criminal courts, and the prison system. Basically, their organization, structures, and functions are patterned after the English criminal justice system. In Sierra Leone, as in England, the police are the first agency with whom a person suspected of crime comes into contact.

THE POLICE

It is difficult to understand the existing structure of the Sierra Leone Police Force without some historical insights into its origins. Right from its inception, the system of law enforcement in Sierra Leone has always been patterned after the British model of policing, although it would be incorrect to suggest that policing in the country currently functions at the level of sophistication, expertise, and efficiency usually associated with the British model. Lack of modernization is one of the main weaknesses of law enforcement in Sierra Leone.

Conceptually, however, the Sierra Leone Police Force still much resembles its colonial beginnings. It dates back to 1829 when 26 constables, half of whom kept order by day and the other half by night, were appointed in Freetown. By 1836, the core of a modern civil police force, consisting of an inspector, 3 sub-inspectors, and 60 constables, had emerged. The senior officers were usually drafted from a pool of retired military noncommissioned officers or civilian volunteers. The force maintained law and order in Freetown and in the villages of what was then called the "Colony" (now the "Western Area").

In 1861, the British annexed Koya and Sherbro Island to Sierra Leone, thus making a greater measure of law enforcement and an increase in man power necessary. The need was met by combined deployment of garrisoned troops and the police force. When the troops were withdrawn, the police became solely responsible for the maintenance of law and order in the colony. In order to provide the police force with some military training, the commanding officer of the garrison in Freetown was appointed inspector general of police, and the force was housed in police barracks, armed with carbines, and given uniforms of white tunics and slacks with broad leather belts. At that time, the numerical strength of the force was 200. As the colony expanded, the police force took on the additional role of guard duties at the frontiers. In 1891, they were relieved by the newly formed Frontier Police.

In October 1894, the civil police was designated the Sierra Leone Police Force for the first time in the government Gazette. With the formation of a police band in 1900, the total strength of the force reached 600. In September 1909, Superintendent Brook became the first Commissioner of the Force. He is credited with having formed a special riot squad to deal with civil disturbances.

In 1948, the force was enlarged to 1000 under a new police commissioner. Africans were promoted to the rank of assistant superintendent.

In 1951, the Sierra Leone Police force became affiliated with Interpol. The riot squad was disbanded, and every police officer began to receive instructions in riot control. In September 1954, the force was extended to the main towns of the protectorate, replacing the disbanded court messenger forces. The first policewoman was recruited in 1947. At independence, the police force had developed into a well-established, efficient law enforcement institution.

By late 1975, the overall numerical strength of the force (including all ranks) was about 3900. The highest ranking officer in the force, Police Commissioner Kaetu-Smith, like the military Force Commander, was a member of the legislature and a minister of state without portfolio, reflecting the high priority that the government placed on internal security and defense matters.

Unlike its British model, the Sierra Leone force is centralized, a true national police service, and its management and control has always been the responsibility of the central government. The force is organized into five geographical divisions, including one for the special protection of the country's diamond industry. Each regional division is subdivided into a number of branches and departments, which include mainly the Criminal Investigation Department (CID), a special branch, and a traffic division. The CID is the elite corps responsible (like the U.S. Federal Bureau of Investigation) for the detection and investigation of serious crimes. In the 1970s and 1980s, the CID, under Commissioner of Police (later Inspector General) Bambay Kamara, was a highly organized and efficient branch of the force. Its detection and investigation of serious violent crimes used skills comparable to those employed by Scotland Yard.

Under specific statutory powers granted by the Police Act of 1964 and the Criminal Procedure Act of 1965, the police force in Sierra Leone has responsibility to (1) maintain law and order and protect persons and property, (2) prevent crime, (3) detect and investigate crime, (4) arrest criminal suspects with or without a warrant on reasonable cause, (5) control road traffic, and (6) decide whether or not to bring charges against persons suspected

of criminal offenses. In addition, pursuant to the law Officers' Act of 1965 and under the direction of the director of public prosecutions, they have responsibility for the conduct of prosecutions for less serious offenses, especially minor traffic violations. They also introduce evidence before magistrates' courts in preliminary hearings into felony charges. Some question whether the police in contemporary Sierra Leone make reasonable and fair use of their discretionary powers of arrest, search, seizure, and bringing charges against person suspected of crime.

During the period of All People's Congress (APC, a political party) rule, policemen were frequently accused of abusing and misusing their powers of arrest, search, and seizure. It was also said that they solicited and accepted bribes or other favors from crime suspects or from agents or relations in exchange for leniency and that they executed their duties in a manner that showed strong political biases and other extraneous influences. There are no empirical studies to support or refute these criticisms. Based on this author's official knowledge, the Sierra Leone police are not entirely without merit, and their errors and miscarriages in law enforcement can be explained in terms of very low educational levels, lack of professional standards and ethics, very low wages, and extremely low morale.

Recruits for the Sierra Leone police wisely have been drawn from all parts of the country. The majority of policemen in Sierra Leone have either elementary or junior high school education, have passed a physical fitness test, and have graduated from the Police Training School at Hastings after 6 months of training. At the completion of their training, they are usually appointed constables and given housing in the barracks (those who cannot be accommodated in barracks receive special housing allowances). Postindependence governments have adopted a policy of recruiting senior high school and university graduates into the officer ranks. Recruits at this level still are sent to the United Kingdom for advanced training because no such facilities exist in Sierra Leone. After this training, they are appointed to the force as assistant superintendents for 6 months of practical work. Successful candidates are then promoted to existing vacancies or wait for openings. At the present time, the force is headed by an inspector general, a Sierra Leonean lawyer who served at the officer level prior to passing the bar.

Apart from the regular police force, Sierra Leone has a Special Security Division. It is a reorganized and restructured version of the Internal Security Unit set up in the early 1970s by the APC government. This force originally performed presidential guard duties, but later

developed into a special counter-subversive security force available for deployment during periods of internal disturbances and civil unrest.

CRIMINAL COURTS

Scholars of Sierra Leone's legal history and constitutional law agree that the history of the administration of justice in the country dates back to the foundation of the settlement in 1787 by English philanthropists. Since that time, adjudication and judicial settlement of public disorders and private disputes has been administered according to the principles of English law. The first chief justice, Mr. Charles Stoddart, was appointed in 1788, and when Freetown was granted municipal status, the mayor and aldermen of the municipality were constituted judges of the civil courts, while the governor and councilors were the colony's criminal court judges. Trial by jury, a core component of the adversarial system of justice, began during those early years of the settlement.

By 1925, courts of tribal rulers had developed, and also the Police Magistrate Court of Freetown, the courts of the District Commissioners of the Bonthé and Headquarters judicial districts, the Coroner's Court, the Supreme Court, the Full Court of Appeal, and the Judicial Committee of the Privy Council (an English tribunal in London with final appellate authority for the British colonies).

The existing judicial structure reflects as already noted a dual system of justice, with general law (British oriented) courts and customary law or local courts. Both the historical and the contemporary developments of the general law courts have been shaped largely by the common law tradition of England. The local courts are essentially indigenous in character. Their evolution continues to be influenced by the country's tradition of customary norms and values, although efforts are being made to modernize their procedures. Like the English courts, the general law courts of Sierra Leone are organized on the basis of jurisdiction (by geography, subject matter, and hierarchy) and on the basis of venue, and adjudicated cases confined to specified political boundaries (a metropolitan or urban area, a village or group of villages, a district or group of districts). Judicial business in Sierra Leone reflects the familiar English common law bifurcation between civil and criminal disputes.

The criminal courts are the linchpin of the criminal justice system and have responsibility for the trial, conviction, and sentencing of persons accused of crime. In addition to the geographical limitations on their jurisdictions, the powers of criminal law courts may be either limited or general in terms of subject matter and either

original or appellate. Presently, the country has a five-tier court system exercising criminal jurisdiction.

LOCAL COURTS

At the bottom of the hierarchy are the local courts with limited jurisdiction. These adjudicate minor criminal cases, especially those involving customary law issues where the maximum penalty is imprisonment for 1 year or a fine of 600 leones or both. Elders of the local area who are proficient in customary law preside, and their decisions are subject to review by the Customary Law Officer, who acts not formally as a court but in a quasi-judicial capacity. Despite the absence of statistics, it can be said that these courts dispose of a significant volume of minor criminal cases involving customary law throughout the country, because the vast majority of Sierra Leoneans are rural people who willingly live their daily lives in accordance with customary law.

MAGISTRATES' COURTS

Next in the hierarchy are the magistrates' courts. They, too, are courts of limited jurisdiction, but have both original and appellate functions. They are courts of record and judges of both facts and law, and in their capacity as original courts, they perform three main roles. These roles are based on the modern classification of criminal offenses into (1) indictable offenses that must be tried on indictment before a jury (all very serious crimes are in this category); (2) indictable offenses that can be tried either on indictment or in magistrates' courts; (3) offenses that are both indictable and summary; (4) summary offenses in which the defendant can demand trial on indictment; and (5) summary offenses triable only in magistrates' courts.

On the basis of the foregoing classification, the first and chief role of magistrates' courts in Sierra Leone is the hearing and disposition of lesser criminal charges punishable by a maximum imprisonment of 3 years or a fine not exceeding 1000 leones or both. This summary function was extended in 1973 to include perjury or subornation of perjury under the Perjury Act of 1911 and reckless driving as defined in the Road Traffic Act of 1964.

Summary jurisdiction, a second role of the first instance magistrates' courts of Sierra Leone, comes into play when a person is charged with an offense punishable by a maximum penalty of 7 years or a fine not exceeding 3000 leones. If the court so determines, the defendant can opt at preliminary hearing to be tried summarily instead of on indictment. The magistrate will then hear

and dispose of the case in accordance with the summary trial law.

In the course of a summary trial, magistrates' courts may commit a defendant to be tried on indictment if the circumstances of the case so warrant or on the grounds of some aggravating or compelling factor. This function is especially useful when statutes create offenses that specify the maximum penalty for conviction summarily and the maximum penalty for conviction on indictment. Legislation of this type clearly makes the crime both summary and indictable, but leaves the courts with no guidance for determining whether a particular case should be tried summarily or on indictment. In one case, the legislature of Sierra Leone conferred special jurisdiction on magistrates' courts in 1977 and 1981 over offenses committed within the country's territorial waters, or in any port, harbor, wharf, or airport. They now have power to try persons charged with such offenses and punish them, on conviction, with a maximum of 5 years' imprisonment or a fine of up to 25,000 leones or both. This is an example of legislation making a crime both a summary and an indictable offense, because it gives the court discretionary power to determine whether to try the case summarily or on indictment. (A magistrates' court cannot exercise this power if it is staffed by lay justices of the peace.)

The magistrates' courts also play a third key role, holding preliminary investigations into felony charges. This is a very important task, because it determines whether a person charged with the commission of a serious crime is to face trial in the High Court or have the charge dismissed. Decisions are made on the basis of whether there is sufficient or *prima facie* evidence to warrant a committal. Where there is no such evidence, the court will dismiss the case and discharge the defendant. The procedure is analogous to that of the preliminary hearing and the grand jury in the United States. Magistrates' courts in Sierra Leone have, since their inception, committed for trial or indictment for charges such as treason, sedition, murder, manslaughter, wounding, causing grievous bodily harm, rape, robbery, burglary, larceny, forgery, and conspiracy to defraud.

Unlike some countries, there are no separate Justice of the Peace courts in Sierra Leone, but these lay officials do play an import role within the country's criminal justice system. They sit in a magisterial capacity and, generally, carry out the same functions as legally qualified magistrates. Their sentencing power, however, is limited: they cannot impose fines in excess of 300 leones or imprisonment for more than a year. One important aspect of the criminal jurisdiction of lay magistrates is adjudicating juvenile offenses (a subject addressed later in this chapter

in the subsection Juvenile Justice). It is thought that nonlegally qualified magistrates bring to the administration of juvenile criminal justice a much needed lay perspective.

There are no fewer than 25 magistrates' courts in Sierra Leone, one in each of the six districts that make up the Northern and Southern Provinces, respectively, three in the Eastern Province, and about ten in the Western Area. (The uncertainty in the number of magistrates' courts in Sierra Leone today is a result of the creation of new magisterial districts by the new regime of a military government that assumed power on April 29, 1992.) They carry the bulk of the criminal workload within the country's criminal justice system. Respect for the law and confidence in the legal system in Sierra Leone often are linked with the adjudication of cases in the magistrates' courts. This is because their function as appellate courts provides the first intersection between the customary justice system and the general law courts system. As district appeal courts, they hear and determine appeals from decisions of local courts, ascertaining whether the court below applied the relevant rule of custom correctly to the facts of the case and whether, on the whole, the case was heard fairly. In exceptional cases, the *de novo* procedure allows them to hear an entire case, admitting additional witnesses who did not testify in the lower court. Appeal to the magistrates' courts is automatic following an automatic stay of execution of the decision of the lower court for a period of 15 days. Unlike procedure in local courts, attorneys have a right of audience before district appeal courts, which consist of the magistrate for the district sitting with two assessors selected from a list of experts in customary law drawn up by the district officer. District appeal courts dispose of a substantial number of criminal appeals emanating from the local courts. In light of the review jurisdiction of the district appeal courts, it is debatable whether the review authority of the Customary Law Officer over the decisions of local courts is desirable or necessary to retain. Magistrates are appointed by the Judicial Service Commission and are (except for lay magistrates) legally qualified and salaried.

HIGH COURT

The next court in the hierarchy of criminal courts in Sierra Leone is the High Court. By far, the most important forum in the structure, the High Court, together with the Court of Appeal and the Supreme Court, constitute the superior Court of Judicature of the State of Sierra Leone. The High Court is a court of records with general jurisdiction. Its powers are original, appellate, and supervisory. As an original court, it hears and determines

all types of criminal cases, especially those involving treason and serious felony charges such as sedition, murder, manslaughter, rape, robbery, burglary, larceny, forgery, and conspiracy to defraud. The cases are usually tried by judge and jury and, exceptionally, by judge alone (on the *ex parte* application of the director of public prosecutions). The work of the High Court is centered in the Western Area, but there is a High Court for the Southern Province and an itinerant High Court judge for the Northern Province. In exercising its original criminal jurisdiction, the court is constituted by a single judge or by a judge and jury.

The High Court also hears and determines appeals from decisions of magistrates' courts, given either as trial courts of limited jurisdiction or as district appeal courts. The appeal procedure reviews the decision of the lower court to determine whether relevant law was correctly interpreted and applied to the facts of the case and scrutinizes the records of the lower court's hearing to ensure that the proceedings were conducted fairly and properly. The High Court may also inquire whether the court below wrongly admitted or excluded evidence. As an appellate tribunal, the court can (1) dismiss an appeal, (2) overturn a conviction and set aside its sentence, (3) dismiss an appeal and leave a sentence unaltered or impose a substitute sentence, (4) order a retrial, or (5) substitute an alternative conviction (e.g., attempt to commit the crime or commission of a different crime) for the conviction given in the lower court.

When the court hears appeals from a district appeal court, it is designated a local appeals division for the High Court and constituted by a single judge with two assessors selected by him or her from a list of experts in customary law drawn up by the Customary Law Officer.

In its supervisory capacity, the High Court has authority in any given case (1) to force a magistrates' court to accomplish an act that is legally required of it by an order of *mandamus*, (2) to require a magistrates' court to send up the records of its proceedings for review by an order of *certiorari*, or (3) to require the court below to refrain from proceeding with a matter not within its jurisdiction by an order of prohibition. The most important additional order in the supervisory legal armory of the High Court is the writ of *habeas corpus*, by which it can inquire into the legality of the detention of any person in Sierra Leone.

In the Western Area, the High Court is continuously in session except for the vacation period, which runs from July 17 to September 17. In the provinces, the sessions are not continuous, varying from two to three a year. In the Western Area, two or three courts sit separately, and there may be three courts sitting simultaneously; in the

provinces, only one court sits. The cases—most of them committed by the magistrates' courts after a preliminary hearing—come before the courts in an order known as the "criminal calendar" for each session.

Exceptionally, there may be cases on the "criminal calendar" that have been sent up for trial on ex-officio ex parte information from the attorney general and minister of justice or from the director of public prosecutions. This procedure is often invoked in cases with a political complexion, such as treason, and in huge fraud cases involving heavy financial losses to the government. It is also used in felony murder cases, where an expeditious trial best serves the ends of justice. Virtually all serious crimes are tried by the High Court. High Court judges are legally qualified and are appointed by the president on the advice of the Judicial and Legal Service Commission, subject to the approval of Parliament. Such appointments are usually made from the pool of state attorneys employed by the government and from members of the private bar. An attorney who currently aspires to High Court judgeship must have at least 10 years' professional standing (formerly it was 5 years). All Superior Court judges hold office pending good behavior. They may opt to retire at age 60, but must retire at age 65. The High Court consists of at least 10 judges.

COURT OF APPEAL

The Court of Appeal is the intermediate appellate tribunal in the general law courts system in Sierra Leone. As a criminal court, it hears and determines appeals from decisions and orders of the High Court. Because it is practically the final appellate court for most criminal appeals arising out of decisions of the High Court, especially in exercise of its original jurisdiction over felony cases, appeal is automatic. As a review tribunal, the court determines whether the High Court interpreted and applied the law applicable to the facts of the case correctly; after examination of the records of High Court proceedings, whether the trial was conducted properly; or, in the case of an appeal, whether it was heard fairly. It can also inquire into whether evidence was improperly admitted or excluded.

After hearing an appeal, the Court of Appeal can (1) dismiss the appeal, (2) overturn the conviction and set aside the sentence, (3) dismiss the appeal and leave the sentence unaltered or impose a substituted sentence, (4) order a retrial, or (5) substitute an alternative conviction (e.g., attempt to commit the crime or commission of a different crime). When dismissing an appeal, the court can claim that although there is merit in the point or points of law raised on appeal, yet no substantial miscarriage of

justice occurred. As in England, but not as in the United States, this statutory power safeguards against the use of legal technicalities to overturn convictions on appeal, especially where the evidence overwhelmingly points to the guilt of the defendant.

The court is constituted by three justices, with the most senior presiding, for the normal business of hearing an appeal, but by a single justice in respect of interlocutory matters. Justices of Appeal are legally qualified and are usually appointed from the pool of judges on the High Court bench on the basis of seniority rather than merit. In exceptional cases, an appointment may be made directly from the team of government lawyers or the private bar. As already noted, all superior court judges in Sierra Leone are appointed by the president on the advice of the judicial and legal service commission, subject to the approval of Parliament. Current aspirants for the position of Justice of Appeal must have at least 15 years of professional standing (formerly it was 7 years). The Court of Appeal consists of at least eight justices.

SUPREME COURT

The Supreme Court of Sierra Leone is the highest judicial organ in the country. Its jurisdiction is mainly appellate and limited to the hearing and determination of civil and criminal appeals from the Court of Appeal. In exercise of its criminal appellate jurisdiction, the court hears and disposes only of a limited number of appeals largely dictated by the court itself and the Court of Appeal. In Sierra Leone, a defendant who is dissatisfied with a decision of the Court of Appeal in a criminal appeal can either opt by right to appeal the decision directly to the Supreme Court or, if the case involves a substantial question of law or is of public importance, he or she can seek permission from the Court of Appeal itself to appeal its decision. He or she can also obtain special permission from the Supreme Court to appeal any decision of the Court of Appeal. But in recent times, the court has insisted that defendants not under an imposed death penalty first apply to the Court of Appeal for permission to appeal its decision before they file an appeal in the Supreme Court or seek its special permission to do so. By this practice, the court limits itself to hearing and determining only those criminal appeals that raise substantial questions of law or are of significant public interest. Because of this limitation, the court disposes of only 5–15 criminal appeals a year.

The Supreme Court also exercises supervisory jurisdiction over all other courts in the country through procedures similar to the certiorari, mandamus, and prohibition proceedings of the English House of Lords

and the U.S. Supreme Court. It also has original jurisdiction, to the exclusion of all other courts, (1) in all matters relating to the interpretation and enforcement of the constitution and (2) where any question arises whether an enactment is *ultra vires*. Also, any citizen of Sierra Leone who alleges that any of his or her constitutional rights or freedoms has been, or is being, or is likely to be, violated can apply directly to the Supreme Court for redress. These two functions are far-reaching, but they certainly fall short of the substantive juridical review power that the U.S. Supreme Court possesses; nevertheless, they do act as significant due process safeguards.

The court is constituted for regular judicial business, whether appellate or original, by five justices, including the chief justice (or, in his or her absence, the most senior justice) acting as president. When hearing interlocutory matters, a single justice sits. Justices of the Supreme Court are legally qualified and are usually appointed from justices of the Court of Appeal, with emphasis being placed on seniority rather than merits. Exceptionally, an appointment may be made from the team of government lawyers or the private bar.

The chief justice and other judges of the Supreme Court are appointed by the president on the advice of the judicial and legal service commission and subject to the approval of Parliament (the advice requirements are recent additions). The position of chief justice is pre-eminent, with the candidate being chosen from among persons qualified to be Supreme Court justices. Present candidates for the position of justice of the Supreme Court must have at least 20 years of profession standing (formerly it was 10 years). The Supreme Court consists of at least five justices. During the period of APC rule, those appointed to the position of chief justice would be judges with considerable political leverage.

PRISON SYSTEM

Like the other components of the criminal justice system, correctional institutions in Sierra Leone are fashioned after the British model, with variations appropriate to local conditions. The main correctional facility in the country—the Freetown Central Prison—is indeed a relic of outmoded English penological theory, with an architectural design reminiscent of correctional institutions in late eighteenth-century England. Since independence, there has been no major attempt to alter or modify the architectural design of that correctional institution.

The administration of correctional services in Sierra Leone falls within the responsibilities of the minister of social welfare, but the services are centered in Freetown,

the capital city, under the direction and supervision of the director of prisons. There are several provincial correctional facilities, including Bo, Makeni, Kabala, Kailahun, Sefadu, Maganta, and Masanki. Ideally, and by statute, prison inmates are to be grouped and segregated according to sex, age, those awaiting trial, and those already convicted. Except for the Freetown facility, there are no correctional facilities in the country providing for complete physical segregation of male and female inmates, and females sentenced in the provinces ought normally to be transferred to Freetown; but in practice, this does not happen. In a developing society such as Sierra Leone, where economic resources are very scarce, funds for the improvement of correctional institutions will necessarily receive very low priority. Hence, the system does not reflect the traditional English classification of prisons into local, short-term training, medium-term training, and long-term training. In 1976, the National Development Plan envisaged the expansion of the main provincial facilities to accommodate more inmates. There was also provision for the development of industries in the Freetown Central Prison. But these plans were never fully implemented because they lacked adequate funding.

The key philosophy underlying the prison system in Sierra Leone is that inmates must either work or learn basic skills, the emphasis being on rehabilitation. Judges in Sierra Leone, however, focus on retributive justice in their sentencing practices. During the period of incarceration, inmates are taught trades such as carpentry, tailoring, shoemaking, printing, bricklaying, weaving, and painting. Courses are also given in basic reading and writing. Funds are not presently available to secure necessary new and additional equipment and machinery for teaching these trades and skills.

As with the police force, recruits in the prison service are drawn from all parts of the country. The majority of prison personnel has either an elementary or a junior high school education and has passed a physical fitness test. As an incentive for highly educated persons to enter the prison service, successive governments since independence have adopted recruiting policies favoring senior high school and university graduates. After some in-service training, these specially recruited officers are appointed to the rank of assistant superintendent, with the opportunity of being promoted to ranks such as chief superintendent, assistant deputy director, deputy director, and director.

Prison sentences in Sierra Leone range from 1 month to life imprisonment depending on the nature and gravity of the offense. Persons convicted of treason, murder,

armed robbery, and robbery with aggravation may be sentenced to death.

There are also special correctional facilities for juvenile offenders. The issue of prisoners' rights in Sierra Leone has never raised much controversy, except as a result of criticisms emanating from Amnesty International on the issue of political detainees.

JUVENILE JUSTICE

In Sierra Leone, juvenile justice is regulated by the Children and Young Person Act of 1945. The juvenile justice process in the country is based on the British model and focuses on rehabilitation with a social welfare emphasis. Two main goals are pursued—first, to fulfill the needs of juveniles for care, protection, and supervision. When a juvenile is found wandering and seems not to have any home, settled place of abode, or visible means of existence, he or she may be brought before a juvenile court in Sierra Leone as one in need of care and protection. The second main goal of the juvenile justice agencies is to protect society against juveniles who violate the criminal law and threaten the fabric of society. A juvenile found guilty of an offense punishable, in the case of an adult, with imprisonment, may be committed to the custody of an approved school until age 18 or for a shorter period of time.

The agencies responsible for addressing the problem of juvenile delinquency in Sierra Leone are the legislature, the courts, the police, prosecutors, defense attorneys, prison, probation officers, approved schools, and remand homes. The Children and Young Persons Act of 1945 and subsequent amendments give statutory provisions defining the scope of the legal authority of these agencies, prescribing procedures for the determination of guilt and for the hearing and disposal of juvenile cases. The term "juvenile" is defined to include both the "child" and the "young person," a child being under age 14 and a young person being between ages 14 and 17.

As in most countries, the bifurcation of the system of justice into juvenile and adult proceedings in Sierra Leone manifests itself in two sets of institutions and procedures with distinct goals and objectives: one set addresses juvenile delinquency and the other adult criminality. This is part of the British common law heritage. But although the juvenile justice system does have formal goals and procedures, its processes tend in practice to be more flexible and informal because of the large element of discretion granted to agencies handling juvenile cases.

On the whole, juvenile proceeding differs from adult proceedings in certain significant respects. The age

boundary between the juvenile justice system and the criminal justice system for adults is 17 years. Generally, the language of adult proceedings, with its denunciatory connotations and stigmatizing effect, is not used in juvenile proceedings. When a juvenile is adjudged guilty or not guilty, reference is not made to a "conviction," a "sentence," or an "acquittal," but to an "order" (the only exception is homicide, in which case a juvenile is tried as an adult). Unlike the United States, magistrates hearing criminal charges against juveniles (who are not charged with adults) sit in different buildings or rooms from those used for ordinary court sittings. Except for homicide, a child is not sentenced to imprisonment. The same applies to a young person, unless the court finds no other statutory disposition suitable. Again, except for homicide, policy dictates that an imprisoned young person should be segregated from adult prisoners.

The entire panoply of due process safeguards afforded the defendant in adult criminal proceedings are not available in juvenile proceedings. Juvenile court hearings take place in camera (meaning, in a judge's private room or place; in a private place, not in public), and only members and officers of the court, relatives of the defendant, parties to the case, their attorneys, and other persons directly concerned are allowed to be present. Other persons cannot attend except with the permission of the court. The court can grant special permission to credentialed representatives of the press to attend. Strict statutory requirements preclude the disclosure of the name, school, or any other identifying information of the youth except with the permission of the court.

When a juvenile is adjudged as having committed a crime, the court will hear evidence of the juvenile's character, antecedents, home life, occupation, and health, so as to determine what disposition should be made in the juvenile's best interest. So long as a juvenile has been adjudged guilty of an offense other than homicide, the court may make custodial or noncustodial orders such as (1) a conditional discharge on the juvenile's own recognition, with or without sureties, to be of good behavior; (2) a fine, compensation, or costs order against the parent or guardian, or against the juvenile, where the parent or guardian cannot be located or did not condone the crime; (3) repatriation of the juvenile to his or her home or district of origin; (4) a release to the custody of a fit person or institution; and (5) a release to the custody of an approved school. The court may also order that any custodial or noncustodial measure be supervised by a court-appointed probation officer.

Juvenile courts in Sierra Leone also dispose of cases involving status offenses, acts perpetrated by juveniles

that, by virtue of the offender's status as a child or young person, may require care, protection, and supervisory jurisdiction from the juvenile justice system. Status offenses include beginning or receiving alms; wandering without home or settled place of abode; and falling into bad associations such as with the company of a reputed thief or a common prostitute. This jurisdiction also extends to cases where the juvenile is a victim of acts such as parental abuse, neglect, abandonment, or being in the custody of a parent or guardian who is criminally disposed or who is violent and alcoholic. Juveniles who are so victimized may be made wards of the court. In such cases, the court may order (1) that the juvenile be sent to an approved school; (2) that the juvenile be committed to the care of a fit person, whether a relative or not, or to an institution; or (3) that his or her parent or guardian guarantee to give him or her proper care and guardianship.

As in England and the United States, there are both pretrial and trial juvenile procedures in Sierra Leone. Pretrial procedures are called referrals and are essentially an intake process. Although no supporting statistics are available, it is evident that referrals to the juvenile court in Sierra Leone have increased over the years because of the country's economic decline. Most referrals come from the police. Parents and relatives rarely make referrals except as a last option, an attitude rooted in both the European and the African strands of Sierra Leone culture and tradition. A delinquent child brings moral opprobrium on the family, and it is thought that rehabilitation can be handled better within the family than by legal and institutional procedures. After a referral, the court must make three key decisions: (1) whether to detain an arrested juvenile pending investigation of the case or to release him or her on bail on his or her own recognizance or that of his or her parents or guardian; (2) whether or not to file formal charges against him or her, and when it has been decided that the juvenile is in need of care, protection, and supervision; and (3) whether to file a formal petition for any appropriate statutory order. The fact that juveniles are not afforded the same comprehensive set of due process rights has not been controversial in Sierra Leone. Essentially, juveniles are afforded the right to bail; the right to cross-examine prosecution witnesses; the right of appeal; and the right to an attorney—but unlike in the United States, not at the expense of the state.

Some key aspects of trial procedures have already been covered in this section, especially with regard to the in-camera nature of juvenile proceedings and the specific orders that the court can make both in exercise of its criminal jurisdiction and in the context of the adjudication of status offenses. When a juvenile is charged with

a criminal offense other than homicide, the substance of the charge is explained to him or her in simple language. The court then gives him or her an opportunity to explain or else to admit to the allegation. If the juvenile's statement amounts to a plea of guilty, the court will record that the charge is proved. If the allegation does not amount to a guilty plea, the court will proceed to hear the evidence of the prosecution witnesses. At the close of the evidence of each witness, the court will ask the witness any questions necessary and desirable to establish the truth of the allegation or test the witness's credibility. The juvenile is also given the opportunity to question the witness, and the court will make sure that this is done, particularly when the juvenile is unrepresented. When all the prosecution evidence is in, the court will hear defense evidence, including any further statement the juvenile may wish to make, if it finds that a sufficient or *prima facie* case has been made against the defendant.

In Sierra Leone today, there are three penal facilities for juveniles. They are probation, approved schools, and remand homes. They function under the control and supervision of probation officers and managers who are in turn supervised by the court.

CONCLUSION

Criticisms of the social control mechanisms of criminal law and of criminal justice systems are inevitable, because their application concerns the extremely delicate and sensitive issue of marking boundaries between individual liberty and the punitive power of the state. In many countries, criminal law and criminal justice processes are perceived as conservative, and in the developing state of Sierra Leone, it would be difficult to contest this generalization. One historical reason adduced for the current lack of a Sierra Leone criminal code is the opposition of a legal profession that has always prided itself in uncritical adherence to the inherited, common law system. The state of affairs is all the more anomalous for the fact that Sierra Leone has a permanent law reform commission whose specific functions are to eliminate anomalies found in the law, to repeal obsolete and outdated enactments, to consolidate enactments, to introduce and incorporate new areas of law, and to modernize and update the law. In spite of a truly elaborate and comprehensive mechanism for the reform of law in Sierra Leone, some key catalysts for law reform are missing—to wit, a lively public opinion, an importunate press, and an insistent academic legal community.

It is arguable, therefore, that criminal law and the criminal justice system in Sierra Leone are seriously

in need of refurbishing. This is necessary if they are to achieve their avowed goals and objectives as a social control mechanism, adjusting and responding to the rapidly changing socioeconomic realities and attendant criminogenic effects in a developing society with a strong common law heritage. For instance, unlike in the United States and in England, there has been no major effort either to devise a rational body of criminal law or to reform in the light of new realities some of its underlying principles and specific offenses. Sierra Leone has no counterpart to the U.S. Model Penal Code or the English Theft Act of 1968. Change is needed, and a legion of issues critical to the functioning of the criminal justice system ought to be addressed, but for our purposes, it will suffice to identify the following main five: (1) whether or not the criminal jurisdiction of the local courts, whose adjudications are not based on due process, ought to be preserved; (2) the role of the jury in trials on indictment; (3) the effectiveness of the criminal justice system as a whole in dealing with crime; (4) the growth of white-collar crime; and (5) the goals of juvenile justice.

With regard to whether the criminal jurisdiction of the local courts should be preserved, undoubtedly the ideal for any country is to have one law and one judicial system for everybody (Roberts-Wray 1959). The bifurcated legal system of Sierra Leone preserves normative disparities by keeping the customary law jurisdiction and the general law jurisdiction separate, and such disparities can inhibit modernization and progress toward industrialization in a developing country. However, two potentially compatible forces are at work in the modern socio-legal setting of Sierra Leone. On one hand, inherited English law is undergoing constant adaptation and modification in response to the changing socioeconomic realities of a pluralistic society that includes both the values of Western liberal democracy and the indigenous African norms and beliefs. On the other hand, customary law rules are being refashioned and reformulated to ensure the rights and obligations of persons of indigenous culture. These complementary forces eventually may lead to the integration of the general law system with the customary system of justice (Thompson 1991). The problem with this idea is that we cannot successfully eliminate a society's cultural values and standards entirely.

The second critical issue arising from the administration of criminal justice in Sierra Leone today concerns whether juries in trials on indictment perform their important duty effectively. The issue has not been seriously addressed in recent times in the country, nor has it evoked much public concern. Nevertheless, in one or two isolated cases in the postindependence period jury,

verdicts have been suspected of being tainted or perverse, and the press has questioned the usefulness of the institution. This problem should be addressed, not by searching for a better system of trial, but by considering new rules for jury eligibility and qualification. It is well known in Sierra Leone that the level of education of persons who qualify for jury service and who actually do serve as jurors seriously compromises the system. The need for reform here cannot be overemphasized.

The criminal justice system of Sierra Leone, as presently organized, is clearly incapable of dealing with the country's escalating crime rates. The law, the courts, the police, and the correctional services currently do not have sufficient resources to address all the manifestations of criminal behavior. Street crimes, white-collar crimes, and corporate and economic crimes are epidemic. The CID's various operational crime units certainly need increased man power and logistical resources to do their jobs.

Furthermore, there is the malfunctioning of the heavily burdened criminal courts. Again, we encounter the recurrent theme of scarcity of responses: criminal justice is not accorded a high place in governmental priorities. The courts have excessive caseloads, heavy backlogs, and protracted delays both in trials and in hearing of appeals. The High Court typically spends 3–6 months adjudicating some ordinary felony cases, and 2–3 years can pass while trying difficult and complicated fraud cases. Cases on appeal never get determined more quickly than 2–4 years after they have been listed. On the trial level, vital witnesses, especially medical experts, may leave the country during protracted judicial delays, making prosecution when the case comes up for trial impossible. This happens frequently in homicide cases, where law requires the medical cause of the victim's death to be established conclusively. In the provinces, witnesses may not be able to attend trials because of scarcity of public transportation. It also should be noted that the criminal courts are often criticized for allegedly poor quality of justice and for failure to resist politicization of the criminal justice process.

The growth of white-collar crime in Sierra Leone manifests not only a lack of political will to fight this brand of criminality but also a lack of expertise in the CID's fraud unit to unravel the complex financial malpractices that take place inside and against bureaucracies and corporate bodies. The difficulty is compounded by the powerful political connections often wielded by businessmen engaged in questionable commercial practices and by the semblance of legitimacy they acquire from corrupt accountants and tax consultants.

Finally, we address the critical issue of the goals of the juvenile justice system in Sierra Leone. As in most

countries, juvenile justice in Sierra Leone can be properly characterized as the neglected sister, the “Cinderella” of the two justice systems. But Sierra Leone, unlike the United States and Britain, shows no concern about the future direction of juvenile justice. There has been no move to improve its process or to redefine its goals in the light of new realities, nor have rises in juvenile deviance provoked any significant impetus in that direction.

REVIEW QUESTIONS

1. Why are many crimes unreported and undetected in Sierra Leone?
2. What is ritual murder?
3. Which crimes predominate in Sierra Leone today?
4. Patterns of criminal behavior in Sierra Leone reflect a combination and interaction of many factors. What are these factors?
5. What is one of the major obstacles to effective law enforcement in Sierra Leone?
6. Name six major roles of the Sierra Leone police force.
7. What are the major criticisms against the police in Sierra Leone?
8. Compare and contrast the U.S. Supreme Court and the Supreme Court of Sierra Leone.
9. What is the main philosophy underlying the prison system in Sierra Leone?
10. Compare and contrast correctional ideology in Sierra Leone and Denmark; Sierra Leone and the United States.
11. Name five ways in which a juvenile offender can be treated in Sierra Leone.
12. Compare and contrast juvenile courts in Sierra Leone and the United States.
13. Thompson raised five issues of critical concern in the Sierra Leone justice system. What are they?
14. What is the role of the Law Reform Commission in Sierra Leone?
15. Name two cases of ritual murder in Sierra Leone in recent years.
16. What is economic crime?
17. What factors influence patterns of criminal behavior in Sierra Leone?
18. The modern police force was introduced in Sierra Leone in 1829. Is there any link between this period and Sir Robert Peel's London Metropolitan Police of 1829?
19. What do you understand by centralized policing in Sierra Leone?
20. Who was the first Chief Justice of Sierra Leone (1788)?

REFERENCES

- Clifford, W. 1974. *Introduction to African criminology*. Nairobi, Kenya: Oxford University Press.
- Clinard, M. B., and D. J. Abbott. 1973. *Crime in developing countries: A comparative perspective*. New York, NY: John Wiley and Sons.
- Fyfe, C., and E. Jones. 1968. *Freetown: A symposium*. Freetown: Sierra Leone University Press.
- Hagan, F. E. 1987. *Introduction to criminology*. Chicago, IL: Nelson-Hall.
- Kaplan, I. 1976. *Area handbook of Sierra Leone*. Washington, DC: U.S. Government Printing Press.
- Roberts-Wray, K. 1959. The need for study of native law. *Journal of African Law*. 1: 82.
- Siegel, L. J. 1989. *Criminology*. St. Paul, MN: West Publishing.
- Terrill, R. J. 1984. *World criminal justice systems: A survey*. Cincinnati, OH: Anderson Publishing.
- Thompson, B. 1991. Child abuse in Sierra Leone: Normative disparities. *International Journal of Law and the Family*. 5: 13–23.

9 Administration of Justice in Poland

Emil W. Plywaczewski

CONTENTS

Brief History	123
Legal System.....	124
System of Government.....	124
Crime.....	124
Classification of Crimes	124
Crime Statistics, 2002	125
Definitions Based on the Criminal Code.....	125
Crime Regions	125
Victims	125
Police.....	127
Administration.....	127
Resources.....	127
Technology	127
Training and Qualifications	129
Discretion	129
Prosecutorial and Judicial Process	129
Rights of the Accused.....	129
Procedures	129
Pretrial Incarceration	130
Judicial System.....	131
Administration.....	131
Judges	131
Penalties and Sentencing.....	132
Types of Penalties.....	132
Prison.....	132
Description	132
Administration.....	132
Conditions	133
Extradition and Treaties	133
Notes	133
Review Questions.....	133
References.....	134

BRIEF HISTORY

The development of Poland's legal system, especially the criminal law, was determined by the political reality, the laws in force in Poland were the laws of the partitioning countries (Russia, Germany, and Austria) until Poland regained her independence in 1918. The result of intensive efforts to shape Poland's own legal system

was the Criminal Code of 1932, which is considered to be one of most outstanding European legislative achievements of that time. This act was based on the principles of the Sociological School of Criminal Law. It should be underlined that despite the factual loss of sovereignty by Poland after World War II, as a result of the country falling within the orbit of influence of the Soviet

Union, the criminal code of the interwar period was in force until as late as 1970. It was replaced only by the new Criminal Code passed in 1969, which did have links with the structure of the Criminal Code of 1932, but constituted a reflection of the political thought of the Polish People's Republic. This was reflected most of all in an increased protection of political interests of the state and in the different scope of protection of the communal and private property. The regaining of full sovereignty by Poland in 1989 brought about Poland's transformation into a democratic state and an initiation of reconstruction of the legal system, to include the criminal law. The amended Criminal Code of 1969 was in force until 1998, when new laws were promulgated, and the country went back to the criminal law traditions of the interwar period that included the criminal code, the criminal procedure law, and the criminal executive law. The criminal laws include multiple specific laws such as the act on preventing drug abuse (Marek 2003; Gardocki 2004).

LEGAL SYSTEM

Poland's legal system has the features of a positive law system, which includes hierarchical structure, lack of contradiction, and completeness (Jamroz 1999). The sources of law are the Constitution of the Republic of Poland, international laws ratified by agreement provided for in a statute, and regular statutes (Constitution of Poland 1997; Criminal Executive Code 1997). Court judgments (*stare decisis*) and doctrinal views are not a source of law. The principles of the constitution, which constitute the basis of operation for bodies of law enforcement, are the principle of judge's independence, the principle of unity of courts, the principle of two-level court proceeding, and the principle of citizen's participation in the administration of justice.

SYSTEM OF GOVERNMENT

Administration of justice in Poland is not only in the scope of responsibility of courts. The organizational framework in which law enforcement functions is determined by the constitution—level regulations, regular statutes, and implementing acts. The Supreme Court performs oversight over common courts with respect to judgments and the minister of justice with respect to their operation. There are three basic types of organizational units in the judiciary: district courts, circuit courts, and courts of appeals. A district court is established for one or more communes (the basic unit of the local government),

and in specific cases, when it is justified, more than one district court can be established within one commune. A circuit court is established for an area comprising at least two district courts.¹ A court of appeals is established for the area comprising at least two district courts. Currently, there are 10 courts of appeal, 42 circuit courts, and approximately 300 district courts (Grzegorzczuk and Tylman 2005).

CRIME

Classification of Crimes

According to Poland's criminal law, a crime is an act of man that is forbidden by a statute, subject to punishment as a felony or offense, is illegal, and socially menacing to the degree that is higher than negligible. The penal responsibility for crimes is regulated by the criminal code and particular statutes. The category of crimes does not include misdemeanors offenses, specified in the misdemeanor code. Crimes include two categories: *felonies* and *offenses*. Felony is an act that is subject to punishment by imprisonment of no less than 3 years or more. Offense is a forbidden act that is subject to a fine of more than 30-day pay, the punishment of limitation of freedom, or the punishment of imprisonment of more than 1 month. The basic difference between a felony and an offense is the so-called willfulness clause, according to which a felony can be committed only willfully, and an offense also unwillingly, if the statute states so. Felonies include, among others, homicide, armed robbery, coup d'état, assassination of president of the Republic of Poland, and offenses such as theft, unwillingly causing death, bodily injury, or a traffic accident. Depending on the procedure of prosecution, there are crimes prosecuted by public indictment (among others, homicide, theft, and crime of corruption) and by private indictment (among others, insult and battery). In the case of some crimes, the victim or another authorized person is required to submit a request (among others, in the case of rape and performance of a medical procedure without the permission of the patient). The criminal responsibility is borne by the perpetrator who commits an act that is forbidden after reaching the *age of 17*. The underage person who commits, after turning *15 years old*, the crime of assassination of the president of the Republic of Poland, manslaughter, grave bodily harm, rape, battery, hostage taking, or causing an event that is dangerous to the public, piracy in water or air transportation, or causing a catastrophe in transportation may be responsible under the code, if the circumstances of the case, the degree of the perpetrator's

maturity, his characteristics and personal conditions warrant it, and especially if previous educational or correctional measures have turned out to be ineffective.² The responsibility for *drug-related crimes* is regulated in the act of preventing drug abuse, which states that it is forbidden to, among others, produce, process, or change, contrary to the provisions of the act, narcotic substances or psychotropic substances, or to process poppy milk or poppy straw, to bring from another country, to transport through the national border or to ship in transit, to traffic, to provide to another person, to facilitate, to make it possible or to induce the use, and to possess narcotic substances or psychotropic substances. It is forbidden and subject to punishment to sell any type of narcotics, unless permitted by an act of law. The very act of using narcotics is not subject to punishment.

Crime Statistics, 2002

Based on police statistics, complemented by information on investigations conducted in public prosecutor's offices and on investigations against juvenile offenders and conducted in family courts, crimes against life and health were 33,866 of which 1,188 were homicide (Art. 148 Criminal Code); crimes against property (public property and private property) were 890,085, of which robbery (Art. 280 Criminal Code) were 38,648; crimes against economic activity, rape (Art. 197 Criminal Code, 2,345), and offenses were 36,178 (Table 9.1).

Definitions Based on the Criminal Code

Rape—Leading another person, by the means of force, lawless threat, or deceit, to have a sexual intercourse, or to submit to other sexual activity, or to perform such activity; *bodily injury*—causing an infraction to the functioning of a body organ or a breakdown of one's health; *theft*—taking someone's moveable property for the purpose of owning it; *armed robbery*—use of force toward a person or the threat of immediate use of force, or leading a person to the loss of conscience or defenselessness to assure the ownership of a stolen object immediately after the theft took place; *predatory extortion*—leading a person to dispose of own or someone else's property or to stop an economic activity by the means of obtaining a financial gain,

Robbery—Taking the property of another with the use of force, threat of force, or by making a person unconscious or defenseless.

Crime Regions

In 2001, the most prominent increase of criminal activity was observed in the Pomorskie region, Zachodniopomorskie region, and the least prominent in the Podkarpackie, Świętokrzyskie, Podlaskie, and Lubelskie regions. In the years 1990–2001, the increase of criminal activity in cities was more than 2.5 times higher than in rural areas.

VICTIMS

Poland participates in an international research program for victim studies (International Crime Victim Survey), which is conducted through the means of a standard questionnaire for the study of victims of approximately a dozen categories of crimes. Among the crimes are car theft, robbery and battery, sexual crimes, and corruption of state officials. Based on the results of the research, it has been stated that almost every fourth Pole has been a victim of one of the crimes that is the subject of the study. The level of general threat of crime has been constant. Poles have most often been victims of consumer crimes, damage to cars, or car theft; the least frequent were sexual crimes and theft of motorcycles. There is a decreasing trend in sexual crimes and battery, and robberies are on a constant level. The number of crimes against property is decreasing. The number of incidents of damage to cars and car theft has increased (Siemaszko 2003).

It is impossible to determine the precise number of institutions that act for the benefit of victims of crimes. In Poland, those are both government organizations and nongovernment organizations. In 1966, the All-Poland Agreement of Person, Organization, and Institutions Helping the Victims of Crimes was signed by 953 institutions.

The role and position of the victim in a criminal process are regulated by the provisions of the criminal code and the code of criminal proceeding. A victim is a natural or legal person, a state, local government, or social institution, even if it has legal status, whose legal rights have been directly violated or endangered by a crime. In a preparatory proceeding, the victim has the rights of a party (the right to influence the proceedings related to evidence, the right to question decisions made by institutions involved in the process, and the right to place complaints concerning other activities that infringe upon the victim's rights). In a court proceeding, which is initiated by a public accusation, the victim can participate in the hearing as well as be a party, in the case that a civil indictment is in place, or be an assistant prosecutor. The victim is a party in the process also when the victim

TABLE 9.1
Police Statistics of 2004

Crimes Observed (Selected Categories)												
	Homicide	Rape	Bodily injury ^a	Battery	Thief ^b	Armed robbery & robbery	Burglary	Traffic offense	Criminal offense	Economic offense	Others	Total
2004	980	2,176	15,184	14,338	339,086	48,636	266,591	177,296	1,085,295	152,148	223,774	1,461,217
2003	1,039	2,322	15,669	14,010	336,143	51,688	294,654	168,827	1,101,387	151,596	213,660	1,466,643
2002	1,188	2,345	16,775	14,194	314,929	47,808	304,625	163,012	1,083,854	109,698	210,677	1,404,229
2001	1,325	2,339	16,968	14,369	314,820	49,862	325,696	138,817	1,107,073	103,521	179,495	1,390,089
2000	1,269	2,399	18,429	14,363	309,846	53,533	364,786	19,894	1,133,162	84,260	49,488	1,266,910
1999	1,048	2,029	17,849	12,756	243,537	44,775	369,235	20,505	1,020,654	60,393	40,498	1,121,545
1998	1,072	2,174	19,495	13,034	211,651	34,225	355,176	34,442	931,037	78,496	63,509	1,073,042
1997	1,093	2,260	20,505	13,005	184,368	30,063	324,017	40,202	838,941	82,296	71,136	992,373
1996	1,134	1,985	19,371	11,575	157,479	26,257	305,703	34,863	761,664	73,911	62,176	897,751
1995	1,134	2,267	18,901	10,600	211,602	26,858	304,899	35,005	835,641	83,893	55,367	974,941
1994	1,160	2,039	18,454	9,223	180,514	23,574	304,293	32,030	780,781	74,956	50,420	906,157
1993	1,106	1,976	16,646	7,285	134,089	21,034	314,338	29,578	734,956	64,055	47,748	852,507

^a After September 1998, in the new Criminal Code: loss of health (without offenses related to accidents at work).

^b Data for the years 1991–1999 do not include “theft of economic character.”

^a After September 1998, in the new Criminal Code: loss of health (without offenses related to accidents at work).

^b Data for the years 1991–1999 do not include “theft of economic character.”

places the indictment in a case where prosecution is initiated by a private indictment as well as in the case that he places an indictment where the prosecution is initiated by a public indictment, if the prosecutor refuses to place the indictment (Gaberle 2004; Kruszynski 2004).

In the sentencing process, the court takes into account particularly the behavior of the perpetrator after he committed the crime, especially the effort to repair the damage or to otherwise respond to the social sense of justice and the victim's behavior. In sentencing, a court also takes into account the positive results of the mediation between the victim and the perpetrator or an agreement they arrived at in a court proceeding or before a prosecutor.

Additionally, reconciliation of the victim with the perpetrator influences the use of means of probation. For example, in the case of conditional resignation from a criminal proceeding, it allows its use on the perpetrator of the crime who is subject to punishment that does not exceed 5 years in prison. However, while resigning from the proceeding, besides the obligation to repair the damage fully or partially, the court may impose the obligation to ask forgiveness of the victim, and not fulfilling the obligations is a reason to possibly initiate the proceeding that the court resigned from.

In 1999, the Ministry of Justice, in cooperation with government and nongovernment institutions and organizations, in response to the inadequate level of knowledge of existing regulations, prepared the Polish Charter of Victim Rights. It is a list of rights of victims of crimes, with the information on what and from whom victims of crimes can demand. According to the Charter, the victim has the right to assistance; respect and sympathy; freedom from secondary victimization (right to safety and ban on repeated tormenting of victims); and access to the system of justice, to mediation and reconciliation with the perpetrator, and to restitution and compensation.³

POLICE

Administration

The Polish police service operates three divisional forces: criminal, preventive, and organizational, logistic, and technical support. The police service also includes court police, higher police training school, police training centers, police training schools, prevention units, antiterrorist subunits, and research and development units. The chief of the Polish police service is the superior of all police officers. The chief of the Polish police service acts as an entity of the national state administration responsible for protecting people and maintaining public safety and civil order. He reports to the

minister of internal affairs and administration. The chief of the Polish police service is appointed and dismissed by the prime minister of internal affairs and administration. There are 169 Voivodship Headquarters of Police and 1 Metropolitan Police Headquarters, 1,793 police Stations, 22 prevention Squads, 14 antiterrorist subunits, 5 police schools, and 13 police training centers.⁴ The police do not constitute a part of Polish armed forces. Other law enforcement bodies are military police, border guard, and fiscal inspection agencies.

Resources

The budget of the police was 4739 million PLN in 2000, 5256 million PLN in 2000, 5256 million PLN in 2001, 5292 million PLN in 2002, and 5480 million PLN in 2003.

As of January 1, 2005, level of employment in the police was 101,309 positions and 100,758 persons employed. Table 9.2 provides the employment data as of December 31, 2004.

Technology

Individual weapons of police officers are mostly P-64 pistols, approximately 120,000, and P-83, approximately 8,600. Both types of pistols use the Makarov ammunition, caliber 9 mm. In 1990s, 7,200 modern Glock 17, Glock 19, Glock 26 pistols were purchased for the police, and they use the Parabellum ammunition, caliber 9 mm. Also, individual weapons include revolvers (mostly Astra, Taurus, and Smith & Wesson), approximately 1150. They use both sharp ammunition (type Wilga, Zieba, and Kos) as well as special ammunition of a diminished momentum and small individual energy of the round (Komar, Soa, and Szerszeń), where the role of the round is played by a sack filled with small metal balls. Machine pistols Glauberyt (9 mm) are being introduced to replace the outdated machine pistols design 43 (using the 7.62 rounds), and 11,300 of them have been purchased for the police. In addition, police officers from the Central Investigation Bureau and members of the police antiterrorist units are using machine pistols UZI and MP5A3, and there are 500 of them. Police officers are also using the carbine AKMS (and its various versions) of 7.62 mm caliber. The police have 9500 of them. Since the beginning of the 1990s, the police have been using smooth barrel rifles (12 mm caliber), and there are 2500 of them. These rifles are used by antiterrorist units, the Central Investigation Bureau, and prevention services, including road traffic units. These weapons use multiple types of ammunition, depending on the situation such as ammunition with lead rounds (breneka, loftka), ammunition with

TABLE 9.2**Employment Data December 31, 2004, by Age, Education, Years of Service, and Leadership Positions**

	Number of Female Police Officers	Total Number of Police Officers	% of Female Police Officers in the Total Number of Police Personnel
Total	10,581	100,223	11
Hierarchy level			
Main police HQ	624	2993	21
Voivodship police HQ	2,758	11,966	23
City, county, district police HQ	4,596	52,866	9
Police stations	2,005	24,779	8
Prevention units	294	5,936	5
Antiterrorist subunits	2	440	0
Police schools	302	1,243	24
Police corps			
Officers	2,283	16,830	14
Warrant officer	2,903	27,745	10
Noncommissioned officers	2,776	35,528	8
Privates	2,619	20,120	13
Age			
Below 25	654	4,954	13
25–30	2,295	20,633	11
30–40	3,089	44,481	7
40–50	3,320	22,515	13
Over 50	1,223	4,640	26
Education			
College or higher	5,046	26,938	19
Associate degree	744	2,964	25
High school	4,784	68,923	7
Trade school	7	1,398	1
Years of service			
Less than 3	1,020	8,942	11
3–10	3,017	26,922	11
10–15	1,799	25,696	7
15–20	1,568	17,564	9
20–30	2,594	18,608	14
Over 30	583	2,491	23
Leadership position			
Commandants, deputy commandants	51	1,846	3
Civilian employees	12,574	19,939	63

Note: Most of the police personnel serve in the criminal department.

rubber rounds (Bak, Crhabaszcz), ammunition with powder rounds (Pr-PIK-94M), and ammunition with tear gas (PR-CS). On July 25, 2000, the decision of the Council of

Ministers No. 48/2000 was signed, introducing the program titled “Modernization of personal arms of police and border guard officers,” which included plans for

purchasing modern pistols and machine pistols for these services to replace the weapons that are currently in use. The plan has since been completed. In 2001, 2360 pistols and 7500 machine pistols were purchased costing a total amount of 21,022,112.80 PLN.

Training and Qualifications

A person serving in the police forces has to be a Polish citizen of impeccable character who has not been sentenced by a court of justice, has full public rights, holds at least a high school diploma, and is capable physically and mentally to serve in the armed services where there is a special discipline that he is ready to accept. As an exception, a person without a high school diploma may be accepted if his or her special qualities for the service in the police have been observed. The position of a police commandant or deputy, unit commander or deputy, chief of a cell or deputy, requires university education and a master's degree or equivalent. In the selection process, candidates with university education in law are preferred.

Discretion

In the course of operational—reconnaissance and inquiry—investigative, and administrative policing activities, undertaken to reconnoiter, prevent, and detect crimes and misdemeanors and to perform the directions of a court, prosecutor, and bodies of administration, police officers have the right to check the documents of persons to determine their identity, apprehend persons who evidently constitute a threat to life or health of other persons as well as to property, and apprehend persons who have received a prison sentence and, on the basis of a permit, have left the place of detention for investigation or a prison, and did not return in time. They can perform body search and luggage and baggage checks in the case of a reasonable suspicion that an illegal act has been committed. Police officers can use means of direct enforcement (physical, technical, and chemical means to subdue suspects) in the case the persons fails to submit to legal orders from police authorities or police officers, the use of a given enforcement method has to be proportional to the needs in a given situation and be necessary to obtain submission to orders. A police officer may refrain from calling a person to behave in accordance with the law and from warning of the intent to use a means of enforcement or from making a “warning shot” with a non-penetrating round, if the delay would bring about danger to human life or health and to property.

The police and other bodies of criminal law enforcement may apprehend a suspect, toward whom there

is a reasonable suspicion that he or she has committed a crime, and there is a risk that the suspect will escape or hide, or damage the evidence of the crime, or if the identity of this person cannot be established.

PROSECUTORIAL AND JUDICIAL PROCESS

Rights of the Accused

The right to a just and open review of the case without a justified delay by a proper, independent, and impartial court has been given to all citizens née the constitution (Art. 45). Among the basic rights of every accused person in the Polish criminal process, one can distinguish two categories: the right to material defense (the set of rights that the accused has for the purpose of making an effective defense) and the right to formal defense (the right to use the help of a counsel). The first category includes most of all the knowledge of what he or she is accused of, the right to an unhindered placement of explanations, the right to be present during the process trial, and the right of appeal concerning the process decisions. Furthermore, the accused has the right to obtain the help of a counsel, who may be assigned by choice of the accused or another person, or by decision of the court. The accused must have a counsel, if he or she is underage, deaf, mute, blind, or if there is a reasonable doubt that he or she is able in body and mind, or if he or she does not speak Polish, and if the court deems it necessary because of circumstances that make defense difficult, and in a process before a circuit court as the court of first instance, when he or she is accused of a crime or has been imprisoned. A counsel is assigned by the court if one of the preceding situations is in place and the accused does not have a counsel of his or her choice. In other cases, the court may assign a counsel if the accused adequately demonstrates that he or she is not capable of bearing the cost of defense without damage to himself or herself and his or her family's subsistence.

Procedures

In the Polish Code of Criminal Procedure (CCP), two forms of preparatory proceedings are distinguished: inquiry and investigation. The basic form of the preparatory proceeding is the inquiry, which is done by the police, unless a prosecutor does it. The prosecutor may conduct an inquiry in person or hand it over to the police. A basis for initiation of a preparatory proceeding is a reasonable suspicion that a crime has been committed. A preparatory proceeding has the goal of determining if a forbidden act has been committed; and, if it is a crime, to clarify its circumstances as well as circumstances that facilitate the perpetration of

such acts; determine the scope of damage; detect, and, if necessary, apprehend the perpetrator; collect data about the perpetrator that is necessary to determine his responsibility; and collect, secure, and preserve, to the degree that is necessary, the evidence for the court. The preparatory proceeding has two phases: the proceeding in the case, which opens the preparatory proceeding, and proceeding against a person, which includes the presentation of accusations, if at the moment a crime is detected, the suspected person is known, then from the beginning there is a proceeding against him or her. The accused and the victim are parties to the preparatory proceeding. The forms of completing the inquiry are its closure, discontinuance, or suspension. The body that oversees the course of the preparatory proceeding is a court of law.

The court, and in the preparatory proceeding, the prosecutor, may with the permission or upon request from the victim and the accused direct the case to a trustworthy institution or person to perform mediation between the victim and the accused person. The results of the mediation are considered by the court at the sentencing stage. Moreover, one of the reasons for a conditional discontinuance of a proceeding against the perpetrator of a crime subject to 5 years in prison is a reconciliation of the victim with the perpetrator, reparation of damage, or agreement on a method of reparation. These factors are also important in extraordinary commutation of a sentence. A large majority of criminal cases are resolved in the course of a criminal process. An alternative to this is a conditional discontinuation of the criminal proceeding and sentencing without a trial.

Pretrial Incarceration

Depriving the accused person freedom before a lawful resolution to the object of the criminal process is called a temporary arrest. Temporary arrest can only be used by a court. Its use requires a joint presence of a general premise in the form of demonstrating by the evidence collected in the case of a high probability that the accused person has committed a crime, or one of the following four premises:

1. There is a reasonable concern that the accused person will escape or hide, especially when it is impossible to determine his or her identity or when he or she does not have a permanent residence in the country.
2. There is a reasonable concern that the accused person will induce others to make false statements or explanations or in other illegal way hinder the criminal proceeding.

3. To assure a proper course of the proceeding, if the accused person is facing a high sentence (he or she is accused of a felony or offense subject to a prison sentence, whose upper limit is 8 years, or the court of first instance sentenced the accused person to no less than 3 years in prison).
4. There is a concern that the accused person will commit a crime against life or health, or public safety, and especially if he or she has threatened to commit such a crime.

Despite the simultaneous presence of the general and particular basis, temporary arrest cannot be applied if it is expected that the court will pronounce a sentence with a probation clause or a more lenient sentence, or that the length of temporary arrest will exceed the expected length of the prison sentence without the parole clause, and if the crime is subject to a sentence of no more than 1 year in prison. The arrest should be given up if another preventive measure is sufficient and if particular concerns do not constitute an obstacle to it (especially when temporary arrest would cause a serious danger to life or health of the accused person, or would lead to bad consequences for the accused person and his or her family).

The preventive measures in Polish criminal process are property bond, social guarantee, guarantee by a person of high trust, police supervision, ban on leaving the country and suspension of the accused person's rights to perform commercial activities or to perform his profession, or ordering the person to abstain from a certain activity or from driving certain types of vehicles. These measures can be used only when the evidence collected in the case demonstrates a high probability that the accused person has committed a crime. In the preparatory proceeding, it is the prosecutor who uses the measures, and, after the act of accusation is brought up, it is the court. The property bond constitutes a guarantee that the accused person will present himself or herself every time he or she is requested to do so by the process bodies, and will not try to escape or in any other way to hinder the proceeding. The bond can be placed by the accused person or by another person in the form of securities, deposit, or a mortgage, and the level and terms of the property bond are determined by the material situation of the accused person and the person who is placing the bond, the nature of the crime, and the size of the damage done. If the accused person does not meet the terms of the bond, a loss of the bond or an execution of the assets that constitute the bond

is pronounced; this is obligatory if the accused person escapes or hides, and optional if the criminal proceeding is being hindered in another way. The property bond is terminated the moment the proceeding is lawfully terminated.

In 2003, among 79,281 persons who were in penitentiary centers, there were 18,240 persons who were temporarily arrested.

JUDICIAL SYSTEM

Administration

According to Art. 175 of the Constitution, the administration of justice in Poland are performed by the Supreme Court, Common Courts of Law, Court of Appeals, Circuit Courts, District Courts, and Municipal Courts.

The Supreme Court performs oversight with respect to sentencing and operation of common courts of law and military courts and performs other activities that fall in its competence under the constitution and acts of law. The Supreme Court remains outside the system of common courts of law. The personnel of the Supreme Court includes the First President, presidents, and justices. The First President heads the Supreme Court and leads its works. His or her deputies are presidents, each of whom is the head of one of the chambers. The Supreme Court has five chambers: the Administrative Chamber, the Labor and Social Security Chambers, the Civil Chamber, the Criminal Chamber, and the Military Chamber. The competences of the Court are as follows: review of measures of appeal court sentences in accordance with the provisions of the process law; review of cessation of lawful sentences of courts and prosecutors in accordance with regulations in force; making, upon request of entitled entities, declarations for the purpose of clarifying the provisions of law that cause doubts in practice or whose application has caused discrepancies in sentencing; and making declarations with respect to resolving legal questions that cause significant doubts in a particular case, which have been presented for the Supreme Court's resolution by courts that fall within its scope of oversight or Supreme Court teams (three persons) that are sentencing in a particular case.

Common Courts of Law

According to Art. 177 of the Constitution, common courts of law perform administration of justice in all cases, except for cases that are restricted for other courts. Those are cases falling within criminal law, civil law, family and custody law, as well as labor law

and social security laws, with the exception of cases that are restricted by a statute to other courts.

With respect to sentencing, the oversight of common courts of law is conducted by the Supreme Court and the minister of justice with respect to their functioning. The organization, property, and process before courts are determined by acts of law. The basic principles of functioning of common courts of law are set in the Act of 27 July 2001, Law on organization of common courts of law and work regulation of common courts of law. The properties of courts of a given level are determined by provisions of procedural statutes. The members of a common court of law are the president, the vice president or vice presidents, and judges. The law on the organization of common courts of law distinguishes three categories of common courts of law: courts of appeal, circuit courts, and district courts.

Courts of appeal operate solely as an instance of appeal with respect to sentencing of circuit courts. Moreover, they perform the tasks of administrative and training oversight; *circuit courts* operate in the first and second instance. In the first instance, the scope of cognition encompasses the most important civil law cases, serious criminal cases, some cases related to social security, and economic cases constituting the subject of a conflict of high value. As courts of second instance, circuit courts deal with appeals concerning sentencing of district courts (to include municipal courts); *district courts* operate only as courts of first instance within their scope of responsibility, which is determined in procedural regulations. They deal with cases falling within civil law, criminal law, family law, juvenile law, labor law, and cases concerning mortgage books. Within the structure of district courts, *municipal courts* have been created, which deal with minor civil and criminal cases that are reviewed using simplified procedures. *The Supreme Administrative Court and other administrative courts* perform the control of public administration.

Military courts perform administration of justice in criminal cases in the armed forces of the Republic of Poland and review cases transferred to them under particular statutes. During the time of a war, a *special court* and a *cursory procedure* may be established.

Judges

In 2002, courts of appeal employed 374 judges; circuit courts have 2307 judges, and courts have 5150 judges. In 2002, the Supreme Court employed 86 judges, and the Supreme Administrative Court has 88 and 197 in remote locations

PENALTIES AND SENTENCING

A court pronounces a penalty to a perpetrator in a given case according to its discretion but within limits set by a statute. The court is bound not only by the scope of sanctions for a given act but also by directives as to the range of penalty. The general directives are as follows: the humanitarian directive, the degree of guilt of the perpetrator directive, the social harm directive, the individual prevention directive, and the general prevention directive. By imposing a penalty on an underage or a juvenile offender, the court is motivated most of all by the goal of educating the perpetrator. If the statute provides for the possibility that the court chooses the penalty, the court selects the penalty of imprisonment without a conditional suspension of its execution only if another penalty or means of punishment cannot achieve the goals of the penalty. The penalty of a fine cannot be pronounced in a case where the financial status of the perpetrator justifies the opinion that the perpetrator will not pay the fine and the fine cannot be enforced. There is no separate consideration on the range of penalty.

Types of Penalties

The catalog of penalties in the Polish Criminal Code includes a fine, limitation of freedom, deprivation of freedom, 25 years in prison, and life prison sentence. The catalog of sanctions is complemented by the following means of punishment: deprivation of public rights, ban on serving in a certain professional position, on performing a certain profession or to conduct a certain type of economic activity, ban on driving vehicles, forfeiture of property, obligation to repair a damage, contribution, monetary payment, and public announcement of the sentence. Probationary means are also provided for conditional discontinuation of the proceeding, conditional suspension of penalty, and conditional early liberation. There is no death sentence in the Polish criminal law.

PRISON

Description

There are three types of penitentiary institutions: closed, semi-open, and open ones. There are four divisions of incarceration: those who serve their first prison sentence, juveniles, repeat offenders, and for those serving the sentence of military arrest. The offenders may serve the prison sentence in a regular system, a programmed influence system, or a therapeutic system.

There are 204 penitentiary units, including 70 investigation arrest prisons, 86 penitentiary complexes,

32 external divisions, 2 mother-and-child's houses, and 14 hospitals of penitentiaries and investigative arrest prisons. The 204 units have a capacity of 69,558 inmates, including housing divisions (68,039), mother and child's house (50), hospitals of penitentiaries and investigative arrest prisons (1,290), and divisions for temporary lodging of convicts (207). The capacity of the housing units (68,039) includes investigative arrest (22,086), penitentiary complexes (22,086), and external divisions (4,050). The number of inmates (temporarily arrested, convicted, and penalized) is 80,368, including 2,309 women. The number of foreigners who are serving sentences in Polish penitentiary units does not exceed 1.5% of the population of inmates (a little over 1000 persons).

Currently, in Polish penitentiary units, there are persons convicted under two criminal codes, so it is not possible to provide consistent statistics. Those convicted under the Criminal Code from 1969 that was previously in force is 4928 and include 1905 convicted of crimes against life and health, 138 against freedom, 318 against family and custody, 2345 against property, 61 economic crimes and forgeries, 3 for participation in a conspiracy or an organized group for the purpose of committing a crime, 4 for military crimes, and 215 for others. Under the Criminal Code of 1979, the number of convicts (not including temporarily arrested) who are serving their sentences in penitentiary units is 60,047, including for crimes against life and health (6,591), against property (26,018), against commercial exchange (132), and against money and securities exchange (850).

Administration

In order to become an official of the prison service, one has to be a Polish citizen of impeccable opinion, who has not been convicted for a crime, who enjoys full public and civil rights, who has completed at least high school education and has adequate professional qualification, and who is physically and mentally capable for the service in armed formation. As of December 31, 2003, the prison service had 22,536 uniformed officials, 2,068 civilian employees and 1,225 posts of which 4,218 were women, 17.1% of them had college or university education, and 70.8% had high school education. The officer corps constitutes 24.6% of the whole personnel. The budget of the penitentiary system in 2004 was revenue 8,895 PLN, and expenditures 2,113,362 PLN (prison system, financial compensation, and other expenditures). The prison system expenditures amount 1,513,323 PLN, and the daily expenditures per one inmate is 5,182 PLN.

The number of persons attending to serve their prison sentences on December 31, 2003 was 31,092, and the number of sentences waiting to be carried out was 35,221.

Conditions

The performance of a prison sentence may be temporarily suspended if the sentence is not longer than 2 years, and it is adequate for achieving the goals of the penalty, and in particular to prevent the perpetrator from reverting to crime (Art. 69 par. 1 of the Criminal Code).

The person who has received the penalty of deprivation of freedom may be put on probation early if his or her behavior, qualities and personal conditions, way of life before he or she committed the crime, the circumstances of the crime, and his or her behavior after the crime was committed and during the sentence justify the belief that the convict will, after his liberation, abide by the legal order, and in particular will not commit crimes again. The convict may be liberated after he or she has served at least half of the sentence, but not earlier than after 6 years, in the case of a repeat offender after he or she has served at least two-thirds of the sentence; in the case of a multiple repeat offender, after he or she serves at least three-fourths of the sentence; in the case of a person who has received a sentence of 25 years in prison—after 15 years—and in the case of the person who has received a life sentence—after 25 years. The time that remains until the end of the sentence constitutes a probation period (may not be shorter than 2 years and longer than 5 years, for a multiple repeat offender—less than 3 years—and in case of a life sentence—10 years) (Art. 78, 80 of the Criminal Code).

The rights of a convict are regulated most of all by the provisions of the Executive Criminal Code (EPC). According to Art. 102 of the EPC, the convict has the right, in particular, to adequate food, clothing, living conditions, lodging and health care, proper hygienic conditions, maintaining contacts with family and other close relatives, unhindered religious practices, compensation for work and to social security, help in obtaining handicapped benefits, education, and self-education and to produce objects, and if approved by the director of the penitentiary institution to sell the objects produced; to utilize the facilities and participate in cultural, educational, and sport activities; to use radio, television, books, and press to communicate with entities involved in readjustment of convicts; to get familiar with opinions prepared by the administration of the penitentiary that constitute the basis for decisions affecting him or her; to submit requests, complaints, and pleas; and to conduct correspondence, without censorship, with institutions of law enforcement, administration of

justice, and other national and local government institutions, and with the spokesman for citizen rights.

EXTRADITION AND TREATIES

Extradition to or from another country is possible under the Constitution of the Republic of Poland and the provisions of the CCP. The provisions of the CCP are applied only when an international agreement, which Poland is a party to, does not state otherwise. In the case that there is no agreement with a given country, extradition may be used on the basis of the provisions of the CCP. Poland has concluded bilateral extradition treaties with Australia, Austria, Belgium, Egypt, France, Luxemburg, Slovakia, Switzerland, Thailand, Turkey, United States, Great Britain and Northern Ireland, and Italy. Poland is also bound by extradition concluded within the European Convention on extradition and the European Convention on combating terrorism. It is not permitted to extradite a Polish citizen or a person who is suspected of a political crime that was committed without the use of force or who is in Poland in asylum, if there are negative process premises, it would be inconsistent with Polish law, if there is a justified suspicion that in the country that demanded this person's extradition the person may receive a death sentence, be tortured, or that a death sentence may be executed on this person. The transfer or the taking of the suspect, convict, or sentenced person may take place also under the European Arrest Warrant—that is, a court decision issued by a European Union member country with the goal of arresting, transferring by another member country of a wanted person in connection with criminal pursuit that is conducted against that person, or the goal of making the person serve a sentence of a preventive measure of deprivation of freedom (Gaberle 2004; Grzegorzczky and Tylmen 2005).

NOTES

1. The Statutes: Law on the regime of common courts of law, SJ 2001, No. 98. Pos. 1070.
2. Criminal Code, Statute Journal, 1997. No. 88. Pos. 553.
3. Government of Poland. <http://www.ms.gov.pl> (Accessed September 5, 2004).
4. Polish Police. <http://www.kgp.gov.pl> (Accessed October 7, 2004).

REVIEW QUESTIONS

1. What factors influenced the present criminal code of Poland?
2. Compare and contrast the role of the prosecutor in Polish and American criminal justice systems.

3. Compare and contrast treatment of offenders in the American and Polish criminal justice systems.
4. *Stare decisis* is not a feature of Polish criminal justice system. Discuss in comparison with the U.S. criminal justice system.
5. What are the basic divisions of Polish court system?
6. Compare and contrast classification of crimes in Poland and the United States.
7. What is predatory extortion?
8. What is the structure of the Polish police service?
9. How does Polish criminal procedure differ from that of the United States?
10. Compare and contrast the role of the Supreme Court in Poland and the United States.

REFERENCES

- Constitution of Poland. 1997. *Statute Journal* (SJ), No. 78, pos 483.
- Criminal Executive Code. 1997. SJ, No. 90. Pos 557.
- Gaberle, A. 2004. *Lexicon of polish criminal procedure*. Gdansk, Poland: YDP Press.
- Gardocki, L. 2004. *Criminal law*. Warszawa, Poland: REA Publishing House.
- Grzegorzczak, T., and J. Tylman. 2005. *Polish criminal procedure*. Warszawa, Poland: REA Publishing House.
- Jamroz, A. 1999. *Introduction to legal sciences*. Bialystok, Poland: Temida 2.
- Kruszynski, P. 2004. *Lecture on criminal procedural law*. Bialystok, Poland: University of Bialystok Publishing House.
- Marek, A. 2003. *Criminal law*. Warszawa, Poland: Temida 2.
- Siemaszko, A. 2003. *Atlas of criminal activity in Poland*. Warszawa, Poland: Temida 2.

10 The Criminal Justice System and Police in Russia

General Overview

Yakov Gilinskiy

CONTENTS

Introduction.....	135
Legal System.....	136
The Office of Public Prosecutor.....	136
System of Government.....	136
Crime and Deviance.....	137
Crime.....	137
Drug Abuse.....	139
Organized Crime.....	139
Corruption.....	141
Victims.....	141
Police.....	142
Punishment.....	143
Prison.....	144
Conclusion.....	146
Notes.....	146
Review Questions.....	146
References.....	146

INTRODUCTION

Criminal justice and police systems are the result of the common social, economic, cultural, and political state. The contemporary Russian criminal justice system and police have complicated history. There are two main sources of the system: first, the old Tsar's system as part of the so-called continental legal system and second, the Soviet "socialistic" system.

It is clear that the communist regime was absolutely terrible. As a result of the unique experiment to establish a social utopia, the country was thrown onto the path of civilization.¹

Gorbachev's *Perestroika* (reconstruction) was a necessary attempt to save the power structures by way of reform. A similar attempt was by Khrushchev (the "Thaw"). However, every attempt finished with the political death of its propagators and was followed by

stagnation or reaction. With all due credit to Gorbachev, his reforms turned out to be the most radical (freedom of speech, freedom of the press, the multi-party system, the right to hold private property, the lifting of the Iron Curtain, the release of those states occupied by Stalin—Latvia, Lithuania, Estonia, etc.). However, this reform did not bring an end to the Soviet nightmare.

The disintegration of production and economy continues. Power still returned to the ruling nomenclature (with new "oligarchs" and criminals); corruption, common in Russia, has taken on a monumental role in all organs of power, establishment, and law enforcement bodies; crises in the health, education, transport, and other social service sectors continue; crises of spirituality and morality continues; and the militarization of economics and politics also continue. There is now a growth in the role (importance) of the power structures—FSB (the former KGB),² MIA (Ministry of

Internal Affairs), and others. The war in Chechnya is a terrifying evidence of neototalitarianism. The country also permits human rights abuses on a large scale, particularly in the army and those penal institutions where tyranny and torture dominate (Abramkin, 1998; Christie 2000; *Index on censorship* 1999; Walmsley 1996). Nationalist, anti-Semitic and neofascist groups operate with impunity and meet with no resistance. Attacks against mass media in opposition began in 1999–2000 and continues to date.

The ever-growing economic polarization of the population—visible in the stark contrast between the poor majority and the nouveau riche minority (the “*New Russian*”)—is a guaranteed source of continuing social conflict. The official unemployment rates in Russia were as follows: 1992—4.8% of the able-bodied population; 1993—5.5%; 1994—7.4%; 1995—8.9%; 1996—9.6%; 1997—11.9%; 1998—13.3%; 2003—8.9% (*Human development report* 1999: 57; *Questions of Statistics* 2004). Today, unemployment in Russia stands at 5.2%. From 2008 to 2012, the average unemployment rate was 8.3% (Trading Economics 2013).

Technological backwardness and the absence of competition in domestic production and the service sectors have manifested themselves in the course of the reforms. A consequence of this is the inferiority complex of employees, their de-qualification, marginalization, and lumpenization. The excluded population in the face of corruption engages in deviances, including crime (Lenoir 1974; Paugam 1996; Finer and Nellis 1998; Young 1999).

LEGAL SYSTEM

According to the Constitution of the Russian Federation (Russia), there are levels of legal institutions (Art. 118, Part 2):

- The Constitutional Court of the Russian Federation
- The Supreme Court of the Russian Federation
- Courts of the subjects of the Russian Federation (Supreme Courts of the smaller republics in remote parts of the Russian Federation); regional—“*krai*”, “*oblast*”, “autonomous regions” courts; Moscow and St. Petersburg city courts
- Area (district) and city courts
- Martial courts
- Arbitral courts (the Supreme Arbitral Court of the Russian Federation; arbitral courts of the subjects of the Russian Federation).

The goals of the Constitutional Court of the Russian Federation are the protection of Russian sovereignty;

defense of the constitutional structure; defense of the general rights and freedoms of the population; and guarantee of the application of the Russian Constitution in all territories of the Russian Federation. Martial courts are included in the common legal system. The arbitral courts resolve disputes between juridical persons.

It is a pity that the contemporary Russian judicial system is not independent. First, many judges are very corrupt. Secondly, many courts depend upon politicians and power. For example, often the Basmany court would decide a case in favor of a power base. “Basmany court” is now common jargon for lack of independence and injustice in the Russian justice system.³

Finally, there are the *mirovye sud'i* (magistracy). They try cases that are not very important (administrative and civil delicts, minor criminal delinquency).

THE OFFICE OF PUBLIC PROSECUTOR

The goals of this institution are protection of the law's leadership and the unanimity of law; defense of the rights and freedom of people; and defense of the legal interests of society and the state. The organizational basis of the Office of Public Order is the principle of one-man management. The General Prosecutor is the head of the Office of Public Prosecutor. There is an Office of Public Prosecutor in each region, city, and district of the Russian Federation. The important functions of the prosecutor are common supervision of public order and legality, criminal investigation, and prosecution of cases.

There is an Advocatory Chamber (the Bar) in each republic of the Russian Federation. The Bar is independent of the government and includes advocatory collegiums, juridical offices, and individual barristers. There are three new organizational forms of the Bar, while only advocatory collegiums existed in the former Soviet Union.

SYSTEM OF GOVERNMENT

Russia has an area of 6,593,000 square miles. The population in 2011 was 141,930,000, and in October 2012, the population was 143,300,000. In 2010, ethnic Russia constituted 81% of the population (World Bank 2012).

The contemporary Russian Federation (Russia) came into existence in 1991 after the breakdown of the Union of Soviet Socialist Republics (USSR). Russia includes 21 republics in the remote regions of the Russian Federation, six *krai* (large regions or territories), fifty *oblast* (provinces or regions), one autonomous area (Chukotsk) and two cities under federal administration

(the capital, Moscow, and the former capital, St. Petersburg). Moreover, seven *Federal Okrugs* (Central, North-Western, Southern, of the Volga, Ural, Siberian, and Far-Eastern) were recently constituted. Every *Federal Okrug* includes some regions. The representative of the president is the head of each *Federal Okrug*. It is a realization of the idea of the consolidation of the central power ("power's vertical line").

According to the Constitution of the Russian Federation, there are divisions of power. The president of the Russian Federation is the head of state. The Russian Federation is a presidential republic with powerful presidential power. Moreover, there are presidents in the republics in the organic parts of the Russian Federation (Bashkiria, Dagestan, Tatarstan, and others).

Federal legislation is a parliament (Federal'noe Sobranie—Federal Assembly, the Duma) of two chambers—upper chamber, the Sovet Federatsiy (Council of Federation) and the lower chamber, called the zakonodatel'noe sobranie (legislative assembly). There are also parliaments in the republics of the Federation.

Federal executive power is exercised by a government with a prime minister. Regional executive power is exercised by a governor (or mayor in a city) with a government (administration).

Unfortunately, many criminals are part of the contemporary power structures, such as the former mayor of Lenin-Kuznetsk, the former governor of the Nizhny

Novgorod region, the mayor of Vladivostok, the former head of department of the St. Petersburg's administration, many assistants of the deputies of the Duma, and so on.

CRIME AND DEVIANCE

CRIME

We are obliged to use official statistical data, because federal victimological survey is absent. Official police crime statistics are not reliable. The correct number and rates of crime are much more than the official statistical data in all countries. But, since 1993–1994, there is mass cover-up of crimes that are not being registered (Gavrilov 2001; Gilinskiy 2002:46–48; Luneev 1997:145). For example, the clearance rate in Russia is almost impossible to achieve (Table 10.1). The data on murders kept by medical departments (World Health Organization 1996) are more reliable than police data (1992—22.9 and 15.5; 1193—30.4 and 19.6; 1994—32.3 and 21.8).

The trend of registered crimes from 1985 till 2002 is presented in Tables 10.2 through 10.4. The main tendencies are as follows:

- The rate (per 100,000 inhabitants) of registered crime decreased in 1986–1988 (time of Gorbachev's *Perestroika*), increased from 817 (1987) to 1863 in 1995 and, after a short period (1996–1998), increased to 2051.4 in 1999.

TABLE 10.1
Detection of Crime (In%) in Russia (1992–2003)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Total	46,9	50,6	59,6	64,5	70,1	72,2	74,4	73,4	75,6	69,7	60,9	55,1
Criminal police			51,9	55,4	60,8	64,6	66,8	65,5	67,9			
MPS*			91,3	94,4	96,9	93,9	94,7	95,4	95,4			

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF; State of Crime in Russia. Annual Moscow: MVD RF.

* Militia (police) of public safety

TABLE 10.2
Dynamic of the Rates (per 100,000 inhabitants) of General Crime in Russia (1985–2003)

1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
989.8	929.2	816.9	833.9	1098.5	1242.5	1463.2	1856.5	1887.8	1778.9
1995	1996	1997	1998	1999	2000	2001	2002	2003	
1862.7	1778.4	1629.3	1759.5	2051.4	2028.3	2039.2	1760.5	1924.8	

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF; State of Crime in Russia. Annual Moscow: MVD RF.

TABLE 10.3

Rate (per 100,000 inhabitants) of Serious Violent Crimes in Russia (1985–2003)

Year	Premeditated homicide (including attempted homicide)	Grievous Bodily Harm
1985	8.5	19.9
1986	6.6	14.7
1987	6.3	13.9
1988	7.2	18.2
1989	9.2	25.0
1990	10.5	27.7
1991	10.9	27.8
1992	15.5	36.2
1993	19.6	45.1
1994	21.8	45.7
1995	21.4	41.7
1996	19.9	36.2
1997	19.9	31.4
1998	20.1	30.8
1999	21.3	32.6
2000	21.9	34.2
2001	23.2	38.5
2002	22.5	40.7
2003	22.1	39.9

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF; State of Crime in Russia. Annual Moscow: MVD RF.

- The rate (per 100,000 inhabitants) of murders (including attempted murders) decreased in 1986–1988 (to 6.3 in 1987), increased from 6.3 in 1987 to 21.8 in 1994 and, after a short time period, went down in 1995–1997, and increased to 22–23 in 2001–2003;
- The dynamics in the rate of other crimes is analogous—minimum during Gorbachev's period, increased in 1994–1995, transitory cutting down and increased again in 1998–2003. The process of lowering of the crime rate was due to the “thaw” of Krushchev too.

The rate of violence is very high in Russia. The official rate (per 100,000 population) of homicide increased from 6.6 in 1987 to 23.1 in 2001, and more than 22 in 2002–2003. By comparison, the rate of homicide on average per year in 1999–2001 was: Australia—1.9; Austria—1.2; Finland—2.8; France—1.7; Germany—1.1; Japan—1.0;

TABLE 10.4

Rate (per 100,000 inhabitants) of Crimes Against Property in Russia (1985–2003)

Year	Theft	Robbery	Assaults with robbery
1985	324.7	29.9	5.8
1986	264.4	21.8	4.2
1987	251.1	21.0	3.9
1988	327.2	29.9	5.5
1989	512.1	51.0	9.9
1990	616.8	56.3	11.2
1991	837.3	68.8	12.4
1992	1110.2	110.9	20.4
1993	1065.2	124.3	27.0
1994	888.4	100.4	25.6
1995	924.6	95.0	25.5
1996	818.0	82.2	24.3
1997	716.3	76.2	23.3
1998	779.2	83.4	26.2
1999	966.2	95.0	28.1
2000	900.0	91.0	27.1
2001	879.2	102.8	30.9
2002	645.8	116.5	32.8
2003	803.6	138.3	33.9

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF; State of Crime in Russia. Annual Moscow: MVD RF.

Netherlands—1.5; Norway—0.9; Poland—2.0; Spain—1.1 Sweden—1.1; USA—5.6 (*Barclay and Tavares*, 2003: 10).

The rate of grievous bodily harm increased in Russia from 13.9 in 1987 to 39.9 in 2003 (45.7 in 1994).

There are many causes of violence in Russia. The main ones are as follows:

1. The *geographical* factor. Russia is a very large country. Russian people had the power to conquer, establishing their power over larger territories.
2. The *historical* factor, including the Byzantine heritage and the Soviet regime. For example, the Byzantine bishops persuaded Russian Prince Vladimir to put the death penalty into operation.
3. The *political* factor. Russia has never been a democratic state, and never experienced the rule of law. Instead, it has experienced a centuries-long tradition of despotism and totalitarianism. The extent of repressing the people in the Soviet

period could be compared with genocide. The Soviet regime killed more than 61.9 million people from 1917 to 1987 (Kressel 1996).

4. The *economic* factor. The Russian people have always been poor. Considerable social and economic inequality always existed in Russia. The constantly growing economic polarization of the contemporary population—visible in the stark contrast between the poor majority and the nouveau riche minority (the “New Russian”)—is a long-term source of continuing social conflict, envy, and violence.
5. The *cultural* factor. Historical, political, and economic factors helped form Russian culture and mentality, which is repressive and intolerant, with a tradition of violence. Russian proverbs attest to it, and popular tales reflect it.
6. The *juridical* factor. Contemporary criminal legislation and practice of the police, the judiciary, and prisons are very strict and repressive, including use of mass torture. Violence gives rise to more violence.

DRUG ABUSE

The real situation of drug use and drug addicts is not known. The official data of drug-related crime is presented in Table 10.5. We can see that this rate increased from 8.6 in 1988 to 167.3 in 2000 and decreased to 126.9 in 2003.

The official rate of drug and heavy substance users in Russia increased from 25.7 in 1985 to 195.7 in 1998. The official rate of drug addicts increased from 1.3 in 1980 to 31.0 in 1997 (*Human development report in the Russian Federation* 1999: 69). Most offenders of drug-related crime (80–90%) were convicted for actions *without* intention to sell (Table 10.6). Consequently, the “war on drugs” is a “war on drugs users” ... The Russian drug police is ineffective and there is extensive drug trafficking (Gilinskiy and Zazulin 2001; Paoli 2001).

ORGANIZED CRIME

There are too many definitions of organized crime (Abadinsky 1994; Albanese 2000; Arlacchi 1986; and others). We will use the definition of organized crime as *the functioning of stable, hierarchical association engaged in crime as a form of business, and setting up a system of protection against public control by means of corruption*.

Organized crime is not only the sum of criminal organizations. It is a complicated social phenomenon, which has an influence on the economy and the policy of states. The growth of the organizational aspect of crime is a natural, objective process; it is a manifestation of the growth of the organizational aspect of the social systems as well as of the subsystems (the economy, politics, etc.). It is a global, worldwide process.

Criminal business arises and develops due to certain conditions:

- Demand for illegal wares (drugs, arms, etc.) and services (sexual, etc.)
- Dissatisfied demand for legal wares and services (for example, total deficit in Russia);
- Unemployment and other sources of indigency as social basis of deviance, including criminality
- Defects in tax policy, customs policy of state, etc.

The high degree of adaptability of criminal associations (resulting from their strict labor discipline, their careful selection of staff, the high profits, etc.), ensure their great vital capacity (“Mafia is immortal!”). For example, the Russian criminal organizations recruit only the youngest, bravest, and the most enterprising persons.

Contemporary organized crime in Russia began during the 1970–1990 period; that was when some kind of contact was established and collaborations initiated between traditional white-collar criminals, corrupt part functionaries, and the criminals, including old “thieves-in-law”⁴ and the new generation of “bandits” or “sportsmen.” This new generation of bandits is made up of young men who were not in the criminal population during the Soviet regime, and,

TABLE 10.5
Rate (per 100,000 inhabitants) of Drug-Related Crimes in Russia (1990–2003)

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
10.9	13.0	20.0	35.8	50.5	54.0	65.5	126.3	129.6	147.9	167.3	166.0	132.1	126.9

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF; State of Crime in Russia. Annual Moscow: MVD RF.

TABLE 10.6
Convicts for Drug-Related Crimes in Russia (1989–2001)

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total	5107	6977	9265	10366	18836	28455	38560	45675	65266	101510	108290	99114	126858
Including: for drug-related actions with intention to sell or selling	290	502	712	783	1448	2665	3734	4602	20257	29518	27064	26367	32154
For drug-related actions without intention to sell (only for use)	4525	6092	8310	9517	17137	25441	34421	40485	43800	70291	78798	69974	91572
For illegal sowing drug plants	7	16	16	11	36	116	121	168	762	1193	1860	2295	2622
For maintenance of den	21	52	22	29	48	71	116	140	157	247	294	287	275
To deprivation of freedom (% from total)	45.6	46.6	42.8	40.0	36.6	43.2	43.3	38.2	32.7	38.0	36.8	43.0	37.7

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MIRF

who at the collapse of the Soviet Union, joined some former KGB elements in organized crime and committing all kinds of vices. Criminals of the new generation showed energy, activity, and cruelty in deciding a conflict situation that has allowed it to quickly occupy a place under the sun in the criminal world. Contemporary organized crime is a result of this process of amalgamation of the old thieves-in-law and *tsekhoviki* (shady operators) with new bandits and corrupt representatives of power structures, oriented to the pursuit of heightened levels of illegal (or legal or semi-legal) profit.

The Russian criminal organizations have different dimensions, organizational structures, and specialization, but are united in illegal (criminal) enterprise. The main fields of activity of criminal organizations in Russia are bank speculations (shady transactions), fictitious real estate transactions, stealing and reselling cars, illegal exports of non-ferrous metals, production of and traffic in fake hard liquor, arms sales, control over gambling, agencies for supplying sexual services, drug trafficking, and money laundering (Gilinskiy 2003:146–164).

CORRUPTION

There are too many definitions of corruption. Perhaps the shortest (and precise) definition is: *the abuse of public power for private profit*.

There are too many forms (manifestations) of corruption—bribery, favoritism, nepotism, protectionism, lobbying, illegal distribution and redistribution of public resources and funds, theft of treasury, illegal privatization, illegal ability to finance political structures, extortion, allowance of favorable credit (contracts), buying of votes, the famous Russian *blat* (different services for relatives, friends, acquaintances) (Ledeneva 1998), etc.

Corruption is a complicated social phenomenon. It is an element of relations of economic exchange (brokers). It is a type (manifestation) of venality of the same kind as marriage swindlers and prostitution (the venality of spirit or body), and it exists in societies of commodity and pecuniary circulation.

Corruption is a social construction (Berger and Luckmann 1967). Society determines (constructs) what, where, when, and by which conditions some action is labeled as “corruption,” “crime,” “prostitution” and so on.

Corruption is a social institution (Timofeev 2000). It is a constituent element of the system of management and government. Corruption is a social institution for the following reasons:

- Corruption carries out some social functions: simplifying of administrative relations; acceleration of administrative decisions; consolidation and

restructuring of relations between the social classes or strata; aiding economic development by decreasing government regulations, trigger optimization of the economy when there is a deficit of resources, etc. (Leff 1964; Scott 1972; and others).

- Process of corruption involves the action of certain persons: the bribe-taker, briber (suborner), and mediator (go-between). There are relations of “patron/client” between them. They play certain social parts.
- There are certain rules (norms) of play, and the partners know these rules.
- Certain slangs and symbols exist (for example, to express a bribe in Russia, you rub three fingers—the thumb, middle finger, and forefinger).
- There are certain fixed prices (tariff). Some of these fixed prices in Russia were published in the Russian press.

There is corruption in all countries. It is a worldwide problem. But, the dimensions of corruption are diverse. Corruption, common in Russia, has taken on a grand scale in all the organs of power and official establishments. The damage from corruption is about \$20–25 billion per year. The export of capital from Russia abroad amounts to \$15–25 billion per year. Every day, the Russian and foreign mass media reveal facts of Russian corruption and corrupt activities. Corruption in contemporary Russia is an element of the political system, and a mechanism of the political regime. There are large corruption networks, including ministries, the police, the FSB/former KGB and so on (Satarvo 2002; Sungurov 2000).

Russia has various typologies of corruption, namely, “white,” “grey,” and “black” corruption (Heidenheimer et al. 1989). Russian corruption is becoming more and more common, because the tolerance of corruption is growing by leaps and bounds.

Corruption, including taking of bribes, is a very latent phenomenon. And official registered data (see Table 10.7a) most probably shows police actions than depict reality.

VICTIMS

The number of the victims in contemporary Russia is huge. The number of persons on death row in Russia is high. Table 10.7b shows number of persons on death row in Russia each year, from 1987 to 2001.

Latent criminality is high. A national victimological survey is absent, but there are local studies. Our victimological study in St. Petersburg (1999–2002) shows that

TABLE 10.7A
Bribery in Russia (1987–2001)

Year	Registered Cases	Rate (per 100,000 population from age 16)	Arrested persons	Convicts
1987	4155	3.8	2836	2008
1988	2462	2.2	1994	812
1989	2195	2.0	1306	451
1990	2691	2.4	1510	649
1991	2534	2.3	1266	612
1992	3331	2.9	1537	686
1993	4497	3.9	2279	843
1994	4921	4.3	2727	1114
1995	4889	4.3	2342	1071
1996	5453	4.8	2692	1243
1997	5608	4.9	2320	1381
1998	5804	5.0	2803	1314
1999	6823	5.9	2921	1515
2000	7047	6.0	3481	1529
2001	7909	6.8	3696	2084

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF.

TABLE 10.7B
Number on Death Row 1987–2001

Year	Number of persons
1987	25,706
1988	30,403
1989	39,102
1990	41,634
1991	44,365
1992	213,590
1993	75,365
1994	75,034
1995	75,510
1996	65,368
1997	65,598
1998	64,545
1999	65,060
2000	76,651
2001	78,697

- There is a stable share of victims from St. Petersburg's citizens: 26.5% in 1999; 27.0% in 2000; 25.9% in 2001; and 26.1% in 2002.
- 28–36% respondents of all victims were victims more than once (two and more times) a year.

- There is a stable share of victims who did not report to the police: 70.3% in 1999; 69.2% in 2000; 73.7% in 2001; and 73.5% in 2002.
- Reasons for refusing to report are: “nothing would be done” in 35%–38%; “police could not do anything” in 17%–19%; “did not want to have contact with police” said another 7%–8%; “injury was insignificant or there was no injury” claimed 26%–32%, etc.
- Reaction of police when crime was reported: “did not react at all” said 12%–18%; “a long time afterward, they took action” claimed 5%–8%; and “do not know anything about actions of police” insisted 11%–15% (!). Police reaction was immediate only for 29%–38% of the victims.

Similar results were observed in the city of Volgograd and the town of Borowitchy (2001). The study shows that the Russian people do not set informal wedges against crimes and police activity is low.

POLICE

The police force in Russia, known as the *Militia*, was set up a month after the state coup of October 1917 and it continues as the militia to this day. The entire militia in Russia is under the direction of the ministry of internal affairs, as are the internal army and specialized forces (railroad, air, and river militia). The penitentiary service was transferred in 1998 to the ministry of justice. The fire safety service is transferred now to the ministry of extraordinary situations.

The militia in the republics are directed by the republican ministry of internal affairs, and in each territory, region, city, or district, they are directed by the main board of internal affairs, as established by the Constitution and law of each region.

The current directives, functions, and structure of the militia are laid down in the Russian legislation, “On the Militia,” passed on April 18, 1991, with some modifications.

The militia is organized into two main subdivisions: the Criminal Militia and the Militia for Civil Safety (or Public Order) at the local level. The Criminal Militia include the detective service, the economic crime prevention service, scientific/technical specialists, operational investigators, and others who supply material for criminal investigations. The Civil Militia include the duty service, the service for security civil order, the state automobile inspectorate, the security service, divisional inspectors, temporary detention guards, the prevention

service, and others. The criminal investigation service is a separate unit under the ministry of internal affairs (Gilinskiy 2000:173–194).

There are different data about the numbers of Russian Militia: the militia forces stood at about 540,000, and that of the internal army at about 278,000 in 1995 (*Everyone's Newspaper* 1995, No. 51); the police rate per 100,000 population in Russian Federation was 1224.58 in 1994 (Newman 1999:124); staff of the Ministry of Internal Affairs RF were about 1.5 million in 1996 (*Corruption and Combat Corruption* 2000:29).

There are different training and education systems for the various police staff in Russia—private (soldier) or officer, investigator, or inspector, etc. There are six main kinds of police training—common education (school, college, university) plus special training; elementary special training for privates; common higher (including juridical) education; special police education; the system of raising the level of one's skill; the Academy of Management of the Ministry of Internal Affairs (MIA) for the senior and the highest commanding staff.

There are two main kinds of regulations of the police training and education—*Law on Education* (1996), *Law on Higher and Post-graduate Professional Education* (1996), and different police orders (statutes, instructions, etc.). All educational programs must correspond to state (public) standards of the Ministry of Education. All training programs must correspond to orders of the MIA.

Staff of teachers is very heterogeneous. Experienced officers teach in the police school (educational centers) for privates. Experienced officers and some university teachers teach in police colleges and police higher courses. University professors, readers, and lecturers teach in police universities and academies.

There is an exchange of experience between teachers of Russian police universities, policemen, and foreign colleagues. The Russian police universities organize different joint international seminars and conferences. Some foreign educational institutions send books and equipment to Russian universities and colleges. Russian police officers have gone abroad for police training in Denmark, Finland, Germany, and the United States.

Training and education plans of Russian universities of the MIA include programs on international human rights standards. Some universities of the MIA have arrangements for training persons assigned to the UN peace-keeping mission (for example, the Rostov's University for the mission in Bosnia).

Police as well as police training and educational systems are part and parcel of the society, and they have common problems—economic, social, political, moral

(including insufficient finances, corruption, traditional Russian police “secrecy,” the militarization of police, and police training, etc.).

PUNISHMENT

The social control over deviance (including criminality) is one of the major problems in the modern world. Street crime, organized crime, violent crime, terrorism, and so on, affect people and give rise to moral panic and fear of crime (Cohen 1973). Legislators, politicians, police, and criminal justice officials try, often habitually, repressive methods to gain control over criminality, drug abuse and drug trafficking, prostitution, corruption, terrorism, etc. However, traditional measures have not obtained the desired results.

Social control is the mechanism of a self-organizing and self-preservation of society by the establishment and maintenance of normative order, by elimination, neutralization, or minimization of deviant behavior (including crimes). Two basic methods of social control are encouragement and punishment (“bait and switch”).

The social control over criminality includes general methods of social control—punishment, “war on crime” by means of reprisals, and crime prevention. Mankind has tried all means of reprisal, including qualified kinds of death penalty and refined torture. However, criminality, for some reason, has not disappeared...

There are some points of view that exist about what inhibits control of crime—“crisis of punishment” (Mathiesen 1974), crisis of the criminal justice system, crisis of the criminal law control over criminality, including the control of police (Christie 1981; Davis and Anderson 1983; Pepinski and Quinney 1991; Hendrics and Byer 1996; Rotwax 1996; Christie 2000; and others). Movement of abolitionism develops and grows toward cancellation not only of the death penalty but also toward replacement of imprisonment by alternative measures of punishment, for transition from retributive justice to restorative justice (Morris 1989; Zehr 1990; Consedine 1995; and others).

R. Lenoir (1974), S. Paugam (1996), N. Luhmann (1998), and J. Young (1999) wrote about the new social global situation—the tendency to divide people and societies into *inclusive* and *exclusive*. “Inclusive” is the personality inclusive in the functional system. “Exclusive” can be individuals not inclusive in the functional system, who are known only by existence (Luhmann). The distinction of inclusion/exclusion exists between countries (global inclusion/exclusion) and between people within some countries (national inclusion/exclusion).

From our point of view, the social and economic inequality is one of the biggest criminogenic factors. People have real opportunities to satisfy their needs, depending on their belonging to one or the other social class, stratum, and group, or depending on their social and economic status. Inequality of opportunity generates social conflict, dissatisfaction, envy, and at last, various forms of deviation. The process of inclusion/exclusion are acquiring more and more criminogenic and deviatogenic significance, both for the contemporary world and for the future. It is clear that “excluded people” are becoming a mass reserve, a social basis of social deviation, including criminality.

Repressive social control is the best means of exclusion, especially through the issue of selection in the police and the judiciary. There appears to be a *circulus vitiosus* (vicious circle). The repressive mode of social control enhances the amount of the excluded people. The more people are excluded, the higher the deviance (including crime) rate seems to be. The higher the rate of deviance, the more repressive the social control is considered to be.

The basic tendencies of the theory (and in the practice of some countries) of the modern Western policy of the social control over criminality are as follows:

- Recognition of irrationality and inefficiency of the reprisals (“crisis of punishment”)
- Change of the strategy of social control from “war” to “peace” and “peacemaking” (Pepinski and Quinney)
- Search for alternative (nonrepressive) measures of social reaction;
- Priority of crime prevention (for our opinion about crime prevention, see: Gilinskiy 1998);
- Realization of the concept of “restorative justice”
- Realization of the concept of “community policing”

The interrelation between the police and the population is old (“eternal”) and is a complicated problem. The centuries-old experience shows that these relations between the police and the public are not friendly and ideal. The increase of crimes after the World War II, fear of crime, and moral panic activate the search for effective methods and means of social control over crime. One of the strategies developed is community policing (Kury 1997; Lab and Das 2003; Skogan and Hartnett 1997). The notion of community policing is not very easy. It has many definitions (Lab and Das 2003:4–9). The main idea of “community policing” is the partnership

and cooperation between the police and the community (population, citizens) for better crime prevention. The police render services to citizens (taxpayers). It is a pity that the partnership between the Russian Militia and the community is an illusion in contemporary Russia.

The real strategy of criminal policy is absent in Russia. There are some *de jure* programs, but there are not really operational without the financing mechanism for realization. Unfortunately, *de facto* crime control is still dominated by repressive approaches in contemporary Russia.

The current punishment system in Russia stipulates the following types of criminal punishment: the death penalty (Art. 59 of the Criminal Code of the Russian Federation, 1996-CC RF); life imprisonment (Art. 57); deprivation of freedom (Art. 56); limitation of freedom (up to 5 years, Art. 53); arrest (up to 6 months, Art. 54); corrective labor (up to 2 years, Art. 50); compulsory labor (up to 240 hours, Art. 49); fines (Art. 46); deprivation of the right to hold a certain position or to conduct certain activities (up to 5 years, Art. 47); confiscation of property (Art. 52); and the deprivation of military or special titles (Art. 48). In addition, military personnel may be sentenced to serve in special disciplinary units (up to 2 years, Art. 55), and there are various compulsory measures of education and supervision for minors (14–17 years, Art. 90).

The last Criminal Code of the Russian Federation (CC RF) from 1996 contains very severe kinds of punishment—death penalty, life imprisonment, and deprivation of freedom for 20 years. In no other previous Criminal Code of Russia, including during Stalin’s period, were there any sanctions like life imprisonment up to 30 years. Moreover, some kinds of probation and parole (deprivation of freedom with suspended sentence) have been excluded from the new CC RF. In fact, the last amendments to the Criminal Code (December, 2003) were steps toward liberalization, but a very timid step.

There is a moratorium of the death penalty from 1997, but the Russian Parliament does not ratify this.

We see a tendency toward cutting down the severity of punishment without the deprivation of freedom in the penal and sentencing practices (Table 10.8)—the quota of corrective labor without deprivation of freedom has decreased (from 26.4% in 1988 to 5.2% in 2001) while the quota of fine has decreased (from 16.8% in 1987 to 6.3% in 2001).

PRISON

There are 750 penitentiary institutions (labor settlements), 61 pedagogical colonies (for juvenile offenders), 13 prisons, and 174 jails in 1997 (Zubkov et al., 1998:81).

TABLE 10.8
Punishment in Russia (1986–2001)

Method of punishment	1986	1987	1989	1991	1993	1995	1997	1999	2000	2001
Total number sentenced	795490	576788	436988	593823	792410	1035807	1013431	1223255	1183631	1244211
Death penalty	225	120	100	147	157	143	106	19	0	0
% of total sentenced	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0	0
Deprivation of freedom	305427	196640	162033	207489	292868	357765	330977	388799	354413	367469
% of sentenced	38.4	34.1	37.1	35.0	37.0	36.4	32.8	32.9	35.0	30.9
Dep. of freedom	79563	64637	56560	83270	142532	188483	—	—	—	—
suspended sentence										
% of total	10.0	11.2	13.0	14.0	18.0	19.2	—	—	—	—
Dep. of freedom	34638	31285	35352	59738	124198	222340	529082	607737	543615	682930
conditional sentence										
% of total	4.4	5.4	8.1	10.1	15.7	22.6	52.4	51.4	53.7	57.5
Corrective labour	195262	150332	103513	12909	143464	92589	69548	56859	50897	62182
without dep. of freedom										
% of total	24.5	26.1	23.7	21.8	18.1	9.4	6.9	4.8	5.0	5.2
Fine	124623	97177	51961	72292	70906	117785	79818	65138	62657	74853
% of total	15.7	16.8	11.9	12.2	8.9	12.0	7.9	5.5	6.2	6.3

Source: Crime and Delinquency. Statistical Review. Annual. Moscow: MVD RF, MJ RF.

TABLE 10.9
Prison Population in Russia (1989–2001)

	Prisoners	Rate (per 100,000 population)
1989	698,900	400
1990	714,700	500
1991	722,636	459
1992	750,280	505
1993	844,870	569
1994	920,685	621
1995	1,017,372	688
1996	1,051,515	713
1997	1,009,863	686
1998	996,913	681
1999	1,006,085	728
2000	923,600	638
2001	979,285	680

Source: Barklay G. & Tavares C., 2003: 22

The imprisonment rate per 100,000 population (Table 10.9) in Russia is the highest in the world (more than 720–730 in 1999, excluding institutions of military justice (Abramkin 1998; Barclay and Tavares 2003; Christie 2000; *Conditions of convicts in contemporary*

Russia 2003; Walmsley 2003). One in four adult men in Russia is a former prisoner. The overwhelming portion of the prisoners are not professional criminals, but people who found themselves in prison because they had been in a position of misery, unemployment, and homelessness. The conditions in penitentiary institutions are terrible (Abramkin 1998; Gilinskiy 1998). Extremely harsh regimes in institutions leading to the deprivation of freedom suffered by those awaiting trial or under conditional sentence contravene human rights, such as overcrowding in the pretrial detention centers; compelling inmates to sleep in shifts; bad food; the spread of tuberculosis; torture of those awaiting trial, and under investigation in the “press cells”⁵ to procure confessions of guilt; and mass beatings. Life in institutions for the deprivation of freedom (prisons and correctional colonies) is unbearable, and the possibilities for “correction” are nil. The correctional outcome is quite the reverse.

Thousands of prisoners die every year from hunger, tuberculosis, and suffocation from the lack of oxygen in overcrowded cells in pretrial detention centers. More than 2,300 people with HIV infections and more than 92,000 people with tuberculosis were in Russian penitentiary institutions in 1999.

The situation in penitentiary institutions has slowly improved after the transfer from the MIA to the ministry of justice.

CONCLUSION

Certainly, the contemporary Russian system of criminal justice and the police are more democratic and more liberal than in the Soviet Union. But there are many negative manifestations and tendencies, particularly from 1999 to 2000. The number and rate of violence is very high, which is a result of the poor social and economic situation, social and economic inequality, and mass exclusion from the economic system. There are the new waves of organized crime—aspiration to the legalization of criminal activity; transition to legal and semi-legal activity; infiltrations to legal business and power structure; the politicization of organized crime; and the criminalization of policy and economy. Russia is going farther and farther along the road to being a criminal state and a criminalized society.

Corruption in contemporary Russia is a product of the political system—a mechanism of the political regime. Wholesale corruption is the most serious Russian problem, because all other Russian problems cannot be solved until the “black market” is eliminated. The criminal justice system is ineffective, fraught with injustice and corruption, and depends on corrupt policy and politicians. Finally, the police and other powerful structures, including the FSB, are very repressive, undemocratic, and irresponsible.

NOTES

1. The slogan on the gate of the Solovki camp of GULAG reads: “Happiness for Everyone through Violence.”
2. “Duma” is the old Russian term from Russian “dumat—to think, to brood.”
3. Basmay is one of a number of districts of Moscow.
4. “Thief-in-law” is a professional thief or a swindler who has chosen crime as a way of earning his living, well-known in the criminal world, and obeying the law of the thieves, a special code for criminals—and observing and protecting it in the prisons. In the criminal world of thieves existed the *obschak*—general cash desk.
5. “Pressors led to high cell”—a cell that can be found in all prison institutions. In such cells, prisoners selected by the administration beat, torture, and rape other prisoners to obtain information from them or to make them compliant to the needs of the administration.

REVIEW QUESTIONS

1. What historical antecedents influenced the Russian criminal justice system?
2. What is *perestroika*? Whose concept was it? Why did it emerge in Russian government?
3. What factors led to the high degree of violence in Russia?
4. What is a predatory state? Why is the Russian government described as a predatory state?
5. Corruption is a fact of life in Russia. Discuss.
6. The police force in Russia is called the militia. Discuss the emergence and structure of the militia in Russia.
7. Corruption is a social institution. Discuss.
8. What is “repressive social control” in Russia?
9. What are the various forms of criminal punishment in Russia?
10. Corruption is the *modus operandi* of Russian governance. Discuss.

REFERENCES

- Abadinsky, H. 1994. *Organized crime*. 4th edition. Chicago, IL: Nelson-Hall.
- Abramkin, V. 1998. *In search of a solution: Crime, criminal policy and prison facilities in the Former Soviet Union*. 2nd edition. Moscow: Human Rights Publishers.
- Albanese, J. 2000. The mafia mystique: Organized crime. In *Criminology. A contemporary handbook*, 3rd edition, edited by J. Sheley, 265–86. Wadsworth Publishing Company.
- Arlacchi, P. 1986. *Mafia business. The mafia ethic and the spirit of capitalism*. Verso edition. Milano: Sergio Bonelli Press.
- Barclay, G. and C. Tavares. 2003. International comparisons of criminal justice statistics 2001. *Home Office Statistical Bulletin* (12/03), London.
- Berger, P. and T. Luckmann. 1967. *The social construction of reality*. New York, NY: Doubleday.
- Christie, N. 1981. *Limits to pain*. Oxford, UK: Martin Robertson.
- Christie, N. 2000. *Crime control as industry: Towards gulags, western style*, 3rd edition. London: Routledge.
- Cohen, S. 1973. *Folk devils and moral panics*. St. Albans, UK: Paladin.
- Conditions of convicts in contemporary Russia*. 2003. Moscow: Moscow's Helsinki's Groups (Russian).
- Consedine, J. 1995. *Restorative justice: Healing the effects of crime*. Lyttelton, NZ: Ploughshares Publications.
- Corruption and combat corruption*. 2000. Moscow: Institute of General Prosecutor's Office.
- Davis, N. and B. Anderson. 1983. *Social control: The production of deviance in the modern state*. New York: Irvington Publishers, Inc.
- Everyone's Newspaper. 1995, No. 51.

- Finer, C. and M. Nellis (eds.). 1998. *Crime and social exclusion*. Oxford, UK: Blackwell Publishers, Ltd.
- Gavrilov, B. 2001. Can Russian statistics on crime become realistic? *Government and Law*. 1: 47–62 (Russian).
- Gilinskiy, Y. 1998. The penal system and other forms of social control in Russia: Problems and perspectives. In: *The Baltic region insights in crime and crime control*, edited by K. Aromaa, 197–204. Oslo: Pax Forlag A/S.
- Gilinskiy, Y. 2000. Challenges of policing democracies: The Russian experience. In *Challenges of policing democracies: A world perspective*, edited by D. Das and O. Marenin, 173–94. Amsterdam: Gordon and Breach Publishers.
- Gilinskiy, Y. 2002. *Criminology*. St. Petersburg: Piter (Russian).
- Gilinskiy, Y. 2003. Organized crime: A perspective from Russia. In *Organized crime: World perspectives*, edited by J. Albanese, D. Das, and A. Verma, 146–64. New Jersey: Prentice Hall.
- Gilinskiy, Y. and G. Zazulin. 2001. Drugs in Russia: Situation, police and the police. *Police Practice and Research* 2(4): 345–364.
- Heidenheimer, A., M. Johnston, and V. Le Vine (eds.). 1989. *Political corruption: A handbook*. New-Brunswick, NJ: Transaction Publishers.
- Hendrics, J. and B. Byer (eds.). 1996. *Crisis intervention in criminal justice/social service*. Springfield, IL: Charles C Thomas Publisher.
- Human development report in the Russian Federation*. 1999. Moscow: UNDP (Russian).
- Index on censorship*. 1999. N 7–8 Moscow (Russian).
- Kressel, N. 1996. *Mass hate: The global rise of genocide and terror*. New York: Plenum Press.
- Kury, H. (Hrsg.). 1997. *Konzepte kommunaler Kriminalprävention*. Freiburg i. Br.: Edition Juscrim.
- Lab, S. and D. Das (eds.). 2003. *International perspectives on community policing and crime prevention*. Upper Saddle River, NJ: Prentice Hall.
- Ledeneva, A. 1998. *Russia's economy of favours: Blat, networking and informal exchange*. Cambridge, UK: Cambridge University Press.
- Leff, N. 1964. Economic development through bureaucratic corruption. In *The American behavioral scientist*. VIII.
- Lenoir, R. 1974. *Les exclus, un français sur dix*. Paris: Seuil.
- Luhmann, N. 1998. *Observations on Modernity*. Cambridge, MA: Harvard University Press.
- Luneev, V. 1997. *Crime in the XXth century: Global, regional and Russian trends*. Moscow: Norma (Russian).
- Mathiesen, T. (ed.). 1974. The politics of abolition: Essays in political action theory. In *Scandinavian studies in criminology*. 4. Oslo: Scandinavian University Press.
- Morris, R. 1989. *Crumbling walls: Why prisons fail*. Oakville, ON: Mosaic Press.
- Newman, G. (ed.). 1999. *Global report on crime and justice*. New York, NY: Oxford University Press.
- Paoli, L. 2001. *Illegal drug trade in Russia*. Freiburg i. Br.: Edition Iuscrim.
- Paugam, S. (ed.). 1996. *L'exclusion, l'état des saviors*. Paris: La Découverte.
- Pepinski, H. and R. Quinney (eds.). 1991. *Criminology as peacemaking*. Bloomington, IN: Indiana University Press.
- Questions of statistic*. 2004.
- Rotwax, H. 1996. *Guilty. The collapse of criminal justice*. New York, NY: Random House.
- Satarvo, G. 2002. *Diagnosis of Russian corruption: Sociological analysis*. Moscow: INDEM (Russian).
- Skogan, W. and S. Hartnett. 1997. *Community policing, Chicago style*. New York: Oxford University Press.
- Scott, J. 1972. *Comparative political corruption*. Englewood Cliffs, NJ: Prentice-Hall.
- State of crime in Russia*. Annual. Moscow: MVD RF (Russian).
- Sungurov, Yu. (ed.). 2000. *Civil initiatives and corruption prevention*. St. Petersburg: Norma (Russian).
- Timofeev, L. 2000. *Institutional corruption: Essay of theory*. Moscow: RGGU (Russian).
- Trading Economics. 2013. *Russia Balance of Trade*. Retrieved from <http://www.tradingeconomics.com/russia/balance-of-trade> (Accessed February 14, 2013).
- Walmsley, R. 1996. *Prison systems in central and eastern Europe: Progress, problems and the international standards*. Helsinki: HEUNI.
- Walmsley, R. 2003. Global incarceration and prison trends. *Forum on Crime and Society* 3(1, 2): 65–80.
- World Bank. 2012. *Metrics*. Retrieved from <http://www.google.com/publicdata> (Accessed February 14, 2013).
- World Health Organization. 1996. *World Health Statistics. 1996. Annual Report*. Geneva: World Health Organization.
- Luhmann (1998) *Observations on Modernity*. Cambridge, MA: Harvard University Press.
- Young, J. 1999. *The exclusive society*. London: SAGE Publications, Ltd.
- Zehr, H. 1990. *Changing lenses: A new focus for crime and justice*. Scottsdale, PA: Herald Press.
- Zubkov, A., Y. Kalinin, and V. Sysoev. 1998. *Penitentiary institutions in the system of the ministry of justice in Russia: History and the present*. Moscow: Norma (Russian).

Section IV

Policing

International and Comparative Perspectives

11 Interpol and International Police Cooperation

Obi N. I. Ebbe

CONTENTS

Emergency of Interpol	151
Structure of Interpol.....	152
Functions of Interpol.....	152
Europol.....	153
Structure of Europol.....	153
Functions of Europol.....	153
United Nations Police Force	153
Recruitment of UN Police Officers	153
Functions and Obligation of the UN Police	154
Strengths and Benefits.....	154
International Police Cooperation in Sub-Saharan Africa.....	154
Current Forms of Cooperation	155
Problems of International Police Cooperation	156
Conclusion	157
Global Police Cooperation.....	157
Obstacles to Global Police Cooperation	158
Policing Terrorism.....	158
Enforcement of International Criminal Law	158
Review Questions.....	159
References.....	159

EMERGENCY OF INTERPOL

There is no smoke without fire. Every sovereign nation has its own police system or law enforcement agency or agencies. But why the International Criminal Police Commission (ICPC) or the International Criminal Police Organization (ICPO) otherwise known as Interpol? Well, as an Igbo proverb has it, “a frog does not hop along a highway on a sunny day for nothing, if it is not chasing something, undoubtedly, something must be chasing it.” Unmistakably, the emergence of the ICPC was the aftermath of the European Revolution of 1848.

The European Revolution of 1848 was a widespread decline in traditional authority in which more than 50 countries were affected. The pivotal countries of the revolution were France, Austria, and Russia/Germany. There was wholesale dissatisfaction with political leadership

throughout most of the European countries. Then came coalitions of weak reformers, middle-class elements, and blue-collar workers who rose against the absolute monarchies and authoritarian political leaders. Thousands of the revolutionaries were killed and many forced into exile (Evans and von Stradmann 2000).

The whole of Europe was in a state of turmoil. Even when the revolution was put down, some assassination gangs emerged bombing and assassinating political leaders. These murderous criminals began to cross international borders to attack and kill political leaders (Deflem 2000). Some professional national police officers began to seek solutions to arrest the upsurge in some international crimes around Europe. They saw that international police cooperation was needed to arrest the situation (Barnett and Coleman 2005).

These European police professionals saw that state governments were obstacles to international police cooperation. In effect, they did not want to involve the states in their efforts to establish an ICPO. As a result, in 1914, a small number of police professionals, lawyers, and court judges or magistrates from 14 European countries assembled in Monaco for what was called ICPC. Their aim was to establish an organization that would help in offender arrest procedure, develop identification techniques, centralize crime records, keep track of international criminals, and pave ways for the extradition of offenders.

The efforts to get the ICPC off the ground were disrupted by World War I (1911–1918). At the end of World War I, the professional police officials of 21 countries and territories held the second ICPC in Vienna, Austria, in 1923 to find a way to respond to the enormous upsurge in international crime since the end of World War I (Anderson 1989; Deflem 2000; Barnett and Coleman 2005). It was at the Vienna meeting that they decided to establish the ICPC. The participants wanted police organizations around the world to be members of the ICPC, and they invited them to join the international organization.

The ICPC did not want state control. It wanted to be an autonomous international law enforcement coordinator for all member states and nonpolitical organizations. From 1923 to 1938, ICPC had 14 meetings as an international coordinator of national police institutions. Its operations were disrupted when the Nazi Germany conquered and annexed Austria in 1938. The Nazi then moved the capital of ICPC (Interpol) from Vienna to Berlin, Germany. The Nazi held control of the ICPC throughout World War II (1939–1945) and appointed a Nazi as the president of Interpol. They arrested the former president and incarcerated him until he was rescued by the Allied forces.

At the end of World War II, the Allies were victorious, and the Interpol was in limbo. Shortly after the war in 1946, a Belgian police officer, Florent Louwage, motivated other police officers to restart the ICPC again (Bresler 1992; Barnett and Coleman 2005). In the first meeting after World War II were representatives from prewar ICPC member states and non-prewar member states. The capital of ICPC was moved to Saint-Cloud, France. In 1989, the capital was again moved to Lyon, France (Forrest 1955; Fooner 1973, 1989; Garrison 1976; Anderson 1989).

Today, Interpol has 84 member countries. It is second only to the United Nations (UN) in sovereign state membership. Member states pay annual dues for the upkeep of the organization.

STRUCTURE OF INTERPOL

Interpol has a president and a secretary-general who administer the organization. There is a secretariat now located in Lyon, France. The president of Interpol can be selected by its board of directors from any member country. It has a staff of more than 500 employees from 84 member states. In 2009, Interpol began to issue its own international passport for its agents to travel to member states, and member states are obliged to honor the passports.

The Interpol has National Central Bureaus in most member countries. In others, it has sub-bureaus. In fact, in some countries, the National Central Bureaus are expanded to airports and key seaport cities. The central roles of the National Central Bureaus are crime data gathering (database), information gathering on international criminals, information sharing on crime and criminals with the local national police departments and intelligence agencies, and informing Interpol headquarters of relevant issues on crime and criminals.

FUNCTIONS OF INTERPOL

While the Interpol constitution mandates it to facilitate the fight against crime (Fijnaut 1997), there are four areas of concentration (Fooner 1973):

1. Bringing together information about notorious criminals
2. Information clearing between and among member states
3. Preventing and controlling counterfeiting currencies, documents, and other products
4. Monthly publication of a journal about the goings around the National Central Bureaus and other global developments

Unmistakably, there are crimes that are untouchable to Interpol. To maintain a neutral law enforcement international organization, Interpol avoids crimes of a political, military, religious, or racial nature. Pivotal to Interpol operations is public safety, crimes against humanity, organized crime, terrorism, environmental crime, genocide, piracy, war crimes, corruption, intellectual property crime, white-collar crime, computer crime, child pornography, money laundering, human trafficking, illicit drug production, narcotics drug trafficking, and weapons smuggling. Interpol issues a red notice that will lead to the arrest of the offenders.

Interpol has no power of arrest of the offender. It can only give guidance and may provide technical support

for the arrest of the offender. Furthermore, Interpol has no prison system and therefore cannot incarcerate an offender. It can make the apprehension of the offender possible by providing necessary information for a member state to achieve their objective about a fugitive offender.

EUROPOL

Europol is an establishment of the European Union (EU). It is the EU's law enforcement organization—the European police. It does services similar to the Interpol. The main difference is Europol concentrates its law enforcement services only on the members of the EU. Unlike Interpol, it is not a global law enforcement organization. Europol focuses on exchange and analysis of criminal intelligence of its member nations. It stimulates agencies of the EU members. It develops mechanisms for effective detection, prevention, and combating international crime and terrorism within EU territories. Europol came into existence in July 1999 and became a full EU agency on January 2010.

STRUCTURE OF EUROPOL

Europol is based in The Hague, the Netherlands. It has a director, deputy director, management board secretary, and the chairman of the Joint Supervisory Body. There are 27 member states of the EU. It works with a staff of over 600, of which about 120 are Europol liaison officers based in The Hague. In its staff of operations are customs immigration services, border and financial police, and so on. Each member state has a National Unit of Europol.

FUNCTIONS OF EUROPOL

Europol is mandated to assist law enforcement efforts in member states in the areas of terrorism, money laundering, illicit drug trafficking, illegal immigration smuggling, trafficking in human beings and child sexual exploitation, counterfeiting, product piracy, forgery of money, and other means of payment.

Europol provides technical support in crime analysis and intelligence analysis of its member states. It helps training law enforcement agents of member states. Europol forms the information sharing center for all members of the EU in international crime. It acts as Europe's central office for combating euro counterfeiting.

Lastly, Europol cooperates with other countries outside of EU to combat international crimes, including terrorism. For instance, European police and FBI dismantled a network of child sex offenders in February 2012.

UNITED NATIONS POLICE FORCE

Unlike the Interpol and the Europol, the UN police is a law enforcement agency. Its history is not as old as the London Metropolitan Police or the Royal Canadian Mounted Police. In fact, the first time the UN police force was deployed into operation was during the crisis and war in Katanga, Congo (Zaire) in 1960. The UN police then was a very small force of less than 800 policemen. Like in the original structure of most countries' police forces, there were no female police members of the UN police force of 1960. As can be seen in the case of Congo crisis, the UN police is part of the UN Peacekeeping operations. In fact, the UN police is a division of the UN Department of Peacekeeping Operations (DPKO).

The UN police division is headed by a UN police advisor and director. Such a person is addressed as police advisor and director of the DPKO's police division (INTERPOL 2002).

RECRUITMENT OF UN POLICE OFFICERS

All policemen and policewomen of member states are eligible for recruitment. The candidate must be between 25 and 62 years old but preferably under 55. The candidate must have served at least 5 years as a policeman or policewoman in a member state's police system excluding years in training. The candidate must be conversant in English or French languages or both with a passing score of 60% or above. Such persons are required to have a valid driving license, at least, and only 1 year of driving experience; pass two mandatory driving tests; pass a mandatory firearms test; and possess basic computer skills.

There are other complementary skills that can give a candidate a competitive edge such as previous experience in a UN mission; knowledge of contour lines (map reading), land navigation, and use of global positioning technology; and basic negotiation, mediation, and conflict-resolution skills. Additionally, a candidate should have skills in personal or telephone interview techniques, and the ability to administer basic first aid.

Furthermore, a candidate should have good judgment skills and good commonsense reasoning in dealing with immediate problems. On the whole, police persons who are polite, objective, impartial, honest, patient, self-disciplined, and very friendly to all human beings of all colors and races stand on solid ground of being recruited.

There are two ways of becoming a UN police officer:

First, most of the UN police officers are seconded or loaned to the UN DPKO's police division by governments of member states for a short period, usually 6–12 months.

A citizen of member state who is a police person in that country can petition his or her country's permanent mission to the UN. In other words, most of the UN police officers were nominated by the government of their countries. In the United States, an American police officer had to apply to the state department via the office of the United States Ambassador to the UN.

Second, a member state police officer can become a UN police officer by looking for a UN-published bulletin called *United Nations Careers*, in which UN police division advertises for police recruits. There also is the website <http://careers.un.org>. Interested qualified persons can visit that site to see available positions.

FUNCTIONS AND OBLIGATION OF THE UN POLICE

The UN police force is under strictly enforced standards and clearly defined functions. The UN police are charged to operate strictly according to the interests of the UN and the host country where they operate with integrity, tact, independence, and impartiality (UN 2011). The UN police force is required to honor the laws of the host country, maintain human rights standards, and avoid abuse and exploitation of the natives, especially their women and children. In all circumstances, the UN police officer must not accept reward for services rendered except from the UN, must not take instructions from sources outside of the UN, must not exploit or expropriate a UN property, and must be a guardian of human rights standards and avoid discrimination in all its shapes or form against persons of all nationals.

Central to UN police functions is provision of peace and security in UN agencies, peacekeeping missions, countries in crisis, and in a state of lawlessness. The UN police try to safeguard the lives of helpless persons in a country in crisis, war, or national disaster especially women, children, and the disabled. At the same time, they protect UN personnel in various operations in the host country.

In politically disturbed areas like Timor-Leste, Darfur, Kosovo, Bosnia, and so on, the UN police help to conduct new national elections and set up new national police after giving them adequate police training. They carried such operations in Bosnia and Herzegovina, Kosovo, Liberia, Namibia, El Salvador, Mozambique, Timor-Leste, Darfur, Cyprus (1964), Congo (1960), and Haiti (2010).

Furthermore, the UN police are often the live wire of international refugees. They police refugee camps and internally displaced camps.

To a national police force, the UN police, like the Interpol, provide help in investigating transnational crimes. Within UN operational territories, the UN police can make arrests and the justice department of the host

country carries out the prosecution and punishment according to the laws of the land, because the UN does not have its own prison system but relies on the prison system of its member states. Also, UN police provide advising, mentoring, and training services to the police departments of its member states.

Finally, in disturbed areas, the UN police restore public safety and rule of law. Unmistakably, in the UN police operations, there is "zero-tolerance policy on sexual exploitation" (UN Police 2013).

STRENGTHS AND BENEFITS

The UN had very small UN police component in its peacekeeping operations from 1960 (Congo) to early 1990s operations in El Salvador, Mozambique, and Cambodia. Indeed, in 1994, there were only 1677 UN police engaged in peacekeeping activities. Up to that year, the UN police were known as civilian police or CIVPOL. It was in 2005 that the name was changed to the United Nations police.

In fact, in 2000, the number of UN police engaged in UN peacekeeping operations all over the world was 5840, and these officers were mostly males. In 2006, only 6% of the UN police force were females, an increase from 4% in 2004. In 2007, the first all-female UN police force was formed from the Republic of India and deployed to the UN Mission in Liberia (UNMIL). While the number of females in the UN police force has increased to 9%, in 2009, the UN Assembly determined to increase the number of female police officers in the UN police force up to 20% of the force by 2014. In fact, the present police advisor and director of the DPKO police division is a female, Ms. Ann-Marie Orlor (UN 2011).

Unmistakably, it is a position of honor and prestige to be a UN police officer. In addition, a UN police officer enjoys fabulous conditions of service as a UN career diplomat; he or she is highly respected everywhere he or she goes. Even those who are UN police officers on secondment enjoy great and promotion at their home countries as one who has experience and enjoyed international exposure.

INTERNATIONAL POLICE COOPERATION IN SUB-SAHARAN AFRICA

In all countries of the world today, police face enormous challenges in law enforcement. These challenges are very pronounced in the nations of Africa, where police needs for effective law enforcement are hardly provided by their various governments, whereas criminals have sophisticated specialization in various syndicated criminal enterprises.

In modern times, this interdependence of nations was realized as far back as April 1914, when Prince Albert I of Monaco organized an international conference on crime attended by lawyers and law enforcement officials from more than 20 countries (Lavey 1989). This Monaco conference of 1914 can be thought of as the forerunner of the ICPO (Interpol). The interdependence of nations in economic, social, and political spheres makes it imperative that international law enforcement cooperation occurs. This is because it is only in a state of social order and harmony that economic, social and political endeavors can proliferate. International trade and tourism are forestalled when a country's criminals continuously ravage and plunder the cities and highways. Some African countries have experienced, and some are still experiencing, this type of criminal attack. It is undeniable that international police cooperation is expedient to controlling the activities of sophisticated syndicated criminals in various countries.

The countries of Africa were tailor-made for political convenience of the Western European countries of Great Britain, France, Portugal, Spain, and the Netherlands in their partition of Africa for economic exploitation and empire-building in the eighteenth and nineteenth centuries. In effect, some African countries have as many as nine land-based international borders: Zaire has nine countries at its borders; Tanzania has eight; Sudan has seven; and Mali and Chad have six each. With so many land-based international borders and due to the small size of many of these countries, commission of cross-border crime is an easy venture, and it becomes simple for criminals routinely to escape to neighboring countries. The multiplicity of land-based international borders makes formation of regional and multinational police cooperation essential for effective control of international crimes and transnational crimes.

In the African colonial era, international crime was in a nascent stage. By 1980, when most of the African countries south of the Sahara had received independence from their colonial masters, international crime had reached epidemic proportions. A variety of factors were responsible for this sudden rise in African international crime. These include population explosion, rapid growth in urbanization and modernization, gross absence of family planning, increased rates of unemployment, droughts in many regions of Africa during the 1970s and 1980s, corrupt national leadership, and weak social control mechanisms. Comparatively, countries characterized by strict Islamic law and harsh law enforcement systems, such as Algeria, Libya, Egypt, and Morocco at the upper northern end of Africa, have relatively lower rates of international crime than most of the countries south of the Sahara.

In sub-Saharan Africa today, international crimes perpetrated with high frequency are motor vehicle theft, transporting stolen goods across the borders, drug trafficking—particularly marijuana (cannabis), heroin, cocaine, and mandrax (methaqualone)—illegal firearms trafficking, unlawful trading in human organs and body parts, computer piracy, smuggling of hazardous wastes or nuclear materials, underground banking or money laundering, smuggling of contraband goods, illegal transportation of juveniles for slavery and prostitution, child stealing, kidnapping, and terrorism.

In some sub-Saharan African countries, such as Cameroon, Ghana, Nigeria, and Zimbabwe, among others, there are gangs that specialize in international crimes of all types. The most nerve-racking international criminal syndicates are those called 419 (pronounced "Four One Nine") that originated in Nigeria, which are specialized in defrauding individuals, businesses, and governments anywhere. The 419 gangs specialize in all forms of international crimes, including, but not limited to, fraudulent bank transactions, money laundering or underground banking, fraudulent contract deals with different governments, trading in body parts (Ebbe 1997, 1999, 2003), kidnapping, child stealing, transportation of juveniles for slavery, narcotics drug smuggling, and arms trafficking. Some have also specialized in acts of terrorism, while others kill for money. To confront such international crimes, the biennial All-African Chiefs of Police Conference (AACPC) was developed (Ebbe 2001).

CURRENT FORMS OF COOPERATION

Every country in sub-Saharan Africa has experienced international crime to a certain degree. Therefore, bilateral, regional, and multinational cooperation in law enforcement among the various police agencies in the region became expedience and inevitable. Most sub-Saharan African countries have entered into bilateral and multilateral treaties for the extradition of criminals.

Another form of international police cooperation has been the AACPC held biennially. The 13th such conference was held in 1995 at Lusaka, Zambia, and the 14th was held in 1997 at Algiers, Algeria.

Regional associations of chiefs of police have also been formed for the discussion of issues dealing with international criminals. Issues discussed in these meetings of the regional chiefs of police and in the AACPC include the following:

- Treatment of fugitives
- Handling of stolen properties across borders

- Extradition agreements and implementation
- Exchange of criminals
- Investigation and tracing the whereabouts of a criminal at large
- International terrorists and terrorism
- Exchange of criminal intelligence
- Review of resolution of previous conferences
- New technologies and electronic devices for easy apprehension of domestic and international criminals (Ebbe 2001)

The most formidable and effective of such regional African police associations is the Southern African Regional Police Chiefs Cooperation Organization (SARPPCO), comprising Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, and Zimbabwe (Chihuri 1996). International agreements among these nations have freed police forces of each country to cooperate with one another in apprehending fugitives and investigating international crimes beyond their own borders without having to obtain specific diplomatic or political approvals (Chihuri 1996).

Other regional associations to combat international crimes are also found in East and West Africa. In the East African region, multinational international police cooperation exists in the form of the East African Regional Chiefs of Police Association. This association holds annual conferences that rotate among the sister member states of Kenya, Uganda, and Tanzania. Other member states include Burundi, Djibouti, Ethiopia, Mauritius, Rwanda, the Seychelles, Somalia, and Sudan. In the West African region, the police forces of the member countries of the Economic Organization of West African States (ECOWAS) have mutual cooperation in dealing with international crimes and fugitives. The ECOWAS nations have extradition treaties and reciprocal warrants for the arrest of fugitives, with the exception of political criminals. Member states include Benin, Burkina Faso, Chad, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

Notably traditional African societies believed that being at peace with one's neighbors was a part of communal and national security. International police cooperation among the regional associations is a natural extension of this belief, as it is of the value accorded to the African extended family structure. Similarly, the biennial AACPC's emphasis on multinational police cooperation is an extension of the traditional African value accorded to being one's brother's keeper.

PROBLEMS OF INTERNATIONAL POLICE COOPERATION

Among the major challenges to effective international police corporation in Africa are linguistic, public distrust, political instability, financial manipulations in the nations treasury, and wholesale corruption of the national leaders and civil servants. Most of the African countries are French-speaking nations, while several others are English-speaking. In addition, every African country has many ethnic groups with distinct languages. This linguistic diversity in every African country poses a serious obstacle for the cross-border investigation of international and transnational crimes.

Furthermore, international police cooperation in Africa is obstructed by strained and unfriendly relations between the police and their fellow citizens. This relationship in various African countries originated with colonialism, in which the modern police system was a tool for mass repression and exploitation. The police came to be seen as a hostile and oppressive enemy. This unfortunate perception on the part of the masses remains, even after the bulk of the policemen and policewomen have become persons of their own race or ethnic affiliation. In some African countries, it is not uncommon for a village man or woman to take to his or her heels at the sight of a policeman, even when he or she is not being sought by the police. This is a serious problem due to the importance of public or community cooperation in combating domestic and transnational crimes.

Undeniably, Zimbabwe is an exception, where citizens are both required and willing to inform the police about criminals, without having to reveal their own names or identities. According to the Zimbabwean Commissioner of Police Augustine Chihuri, community involvement and cooperation in law enforcement have been achieved and "this approach is working very well in the country" (Chihuri 1996, p. 15). More generally, the southern African region is an exception in being the only region within Africa in which the police are relatively free from specific political and diplomatic approvals before engaging in bilateral police cooperation.

Lack of funds is a major problem. Most African nations are poor. African police agencies typically lack the resources to obtain state-of-the-art computers and other equipments for surveillance and intelligence. They also lack resources for training their members in these and many other investigative aids such as criminal profiling. In short, the high degree of professional law enforcement expertise demonstrated in many European countries, the United States, and Canada is rarely found in African countries because of the high costs of training and equipment (Lavey 1989).

African police forces lack cryptographic facilities, electronic devices for intelligence operations, advanced forensic document laboratories (for determining genuine, counterfeit, or altered documents such as passports, visas, counterfoils, cachets, and other forms of identification), advanced short-range and long-range communication devices, and up-to-date, computer-based law-enforcement tools.

Wholesale corruption prevents many African governments from putting a substantial part of their annual budgets toward law-enforcement needs. Law enforcement and the funding of police operations and administration are given very low priority in most African countries. Although most African governments commit substantial portions of their revenue to industrialization and modernization, a high incidence of domestic and international crimes and corruption hinders the success of these efforts. The police are not well equipped to tackle sophisticated international or transnational crimes. Many African leaders are corrupt, and a weak police force serves their criminal interests.

Unmistakably, the most serious obstacle to international police cooperation among some countries in Africa is corruption on the part of some public officials and political leaders as well as within some police agencies. Organized crime and other international crimes cannot survive without the cooperation and involvement of some corrupt police officers, government officials, and politicians. Africa is no exception to Richard. H. Ward's (1987, p. 5) observation that "problems of corruption and unethical behaviors plague law enforcement agencies the world over." In addition, a small number of police collaborate with international criminals. Although such police criminality may be limited to a very small number of police, it can seriously impair international police cooperation across national borders.

The factor most advantageous for African international police cooperation is the willingness of African police agencies in various regions to use informal cooperation to solve a criminal event, as is common among the countries of the southern African region (e.g., through SARPCCO). The use of both formal and informal cooperation among nations of a continental region will likely make international crime more difficult to perpetrate and also more likely to be solved when it occurs. It will also increase the probability of apprehending international criminals and will deny them a place of safe refuge.

CONCLUSION

African nations' police cooperation is undoubtedly required to control terrorism, drug trafficking, illegal arms trafficking, international prostitution syndicates,

child stealing, slavery, trading in body parts and stolen property, and so forth. Since international criminals ignore borders, police must do all they can to minimize the barriers that borders present to combating international crime. International criminals have specialized; therefore, the law enforcement agencies of each country must specialize in controlling specific international crimes. The various regional police organizations of Africa have formed the bases for the specializations. Also, the recent upsurge of training police officers from poorer African countries in richer African states is bearing a lot of fruits in apprehension of transnational criminals.

GLOBAL POLICE COOPERATION

The Interpol is the engineer and forerunner of global police cooperation. The jet age and advancements in technological developments have given rise to globalization of human activities across the globe. The rapid international mass production, distribution, and consumption of goods and services by means of eliminating or reducing international trade barriers such as tariffs, export fees, import quotas, restrictions on movements of capital, and immigration laws such as eliminating requirements for travel visas, and visa lotteries have led to an increase in international criminals and terrorism. Since international criminals do not respect international borders, national police forces had to agitate their governments to relax their sovereignty to pursue the international criminal beyond national borders, thus the emergence of the Interpol, Europol, ECOWAS treaties, SARPCCO, Association of Southeast Asian Nations, AACPC, and so on, for tracking international crimes and criminals.

On the global level, Interpol has established National Central Bureaus and supplied communication equipment to their central bureau and sub-regional bureaus throughout Africa. The UN and Interpol have sponsored seminars and conferences to promote international police cooperation in seeking to control international crimes such as drug trafficking, terrorism, and weapons trafficking, among others (Ebbe 2001).

In the southern African, East African, and West African regions, Interpol has sub-regional bureaus in Harare (Zimbabwe), Nairobi (Kenya), and Accra (Ghana), respectively. Kenya is Interpol's National Central Bureau headquarters, serving 19 countries of Eastern, central, and some parts of southern Africa. The Eastern African Interpol Sub-Regional Bureau serves Burundi, Djibouti, Ethiopia, Kenya, Mauritius, Rwanda, the Seychelles, Somalia, Sudan, Uganda, and Tanzania.

Throughout the countries of Asia, Europe, North and South America, Australasia, and Middle East, Interpol has established National Central Bureaus to help national police forces to control transnational crimes and the offenders. All regional law enforcement organizations across the continents of the world share databases on international criminals and have developed intercontinental strategies to apprehend international criminals. Intelligence sharing is one of the major cooperative efforts of the world strategic law enforcement organizations.

OBSTACLES TO GLOBAL POLICE COOPERATION

Economic imbalance between poor and rich countries creates unequal contributions to international crime control endeavors. In that regard, some rich countries are very unwilling to share advanced technologies with poor countries in controlling transnational crimes. This is a very unfortunate situation, because cybercriminals may be residing in poor countries and from there target victims in advanced economies. That is why Interpol tries to break the barriers between rich and poor countries' ability to purchase advanced technology to prevent the offender from perpetrating his crime or apprehend him after the act.

There is a need for intra-agency specialization, national specialization, regional and continental specialization, and global specialization in various international crimes. Such specializations are already in existence within the Interpol bureaus and regional organizations in Europe, Africa, and elsewhere.

There is an additional need for wealthy nations to assist poor nations to acquire suitable training, equipment, and supplies for the effective control of international crimes. Such assistance must be vastly expanded from current levels. Without such assistance, poor nations will continue to be hideouts for money launderers, drug traffickers, and other criminals who are taking refuge from Europe, the Americas, and elsewhere. Moreover, continued stinginess by the developed nations to the developing nations of the world will continue to render futile efforts to control narcotics drug trafficking, terrorism, and other international crimes and will make international police cooperation an illusion.

Many countries have benefited from assistance provided by some developed West European countries such as Britain, France, and Germany as well as by the United States and Canada. Such assistance has taken many forms such as training and equipment. In turn, these countries also benefit from the cooperation of the poor countries variously in the extradition of fugitives, investigations, and generally foreigners who visit the poor countries for business or recreational purposes.

In conclusion, global police cooperation is the only way out of the enormous population of international crimes and criminals created by globalization and "turbo capitalism" (Frank 2002).

POLICING TERRORISM

Since September 11, 2001, when the Islamic fundamental extremists bombed the World Trade Center and other targets in the United States, watching out for acts of terrorism has taken center stage in the international control of transnational crime. From that time, all sovereign nations' strategic law-enforcement agencies became alerted to the possibility of their countries becoming the next target. In fact, since then, many countries have become victims of international terrorism, such as Great Britain, France, Russia, Nigeria, and Mexico.

Less than a year after 9/11, Interpol established a watch list (April 11, 2002) captioned "The Interpol Terrorism Watch List" (UN 2011). This list was intended for Interpol offices and all police departments in 186 Interpol member countries to have access to terrorist syndicates on the list. In fact, after 9/11, Interpol set up "a 24 hour, 7 days a week command center and a linkage system to identify terrorist financing list," for the benefit of its member countries (UN 2011).

Today, most countries have passed legislations giving acts of terrorism the severest penalty of all felonious offenses.

ENFORCEMENT OF INTERNATIONAL CRIMINAL LAW

The international criminal law is a category of international law. A body of international law is based on norms, customs, and standards that are cultural universals whose violations are deemed wrong in every civilized nation. This can be described as international customary law. In our contemporary world, the sources of international law stem from the 1945 Statute of the International Court of Justice (ICJ), Article 38, which empowers the Court to determine what constitutes international law and its violation. Article 38 listed three primary sources and one secondary source of international law as follows:

1. International conventions, whether general or particular, establishing rules expressly recognize by the contesting states;
2. International customs as evidence of a general practice accepted as law; and

3. The general principles of law recognized by civilized nations;
4. Subject to the provisions of Article 59, judicial decisions, and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law (see also Chapter 3).

Recently, some legal scholars have argued that the 1945 Statute of the ICJ, Article 38, did not list all of the contemporary sources of international law (Dixon 1993). Unmistakably, the sources of international criminal law are the same as those of international law. The difference between international law and international criminal law (genocide, war crimes, war of aggression, and crime against humanity) is the fact that the latter deals with individual offenders who are prosecuted and penalized if convicted, but the former deals with states or organizations.

The enforcement of international criminal law is in the hands of the newly created International Criminal Court (ICC) and the state parties of the ICC. The ICC (see Chapter 14) does not have prisons for incarceration of offenders that it convicted. Offenders found guilty and sentenced to prison terms are incarcerated in the prison system of their native countries. Whatever is the penalty for the crime committed, the state of origin of the offender makes sure that the penalty is executed.

REVIEW QUESTIONS

1. What factors led to the emergence of the Interpol?
2. How did Nazi Germany deal with the Interpol during World War II?
3. Briefly discuss the resurgence of the Interpol after World War II.
4. What is the structure of the Interpol?
5. Compare and contrast Interpol and Europol.
6. Write an essay on the UN police force.
7. What are the functions and obligations of the UN police force?
8. What is the place of international police cooperation in the control of transnational crime?
9. What are the problems in international police cooperation?
10. What are obstacles to global police cooperation?

REFERENCES

Anderson, M. 1989. *Policing the world: Interpol and the politics of international police cooperation*. Oxford, UK: Clarendon Press.

- Barnett, M., and L. Coleman. 2005. Designing police: Interpol and the study of change in international organizations. *International Study Quarterly* 49(4): 593–620.
- Bresler, F. 1992. *Interpol*. Weert, the Netherlands: M&P.
- Chihuri, A. 1996. Organized crime in Zimbabwe. Paper presented at the third international police executive symposium, Yokohama, Japan.
- Deflem, M. 2000. Bureaucratization and social control: Historical foundations of international policing. *Law Society Review* 34(3): 601–640.
- Dixon, M. 1993. *Textbook on international law*. Oxford, UK: Oxford University Press.
- Ebbe, O. N. I. 1997. Political-criminal nexus in Nigeria: An excerpt. *Trends in Organized Crime* 30: 73–77.
- Ebbe, O. N. I. 1999. Slicing Nigeria's national cake: Political-criminal nexus in Nigeria—a case study. *Trends in Organized Crime* 4(3): 29–59.
- Ebbe, O. N. I. 2001. International police cooperation in Africa. In *International police cooperation: A world perspective*, edited by D. J. Koenig and D. K. Das, 63–69. Lanham, MA: Lexington Books.
- Ebbe, O. N. I. 2003. Political-criminal nexus. Slicing Nigerian national cake. In *Menace to society: Criminal collaborations around the world*, edited by R. Godson, 137–174. Piscataway, NJ: Transaction Publishers.
- Evans, R. J. W. and H. P. von Stradmann. 2000. *The revolution in Europe 1848–1849: from reform to reaction*. New York: Oxford University Press.
- Fijnaut, C. 1997. *Policing in Europe*. Antwerpen: Apeldoorn.
- Fooner, M. 1973. *Interpol: The inside story of the international crime-fighting organization*. Chicago, IL: Henry Regney.
- Fooner, M. 1989. *Interpol: Issues in world crime and international criminal justice*. New York, NY: Plenum Press.
- Forrest, A. J. 1955. *Interpol*. London, UK: Allan Wingate.
- Frank, T. 2002. *One market under God: Extreme capitalism, market populism, and the end of economic democracy*. London, UK: Vintage.
- Garrison, O. V. 1976. *The secret world of Interpol*. New York, NY: Ralston-Pilot.
- INTERPOL. 2002. INTERPOL launches new tool in the fight against terrorism. Retrieved from <https://secure.interpol.int/Public/ICPO/PressReleases/PR2002/PR200210.asp> (Accessed February 15, 2013).
- Lavey, D. 1989. Interpol. Fostering international cooperation. *Police Chief* 56(3): 46–49.
- UN Department of Public Information. 2011. Press conference by director of police division, department of peace-keeping operations. Retrieved from http://www.un.org/News/briefings/docs/2011/110616_Orler.doc.htm (Accessed February 15, 2013).
- UN Police. 2013. UN Police Division obligations. Retrieved from <http://www.un.org/en/peacekeeping/sites/police/obligations.shtml> (Accessed February 15, 2013).
- Ward, R. H. 1987. *Managing police corruption*. Chicago, IL: Office of International Criminal Justice.

12 Policing and Public Disorder in the United Kingdom

Michael Bullock

CONTENTS

Introduction.....	161
The Dilemma of Police Service	162
Police and the Community.....	163
U.S. and UK Innovations in Quality of Service.....	165
The Mid State, Tourist, and Big Cities Departments	165
The Differences Between the United States and the United Kingdom in Community Policing	168
Issues	169
Events.....	169
Community.....	169
Review Questions.....	171
References.....	171

Quality of Service! A police department puts out a product to maintain peace and reduce crime and violence so that people feel safe. Our goal should be customer satisfaction, but rarely do we bother to find out what the customer wants.

Gates and Shad, 1992

INTRODUCTION

The preceding quote does not originate from England, where a considerable effort is being made to provide high-quality service to the community, but from the biography of Daryl F. Gates, retired chief of police of Los Angeles. The use of the terms “Quality of Service,” “customer satisfaction,” and “find out what the customer wants” illustrates the argument put forward in this chapter. Gates appears to have made the link between service and disorder, connecting action with community consultation and the identification of customer needs, although he gives final primacy to the agreement of expectation. Here, then, are our central themes—namely, that consultation will affect the quality of service and standing of the police force in the community, which will lead, in turn, to shared responsibility for policing the community and a reduction in the levels of disorder. The evidence for this hypothesis comes from research undertaken by this

writer in 1992 and from data collected from American police departments and English police forces.

In this chapter, we will consider what is meant by quality in police service in the United Kingdom, how such quality relates to the service function, and the need to consult with the community to achieve tranquility. Communities have asked for a more caring police service, and the police responded initially through service programs such as Metropolitan Police “Plus” and Thames Valley Police “Make Contact.” These were undertaken by individual forces, and there was a need for a national approach; consequently, in October 1990, the British Association of Chief Police Officers (ACPO) met to launch The ACPO Statement of Common Purpose and Values (Hirst 1990). Work undertaken to identify the police role in society in the 1990s had shown that such a statement would be helpful (Birch 1990).

In 1975, the public considered the UK police to be poor performers, and subsequent surveys also recorded falling levels of public satisfaction with the police. The disturbing numbers of incidents of public disorder during the late 1970s and the early 1980s were interpreted as symptoms of a loss of confidence in the police (Smith 1982; Reiner 1992), which was reflected in research. Studies carried out in those decades showed a public loss of trust and confidence in the police (Jones et al. 1982).

The Statement of Common Purpose and Values sought to set a standard that would counter claims of poor service. It may be, however, that the loss of confidence in the police was actually a response to the style of policing by the police taking part in public disorders—an issue only partly addressed by Scarman (1981) in this seminal report on the Brixton Disorders in London.

The community disorders of the 1980s were also partly attributed to mistrust and hostility toward the police (Benyon 1987), with the Bristol City riots and the Brixton Disorders in London seen as a watershed for British policing. But, they were neither the first disorders (Geary 1985) nor the last, as was clear in 1985, 1990, and 1991 (Metcalf 1990). Were these disorders primarily linked to a loss of confidence in the police, or was the policing style of the 1980s a contributory factor? If it was the latter, then changing the style and improving the quality of police service may be one way forward. If the former, can we expect a mere improvement in service quality to restore police standing in the community? In the United States, several police initiatives have been described, varying from COP+ (Glensor 1990) to problem-solving (Goldstein 1990) and community policing (Skolnick and Bayley 1986). But, it is not clear whether these initiatives deliver the quality of service that the British police forces seek or that they were ever intended to do so. Some work in quality service has been done in the United States since the early 1980s; Goldstein (1977) argued that problem-oriented policing would answer many of the community concerns being raised by the changes in society, and would overcome the insular culture of the police.

THE DILEMMA OF POLICE SERVICE

All police services face the dilemma of how to deliver quality service acceptable to the community while simultaneously exerting a coercive force over that community to maintain order. One commentator suggests that quality service is determined by the discretion of the individual officers, and concludes that emphasis on quality service is a mere cloak for the coercive function of the police and does not eliminate it (Brown 1988). This criticism could be evaded if quality service was consistently linked to consent and accountability, and not to response time and image, as is often the case in the United Kingdom at present. Current initiatives will be unlikely to succeed if they are arrived at without community consent, consultation, or internal support. But, can this be achieved when trust and confidence in the police have fallen and civil rights issues have grown, when the media increasingly question the police role, and court convictions

are overturned on appeal? Objections are also made to any assumption that the community is one homogenous group; there are many communities or “customers of the police”—each with its own profile, hopes, expectations, and needs.

If policing in the United Kingdom is now primarily measured by the provision of quality service, one must define both quality and service. Quality means an excellence of disposition, a mental or moral attribute, trait or characteristic, an accomplishment or attainment. It relates to professionalism and varies from best to acceptable, unacceptable, and worst. In management terms, quality is the result of a carefully constructed cultural environment. It must include the whole fabric of an organization, not just a part of it. Services of good quality often are assumed to be customer driven, meeting customers’ agreed requirements at lowest cost, the first time and every time (Crosby 1990), but it might be said that goals should go even beyond this. Quality should be an ongoing process, always aiming to improve. Achieving this requires cultural change through training, planning, indentifying, and understanding customer needs and expectations, and developing a process for their accomplishment. From such analyses can be deduced a logistical formula for quality—the frequency of deficiencies (defects, errors, failures) divided by the opportunity for deficiencies (hours, beats, manpower levels) (Juran 1989). Quality in policing might be defined as the totality of features or characteristics of a police service that bear on its ability to satisfy a given need; in other words, the provision of the right service at the right time, and at a reasonable price.

A service is a branch of public employment or body of public servants concerned with some particular work or supplying particular needs. The British police serve the sovereign, the state, and the community. They also serve to enforce laws and maintain order as representatives of the community. It should be noted that this last point is not universally agreed on. Some insist that the police role is law enforcement and order maintenance only, that “such a role (service) does not belong to police work” (Kinsey et al. 1986). This point of view gains support from a number of police officers who do not regard service jobs as “real” policing. Some may think that the main police service is coercive action, but one must also take account of how the British police themselves view their role. The ACPO statement has been devised to support the following key service areas, all of which have been recognized by the central government in advice on monitoring police performance: (1) public contract management; (2) crime management; (3) traffic

management; (4) public tranquility; and (5) community partnership and reassurance.

Demands for community services from police, however, must be balanced against the demands for police coercion and the readiness to meet conflict—successful police forces will combine these two. Only once this balance has been attained will quality considerations enhance the service provision. Goldstein argues that the ultimate objective for all efforts to improve the police is to increase the capacity to deliver high-quality service and to equip the police to do so in ways that are consistent with, and support, democratic values. Weaknesses in police response came from their belief that the best possible service was being provided already, from autocratic styles of management, and from lack of shared or devolved responsibility; in short, there was a general failure to appreciate severe shortcomings in the police's management of their service role.

POLICE AND THE COMMUNITY

Goldstein advocated quality service as early as 1977, when the police clearly were becoming isolated from the community. Low police visibility and lack of regular contact with the community had caused the citizens to feel that there was no one to define and enforce social norms, and that the police neither knew nor cared about them (Brown and Wycoff 1986). The police responded that they did care, but their response was not communicated adequately.

Obviously, there is only tenuous evidence of police consulting with the community to identify the needs and expectations. Such procedures have their problems, and the police occasionally believe that members of the community may not know what is good for them. Members of the community, however, know very well when they are not getting what they believe they deserve from the police. In the present writer's own experience of working through interagency approaches to crime with victim care schemes, crime prevention panels, and several other liaison groups, there has been a noticeable rise in demands throughout the community for more police time to be spent on service. The main qualities demanded today are concern, care and competency (not necessarily efficiency), effectiveness—and economy. Can such care be achieved in the face of constant demands for decreasing spending and increasing control from the central government? Recent government involvement in policing major industrial disputes that led to public disorder have continued a process that started as a response to the disorders of the late 1970s and the early 1980s.

Under the Conservative government, the UK Home Office has pursued national police policy demands for Value for Money (VFM). Police were notified of this policy through the Home Office Guidance Circular 114 of 1983, which introduced the three essential components of VFM—efficiency, effectiveness, and economy, supported by performance indicators designed to facilitate their measurement. The use of performance indicators can be regarded properly as a valuable tool for management, but the policy runs the risk of excluding the customer from decisions. It is unlikely that the police will ever give value, whatever the cost, if the needs of the public are not addressed. The pursuit of efficiency probably would lead to a style of policing that leans more toward law enforcement than service provision because the former can be more easily measured on a quantitative basis. Efficiency is easy to measure, but it leads to preoccupation with means rather than ends, and the goals of strategies based on efficiency tend to be short-term rather than long-term. Would this not create problems by failing to address the causes of community disorders? The police problem is not a VFM problem, but a crisis in policing itself and public confidence in the police. Quality is unlikely to be achieved through financial initiatives, and the present writer would suggest that the three “Cs”—competence, caring, and competition—will lead to greater public confidence in the police than the three “Es” of efficiency, effectiveness, and economy.

Confidence in the police will clearly be affected if the public observes police injustice, improper conduct, repressive measures, or coercion. Injustice, especially, can lead to disturbances, and hostility to the police can be a primary cause of disorder (Scarman 1981). This view was supported by a survey of Londoners, which suggested that between one-third and one-half of resident West Indians completely lack confidence in the police force, and that two-thirds have considerable doubts about police standards of conduct (Smith 1982). In an independent inquiry into the disturbances at Broadwater Farm, Tottenham, London, conclusions confirmed the findings of the earlier survey of Londoners, but the evidence that was presented tended to be anecdotal and not subject to vigorous cross-examination. A report from the inquiry (largely critical of the police role) called for a strategy by which the police should cooperate at all levels with various agencies that represent the community in order to detect and deter crime (Gifford 1986). But, this argument generalized from London to the rest of the country, just as false a deduction as saying that the causes of the Los Angeles riot of April 1992 must have reflected the conditions in the rest of the United States. Policing

must meet different needs in different communities and will require different strategies of crime and order control. A much wider British crime survey suggested that four distinct groups expressed most dissatisfaction in the police—young men, the unemployed, motorists, and ethnic minorities. In effecting any improvements in public confidence, there must be a drive for quality at both the national and local levels, and it must be targeted at groups such as these that least trust the police.

Once one recognizes that police service provision has satisfied all of the community, one must ask questions about the gap between the service provision and public expectation. Policing has always concentrated on crime, traffic, and order maintenance when not specifically responding to demands for family intervention, care of lost property, or issuing a variety of certificates. Little effort is, or can be, expended on public nuisance offenses, such as litter, dogs fouling the footway, or noisy motorcycles. Yet, the presence of public nuisances tends to dictate the public perception of the police. There are constant calls for more officers on the beat, pressures for greater victim care, and the need to address the fears of crime felt by non-victims in the community. As a senior police officer said, "In neglecting to respond to the very real needs of those elements of the community we may appear to have lost the caring dimension in the quality of our service and in consequence undermined public confidence in the police" (Hirst 1990). In fact, the police tend to be apprehensive about social agency sorts of involvement, and about raising community expectations through such consultation and involvement. Because of conflicting requirements, whether national or local, they frequently have had to admit failure to respond or meet those demands. This conflict may be addressed by changing the culture of the police service. But, in order to achieve that change, one must overcome any notion that the workforce alone is responsible for quality. Only when the top management demands service-oriented quality as being imposed upon them will real quality of service, in addition to law enforcement and order maintenance, be achievable. A parallel process must be followed in educating the public about the external consultative process. The police ought to make it clear that they seek partnership with their customers in the community.

The police must gain both public support and public consent to perform their role. However, in a society where conflict rather than consensus dominates political life, is that achievable? Some hold that society became deeply divided in the 1980s, and that this division precludes policing by consent of all of the community's members. In the United Kingdom, inner city problems,

poverty, a weakened trade union movement, institutionalized groups, and racism, all confront the police, and they will continue to do so. The police cannot work for the greater good merely in terms of some utilitarian calculation; rather, they need to pursue quality service for all in the community. If the traditional model of consensual policing is abandoned for one based upon coercive force, the police will continue to lose the confidence of the public. They will become further isolated in performing their role, looking inward, and merely reacting to the events around them. To improve the role of the police in the community and achieve quality service, one must consult and gain consensus in order to succeed. A study of a 1990 survey showed that the public would prefer a service that worked with the community to solve crime matters and that police discretion and crime prevention were the best means of dealing with crime (Birch 1990). This has long been advocated through the problem-oriented approach.

While accepting the importance of experienced police judgment in deciding priorities, such judgment may be verified and strengthened through consultation. The question is, do police consult effectively? It might be said that the UK police do consult through the formal committees set up under Section 106 of the Police and Criminal Evidence Act (1984), but a Home Office review of these arrangements found that genuine community representation was difficult, if not impossible, to achieve; that ethnic members of the community were not attracted to the committee groups; and that some sections of the community deliberately distanced themselves from the consultation process (Home Office 1989). If quality service is a matter of meeting community expectations or needs, how are the police addressing their identification of those needs? Is informal consultation going on outside the parameters of the Section 106 committees, where policing priorities are determined and policing operations agreed upon? It would seem that none are truly effective, and that the police, in fact, still decide their own priorities.

The present writer has undertaken research showing that quality-oriented UK police have failed to adopt the central requirements for effective consultation in the United States; for, in Britain, consultations that occur in problem and community-oriented policing are not usually driven by an identified need to provide quality service. In both countries, there has been a series of innovations that have attempted to overcome the alleged crisis that has arisen in policing during the past 30 years. Most of the innovations that aimed for quality service (such as consultation, contact, consent, meeting of agreed needs, reduction in the use of coercive force) have been carried out in the United States (Skolnick and Bayley 1986;

Brown 1988; Sparrow et al. 1990). Examples of particular team policing, contract programs, problem-oriented policing and community-oriented policing abound in the United States, but can lessons learned in that country be brought back to the United Kingdom?

U.S. AND UK INNOVATIONS IN QUALITY OF SERVICE

In comparing the United States and the United Kingdom, we will look at differing types of police departments in the United States that might be categorized as State Capital, Mid-State, Tourist City, and Big City. These groups represent communities of up to two million whose police officer establishments of up to 4000 compare favorably with the UK police forces, where the average police population and officer establishment per unit area tends to be much higher than in the United States. The State Capital has a population of just under half a million and an officer establishment of more than 700. While the crime rate is comparatively low, the management style fosters community policing. As part of the city structure and its overall requirements of management with accountability, the department has adopted the city mission statement for quality of service that states, "We want City X to be the best managed and most livable city in the country. We will accomplish this through people who genuinely care and provide responsible quality service." The city mission has always centered on high standards of service, but recently, even more attention has been focused on the police as public servants. Between 1990 and 1992, the city management plan gave "focus on customer service" top billing, with a common theme of quality service permeating value statements. The city emphasizes quality customer service and regards the concept of community policing as a priority, actively support the chief of police in its achievement. To meet this priority, the city police department has decided that the key element in policing style is police presence. He or she fulfills an integral part of community policing strategy by redeploying the resources to ensure that every police officer has a well-defined area of the city to serve. As in China, each community will have one or more identifiable officers responsible for it.

Another key element in the state capital's police service goals has been the full adoption of the Stephens/Goldstein model of problem-solving, whose entire process is underpinned by qualitative, rather than quantitative, performance measures. The force recognizes the practical difficulties here, and has considered the findings of one unpublished report that the quality of police service is absent from most of the evaluative measures that

are now in use. The response time is easy to measure, but it is the quality delivered during the initial call until the customer's request for service has been met that is subjective and difficult to evaluate. To negotiate this difficulty, the department has appointed a full-time officer responsible for total quality management and quality of service within the state capital police department. Having pursued reactive policing and having failed to deliver a good service, the department has changed its philosophy—it can now be proactive, but seeks to be coactive through collaboration and consultation. The quality of police service will emerge from the latter.

THE MID STATE, TOURIST, AND BIG CITIES DEPARTMENTS

The Mid State City is a relatively small department, by English standards, with an establishment of 350 officers for a city population of 130,000. The city has an ethnic mix of white, African American, and Hispanic peoples, reflecting the national average of 70%, 15%, and 10%, respectively. Its main source of income is tourism. Policing is community-oriented, seeking to achieve three benefits: (1) improved delivery of police services; (2) improved community relations; and (3) mutual resolution of identifiable problems.

For some years this quality service approach to policing has been shown to be effective, and it closely resembles quality developments in the United Kingdom. Public attitude and satisfaction surveys are carried out biannually, and findings are now supported with internal staff surveys. The department uses three agencies to apply this data to its policing service in objectives: (1) the Quality Assurance Bureau; (2) the Neighborhood Advisory Group (NAG); and (3) the Crime Analysis Unit.

The NAGs were much more effective at identifying community problems and expectations than the formal consultative groups of the United Kingdom. A play for operational policing was agreed on that devolved community relations responsibilities, making the local officer accountable to the community.

The Quality Assurance Bureau coordinates departmental efforts to improve the service level to the community through consultation, external surveys, and internal surveys; it is now recognized by the Police Executive Research Forum as a model American program. Its strength lies in public consultation, and its success in such programs as community storefronts. Over the past four years, these successes have led to an increased level of public satisfaction, and also to a reduction in community tensions and disorder.

Tourist cities attracts visitors from around the world. Such cities are located over a wide mixed population of about one million. The community tensions between the African Americans and the Hispanics were also apparent between officers of both the groups. The police department has more than 1500 officers and practices traditional community policing. However, innovations have met public concerns that primarily relate to tourism and to the increasing number of immigrants to the city from the Latin countries. One innovation—crisis intervention—mandates a unit of individually selected and trained officers to work directly with the area commanders, and to design responses to community problems identified through the analysis of calls, citizen complaints, or crime figures. The department also attends to the need for long-term solutions to community problems by encouraging joint interagency approaches. Projects have included derelict property cleaning and the establishment of city regulation to control behavior. The crisis intervention officers have increased the ability of the department to respond to the public through community-oriented initiatives addressed during the day across the city.

Big City Department is large and multicultural by any standards, with more than 4000 officers serving a city of two million people. African Americans and Hispanics are overrepresented within the community when compared to the national average. Relations between the two groups can be tense, as seen in very large cities of the United Kingdom. Several major policing programs have been developed; one, for example, encourages the exchange of information between the beat officers and neighborhood residents at community exchange meetings (often held in storefront premises). Police hope that this program will build community links through the consultative process, provide a forum for the exchange of information, and demonstrate care for the quality of life within neighborhoods.

In practice, monthly meetings are held that bring together members of the police department and community representatives (including various civic groups). Each representative is responsible for reporting back to his or her group, and the meetings often achieve a change in police response to community or in identification of problems. The program resembles the Mid State Neighborhood Action Group concept, and it requires that beat officers encourage civic groups to discuss policing at the patrol officer rather than the management level. This will make it clear that it is local consultation that will make the project succeed.

Although the definition of quality has been far from clear in many cases, the concept of quality has been accepted generally by all U.S. departments and UK forces. Lack of a clear definition is not a problem, if all understand the philosophy under which a definition is being pursued; but not all do understand. The State Capital's management-centered approach, which seeks to achieve quality through the adoption of the City Management Mission Statement, differs considerably from that advocated by Mid-State. Mid-State adopted a personnel model addressing community needs, combining public feedback on expectations. The management model approach, although coactive with the community, allows the management to retain control of direction—management staff determines priorities and employs their own professional judgments in their focus on customer service. The personnel model allows directional control to devolve to the community working with the lowest police ranks, with responsibility usually placed on a group that tends to be part of the management services, the force inspectorate, or the audit division. Of the forces and departments surveyed, only 13 forces (31% of total) and three departments (10% of total) clearly identified a group with full-time responsibility. Since respondents often reported these as problem-solving groups; Table 12.1 includes that category.

TABLE 12.1

Frequency of Problem Solving Groups, Quality Circles, and Quality Groups

		Problem Solving	Level (%)	QC (%)	Level (%)	QG (%)	Level (%)
U.S.	60%	Policy	28		24		16
		Management	12	24	8	40	12
		Other	36	26		20	
UK	38%	Policy	3		0	6	
		Management	6	24	3	50	6
		Other	29		21		39

Policy is represented by chief officer groups.

TABLE 12.2
Customer Groups—Consultation

	U.S.			UK		
	Informal	Quality	Style	Informal	Quality	Style
Statutory Agencies	44	12	20	85	15	30
Non-Statutory Agencies	32	4	12	32	9	12
Victim Support	60	8	20	88	6	30
Political Group	36	8	20	17	6	15
Neighborhood Watch	80	8	20	88	3	27
Chamber of Trade	76	8	16	65	3	27
Schools	76	4	16	82	3	21
Churches	60	0	20	82	3	6
Race Relations	24	0	12	35	0	7
Tenants Association	40	0	0	70	0	0
Property Owners	32	20	0	18	3	0

The actual use of problem-solving techniques to address either quality or style is limited, partially because the English do not approach quality through the personnel model, but through a combination of elements of both. The term “customer” is often clarified—although opinions on the issue are divided, it can be deduced that the customer is the community and not the internal members of the organization. Unfortunately, many police officers, both in the United States and in England, believe that the lower ranks and civilian staff are customers of the chief officer and the senior management team. The UK central government team, however, takes the view that the term “customer” does not include the internal employees of the police organization. If the police accept that the customer is the victim, service user or participative user, and offenders, who should the police consult to identify customer needs? The current state of affairs is summarized in Table 12.2, which indicates the percentage of forces and departments that consult informally, the percentage that formally consult on matters of quality of service, and the percentage that formally consult on policing style.

The groups listed in Table 12.2 are the ones most frequently cited for police consultation on behalf of the community. No such list, however, can be complete, and one might say that by selecting only certain customers for liaison, police still set the rules by which they will succeed. The survey data in Table 12.3 answer to this difficulty by being customer-generated, indicating the most common demands by the community for police action; that is, the community needs.

TABLE 12.3
Comparisons of Demands from the Public for Police Action

Demand for Action	U.S.	England
More Foot Patrol	12%	53%
More Community Involvement	12	29
Enforcement of Nuisance Offenses	16	26
Greater Victim Care	8	23
Control of Domestic Violence	20	6
Enforcement of Drug Laws	20	15
Juvenile Crime	8	18
Other (Includes demand for action against Burglary and Car theft)	8	47

The category “other” features strongly in English surveys, and most often contains demands for more information from victims about the crimes committed against them along with demands for more action against burglars and car thieves, including joy riders. This presents a further dilemma for the police, particularly in England. If they enforce this area of the law, some communities may react violently, as was the case in Oxford, Newcastle, and other large city housing estates in the United Kingdom in 1991. However, if the police do nothing, the public satisfaction decreases. It seems that the police need to rely on more data-gathering mechanisms than mere public surveys, ones that allow a better understanding of the police role and an airing of public views through effective consultation.

THE DIFFERENCES BETWEEN THE UNITED STATES AND THE UNITED KINGDOM IN COMMUNITY POLICING

In the United States, problem-solving is accepted and practiced by many departments at the lower rank level, but in England, the involvement of the lower ranks is often poor. However, problem-solving is not being addressed internally, particularly in community consultation and problem identification. Such consultation will allow a redefinition of the police role and function. It is not sufficient merely to pursue order maintenance or crime control; rather, both the police and the community must define what local problems exist and the appropriate response. Consultation can occur through a multiagency group, through a community group, or through local teams of police officers providing contact and reassurance, as observed in Mid-State and Big City. If consultation is the seeking of consent, how effective is that process and with whom do the police consult? Table 12.1 indicates the levels of problem-solving consultation within police forces and departments, while Table 12.2 indicates the groups most commonly consulted in the community on issues of quality and style. But, are all these consultations true two-way pursuits of consensus, or are they mere instances of contact such as a school visit or a Neighborhood Watch talk? Consultation most often appears to be contact rather than agreement, used by the police as part of an information process in which they set their own priorities. This is highlighted by the differences between the English and American attendance of formal consultative meetings, as shown in Table 12.4.

Many informal meetings are regularly attended by lower ranking officers, but such meetings tend to be talks on offense prevention or safety; no informal meetings about policing style in England have become evident to this writer. Not only are there rank differences between officers who attend formal consultative meetings in the United States and those who attend in the United Kingdom, but the frequency of such meetings also varies (Table 12.5). One weakness in the consultation programs is the limited opportunities they provide to discuss a response to problems as they arise. This is particularly noticeable in the United Kingdom, where formal meetings are held, on the average, once every 15 weeks. Another weakness is their tendency to represent a very large section of the area's population. Specific problems affecting only a local community would be less likely to be known and raised at large group meetings. The average UK Police and Community Consultative Committee represents just under 100,000 of the population, compared to fewer than 30,000 represented in similar committees in the United States. However, this comparison is not altogether just, because participation in such groups is not a statutory duty in the United States. This makes the precise defining of formal consultation groups difficult.

One cannot easily gauge whether representation by such a large group is effective, but one can deduce from the infrequency of meetings that they are not a suitable vehicle for attempting to meet community consultation, and then, it has great weaknesses in addition to its underrepresentation of the young, males, ethnically marginal groups, and offenders, whose willingness to attend such a formal forum compromises any hope that this style of

TABLE 12.4
Rank Attendance at Consultative Meetings

U.S.	Cop	Capt	Lieutenants	Sergeants	Patrol Offr.
	32%	20	12	20	36
UK	ACPO	Supts	Inspectors	Sergeants	Constables
	9%	70	50	23	9

TABLE 12.5
Frequency of Formal Consultation

	No. of Formal Consult. Groups of Meetings	Frequency (Weeks)	Average Population	
			Population	Per Con. Group
U.S.	131 (8 Dept.)	8	0.47m	28k
UK	345 (28 Force)	15	1.1m	98k

consultation could achieve the goal of quality service. As a result, the police will continue to choose their own policing style, subject to government pressures, and little effort will be made to address the causes behind the lack of consultation.

In England, only 20% of forces surveyed felt that the policing style had been changed to meet public demand—most interviewees felt that no real change had occurred. If changes in the policing style and action do arise from community demand, the police must evaluate the effectiveness of those changes by setting performance standards or targets (see Table 12.6).

If the standards or targets in quality and style are not set, and feedback does not specifically address these aspects, how can the police know whether they are meeting the community expectations and needs for quality? One alternative is to use an internal audit process by inspection departments. There are some 76% of forces and 40% of departments that allocate some responsibility to a specialist department or division, whether full-time (40% England, 14% America) or part-time (36% England, 26% American). This process was established for different reasons in each country—in the United States to meet accreditation requirements, and in the United Kingdom as a part of the “value of money” initiative. Quality, style, and communication may enable the police to succeed, but if the young, the marginal groups, or the offenders are not consulted on these issues, it is no surprise when protest against authority and the police occurs. The disorders that affected society in the 1990s can be separated into three categories—those relating to issues, those relating to events, and those relating to communities. Although there will always be some overlap between the groups, the general patterns observed are a concern over a need to meet community demands; community consultation; unacceptable crime rate; evolution of style; changes in management style; style of the chief officer; and need for success (Table 12.7).

TABLE 12.6
Factors Influencing a Change in Police Style

	U.S.	UK
A Need to Meet Demand	64%	20%
Community Consultation	36	9
Crime Level Unacceptable	20	3
Evolution of Style	8	21
Management Style Change	—	3
Style of Chief Officer	16	12
Need for Success	4	3
Other	—	3

ISSUES

Over 25% of forces experienced demonstrations in relation to political causes, such as the Gulf War, animal rights, and anti-community taxation. Most passed with only a minimum of disorder. Others, such as the events at Trafalgar Square in March 1991, cannot be regarded so lightly, but they do not cause any real long-term problems. In the United States, abortion issues have led to disorder similar to that seen in part of the United Kingdom.

EVENTS

In recent years in England, pro-Al Qaeda gangs, illegal dance parties, and the reemergence of the itinerant New Age travelers have led to confrontation with the police and sporadic outbreaks of violence. Sports events also have caused disorders. Again, these present no long-term problem for the police.

COMMUNITY

Community-oriented disorders are the sort that have, in the past years, been most frequent and crime related; usually, they occur on large local authority housing estates and in areas of severe poverty. A solution to the problems encountered in such areas will only be found in long-term policing strategy. Developing an effective policing style will lead to an acceptable response from the community. Housing estate disorders affect nearly half of all forces in England, cause high levels of damage to community infrastructure, and reduce the general public satisfaction in the level of local policing. The frequency of U.S. housing project disorders is not as high as in England despite similar poverty, unemployment, and feelings of hopelessness observed among the disadvantaged. This is surprising, given the added factor of racial tension between the Hispanic, Asian, and African American groups in the community. In Big City, the disorders relate to issues and rarely to the community, but this is not the case in other parts of the country.

The U.S. police do campaign against drug abuse, street crime, burglary, and vehicle-related offenses, but there is

TABLE 12.7
Setting of Standard of Performance

	U.S.	UK
Are Standards Set	52%	41%
Quality Standards	40	29
Style Standards	80	12

no protest against the policing style, law enforcement, or police presence. Why isn't there as much hostility toward the police as in the United Kingdom? In short, American police consultation programs have strengthened their communities' abilities to address the identified problems.

Community disorder in state capitals is comparatively rare and relates to issues that attract demonstrations rather than to community unrest. It might be argued that the managerial approach to quality helps in the maintenance of public tranquility. But, other factors such as low crime rate, the low number of police officers leading to selective law enforcement, and the imposition of a curfew on young people in certain districts, all play some part in the community's quality of life. In tourist towns, the police respond to community disorder incidents through specialized units, supported by up to 200 officers trained in tactics, which very much reflects the UK approach. As noted earlier, there is an awareness of the problems with the Hispanic community and of public demand for police change. Since the L.A. riots of April 1992, greater cultural sensitivity training has been attempted to overcome the gap between the major Hispanic community and the predominately white police department.

In England, the police appear confused about their role. On the one hand, they seek to provide quality service, which could be achieved through community contacts; on the other hand, they continue to place an emphasis not on consultation, but on instant response and being available to exert a coercive force. Such constant response, often to repeat calls, does little to address causes—causes that might be identified if the police were to depend on responsible low-level consultation. Current management-oriented models for police quality will be unlikely to attain the prime objective of community policing, that is, enhancing the relationships between the police and the community. It seems necessary to consider a new model for English policing that not only meets the community expectations on crime control and order maintenance, but also meets the need for quality of life and feeling of safety—neither of which exists now. Let us assume that the police ought to provide the latter in the context of crime prevention, using the standard model of problem-solving.

The ACPO statement is a starting point, but it is general and poses public tranquility as an overriding need. Such tranquility can be achieved through innovation and a readjustment in the means of determining policing. There are many examples of this happening in both countries, all of which include community police teams assigned to a clearly defined area with a specific responsibility for that area, with authority to consult and respond

and be coercive with the community. Such teams, while accountable to the local community, should be part of a much shorter management structure within the police. They should form part of a basic command unit that has gained greater autonomy—an autonomy attained by lowering the rank level of formal community consultation in order to achieve three objectives. First, the formal group will represent a much smaller, more clearly defined section of the population; second, the community will take part in decision-making; and finally, a multi-agency approach will be adopted within the community in order to consider both crime and its causes and to give some level of public ownership to the statutory agencies' response.

No more than a handful of forces and departments have changed their basic policing style, preferring instead to examine their performance, improve response, and seek a more visible caring image. Police officers are, by and large, caring and concerned, yet they are blamed for many of the shortcomings in society. Focusing on quality alone is unlikely to curb disorder, because it is the police law enforcement culture itself that provides resistance. Senior management does not devolve responsibility beyond the ranks of superintendent or captain, and forces consistently fail to consult effectively. The police need to be more competent and caring than they are now in order to be effective, but the drive for efficiency and economy through use of a management style for quality rather than a personnel style may preclude any service-centered approach. The State Capital management approach to quality is not likely to have so good an effect in England as the community of personal approach practiced in Mid State City, but current English trends are toward the former rather than the latter. If possible, this should be changed. English policing needs to adapt to that philosophy of community policing that most empowers the local officer, and that links that officer with the community through effective consultation.

Can the quality of service and community consultation reduce the number of disorders—particularly community disorders—that have been seen in the United Kingdom during the past 10 years? On their own, probably not. But, if taken as part of a style of policing that effectively delivers quality based upon consultation and devolved responsibility, one can be much more hopeful. Consultation and quality service within the community will reduce community disorder, and "community policing provides a powerful strategy for the police to employ in reducing the likelihood of collective violence in cities, and, arguably the most substantial short run program for meeting urban social needs" (Bayley 1992).

REVIEW QUESTIONS

1. What does Bullock mean by the “insular culture of the police?”
2. The British police serve three categories of people. Who are they?
3. “Police service job is not real policing.” Discuss and comment.
4. The conservative government of Britain introduced a policy of “value for money.” What is meant by value for money?
5. What are the three essential components of value for money?
6. According to Bullock, what are the three factors that could lead to greater public confidence in the police?
7. What are the major problems facing the British police in law enforcement?
8. Policing based on coercive force versus policing based on consultation and consensus—discuss and comment.
9. What are the principles needed to achieve the required quality of police services?
10. The key element in policing is police presence. Discuss and comment.
11. What are the three major benefits that “mid state” policing is designed to achieve?
12. What are the differences between the United States and United Kingdom in community policing?
13. There were three types of disorder that affected society in the 1990s. What are they?
14. According to Bullock, consultation and quality of service within the community will reduce community disorder. Discuss.

REFERENCES

- Bayley, D. 1992. *A fresh perspectives paper: The best dance*. Washington, D.C.: Police Executive Research Forum.
- Benyon, J. 1987. In *The roots of urban unrest*, edited by J. Benyon, 207. New York: Pergamon Press.
- Birch, R. 1990. *Operational policing review*. Surbiton, UK: Sierra Leone Joint Consultative Committee.
- Brown, M. 1988. *Working the street: Police discretion and dilemmas of reform*. New York, NY: Russell Sage Foundation.
- Brown, L., and M. Wycoff. 1986. Policing Houston: Reducing fear and improving service. *Crime Delinquency*, January, 33:71–89.
- Crosby, P. 1990. *Leading*. London, UK: McGraw-Hill.
- Geary, R. 1985. *Policing industrial disputes 1893–1985*. London, UK: Methuen.
- Gifford, L. 1986. *Independent enquiry into the disturbances at Broadwater Farm Estate—Tottenham*. London, UK: Broadwater Farm Enquiry.
- Glensor, R. 1990. Community oriented policing—plus. Report for the Reno Police Department, August.
- Goldstein, H. 1977. *Policing a free society*. New York, NY: Ballinger.
- Goldstein, H. 1990. *Problem oriented policing*. New York, NY: McGraw-Hill.
- Hirst, M. 1990. *The ACPO statement of common purpose and values—New Scotland Yard*. London, UK: HMSO.
- Home Office. 1989. *Review of police consultancy arrangements*. Home Office Circular 62/1989. London, UK: Home Office.
- Jones, T., J. Yound, and B. MacClean. 1982. *Islington crime survey: Crime victimization and policing in inner-city London*. Brookfield, VT: Gower.
- Juran, J. M. 1989. *Juran on leadership for quality*. London, UK: Free Press.
- Kinsey, R., J. Lea, and J. Young. 1986. *Losing the fight against crime*. London, UK: Basil Blackwell.
- Metcalf, D. 1990. *Report into the Trafalgar Square riots of 30 March 1990*. London, UK: Metropolitan Police.
- Reiner, R. 1992. Fin de Siècle: The police face the millennium. *Political Quarterly*, 63(1): 37–49.
- Scarman, L. J. 1981. *The Brixton disorders: 10–12 April 1981*. (Cmnd. 8427). London, UK: HMSO.
- Skolnick, J., and D. Bayley. 1986. *The new blue line: Police innovations in six American cities*. New York, NY: Free Press.
- Smith, D. J. 1982. Police and people in London: A survey of Londoners. Report no. 618: Policy Studies Institute.
- Sparrow, M., M. Moore, and D. Kennedy. 1990. *Beyond 911: A new era for policing*. New York, NY: Basic Books.

13 The Police System in the People's Republic of China

John Zheng Wang

CONTENTS

Introduction.....	173
Historical Development	173
Organizational Structure	174
Types of Police Forces	176
Functions of the Police in the Judicial Process.....	178
Functions of the Police in the Social Arena.....	178
Dynamics of the System	179
Conclusion	181
Notes	181
Review Questions.....	182
References.....	182

INTRODUCTION

The People's Republic of China, with its population of more than 1.3 billion (a fifth of the world's total population), is currently undergoing many changes toward the development of an open market economy. Under its new "open policy," China desires that its criminal justice system, including its police system, is understood. The police system in China has long been shrouded in secrecy and not been fully revealed to the West, especially not by the people of Chinese origin. This chapter attempts to provide an initial firsthand account of the police system in China. We describe the historical development of the police force, its overall organizational structure, the types of police forces, dynamic factors influencing and controlling the system, the crime situation that has resulted from Chinese policing, and a comparison between the policing in China and the policing in the United States.

To better illustrate the system, tables, figures, diagrams, and statistics collected over the past 12 years are provided.¹

The police systems in China are usually called the "people's police agencies" or the "public security agencies," and policemen are called "public security personnel." Along with the other three major components of the criminal justice system, procuratorate, court, and

corrections, the police play a major role in maintaining social order in both city and countryside. Therefore, greater understanding of the Chinese police system will be a major step toward understanding China's criminal justice system at large.

HISTORICAL DEVELOPMENT

The establishment of the public security system can be traced back to the early 1920s, when the Community Party was an underground movement fighting against the Nationalist Government. During the First Revolutionary Civil War (1924–1927), the Special Service Section was set up to lead the workers' union movement (Du and Zhang 1990, p. 124). In 1938, the Special Service Section was replaced by the Social Affairs Department under the direction and jurisdiction of the Politburo (Richelson 1988, p. 274).

In October 1949, the Ministry of Public Security (MPS) was established under the supervision of the State Council (the central government). The MPS was responsible for countersubversion, counterintelligence, surveillance, protection of economic and military installations, border patrol, management of "labor reform" camps, census registration, routine police administration, and investigation of criminal cases.

ORGANIZATIONAL STRUCTURE

Like all the political and economic systems in the People’s Republic of China, the current criminal justice system is highly centralized. Its four major components are placed under four different state ministries, with the police system under the supervision of the MPS, the procuratorate under the Supreme People’s Procuratorate, the court

under the Supreme People’s Court, and the correction division under the ministry of Justice (see Figure 13.1).
On October 15, 1949, the first National Public Security Conference decided on a centralized public security organization, and agencies were to be established at various levels (Figure 13.2). Security systems were also set up within the military, government agencies, schools,

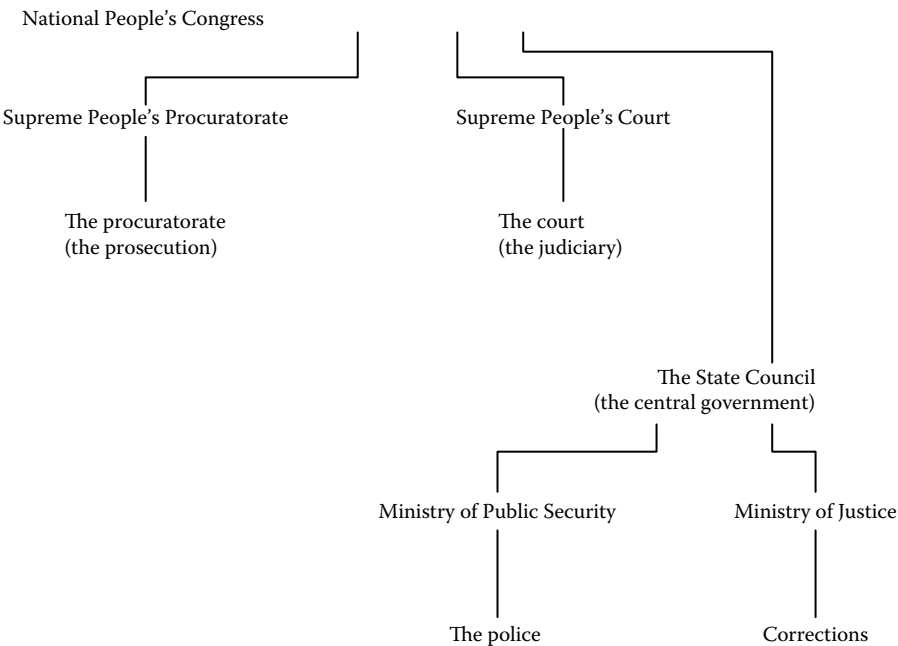


FIGURE 13.1 Overall criminal justice system in China.

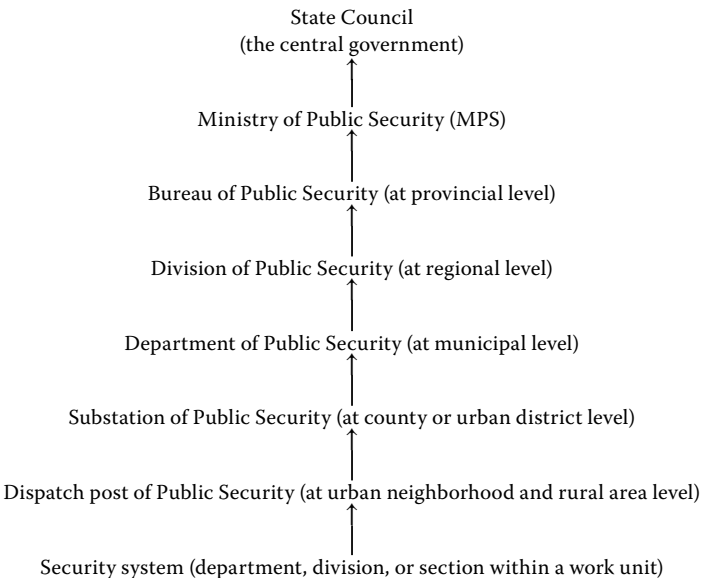


FIGURE 13.2 Vertical structure of public security organizations.

institutes, and factories. These agencies are responsible for the public security within these units and are auxiliary apparatus of local public security police system in China.

The ministries besides Public Security that have their own public security systems are the Ministry of Railway Transportation (MRT), Ministry of Forestry (MF), Ministry of Transportation (MT), Air Administration (AD), and Ministry of Defense (MD) (Figure 13.3). These police forces are responsible for public security within their respective jurisdictions.²

Unlike the decentralized police forces in the United States, various security institutions in China follow a “dual supervision system.” Each police agency is supervised by higher police agencies that reside under the jurisdiction of the MPS, which is in turn subordinate to the government (Figure 13.2). All public security agencies are armed forces and are charged with keeping public order in society.

Ministry of Public Security – Regular Police and Armed Police
 Ministry of Railroads – Railway Police
 Ministry of Forestry – Forest Police
 Ministry of Transportation – Maritime Police
 Air Administration – Airport Police
 Ministry of Defense – Military Police

FIGURE 13.3 Vertical organizational structure of Chinese public security.

The MPS, the highest police agency in China, is under the direct leadership of State Council. Its major functions are to provide police directions and coordinate criminal investigations that include more than one provincial jurisdiction. Within the Ministry there are 13 bureaus and also several supporting bureaus such as the General Office, the Personnel Administration Department, and the International Cooperation Bureau. In addition, the Ministry runs three police universities and three research institutes. Figure 13.4 shows the organization of the MPS.

The major functions of the police bureau at the provincial levels are (1) to handle major or heinous crimes occurring within that province, (2) to conduct forensic/criminalistic analysis of the evidence submitted by the local police stations, and (3) to provide professional supervision for the local police agencies.

At the municipal level, Chinese police departments have greater similarity to Western police departments than is generally the case otherwise.

In urban areas, local police district stations and local neighborhood police stations (dispatch posts) are grass-roots agencies and carry the bulk of policing work, conducting criminal investigations, maintaining public order, administering census registration, managing special trades, controlling criminal activities, and doing routine patrols. We illustrate with two examples of local police agencies.

The General Office
 The Personnel Administration
 The International Cooperation Bureau
 The Headquarters of People's Armed Police
 Bureau 1: Special Investigation (International Crime)
 Bureau 2: Traffic Control
 Bureau 3: Public Order (Public Safety)
 Bureau 4: Preliminary Hearing (Interrogation and Questioning)
 Bureau 5: Criminal Investigation (Murder, Armed Robbery, Rape, and National Central Bureau of INTERPOL)
 Bureau 6: Interior Guard (Protection of State Leaders and Foreign VIPs)
 Bureau 7: Residence Registration (Household Administration)
 Bureau 8: Border Control (Border Patrol, Border Check)
 Bureau 9: Education and Training
 Bureau 10: Firefighting and Prevention
 Bureau 11: Technical Investigation (Surveillance)
 Bureau 12: Scientific and Technological Development
 Bureau 13: Comprehensive Affairs (Budget, Finance, Supply, and General Service)
 Public Security University (Beijing)
 Police Officers (Beijing)
 Criminal Police College of China (Shenyang)
 The First Research Institute (Police Equipment)
 The Second Research Institute (Forensic Science and Criminalistics)
 The Third Research Institute (Police System and Organization)

FIGURE 13.4 Organization of the Ministry of Public Security.

Yan'an Zhoungh Lu police substation in Shanghai is considered a medium-sized agency. Its jurisdiction covers an area of 1.7 km² and includes 14,500 households and 50,700 residents. There are 34 police officers and 4 supervisors in the agency whose average age is 31 years. They are not usually armed, but carry electric prods when necessary. The agency investigated 23 reported criminal incidents in 1983 and 22 incidents in 1984. Eighty percent of these cases were solved (Allen 1987).

The Keiko Road police station in northwest Jianan is an example of the People's Republic of China (PRC) effort to integrate law enforcement within the community. The neighborhood has 11 households, 27,000 residents, and some 60 factories and schools. The police station is a two-story, gray stucco building divided into a number of offices, and the number of staff (as usual) is small. The 15 members include the director, deputy director, two office workers, and 11 policemen, each policeman managing household registration in one district (Johnson 1983).

Within both large and small public security organizations down to the substation level, division of labor tends to be clear and fixed, as arranged half a century ago. Each separate responsibility falls within a specific unit, and certain tasks are designated for each unit. Generally speaking, there are 12 units in each public security agency: security for political affairs, criminal investigation, preliminary interrogation, security for economic and cultural affairs, public order, firefighting, security guards, reform through labor, reform through education, and armed police (Figure 13.5).

If we could say that the police district station or substation is the first level, where there is some degree of specialization, the neighborhood police station is like a general management office for all community affairs (Chang 1984). It emphasizes "educating the masses," which includes crime-prevention efforts, classes on various aspects of the law, and working with juveniles and work groups to develop better lines of communication

between the police and the people (Ward 1985). All the police officers at the neighborhood station levels are called census registration police, although in practice there is some division of labor.

TYPES OF POLICE FORCES

As of 2012, China has a total strength of 2 million police men and women, and 800,000 of them are employed in its internal security units (Hays 2012).

There are seven major types of police with different functions within the system: criminal police, public order police, census registration (residence/household registration), police, traffic police, foreign affairs police, firefighting police, and armed police. All are under the leadership of the MPS, are housed within one police agency, and are designed to cooperate with each other. The five additional security agencies governed by different ministries work side by side with the regular police force (Figure 13.6).

The criminal police force is the system's backbone agency. Its major tasks include on-scene response, collection of evidence, investigation of major crimes (murder, robbery, rape, arson, etc.), conduct of criminalistic laboratory analyses, arresting of criminals, testifying at court, and enforcing sentences imposed by the courts. The subdivision within the criminal police force conducting criminalistic analyses is called criminal examiners; the rest are referred to as criminal investigators. The criminal examiners are subdivided further into those specializing in forensic medicine, forensic chemistry, physical evidence, and examination of disputed documents.

Census registration police are responsible for compiling statistics on population growth and movement. Every Chinese must register with a census police officer, and authorization must be obtained from the local census registration police station before anyone can move out of an

Unit 1	Unit 2	Unit 3	Unit 4	
Security political affairs	Criminal investigation	Preliminary hearing	Security for economic and cultural affairs	
Unit 5	Unit 6	Unit 7	Unit 8	Unit 9
Public order	Firefighting	Household registration	Security guard	Border patrol
Unit 10	Unit 11	Unit 12		
Reform through labor	Reform through education	Armed police		

FIGURE 13.5 Internal structure of the police department.

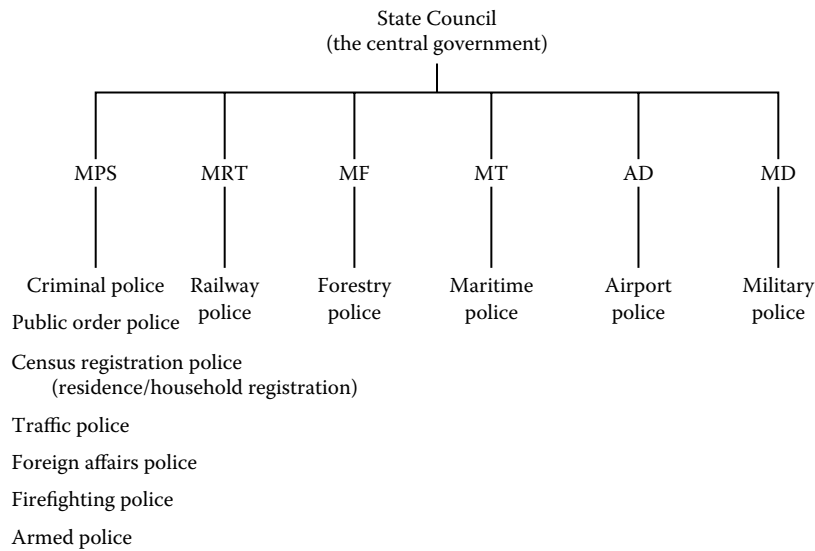


FIGURE 13.6 Administration of police force.

old residence or into a new one. All births and deaths in the jurisdiction are recorded at the police station. Finally, census registration police are also responsible for supervising probationers and parolees.

Traffic police primarily patrol the highways and maintain an orderly flow of automotive and pedestrian traffic in urban areas. There is a police booth (post) at almost every major street intersection where one or two traffic officers are on duty and one or two more direct traffic at the center of the street crossing.

Public order police generally oversee special trades, dangerous goods, and public places. Moreover, they concentrate on preventing, controlling, and handling crimes; act on violations of public order; and deal with disastrous accidents. In China, professions whose workers could provide tools for crime are regarded as special trades. A smith's shop, for instance, can produce a key for illegal entry, and a seal or stamp shop can forge seals or stamps for illegal use. Therefore, people working in these professions are required to report to the police if they discover that somebody has made a suspicious request. In terms of dangerous goods, public order police control certain sorts of equipment and poisonous drugs and medicines. Guns and ammunition are strictly forbidden to individual use. Opium, morphine, and heroin are prohibited save with doctor's permission. Public order police also routinely patrol public places: railway stations, long-distance bus stations, parks, shopping centers, free markets, and certain "busy areas"—that is, prostitution or gambling

areas. Finally, public order police keep close working relations with hotels, motels, theaters, and pawn shops to detect any criminal or criminal activities.

Foreign affairs police work only at the municipal level, handling crimes and other incidents involving foreigners. Moreover, foreign affairs police examine and approve all applications for going abroad, either for study or for short visits (official and nonofficial). Finally, foreign affairs police issue passports to those who have obtained approval for going abroad.

The people's armed police force was established in the early 1950s but was abolished in the mid-1960s. In 1983, as a result of the post-Mao Tse-Tung disarmament, one million military soldiers were converted into an armed police force, thus reestablishing the armed police. This special police force has its own headquarters within the MPS and constitutes a special subsystem within the regular police force at various levels. Some regular police tasks have been transferred to the armed police, including border patrol and the guarding of major governmental and party institutions, foreign embassies, key installations (major bridges and tunnels, power and utility centers), airports, and ports. In recent years, antiterrorist duties have been added to armed police activities. Overall, armed police are housed only in provincial police agencies and in urban districts.

Firefighting police and armed police differ from the rest of the police in being not professional but obligatory. Their service resembles that of a soldier in the military and

is paid accordingly. In 1988, the armed police started their own military-style ranking system: lieutenant general, major general, senior colonel, colonel, lieutenant colonel, major, captain, first lieutenant, and second lieutenant.

FUNCTIONS OF THE POLICE IN THE JUDICIAL PROCESS

According to Chinese criminal procedure law, there are several important functions carried out by the police.

The first function is registration of criminal cases. A criminal case is registered when the police department (and court and procuratorate) examine denunciations, which inform them that a crime has been committed. The department also registers a criminal case when information is presented by those who surrender themselves to the law, confessing that they have committed a criminal act. A criminal case is formally registered only when the police department believes that it is necessary to hold the accused criminally responsible for the offense.

The second function is investigation. During this stage, the police agency conducts search and seizure, collects evidence, and handles criminal investigation. Except in emergency situations, police wishing to search must show the suspect a search warrant (*Criminal Law* 1984, pp. 125–128). Finally, if they believe that the accused should be held criminally liable, the police draft a request for an arrest. This request, together with all relevant materials, is forwarded to the procuratorate, which can issue a warrant for arrest. The police must obtain an arrest warrant from the procuratorate before carrying out an apprehension or making an arrest (Leng 1982). Only police agencies may execute arrests.

Persons under suspicion of having committed crimes may also be detained by the police for questioning before issue of an arrest warrant. Either in arrest or in detention situation, the family of the detainee or the arrestee should be notified within 24 hours of the time the arrest was made of the reasons for the arrest and the confinement. Interrogation must start within 24 hours after detention or arrest.³ The detainee or the arrested party must be released without delay if no legitimate grounds for concern are established by the police. When the police department deems it necessary to declare a detainee arrested, the case is submitted to the procuratorate for approval within 3 days or, in special circumstances, 7 days. The procuratorate must either approve the arrest or order a release of the detainee within 3 days (Article 38–52).

The third function of the police in the judicial process is to conduct preliminary judicial hearings for persons arrested or detained according to law. Such a hearing

continues investigatory work and includes examination and interrogation of criminals before they are brought to court for trial (Du and Zhang 1990, p. 133). According to the law, during the preliminary hearings, the police should gather all the facts surrounding the defendant's behavior and the relationships between the defendant and any other criminals in the case. The police must insist on the principle of seeking truth from facts, relying on evidence and investigation, and must refrain from extorting confessions by torture, threat, enticement, or deceit of any other illegal nature (Article 32).

The fourth function is to file a "memorandum of indictment" to the procuratorate for further examination. The procuratorate examines the materials submitted by the police agency. On finding the facts of the crime clear and evidence sufficient to hold the accused responsible for the crime, the procuratorate files an indictment against the accused. The case is then held over for trial by the court. The procuratorate must decide whether or not to prosecute a case within 1–1.5 months (Article 97).

FUNCTIONS OF THE POLICE IN THE SOCIAL ARENA

Besides their judicial functions in the legal process, the police in China are also mandated by law to play an important administrative role in crime prevention and social control.

According to the Security Administrative Punishment Act,⁴ there are three types of sanctions that the police can implement in dealing with minor crimes or public order offenses (prostitution, drugs, and gambling) without reference to the procuratorate, the court, and corrections. First, the police agency at the neighborhood level can issue a warning to a minor criminal offender. Second, the police agency from urban district level and above can order a fine up to 400 yuan (\$63.36) and a detention at the police station (up to 15 days). However, a dissatisfied defendant has the right to make an appeal to a police agency at the next level up and ultimately to a court that is under the supervision of the Ministry of Justice and not the MPS. If the individual wins the appellate case, the police agency and the police officer(s) concerned have to apologize to the victim and compensate him or her for any damages.

Reform-through-education⁵ is another administrative sanction that police agencies at the urban district level and above can employ in dealing with "anti-societal" behaviors. The police do not need to ask the procuratorate or the court for any approval, but do need to consult with the public security committee⁶ in the defendant's

neighborhood. The language of this legislation somewhat resembles that of the old vagrancy laws in England and the United States. Both the Security Administrative Punishment Act and the Decision of the State Council Relating to Problems of Reform through Education require sanctions to be imposed on the following:

[T]hose who do not engage in productive labor and those who behave like hooligans, ... those who receive the sanction of expulsion from an organ, organization, enterprise, school ... and who are without a way of earning a livelihood, ... those persons who have the capacity to labor, but who for a long period refuse to labor or who destroy discipline, ... those who do not obey work assignments or arrangements for getting them employment or for transferring them to other employment ...” (English translation in Cohen 1968, pp. 249–250).

The purpose of this sanction is twofold. First, it brings reeducation and moral reform to an unproductive person. Second, it forces the person to do compulsory labor. Before an offender is treated, the source of his or her problem with the law must be determined. Generally, it is either as a result of ignorance of the law, in which case the offender needs reform through legal education, or the offender is too lazy to work, in which case he or she needs reform through labor.

Commonly a local neighborhood, school, work unit, or family may report to the police that somebody fits the definition of an “unproductive person.” If the police and the local neighborhood committee agree after a review of a case, they make recommendations. Next, the case is sent to a District Reform through Labor Committee that consists of representatives from the police, civil affairs, and labor officials. The committee can decide to send the person to a labor farm for a period of 1–3 years. The basic programs on the labor farm usually consist of agricultural labor, physical training, skill training, academic education, and political education. It is believed that such administrative sanctions could help an “unproductive person” to learn job skills and learn to labor.

DYNAMICS OF THE SYSTEM

“Following the Mass Line” was a slogan that directed police work from the early 1950s to the early 1980s. Ideally, this strategy is to call on the police to respect the people’s opinion, to experience the people’s lives, and accept the people’s supervision. However, the police officials are the ones who finally define what the masses want in the field of public security (Bracey 1989).

In 1984, a new “Comprehensive Approach” was outlined, containing the following seven major objectives:

1. To call on society to show concern for the youth and further educate them in lofty ideals, moral codes, discipline, and legality;
2. To promote mass participation in cultural and sporting activities and enrich young people’s lives in the leisure hours;
3. To clear away all pornographic publications and objects;
4. To punish severely abettors who lead young people astray;
5. To accomplish good school education and reduce the number of dropouts;
6. To make use of retired officials, workers, and teachers and encourage them to help and educate delinquents; and
7. To expedite the formation of a law for protecting the youth (Jiang and Dai 1990).

In essence, this new program is to organize all possible social forces to educate the young people and to promote a good social order. Since 1984, the police agencies at various levels have asked the members of public security committees to join the police in patrol and have organized them to do so. Public security committees are similar to the Neighborhood Watch or Guardian Angels programs in the United States. As of 1991, there were 1.7 million public security committees with 12 million members throughout China (Jiang and Dai 1990).

Furthermore, the police also assist larger work in setting up civilian security forces (economic police) in big factories, mines, companies, and hotels. These economic police forces are quite similar to private security forces in the United States: they have their own uniforms; they are responsible for security and prevention of offenses such as theft and assault only within the work unit; and they are under direct supervision of the leadership of the work unit. In China, however, the economic police must report to the local police agency on their security work. Essentially, this program emphasizes partnership between the society and the police force to control crime and preserve social order.

Mass education is another strategy used in the Comprehensive Approach. According to Confucianism, human beings are born with the capability of developing a good nature through proper education and training. Moreover, all behavior results from an individual’s ideology (values, morals, or viewpoints). The individual’s

ideology is shaped and influenced by social environment, including education. Deviant behavior also develops gradually over time. Therefore, reinforcing early education, intervention, and rehabilitation will, as they say, “nip crime in the bud.”

For this reason, police and local governments in China constantly launch massive campaigns of legal education. Legal education is expected to fulfill two purposes. First, it can shape mass legal thoughts (awareness) about what is right and what is wrong. Second, it warns lawbreakers of the possible consequences of deviant behavior. The legal education takes various forms. The police agency may take to the streets to deliver speeches on laws, may offer legal courses in schools, or may help the court to organize a public trial of a defendant in his or her own work unit.

When mass mobilization and mass education fail in the persuasive functions, punitive measures are necessary to crack down on serious crimes. This is the third important component of the Chinese comprehensive program. The police authorities often relate the sudden increase in crime rates between 1981 and 1983 to an overemphasis on education and persuasion. Punishment and deterrence still have an important role in crime prevention. The “Anti-Crime Campaign” of 1983–1984 and the “Anti-Six Evils Campaign” of 1988–1989 directly resulted from this punitive principle. The second campaign focused on six new types of crimes: (1) prostitution; (2) producing, selling, and spreading pornographic objects; (3) kidnapping women and children; (4) planting, gathering, and trafficking in drugs without permission; (5) gambling; and (6) defrauding people of their money by superstition.

Chinese police officers believe that such law enforcement functions must supplement mass mobilization and mass education to improve social order.

The “Comprehensive Approach” brought crime under control by 1988 (see Tables 13.1 and 13.2). However, after 1988, the crime rate rose again, due in part to a rapid increase in juvenile offenses. According to official data, the conviction rate in 1989 was 36% above that of 1988. Major Chinese crime statistics from 1981 to 1987 are listed in Tables 13.1 and 13.2.

From the late 1980s onward, regular patrol emerged as a new direction in police strategy. Contrary to trends in the United States toward community policing, the police in China are switching from “people’s policing” to formal patrolling. There are several reasons for this new direction. First, as the economic reform gathers strength, more and more small private businesses are set up in urban areas. Thus, security and protection require immediate attention. Second, more and more young farmers are moving to urban areas for employment. This new transient population tends to be without permanent residence: therefore, the traditional neighborhood police cannot deal effectively with this new social element. Third, the degree of seriousness of crime has escalated: although nonviolent crimes such as theft or larceny have decreased, violent crimes such as robbery, armed robbery, rape, and murder have burgeoned. The police as well as the public are beginning to question the effectiveness of community policing. Finally, as China becomes a more open society, the traditional culture of collectiveness is being challenged (Wang 1993). This means that the number of people

TABLE 13.1
National Crimes Recorded by Public Security in the People’s Republic of China

Crimes	1981	1982	1983 ^a	1984	1985	1986	1987
Homicide	9,567	9,324	—	9,021	10,440	11,510	13,154
Assault	21,499	20,298	—	14,526	15,586	18,364	21,727
Robbery	22,266	16,518	—	7,237	8,801	12,124	18,775
Rape	30,808	35,361	—	44,630	37,712	39,121	37,225
Larceny	743,105	609,481	—	395,319	431,323	425,845	435,235
(Grand)	(16,147)	(15,462)	—	(16,340)	(34,643)	(42,192)	(58,661)
Fraud	18,665	17,707	—	13,479	13,157	14,663	14,693
Counterfeit	1,649	1,763	—	707	491	497	436
Other	41,424	38,024	—	29,414	24,495	25,001	29,630
Total	890,261	748,476	610,478	514,369	542,002	547,115	570,439

Source: Law Yearbook of China.

^a No official crime data available for 1983.

TABLE 13.2
Rates of Crime in People's Republic of China

Crimes	1981	1982	1983 ^a	1984	1985	1986	1987
Homicide	0.96	0.92	—	0.88	1.00	2.10	2.31
Assault	2.16	2.01	—	1.41	1.50	3.36	3.81
Robbery	2.24	1.63	—	0.71	0.86	2.22	3.29
Rape	3.09	3.50	—	4.33	3.62	7.15	6.53
Larceny	74.72	60.21	—	38.36	41.43	77.83	76.30
Fraud	1.87	1.75	—	1.31	1.26	2.68	2.58
Counterfeit	0.17	0.17	—	0.07	0.05	0.09	0.08
Other	89.37	14.02	59.81	49.91	52.06	51.41	54.10
Clearance rate	73.1%	77.4%	—	76.9%	78.8%	79.2%	81.3%

Source: Law Yearbook of China.

^a No official crime data available for 1983.

interested in voluntary or low-paying public participation has decreased sharply (Fu 1991).

Since the late 1980s, police patrol of the big cities, such as Beijing, Shanghai, Tianjin, Guanzhong, Shenyang, and Xian, has increased because of social, economic, and cultural changes and the concomitant public pressure for more police protection, professionalism, and visibility.

The police in China, like those in other countries, tend to be satisfied with the status quo, completely supportive of the government, and somewhat resistant to change (Ward 1985). The most common complaints and criticisms against Chinese police are corruption, brutality, and too much discretion (Ma 1986; Seymour 1987; Townsend 1987; Fu 1991). Recently, some efforts have been made to improve the situation.

CONCLUSION

The police system in China is the social product of the country's political and economic systems. Its nature and functions therefore must be analyzed in the Chinese social context.

The Chinese police operate under a highly centralized hierarchy with complex subdivisions. Unlike the police forces in Western societies, the Chinese police play important roles both in legal process and in the social area; it is the social (administrative) functions that have enabled police to achieve a unique social control in Chinese society. Police in China and in the United States use very different approaches, especially in terms of roles, scope of police power, and police discretion in both the legal and the social arenas. However, as political and

economic reforms strengthen, the police system in China is facing its new challenges, including control of illegal police power, overprofessionalism, and waning public support.

NOTES

1. The author expresses sincere thanks to Professor Robert Davidson of the Justice Studies Program at Northern Michigan University for his valuable comments and suggestions. Professor Davidson has visited China twice with the Office of International Criminal Justice Delegations.
2. The security system within the military differs from public security in that the military security personnel wear military uniforms, not regular police uniforms. The military also has its own prosecution and court system defendants who commit crimes within military jurisdiction and/or crimes involving military secrets.
3. The difference between "detention" and "arrest" is as follows: detention is the emergency apprehension and confinement of a suspect without an arrest warrant for the purpose of investigating whether there is sufficient evidence to justify arrest. Arrest is apprehension and confinement of a suspect on the basis of an arrest warrant for the purpose of investigation and to determine whether there is sufficient evidence to justify prosecution (Leng 1982).
4. This Act was originally passed in 1957, then republished in 1980, and amended in 1987.

5. Reform-through-education and reform-through-labor are two different types of punishment. The former is an administrative sanction determined by the police agency at the urban district level and above, whereas the latter is a formal judicial punishment levied by the court.
6. The Public Security Committee and the Medication Committee are two major components in a neighborhood committee. Most members are retired workers, officials, teachers, or housewives. The members of the Public Security Committee patrol the neighborhood and report to the local neighborhood police station when they find a suspicious person in the area (Bracey 1989, pp. 134–136).

REVIEW QUESTIONS

1. What are the duties of the MPS in the Chinese criminal justice system?
2. What are the four components of the Chinese criminal justice system?
3. What are the divisions of the MPS?
4. Local police district stations and local neighborhood police stations are China's grassroots agencies. Discuss.
5. What are the functions of the following:
 - a. Criminal police force
 - b. Criminal examiner
 - c. Public order police
 - d. People's armed police
6. Which agency issues arrest warrants in China?
7. What are the functions of the police in the judicial process?
8. What are the functions of the police in the social arena?
9. Compare and contrast police services in Great Britain and China.
10. What is meant by "Following the Mass Line"?
11. Compare and contrast public security committees in China and the Guardian Angels in the United States.
12. What are the six evils of the Chinese "Anti-Six Evils Campaign"?
13. What is the most influential traditional value system in China?
14. What are the most common complaints against the police in China?

15. Compare and contrast the role of the police in China and the United States.
16. What is the administrative difference between reform-through-education and reform-through-labor?

REFERENCES

- Allen, G. F. 1987. Where are we going in criminal justice? Some insights from the Chinese criminal justice system. *International Journal of Offender Therapy and Comparative Criminology* 31: 101–109.
- Bracey, D. 1989. Community crime prevention in the People's Republic of China. *The Key* 10: 3–10.
- Chang, D. H. 1984. Government and crime control in China: Its relevance to U. S. criminal justice. *International of Comparative and Applied Criminal Justice* 2: 94–111.
- Cohen, J. A. 1968. *The criminal process in the People's Republic of China, 1948–1953*. Cambridge, MA: Harvard University Press.
- Criminal law and criminal procedure law of China*. 1984. Beijing: Foreign Language Press.
- Du, X., and L. Zhang. 1990. *China's legal system: A general survey*. Beijing: New World Press.
- Fu, H. 1991. Police accountability: The case of the People's Republic of China. *Police Studies* 14: 40–49.
- Hays, J. 2012. China. Retrieved from <http://factsanddetails.com/china.php>
- Jiang, B., and Y. Dai. 1990. Mobilize all possible social forces to strengthen public security—A must for crime prevention. *Police Studies: The International Review of Police Development* 2: 1–9.
- Johnson, E. H. 1983. Neighborhood and the police: The People's Republic of China. *International Journal of Comparative and Applied Criminal Justice* 7: 209–215.
- Leng, S. 1982. Criminal justice in post-Mao China: Some preliminary observations. *The Journal of Criminal Law and Criminology* 73: 204–237.
- Ma, S. K. 1986. Reform corruption: A discussion on China's recent development. *Pacific Affairs* 58(4): 129–136.
- Richelson, J. T. 1988. *Foreign intelligence organization*. Cambridge, MA: Ballinger Press Co.
- Seymour, J. D. 1987. Cadres accountability and law. *Australia Journal of Chinese Affairs* 3: 95–107.
- Townsend, D. E. 1987. The concept of law in post-Mao China: A case study of economic crime. *Stanford Journal of International Law* 23: 73–92.
- Wang, Z. 1993. Some new crime trends in China: Their impact on the United States police studies. *The Review of Police Development* 17: 12–23.
- Ward, R. 1985. The police in China. *Justice Quarterly* 2: 111–115.

Section V

The Judiciary and International Tribunals

14 World Courts of Justice of the United Nations

Obi N. I. Ebbe

CONTENTS

Introduction.....	186
International Court of Justice.....	187
International Military Tribunal.....	187
The Post–World War II Criminal Trials: Nuremberg.....	187
The Criminals of the Nuremberg Trial.....	187
Crimes Charged at the Nuremberg Trial.....	188
International Military Tribunal for the Far East (IMTFE).....	188
Judges of the Tokyo Tribunal.....	188
Crimes Charged at Tokyo War Crimes Tribunal.....	188
The Japanese Defense.....	188
Judgment and Sentencing.....	188
Sentencing.....	188
International Criminal Tribunals.....	189
Introduction.....	189
Remote Causes of Yugoslavia Conflict.....	189
International Criminal Tribunal for the Former Yugoslavia.....	190
ICTY Organizational Structure.....	190
Chambers.....	190
Judges of the ICTY.....	190
Prosecutor.....	190
Registry.....	190
Detention Center for ICTY.....	190
Indictments.....	190
Crimes Charged at the ICTY.....	191
Judgment and Sentencing.....	191
The Relevance of ICTY.....	191
International Criminal Tribunal for Rwanda (ICTR).....	191
The Immediate Cause of Rwandan Genocide.....	191
The Emergence of International Criminal Tribunal for Rwanda.....	192
Purpose of ICTR.....	192
The Structure of ICTR.....	192
Office of the Prosecutor.....	192
The Registry.....	192
Headquarters of the ICTR.....	192
Jurisdiction of ICTR.....	192
Defendants at ICTR.....	193
ICTR Detention and Prison System.....	193
The Relevance of ICTR.....	193

The Emergence of the International Criminal Court	193
Introduction	193
Origins and Development of the International Criminal Court	193
Signatories to ICC	194
The Purpose, Statute, and Ratification of ICC	194
Jurisdiction of the ICC	194
Genocide	195
Crime Against Humanity	195
War Crimes	195
Crimes of Aggression (Crimes against Peace)	196
Limitations and Autonomy of the ICC	196
How Cases Reach the ICC	196
Judges of the ICC: Composition, Qualification, and Selection	197
Prosecutor of the ICC	197
Defendant(s)	197
Standard of Proof	197
Registrar of the ICC	197
Discussion and Conclusion	197
Notes	198
Review Questions	198
References	199

INTRODUCTION

“No independent states, large or small, shall come under the domination of another state by inheritance, exchange, purchase, or donation.” Immanuel Kant 1795

Why “World Courts of Justice”? Every sovereign nation or traditional society has a court or courts of justice. But, why should the whole world have a court of justice? Well, the world of the medieval period to the modern times, of 1453 to the 1800s was a world of one society against another. It was like Thomas Hobbes’s (1588–1679) “war of all against all.” The Western European countries were engulfed in empire-building. Great Britain, France, Spain, Portugal, Germany, Belgium, the Netherlands, etc. invaded kingdoms and autonomous nations in Africa, Asia, the Middle East, South and North America, the Oceanic Islands, and Australasia, conquered, dominated, exploited, and expropriated them. The consequent partition of the African continent is a living testimony. In today’s world, all of those unprovoked invasions of nations would tantamount to acts of terrorism, crimes against humanity, genocide in some cases, violations of human rights, and wars of aggression, which are all violations of international criminal law (see Chapter 2).

Some of the seventeenth- and eighteenth-century social and moral philosophers, such as Immanuel Kant (1724–1804), saw the world as going to be in a deeper mess than it was in their time, if there was no system of global peaceful

community. As far back as 1795, in one of his great writings (*Perpetual Peace: A Philosophical Sketch*), Kant—like a prophet—prescribed “the establishment of a peaceful world community” (Kant 1795). It was not long until 1914, when the Central Powers—Germany, Austria-Hungary, and so on—engaged in what came to be known as the World War I (1914–1918). At the end of the war, there had to be a mutual agreement not to wage any more wars. An attempt to end the war gave rise to the League of Nations.

Before the League of Nations, Kant had warned the world leaders of his time thus, “no treaty of peace shall be held valid which there is tacitly reserved matter for a future war.” This warning was violated in the League of Nations. The major purpose of the League of Nations, referred to as the Paris Peace Conference, was to prevent wars through negotiation and arbitration.

Consequently, the League of Nations established a Permanent Court of International Justice in 1922 to deal with conflicts between its member states. But, the League of Nations could not deal with violations of its covenants by powerful European nations. It could only deal with violations by poor weak countries. Besides, the League did not have its own military force and did not provide in its covenant how the member states should provide such a military enforcement. In effect, some key members of the League withdrew their membership because the League could not do anything before, and when, Italy invaded Abyssinia (now Ethiopia).

Additionally, the League could not prevent the World War II. As noted in Chapter 11, Germany attacked Austria in 1928 and annexed it, and the League showed itself as being weaker than a toothless bulldog. Consequently, in 1939, Adolf Hitler set the World War II in motion. At the end of World War II, in 1945, victorious Allies determined that there will be no more World Wars. They dismantled the League of Nations and set up the United Nations (UN) at a conference in San Francisco, California (United States) in 1945 to promote world peace and security, maintain treaty obligations, respect the dictates of international law, and cooperate in furthering social progress.

INTERNATIONAL COURT OF JUSTICE

The UN inherited some of the agencies of the League of Nations, such as the International Labor Organization, World Health Organization, the Permanent Court of International Justice (PCIJ), etc. In 1945, the UN dismantled the Permanent Court of International Justice and set up the International Court of Justice (ICJ) by a statute. The statute of the ICJ is annexed to the UN Charter. In other words, the ICJ is an integral part of the UN Charter. The ICJ is one of the six principal organs of the UN. And, the ICJ is the only one of the six principal organs not located in New York. This court is not a criminal court. It is a civil court. It is a court for settling disputes between member states of the UN if both parties agree to bring their case to the court.

Since the ICJ is not a criminal court, I will not go into detail about the structure, operations, and procedures of the court. However, to satisfy the curiosity of some students and scholars, I will address the composition of the court.

The court is composed of 15 highly qualified judges. They are elected by the General Assembly of the UN and the Security Council from a list provided by the Secretary General of the UN. The list is compiled by the Registrar of the ICJ, based on nominations from member states of their most qualified judges. Both the General Assembly and the Security Council hold their elections independent of each other. Two persons from the same country cannot serve in the court at the same period. If it happens that the General Assembly elects one judge from Japan, for example, and the Security Council elects another Japanese judge from the list, only the older of the two Japanese will serve and the other is dropped.

The decision of the ICJ judges is based on majority opinion. There is no appeal to any other court, because

the parties agree to accept the decision of the court prior to bringing the case to the court.

The ICJ is presented here because it is the precursor of all of the international criminal courts or tribunals.

INTERNATIONAL MILITARY TRIBUNAL

The International Military Tribunal (IMT) is a product of the World War II. Long before the war ended, the leaders of the United States, Great Britain, and the Soviet Union, infuriated about the ruthless genocidal murder of European Jews and the torture and murder of Allied prisoners of war, announced in unequivocal terms that they were going to prosecute those who engineered the World War II for crimes against humanity and war of aggression. They came to a conclusion to hold an IMT.

The leaders of the Allied forces—President Franklin D. Roosevelt (United States), Prime Minister Winston Churchill (Great Britain), and Josef Stalin (Soviet Union)—signed an agreement in 1943, called the Moscow Declaration, during an armistice that those found to be responsible for war crimes would be sent back to the country where they committed the offense and tried according to the laws of that country. Additionally, major war criminals whose crimes could not be pinned to any particular country would be tried and punished, based on a joint decision of the Allied governments (USHMM 2012).

THE POST-WORLD WAR II CRIMINAL TRIALS: NUREMBERG

There were two major IMTs at the end of the World War II. The first was the IMT at Nuremberg, Germany, which began on November 20, 1945, about six and half months after Nazi Germany surrendered to the Allied forces.

The IMT at Nuremberg was a set up by the four Allied nations—the United States, Great Britain, the Soviet Union, and France. Each of the four countries supplied a judge and an alternate, and a prosecution team. The presiding judge was Colonel Lord Justice Geoffrey Lawrence of Great Britain. Four languages (English, French, German, and Russian) were used simultaneously in the trial proceedings (USHMM 2012). Most of the attorneys for the defendants were German lawyers (Davidson 1997).

THE CRIMINALS OF THE NUREMBERG TRIAL

The offenders charged at the Nuremberg trial were those considered to be the masterminds of the World War II. There were 24 of them. Only 21 appeared before the

tribunal because Adolf Hitler, Heinrich Himmler, and Joseph Goebbels had committed suicide prior to the end of the War.

On the whole, about 200 Nazi war-crime defendants were tried in Bavaria, Nuremberg, and 1600 others, who received lesser charges than the Nuremberg offenders, were tried in other locations. Leipzig, Munich, and Luxembourg were among the other locations (Overy 2001).

CRIMES CHARGED AT THE NUREMBERG TRIAL

The Nazi defendants were charged with genocide, war crimes, crimes against peace, and crimes against humanity. The Nuremberg Tribunal defined crimes against humanity as “murder extermination, enslavement, deportation, or persecutions on political, racial, or religious grounds” (MacLeod 2010; Biddiss 1995; Utley 1948). Some of the Nuremberg war crime defendants were convicted. Some received the death penalty; some life imprisonment; and others were discharged and acquitted.

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST (IMTFE)

The second IMT after the World War II was the Tokyo Crimes Tribunal, which is also known as the IMTFE. This tribunal was set up on April 29, 1946, to try the leaders of Japan for war crimes. The Japanese World War II leaders, who were suspected of war crimes, were divided into three categories—Class A, Class B, and Class C. Class A crimes are charged to those who were privy to a joint conspiracy to wage the war and were in the highest decision-making echelon. Class B crimes were for those who committed heinous crimes, such as crimes against humanity. And Class C crimes were for those who engaged in organizing and executing the war plan or failed to prevent the war.

In the Class A crimes were 28 Japanese military men and political leaders, while more than 5700 Japanese were charged in Class B and C crimes. Most of Class B and C offenders were involved in the ruthless abuse of war prisoners (Minear 1971; Horowitz 1950; Roling and Ruter 1977).

JUDGES OF THE TOKYO TRIBUNAL

There were 11 judges, one each from United Kingdom, Australia, Canada, British India, New Zealand, Republic of China, the provisional government of the French Republic, the Kingdom of the Netherlands, Philippines, and the USSR, and two from the United States. Also,

there were 11 prosecutors from the countries who served as judges. The chief prosecutor was Joseph Keenan of the United States, who was appointed by President Harry S. Truman (Maya 2001; Piccigallo 1979; Sherman 2001).

CRIMES CHARGED AT TOKYO WAR CRIMES TRIBUNAL

The defendants were charged with conventional war crimes, crimes against peace, and crimes against humanity. The trial lasted over two and a half years, because there were hundreds of witnesses and thousands of exhibits of evidence introduced in court. The Japanese suspects were further charged with depraved heart murdering, the maiming and ill-treatment of prisoners of war; subjecting internees to work under inhuman conditions, plundering public and private property, recklessly destroying towns and villages, inflicting mass murder, rape, pillage, brigandage, torture, and the barbaric destruction of populations (Minear 1971; Brackman 1987). The Japanese defendants could not escape the charges of waging unprovoked war against China, and waging aggressive wars against the United States, the British Commonwealth, the Netherlands, France (IndoChina), and the USSR.

THE JAPANESE DEFENSE

The Japanese defendants were represented by 75 Japanese lawyers and 25 American attorneys. While it took the prosecution 192 days to present their charges, it took the defense 225 days to complete their presentation (Minear 1971; Brackman 1987; Horowitz 1950; Piccigallo 1979).

JUDGMENT AND SENTENCING

It took the IMTFE six months to reach a decision and draft a 1781-page opinion. There was no counsel among the judges on how to deal with the Japanese defendants. Five of the eleven judges issued separate opinions. There were some who wanted clemency; and there were others who saw the tribunals as a non-neutral court; and some did not countenance the exclusion of Emperor Hirohito and his family from the criminal indictments.

SENTENCING

At the end, the majority of the judges' opinion prevailed. Eight of the Japanese defendants were given a death penalty for war crimes, crimes against humanity, and crimes against peace. They were two political leaders and six military commanders. Eighteen of the defendants were

sentenced to years of imprisonment to life. Unmistakably, a plea of clemency was granted in some cases in the Tokyo trial.

It must be noted that in the war crimes tribunal judgments, there was no appeal to any other court, because the victor is the judge in the case. War is like a ruthless tornado. It blows down everything on its path. War destroys lives and property on both the side of the victor and of the vanquished, and it also destroys the prior customary order and culture of both sides. In effect, the victor's partiality in dealing with the vanquished at the end of a war is inevitable.

INTERNATIONAL CRIMINAL TRIBUNALS

INTRODUCTION

We have learned above why and how the ICJ emerged and what led to the ad hoc IMTs at Nuremberg and Tokyo. We also learned above that the IMTs at Nuremberg and Tokyo emerged because of war crimes, crimes against humanity, crimes of aggression, and genocide during World War II. And after the offenders in that World War II were indicted, convicted, and punished, what happened to the offenders in wars that occurred from 1946 through 1989? There have been many wars, all over the world, since the end of World War II in 1945, such as the Indo-China war between France and Vietnam (1946–1954), the Vietnam War between the United States and Vietnam (1959–1975), the Franco-Algerian War (1946–1962), the Angolan War of Independence (the Portuguese government vs. nationalist Angolans, 1961–1975), the Eritrean War of Independence (1961–1991), the Eritrea-Ethiopia War (1968–2000), the Iran–Iraq War (1980–1988), the Salvadoran Civil War (1980–1992), the Soviet war in Afghanistan (1979–1988), the Nigeria-Biafra War (1967–1971), to name but a few. Why didn't the UN set up an IMT or an International Criminal Tribunal (ICT) to investigate atrocities committed by some people in those wars that were war crimes, crimes against humanity, crimes of aggression, and acts of genocide? For example, why the UN did not set up an IMT or an ICT after any one of the so many wars since the end of the World War II can be found in the Nigeria-Biafra War in which I was a commanding Army officer on the Biafran side.

Biafra seceded from Nigeria because of pogrom and acts of genocide that occurred throughout the north, west, and the southeast of Nigeria against an ethnic group, the Igbos, whom the British hated for agitating in favor of Nigerian independence. As a result of the pogrom and the massacre of Igbo men, women, and children in all corners

of Nigeria, the Igbos and the minority ethnic groups of eastern Nigeria seceded from Nigeria and formed the Republic of Biafra on May 30, 1967. On July 6, 1967, Nigeria attacked Biafra. In the war, Great Britain and the Soviet Union supplied Nigeria with jet fighters and bomber aircrafts, all kinds of tanks, and other weapons and ammunition. With the war planes, Nigeria bombed open-air civilian market squares, churches, refugee camps, and civilian village homes (Ebbe 2010). Were all of these not crimes against humanity? Were they not war crimes? The answer is, whenever the so-called big powers in the Security Council of the UN have special interests in a war, there is no need to investigate for atrocities committed in the war.

Why did the UN and the North Atlantic Treaty Organization (NATO) pay attention to the wars in the former Yugoslavian areas in 1990–1992? The answer is simple. The demise of the Soviet Union, which had held Yugoslavia as a communist ally; the federation of Yugoslavia is a reminder to the Allies of a communist economy and ideology and had to be dismantled as the ethnic groups thereon desired; the NATO members and their big powers in the Security Council saw better trade partners in a dismantled Yugoslavian federation; and the mass media sealed the Allies' intentions. Indeed, a German, Klaus Kinkel, Foreign Minister of Germany, originally came up with the idea of creating an ICT (Hazan 2004). For the powers in the UN Security Council, now was the time to establish the ICT, and it had to start with the wars in the former Yugoslavia.

REMOTE CAUSES OF YUGOSLAVIA CONFLICT

Adolf Hitler sowed the seed of future disintegration in Yugoslavia. In 1941, Hitler captured the Kingdom of Yugoslavia and divided the country among the Axis states (Lukic and Lynch 1996). Like the scramble for Africa in the eighteenth and nineteenth centuries, some ethnic groups in Yugoslavia were split into two and amalgamated with others. At the end of World War II, communist totalitarianism held them together. But, with the collapse of the Soviet Union, the newly independent states (NIS) of the Soviet empire began to emerge. For the Yugoslavian ethnic groups—Slovenia, Serbia, Croatia, Bosnia, and Herzegovina, etc.—the desire for self-determination and nationalism led to ethnic cleansing and acts of genocide. The Bosnian Serb Army pursued Bosnian Muslims and Bosnian Croats. Against them were crimes of murder, rape, sexual assault, unlawful confinement, torture, robbery, beating and hunting down political leaders, crushing intellectuals and professionals, illegal trafficking in

women and children, illegal deportation of civilians, illegal taking away of real personal property, destruction of homes and businesses, destruction of buildings of worship, and depraved heart genocide (Thackrah 2008).

The atrocities being committed in the areas of Yugoslavia drew international attention and coupled with similar events that had happened over the years, the UN finally decided to establish an ad hoc ICT for the prosecution of individuals responsible for serious violations of International Humanitarian Law. Such a tribunal had to start with the former Yugoslavia. The second of such a tribunal would be Rwanda.

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Given the events described above that took place in the former territories of Yugoslavia from 1991–1995, the UN Security Council passed Resolution 827 on May 25, 1993, to establish the International Criminal Tribunal for the Former Yugoslavia (ICTY) and gave it jurisdiction over the four classes of crimes committed in Yugoslavia since 1991, which are—grave breaches of the Geneva Conventions, crimes against humanity, genocide, and violations of the law or customs of war (Hazan 2004).

ICTY ORGANIZATIONAL STRUCTURE

The headquarters of ICTY is at the Hague, the Netherlands. It has a courtroom and detention facilities. While it started with 200 staff, its employees now number over 900 (ICTY 2012). ICTY is a part of the UN, and it is the first international court for criminal justice.

The tribunal has a president and a vice-president. At the ICTY headquarters are chambers, the court registry, and the office of the prosecutor.

CHAMBERS

Judges and their aides are based at the chambers. There are three trial chambers and one appeals chamber. Unlike the ICJ, the decisions of the International Criminal Tribunals can be appealed.

JUDGES OF THE ICTY

The UN General Assembly elects the judges of the ICTY. First of all, the UN member states each submit two nominees to the UN Secretary General. The UN Secretary General compiles a list and submits it to the UN Security Council. The Security Council selects 28–42 nominees

and submits those selected to the UN General Assembly, which elects 14 judges from the list (ICTY 2009b).

An ICTY judge can serve for four years and may stand for reelection. The UN Secretary General can appoint a replacement in case of emergency. Sixteen permanent judges and nine *ad litem* judges serve on the ICTY.

PROSECUTOR

The prosecutor is the head of the office of the prosecution division. The UN Secretary General nominates the prosecutor and submits the name of the candidate to the UN Security Council. The UN Security Council makes the appointment (UN Security Council 1993). He or she is responsible for investigating crimes, gathering evidence, and prosecuting the cases.

REGISTRY

This is the administrative division of the tribunal. It maintains court records. It is responsible for transporting and accommodating witnesses, translating court documents, taking care of public information section, payroll administration, personnel and procurement administration. Additionally, it takes care of the legal aid program and the detention unit for those indicted by the ICTY. The registry is headed by a registrar.

DETENTION CENTER FOR ICTY

The UN Detention Unit is on the Penitentiary Institution Haaglanden, Scheveningen, The Hague, the Netherlands, about four miles from the ICTY chambers. Those indicted are kept in private cells, which have a toilet, shower, radio, satellite TV, personal computer, etc., (no internet access). They have some social amenities and can telephone friends and relatives and can have family member visits. They can cook for themselves. Library, sports, and religious facilities are available. The inmates—enemies and friends—mix freely (Evans 2009).

INDICTMENTS

The first indictment of the ICTY was issued in 1994 against the Bosnian-Serb concentration camp commander Dragan Nikolic. The next were two indictments on February 13, 1995, against 21 Bosnian-Serbs charged with committing atrocities against Muslim and Croat civilian prisoners.

Dusko Tadic, a Bosnian-Serb, was the tribunal's first trial. He was arrested by the German police in 1994 in Munich for his alleged crimes in Omarska, Irnopolje,

and Keraterm detention camps. So far, the tribunal has indicted more than 166 persons and has completed proceedings on 126 of them. Among them, 13 have had their cases acquitted, 64 were sentenced, 13 have had their cases transferred to local courts, and 36 cases were terminated for lack of evidence (ICTY 2013; BBC 2008). The ICTY had, among its indicted suspects, ordinary common soldiers, police commanders, generals, and prime ministers. Among the top political and military figures indicted were General Ante Gotovina of the Croatian Army; Ramush Haradinaj, former prime minister of Kosovo; Radovan Karadzic, former president of the Republika Srpska; Ratko Mladic, former commander of the Bosnian-Serb Army; Milan Babic, former president of the Republika Srpska Krajina; and Prime Minister Slobodan Milosevic. Unmistakably, Slobodan Milosevic became the first sitting head of state to be indicted for war crimes in modern history. Of course, he was not the first head of state to commit war crimes.

Some of the cases tried have been appealed. Some of the indicted suspects are still at large. As of September 2012, some of the fugitives wanted by the Tribunal had been arrested (Al Jazeera 2011).

CRIMES CHARGED AT THE ICTY

The defendants were charged with one or more of the following crimes—genocide; persecutions on political, racial, or religious grounds—a crime against humanity; extermination—a crime against humanity; murder—a crime against humanity—a violation of the law or customs of war; unlawful deportation—a crime against humanity; inhumane acts of forcible transfer—a crime against humanity; acts of violence with the primary purpose of spreading terror among the civilian population—a violation of the laws or customs of war; unlawful attacks on civilians—a violation of laws or customs of war; and taking hostages—a violation of the laws or customs of war (ICTY 2009a).

JUDGMENT AND SENTENCING

The ICTY has the power to impose life imprisonment but not a death penalty. Some of those already indicted, tried, and found guilty received sentences ranging from seven years to life.

The UN Security Council wants the ICTY to complete its trials and sentencing by December 31, 2014, and transfer its duties to the newly established International Residual Mechanism for Criminal Tribunals (IRMCT), which will start working for the ICTY branch from July 1, 2013. The

ICTY will finish all outstanding cases and appeals against their judgments or sentences, if filed before July 1, 2013. The ICTY and the defendants have been made aware that appeals filed after that date will be handled by the IRMCT (ICTY 2010). The ICTY plans to have all appeals heard and resolved by 2015, except those fugitives recently arrested (UN Security Council 2011). Lastly, 17 member states of the UN have signed an agreement to provide prison facilities for persons convicted by the ICTY.

THE RELEVANCE OF ICTY

The ICTY has demonstrated that henceforth, no head of state is beyond incrimination. The grounds for its indictments have sharpened the facts, reality, and the edges of international criminal law. The ICTY allowed the victims of domestic and international wars have a voice in their grievances. The ICTY has awakened the importance of international criminal law, which had been lost since the Nuremberg and Tokyo trials. Finally, ICTY proceedings and evidence have strengthened the relevance of the rule of law in all societies.

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

The second and last ICT is that for Rwanda. The bloody conflict that erupted in Rwanda in 1994 was started by the Belgian colonial administration of Rwanda, who gave political and economic power to the minority ethnic group of the Tutsi (only 14% of Rwandan population compared to Hutus, who form 85%). After the Rwandan independence, which was fought for by the Tutsi, Belgium sided with the Hutu in democratic political maneuvers to punish the Tutsi, reminiscent of the British colonial administration of Nigeria.

THE IMMEDIATE CAUSE OF RWANDAN GENOCIDE

As of April 1994, the Tutsi ethnic groups still held economic power in Rwanda, but a Hutu, Mr. Habyarimana, was the president of Rwanda. On April 6, 1994, an aircraft carrying President Habyarimana was shot down in broad daylight and the president was killed. Among the Hutu leadership, it was strongly believed that the Tutsi shot down the plane that killed President Habyarimana. In effect, the Hutu designed acts of genocide under the camouflage of a civil war. According to the United Human Rights Council, Belgium, France, the United States, the UN, and other European powers knew from

the beginning that genocide was going on in Rwanda but kept silent (United Human Rights Council 2013). The genocide in Rwanda reached epidemic proportions when the Hutu began killing some other Hutu who were sympathizers of the genocidal killings of the Tutsi. In many cases, the Hutu and Tutsi had profoundly intermarried with each other over the centuries. Unmistakably, in many situations, it was relatives slaughtering a whole family of relatives. It was a genocide of the majority against the minority, and at one point, the majority was also destroying itself because of the inter-ethnic marriages.

The international media, the Human Rights Watch groups, and other nongovernmental organizations charged the UN and European powers connected with events in Rwanda with discrimination and a nonchalant attitude toward what was happening in Rwanda, given that the UN had created an ICT for the Former Yugoslavia in 1993. They wanted the same kind of tribunal to be created for Rwanda.

THE EMERGENCE OF INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Responding to the cries of public opinion and the international media, the UN Security Council recognized the seriousness of humanitarian law being violated with impunity in Rwanda. In effect, it acted on the basis of Chapter VII of the UN Charter and created the ICT for Rwanda in line with that of former Yugoslavia (ICTY) by Resolution 955 of November 8, 1994.

PURPOSE OF ICTR

The primary aim of creating the ICT for Rwanda was to start a process of national reconciliation in Rwanda, and to maintain peace in the region. To achieve the set out aim, the ICTR had to prosecute persons responsible for the Rwandan genocide and other serious violations of international humanitarian law committed in Rwanda from January 1, 1994 to December 31, 1994, including prosecuting Rwandan citizens who were responsible for the genocide and violations of international criminal law in the territory of neighboring states at the same period (ICTR 2013a).

THE STRUCTURE OF ICTR

There are three organs of the ICTR. These are:

1. The chambers and the appeal chamber;
2. The office of the prosecutor; and
3. The registry

There are three chambers of original jurisdiction (trial chamber I, trial chamber II, and trial chamber III).

There are 16 independent judges for the four chambers, and nine *ad litem* judges. Member states nominate their best judges to the Secretary General (S-G) of the UN. The S-G sends the compiled list to the UN Security Council, which sends a list to the UN General Assembly. The judges are then elected by the General Assembly. The judges serve for four years and may be reelected. As in the case of ICTY, no two judges from the same country will serve in the tribunal at the same time. Three judges sit in each of the trial chambers, and five judges sit in the appeals chamber. In all chambers, there is a presiding judge. The appeals chamber is shared with ICTY appeals. A maximum of four *ad litem* judges are attached to each trial chamber. By Resolution 1855 of December 19, 2008, the UN Security Council authorized the Secretary General to appoint additional *ad litem* judges upon the request of the president of the ICTR “in order to complete existing trials or conduct additional trials” (ICTR 2013b).

OFFICE OF THE PROSECUTOR

The prosecutor is responsible for investigating the cases and prosecuting them. There are two sections in the office of the prosecutor. The investigation section investigates the cases and collects evidence against persons who committed war crimes in Rwanda in 1994. The prosecution section is responsible for indicting all Rwandan war crime criminals and prosecuting them before the tribunal.

THE REGISTRY

The registry is headed by a registrar. The main duties of the registry are to provide all judicial and administrative support to all of the chambers, and to the prosecutor.

HEADQUARTERS OF THE ICTR

On February 22, 1995, the UN Security Council decided that the seat of the ICT for Rwanda will be located in Arusha, United Republic of Tanzania.

JURISDICTION OF ICTR

The ICT for Rwanda has jurisdiction to try genocide, crimes against humanity, violations of Article 3 common to the Geneva Convention and of Additional Protocol II which shall be punishable, crimes committed by Rwandans in Rwanda, and crimes “in the territory of

neighboring states as well as non-Rwandan citizens for crimes committed in Rwanda” (ICTR 2013a).

DEFENDANTS AT ICTR

Most of the time, persons who commit genocide and crimes against humanity are individuals in power and positions of authority. The ICTR presents, for the first time, persons in positions of power who committed atrocities, including violations of human rights in Africa, who were prosecuted for their crimes.

The defendants in ICTR ran away and scattered across more than 15 countries before most of them were arrested. As of December 2011, the Tribunal has indicted 161 individuals. Proceedings have been completed for 97 of them, 67 were convicted and sentenced to terms of imprisonment, 17 were acquitted, and 13 have had their cases transferred to courts in Bosnia and Herzegovina. Out of the 161 indicted persons, 36 were terminated because of death of the suspect, or the case was withdrawn. Out of the 67 indicted persons, 48 were convicted and sentenced, 34 have completed their prison sentences, and 3 died while serving their sentences. Also, there are 7 ongoing trials; 5 cases were at the appeals stage, and 23 suspects were the subject of contempt proceedings (Al Jazeera 2011).

Croat Serb General and former President of the Republic of Serbia, Krajina Goran Hadzic, became the last fugitive wanted by the Tribunal to be arrested on July 20, 2011 (Al Jazeera 2011).

Two persons in charge of Rwandan Radio Television Libre des Mille Collines, Ferdinand Nahimana and Jean Bosco Barayagwiza, and the director and editor of the Kangur newspaper, Mr. Hassan Ngeze, who were charged with genocide, incitement of genocide, and crimes against humanity because they used their media to incite genocide and other war crimes, were convicted in 2003. While Jean Bosco Barayagwiza was sentenced to 35 years of imprisonment, Ferdinand Nahimana and Hassan Ngeze received life imprisonment. The three convicts appealed their cases. The appeals chamber did not see any evidence of misdirection of justice in the decision of the trial chamber, and only reduced their sentences to 30 years imprisonment for Ferdinand Nahimana, 32 years for Jean Bosco Barayagwiza, and 35 years imprisonment for Hassan Ngeze.

ICTR DETENTION AND PRISON SYSTEM

African countries very strongly cooperated with the ICTR in helping to arrest the fugitives and incarcerating the convicted war criminals. In fact, on February 12, 1999, the Republic of Mali became the first African country to sign an agreement with the ICTR to provide

prison facilities for the ICTR for the imprisonment of individuals convicted by the Tribunal. The Republic of Benin in West Africa followed, on August 28, 1999. Now, there are 15 African countries as well as countries outside of Africa, such as Italy, France, and Sweden, that have signed agreements with the ICTR to provide detention and incarceration facilities for the tribunal.

THE RELEVANCE OF ICTR

Since the eclipse of colonial hegemony around the world in the 1960s and the early 1970s, no continent has seen inter-ethnic wars and bloody political upheavals more than Africa and Asia. In effect, no continent has seen its heads of state violate fundamental human rights and commit crimes against humanity, including genocide, more than the African continent.

Like the ICTY and the Eastern European countries, the ICTR is a warning to the present and future African countries' heads of state that no national leader is beyond incrimination. Also, the ICTR has brought back normal life in Rwanda and Hutu-Tutsi reconciliation is almost complete. Both the ICTY and the ICTR made possible the creation of the IRMCT for each of them to take care of cases whose appeals may not be dealt with by their deadlines (2014 for ICTR and 2015 for ICTY). Finally, both the ICTY and the ICTR made the emergence of a permanent International Criminal Court (ICC) possible, which has started handling war crimes committed in Africa and elsewhere after the creation of the ICTR.

Next, we are going to discuss and analyze the first permanent international court of criminal justice, which the former Secretary General of the UN, Kofi Annan, described as the best and the greatest achievement of the UN so far.

THE EMERGENCE OF THE INTERNATIONAL CRIMINAL COURT

INTRODUCTION

Origins and Development of the International Criminal Court

The idea for the establishment of a permanent International Criminal Court (ICC) goes back to the 1948 UN Convention on the Prevention and Punishment of the crime of Genocide (Genocide Convention). It was after the adoption of the 1948 UN Genocide Convention that the General Assembly engaged the International Law Commission (ILC) “to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide” (Bantekas

and Nash 2003; Magnarella 2004). This court will not be an ad hoc tribunal. It will be a permanent criminal court.

The ILC met in 1949 and 1950 and reported to the General Assembly that the establishment of such a court was desirable and a possibility. However, there were tense disagreements about the ICC subject-matter jurisdiction over certain crimes. Even when four crimes were identified, the lack of a consensus over the definition of “crime of aggression” put the idea of establishing an international criminal court in limbo until more than three decades later.

In December 1989, Trinidad and Tobago was overwhelmed by high waves of illicit trafficking in drugs. In effect, they petitioned the Secretary General of the UN for establishing an international court with jurisdiction over illicit trafficking in drugs across international borders. In response, the UN General Assembly, once again, called upon the ILC to continue work on the establishment of an ICC.¹ Also, the war in the former Yugoslavia, with the concomitant establishment of the ICTY, spurred the General Assembly on to making the emergence of the ICC a priority. Consequently, a draft statute of the ICC was produced in 1994 (Crawford 1995), and the General Assembly created an Ad Hoc Committee on the Establishment of an International Criminal Court. This committee met more than once in 1995 (Morris and Bourloyannis-Vrailas 1996; Bantekas and Nash 2003; Magnarella 2004). The General Assembly established the Preparatory Committee on the Establishment of an International Criminal Court.² After the preparatory committee completed its work, the General Assembly convened a diplomatic conference in Rome in July 1998 to give finishing touches to some of the articles of the statute. After some intensive debates, negotiations, and resolutions on various issues, the ICC Statute was signed on July 17, 1998 (Bantekas and Nash 2003; Magnarella 2004).

SIGNATORIES TO ICC

The ICC Treaty was signed by 120 states who voted in favor of the treaty. Seven countries (United States, China, Libya, Iraq, Israel, Qatar, and Yemen) voted against the treaty, while 21 countries abstained. When the United States and Israel were criticized by some of the US European allies for voting against the ICC treaty along with five dictatorships (China, Libya, Iraq, Qatar, and Yemen), they changed their stand. On December 31, 2000, the United States and Israel signed the ICC Statute (Thakur 2004; Magnarella 2004). On May 6, 2002, however, President George W. Bush unilaterally withdrew the United States’ signature from the ICC treaty.

THE PURPOSE, STATUTE, AND RATIFICATION OF ICC

The ICC was created as a permanent international criminal court, under the auspices of the UN General Assembly, to bring to justice individuals or groups who committed heinous crimes of profound concern to the international community, such as genocide, crimes against humanity, war crimes, and crimes of aggression.

For the ICC to operate as a legitimate court with a definite jurisdiction, its statute, which is officially captioned as the “Rome Statute of International Criminal Court,”³ required ratification by 60 states. On April 11, 2002, the ICC received the required number of ratifications “when ten states presented their instruments of ratification at the UN Headquarters, bringing the total number of ratifying countries to 66” (Magnarella 2004). The ICC Statute assumed an international, legal viable force on July 1, 2002.

JURISDICTION OF THE ICC

The jurisdiction of the ICC includes party and nonparty states. Party states are countries who signed the ICC treaty. The individuals, groups, or states, accused of any crimes under the jurisdiction of the ICC, may be residing in party states or nonparty states. The Rome Statute of the ICC provides that, if the state where the crime is alleged to have been committed (the “territorial state”) is a party to the ICC Statute or consents to the jurisdiction of the court, “then the ICC would have authority to prosecute even if the defendant’s state of nationality was not a party to the Statute and did not consent to the ICC jurisdiction”⁴ (Thakur 2004; Morris 2004). The above provision gives the ICC “jurisdiction over non-party nationals.” Giving the ICC power to prosecute the accused without the consent of their state of nationality speaks of the gravity of the seriousness of the subject matter jurisdiction of the crimes to the international community.

It is expected that the ICC and the national courts of states complement each other. The ICC may exercise jurisdiction in the subject matter crimes if states are incapable or reluctant to prosecute. The Rome Statute of the ICC Article 17 provides that “A case shall not be admissible before the ICC if the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unable or unwilling genuinely to carry out the investigation or prosecution.”⁵

Under the system of complementarity of the ICC and the states, the ICC is the ultimate judge as to whether the national state has sincerely exercised jurisdiction over a case involving its citizen(s) (Morris 2004). Unmistakably, if the ICC observes that there is no bonafide exercise of jurisdiction by

the state authority in the matter, the ICC can exercise jurisdiction even in spite of the objection of the state authority.

The subject matter jurisdiction of the ICC is over genocide, crimes against humanity, war crimes, and crimes of aggression. The crimes of aggression have been isolated in the ICC operations and scholarly writings. The reason will be explained later. In compiling the subject matter jurisdiction of the ICC, the inclusion of other crimes such as drug trafficking, terrorism, and offenses against the UN and associated personnel, was speculated prior to and during the Rome conference, but they were excluded due to the problem of investigation and the sensitive nature of drug trafficking and terrorism, and given the absence of an international definition of terrorism (Bantekas and Nash 2003). Of the four crimes under the ICC jurisdiction, only three received a consensual definition.

GENOCIDE

Article 6 of the Rome Statute of the ICC was taken verbatim from Article II of the 1948 Genocide Convention, and received a unanimous consensus (see the section on genocide in Chapter 2).

CRIME AGAINST HUMANITY

The general definition of crimes against humanity is set out in Article 7(1) of the Statute, comprising any act contained in an exhaustive list of offenses when perpetrated “as part of a widespread or systematic attack” against any civilian population. Since not every inhuman act is a crime against humanity, the ICC Statute modified “attack” to mean “a course of conduct involving the multiple commission of acts pursuant to or in furtherance of a state or organizational policy to commit such attacks” (Bantekas and Nash 2003; Thakur 2004; Schabas 2000; UN General Assembly Report 1995).⁶

To prove a charge of crime against humanity, the prosecutor had to show that an attack against a civilian population involved multiple acts and a policy element, and had to show that the attack was either widespread or systemic (Robinson 1999). The *mens rea* for crime against humanity requires that the defendant acts with knowledge that his/her offense was part of an overall widespread or systematic attack against a civilian population (Bantekas and Nash 2003; Maxted 2004). Additionally, the elements of the charged particular offense must be proved before the court. Crimes against humanity can be committed by states or their agents, as well as nonstate bodies.

Among the crimes against humanity are the offenses of apartheid and enforced disappearance. Apartheid is defined in Article 7(2)(h) as, “inhumane acts [intentionally

causing great suffering, or serious injury to body or to mental health] committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.”

Before the Rome Statute of 1998, earlier conventions had criminalized apartheid as a crime against humanity—Article I(b) of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity and Article I of the 1973 Convention on the Prevention and Suppression of Apartheid. The inclusion of apartheid in the ICC’s subject matter jurisdiction shows the detest of the offense by the international community. In the same vein, “enforced disappearance” was a clandestine criminal policy of dictators such as former president Augusto Pinochet of Chile, Somoza of Nicaragua, the late president Abacha of Nigeria, the Saddam Hussein of Iraq, the late Idi Amin of Uganda, the late Milosevic of the Former Yugoslavia, the late Mubutu Seseko of Zaire, the later Ferdinand Marcos of the Philippines, the late Stroessner of Paraguay, etc., using their thugs to kidnap their political opponents and bury them in cold blood and declare them as missing, or incarcerate them as political prisoners, or get them poisoned while in prison like president Abacha did so that they die in prison. The world has seen a lot of such political murderers as heads of state to the point that ICC was created to pursue them. The crime of enforced disappearance is defined in Article 7(2)(i) of the Rome Statute as, “the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

Enforced disappearance is a crime of persecution. In the ICC statute (Art. 7), persecution is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” The crime of persecution that may sound like criminalizing discrimination is a type of “extreme forms of discrimination with a deeply criminal character” (Bantekas and Nash 2003).

Other offenses included as crimes against humanity are “sexual slavery, enforced prostitution, enforced sterilization, and any other forms of sexual violence of comparable gravity.”⁶

WAR CRIMES

Articles of the Rome Statute of the ICC deal with war crimes. Acts classified under war crimes include offenses

against UN personnel and UN military personnel on peacekeeping missions for as long as they are not engaged in hostilities,⁷ use of poison or poisoned weapons, asphyxiating, poisonous or other gases, liquid or materials,⁸ and use of bullets which expand or flatten after entering the body of human beings.⁹ Also included as war crimes are the conscription or enlistment of children under 15 years old into “national armed forces or other groups engaged in non-international armed conflicts” (Bantekas and Nash 2003; Maxted 2004; Thakur 2004), destruction of buildings dedicated to education, religious worship, arts, science, and other historic monuments,¹⁰ for as long as such buildings and monuments are not used for military purposes.

Attempts to include the use of nuclear weapons and land mines as war crimes were blocked by the nuclear state parties of the ICC Rome Convention. In the same vein, the prohibition of the development of new weapons received opposition from some powerful nations. However, some compromise was reached. The Rome Statute stated the compromise in three categories (see Bantekas and Nash 2003: 338): First, new weapons are prohibited and their use criminalized if they are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate; secondly, such weapons must be the subject of a comprehensive prohibition; and thirdly, they must be specifically included in an annex to the statute by a future amendment, in accordance with the constitutional arrangements of the statute under Acts 121 and 123.¹¹

It must be noted that the 1949 Geneva Convention and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict included bombing or destruction of hospitals, schools, colleges, and civilian populations as war crimes for as long as such institutions are not being used for the production or storage of war materials. The Rome Statute of the ICC was a complement and an attempt to provide a watchdog for previous war crime conventions.

CRIMES OF AGGRESSION (CRIMES AGAINST PEACE)

The concept of crimes against peace or crimes of aggression is as old as the Nuremberg Charter. The 1998 Rome Statute made an attempt to include crimes of aggression as one of the ICC’s subject matter jurisdiction. But, the permanent members of the Security Council objected to the inclusion of crimes of aggression as a war crime because they argued as to “who would explain when a crime of aggression has been committed?” And “what is its definition?” Such an opposition, coming from

powerful nations, led the Rome Statute to drop “crimes of aggression” from the list of crimes falling under the subject matter jurisdiction of the ICC.

LIMITATIONS AND AUTONOMY OF THE ICC

The authority of the ICC is highly limited by the interests of the powerful and industrialized nations of the Security Council. This group resisted the inclusion of many serious crimes in the subject matter jurisdiction of the ICC. The most serious area is the area of war crimes. As a result of the objection by some members of the Security Council, Article 124 of the ICC Statute allows ratifying state members to declare that it will not accept the jurisdiction of the ICC for a period of seven years after the statute comes into effect with respect to war crimes perpetrated by its citizens or within its territorial integrity. Thereafter, ratifying states must accept the jurisdiction of the ICC in its totality (Magnarella 2004; Bantekas and Nash 2003; Forsythe 2004).

The ICC exercises some degree of authority in dealing with genocide, crimes against humanity, and war crimes. The ICC can prosecute some nationals of member states and nonmember states in the three crime areas without the approval of their governments. The court also exercises a high degree of authority in its decisions and prescription of penalty.

HOW CASES REACH THE ICC

Cases reach the ICC in three ways: (1) on the basis of Chapter VII of the UN Charter, the Security Council can ask the ICC to investigate a matter in a particular state that the council feels threatens international peace and tranquility. All states under the UN flag are obliged to cooperate with the ICC investigations and surrender their accused citizens when requested to do so because the ICC operates under the authority of the Security Council and assembly parties. Also, the orders of the court can “be enforced by the Security Council in the form of imposing embargos, the freezing of assets of leaders and their supporters, and the use of force” (Magnarella 2004; Forsythe 2004); (2) individual countries can bring a case to the court based on cooperation and complementarity of state parties to the ICC; and (3) the ICC prosecutor can bring an action against individuals or groups accused of crimes of genocide, crimes against humanity, or war crimes. As noted earlier, the court could bring an action against individuals or groups when a state’s authorities are unwilling or unable to prosecute the offenders.

JUDGES OF THE ICC: COMPOSITION, QUALIFICATION, AND SELECTION

Article 36 of the Rome Statute spells out the rules for judicial nominations and selections. Any state party to the ICC can nominate one candidate to be elected judge of the court.

In the selection of the judges, the assembly state parties are required to take into account a fair representation of males and females, geographical diversity, and the principal world legal systems (Magnarella 2004; Bantekas and Nash 2003; Flinterman 2004; Forsythe 2004).

The Rome Statute provides that the judges of the ICC must be longstanding, experienced legal practitioners admitted to the bar association of their respective countries. They must be persons of sound, moral character, highly qualified, and impartial judges. Candidates for nomination to the position of judge of the ICC must have demonstrated competence in criminal law and international law, and possess extensive experience in the legal profession (Art. 36).

A list of candidates is submitted to state parties to the statute. From the list of candidates, state parties elect 18 full-time judges. It is required that a minimum of five judges must be experts in relevant areas of international law, such as international humanitarian law and human rights (Forsythe 2004; Magnarella 2004; Bantekas and Nash 2003; Flinterman 2004).

Article 35 provides that the term of service of the judges be 9 years, and the judges are not eligible for reelection. Additionally, no two judges shall be citizens of the same state party to the statute. Article 40 provides that the judges of the ICC be independent in the execution of their duties. And, Article 41 stipulates that a judge of the ICC shall not participate in any case in which his/her impartiality might be taken with a grain of salt.

PROSECUTOR OF THE ICC

The prosecutor is an independent agent of the ICC. He/she may designate deputy prosecutors whose candidacy must be approved by the assembly state parties. The deputy prosecutors serve the court full-time. Like the judges, the prosecutor must be independent (Art. 42) and must not be involved in any activity that will interfere with his/her duties.

Both the prosecutor and deputy prosecutors are elected by the assembly of state parties for a nine-year term. Candidates for the position of prosecutor and deputy prosecutor must be highly qualified legal practitioners with high moral character and legal competence.

DEFENDANT(S)

Individuals or groups or a country being investigated or prosecuted can, at any stage of the prosecution, demand that a prosecutor be disqualified to handle the case on reasonable grounds such as partiality. However, the ICC Statute provides safeguards against fabricated, politically motivated prosecutions.

STANDARD OF PROOF

In all cases before the ICC, the standard of proof for criminal conviction is guilty beyond a reasonable doubt.

REGISTRAR OF THE ICC

Article 43(4) of the Statute stipulates that the judges of the ICC are authorized to elect the registrar of the court for a five-year term. The registrar can be reelected only once.

DISCUSSION AND CONCLUSION

The establishment of a permanent international criminal court by the international community, to deal with three heinous global crimes, is a commendable progress to humanity. The mere existence of such a permanent world court has a deterrent effect throughout developed and developing countries. Unmistakably, no dictator (an individual, a group, or a state) will engage in acts of genocide, war crimes, or offenses against humanity, without realizing that there are watchdogs that would bring him to justice in a court beyond his control.

The ICC, by far, is better and more effective in deterrence than the IMT and the ICT in that both IMT and ICT are ad hoc courts. They exist for as long as the case assigned to its lasts. As soon as the case is decided, it ends the life of the tribunal. For instance, the IMT for the Nuremberg trial ended with the Nuremberg trial, and the ICT for the former Yugoslavia (ICTY), and the ICTR for Rwanda end their existence after the trial of the offenders and sentencing them is achieved. But, the ICC exists forever and so is its effect on humanity.

Although the ICC has some degree of autonomy, its authority is controlled by the Security Council. The permanent members of the Security Council are broken back axles on the wheel of the UN. If the General Assembly's decision, on any issue, does not favor any of them, they veto the bill individually or collectively. The 1998 Rome Conference that created the ICC Statute ran into road blocks set by the nuclear nations and land mine nations who are permanent members of the Security Council. In the same vein, the

definition of war crimes was modified to accommodate the interests of France and some other permanent members of the Security Council who opposed the original definition of the crime. "Crime of aggression" was not submitted to the ICC because some of the permanent members of the Security Council could not come to terms with any consensual definition of the offense, even though "crimes against peace" was accepted as war crimes at the 1945 Nuremberg IMT Charter (Bantekas and Nash 2003). "Crimes against peace" is the same as crimes of aggression.

Unmistakably, with the unpredictability of the permanent members of the Security Council, it is not good news that the Security Council has control over the ICC. Undeniably, the provision that an assembly state party can opt to refuse to accept the jurisdiction of the ICC for seven years after the statute went into effect was to appease the minds of some permanent members of the Security Council. That provision is a slap on the face to the Rome Statute.

The assembly of state parties controls the administrative and substantive matters of the court. Although the assembly of state parties governs by majority rule, the permanent members of the Security Council (except the United States) are still part of the assembly of state parties. They can veto whatever ruling they want to veto.

The United States, which is the world peacemaker, surprisingly declined to ratify the ICC statute. It is mind-boggling that the United States refused to sign a treaty to establish a permanent international criminal court to hold dictators responsible for their crimes against humanity.

According to Forsythe (2004), the United States refused to sign the Rome Statute because the American policy makers could not countenance the American military personnel standing as defendants before the ICC. Worst of all, the fear that ICC could summon senior members of the U.S. military and Pentagon to the ICC to answer questions on U.S. military activities in Afghanistan, Iraq, etc., is so hard to swallow in Washington, D.C. Some U.S. policy-makers argue that the ICC is not democratic, and that the court is not answerable to any political body. In other words, there is no political check over the ICC (Forsythe 2004). The U.S. objection to the ICC stems from Jesse Helm's argument long ago as Chairman of the Senate Foreign Relations Committee that, "Nothing trumps our Constitution, no international court, unless we voluntarily, under our constitutional process, agree to submit to that court" (Forsythe 2004). In the light of Helm's argument, and given that the U.S. Congress understood that the Rome Statute gives the ICC the power to prosecute persons or groups, including those whose countries are not signatories to the statute, who committed crimes that fall within its subject matter jurisdiction, a bill was

passed in Congress and signed by President Bush into law in August 2002 to wedge the ICC. The law authorizes the American president to use force to free any U.S. citizen being held in custody by the ICC (Forsythe 2004).

The U.S. argument that since it did not ratify the treaty, and therefore, American citizens should not be subject to the ICC, is not in order, for two reasons: First, other treaties, like the treaty on terrorism, contain similar provisions that some states did not ratify; yet, citizens of those non-ratifying states are legally bound under international law. Second, "the Nuremberg tribunal went forward without the consent of any German Government" (Forsythe 2004).

In conclusion, adherence to international law and treaties is for world peace, and U.S. allies, such as France, the United Kingdom, etc., realized that view and ratified the ICC statute. Nobody loses with the emergence of the ICC except dictatorial regimes. The ICC was not created to control the United States or impinge upon the American Constitution or the Constitution of any developed nation. The Rome Statute was intended to protect the "little people" all over the world who may be in danger of being slaughtered by greedy, authoritarian regimes.

NOTES

1. UN General Assembly Resolution 44/39, December 4, 1989.
2. UN General Assembly Resolution 50/46, December 11, 1995.
3. UN Doc. A/CONF. 183/9, July 17, 1998.
4. Rome Statutes of the International Criminal Court, Art. 5, July 17, 1998; also see Art. 12.
5. Rome Statutes of the International Criminal Court, Art. 5, July 17, 1998; also see Art. 12.
6. ICC Statute, Art. 7(1)(h); Art. 7(1)(g).
7. ICC Statute, Art. 8(2)(b)(xvii).
8. ICC Statute, Art. 8(2)(b)(xvii).
9. ICC Statute, Art. 8(2)(b)(xvii).
10. ICC Statute, Art. 8(2)(b)(ix) and (e)(iv).
11. ICC Statute, Art 8(2)(b)(xix).

REVIEW QUESTIONS

1. Immanuel Kant (1724–1804) was the forerunner of the emergence of the world courts of justice of the UN. Discuss.
2. The emergence of criminal law is embedded in Thomas Hobbes's (1588–1679) theory of social contract. Explain and discuss.
3. What were the weaknesses of the League of Nations?

4. What agencies of the League of Nations were inherited by the UN?
 5. Why was the ICC created while the ICJ was already in place?
 6. Compare and contrast the post–World War II IMTs: The Nuremberg Trial and the Tokyo Trial.
 7. What crimes were charged at the Nuremberg trial and the Tokyo trial?
 8. What countries were represented among the judges of the Nuremberg and Tokyo trials?
 9. What led to the creation of the ICTs?
 10. What were the remote causes of the Yugoslavia conflict?
 11. Compare and contrast the ICTY and ICTR.
 12. What explanations were provided by the author as the reasons why the UN did not intervene in various international and domestic wars from 1950 to 1989?
 13. What were the immediate causes of the Rwanda genocide?
 14. Describe the origin and development of the ICC.
 15. With regards to the ICC, what is meant by American exceptionalism?
 16. The UN has no prison system, but ICTY, ICTR, and ICC sentence convicted suspects to terms of imprisonment. How does this work?
 17. Briefly write an essay on the International Law Commission.
 18. What is the jurisdiction of the ICC?
 19. What is the definition of the following crimes from the United Nations standpoint—genocide, crimes against humanity, war crimes?
 20. Why is it that “crimes of aggression” (crimes against peace) not one of the subject matter jurisdictions of the ICC?
 21. What are some of the limitations of ICC?
 22. How do cases reach the ICC?
 23. What is the structure of the ICC?
 24. How many judges sit at the court chamber of the ICC?
 25. Who appoints the judges of the ICC?
 26. Why is it that any party found guilty at the ICJ cannot appeal his case?
- REFERENCES**
- Al Jazeera. 2011. Serbia's last war crimes fugitive arrested. *Al Jazeera Media Network*. Retrieved from <http://www.aljazeera.com/news/europe/2011/07/201172074249705610.html>
- Bantekas, I., and S. Nash. 2003. *International criminal law*. 2nd edition. London, UK: Cavendish Publishing Limited.
- BBC. 2008. Hague court acquits Kosovo ex-PM. *BBC News*. Retrieved from <http://news.bbc.co.uk/2/hi/7328148.stm> (Accessed February 15, 2013).
- Biddiss, M. 1995. Victor's justice: The Nuremberg tribunal. *History Today* 45: 40.
- Brackman, A. C. 1987. *The other Nuremberg: The untold story of the Tokyo war crimes trial*. New York, NY: William Morrow and Company.
- Crawford, J. 1995. The ILC adopts a statute for the international criminal court. *AJIL* 89: 404.
- Davidson, E. 1997. *The trial of the Germans: An account of the twenty-two defendants before the international military tribunal at Nuremberg*. Columbia: University of Missouri Press.
- Ebbe, O. N. I. 2010. *Broken back axle: Unspeakable events in Biafra*. Bloomington, IN: Xlibris Publications.
- Evans, J. 2009. Radovan Karadzic cell life. *The Times* (London). <http://www.timesonline.co.uk/tol/news/world/europe/article6891319.ece> (Accessed May 14 2012).
- Flinterman, C. 2004. The International criminal court: obstacles or contribution to an Effective system of human rights protection? In *From sovereign impunity to international accountability: the search for justice in the world of states*, 264–271, edited by R. Thakur, and P. Malcontent. New York, NY: United Nations University Press.
- Forsythe, D. P. 2004. International criminal justice and the United States: law, culture, power. In *From sovereign impunity to international accountability: The search for justice in the world of states*, 61–79, edited by R. Thakur, and P. Malcontent. New York, NY: United Nations University Press.
- Hazan, P. 2004. *Justice in time of war: The true story behind the international criminal tribunal for the former Yugoslavia*. College Station, TX: Texas A & M University Press.
- Horowitz, S. 1950. The Tokyo trial. *International Counciliation* 465 (November): 473–584.
- International Tribunal for the Former Yugoslavia (ICTY). 1995. Karadzic indictment. Retrieved from <http://www.icty.org/x/cases/mladic/ind/en/kar-ii950724e.pdf> (Accessed May 15, 2012).
- International Tribunal for the Former Yugoslavia (ICTY). 2009a. The Prosecutor v. Radovan Karadzic. Retrieved from http://www.icty.org/x/cases/karadzic/ind/en/markedup_indictment_091019.pdf (Accessed February 15, 2013).
- International Tribunal for the Former Yugoslavia (ICTY). 2009b. Updated statute of the International Criminal Tribunal for the Former Yugoslavia. Retrieved from http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf (Accessed May 14, 2012).
- International Tribunal for the Former Yugoslavia (ICTY). 2010. Resolution 1966. Retrieved from http://www.icty.org/x/file/About/Reports%20and%20Publications/ResidualMechanism/101222_sc_res1966_residualmechanism_en.pdf (Accessed February 15, 2013).

- International Tribunal for the Former Yugoslavia (ICTY). 2012. Employment and internships. Retrieved from <http://www.icty.org/sid/106> (Accessed May 14, 2012).
- International Tribunal for the Former Yugoslavia (ICTY). 2013. Key figures. Retrieved from <http://www.icty.org/sections/TheCases/KeyFigures> (Accessed February 15, 2013).
- International Criminal Tribunal for Rwanda (ICTR). 2013a. General information. Retrieved from <http://www.unicttr.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx> (Accessed February 15, 2013).
- International Criminal Tribunal for Rwanda (ICTR). 2013b. The chambers. Retrieved from <http://www.unicttr.org/tabid/103/Default.aspx> (Accessed February 15, 2013).
- International Criminal Tribunal for Rwanda (ICTR). 2013c. Press briefings. Retrieved from <http://www.unicttr.org/AboutICTR/GeneralInformation/tabid/65/Default.aspx> (Accessed February 15, 2013).
- Kant, I. 1795. Perpetual peace: a philosophical sketch. Retrieved from <http://www.constitution.org/kant/perpeace.htm> (Accessed April 12, 2012).
- Lukic, R., and A. Lynch. 1996. *Europe from the Balkans to the Urals: The disintegration of Yugoslavia and the Soviet Union*. Oxford, UK: Oxford University Press and the Stockholm International Peace Research Institute.
- MacLeod, C. 2010. Toward a philosophical account of crimes against humanity. *European Journal of International Law* 21(2): 281–302.
- Maya, T. P. 2001. *Judgment at Tokyo: The Japanese war crimes trials*. Lexington, KY: University of Kentucky Press.
- Magnarella, P. J. 2004. The consequences of the war crimes tribunals and an international criminal court for human rights in transition societies. In *Human rights and societies in transition: Causes consequences, responses*, 119–140, edited by S. Harowitz, and A. Schnabel. New York, NY: United Nations University Press.
- Maxted, J. 2004. The international criminal court and the prohibition of the use of children in armed conflict. In *From sovereign impunity to international accountability: The search for justice in the world of states*, 253–263, edited by R. Thakur, and P. Malcontent. New York, NY: United Nations University Press.
- Minear, R. H. 1971. *Victor's justice: The Tokyo war crimes trial*. Princeton, NJ: Princeton University Press.
- Morris, M. H. 2004. Democracy, global governance and the international criminal court. In *From sovereign impunity to international accountability: The search for justice in the world of states*, 182–183, edited by R. Thakur, and P. Malcontent. New York, NY: United Nations University Press.
- Morris, V., and C. M. Bourloyannie-Vrailas. 1996. The work of the sixth committee at the fiftieth session of the UN general assembly. *AJIL* 90: 491.
- Overy, R. 2001. *Interrogations: The nazi elite in allied hands*. London: Allen Lane/ The Penguin Press.
- Piccigallo, P. R. 1979. *The Japanese on trial: The allied war crimes operations in the east, 1945–1951*. Austin, TX: University of Texas Press.
- Robinson, D. 1999. Defining crime against humanity at the Rome conference. *AJIL* 93: 51.
- Roling, B. V. A., and C. F. Ruter. 1977. *The Tokyo Judgment: The International military tribunal for the far east (IMTFE), 29 April 1946–12 November 1948*. Amsterdam: APA—University Press.
- Schabas, W. A. 2000. *Genocide in international law: The crimes of crimes*. New York, NY: Cambridge University Press.
- Sherman, C. 2001. *War crimes: International military tribunal*. Paducah, KY: Turner Publishing Company.
- Thackrah, J. R. 2008. *The Routledge companion to military conflict since 1945: Routledge companion series*. New York: Taylor & Francis.
- Thakur, R. 2004. Dealing with guilt beyond crime: The strained quality of universal justice. In *From sovereign impunity to international accountability: The search for justice in the world of states*, 272–292, edited by R. Thakur, and P. Malcontent. New York, NY: United Nations University Press.
- UN General Assembly Report, 1995.
- United Human Rights Council. 2013. Genocide in Rwanda. Retrieved from http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm (Accessed February 15, 2013).
- UN Security Council. 1993. Annex, Article 16. *Report of the secretary-general pursuant to paragraph 2 of Security Council Resolution 808*. Retrieved from http://www.icty.org/x/file/Legal%20Library/Statute/statute_re808_1993_en.pdf (Accessed February 15, 2013).
- UN Security Council. 2011. Assessment and report of Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534. Retrieved from http://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_18may2011_en.pdf (Accessed February 15, 2013).
- United States Holocaust Memorial Museum (USHMM). 2012. International military tribunal at Nuremberg. Retrieved from <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007069> (Accessed May 10, 2012).
- Utlley, F. 1948. *The Nuremberg judgment*. Chicago, IL: Henry Regnery Company.

15 The Judiciary and Criminal Procedure in Nigeria

Obi N. I. Ebbe

CONTENTS

Introduction.....	202
Pre-English Legal System	202
Emergence of the English Legal System	202
Criminal Code	202
Penal Code	203
Customary Law	203
Crime Problem	204
Judicial System	206
Administration and Organization	206
Supreme Court	206
Federal High Court/Federal Court of Appeal.....	206
State Courts	206
Court of Appeal	207
Western States	207
Courts of Resolution	208
Northern States.....	208
Sharia Court of Appeal.....	208
Northern States.....	208
High Courts	208
Magistrates' Courts	208
Customary Courts.....	208
Special Courts	209
Special Criminal	209
Juvenile Court	209
Criminal Procedures.....	209
Rights of the Accused.....	209
Arrest and Investigation	210
Dismissal or Discharge	211
Right of Appeal in Criminal Cases.....	212
Appeals to Magistrate's Court.....	212
High Court in Criminal Appeals	213
Appellate Jurisdiction of the Nigerian Supreme Court.....	213
Penalties and Sentencing.....	214
Sentencing Process	214
Types of Penalties.....	214

Discussion	214
Conclusion	215
Notes	215
Review Questions.....	215
References.....	216

INTRODUCTION

Criminal law creates both crime and the criminal; in turn, crimes and criminals create judiciary and criminal procedures. For an indigenous Nigerian society, where all such criminal justice concepts are alien, there could be no judiciary and criminal procedures. This chapter descriptively analyzes the emergence of a Western judiciary and criminal procedure model in a formerly stateless society, how the new judicial system currently exists in symbiosis with customary law and procedure, and factors that have influenced the operation of the Western and Nigerian customary models.

Studying Nigerian judiciary and criminal procedures provides answers to why societies evolve from simple to complex, why rules change over time, and what impact a dual system of judiciary can have on societal order.

This chapter gives a brief history of how the concepts of “crime” and “criminal law” emerged in Nigeria and also provides arrest and prosecution rates and offender disposal records. The account is based on the author’s own ethnographic observations as a native of Nigeria, on his formal and informal knowledge of Nigerian history, and on a review of relevant literature on Nigerian judiciary and legal history.

PRE-ENGLISH LEGAL SYSTEM

Before its colonization in 1849, Nigeria was a stateless society made up of isolated clusters of “gemeinschafts” or communities. Some larger communities had kings, emirs, obas, chiefs, an elder, or a council of elders who judged disputes in the community. Relative order and solidarity prevailed in communities without a criminal or penal code.

Offenses in stateless Nigeria were conceived as abominations, taboos, offenses against the earth or deities or ancestors, and minor interpersonal victimizations. The highest authority in each community settled all interpersonal victimizations. Abominations, taboos, and offenses against earth, deities, and ancestors could be tried and disposed by the community as a whole according to the customs of the tribe. But none of these offenses was technically a “crime”; the concept of criminality did not emerge in Nigeria until 1861.

EMERGENCE OF THE ENGLISH LEGAL SYSTEM

In 1849, the British annexed Lagos and declared it a colony (Lagos was the capital of Nigeria until 1992). In time, the British gained control over the whole of Nigeria where several parts were the colony and protectorate of Lagos, the protectorate of Southern Nigeria, and the protectorate of Northern Nigeria. In 1861, a legislative council was created to control friendly and unfriendly populations and to regulate business activities that included agents from many European and African countries (Burns 1929; Niven 1957; Dike 1959; Arikpo 1967).

The British consuls and the Royal Niger Company, who set up the legislative council, also established courts of justice and an armed constabulary to enforce laws and regulations. Between 1861 and 1874, 10 different courts were created, only four of which were concerned with criminal matters: the Supreme Court/Police Magistrate Court, the Court of Civil and Criminal Justice, the West African Court of Appeal (WACA), and the Privy Council in London (Elias 1963). The law enacted by the colonial legislative council was based on laws, values, standards, and customs in England. It was during this period that the concept of “crime” emerged in Nigeria. In 1900, the British government took over direct administration of Nigeria from the Royal Niger Company, retaining all of the courts, laws, and regulations of the previous administration.

Nigeria has two codes of law and procedure, the Criminal Code and the Penal Code. How and why the two codes emerged is discussed next.

CRIMINAL CODE

In 1904, Lord Lugard, the colonial Governor of the Northern Protectorate of Nigeria, introduced a Criminal Code for the Northern Protectorate only (Elias 1954, 1963, 1967; Nwabueze 1963; Okonkwo and Naish 1964; Adewoye 1977). It was modeled closely on the code introduced into the State of Queensland, Australia, in 1899; the Queensland Code was in turn based on a criminal code drafted by British criminal law attorney Sir James Fritzstephen, in Jamaica in 1878 (Arikpo 1967). The Southern Protectorates of Nigeria

were amalgamated in 1906, and in 1914, the Southern Protectorates were amalgamated with the Protectorate of Northern Nigeria. Lord Lugard subsequently made the Criminal Code of 1904 applicable to all of the protectorates in Nigeria.

The Nigerian Criminal Code and its antecedent colonial documents were based on the values of the English common law tradition and not on the values of the people governed; furthermore, the members of the central Legislative Council who drafted and approved the Nigerian Criminal Code of 1904 were all of British origin (Elias 1954; Ebbe 1985). Therefore, the first Nigerian Criminal Code was determined by the interests and standards of British officials and by what would constitute a crime in Great Britain (Lugard 1913). The Criminal Code provoked conflicts of norms among the citizens of Nigeria, because it criminalized some customary practices and normative standards of the Nigerian people. For example, Section 370 of the Nigerian Criminal Code prescribes 7 years of imprisonment for any person who marries another while his or her marriage partner is still living (Elias 1954, 1972b; Ebbe 1985). According to this section of the Criminal Code, "Bigamy is the contracting of a second marriage during the lifetime of one's 'first' wife or husband. Section 35 of the Marriage Act declares such a second marriage as void, and there [are] penalty provisions in Section 47 and 48 of the Marriage Act" (Elias 1954, 1972b). Section 370 of the Criminal Code was interpreted to mean that second marriages under Customary Law henceforward would be illegal.

The introduction of a bigamy statute into Nigeria was a gross error and would not have been featured in the Nigerian criminal code if it had been based on "customs, customary beliefs, ideals, values, and taboos" of Nigerian society, as consensus theorists assumed. Culturally and traditionally, polygamy is a cherished tradition in Nigerian culture: a Nigerian who marries a second or a third wife gets a handshake and a pat on the back, like a man who has scored a touchdown in American football. Furthermore, the Islamic Maliki Law, to which 49% of Nigerians are subject, allows its members a maximum of four wives (Ebbe 1985). After 35 years of political independence from Britain (1960–1995), and some amendments to the criminal code, Nigerians still have difficulties with its alien-based standards.

PENAL CODE

In 1959, the current Nigerian Criminal Code ceased to apply to Northern Nigeria. Throughout the colonial era, the courts in the northern region of Nigeria had been

without personnel with professional training in English criminal law, and the British judges had experienced difficulties with the emirs regarding offense and punishment differences between Islamic (Maliki) law and English criminal law. As a result, a panel of jurists introduced a Penal Code that would take into account the interests, values, and standards of the Muslims (Nwabueze 1963; Adewoye 1977). The new penal code was based on the Sudanese penal code because the Sudan's Muslim laws were similar to those of the Maliki Code in Northern Nigeria (Elias 1967).

The Northern Nigerian penal code law was intended to apply to all persons living in Northern Nigeria, thus solving some of the problems associated with having different laws for different groups. Occasionally a non-Muslim had been brought before an Islamic Alkali Court, with the defendant not even knowing the illegality of some acts in the emirate (Karibi-Whyte 1964). The penal code made the region's laws applicable to everybody, but because the majority of the people living in the region were Muslim, the penal code law avoided any conflict with the dictates of the Holy Koran (Elias 1967).

CUSTOMARY LAW

After the criminal code became applicable to the whole of Nigeria in 1916, most criminal cases were still governed not by the code but by native law and custom. In Southern Nigeria, customary law is unwritten, but Northern Nigeria has written customary law and has even schools of jurists such as the Maliki School (Allott 1963; Nwabueze 1963). This created problems, especially in Northern Nigeria, where Maliki law and English law were frequently incompatible (Okonkwo and Naish 1964). In Maliki law, for instance, the capital offense of homicide included any assault ending in death, regardless of intention. What the colonial criminal code considered manslaughter was interpreted as murder under Maliki law (Okonkwo and Naish 1964).

It is not surprising, then, that colonial authorities attempted to abolish customary law in 1933 by dropping clauses protecting it in Section 4 of the Criminal Code.¹

British administrators, however, realized that total abolition of the Maliki law would cause an intolerable backlash; therefore, Section 10 of the Native Courts Ordinance allowed customary law to continue, provided that its punishments did not involve mutilation or torture and were "not repugnant to natural justice, equity, and good conscience" (Elias 1963).

Since independence in 1960, both the criminal code and the penal code of Nigeria have been amended many times to reflect the norms, values, and standards of the Nigerian people (Karibi-Whyte 1964; Elias 1972b; Ebbe 1985a). Also, some Nigerian customs that were criminalized by the colonial administration have again been legalized. For example, by a 1970 decree, the anti-bigamy law was declared null and void (Obilade 1969; Elias 1972b; Ebbe 1985a).

The postindependence legislatures have given more regard to customary law and its administration than the colonial regime. Indigenous Nigerian administrators understand and sympathize with the culture of the people and their traditional justice system more than the colonial administrators, and many customary laws were restored and others strengthened after the colonial regime (Keay and Richardson 1966).

Today, Nigeria operates a tripartite system of criminal law and justice. First, there is the criminal code, based on English common law and legal practice; second, the penal code, based on Maliki law and Muslim system of law and justice; and finally, customary law, based on immemorial customs and traditions of the people. These native laws and customs are conventional and unwritten in Southern Nigeria, whereas in Northern Nigeria they are written.

To understand the judiciary and criminal procedure in Nigeria, we discuss the nature of that country's crime problem.

CRIME PROBLEM

The crime problem in Nigeria emanates mainly from modernization. By the time colonial rule ended on October 1, 1960, Nigeria had become the largest and most populous center of Western, Asian, and Middle Eastern trade in sub-Saharan Africa. Nigerian cities have many racial and ethnic groups, with the precolonial *gemeinschaft* structure, or what Durkheim (1964) called the "mechanical solidarity" type of structure, having given way to an "organic solidarity." After 60 years of direct British administration of Nigeria, English laws, values, and education had been embraced by the greater part of the Nigerian people.

The heterogeneity of city population made English law seem most suitable for a country of Muslims, Christians, and African religions. However, such multiracial, multiethnic, and multireligious communities with laws of alien origin as a control mechanism led inevitably to cultural conflict and crime (Sellin 1938).

Crimes in Nigeria today are classified by seriousness (with felonies being very serious and misdemeanors less serious). They are also separated by the Nigerian police

into offenses against persons, offenses against property, other offenses (crimes without victims), and offenses against local ordinance.

Felonious offenses include armed robbery, arson, auto theft, burglary, child stealing, counterfeiting, conspiracy, drug offenses, forgery, fraud, kidnapping, murder, aggravated assault, rape, smuggling contrabands, theft of something of high value, strong-arm robbery, and treason. All other offenses are misdemeanors.

For the purpose of criminal prosecution, any person 17 years or older is an adult. Young persons 12–16 years old are treated as juveniles, while ages 7–11 years are regarded as children. The offenses of both children and young persons are handled by juvenile courts. The magistrate of a local government area (county), a layman, and a laywoman constitute a juvenile court, that is, an *ad hoc* informal court (Ebbe 1988).

Drug offenses in Nigeria include possession or selling of cocaine, heroin, or marijuana. Unlike in the United States, all barbiturates and amphetamines are legal drugs that can be purchased easily as over-the-counter medicines.

Tables 15.1 and 15.2 show the rates of crime based on police records from 1986 to 1989, in terms of number of crimes reported (which includes crimes reported by citizens, crimes observed by citizens, and crimes observed by police), percentage of cases solved by the police, and rate of crime per 100,000 population. Tables 15.1 and 15.2 do not include attempted offenses nor do they include "offenses against local ordinance," for which much data is missing.

Systematic record-keeping on crime data in Nigeria is still very cumbersome for the Nigerian police force (NPF), but police force headquarters is making some effort toward achieving that goal. The number of robberies and burglaries recorded by the Nigerian police constitutes only about 30% of the robberies or burglaries committed in the country, because many of such crimes are not detected or reported. Furthermore, over 60% of crimes that should appear in police records are disposed without record at informal, customary criminal justice courts of the chiefs or councils of elders. Police crime record data from Nigeria can be used only with the full realization of its incompleteness. Table 15.3 presents records of kidnappings in Nigeria from 1991 to 2011.

The definitions of the crimes listed in Tables 15.1 and 15.2 are similar to English and American definitions, but the American concept of date-rape is not a rape in Nigeria. Additionally, unlike in some states in the United States, in Nigeria, a husband can never be said to have raped his wife.

From the state of the crime problem presented here, one can see that Nigeria has become more complex than

TABLE 15.1**Rates of Crime Based on Offenses Known to the Police, 2007–2008**

Types of Offenses	2007			2008		
	Number of Crimes Reported	Cases Solved (%)	Crime per 100,000	Number of Crimes Reported	Cases Solved (%)	Crime per 100,000
1. Armed robbery	2469	67.1	8.33	2366	64.3	9.64
2. Assault (aggravated and simple assault)	87,839	125.5	91.22	93,123	74.8	93.02
3. Auto theft	7639	63.7	9.49	8212	54.9	8.79
4. Burglary	22,223	61.6	32.09	19,456	61.2	22.15
5. Counterfeiting	643	39.4	0.87	783	32.4	0.92
6. Drug offenses	845	88.9	2.46	869	56.2	2.89
7. Forgery	369	64.3	0.71	288	82.3	0.46
8. Fraud	478	52.3	0.93	488	78.4	0.92
9. Manslaughter	799	69.1	0.92	649	56.7	0.76
10. Murder	1233	145.4	2.41	1326	102.2	2.07
11. Rape	1146	43.4	1.55	1022	42.2	1.37
12. Smuggling	548	44.5	0.46	464	37.9	0.35
13. Stealing (theft)	93,478	39.5	74.82	89,799	39.0	88.92
14. Strong-arm robbery	926	36.9	1.03	1044	44.7	1.15
Total	220,635	—	183.01	219,989	—	182.58
Population	120,556,000			120,556,000		

Source: Annual Reports of the Nigerian Police Force 2007–2010 and Nigerian Year Book 2007–2010.

Note: The rates of crime are computed based on the police reports, and the country's population was estimated from the 2011 Nigerian census report of 120,556,000.

TABLE 15.2**Rates of Crime Based on Offenses Known to the Police, 2009–2010**

Types of Offenses	2009			2010		
	Number of Crimes Reported	Cases Solved (%)	Crime per 100,000	Number of Crimes Reported	Cases Solved (%)	Crime per 100,000
1. Armed robbery	2276	39.5	2.16	2209	35.7	1.83
2. Assault (aggravated and simple assault)	92,544	54.2	69.32	88,089	38.8	80.36
3. Auto theft	8328	39.6	7.55	6322	41.3	7.20
4. Burglary	15,933	40.6	15.28	14,789	38.9	12.74
5. Counterfeiting	622	39.8	0.66	591	37.9	0.54
6. Drug offenses	732	41.9	0.94.5	658	41.8	1.09
7. Forgery	310	41.8	0.39	387	46.9	0.39
8. Fraud	407	41.3	0.55	488	35.8	0.67
9. Manslaughter	611	57.3	0.78	523	49.0	0.69
10. Murder	936	52.3	1.06	996	51.6	1.28
11. Rape	989	41.8	1.10	1087	51.7	1.11
12. Smuggling	391	35.5	0.36	388	41.8	0.34
13. Stealing (theft)	84,879	50.3	81.43	89,846	45.0	79.74
14. Strong-arm robbery	932	44.7	1.07	794	39.7	0.89
Total	201,664	—	169.28	194,667	—	161.47
Population	120,556,000			120,556,000		

Source: Annual Reports of the Nigerian Police Force 2007–2010 and Nigerian Year Book 2007–2010.

Note: The rates of crime are computed based on the police reports, and the country's population was estimated from the 2011 Nigerian census report of 120,556,000.

TABLE 15.3
Kidnapping in Nigeria from 1990 to 2011

Year	Nigerians	Foreigners	Total Number of Persons Kidnapped
1990–1995	0	0	0
1996	2	0	2
1997	2	0	2
1998	0	6	6
1999	0	5	5
2000	0	4	4
2001	0	4	4
2002	0	6	6
2003	0	5	5
2004	0	6	6
2005	0	7	7
2006	139	119	258
2007	204	150	354
2008	201	152	353
2009	403	109	512
2010	551	82	633
Grand Total	1480	673	2157

Source: Nigerian Police Reports January 2012.

in the precolonial period. It was unavoidable under such an amalgamation of ethnic groups, regions, and religious denominations that an English-based judiciary and criminal procedure should be introduced.

JUDICIAL SYSTEM

ADMINISTRATION AND ORGANIZATION

There are two classes of courts in Nigeria: federal courts and state courts. Federal courts include the Nigerian Supreme Court and the Federal High Court. In the states, there are a variety of courts (Figure 15.1). Unlike in the United States, the states in Nigeria have no Supreme Court. The state high court is the highest court in most states, although some have a High Court of Appeal.

We first discuss the federal courts and then proceed to the state courts.

SUPREME COURT

The Nigerian Supreme Court was established under the Constitution of the Federation Order-in-Council in 1960 and revised by the Republican Constitution (1963). The Republican Constitution did not ensure the independence of the judiciary but did provide for a Supreme

Court with the chief justice of Nigeria and at least five other judges. The Supreme Court is the final court of appeal and a superior court of records. It has exclusive jurisdiction on constitutional matters, and its judges are appointed by the president of the Republic.²

The Nigerian Supreme Court today has powers similar to those of the US Supreme Court. Under the 1979 Constitution, the Supreme Court and its judges became independent of the president and the legislature, and presidential appointments were made subject to the approval of both Houses of the Legislature (Kasumu 1978). There are 13 judges in the Nigerian Supreme Court including the chief justice. The judges must be certified lawyers who had served as judges at the federal or state court levels for a minimum of 10 years.

Unfortunately, the presence of a military head of state in Nigeria from 1983 to 1999 adversely influenced the roles and decisions of the Supreme Court. But the military influence is now over since the country became democratic in 2000. We will discuss the Supreme Court's procedures in the section on "Criminal Procedures."

FEDERAL HIGH COURT/FEDERAL COURT OF APPEAL

The Federal High Court is composed of a chief justice and at least five other judges, all of whom are appointed by the president of the Republic. The Federal High Court is a superior court of records, hearing cases involving the federal government versus individuals or states, or states versus states. Appeals from its decisions go to the Supreme Court. The Federal High Court may sit in any one of the states as an assize court, especially where the parties come from the same state. A case involving persons of different states may be filed in a Federal High Court in Lagos or Abuja. The court has both original and appellate jurisdiction in offenses involving violation of federal law such as smuggling contraband, counterfeiting, and possession of marijuana or narcotic drugs (drug appeals and currency offenses are now tried by special tribunals). Ten years of experience on the bench is required before a lawyer is appointed judge of the Federal High Court. The Federal High Court hears appeals from state high courts and states' courts of appeals.

STATE COURTS

All of Nigeria's 36 states have powers under the constitution to establish state courts of appeal for the determination of appeals brought from a state high court (Elias 1967). Where a state has a court of appeal, decisions from its high court cannot be brought directly to the Nigerian Supreme Court.

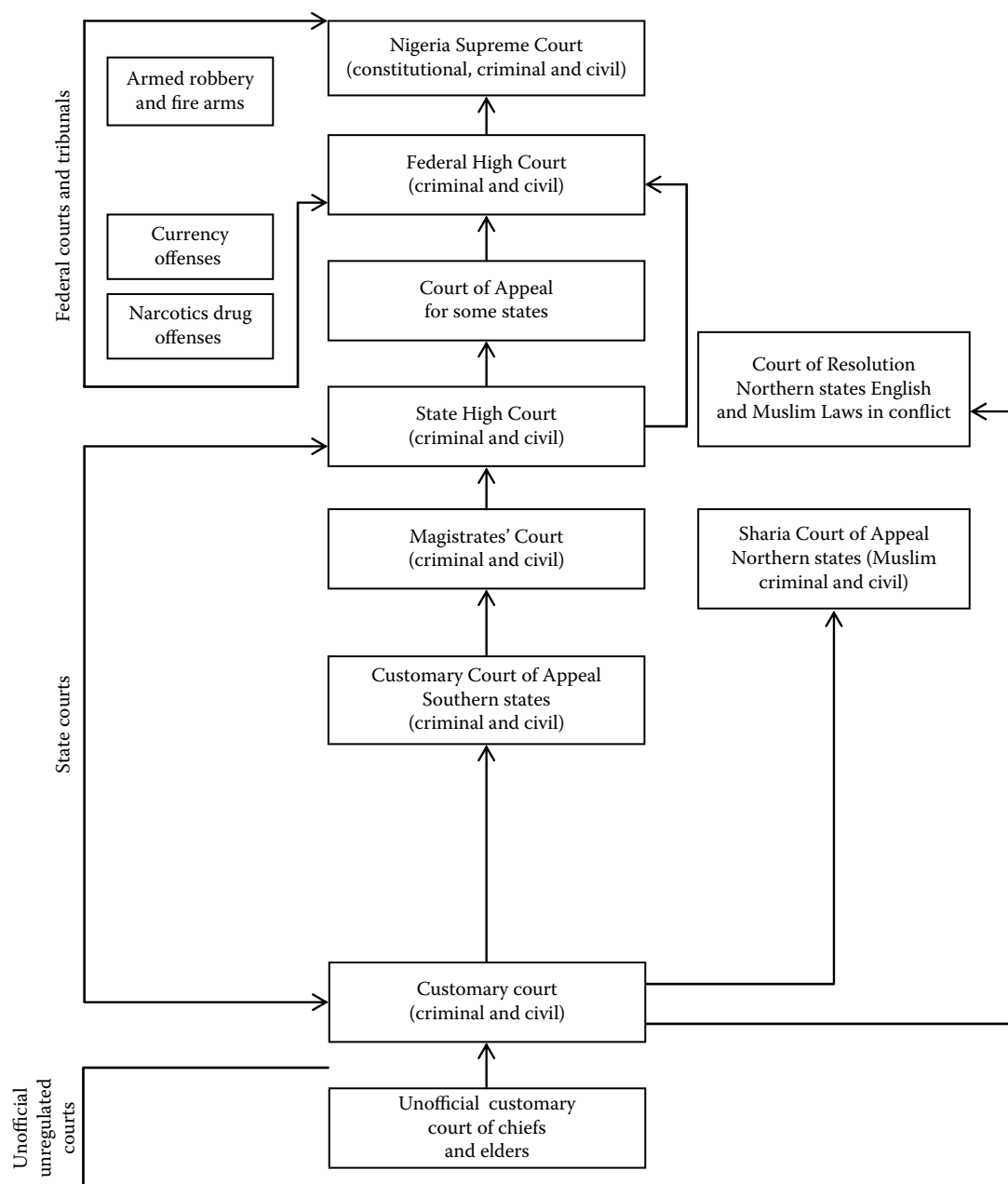


FIGURE 15.1 Structure and organization of the court in the federal republic of Nigeria.

Instead, appeals must first be made to the State Court of Appeal and from there to the Supreme Court.

COURT OF APPEAL

Western States

In the western states, a court of appeal was established by the Court of Appeal Edict 1967 (Elias 1972b). The provisions

of the edict were given effect under Section 127 (2) of the Constitution of the Federation by the Constitution (Western Nigeria Court of Appeal) Order, 1967. The court consists of the president and four justices of appeal and receives appeals from high courts of western states. It has jurisdiction in questions concerning the interpretation of the state constitution, civil matters, murder, and all felonies requiring more than 5 years of imprisonment.

COURTS OF RESOLUTION

Northern States

The Court of Resolution of Northern Nigeria was established by the Court of Resolution Law (1960)³ for the purpose of resolving any conflict of jurisdiction between the state high court and the Sharia Court of Appeal. Today, the Court of Resolution of each northern state consists of the chief justice of the state (who is the president), the Grand Khadi, one judge of the high court nominated by the chief justice, and one judge of the Sharia Court nominated by the Grand Khadi.⁴ No appeal can be made from the Court of Resolution to any other court.⁵

SHARIA COURT OF APPEAL

Northern States

The Sharia Court of Appeal was established in the northern states in 1960 for hearing appeals from customary courts where Muslim personal law is involved. The Sharia Court of Appeal consists of a Grand Khadi and not less than two other judges well versed in Sharia law. The judges are appointed by the president after consultation with the Advisory Judicial Committee. Appeals from an upper area court in cases involving Muslim personal law go to the Sharia Court of Appeal. Appeals from the decision of the Sharia Court of Appeal on questions regarding the interpretation of the Constitution of the Federation, or that of a state, or questions about violations of fundamental constitutional rights, go to the Nigerian Supreme Court.⁶

HIGH COURTS

The federal constitution of 1954 empowered the regional legislatures to establish courts for their respective regions, and in 1955, each region established a high court, magistrates' courts, and native or customary courts. When the regions were broken into 36 states, each state was granted power to establish its own courts in accordance with the federal constitution.

Under the constitutions of 1960, 1979, and 1992, the high court of each state consists of the chief justice of the state and other judges. Each state high court is required by law to have six or more judges (except in the state of Lagos, which requires five or more). The chief justice is appointed by the state governor. The other judges are also appointed by the governor, but the appointments have to be in accordance with the advice of the state Judicial Service Commission. During Nigeria's military regimes, the chief justice of each high court and the other judges of

the court were appointed by the Supreme Military Council after consultation with the Advisory Judicial Committee.

Each high court is a superior court of records having original and appellate jurisdiction. Since the Nigerian Civil War destroyed most of the customary court buildings in the Eastern states, customary courts have been abolished there, and the high courts now have original jurisdiction in their land causes and matters arising under customary law.

MAGISTRATES' COURTS

There are different grades of magistrates' courts from state to state. The Public Service Commission of each state is empowered to appoint magistrates, and there are grades of magistrates and magistrates' courts that vary from state to state. The magistrates are all certified lawyers with at least 5 years of experience on the bench. In the Eastern states, especially in the Ibo areas, the cases that used to be brought to the customary courts now go to the magistrates' courts.

CUSTOMARY COURTS

All judges of customary courts, including Sharia Courts, are lay judges without formal legal training. They are supposed to be persons who, by their age and experience, have a deep knowledge of the customary laws of their clans.

In the northern states, the customary courts are known as area courts. Area courts are of four types: Upper Area Courts, Area Courts Grade I, Area Courts Grade II, and Area Courts Grade III. The area courts are established by the chief justice of each of the states, and their judges are appointed by the state's Public Service Commission. Appeals go from an Area Court Grade I to II or III or to the Upper Area Court having jurisdiction. Appeals from Upper Area Court go to the Sharia Court of Appeal in cases involving Muslim personal law and to the High Court in other cases (Nwabueze 1963; Elias 1967; Aguda 1974).

In midwestern states, all customary courts are now of the same grade. Customary courts are established by the chief justice subject to the approval of the state governor. The chief justice has the power to appoint persons as presidents or members of a customary court on the recommendation of the Advisory Judicial Committee (Elias 1972a).

In the western states, customary courts are graded as A, B, and C; there was formerly a D grade that has been abolished now. The Judicial Service Commission was

empowered to appoint presidents of grade A and B courts presided over by legal practitioners. On the abolition of the Judicial Service Commission, the Local Government Service Board was empowered to appoint, dismiss, and exercise disciplinary control over all members of customary courts (Aguda 1974).

All the courts discussed above have powers of criminal jurisdiction except some district courts in the northern states.

SPECIAL COURTS

Special Criminal

Offenses Tribunals

Special criminal offenses are those for which trials cannot be originated in any of the courts just discussed. Such crimes are tried at special tribunals, including (1) the Armed Robbery and Firearms Tribunal (1970), (2) the Currency Offenses Tribunal (1974), and (3) the Illegal Drugs and Narcotics Tribunal (1986).

The Nigerian government set up those tribunals because people known to have committed the offenses were not paying the price for the crimes in regular criminal courts due to pettifogging of legal arguments of defense lawyers. Each one of the tribunals is composed of five to seven officials such as retired court judges, senior military officials, retired senior police officers, or retired senior civil servants, most with no degree in law. The defendant is allowed to call witnesses and to have a defense attorney, and there is no prosecutor; the trial session consists of the defendant and his or her defense attorney facing a panel of unbiased judges. This system and its operation could be said to be the spirit of the Nigerian customary criminal procedure haunting the government's English judicial system. In effect, the adversarial system is disregarded in these tribunals in favor of the inquisitorial approach: instead of the accused being convicted only when evidence proves that he or she committed the offense beyond a reasonable doubt, the accused has to prove to the tribunal that he or she did not commit the offense (inquisitorial).

Penalties for each of the three offenses are established by decree, with very little discretionary power given to the judges in sentencing: any person convicted of any of the tribunal offenses received death by a firing squad. It was only in November 1992 that Nigerian Head of State Ibrahim Babangida commuted the death penalty to life imprisonment for any person convicted of narcotics drug smuggling or possession. Whether a person convicted of

narcotics drug smuggling has a prior criminal record is immaterial to the life sentence, and Nigeria has no parole system.

JUVENILE COURT

The juvenile court in Nigeria began in Lagos in the 1940s as a brainchild of British colonial authorities. After World War II, it was introduced into the Western, Eastern, and Northern regions (Ebbe 1988). Today the court is composed of a magistrate who is the president of the court, a layman, and a laywoman.

Juveniles adjudicated as delinquent are sent to approved schools, remand homes, or placed on probation. A juvenile accused of murder is tried as an adult in a criminal court. If convicted, he or she is sent to a medium security prison until he or she attains the age of 17 or 18.

CRIMINAL PROCEDURES

Both to Nigerians with some Western education and to those without Western education, the English system of criminal procedure can be a nightmare. It is not easy to adapt English criminal procedures to a society for which any such system is culturally alien. In fact, in some rural towns and villages in Nigeria today, it will offend the whole town or village if any member of the community calls the police over any criminal victimization by a community member or brings a lawsuit against any member for damages. This attitude has prevailed since the colonial days. Most villages want to handle all criminal victimizations within the village in a traditional manner.

Nigeria is a country divided between literates and illiterates, with the literates holding firmly to Western ways and systems of justice; therefore, the English system of criminal procedure probably has come to stay despite its difficulties and despite local opposition. The controversial nature of the English criminal procedures, however, has made police operations in Nigeria very cumbersome and often ineffective.

RIGHTS OF THE ACCUSED

When the accused is indigent and incapable of providing a defense attorney, he or she is protected against self-incrimination by a public defender.

There has been no jury trial in Nigeria since the eclipse of the colonial administration of justice (Aguda 1974). If an accused is brought before a magistrate's court and pleads guilty during questioning, the court will

immediately refer him or her to a psychiatrist to determine whether he or she is in full control of his or her mental faculties. If he or she is found to be normal, the magistrate will then give sentence according to law without regard to his or her pleading guilty. (The court accepts the defendant's guilty plea, but—unlike the American plea bargaining situation—there is no reduction in the severity of punishment for the offense.)

ARREST AND INVESTIGATION

Suspects come to the attention of the police through victims or crime scene observers, or suspects may be caught by the police on patrol. The police officer with greatest seniority at the station thoroughly investigates the case and may take any one of the following three actions:

1. Dismiss the case because of insufficient evidence.
2. In trivial cases, simply warn the suspect and discharge him or her on grounds that
 - a. the suspect has no prior criminal record
 - b. the crime has no victim
 - c. the offender has agreed to compensate the victim.
3. When the suspect is a juvenile (less than 17 years old), refer the case to a juvenile court or discharge the juvenile.

If there are grounds to detain the suspect, the police officer will do so and initiate an investigation of the case. If the investigation report shows that the suspect actually committed an offense, the case reports for the accused person are transferred to the office of the director of public prosecution (DPP). If the DPP finds inadequate evidence to charge the case to court, he or she dismisses it. If there is enough evidence to charge the accused of a crime, he or she places charges against the suspect in a magistrate's court.

A person charged with a misdemeanor is entitled to bail, unless the DPP and the court see good reasons for not granting it. In felony cases, however, granting bail is at the discretion of the court. Should the offender fail to show up on the day of trial, the bailer is held liable. Bail can be granted by the court on recognizance with or without sureties to appear before the court. The court can deny bail and require an offender to be remanded in custody awaiting trial in a medium or maximum pre-trial security prison. Law allows magistrates to detain a suspect for 30 days, but in practice, detainees may be in

prison awaiting trial for 6 months or even a year. Bail may be denied on the following grounds:

1. The suspect refused arrest.
2. The suspect is a recidivist.
3. The suspect committed the crime while on bail.
4. The suspect is arrested for murder, rape, armed robbery, narcotics drug smuggling, counterfeiting currency, or any other heinous crime.
5. The suspect is an apparent danger to the public.
6. There is a need to protect the offender.
7. The suspect is an unruly juvenile.

It is noteworthy that in the area of public prosecution, there are deviant factors that can make the police or the DPP not charge an offender with a legal violation. These are the interests and influences of top officials or politicians in the executive branch of the government, the justice department, corporate executives, and wealthy businessmen. These individuals can order or lobby the police or the DPP not to take a case to court or cause a case to be dropped when it is already charged to court.

As in Britain, most criminal prosecutions are police prosecutions. The DPP and police department prosecute only in more serious cases, particularly murder, armed robbery, and narcotics drug trafficking (Aguda 1974). When the police prosecute, the prosecution may be in the name of the officer of the NPF or the native authority police, or in the name of the commissioner of police of the state (e.g., *Obi Okonkwo v. Commissioner of Police*), or in the name of the native authority of the area in which the offense was committed or against whose rules the offenses were committed (e.g., *Bobo Ikemefuna v. Orlu Urban Council* or *Jim Jones v. The Inspector General*). In contrast, in the United States, the accused is prosecuted in the name of the state or the people (e.g., *The People v. O.J. Simpson*).

There is no plea bargaining in the Nigerian criminal justice system. The defense in a criminal trial may claim self-defense or insanity (Brett and McLean 1963), but intoxication is not a defense unless coupled with duress. Minor criminal cases that require negotiated settlements are referred at the discretion of the magistrate to a customary court that has jurisdiction over the parties involved in the case. In practice, if it is clear, unequivocal, and beyond a reasonable doubt that the defendant committed the crime charged, Nigerian criminal procedure will not entertain denial of due process (e.g., failure to read the Miranda rule or judge's rule to the accused) as a defense in court. This constitutes a major difference between Nigerian and American criminal procedures.

Tables 15.4 and 15.5, which show offender disposal records for 1987 and 1988, indicate that most persons convicted of offenses in Nigeria are not incarcerated. Instead, they receive non-prison sentences, including warning, compensation, service at public projects, a fine, or time in a labor camp. Most arrested persons are not prosecuted, but most of those prosecuted are found guilty of the offense(s) charged (66.9% in 1987 and 81.2% in 1988). Rates of conviction are particularly high for murder, armed robbery, rape, burglary, counterfeiting, forgery, fraud, auto theft, strong-arm robbery, and drug offenses. Assault charges (except for premeditated aggravated assault) are less likely to lead to a sentence of imprisonment. Assault and battery are a traditional means of settling differences between friends in Nigeria, and social change including high degree of urbanization has increased their frequency, despite the fact that the British criminalized them; thus, they do not lead to incarceration of the offender in most cases today.

DISMISSAL OR DISCHARGE

Every criminal court in Nigeria, whether a court of first instance or a court of appeal, can dismiss a case and discharge the accused, if it finds no reasonable grounds to put the accused on trial or convict him.

It is provided, however, that the dismissal of a complaint or the discharge of the accused is not the same as an acquittal (Criminal Procedure Act, Cap. 43 of the Laws of the Federation of Nigeria; Aguda 1980). Also, if an accused has been tried by a court of competent jurisdiction for a crime and convicted or acquitted of the crime, he or she will not be tried again for the same offense, nor will the same facts be used to charge him or her with any other crime “for which a different charge from the one made against him might have been made before the court by which he was earlier on acquitted or convicted” (Brett and McLean 1963; Aguda 1980). Such a second trial would amount to “double jeopardy,” also prohibited by law in the US criminal justice system.

TABLE 15.4
Offender Disposal Records Year 2009

	Non-Prison Sentences (%) ^a	Number of Persons Arrested (%) ^b	Number of Found Prosecutions Guilty (%)		Number of Persons Discharged (%)	Number of Persons Imprisoned (%)	Death Sentence (%) ^a
1. Murder	1247	732 (53.2)	49 (6.4)	81 (28.3)	189 (55.0)	—	94.2
2. Manslaughter	799	411 (51.9)	166 (27.1)	107 (58.7)	—	—	72.8
3. Armed robbery	2206	1622 (65.8)	91 (9.9)	92 (19.7)	292 (57.2)	—	79.6
4. Rape	1881	471 (42.2)	113 (24.0)	411 (76.0)	—	—	76.0
5. Burglary	14,225	6827 (41.2)	2209 (34.1)	3244 (65.9)	—	—	65.9
6. Stealing/theft	42,332	6878 (26.8)	2274 (15.4)	4764 (33.5)	—	6937 (49.6)	84.6
7. Assault (all types)	41,288	16,848 (41.4)	10,096 (48.5)	1239 (6.5)	—	8922 (43.7)	51.5
8. Smuggling	642	105 (39.9)	16 (15.2)	89 (84.8)	—	—	84.8
9. Counterfeiting	518	224 (42.9)	21 (9.4)	224 (90.6)	—	—	90.6
10. Forgery	289	51 (42.1)	19 (37.3)	44 (62.7)	—	—	62.7
11. Fraud	299	60 (35.5)	22 (36.7)	39 (63.3)	—	—	63.3
12. Auto theft and snatching	6146	1479 (36.4)	173 (11.7)	1314 (88.3)	—	—	88.3
13. Strong-arm robbery	712	311 (49.9)	58 (18.6)	198 (60.5)	—	71 (25.8)	81.4
14. Narcotic drugs	519	198 (46.9)	86 (43.4)	54 (33.3)	46 (23.2)	—	56.5
15. Other offense	906	464 (57.0)	132 (28.4)	166 (32.8)	—	179 (34.3)	71.6
Total	114,009	35,708 (31.3%)	15,806 (44.3%)	11,977 (33.5%)	527 (1.5%)	16,109 (45.1%)	45.5%
Population	120,556,000						

Source: Nigerian Police Force Annual Reports 2011.

^a Percentage of those prosecuted.

^b Percentage of those prosecuted found guilty of the offense charged.

TABLE 15.5
Offender Disposal Records Year 2010

	Non-Prison Sentences (%) ^a	Number of Persons Arrested (%) ^b	Number of Found Prosecutions Guilty (%)	Number of Persons Discharged (%)	Number of Persons Imprisoned (%)		Death Sentence (%) ^a
1. Murder	1289	579 (51.4)	56 (9.2)	167 (32.0)	388 (42.6)	—	91.3
2. Manslaughter	615	393 (61.7)	131 (38.6)	208 (61.4)	—	—	57.2
3. Armed robbery	1345	5651 (46.5)	33 (5.8)	238 (42.1)	294 (52.0)	—	88.9
4. Rape	889	403 (44.2)	98 (24.3)	305 (75.7)	—	—	73.8
5. Burglary	11,662	4582 (41.8)	914 (19.9)	3553 (77.5)	—	115 (2.5)	83.7
6. Stealing/theft	39,893	21,689 (50.3)	1224 (5.6)	8731 (40.3)	—	11,734 (54.1)	92.9
7. Assault (all types)	32,912	22,380 (62.4)	7361 (32.9)	4406 (19.7)	—	10,613 (47.4)	69.3
8. Smuggling	326	76 (35.7)	24 (31.6)	38 (50.0)	—	14 (18.4)	71.5
9. Counterfeiting	288	137 (37.6)	11 (8.0)	113 (82.5)	—	13 (9.5)	94.6
10. Forgery	199	119 (52.0)	15 (12.6)	104 (87.4)	—	—	89.1
11. Fraud	486	144 (43.4)	9 (6.3)	135 (93.8)	—	—	96.3
12. Auto theft and snatching	5277	1821 (43.8)	51 (2.9)	1768 (97.1)	—	—	93.5
13. Strong-arm robbery	619	275 (50.8)	39 (13.5)	189 (68.7)	—	49 (17.8)	74.7
14. Narcotic drugs	668	237 (45.8)	26 (11.0)	135 (57.0)	76 (32.1)	—	90.7
15. Other offense	898	493 (51.0)	126 (22.9)	117 (23.7)	—	263 (53.3)	82.9
Total	97,366	58,979 (60.57%)	10,124 (17.2%)	20,207 (34.3%)	758 (1.3%)	21,016 (56.6%)	71.2%
Population	120,556,000						

Source: Nigerian Police Force Annual Reports 2011.

^a Percentage of those prosecuted.

^b Percentage of those prosecuted found guilty of the offense charged.

However, if an accused was tried for a crime and convicted or acquitted by a court that has no competent jurisdiction in the matter, he or she can be subsequently charged with and tried for the same offense, without regard to the decision of the court where he or she was first charged and adjudicated (Criminal Procedure Act 1960; Brett and McLean 1963; Aguda 1980).

RIGHT OF APPEAL IN CRIMINAL CASES

Both federal and state constitutions in Nigeria provide for rights of appeal from subordinate courts to the appropriate high court and from the state high courts, in their original and appellate jurisdictions, to the federal high court and on to the federal Supreme Court on constitutional grounds. The constitutional provisions are

the same, *mutatis mutandis*, for all of the 30 states in Nigeria and for the capital territory of Abuja.

APPEALS TO MAGISTRATE'S COURT

At the customary court level, if a convicted party does not countenance the decision or order of a grade A or grade B district court or a customary court of appeal, he or she can appeal to the magistrate's court or the state high court within 30 days from the date of the lower court's order or decision (similar appeals are allowed 6 or 7 months to be lodged in the United States and 3 days in China). The cases appealed must involve a prison sentence or a fine exceeding N1000 (Naira) (US\$7.50) on conviction.

An appeal from a decision or order of a magistrate's court goes to the high court of the state where the

magistrate's court is located. The appellant must give the registrar of the magistrate's court notice of appeal indicating the grounds on which his or her complaints are based.

If the appellant is in prison custody, the magistrate may "release him from custody on his entering into a recognizance, with or without securities" and at a reasonable cost that the magistrate thinks expedient to secure the appellant's appearance (Nigerian [Constitution] Order in Council 1960; Brett and McLean 1963). The magistrate will not grant a release from prison custody if any one of the following applies:

1. The appellant has previously served a sentence of not less than 6 months of imprisonment.
2. The magistrate has a reason to believe that if released from prison, the appellant is likely to commit an additional crime.
3. The appellant is likely to abscond or disappear.

The magistrate has the discretionary power to release the appellant from prison custody or not to do so. However, if the magistrate refuses to grant release, the appellant can apply to the state high court, which also has the power to grant a release or refuse to do so. If the high court grants the release request and the appellant fails to show up on the day of the appeal hearing, the high court may take any one of the following actions:

1. Issue a warrant for the appellant's arrest.
2. Dismiss the appeal or order the appeal hearing to be postponed, and order that, if the appellant is caught, he or she should be remanded in custody.
3. Order that the appellant's security or securities be forfeited in total or in part.

HIGH COURT IN CRIMINAL APPEALS

The High Court, in its appellate jurisdiction in criminal cases coming from the customary courts and magistrate's courts, can respond to the appeals as follows:

1. It can, after reviewing the matter, confirm the decision or order of the lower court and dismiss the appeal.
2. If it sees that there is sufficient ground to interfere with the decision of the lower court, it can set aside the earlier decision and (a) acquit the appellant; or (b) retry the appellant on the same charge and/or on a new charge that might have been disclosed by the evidence and then sentence the appellant as it deems just; or

(c) order a retrial of the appellant on the same charge or on any new charge disclosed by the evidence; or (d) modify or substitute the decision or order of the lower court where the appeal was filed (Brett and McLean 1963; Aguda 1980).

An appeal court may not entertain an appeal made only because the decision reached by the lower court is "challenged on the ground of its being contrary to the weight of the evidence" (Aguda 1980). However, the court of appeal can hear the case if it can be shown that the decision or order of the court of trial is "unwarranted, unreasonable, and cannot be supported having regard to the evidence" (Aguda 1980).

APPELLATE JURISDICTION OF THE NIGERIAN SUPREME COURT

The federal Supreme Court has exclusive jurisdiction to hear and determine appeals from state high courts and the federal high court. In addition to civil matters, the Supreme Court has final say (1) in all criminal cases brought before the high court sitting at first instance; (2) in any criminal decisions addressing alleged violations of the constitutional rights of the accused; and (3) in instances where a death sentence has been imposed by a high court, or decisions "in which the High Court has affirmed a sentence of death imposed by some other courts" (Brett and McLean 1963; Aguda 1980).

The Supreme Court allows an appeal against conviction from a high court if it thinks that the decision reached at the lower court "should be set aside on the ground that it is unreasonable and cannot be supported having regard to the evidence"; or it believes that a wrongful decision was made based on a question of law applied to the case; or "on the ground that there was a miscarriage of justice" (Brett and McLean 1963).

If the Supreme Court allows an appeal against a conviction, it may set aside the conviction and order that the appellant be acquitted. Also, the Supreme Court may order that "the appellant be retried by a court of competent jurisdiction" (Brett and McLean 1963).

A defendant in a criminal case who wants to take a case to the Supreme Court must "give notice of appeal or notice of his application for leave to appeal" (Brett and McLean 1963; Aguda 1980) according to the rules of the court and within 30 days. In some circumstances, 15 days may be added to help the appellant prepare.

The Supreme Court may, at any stage, appoint counsel to help an appellant. When the Supreme Court upholds the decision of the high court, the appellant serves the sentence imposed by the high court that led to the appeal.

Appeals may also reach the Supreme Court from the special tribunals for cases of armed robbery, which draws the death penalty, or for cases of counterfeiting currency and narcotic drugs trafficking, which draw a life sentence without parole.

PENALTIES AND SENTENCING

Sentencing Process

Nigeria has no presentencing hearings. The magistrate or a high court judge, in a state court, can sentence an offender to terms of imprisonment according to law on the very day the case is tried, if the accused is found guilty of the offense. Only rarely does a judge or magistrate postpone sentencing until a later date.

Only judges can give sentences. Victims have no sentencing role nor do psychiatrists or social workers, although they may be involved in pretrial investigations.

Types of Penalties

Persons found guilty of misdemeanor offense may be fined, warned, granted probation, or, as in Singapore, be given corporal punishment or a community service order. Persons found guilty of felonious offenses may be sentenced to some years of imprisonment, served either in a maximum-security prison or in a medium security prison, depending on the gravity of the offense. Less serious felonious criminal offenders are sent either to minimum-security prisons or to a labor camp.

Nigeria has the death penalty for murder, armed robbery, treason, and serious currency offenses. Until November 1992, illegal drugs and narcotics smuggling was disposed by death penalty. The punishment is not life imprisonment, which in Nigeria means that the offender will be released from prison only in a coffin. Once again, there is no parole program in the Nigerian criminal justice system.

House arrest, banishment, and exile are no longer used in the Nigerian criminal justice system. House arrest, however, may be applied to a political dissident.

Capital punishment is carried out publicly by a firing squad of soldiers, with the offender tied to a stake. Sometimes the audience is an angry crowd of crime condemners; sometimes it is a sympathetic crowd.

DISCUSSION

Every aspect of the Nigerian criminal justice system is still developing, partly because most of Nigeria's laws are based on alien customs and traditions and partly because federal governments in Nigeria fall like ripe apples. Every new regime brings new decrees, a new constitution, and new organizational structures, and what criminal codes declare to be illegal acts depends on who occupies the seat of power. Changes in Nigerian law reflect changes in its ruling class.

Contrary to Thompson's idea about Sierra Leone (Chapter 8), Nigeria does show that multiple systems of criminal justice—the English legal system, the Islamic legal system, and the customary legal system—can coexist and work in relative harmony with each other. The Muslim courts and the customary courts are very close to the people and are understood by the common citizens, because the legal arguments in those courts are based on immemorial custom, tradition, and revelation (Sharia)—that is, on the values and standards of the people. Cases are disposed of in these courts cheaply and expeditiously. But the English legal system, although entrenched in the Nigerian constitution, still appears alien and threatening to the majority of the people.

The English-based legal system has many loopholes through which a criminal can escape. It is a phenomenon of the urban areas, and so is crime: criminals take refuge and operate in the cities, because customary law and its informal control mechanisms are too far away to apply. Finally, frequent military interventions in the governance of Nigeria weaken the independence of the judiciary and generally disrupt the normal course of the criminal justice system.

The judiciary in Nigeria is highly politicized; arcane societies that unite some members of the judiciary, the military, and top civilians create disintegration and insincerity within the judiciary. In effect, partisanship has nullified the rule of law and due process, and the entire society has become disorganized. The military regime and violent criminals maintain their power through cold-blooded assassinations; consequently, some murders are not truly investigated, because they were ordered by top military commanders or their civilian cronies. The judiciary failed to challenge the illegal regimes and their atrocities, because many important members of the judiciary are party to political conspiracies and self-defeating political agendas.

Under this state of affairs, an offender who reaches the courts and gets convicted is one who has no money and no "godfather" in the military or among the top civilian

population. Nigeria's criminal justice system has shortened *prima facie* cases against offenders with "godfathers," but for the poor and unconnected, it has become a nightmare.

CONCLUSION

In nations without viable political systems, justice is denied, and Nigeria is such a nation. The Nigerian Constitution becomes obsolete with each change of government, and a new one is created in its place. The masses become disorganized and the judiciary rendered powerless. Worst of all, the Nigerian Supreme Court refused to declare an act of the military junta or government unconstitutional. In effect, the military junta criminalized any behaviors that fail to serve their interests. Since the eclipse of the Nigerian military regimes in 1999, the Nigerian criminal justice system has become more democratic than ever before. However, corruption in the judiciary obliterates the gains of being under a military regime.

In summary, the advent of the English legal system in Nigeria in the late nineteenth century created new forms of crime and criminals. Contemporary Nigerian criminal law is based on English law, customary law, and Maliki law summed up in the criminal code and the penal code. Of course, customary law still stands apart from the two codes, making Nigeria effectively operate a tripartite system of criminal law and justice.

Nigeria has two classes of courts, federal and state, with the Nigerian Supreme Court being the highest court of the land. The 1979 Constitution gave the Supreme Court powers similar to those of the US Supreme Court, and the Nigerian military regimes' influence is no more effective. The most important lesson to be learned from the Nigerian criminal justice system is the use of lay judges, chiefs, or a village council of elders as mediators in disposing some serious crimes at very little cost to the victim, offender, or taxpayers. This customary court approach also reduces the number of undecided cases in the files of magistrates' courts and high courts.

NOTES

1. Section 4 of the Criminal Code originally stated that "no person shall be liable to be tried or punished in any Court in Nigeria, other than a native tribunal, for an offense except under the express provision of the Code or some other

Ordinance, or some law, or of some Order-in-Council made by his Majesty for Nigeria or under the express provisions of some statute of the Imperial Parliament which is in force in, or forms part of the law of Nigeria" (Okonkwo and Naish 1964; Elias 1967). It was amended to read that "no person shall be liable to be tried or punished in any Court in Nigeria for an offense except under the express provisions of the Code or...under the express provisions of some statute of the Imperial Parliament which is in force, or forms part of, the law of Nigeria" (Okonkwo and Naish 1964; Elias 1967).

2. Constitution of the Federal Republic of Nigeria 1963, Sec. III(2).
3. Northern Region Law Report, 94 of 1960.
4. Court of Resolution Law, Cap. 28, Law of Northern Nigeria, 1964 Revision Section 3(1).
5. Court of Resolution Law, Cap. 28, Law of Northern Nigeria, 1964 Revision Section 3(1).
6. Constitution of the Federation Sec. 119, Act No. 20 of 1963.

REVIEW QUESTIONS

1. What are the two codes of law in Nigeria?
2. The Nigerian Criminal Code of 1904 was determined by alien norms. Discuss and comment.
3. What is the consensus theorists' view of criminal law?
4. What is Maliki law?
5. What is Sharia Court?
6. What is meant by the statement that "Nigeria operates a tripartite system of criminal justice"?
7. Compare and contrast the judiciary in Nigeria and the United States.
8. What are the common features of the Nigerian judiciary and the Sierra Leonean judiciary?
9. On what grounds can bail be denied to an accused in the Nigerian criminal justice system?
10. What are the functions of the DPP in the Nigerian criminal justice system?
11. What are the defenses available to one accused of a crime in Nigeria?
12. What factors will make a magistrate choose not to release an appellant from detention when his or her appeal is pending?
13. Under what circumstances can the Nigerian Supreme Court allow an appeal against conviction from a high court decision?
14. What are the capital offenses in Nigeria?

15. What factors politicized the Nigerian judiciary before 1999 and made it unreliable in upholding the rule of law and due process standards?
16. Compare and contrast treatment of offenders in precolonial Nigeria and in contemporary Denmark.
17. How did the English legal system emerge in Nigeria?
18. What are “special tribunals” in Nigeria?
19. What were the roles of the West African Court of Appeal (WACA) and the Privy Council in London (UK) in the colonial times?
20. What is the purpose of the Court of Resolution in the Nigerian criminal Justice system?

REFERENCES

- Adewoye, O. 1977. *The judicial system in Southern Nigeria, 1854–1954: Law and justice in a dependency*. Atlantic Highlands, NJ: Humanities Press.
- Aguda, A. T. 1974. *The law of evidence in Nigeria*. London, UK: Sweet and Maxwell.
- Aguda, A. T. 1980. *The law and practice relating to evidence in Nigeria*. London, UK: Sweet and Maxwell.
- Allott, A. N. 1963. *The future of law in Nigeria*. London, UK: Sweet and Maxwell.
- Arikpo, O. 1967. *The development of modern Nigeria*. Baltimore, MD: Penguin Books, Inc.
- Brett, L., and I. McLean. 1963. *The criminal law and procedure of Lagos, eastern Nigeria and western Nigeria*. London, UK: Sweet and Maxwell.
- Burns, A. 1929. *History of Nigeria*. London, UK: George Allen and Unwin Limited.
- Dike, K. O. 1959. *Trade and politics in the Niger Delta, 1830–1885*. Oxford, UK: Oxford University Press.
- Durkheim, E. 1964. *The division of labor in society*. New York, NY: Free Press.
- Ebbe, O. N. I. 1985. The correlates of female criminality in Nigeria. *International Journal of Comparative and Applied Criminal Justice* 7: 171–192.
- Ebbe, O. N. I. 1988. Juvenile justice system in southern Nigeria. *International Journal of Comparative and Applied Criminal Justice* 12(2): 191–204.
- Elias, O. T. 1954. *The groundwork of Nigerian law*. London, UK: Routledge and Kegan Paul Ltd.
- Elias, O. T. 1963. *The Nigerian legal system*. London, UK: Routledge & Kegan Paul Ltd.
- Elias, O. T. 1967. *The British Commonwealth: The development of its law and constitution—Nigeria*, vol. 4. London, UK: Steven and Sons, Limited.
- Elias, O. T. 1972a. *The Nigerian magistrate and the offender*. Benin City, Nigeria: Ethiope Publishing Company.
- Elias, O. T. 1972b. *Law and social change in Nigeria*. Lagos: Evans Brothers Limited.
- Karibi-Wyatte, A. G. 1964. Some recent amendments to the criminal code (Nigeria). *Nigerian Law Journal* 10: 156–164.
- Kasumu, A. B. 1978. *The Supreme court of Nigeria*. London, UK: Heinemann.
- Keay, E. A., and S. S. Richardson. 1966. *The nature of customary courts in Nigeria*. London, UK: Sweet & Maxwell.
- Lugard, F. 1913. *Sir Frederick Lugard: Political memorandum*. Ibadan, Nigeria: National Archives Library, University of Ibadan.
- Nigerian Constitution Order in Council, 1960.
- The Nigerian Criminal Procedure Act, 1960.
- Niven, C. R. 1957. *A short history of Nigeria*. London, UK: Longmans, Green & Co. Ltd.
- Nwabueze, B. B. 1963. *The machinery of justice in Nigeria*. London, UK: Butterworths.
- Obilade, A. O. 1969. Reform of customary court systems in Nigeria under military government. *Nigerian Law Journal* 3: 29–36.
- Okonkwo, C. O., and M. Naish. 1964. *Criminal law in Nigeria (excluding the North)*. London, UK: Sweet & Maxwell.
- Sellin, T. 1938. *Culture, conflict and crime*. New York, NY: Social Science Research.

16 The Islamic Criminal Justice System

Obi N. I. Ebbe and Jonathan Odo

CONTENTS

Introduction.....	217
Historical Development of Islamic Criminal Law	218
Sources of Islamic Criminal Law (Sharia).....	218
The Koran (Qur'an).....	219
The <i>Sunnah</i>	219
The <i>Ijma</i>	219
The <i>Qiyya</i>	219
Legislation and Islam in Contemporary Societies	219
The Crime Problem.....	220
Types of Crime in Islamic Jurisprudence.....	221
<i>Hudud</i> (Set Penalty Crimes).....	221
<i>Qesas/Qisas</i> (Just Retaliation or Parity of Punishment) Crimes.....	221
<i>Ta'azir</i> Crimes.....	221
Islamic Judicial System.....	222
The Office of <i>Qadi</i> (<i>Khadi</i>).....	222
Courts and Judges (<i>Qadis</i>) in Contemporary Islamic States	222
Courts.....	223
Court Procedure.....	223
Prosecution.....	223
The Defendant/Accused.....	223
The Right of the Victim.....	224
Judgment.....	224
Corrections.....	224
Discussion and Conclusion.....	224
Notes	225
Review Questions.....	225
References.....	226

INTRODUCTION

From our observations as those born and raised in a partially Islamic country, the least-studied system of justice in the Western world is the Islamic system of criminal justice. This is because of the impact of colonization of nations in the seventeenth and eighteenth centuries by Western imperialists, who condemned the cultures and customary standards of their conquered nations. For Islamic nations prior to their colonization, religion and politics were inseparable; they were intertwined as a complete system. Just like in medieval Europe, when the head of the Christian church was also the head of state,

the head of an Islamic nation was also the head of state. Colonization, in the main, disorganized many Muslim nations' approaches to their religion and politics.

Colonial hegemony in Islamic countries condemned what they found objectionable in Islamic religion and ignored the central philosophy and teachings of the Prophet Muhammad, and the noble intentions of the Koran (Holy book—the principal source of Islamic law), which include the preservation of security of individuals and society (Horrie and Chippindale 1991; Makdisi 1999). Instead, what are presented to non-Muslims are the severe penalties for heinous crimes in the Islamic

criminal justice system, such as the amputation of a hand for stealing and robbery, stoning, and 100 stripes for adultery and fornication. These scaring penalties turned people away from trying to learn the philosophy behind the severe penalties and their deterrent effects in safeguarding society and maintaining stable peace in a society.

Furthermore, some Muslims are extremely violent, and this in turn produced its inhibitive effect in those trying to find out what is good about Islam. But, social scientists should conduct an objective investigation into all social systems to see what we can learn from them. Every criminal justice system is culturally specific. Unmistakably, there are many good results and approaches to dealing with offenders in Islamic law and the Islamic criminal justice system, as you will see in this chapter.

Islam is not only a religion; it is also a social system. It is a system of managing and governing a society. Democracy is not inherent in Islamism. A study of the Koran and the *Sunnah* (deeds and sayings of the Prophet Muhammad, the second source of Islamic law) will show the researcher that Islam is a religion as well as a system of social organization.

The Koran and the *Sunnah* are full of prescriptions on how to worship the Almighty God, protect and preserve the lives of individuals, and safeguard society. By Islamic doctrines and principles, the ruler of a society is divinely commissioned to feed the poor and the rich. Islamic laws become a glue that keeps society united and in harmony. In effect, the stringent enforcement of the law becomes the *modus operandi* of Islamic societies.

In the next section, we discuss the development and sources of Islamic criminal law.

HISTORICAL DEVELOPMENT OF ISLAMIC CRIMINAL LAW

The emergence of Islamic criminal law stems from the Koran, which is claimed to be a compilation of revelations made to the Prophet Muhammad (579–632 CE)¹ by the Almighty God (Allah). From the moral point of view, the Koran is like the Ten Commandments given to Moses for the Christians, from which the Christians came up with mortal sins and venial sins (Campbell 2007; Cavendish 2007).

For the Prophet Muhammad and his followers, the Koran is an embodiment of how a society should serve the Almighty God and how a society should be governed and regulated. In effect, a significant portion of the contents of the Holy Koran is concerned with civil laws,

criminal laws, and how offenders should be treated. As a result, the Koran became the primary source of Islamic law, including criminal law. The Muslims believe that the prescriptions of the Koran are what God (Allah) told Muhammad, and that whatever God says is sacred and must be obeyed. The Koran, however, is not specifically a legal document; instead, the Koran is a holy book of religious and moral principles, and exhortations about the Almighty God.

Since Prophet Muhammad was seen as a messenger of God, and his prophecies stood the test of time, many people began to accompany him wherever he was going to receive from him the word of God. Shortly, his followers began to be known to others as Mohammedans. Since the motto (rule of behavior of Mohammedans) is “total submission to the will of God,” they took the name “Islam” as the name of their religion, because Islam means “submission to the Will of God.” That means, give yourself to one Almighty God (Allah) (Bassiouni 1982).

As Islamism started spreading all over the Middle East as fast as a new song, the Prophet Muhammad became more and more popular than ever. His teachings, statements, ideas (Hadith), and deeds called *Sunnah* became sacred like the Holy Koran. In effect, his followers documented all of the *Sunnah* as a source of truth and a secondary source of Islamic law (Coulson 1964; Bassiouni 1982).

SOURCES OF ISLAMIC CRIMINAL LAW (SHARIA)

The totality of a system of traditional Muslim laws is called Sharia. Unmistakably, Sharia is a system of civil and criminal law in partially Islamic states (Nigeria, Mali, Turkey), neo-Sharia Islamic states (Pakistan, Egypt, Sudan), and totally Islamic states (Saudi Arabia, Kuwait, Qatar).

The Sharia laws (Islamic law) emanate from those communications from God to the Prophet Muhammad, which are regarded by Muslims as the injunctions of the divine legislator. In Islamic law, there is only one legislator, and that is the Almighty God (Allah). He is the only law giver, and His laws are the “sacred law” (Bassiouni 1982).

There are four principal sources of Islamic criminal law:

1. The Koran
2. The *Sunnah*
3. The *Ijma*
4. *Qiyas*

THE KORAN (QUR'AN)

The Holy Koran is to the Muslims what the Holy Bible is to the Christians. It is the holy book of Islam. To the Muslims, the Koran is the Word of God, which He revealed to Prophet Muhammad to guide all mankind to find peace and happiness in this world and hereafter (al-'Awwa 1982). The Koran has 114 *suras* (chapters) and 6,342 verses. Only 500 of the verses deal with legal matters (Ali 2000; al-'Awwa 1982). The Muslims see the Koran as a means by which God tries to prevent humans from engaging in behaviors that are harmful to society. It is a code of conduct that governs religious and social life. It is the most principal source of Islamic law (Sharia).

THE SUNNAH

This constitutes the collective word for the mass of books, essays, etc., that tell about the Prophet Muhammad's testimonies, sayings, acts, or spoken words attributed to him, also known as Hadiths, and hence become a benchmark for assessing what is right or wrong among Muslims (Bassiouni 1982; al-'Awwa 1982; Kusha 2002). The *Sunnah* is the second source of Islamic law. While the contents of the texts did not come from heavenly revelations, Muslims still regard it as sacred and divinely inspired writings that have the force of the sacred laws of God (Bassiouni 1982; Salama 1982). There are many compilations of the Hadith, with most of the authentic ones released in the Sahih Period (850–915 AD).

THE IJMA

As expert opinions of legal scholars in common law and civil law countries like Nigeria and France, respectively, are one of the sources of law, *Ijma* refers to a consensus of the Islamic community's competent representatives, including a consensus of Islamic religious scholars (*Ulama*). The community is seen as all Muslims of one particular epoch. That means the *ijma* can arise any time. It is a formulation that arises when neither the Koran nor the *Sunnah* provides any answer to the issue. In that case, a community of Islamic authorities comes up with a solution by means of a consensus. Since Islam does not tolerate any challenge to a constituted authority, it is very easy to reach a consensus in an Islamic synod or community.

THE QIYYA

The *qiyya* is a system of reasoning by analogy. Analogical reasoning can be used to expand the application of an existing rule of law derived from a decision. If the

analogy is found in the Koran or the *Sunnah*, it becomes a settled case. *Qiyya* is like the *stare decisis* of the common law countries. *Qiyya* is not an autonomous source of Islamic law, because it depends on the existence of a model case or a model body of rules in either the Koran or the *Sunnah* (al-'Awwa 1982; Bassiouni 1982). Its use is highly limited in the Islamic criminal justice system. In fact, jurists prohibit the application of *qiyyas* in *hudud* and *qesas* crimes (these crimes will be discussed later). On the whole, *qiyya* is a source of Islamic law and a method of interpreting the principles and norms of the Sharia (Hamidulla 1954; Salama 1982; Mansour 1982; Bassiouni 1982).

The Koran and the *Sunnah* are the main sources of Sharia law in Islamic states and Islamic jurisprudence.

LEGISLATION AND ISLAM IN CONTEMPORARY SOCIETIES

Legislation is the making of laws by some representatives of a society's citizens at a national, state, or provincial legislature. This system is found in Western and some non-Western societies. In these societies, the laws can be revoked or amended to meet the circumstances of the changing times. These are societies not influenced by Islam. In the world political system, these Western and non-Western societies are in the majority of nations with a legislature.

Man-made laws are not a feature of classical or traditional Islamic societies. For Muslims, all laws come from God (Allah); that is why those laws are sacred and must be obeyed. Violation of the sacred law of God is a heinous offense that must be penalized. There is no plea bargaining. Under the founder of Islam, Prophet Muhammad, there was no separation of powers of the state. He, the Prophet, exercised judicial, legislative, and executive powers himself (Sherif 2003). God revealed the law to him, and he gave the law to the people, and thus his legislative power to the people. His laws were the laws of God. The Caliphs who succeeded him simply maintained the laws created by God and revealed through the Prophet (Koran) and the *Sunnah*. The Muslims do not believe in the creation of new laws, because the Koran and the *Sunnah* covered all aspects of human behavior and responses to them.

As centuries passed and populations grew, coupled with European colonization, immigration, cultural evolution, and acculturation, Islamic nations began to experience challenges to their way of social organization and governance.

In the process of colonization, every Islamic nation in the Middle East was contaminated by four of the European empire builders—Britain, France, Portugal, and the Netherlands (in order of magnitude). Although British and French colonists pretended not to interfere with the religions and customs of the nations colonized, they introduced English and French laws and religion (Christianity), which challenged the indigenous customs and religious doctrines. For example, both English law and Christianity challenged the matrimonial norms of Islam. The Koran permits a Muslim to marry a maximum of four wives, if he so chooses. And in non-Muslim ethnic groups in Nigeria, a man can marry as many wives as he can afford. But, English law prescribes seven years of imprisonment for bigamy (Ebbe 1985; Elias 1972), which voids the customary law of the people.

The impact of European imperial expansion in the Middle East on Islamic laws and customs can be seen in the following accounts—the traditional Islamic nations of Aden Protectorate, Bahrain, Egypt, Kuwait, Oman, Palestine, Qatar, Saudi Arabia, Transjordan (now Jordan), and the Trucial Coast (now United Arab Emirates) were all British colonies; all other parts of the Middle East were colonized by either France, the Netherlands, or Portugal (Rodney 1972; Schwarz 2004).

Unmistakably, the European system of state organization (democracy) and Christianity are opposed to Islamic religious practices and state organization. The colonists took away some state powers of the caliphs and instituted the European common law system of social control. Christian churches were built by the missionaries, and European school systems built and staffed with European teachers; the language of instruction was English, French, or Dutch as the case may be, but not Arabic, which was the language of the people. The traditional Islamic states were virtually dismantled by force, and the Islamic system of justice was disrupted and diluted in most places.

After independence following the end of World War II (1945), spearheaded by India and Egypt in 1947, the Islamic countries of the Middle East gradually began to rebuild their traditional Islamic Sharia system of justice, which was tarnished by European colonization. So far, the reconstruction of the Islamic system of justice and state organization has met with resistance, both from within and outside of the Islamic system. This is because many former Muslims are now Christians; some Christians are now Muslims; some Muslims want a change; and, unfortunately, the authority of the Caliph or the Imam can now be only challenged by a lay member of the state. Democracy and European languages introduced in

traditional Islamic societies have polluted the sanctity of the Islamic religion, philosophy, and justice system.

Since their achievement of political independence, the former traditional Islamic states have developed certain political structures to cope with their polluted former traditional systems. Some avoided the common law system introduced by the colonial masters, revoked all vestiges of the common law and colonial hegemony, and reintroduced the classical Sharia system of laws and state organization, such as in Saudi Arabia and some Gulf nations. Others chose to make some changes and established a republic with the title “Islamic Republic of ...,” such as the Islamic Republic of Iran, the Islamic Republic of Pakistan, the Islamic Republic of Afghanistan, and the Islamic Republic of Mauritania. These Islamic republics have a constitution and a legislature—a legacy of colonial administration. Then, we have another structure in countries where the Muslims are not in the majority, but occupy a particular region of the country, such as Nigeria. The colonial administration provided them with an Islamic court and a court of resolution in the Independence Constitution (see Chapter 15). In Nigeria’s post-independence constitutions, the 47.9% Muslim population of Nigeria was provided with a customary court of the Grand Khadi, the Sharia Court of Appeals, and the Court of Resolution² (see Chapter 15).

Nigeria is not an Islamic state, but 12 of Nigeria’s 36 states unilaterally declared themselves Islamic states under the Republic of Nigerian Constitution. The 12 states have run into trouble in their attempts to apply Sharia law and its draconian penalties. Such attempts were blocked by the Nigerian Supreme Court, which is based on the English common law tradition. Also, attempts by Nigerian Muslims to have a Sharia Supreme Court have been blocked by the power of democracy.

In the final analysis, there are Islamic states where politics and religion are clearly separated, such as Turkey, Malaysia, Mali, Kazakhstan, etc. Sharia law is applied in these countries in very limited cases (Otto 2008; Ebeniro 2011).

THE CRIME PROBLEM

Compared to non-Islamic states and non-Islamic communities, Islamic states and communities have, relatively, no crime problems. The crime rate is very low in Islamic states and communities, especially wherever Muslims are in the majority. This is because Muslims have been made to believe through the Koran that any offense against the person, property, or the state is an offense against Allah (God). And Muslims internalized that value. Additionally,

the penalty for an offense is draconian, which deters the members from criminal behavior.

An in-depth look at Islamic criminal law will show you that most crimes regarded as felonies in Islamic states are minor crimes in common law and civil law countries. Also, the crime rate is low in Islamic states and communities for five main reasons:

1. Detection of a crime is prompt and certain, because even your brother or sister who observes your crime must report it to the authorities, since failing to report the offender and his/her crime is an offense against Allah (God).
2. Prosecuting the offender is swift, because the judge is also the investigator in the crime charged, and there is no jury trial. There are no long delays by defense lawyers. There is no long wait for trials, because that is opposed to the dictates of the Koran and the Prophet Muhammad. A trial for a very serious offense can be completed in one day, and sentencing takes place on the same day. Even in capital offense, there is no death row in the Islamic criminal justice system.
3. The penalty is fixed. There is no less alternative punishment for *Hudud* Crimes (Islamic part I crimes—see types of Islamic crimes below).
4. The severity of punishment is very high. Think about cutting the right hand off when one commits the first theft, or 100 lashes for fornication administered in public, or 80 lashes for slander, and the number of lashes and severity cannot be reduced.
5. Finally, certainty of the application of punishment is irrevocable, because the Koran demands it. Once again, there is no plea-bargaining in the Islamic criminal justice system.

TYPES OF CRIME IN ISLAMIC JURISPRUDENCE

There are three categories of crime in Islamic states—*Hudud*, *Qesas*, and *Ta'azir* (Bassiouni 1982; Bahnassi 1982; Mansour 1982).

Hudud (Set Penalty Crimes)

These are crimes against the law of God. *Hudud* crimes are punishable by a *Had*, that is, the punishment is in accordance with God's Rights. The punishment is prescribed by the Koran. The prosecution and the punishment are mandatory.

There are seven *Hudud* crimes: (1) adultery, (2) deformation/slander, (3) alcoholism (drinking alcoholic beverages),

(4) theft, (5) brigandage (highway robbery), (6) apostasy (rejecting Islam), and (7) rebellion/corruption of Islam (transgression of Islam).

We describe these seven offenses as the seven part one crimes of Islam. While slander or defamation of character, drinking alcoholic beverages, and theft demand very severe penalties in public, all of the other four offenses receive a death penalty.

Qesas/Qisas (Just Retaliation or Parity of Punishment) Crimes

Unlike *Hudud* crimes, *Qesas* crimes are not an intrinsic offspring of the Koran. Instead, *quesas* arose through academic, judicial, and political supervision of Islamic authorities, but they are specifically listed in the Koran (Bassiouni 1982).

There are five types of *quesas* crimes:

1. Murder
2. Voluntary homicide (Manslaughter)
3. Involuntary homicide (Manslaughter)
4. Intentional crimes against the person
5. Unintentional crimes against the person

Intentional and unintentional crimes against the person are equivalent to assault, battery, mayhem, and other offenses against the person that do not result in death of the victim (Sherif 2003). In *quesas* crimes, the parity of punishment is warranted.

Diya (compensation) crimes—*Diya* crimes are crimes against the person for which compensation of the victim must be made as the penalty. *Diya* crimes are part of *quesas/qisas* crimes in that both are injuries against an individual. While some *quesas* may demand equity or retaliation, *diya* crimes demand compensation as a medium of disposal of the offender. The *Sunnah* spells out detailed instances of *quesas* and *diya* crimes, and the Koran determines the punishment to be meted out in each case (Sherif 2003).

Ta'azir Crimes

There are two classes of *Ta'azir* crimes—those specified in the Koran or the *Sunnah* and discretionary penalty crimes—those defined by the caliph to meet emerging needs of the society. *Ta'azir* crimes may either affect the rights of God, or the rights of worshippers, or both (Benmelha 1982; Sherif 2003). *Ta'azir* crimes are outside the purview of *hudud* and *quesas* crimes under the Sharia. Neither the Koran nor the *Sunnah* prescribed any punishment for *ta'azir* crimes. The caliph is responsible for determining the right punishment for all *ta'azir* offenses.

Ta'azir crimes include false charges of committing adultery, libel, lying under oath, contempt of court, bribery, embezzlement, violations of regulations, and other offenses defined by an Islamic state authority (Sherif 2003; Ibrahim 2003; Hussein 2003).

The penalty for *ta'azir* crimes is rehabilitation. *Ta'azir* crime penalties may include imprisonment, or physical punishment, or compensation in agreement with the principle of rehabilitation of the offender. The penalty for *ta'azir* crimes is intended to protect the interest of society and prevent recidivism. In defining an act as a *ta'azir* crime, the Islamic state authority or ruler aims at securing the interests of the whole society, the individual, the state, and obedience to Islamic law, and sets up punishments commensurate with the gravity of the violation (Hussein 2003). In effect, potential offenders are deterred from engaging in such crimes.

Under Islamic jurisprudence, all rights are bestowed on believers by Allah (God), and there are two divisions of rights—rights of God and rights of worshippers. The Koran provides a method of determining which offense falls into each of the two divisions. “Rights granted in the public interest are considered Rights of God, while rights bestowed to protected private interests are deemed Rights of Worshippers” (Sherif 2003).

Unmistakably, all *hudud* crimes are offenses against the rights of God, which is why the penalties for *hudud* crimes cannot be altered by man. Additionally, most *quesas* and *diya* crimes fall into both rights of God and rights of worshippers, and some are only violations of the rights of worshippers. In effect, the penalties for *quesas* and *diya* crimes are determinations of the Koran and cannot be altered by man and cannot be revoked. Conversely, *ta'azir* crimes can be revoked or decriminalized (Sherif 2003; Benmelha 1982).

ISLAMIC JUDICIAL SYSTEM

In a traditional Islamic state, the same courts deal with both criminal and civil matters. This is because under the Sharia, both the caliph (executive branch) and individuals can initiate and terminate criminal proceedings, depending on the type of crime being prosecuted or the rights being violated (Sherif 2003). Take note that some of the offenses classified in American and European legal systems as civil cases are criminal cases under the Islamic Sharia.

THE OFFICE OF QADI (KHADI)

Under the traditional Islamic Sharia system of justice, the office of *Qadi* (judge) is an Islamic court of original jurisdiction in all cases—criminal or non-criminal.

The caliph appoints the *qadi*, who must be “pious, free, learned, just, sane and an adult Muslim” (Surty 2003), as a judge (*qadi*).

The traditional Islamic court officials were—the chief justice, the judge, the deputy judge, the clerk of the court, the court ushers, the bodyguard, the doorkeeper, the secret investigator, the accredited witnesses, the interpreter, the distributor, the legal trustee, and the agent or solicitor (Surty 2003). The current Saudi Arabian judicial system epitomizes the classical Islamic Sharia system of criminal justice.

COURTS AND JUDGES (QADIS) IN CONTEMPORARY ISLAMIC STATES

In the Islamic states of Saudi Arabia, some of the above court officials are still maintained. The Grand *Qadi*'s court is still a court of original jurisdiction. Even in Nigeria, which is not an Islamic state, in both the 1960 Nigerian Independence Constitution, and the post-independence Constitution, the Grand *Qadi* court is a court of original jurisdiction in both criminal and civil matters, especially in the 12 predominantly Islamic states. Under the classical/traditional Islamic Sharia court system, there is no appeal to any other court for decisions of the *qadi*, because there is no other higher court, due to the belief that the decision is based on the prescriptions of the Allah, and the law broken is a sacred law of Allah.

Today, in non-traditional Islamic states, such as Iran, Egypt, etc., their courts have been modified to have both European and Islamic Sharia features. While Iran has 10 types of courts, only two of them deal with criminal matters—the criminal courts and a special court called the criminal court of government officials (Kusha 2002). Even in non-traditional Islamic states, the judges of the criminal courts must be versed in Islamic Sharia law and the laws of their former colonial masters.

Given the contamination of the Islamic Sharia criminal justice system in the Middle East nations by European imperial hegemony, Saudi Arabia becomes the best epitome of the Islamic Sharia system of criminal justice today. In line with the prescriptions of the Koran and the *Sunnah*, there is no separation of state and religion in Saudi Arabia. As the Prophet Muhammad would have it, Saudi Arabia—like medieval states—is an absolute monarchy. The country has no written constitution. The Koran is the Constitution of Saudi Arabia. Since the eclipse of colonial regime and the emergence of international commerce, corporate expansion, and globalization, the king had to make new regulations to control behaviors unforeseen or

uncovered by both the Koran and the *Sunnah*. These new regulations are known as the basic laws of Saudi Arabia, which were adopted by Royal Decree (Royal Embassy of Saudi Arabia 1992; Robbers 2007; Cavendish 2007; Champion 2003; Niblock 2006).

As the Saudi Arabian criminal justice system is based on traditional Sharia law, the Grand *Mufti* was the head of the judiciary until after 1969, when the king created the ministry of justice due to pressure from outside to modernize.

In Saudi Arabia, the chief religious leader is the head of the judiciary. He is appointed by and answerable only to the King. The Sharia court system is pivotal to the Saudi Arabia judiciary (Esposito 1998; Powell 1982). The judges and lawyers of the judiciary are part and parcel of the Islamic oligarchy in Saudi Arabia.

COURTS

There are two categories of courts in Saudi Arabia—Sharia courts and government tribunals.

Sharia courts have general jurisdiction in both criminal and civil matters. The *qadis* and the lawyers of the court may be nominated by the Grand *Mufti*, but they are appointed by the king. As noted above, these *qadis* or judges and the lawyers are members of the Saudi Arabian oligarchy.

The government tribunals, otherwise referred to as extra-Sharia government tribunals, deal with cases of specific royal decrees. Both courts must follow the Sharia rules of evidence and procedure (Otto 2010).

Unlike in Prophet Muhammad's era, final appeals from both courts go to the King.

Within the Sharia courts, there are two types of courts of original jurisdiction—general courts and summary courts. The summary courts handle less serious crimes, such as *ta'azir* crimes.

Additionally, there are non-Sharia courts. An example of a non-Sharia court is the board of grievances, which handles cases of complaints against the government. This court also handles commercial cases. This court is mentioned because it has jurisdiction in some criminal matters, such as forgery, bribery, fraud, extortion, etc. Furthermore, the board of grievances is a court of appeal for certain non-Sharia government tribunals (Otto 2010; Vogel 1999; Baamir 2010).

Note that in the absence of a national Supreme Court for judicial review, Saudi Arabia has appellate courts that are set up in Mecca and Riyadh. Their main duty is the judicial review of decisions of other courts to make sure that their decisions are in compliance with Sharia law.

In fact, individual Islamic jurists can appeal decisions of a *qadi* if they feel that any decision deviated from the Sharia.

Court Procedure

Only a single judge holds a court session, decides the case, and sentences the offender, if he/she is found guilty of the offense charged. Islamic courts apply both adversarial and inquisitorial approaches in their criminal prosecutions, depending on the type of crime committed.

There are three judges on the trial bench if the penalty for the crime is either a death penalty, amputation, or stoning. No single judge is allowed to make such decisions.

Unmistakably, in 2007, the King of Saudi Arabia issued a royal decree with the purpose of reforming the country's judiciary, which would include the creation of a Supreme Court to please Western critics, but the reforms have not been implemented, because many Islamic jurists within the country are strongly opposed to any reforms (Otto 2010). However, in 2008, a specialized criminal court was created specifically to try terrorists, especially Al-Qaeda terrorists and human rights activists (Human Rights Watch 2011). This special criminal court was quickly created without internal opposition, because the court ruthlessly applies Sharia to the letter of the law. In 2011, the court tried more than 126 terrorists and many human rights activists, and convicted most of the terrorists, including 16 human rights activists who were sentenced to 5–30 years of imprisonment (Carey 2011).

PROSECUTION

In Saudi Arabia as well as in Islamic Sharia states, there is no prosecutor. The judge who will decide the case carries out the criminal investigation. The regular police commission (*Sahib al-Shurta*) and the religious police (the *Muhtasib*) play a part in carrying out the investigation. The caliph who appoints the judges can also appoint persons to conduct the investigation (Sherif 2003). A criminal proceeding under the Islamic Sharia can be initiated either by an official of the executive or an official of the judiciary, depending on the nature of the case. Additionally, individuals victimized can initiate criminal proceedings against the offender.

THE DEFENDANT/ACCUSED

In Islamic criminal justice, the defendant is given full legal rights under the Koran and the *Sunnah*. The defendant has the right to remain silent, but there is no Miranda

doctrine, as required in the United States. The defendant is innocent until proven guilty. Under Islamic Sharia, any forced confession from the defendant is invalid in the Sharia court.

Furthermore, if a defendant voluntarily confesses his crime, he has the right to withdraw the confession and the withdrawal will not be used as a ground to convict him of the crime (Sherif 2003). Additionally, under the Islamic Sharia criminal justice system, the defendant has a right to fair trial, right to have an independent and impartial judge decide the merits of the charge or charges against him/her, right to equal protection under the law, right to be represented by a lawyer, right to public trial, right to confront evidence against him, right to obtain judgment within a reasonable time, and his guilt must be established without a reasonable doubt (Sherif 2003; El-Awa 2003; Surty 2003).

Given that the violation of Islamic Sharia law receives draconian penalties, Sharia court judges insist that to charge and convict a defendant of a crime, evidence must be built upon truth and obtained through legal means; otherwise, it is tantamount to a deliberate "violation of privacy rights protected by the Sharia" (Sherif 2003). Also, Islamic jurists assert that illegally secured evidence is inconsistent with Sharia and is simply Machiavellism (Ibrahim 2003; Sherif 2003; Hussein 2003; Salama 1982).

THE RIGHT OF THE VICTIM

The crime must be a crime against the right of worshippers. In such a case, the charge is initiated by the victim, and the prosecution can be terminated by the victim, as long as the crime does not involve the right of God. If the crime involves both the right of God and the right of worshippers, and the victim terminates his charge, the court will go ahead with only the right of God violated by the defendant.

The victim must testify in court and present all evidence that he/she has against the defendant, including witnesses. Witness under Sharia is adversarial. Cross-examination of witnesses is involved. The judge provides witness-protection mechanisms.

JUDGMENT

After weighing all of the evidence in the case of *quesas* or *ta'azir* crimes, the single judge pronounces his decision. If the accused is found guilty beyond a reasonable doubt, the judge sentences him/her that same day. The victim plays a part in the sentencing if the crime involves the right of worshippers. The victim cannot influence the judge's sentence if the crime involves the right of

God. There is guilty plea under Sharia, but that does not ameliorate the sentence against the convicted person.

In a panel of three judges in a *hudud* crime trial, the decision of guilty or not guilty is always unanimous. There is nothing like a dissenting opinion in a bench of Sharia court judges.

Note that under Islamic Sharia law, an accused cannot be found guilty based on circumstantial evidence. Take, for example, adultery by a married woman—which is penalized by stoning her to death; four persons must have witnessed the event before coming to bear witness against her in a public trial. Also, bearing a false witness for any crime, or making unfounded accusations against a person, can yield one a corporal punishment of 80 lashes and capital punishment. Additionally, in all crimes, mitigating and exculpatory circumstances are recognized in Sharia law and can be grounds for acquittal.

CORRECTIONS

The prison system is not a feature of the classical Sharia system of criminal justice. The Prophet held that it was better to correct a person in the community, but not in a prison. The correctional systems found today in Islamic states of the Middle East and Africa were brought by the colonial masters. Under the Islamic correctional system today, prisoners are not in the best of hands. These prisoners are the ones who committed some *ta'azir* crimes. In a typical Islamic state such as Saudi Arabia, a *hudud* and a *quesas* criminal has no chance of being in prison. They would prefer to go to prison, but they will not have it. Such criminals are either hanged, killed by a firing squad, executed in a chamber, stoned to death, or amputated.

DISCUSSION AND CONCLUSION

There is a lot to be learned in the criminal justice systems of Islamic states that combined some features of Sharia law and common law, especially in the areas of stringent enforcement of the law. What to do to the offender has been a serious concern to societies from ancient to medieval times. Classical Islamic states represent the medieval approach. The Islamic system of penology and corrections has never been the worst. Have societies not left offenders in mine-shafts, abandoned ships, and transported them to foreign countries in which death was preferred than the transportation? (Rusche and Kirchheimer 1939; Peters 1995; Barnes 1972). Besides, has our Western modified contemporary criminal justice system reduced recidivism and been better for society than the classical Islamic criminal justice system? The answer is no.

What is disturbing, however, is despite the draconic penal system of classical Sharia adopted in Saudi Arabia, between 2007 and 2010, as high as 345 persons were executed by public beheading for various *hudud* crimes in Saudi Arabia? Although the rate of crime in Saudi Arabia is lower than in many non-Islamic countries, the number of executions for crime in Saudi Arabia in a space of four years shows that the severity of punishment cannot deter some criminals. In other words, there is no panacea for criminal involvement.

The nature of the Islamic criminal-justice system process is justice—fairness-oriented. The goal of the Sharia is the ascertainment of the truth, determination of the responsibility of the accused, the remedy to the victim of the crime, and social remedy. In other words, the guiding principles of the Islamic Sharia criminal justice system are justice, equality, fairness, and honesty. These are the foundations of criminal procedure under Islamic jurisprudence (Bassiouni 1982).

The absence of plea bargaining, jury trial, wholesale police corruption, long delays in the process of trial, death rows, and long awaiting trials, etc. make the Islamic criminal justice system a more reliable system than those of common law and civil law countries.

The pressure currently being mounted on Islamic states to modernize their draconian system will disorganize the criminal justice system of Islamic states, and their crime rates will rise as high as those of non-Islamic countries.

Convicting an accused in the Islamic criminal justice system is not based on circumstantial evidence. It must be unequivocal that the accused has committed the offense and proved with irrefutable evidence. Furthermore, the accused is very well protected in that in any misdirection of justice, the falsely convicted must be compensated by the state. That is one of the requirements of Sharia law.

NOTES

1. Prophet Mohammed was estimated to have been born in 570 AD and died in 632 AD in Mecca in the Arabian desert. As a young adult, he was a trader and married his employer, Khadija. Around the age 30, he began to talk to close friends and relatives about his having some revelations from God (Coulson 1964; Janin and Kahlmeyer 2007).
2. The Court of Resolution found in Muslim regions of Northern Nigeria was created to resolve a situation when English and Sharia laws are in conflict (see Ebbe 1985:91).

REVIEW QUESTIONS

1. What factors contributed to the isolation of Islamic criminal justice system from Western scholars?
2. Why have Islamic laws been described as draconian?
3. What are the sources of Islamic law?
4. Why was Prophet Muhammad able to promulgate and enforce the laws that he enacted?
5. What is the difference between the Koran and the *Sunnah* as sources of Islamic law?
6. What do you understand by Sharia law?
7. Islam is not only a religion; it is also a social system. Discuss.
8. What countries of the world can be described as Islamic states, partially Sharia Islamic states, and neo-Sharia Islamic states?
9. Who is the *Qadi* or Grand *Khadi* in Islamic criminal justice system? What are his roles?
10. Why is there no legislature in an Islamic state?
11. In what way(s) was the traditional Islamic system of criminal justice contaminated?
12. What is the role of the caliph or imam in the Islamic system of criminal justice?
13. What are the five reasons why there is low crime rate in Islamic states?
14. What are the three categories of crime in Islamic states? Which crimes are classified in each category?
15. The authors termed *hudud* crimes as “seven part one crimes of Islam.” Which crimes are *hudud* crimes?
16. What do you understand by “rights of God” and “rights of worshippers”? Why is distinction between the two necessary in Islamic criminal justice system?
17. Why is there no plea bargaining in Islamic criminal procedure?
18. The Koran is the Constitution of the government of Saudi Arabia. Discuss.
19. Compare and contrast the two categories of courts in Saudi Arabia.
20. Why is there no prosecutor in the criminal justice system of Islamic states?
21. In the Islamic states’ criminal justice system, the defendant is protected against self-incrimination. How is this done?
22. Like in the Chinese criminal justice system, a judge in the Islamic justice system can investigate a crime brought before his court. What is the advantage of this procedure in both systems?

23. What are the rights and roles of the victim of a crime in the Islamic criminal justice system?
24. Compare and contrast the Western common law tradition and the Islamic system of justice.
25. The guiding principles of the Islamic Sharia criminal justice system are justice, equality, fairness, and honesty. How are these principles safeguarded in Islamic criminal justice system?

REFERENCES

- Al-'Awwa, M. S. 1982. The basis of Islamic penal legislation. In *The Islamic criminal justice system*, edited by M. C. Bassiouni, 127–147. London, UK: Oceana Publications, Inc.
- Ali, A. Y. 2000. *The holy Qur'an*. Ware, Hertfordshire, England: Wordsworth Editions.
- Baamir, A. Y. 2010. *Sharia law in commercial and banking arbitration*. Burlington, VT: Ashgate Publishing Company.
- Bahnassi, A. F. 1982. Criminal responsibility in Islamic law. In *The Islamic criminal justice system*, edited by M. C. Bassiouni, 171–193. London, UK: Oceana Publications, Inc.
- Barnes, H. E. 1972. *The story of punishment: A record of man's inhumanity to man*, 2nd edition. Montclair, NJ: Paterson Smith Publishing Corporation.
- Bassiouni, M. C. 1982. Sources of Islamic law and the protection of human rights in the Islamic criminal justice system. In *The Islamic criminal justice system*, edited by M. C. Bassiouni, 3–54. London, UK: Oceana Publications, Inc.
- Benmelha, G. 1982. Ta'azir crimes. In *The Islamic criminal justice system*, edited by M. C. Bassiouni, 211–225. London, UK: Oceana Publications, Inc.
- Campbell, C. 2007. *Legal aspects of doing business in the Middle East*. New York, NY: Lulu.com.
- Carey, G. 2011. Saudi court tries militants for planning attacks on U.S. troops. http://mobile_bloomberg.com/news/2011-09-19/saudi-court-tries-militants-for-planning-attacks-on-u-s-troops.html (Accessed June 14, 2012).
- Cavendish, M. 2007. *World and its people: The Arabian peninsula*. New York, NY: Marshall Cavendish Group.
- Champion, D. 2003. *The paradoxical kingdom: Saudi Arabia and the momentum of reform*. London, UK: Blackwell Company.
- Coulson, N. J. 1964. *A history of Islamic law (Islamic surveys)*. Oxford, UK: Oxford University Press.
- Ebbe, O. N. I. 1985. Power and criminal law: Criminalization of conduct norms in a colonial regime. *International Journal of Comparative and Applied Criminal Justice* 9(2): 113–122.
- Ebeniro, C. D. 2011. The problems of administration of justice on female offenders in Nigeria. *African Journal of Criminology and Criminal Justice Studies* 4(2): 3–13.
- El-Awa, M. S. 2003. Confession and other methods of evidence in Islamic procedural jurisprudence. In *Criminal justice in Islam: Judicial procedure in the Sharia*, edited by M. A. Haleem, A. D. Sherif, and K. Daniels, 111–129. London, UK: I.B. Tauris & Co. Ltd.
- Elias, T. O. 1972. *Law and social change in Nigeria*. Lagos, Nigeria: Evans Brothers Ltd.
- Esposito, J. L. 1998. *Islam and politics*. Syracuse, NY: Syracuse University Press.
- Hamidulla, M. 1954. Sources of Islamic law: A new approach. *Islamic quarterly* 1: 205–211.
- Horrie, C. and P. Chippindale. 1991. *What is Islam? A comprehensive introduction*. New York, NY: Virgin Books.
- Human Rights Watch. 2011. Saudi Arabia: renewed protests defy ban. Retrieved from <http://www.hrw.org/news/2011/12/30/saudi-arabia-renewed-protests-defy-ban> (Accessed February 15, 2013).
- Hussein, G. M. 2003. Basic guarantees in the Islamic criminal justice system. In *Criminal Justice in Islam: Judicial Procedure in the Sharia*, edited by M. A. Haleem, A. D. Sherif, and K. Daniels, 35–53. London, UK: I.B. Tauris & Co. Ltd.
- Ibrahim, S. H. 2003. Basic principles of criminal procedure under Islamic Sharia. In *Criminal justice in Islam: Judicial procedure in the Sharia*, edited by M. A. Haleem, A. D. Sherif, and K. Daniels, 17–34. London, UK: I.B. Tauris & Co. Ltd.
- Janin, H. and A. Kahlmeyer. 2007. *Islamic Law: The Sharia from Muhammad's time to the present*. New York, NY: McFarland and Co. Publishers.
- Kusha, H. R. 2002. *The sacred law of Islam*. Burlington, VT: Ashgate Publishing Company.
- Makdisi, J. A. 1999. The Islamic origins of the common law. *North Carolina Law Review* 77(5): 1635–1739.
- Mansour, A. A. 1982. Hudud crimes. In *The Islamic criminal justice system*, edited by M. C. Bassiouni, 195–201. London: Oceana Publications, Inc.
- Niblock, T. 2006. *Saudi Arabia: Power, legitimacy and survival*. London/New York: Routledge.
- Otto, J. M. 2008. Sharia and national law in Muslim countries—tension and opportunities for Dutch and EU foreign policy—law, governance, and development. E-book: Amsterdam University Press.
- Otto, J. M. 2010. *Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present*. Leiden, the Netherlands: Leiden University Press.
- Peters, E. M. 1995. Prison before the prison: The ancient and Medieval worlds. In *The Oxford history of the prisons: The practice of punishment in Western society*, edited by N. Morris and D. J. Rothman, 3–47. New York, NY: Oxford University Press.
- Powell, W. 1982. *Saudi Arabia and its royal family*. New York, NY: Carol Publishing Group.
- Robbers, G. 2007. *Encyclopedia of world constitutions*, vol. 2. New York, NY: Facts on file.
- Rodney, W. 1972. *How Europe underdeveloped Africa*. Nairobi, Kenya: Black Classic Press.
- Royal Embassy of Saudi Arabia. 1992. The basic law of governance. Retrieved from http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_of_Governance.aspx (Accessed February 15, 2013).

- Royal Embassy of Saudi Arabia. 2011. Specialized criminal court begins hearings against 85 people accused of terrorism. Retrieved from http://www.saudiembassy.net/latest_news/news06261105.aspx (Accessed February 15, 2013).
- Rusche, G. and O. Kirchheimer. 1939. *Punishment and social structure*. New York, NY: Columbia University Press.
- Salama, M. M. 1982. General principles of criminal evidence in Islamic jurisprudence. In *The Islamic criminal justice system*, 109–123. London, UK: Oceana Publications, Inc.
- Schwarz, H. 2004. *A companion to post-colonial studies*. Chicago, IL: John Wiley & Sons.
- Sherif, A. O. 2003. Generalities on criminal procedure under Islamic Sharia. In *Criminal justice in Islam: Judicial procedure in the Sharia*, edited by M. A. Haleem, A. D. Sherif, and K. Daniels, 3–16. London, UK: I.B. Tauris & Co. Ltd.
- Surty, M. H. 2003. The ethical code and organized procedure of early Islamic law courts, with reference to *al-Khassaf's Adab Al-Qadi*. In *Criminal justice in Islam: Judicial procedure in the Sharia*, edited by M. A. Haleem, A. D. Sherif, and K. Daniels, 149–166. London, UK: I.B. Tauris & Co. Ltd.
- U.S. State Department. 2011. 2010 Human Rights Report: Saudi Arabia. Retrieved from <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154472.htm> (Accessed February 15, 2013).
- Vogel, F. E. 1999. *Islamic law and legal system: Studies of Saudi Arabia*. New York, NY: Brill Academic Publishers.

17 The Court System in the People's Republic of China with a Case Study of a Criminal Trial

Robert Davidson and John Zheng Wang

CONTENTS

Introduction.....	230
Overall Structure.....	230
Major Procedures.....	232
Pretrial.....	232
Right to Defense Counsel.....	232
Trial.....	232
Penalty.....	233
Appeal.....	233
Second Instance.....	234
Major Principles.....	234
Mutual Restraint.....	234
Independence.....	234
Equality.....	234
Language.....	234
Combining Punishment with Leniency.....	234
Supervision by the Procuratorate.....	235
Some Factors and Issues Affecting the Court System.....	235
Function of the Law.....	235
Party Line.....	235
Presumption of Independence.....	235
A Case Study.....	236
Charge.....	236
Defendant's Background.....	236
Circumstances of the Case.....	236
The Trial.....	236
Jurisdiction.....	236
Physical Setting of the Court.....	236
Components.....	237
Judiciary.....	237
The Procuratorate.....	237
Defense.....	237
Summary of the Procedures.....	237
Disposition.....	237
Sentence.....	238

Social Issues.....	238
Points of Comparison.....	238
Conclusion	239
Note.....	239
Review Questions.....	239
References.....	239

INTRODUCTION

The American and Chinese approaches to social control are enforced by two very different philosophical and experimental perspectives (Rojek 1985). Indeed, they differ so fundamentally that they invite comparison to promote a better understanding of each approach. This chapter attempts such a comparison focusing on the basic structure, organizational dynamics, and philosophies of the Chinese judicial system. To illustrate how the system works, a case study of criminal trial also is provided. Finally, a summary of the trial is given from a comparative perspective.

The present court system in China was first designed after the founding of the People's Republic of China (PRC) in 1949, but has been remodeled several times since then. Under Article 17 of the Common Program,¹ "laws and decrees promoting the people shall be enacted, and the people's judicial systems shall be established" (Important Documents 1949, pp. 1–20). Later, the Ministry of Justice was set up, with the court system being one of the functions within the Ministry. On September 30, 1954, the first adopted constitution announced that the court system would be separated from governmental supervision under the Ministry of Justice and under an independent system, the Supreme People's Court. September 28, 1954, saw passage of the Organic Law of the People's Court, which laid out the present court system.

OVERALL STRUCTURE

According to the Organic Law of the People's Courts of the PRC, the judicial authority of the state is exercised through the Supreme People's Court, local people's courts, and special people's courts.

Special courts include military, maritime, railway transportation, forestry, and other courts. The military courts handle cases of violation of military duties and criminal cases involving servicemen in the Chinese People's Liberation Army. The maritime courts deal with cases related to maritime affairs. There are eight maritime courts in the eight coastal and island river ports. Railway transportation courts handle criminal cases that occur along rail lines and aboard trains as well as cases of economic dispute related to rail transportation.

The major court system in China is divided into two levels: the Supreme People's Court at the national level and the local people's courts at the divisional levels. The local people's courts are subdivided into another three levels: the higher people's courts at the provincial, autonomous region, and autonomous city level; the intermediate people's courts at the municipal or prefecture level; and the basic people's courts at the urban district level or rural county level (also called the District People's Court) (see Figures 17.1 and 17.2).

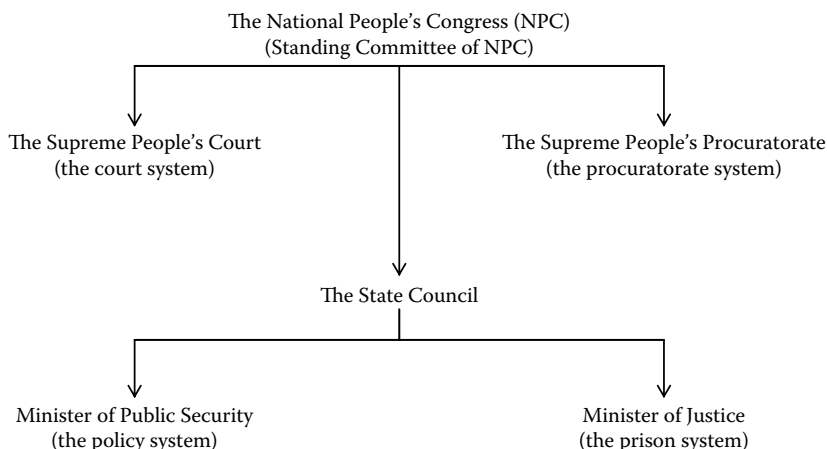


FIGURE 17.1 The national court system of the People's Republic of China.

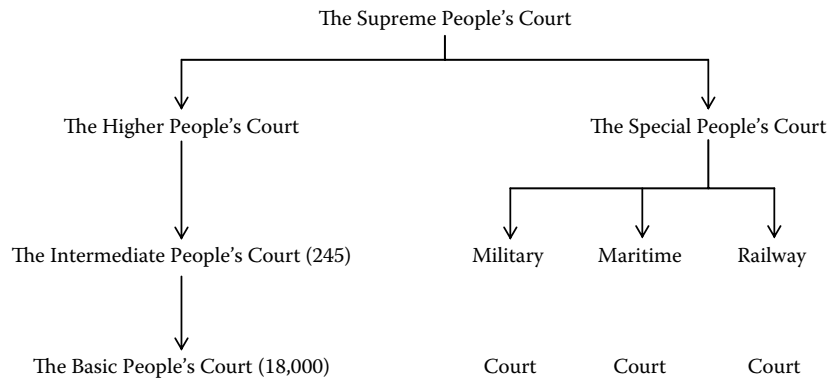


FIGURE 17.2 The divisional court system of the People's Republic of China.

There are five autonomous regions in China, each occupying an area inhabited predominately by minority peoples. Their governments have the same basic responsibilities as the provincial governments in economic affairs but enjoy more favorable national policies.

Three of China's largest and most important cities, Beijing, Shanghai, and Tianjin, are called autonomous or centrally administered cities. They are not subject to provincial governments, but under the direct supervision of the central government or the State Council. Therefore, each of these three cities has a higher people's court, an intermediate people's court, and several district people's courts.

Prefectures lie within autonomous regions and county levels. Their main function is to provide a convenient administrative division for minorities who occupy areas larger than counties but smaller than provinces.

China's judicial system is a highly centralized (unified) and hierarchical organization. The Constitution gives the Standing Committee of the National People's Congress (NPC) judicial as well as legislative control of the country. The Standing Committee interprets the Constitution and various statutes, enacts and amends statutes, and also supervises the work of the Supreme People's Court, the Supreme People's Procuratorate, and the State Council. This is unlike the United States, which limits constitutional interpretation to the highest judicial organ (the U.S. Supreme Court).

The Supreme People's Court is the highest judicial organ in China. It supervises the administration of justice by the various local courts, although these local people's courts also must answer to the Standing Committee of the NPC at corresponding levels. The Supreme People's Court has several important functions. First, it explains how laws and decrees should be specifically applied in judicial procedures. Such explanation by the Supreme

Court usually occurs in two ways: in response to petitions from local courts and in notices issued to local courts in the region (Gong 1989). Second, the Supreme People's Court deals with cases that will have significant impact on the whole judicial system of the country. When the Supreme People's Court decides a case, its judgment or order is final. Third, it hears appeals from higher people's court. Finally, it approves death sentences.

Few cases are tried directly by the Supreme Court. Since 1949, first instance trials have included only the cases of Japanese war criminal and the Lin Biao and "Gang of Four" cases. The court operates at four levels, consisting of four subcourts (also called divisions, chambers, or tribunals): the criminal court, the civil court, the economic court, and the administrative court. On certain occasions and for special purposes, an additional court is set up.

The different levels of criminal court have jurisdiction over criminal cases. The criminal court within the higher people's court at the provincial level serves as a court of both first and second instances. As a court of first instance, it decides major cases that have an impact on the entire province. As a court of second instance, it receives appeals from the criminal court of the intermediate people's court at the municipal or prefecture level.

The criminal court within the intermediate people's court hears the criminal cases of major crimes in the jurisdiction, such as murder, rape, robbery, bombing, arson, and grand larceny. Like the higher people's court, the intermediate people's court also serves as a court of second instance.

The criminal court within the basic people's court tries misdemeanor and minor felonious cases, such as theft, assault, and violations of public order. This level of the courts carries the heaviest workload in the judicial system. In recent years, some district courts in Beijing,

Tianjin, and some other larger cities have also established neighborhood-based courts. These courts not only handle cases in their permanent offices but also make a circuit of localities to try the cases on the spot. The procedure has allowed them to handle large numbers of civil disputes. Today, they handle some 76–87% of the civil cases and economic disputes accepted by those district courts (University of Mississippi 2012).

Every court is composed of a president, two or more vice presidents, one chief judge (presiding judge of a given division), several deputy judges, judges, and assistant judges (Figure 17.3). The court president is elected by the people's congress at the corresponding level, while other members are appointed and dismissed by the standing committees of those congresses. Assistant judges can act for judges at the suggestion of the president of the court with the approval of the judicial committee, and they are appointed and dismissed by the courts at the same level.

Every court at every level must set up a judicial committee to deal with the most difficult or major cases. Instead of trying cases directly, the committee first discusses and then decides the most important or difficult cases submitted by collegiate benches of judges. Its members are appointed by the Standing Committee of NPC at the corresponding level, upon the recommendation of the president of the court. The procurators at the corresponding levels have the right to attend the committee meeting as observers.

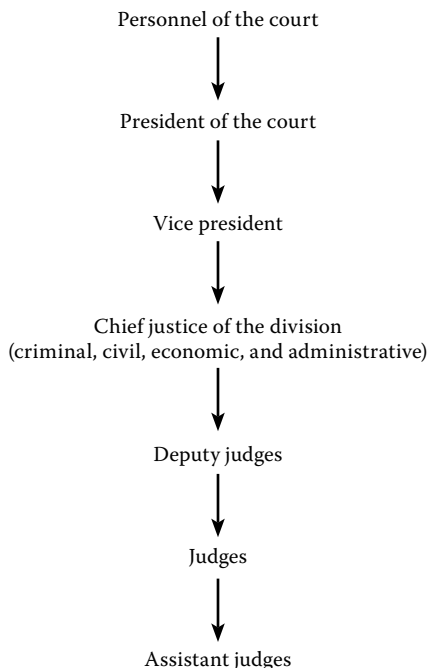


FIGURE 17.3 The composition of each court.

MAJOR PROCEDURES

The people's courts at various levels in China abide by the following procedures in their judicial responsibilities.

PRETRIAL

The court should send a copy of the indictment to the accused at least 7 working days before the trial and also notify the accused of the trial's location. The court must also notify the victim, the defense attorney, the witness, the examination expert, and the translator at least 3 working days before the trial. Finally, the court also has to inform the procuratorate at least 3 days before the trial.

RIGHT TO DEFENSE COUNSEL

The accused, apart from having the right to defend himself, has the right to choose to entrust a lawyer, relative, or lay advocate recommended by his work unit to plead on his behalf. The court may also appoint an advocate for the accused at its own discretion. However, the defense counsel may only consult the materials of the case, acquaint himself or herself with the circumstances of the case, and interview and correspond with a defendant held in custody. The counsel has no right to participate in the preliminary investigation (McCabe 1989, p. 123).

TRIAL

Criminal cases of both instances are heard in public, unless they involve issues of state secrets, privacy, or juvenile offenders under the age of 18. Occasionally, the criminal court even hears a criminal case in the work unit or college where the defendant is resident. There are several reasons behind this practice. First, as the court exposes and punishes the criminal during the hearing, citizens learn that criminal deeds are dangerous to society and lead to serious consequences. Second, this awareness should increase the citizen's sense of responsibility in obeying the law and fighting crime. Finally, the public trial warns potential criminals to give up their intentions and to become law-abiding citizens (Du and Zhang 1990, p. 103).

In local people's courts, cases of the first instance are tried either by an appointed judge for minor offense or before a collegiate bench consisting of an appointed judge and two people's assessors (jurors) (see Figure 17.4). The judge of a collegiate bench is appointed by the president of the court or by the chief judge of the division concerned.

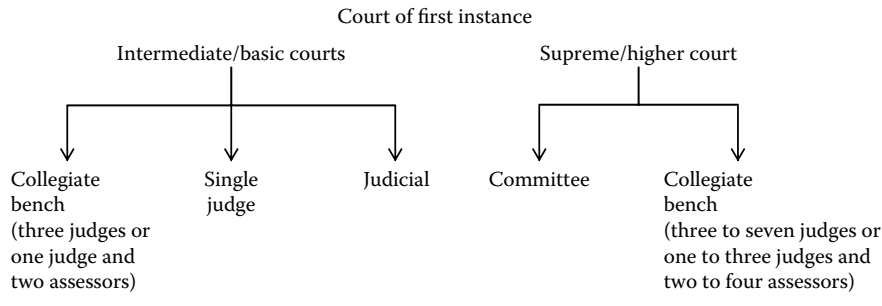


FIGURE 17.4 Types of trial in People's Republic of China.

The two people's assessors may be the defendant's relatives or friends with the permission of the court. This is usually the case when the defendant is disabled, deaf, or mute. In most cases, the two assessors are the citizens elected by the defendant's work unit. Citizens who have reached the age of 23 and are eligible to vote and stand for election may be elected as people's jurors. Article 105 states that assessors have equal status with judges (Criminal law 1984, p. 147). The opinion of the majority prevails, but the minority viewpoint is recorded (see Figure 17.4).

The purpose of the people's assessors is to ensure that the "mass line" is followed and that the opinion of the people is considered at all court trials. Additionally, the people's assessors serve indirectly as educators. The masses can learn from the assessors in group discussions in work units or neighborhood associations (Rojek 1985). In other words, this process increases the involvement of the community, bridges the gap between the community and the courts, and has the potential to reduce disparities in sentencing.

There are two possible results of the trial. First, the court may find the accused innocent and acquit him or her immediately. Second, the court may find the accused guilty and sentence him or her at the end of the trial, sending the verdict in writing to the convicted offender and the procuratorate within 5 working days after the trial.

PENALTY

There are five major penalties and three supplementary penalties listed in Criminal law. These five major penalties are control, criminal detention, fixed-term imprisonment, life imprisonment, and death penalty. The three supplementary penalties are fines, deprivation of political rights, and confiscation of property (Criminal law 1984, pp. 17–18). The five major penalties and three additional penalties can be meted out concurrently or independently.

The Chinese judicial system, like those of Nigeria, Ghana, and Sierra Leone, decides on both conviction and

sentencing on the same day the trial ends, with the sentence taking immediate effect. This saves time and resources and also prevents any potential interference from outside. Two points need to be elaborated. First, control or surveillance, similar to "probation," ranges from 3 months to 2 years. The person sentenced to control can live with his family, continue to work, and enjoy his rights to citizenship; but he must report to the police regularly.

Second, according to the principle of combining punishment with leniency, the court can sentence a defendant to death with a 2-year suspension, depending on the circumstances. This means that the person will have a 2-year stay of the actual execution of the death sentence. During the 2-year period, the person is given a last opportunity to repent and mend his ways by reformation through labor. If he meets the requirements, the death sentence with 2-year suspension can be reduced to life imprisonment by the court upon the recommendation of the prison authority. The death penalty or death with 2-year suspension is only applied for those persons convicted of the most odious and atrocious offenses such as murder, rape, counterrevolutionary offenses, and high-level official corruption (Felkenes 1989, p. 151).

The verdict of capital punishment must be reported to the Supreme People's Court for examination and approval and becomes legally effective after it is approved. The death sentence must be pronounced or approved by the Supreme People's Court after reexamination by the higher people's court.

In 1983, a special statute was passed to stipulate that the higher people's court at the provincial level has the authority to approve the death sentence in cases of murder, rape, robbery, and explosion/bombing.

APPEAL

Criminal procedure law stipulates the right to one appeal by either the accused or the procurator. When a person

has been convicted and sentenced, he or she can appeal to a higher court within 10 working days after the trial if he or she is dissatisfied with the decision of the court. If the person has been convicted for murder, rape, robbery, or explosion, he or she must appeal within three working days. The person can either appeal to the court of first instance or go directly up to the court at the next level. By the same principle, the procuratorate at the same level may protest the ordinary criminal judgments or order of a legal supervisory organ of the state by appealing to a court at the next level within 10 working days. Cases involving murder, rape, robbery, or explosion should be protested by the procuratorate within 3 working days after the trial. If the accused makes appeal, the court cannot increase the punishment, but an appeal by the procuratorate can increase punishment (McCabe 1989, p. 125). The execution of sentences is carried out as originally specified, until some appellate body directs otherwise.

SECOND INSTANCE

The second instance (or appellant instance) is conducted by a higher court, which reviews the verdict of the court of the first instance, when a part concerned appeals or the procuratorate protests against the verdict. Unlike practices in Britain, Nigeria, and the United States, the appellate court reviews both the facts and the laws of the case. A collegiate bench consisting of three to five judges examines the case and comes to a decision. The bench may rebuff the appeal or modify the original judgment. In these two instances, the judgment or order of the higher court is final.

The appellate bench may also withdraw the original judgment and return it to the original court for a retrial. In this case, the accused can appeal again if he disagrees with the new ruling. The court of second instance should notify the appealing party or the protesting procuratorate of its decisions within 10 working days after the review.

MAJOR PRINCIPLES

MUTUAL RESTRAINT

In China, the police, the procuratorate, the court, and the corrections are the four major components in the criminal justice system and are all state organs of law enforcement with separate responsibilities. These agencies not only coordinate but also restrain each other to guarantee accurate and effective enforcement of the law (Zhou 1987). Specifically, the police are responsible for investigating crime and arresting suspects. The arrests must be approved

by another branch, the procuratorate, which then decides whether to prosecute, exempt, or waive the case. In turn, the court decides whether to accept the case prosecuted by the procuratorate or return it to the same procuratorate for further investigation or request the procuratorate to withdraw the case. The procuratorate, on the contrary, may disagree with the decision of the court and may lodge a protest with the next-higher court.

INDEPENDENCE

Article 126 of the constitution states that “the people’s court exercises judicial power independently, and is not subject to interference by administrative organs, public organizations or individuals” (Constitution 1986, p. 86). That is to say, that the court must try cases based on the facts and according to law, and its performance should not be subject to interference by individuals, governmental offices, or political parties. One measure that guarantees the independence of the judiciary is the appointment system. Unlike practices in some states in the United States, all judges except assistant judges are appointed and dismissed by the Standing Committee of the NPC at the corresponding level. The government and the Communist Party otherwise should not interfere with the administration of justice by the court.

EQUALITY

Everyone is considered equal before the law. The court should treat every citizen equally under applicable law without regard to nationality, race, sex, occupation, social position, religion, education, financial background, or length of residence. Any special privilege is forbidden.

LANGUAGE

Citizens of all nationalities have the right to use their own spoken and written languages in court procedures. The court should provide interpreters for court proceedings if necessary.

COMBINING PUNISHMENT WITH LENIENCY

Article I of the Criminal Law states that the criminal law is “formulated in accordance with the policy of combining punishment with leniency in light of actual circumstances.” According to this principle, the court takes into account subjective and objective conditions of crime within the range of the law. For instance, different sentences will apply to the primary culprit and the subordinate; to one

who actively engages in crime and one who is coerced into a crime; to the first-time offender and the recidivist; to one who refuses to confess; and to one who surrenders himself to the police. The attitude of the defendant is very important in mitigating the sentence. Adult offenders caught *in flagrante delicto*, or who involve children in a crime, are punished severely. Finally, crimes against the state are treated very harshly (Felkenes 1989, p. 146).

SUPERVISION BY THE PROCURATORATE

When a case is being tried, the procuratorate is required to attend the trial and to determine whether the court procedures conform to the law. The procurator can make a protest (counterplea) to the next higher court if he or she believes that the judge has made an error.

SOME FACTORS AND ISSUES AFFECTING THE COURT SYSTEM

Because the judicial system is a part of the overall social system, it is greatly affected by certain social and political factors. This is especially true of the judicial system in China.

FUNCTION OF THE LAW

One essential function of the court system is to administer justice according to law. However, the Marxist view of law has prevailed for some time in China and regards law as an instrument of class struggle or class oppression. According to this view, laws in a capitalist society aim at protecting the rich and exploiting the poor, whereas in China the law protects the ordinary people. This Marxist view fails to take two important points into account. First, laws in the West are used not only to protect or exploit but also to readjust internal relations within the society, and further, to regulate the life of the whole society. In effect, laws in Marxist China are used to achieve the same purpose—exploitation of the proletariat and protection of the life and property of every citizen. Second, if the law in China is nothing but an instrument of class struggle (or class oppression), how can one explain the laws on traffic, sanitation, forestry, and environmental protection?

In recent years, the debate over whether laws should be a function of class or of society has still gone unsettled. However, more and more people hold that the law should be divided into three categories: one related more closely to class structure, another oriented toward social life, and finally, one that combines elements of both. Criminal law falls within the third category, having a class as well as a

social orientation. Overall, people throughout the society benefit from the implantation of the laws. Based on this legal ideology, the court keeps a neutral stand in dealing with criminal cases. However, when it deals with crimes against the state, or with “counterrevolutionary” crimes, it shifts to what the party line directs.

PARTY LINE

In China, the Communist Party is still the ruling party, and it must play some role in the judicial system. The constitution emphasizes that the court should administer justice independently. In practice, however, the court is required to implement the policies of the party, follow the “party line.” Such a practice is usually initiated and guided by documents or directives from party organizations at various levels. Obviously, conflict between judicial independence and toeing the party line occasionally arises. Up to this point, no sound solutions have materialized.

Furthermore, if a party government official (or an official's relative or family member) violates the law, can the law be applied equally by the court? In other words, to what extent can the judicial system act independently? These issues remain controversial in China, and the Chinese clearly are engaged in a good faith effort to reform their practices. However, the question remains: to what extent do pressures or interventions by the party vitiate the protection that the legal system purports to provide (Gelatt 1982)?

PRESUMPTION OF INDEPENDENCE

The basic principles set forth in the introductory section of the criminal procedure law do not clearly espouse a presumption of innocence, but do not negate or deny the presumption either (Gelatt 1982). Basically, the presumption of innocence is a concept missing from the Chinese judicial system. The concept of presumption of innocence was raised during the French bourgeois revolution in opposition to the feudal principle of presumption of guilt. It played a certain progressive role in the struggle against feudal judicial arbitrariness. But in modern China, the concept of presumption of innocence has been regarded as a manifestation of idealism and metaphysics and has been rejected in favor of a more practical or pragmatic approach, for two reasons. First, China does not wish criminals to escape penalty under a presumption of innocence. Second, China has its own guideline, the principle of “seeking truth from facts,” with “facts” here referring to the evidence that both parties concerned can provide in court.

China would also disagree with the notion that the accused should be presumed innocent before the trial. In other words, according to the Criminal Procedure Law of PRC, when the court decides to try the case prosecuted by the procurator, the acceptance of the case by the court itself implies that the court agrees that the accused is guilty. This is because the case has gone through a two-stage pretrial investigation, a procuratorial determination, and a preliminary court screening; if the accused were presumed innocent, the court would ask the procuratorate to withdraw the case. Also, there is the influence of Confucian ideology. Unlike American society, which stresses the rights of the individual, Confucian ideology emphasizes public interest. Therefore, the judicial system is obligated to maximize protection of public interest first, or the innocent majority. Of course, this practice is maintained at the risk of sacrificing the rights of the accused. But the Chinese would reply that the whole is greater than the sum of its parts. In Western society, the dilemma is known as society versus the individual.

In the Anglo-American legal system, the probable cause standard for prosecution and the absence of an extensive pretrial procedure might make the presumption of innocence at trial seem easier to accept (Gelatt 1982). In brief, the Anglo-American judicial system tends to categorize the accused as either guilty or innocent, while the Chinese judicial system tends to categorize the accused as either guilty or semi-guilty.

A CASE STUDY

During the summers of 1991 and 1992, one of the authors participated in two study tours in the PRC sponsored by the Office of International Criminal Justice at the University of Illinois at Chicago. During the tour, the author was privileged to observe two Chinese criminal trials in addition to local mediation sessions. The trials were conducted by the Changning District People's Court of Shanghai. The following section describes one of the trials and the related legal proceedings. The authors attempt to illustrate some of the Chinese court system through this example.

CHARGE

The defendant was arrested on March 11, 1992, by police officers of the Public Security Bureau of Shanghai and charged with four counts of robbery. Under Article 151 of the Criminal law (Criminal law 1984, p. 53), "whoever habitually steals or habitually swindles, or steals, swindles or forcibly seizes articles of public or private property of a relatively large amount is to be sentenced

to not more than five years of fixed-term imprisonment." The trial was held on July 1, 1992.

DEFENDANT'S BACKGROUND

The defendant was in his mid-20s. He had no previous criminal record. He lived in the district where the crimes were committed and where the trial took place. He had a high school education, and he was unemployed at the time of the offense and trial.

CIRCUMSTANCES OF THE CASE

The defendant was accused of waiting outside a public bath house late at night and then robbing young females as they left the premises. The accused allegedly rode a bicycle rapidly past the victims and grabbed their bags, which contained clothing, money, purses, and other valuable items. The total value of the items stolen was 900 yuan (about U.S. \$165). To help put this figure into perspective, 900 yuan represents four months' average wages in China. Additionally, the defendant reportedly had worn some of the women's undergarments he stole. This became an important issue in the trial: the collegial panel that the defendant was psychologically disturbed. The defense pleaded that he should not be held fully accountable for his actions and that he should be institutionalized for psychological treatment rather than being sentenced to prison.

THE TRIAL

JURISDICTION

The Changning District Court has jurisdiction over a 44-km² area with a population of 580,000 citizens. The court adjudicates cases involving criminal, civil, economic, and administrative issues. During 1991, the court heard 3700 cases, over half of which were criminal cases (1600–1700 cases were civil).

District court is the lowest level of courts in the Chinese system. Those found guilty have the right of appeal to the intermediate people's court.

PHYSICAL SETTING OF THE COURT

The courtroom itself is not unlike some courtrooms in the United States and Europe. The participants were located at the four sides of a rectangle, facing one another. The judge presided over the trial from a central position behind the bench. He was flanked on either side by people's assessors. The defendant stood in a witness box

facing the bench. He could view the judge and the assessors as well as the bench. Defense counsels were seated to the right of the bench, equally facing the others. Directly behind the defendant's box were several rows of seats for the public. This is consistent with the Chinese legal premise that trials should serve as a vehicle for public education as well as adjudication.

COMPONENTS

Judiciary

A judge presided over the trial. More than 70% of the judges in China have university degrees. Chinese judges wear gray public service uniforms with red and gold shoulder boards. The judge headed a collegial bench (panel) that included two people's assessors, private citizens selected to assist the judge in reaching a verdict and sentencing. They have no formal legal training, but have authority that almost equals that of the judge.

One of the assessors is elected from the defendant's work unit. The other is selected from the defendant's neighborhood. The verdict is a product of majority rule, which, of course, could result in the judge being outvoted by the assessors.

The judge and people's assessors are active inquisitors in the trial process. Additionally, the judge also may have chosen to be active investigator in the case.

The Procuratorate

The procurator (the prosecutor) is the major figure in filing formal charges against the accused. Often the procurator chooses to play an active role in the investigation of the offense. During trial, the procurator represents the state interest against the defendant and conducts a direct examination of the accused. The procurator also wears a public service uniform in court.

Defense

The defense was presented by lawyers from the Number Four Law Firm. Lawyers are usually provided for the defense by the court. However, if the defendant and/or the family can afford to hire lawyers of their own, this is permitted. The second option was exercised in the case observed. The two defense attorneys wore civilian clothing.

Summary of the Procedures

1. Court was called to order and the judge proceeded to introduce all of the participants.
2. The defendant was identified.
3. The charges were read.

4. The defendant was advised of his rights under Chinese law and the constitution.
5. The judge and people's assessors questioned the defendant.
6. The procurator made a statement, questioned the defendant, and verified the evidence.
7. The defense entered a statement and questioned the defendant.
8. The procurator and the defense presented their arguments.
9. No witnesses testified other than the defendant.
10. The defendant was invited to make a statement and he did so.
11. The judge called for a 15-minute recess while he and the people's assessors deliberated.
12. Court was reconvened, a guilty verdict announced, and the defendant was sentenced.

DISPOSITION

The defendant confessed to the offenses and was found guilty by a panel in a unanimous decision. During an interview with the judge following the trial, it was explained that the defense's position was that the defendant was psychologically disturbed or mentally ill and was therefore not fully responsible for his actions. The collegial panel did not find this argument persuasive.

The Chinese law does not hold a legally insane person culpable of criminal behavior (Criminal law 1984, p. 14). The test for insanity is based on the accused being capable of understanding the difference between right and wrong.

The procurator, however, argued that the defendant knew his actions were wrong based on the planning and development of method employed in carrying out the offenses. The defendant planned the offenses and timed them for late night when visibility was poor and fewer people were on the streets, selected promising victims, and ensured that escape could be accomplished easily; therefore, the judge and the assessors found the procurator's argument more convincing. The judge added that the defendant apparently did have some minor psychological problems, but not of the sort to make his behavior uncontrollable and certainly not to the level of legal insanity. (The Chinese do not equate medical insanity and legal insanity.)

The preceding description illustrates some important differences between the Chinese legal system and that of the United States. First, the defendant's guilt is established through previous investigations (a two-stage pretrial investigation, a procuratorial determination, and

a preliminary court screening). Once this disposition is reached, one is in the position of needing to prove one’s own innocence. Second, the purpose of having a trial is to formalize the process and to allow the defendant and the defense attorney to make statements, offering evidence and mitigating circumstances that would prove innocence.

SENTENCE

The defendant was sentenced to an 8-month “fixed term” in prison. The defense planned to appeal the verdict to the intermediate people’s court.

SOCIAL ISSUES

The legal system in China is seen as a major form of social control and an essential element for progress and order in the socialist society. However, informal social controls are believed to be some of the most effective sanctions.

The basic organization of Chinese society is centered on the “work unit” or “the danwei.” The citizens work unit not only provides income but also assigns housing. Housing police and local neighborhood committees also help to maintain order and settle minor disputes.

When a person is convicted of committing a crime and imprisoned or otherwise sanctioned, the workplace may not accept him or her back into the community. In this case, the individual must seek a new workplace and

may have to accept lower pay and less satisfactory housing if a new job is available at all. This situation affects not only the convicted offender but also his or her family.

POINTS OF COMPARISON

The following are some preliminary comparisons between the judicial system of China and the United States (Table 17.1). Emphasis is placed on major contrasting points.

First, there are fewer persons involved in the Chinese collegial bench than in a jury in the United States. This may be due to limited resources in the Chinese judicial system.

Second, the Chinese collegial bench is inquisitorial, whereas the task of the judge and the jury in the United States is to oversee the adversarial process. The judge in China may even have been an investigator for the case.

Third, the people’s assessors are active components of the court in which they participate and enjoy the same rights as judges. In the United States, the jurors are the decision makers, but they do not ask the accused any questions.

Fourth, the court system in China is primarily responsible for the protection of public interest, whereas the U.S. court system places strong emphasis on the rights of the accused through due process.

Fifth, for certain practical and philosophical reasons, in China there is no presumption of innocence of the

TABLE 17.1
Summary of Points of Comparison

China	United States
Public security bureau—Usual initial contact with the CJ system and investigation	Police—same
Defense—provided by state	Same in United States if the accused is indigent
Collegial bench—Inquisitorial	Jury
Judge may be an active investigator	Judge presides and referees over adversarial process
Emphasis on protection of public and less on individual	Judge does not take active role in investigation
More flexibility in investigation and interrogation	Emphasis on protection of rights of the accused and less of the victim
	More restrictive—primarily through 4th, 5th, 6th, 8th, and 14th amendments of the U.S. Constitution
Emphasis on expediency: Quick capture of offender and successful prosecution effective method of crime control	Emphasis more on due process protection of constitutional rights of the accused regardless of slow process and less efficiency
Emphasis on confession: confession = light sentence; no confession = more severe sentence	Plea bargaining—risk innocent pleading guilty for guaranteed light sentence
No presumption of innocence at trial	Presumption of innocence until found guilty
Trial mainly for review of facts, consideration of mitigating factors, and sentencing	Trial to determine guilt of innocence
Guilty party has a right to appeal	Guilty party has a right to appeal

accused. In the United States, on the contrary, the adversarial approach is taken, and presumption of innocence is so important that the prosecutor representing the state must prove guilt beyond a reasonable doubt.

Finally, a trial in China is a final stage in the legal process in which the facts are reviewed and a final decision is made. In the United States, on the contrary, the trial is a critical moment in which the guilt or innocence of the accused is decided through adversarial process by judge and jury.

CONCLUSION

This chapter does not seek to judge which system, that of China or that of the United States, is better. Rather, it is intended to illustrate and explain the Chinese system with a case study; comparisons are made to enhance understanding of the two systems. China is experiencing rapid changes in many areas, including changes in its judicial system. It is hoped that this analysis may eventually promote a movement toward a more democratic Chinese judicial system.

Finally, studying another system helps us to appreciate our own with greater sophistication and sensitivity than might be under rote learning. Comparing crime problems and options for control in countries with different cultures and systems of government adds new perspective to the observation that democratic governments are faced with unusual crime control challenges.

NOTE

1. The Common Program was the preliminary constitution for the PRC and was passed by the Chinese People's Political Consultative Conference on September 29, 1949.

REVIEW QUESTIONS

1. What are formal and informal courts in China?
2. What is the highest legislative body in China?
3. What are the functions of the standing committee of the NPC with regard to criminal justice?
4. At the judicial formal court level, the Chinese judiciary and procedure are to some extent democratic. Discuss.
5. Why are some Chinese criminal court hearings held in the work unit of the defendant, or at the residence of the defendant, or at a college the defendant attends?
6. Compare and contrast the Nigerian High Court and the Higher People's Court of China.

7. Compare and contrast assessors in a criminal court in China and jurors in American criminal courts.
8. What are the five major penalties and three supplementary penalties in the Chinese criminal justice system?
9. Why is it that in the PRC, as in Nigeria, Ghana, and Sierra Leone, the defendant is sentenced on the same day that he or she is convicted?
10. Name the capital offenses in China.
11. For a capital offense conviction, an appeal must be filed within 3 days in China, within 30 days in Nigeria, and within 6–7 months in the state of New York in the United States. What are the merits and demerits of the different appeal deadlines in the three countries?
12. In China, the interests of society are held to be superior to individual rights. Discuss this in the light of individual rights in the United States.
13. Give three reasons why China does not recognize the principle of presumption of innocence.
14. Compare and contrast the standard application of the insanity defense in China and United States.
15. Consider the American adversarial versus the Chinese inquisitorial approach in criminal trials, discussing the merits and demerits of each approach.
16. Write a short paragraph on the following:
 - a. "Control" as one of the five major penalties in China.
 - b. The nature of the Chinese death penalty with a 2-year suspension.
17. In China, the Appellate Courts review both the facts and the law. Discuss this in the light of Court of Appeal hearings in the United States, Nigeria, and the United Kingdom.

REFERENCES

- Constitution of the People's Republic of China. 1986. Beijing: Foreign Languages Press.
- Criminal law and the criminal procedure law of China. 1984. Beijing: Foreign Languages Press.
- Du, X., and L. Zhang. 1990. *China legal system: A general survey*. Beijing: New World Press.
- Felkenes, G. T. 1989. Courts, sentencing, and the death penalty in the People's Republic of China. In *Social control in the People's Republic of China*, edited by R. Troyer, J. Clark, and D. Rojek, 141–158. New York, NY: Praeger Publishers.
- Gelatt, T. A. 1982. The People's Republic of China and the presumption of innocence. *The Journal of Criminal Law and Criminology* 73: 259–316.

- Gong, J. 1989. Interpretation of the constitution statutes of the People's Republic of China. *Criminal Law Review* 14: 166–175.
- McCabe, E. J. 1989. Structural elements in contemporary criminal justice in the People's Republic of China. In *Social control in the People's Republic of China*, edited by R. Troyer, J. Clark, and D. Rojek, 115–129. New York, NY: Praeger Publishers.
- Rojek, D. G. 1985. The criminal process in People's Republic of China. *Justice Quarterly* 2: 117–125.
- University of Mississippi. 2012. China's judicial system: People's courts, procuratorates, and public security. Retrieved from <http://www.olemiss.edu/courses/pol324/chnjudic.htm> (Accessed February 13, 2013).
- Zhang, M., and C. Shan. 1990. Inside China's court system. *Beijing Review* 45: 15–20.
- Zhou, J. 1987. An introduction to the present legal system of the People's Republic of China. *North Carolina Criminal Justice Today* 5: 8–15.

Section VI

Corrections

United Nations Policy and Correctional Models

18 United Nations Provisions for Punishment of Offenders vis-à-vis Punishment of Offenders in History

Obi N. I. Ebbe

CONTENTS

Introduction.....	243
Treatment of Offenders in Ancient and Medieval Times	243
Treatment of Criminals in Modern Times.....	245
The Impact of World War II on the Treatment of Prisoners and Prisoners of War	247
The United Nations Intervention in the Ruthless Treatment of Offenders	247
Conclusion	248
Notes	249
Review Questions.....	249
References.....	250

INTRODUCTION

The atrocities committed by Nazi Germany in World War II against the Jews, prisoners of war, and other ethnic groups, coupled with post-war ruthless moving of populations by the Allies, were a wake-up call to the United Nations (UN) with regard to man's inhumanity to man that pervaded centuries of ancient and medieval societies, right up to modern times. The barbaric and depraved heart treatments meted out to fellow human beings during and immediately after World War II made nations of the world, big and small, realize that there is a need for global solidarity to avoid the Hobbesian war of all against all.

The pivot and nucleus of the criminal justice system is penology. What to do with the offender has bothered every society, from the ancient times to the medieval, and modern times too. So far, no society has found a panacea for criminal behavior.

Unmistakably, no society is immune to criminal acts among its members. The question that many social scientists and other researchers in criminology and criminal justice have asked, without convincing answers is, why do some people commit abominations and heinous felonious crimes while others do not? Another very disturbing question: why are some criminals not deterred by the most severe penalty for crime?

In this chapter, we are going to trace crimes and how societies responded to the offenders in ancient, medieval, and modern times. We are going to see the impact of World War II on the treatment of offenders, and the UN intervention on how member states should handle their civil and criminal prisoners.

TREATMENT OF OFFENDERS IN ANCIENT AND MEDIEVAL TIMES

In ancient times, not all societies had criminal law. Most societies of ancient times were controlled by a combination of customs, tradition, and religious doctrines, which were part of the customs of the society. Among traditional societies, there were two degrees of customary norms or rules—abominations (felonies) and non-abominations (misdemeanors). Every violation of an abomination was an offense against the whole society and the gods. All of the elders of the society or village or clan made up the judiciary. They adjudicated cases and sentenced the offender in a unanimous decision. Using the Igbos of Nigeria as an example, in those primordial times, even up to the medieval and early modern periods, an abominable crime offender was laid down prostrate and stark naked in the village market square before a crowd of

condemners, and the elders invoked the anger of the gods that have been offended by the abomination to come and take the offender out of their village or town forever, and let him and his descendants not find peace in this world. Then, with a rope tied around his ankles, they dragged him out of the village or town limits and dedicated him to a god's shrine outside of his place of birth, and he became an "*OSU*" (untouchable). He also became an abomination unto himself; his humanity is taken away from him; and he becomes an outcast.¹ Whoever touched him became an *OSU* too.

The offenses that would lead to dedicating the offender to the gods were incest, murder of a kinsman or kinswoman, sorcery, witchcraft, poisoning another, treason (betraying one's tribe or village), sacrilege, adultery (due to abhorrence of illegitimate offspring in the lineage), and a man having sexual intercourse with one of his father's wives when his father was still alive.

When Nigeria was colonized by the British, and the colonial administration condemned the *OSU* system, some Igbo villages and clans resorted to burning the house of an abominable offender as the only way to get him out of the village, town, or clan.

Like ancient and medieval Romans, Greeks, British, Germanic tribes of Europe, the Igbos used branding, corporal punishment (flogging), solitary confinement in a darkroom for a short time, and humiliation of the offender by taking him to a market square stark naked (shaming the offender). All of these are for non-abomination offenses.

The Athenian legal procedure for punishing the offender included lapidation (stoning him to death), precipitation (pushing him off a cliff), binding him to a stake so that he died slowly, apotympanismos (crucifixion) for serious crimes, dedication of the offender to the gods by a ritual cursing him, and forbidding all citizens from any social communication with him (Peters 1995:5), just like the Igbo *OSU* system in Nigeria.

In several ancient European nations, various criminal offenders were believed to be the products of Satan (Schafer 1977). In effect, the punishment meted out to them was burning them to ashes. But, the most common methods of offender disposal in ancient times were banishment, death penalty (by burning, lapidation, or beheading), and permanent excommunication (while still allowed to live in the town or village),² branding, mutilation, and pillory. It is notable that the first recorded offense in Jewish/Hebrew history was Adam and Eve's disobedience to God, and it was punished by exile. Furthermore, as crime and sin are one and the same thing in all traditional societies from the ancient to medieval

times, an offense was not only against the individual victim and society, it was also a desecration of the gods. The offense, therefore, was seen as having defiled the entire society and estranged the society or community from the gods. Consequently, to restore the disorder created by the offense, punishment commensurate with the gravity of the offense had to be meted out to the offender to placate, expiate, and propitiate the gods to prevent the anger of the gods with the entire society. Islamic law (Sharia) believes in this principle up to this day in Islamic states (see Chapter 16).

The traditional societies' view of crime and punishment noted above found its origin in the Bible.³ In the book of Ezra (Ezra 7:26), it is stated, "And whosoever will not do the law of thy God, and the law of the King, let judgment be executed speedily upon him, whether it be unto death, or to banishment, or to confiscation of goods, or to imprisonment."

Unmistakably, death penalty was very often the last resort in the Roman times of 451 BC for various types of offenses and various types of executions, namely, precipitation from the Tarpeian Clift for perjury, burning for arson, clubbing to death for composers of scurrilous songs about a Roman citizen, hanging for theft of food crops, sacrificing the offender to the goddess Cebes for any heinous offense, and decapitation (Peters 1995; Drapkin 1989; Watson 1970). Additionally, for killing a close relative, which could have made a person an *OSU* in Igbo traditional justice system, the ancient Romans put such an offender in a sack in the company of an ape, a dog, and a serpent, and then threw him into the sea (The Culleus) (Watson 1970; Peters 1995). Also, Vestal Virgins⁴ of ancient Rome who breached their oaths of chastity were buried alive.

There is no clear line of demarcation between the methods of disposal of offenders in the ancient times and those of the medieval times. Some of the methods of punishing offenders in ancient times (the era before the end of the Western Roman Empire) continued into the medieval period. While imprisonment of the offender has roots in the ancient period, it was more frequently used in medieval times. For instance, in the Roman Republic, as noted in the Twelve Tables of Rome, the only instance of imprisonment was in the laws regarding debt. Debtors who were indigent or refused to pay were held in private cells by their debtors for 60 days. Their debts were announced to the public on three consecutive market days. After the last announcement, they were either executed or sold into slavery outside the city limits (Peters 1995).

The methods of offender disposal in Imperial Rome, which found its way to the medieval times, include exile

from Rome, forced labor at public establishments, forced work in mines or made to live in mine shafts, gladiator combat, being thrown to a beast for a fight for those who offended the emperor (or king, in medieval times). Also, prisoners in chains in dark rooms of the Roman Republic of the third century BC and underground prisons or dungeons found their use in the medieval period.

Undeniably, medieval kings advanced man's inhumanity to man beyond those of the ancient times in so many areas. Medieval imprisonment had two elements—denial of freedom and slavery. Most offenders were incarcerated with hard labor. Persons accused of treason, sorcery, adultery, witchcraft, crimes against the dead, rape, or murder were seen as demons. In effect, due process of law was suspended in their prosecution and they were given severe punishments. While in prison, some of the offenders were tortured by their keepers, left in cells unfed and without medical care. The gravity of medieval treatments to criminals can be seen in the decree passed by William the Conqueror (1066–1084) in England which read, "Let the criminal be mutilated to such a degree that whatever part of his body that remains will be a living sign to all of his crime and iniquity" (Barnes 1972:61). In some societies of the dark ages (medieval societies), spies had their eyes gouged out, rapists were castrated, thieves and counterfeiters had their hands cut off, liars and perjurers had their tongues torn out, women guilty of adultery had their noses cut off or were disfigured and made unattractive in some manner, and a woman who helped to set up an adulterous venue had her ears cut off (Peters 1995).

Throughout medieval Europe, especially in France, Italy, England, Germany, etc., branding of criminals, prisoners of war, and slaves upon the forehead or shoulders, with letters portraying the initials of their crimes, was the norm. In the above countries and beyond, shaming, pillory, stocks, mutilation, ducking tools, and death penalty by hanging, drowning, burning, burial alive, decapitation, and torture before even the execution were utilized ruthlessly (Proal 1898; Peters 1995; Watson 1970; Barnes 1972).

Lay offenders were not the only group that smelt the rod of inhuman treatments. In the monasteries of the thirteenth century AD, many monks smelt the rod of utter misery in the hands of some bishops and abbots. In fact, in that period, for both lay men and monks in prison, the only hope of freedom and survival was not in human justice, but divine intervention (Peters 1995). Offending monks were imprisoned in one section of the monastery. Some were imprisoned for a short time to make penance for their grievous sins, but some monks were incarcerated with little or no food, coupled with corporal

punishment, while others were incarcerated in a subterranean chamber for life with chains and fetters. This is tantamount to death penalty in secular justice (Peters 1995). Unmistakably, the perpetrators of man's inhumanity to man were not limited to secular or lay authority. Some clergymen and clergy-women in authority may have been among the worst perpetrators.

TREATMENT OF CRIMINALS IN MODERN TIMES

The year 1453 saw the end of the Dark Ages and the beginning of modern times. It was the year that Constantinople fell and the Renaissance emerged. And that was the birth of freedom in the arts, science, and travels between the East and the West—signaling the modern times.

Beyond doubt, many of the atrocious methods of offender disposal in the medieval times survived in the modern era. While imprisonment became the most common method of offender disposal, death penalty by either hanging, stoning, beheading, torture, firing squad, electrocution, gas chamber, lethal injection, starvation, denial of sleep, or poison is used in most countries of the world today. Even denial of due process of law, which found its use in ancient and medieval times, is used in many countries today. In some traditional societies today, due process of law will not be followed if it is clear and unequivocal that the offender committed an abomination. The result is the offender is buried alive either in broad daylight or in the dead of the night, because he/she killed a relative, committed treason against the community, or committed a depraved burglary. Such an offender in some Igbo communities was buried alive vertically. The offender's hands and feet would be tied together and his/her mouth stuffed with dirty pieces of cloth, and the offender would be led headfirst into a narrow vertical pit, and the hole closed without a grave mark. The intent of this method of death penalty is because the Igbos believe in life after death, and they do not want the offender to be reincarnated as anybody like him/her. Another method of death penalty without due process found in many countries of the world for depraved-heart burglary and other heinous crimes is to force the offender to drink a cup of cement, or hammer a six-inch long nail at the top center of his head and pull off the nail and let him go. Usually the offender so punished died on his way home or died immediately upon getting home.⁵

Unmistakably, the use of poison, either forced and secretly delivered, found its use in modern times among many heads of state (Ebbe 1990; 1999). The notorious war monger, Adolf Hitler, used poison to get rid of some of

his commanders whom he believed had turned against him. Here is how he got rid of General Field Marshal Erwin Rommel:

On July 17, 1944, my father was severely wounded in Normandy during an attack by British low-flying aircraft. When Graf Stauffenberg, on 20 July tried to assassinate Hitler, my father was still unconscious. As is well known, Stauffenberg's attempt failed. Hitler set in motion exhaustive investigations amongst the conspirators, and in the process it became known that my father had intended to turn against Hitler. Hitler, therefore, decided to exterminate my father, and this decision was implemented on 14 October, 1944. Two generals, charged by Hitler with this mission, delivered Hitler's offer to our house at Herrlingen near Ulm: that my father should agree to be poisoned. Provided he agreed, he was assured that the customary measures against his family—removal to a concentration camp—would not be taken. Nor would investigations be made about his staff officers. My father, who was convinced that Hitler would never put him on public trial, decided on death. He asked for the favour of ten minutes' respite to say goodbye to my mother, myself and his staff officer. This he was granted. And so we knew how he had to die. Hitler arranged a state funeral for him, and at Hitler's Command the NS-Press celebrated my father once more as a war hero, so that those whom Hitler sent into the senseless battles of the last months of the war, could take him as their inspiration (Rommel 1990).

I very much welcome this new edition of my father's book, which after many years is now available once more for a new generation of those who study military conflict.

MANFRED ROMMEL

*Oberbürgermeister
Stuttgart, 1990*

It is not a hidden truth that contemporary heads of state have used many poisonous methods to kill their enemies and those who attempted to hurt them politically (Ebbe 1990). In many of our modern prisons, in various countries, prison inmates are treated as being worse than a worthless dog. They live and sleep in stench and a filthy environment. Prisons without beds, food, water, and exercise equipment are found throughout Asian, African, and South American countries. In some Western European countries and the United States, prisons are designed as a means to maximize surplus population to propagate the capitalist mode of production (Quinney 1977). These large prison populations that are denied any form of corrections and rehabilitation make low wages possible in the capitalist world. The capitalist contractors

who provide food, medicine, and clothing to the prisons need a large prison population to make fabulous profits and give campaign contributions to politicians in their countries to keep getting contract awards.

Undeniably, women participation in crime has quadrupled since the end of World War II because of the impact of the capitalist mode of production. Additionally, globalization, which is the product of capitalism, has created new crimes, new criminals, and new methods of offender disposal, and has led to an increase in population of incarcerated offenders.

Whereas sending offenders into exile and transportation to foreign countries used as penal colonies are no more common methods of offender disposal since the end of Western European imperialism in the Americas, Africa, and Asia, deportation and denaturalization have replaced the former mechanisms of offender disposal.

Furthermore, modern penology has seen the incarceration of offenders in abandoned ships, prisoners clapped in irons or iron collars attached to a wall or post, starvation as a method of correction that does not correct, the confinement of offenders who should not be incarcerated, the neglect of the welfare of prisoners as was in medieval times, the heartless abuse of prisoners observed in virtually all countries of the modern world, the incarceration of minors with adults in the same prison without demarcation, the incarceration of women without sanitary, or adequate sanitary provisions, or care of their dependent children. Torture as an ancient and medieval method of offender disposal has never been in eclipse in modern times. The 2003 Abu Ghraib prison torture perpetrated by persons from a civilized, industrial superpower demonstrates what happens in prisons of poor, backward countries. The Abu Ghraib prison torture was so inhuman that an independent panel to review the U.S. Department of Defense Detention operations noted, "The events of October through December 2003 on the night shift of Tier I at Abu Ghraib prison were acts of brutally and purposeless sadism" (Rodriguez 2006:16; Strasser 2004). In fact, some writers assert that there are "hundreds of Abu Ghraibs that constitute the American prison-industrial complex" (Rodriguez 2006:16). And Franklin (2006) postulates, "our prison system has helped make torture a normal, legitimate, even routine part of American culture."

Many countries at war have used torture to dehumanize prisoners of war and their own offender soldiers. Undeniably, many heads of state and their state agents have engaged in torturous treatments against their subjects in prison and outside of the prison in the name of national security, and such torturous acts are state crimes

(Quinney 1977; Ebbe 1990). In fact, during the era of the League of Nations, countries all over the world were aware of man's inhumanity to man in prisons and outside of the prison system, especially when European colonists sent so many African traditional rulers to exile just to intimidate them, usurp the political role of the king or chief, and exploit the economy of the traditional leader's region of authority. World War II was a wake-up call to world sanity in this regard.

THE IMPACT OF WORLD WAR II ON THE TREATMENT OF PRISONERS AND PRISONERS OF WAR

During World War II (1939–1945), Adolf Hitler and his Nazi army committed so many atrocities against the Jews and prisoners of war. Captured Allied soldiers were tortured in ways more severe than the atrocious methods of torture in the dark ages. The news of the brutal and sadistic methods of torture in Nazi concentration and prisoner of war camps spread all over the world faster than a new song. After the World War II, it did not take long before certain countries at war with each other began to use torture against their captured enemies. Besides, torture as a means of intimidating and controlling prison inmates proliferated in prisons all over the world much more than in the pre-World War II era.

The then European dependencies in Africa, Asia, and the Middle East, who fought with their colonial masters for their masters to have independence and be free from the Nazis, began to agitate for their own self-determination and freedom from their masters. Some of these colonial dependencies opted to go to war against their masters. In those conflicts or wars of independence, some demonstrators and freedom fighters were tortured even beyond those of the Nazi era.

Beyond doubt, the Nazi style of punishment and torturous behavior reached many prisons in various countries, including Great Britain, the Soviet Union (Russia), the United States, France, Italy, etc. Additionally, wars of genocide, reminiscent of the Nazi genocide onslaught against the Jews in World War II, erupted in many parts of the world after the end of the World War II. Some of these wars were the Katanga-Congo war, the Eritrea-Ethiopia war, the Nigeria-Biafra war (1967–1970), the Bosnia-Herzegovina war, the war in the former Yugoslavia, the Rwanda-Burundi war, the Liberian war, the war in Sierra Leone, the war in the Ivory Coast, etc. In all these wars, torturous, cruel, inhuman, and degrading treatments were meted out to fellow citizens, just like the atrocious acts of

World War II. All of the above wars posed a wake-up call to the 66-year-old United Nations (UN, 1946–2012) to safeguard humanity from self destruction.

THE UNITED NATIONS INTERVENTION IN THE RUTHLESS TREATMENT OF OFFENDERS

World War II made the countries of the world, both big and small, aware that any country could rise up one morning and set up to eliminate another powerful or non-powerful country. In effect, the UN was formed to make sure that there will be no more Adolf Hitlers.

Since the emergence of the UN, the organization has taken many actions to seal the sources of man's inhumanity to man. Consequently, one of the first areas of the UN actions was the treatment of offenders. In fact, as early as 1955, just 10 years after the World War II, the First UN Congress adopted the UN Standard Minimum Rules for the Treatment of Prisoners. These 1955 standards originated from the standards for the treatment of prisoners developed by the International Penal and Penitentiary Commission, as endorsed with some modifications, by the League of Nations in 1934.⁶ The First UN Congress adopted the Rules unanimously and was approved by the Economic and Social Council in its resolution 663 CI (XXIV) of July 31, 1957.⁷ The Rules encompass the principles of humanity, respect for human dignity, social purpose, and managerial performance, which have formed a basis for the administration of prison systems worldwide. The UN established what was seen as good principle and practice in the treatment of prisoners and management of correctional facilities.

Furthermore, the UN set up "Model Agreement on the Transfer of Foreign Prisoners," which was adopted by the seventh Congress and approved by the General Assembly in its resolution 40/146 of September 13, 1985.⁸ The Model Agreement emphasized the importance of giving foreign prisoners the chance to serve their sentences in their countries of origin. In effect, the UN member states are given the opportunity to develop bilateral and multilateral arrangements in order to speed up the return of foreign prisoners to serve their sentences in their home countries.

The UN General Assembly, through its Congresses, organs, and resolutions, provided that foreign prisoners should have access to education, work, and vocational training in prison as well as equal eligibility to alternative treatments, respect for their religion and customs, should have rights to contact their consular authorities, family members, and be assisted by interpreters. Additionally,

member states are made to treat all prisoners with due respect to their inherent dignity and value as human beings without discrimination. It is further urged that all prisoners should be given human rights and fundamental freedoms, as set out in universally recognized international instruments.

On the whole, the UN Standard Minimum Rules for the treatment of offenders provided rules of general application. In addition to the basic principles noted above, the UN provided standards to be followed by all member states with regard to the registration of prisoners, comfortable accommodation—each prisoner by himself in a cell or room—men and women, adults and minors, convicted and untried prisoners in separate accommodations, provision of adequate sanitary conditions, clothing and bedding, food, exercise and sports, and medical services. The Standard Minimum Rules laid down the forms and conditions of discipline and punishment in prisons; instruments of restraints; handling of information to and complaints by prisoners; inmates contact with the outside world; provision of a library and religious practice opportunities; rules for handling prisoners' property; death, illness, transfer, etc., of a prisoner; removal of prisoners; institutional personnel handling of prisoners; and respectful order of inspection of inmates' cells.

Furthermore, the Standard Minimum Rules also deal with special category of prisoners, such as prisoners under sentence, insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial, civil prisoners, and persons arrested, but not charged.

In addition, since the end of World War II, women participation in crime has gradually increased all over the world, and so has their prison population. Unfortunately, many countries were caught off guard in dealing with female offenders. In this regard too, the UN intervened. On December 10, 2010, the UN took some steps to solve the problems of women in the criminal justice system pipeline. The General Assembly, by adopting Resolution A/RES/65/229, without a vote, approved the UN rules for the Treatment of Women Prisoners and non-custodial Measures for Women Offenders, otherwise known as "Bangkok Rules."⁹ These UN rules for the Treatment of Women Prisoners supplement, but do not replace, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Standard Minimum Rules for non-custodial measures (PRI and QUNO 2011; UNODC 2008; WHO 2009).

The UN Rules for the Treatment of Women Prisoners emerged because women prisoners have unique issues, such as the existence of very few women's prisons in most countries, which are often located far away from home,

family, and friends; care of their dependent children living outside the prison; care of their dependent children living in the prison; vulnerability of women to mental and physical abuse; heightened vulnerability of women to self-harm and suicide; and women's special health-care needs. Also, women's economic and social disadvantages reduced their access to justice, and customary women's gender roles may increase the stigmatization of offending women (PRI and QUNO 2011).

There are a total of 70 rules provided by the UN for the treatment of women prisoners. The rules addressed the following issues: women prisoners under arrest and awaiting trial; prisoners under sentence—classification and individualization, registration and allocation, personal hygiene, health-care services, safety and security, searches, discipline and punishment, contact with the outside world, institutional personnel and their training, the specific needs of pregnant women, breastfeeding mothers, women with dependent children, juvenile female offenders, foreign nationals, minorities and indigenous people; the need for research, planning and evaluation; public awareness raising; information sharing; and training.

There is no doubt that women offenders in prison deserve some special treatment to help them cope with the pains of imprisonment. This is because they are not naturally as strong as men. On the whole, the humane treatment of persons in a state of incarceration helps to correct the offenders. Prison inmates are members of the society outside. The more inhumane treatments meted out to them, the more they are alienated from society, and the more they recidivate after their release from prison.

CONCLUSION

Society's reaction to the offender has been too harsh throughout history. But history has shown that there are offenders who can never be deterred, regardless of the severity of the prescribed penalty. The ancient and medieval societies did not learn that fact. Contemporary society has learned this, but has continued to pursue retributive justice. Death penalty, specifically, deters the offender forever, but what about general deterrence? Saudi Arabia (an Islamic state) has the severest penalty, including death penalty for certain crimes; yet, in 2011, it had more than 300 executions. Does this number of executions show that the severity of punishment deters, when the offenders already knew the consequences of their crimes and still committed them?

The inhumane treatments meted out to both civil and criminal prisoners around the world since World War II

are mind-boggling to the point that some organizations stepped in to agitate for the safety of prisoners, such as Amnesty International, Penal Reform International, and other non-governmental organizations (NGOs). While the UN has had so many conventions on the treatment of offenders, many countries failed to abide by the terms of those agreements. The headache countries all over the world are having is that the UN has very little means to enforce its laws or treaties, especially when the treaties are violated by the so called “Big 8”—industrialized nations or super nations.

Finally, the UN intervention in the treatment of prisoners provides needed guidelines for the humane treatment of offenders to restore the dignity of the human race.

NOTES

1. What is heartrending about this system of punishment is that the Igbos made the descendants of an abominable criminal suffer for a crime they did not commit. This Igbos *OSU* system is reminiscent of the ancient Hebrew and Athenian societies. But, there are other societies with similar Igbo *OSU* system, but it is not inherited in those societies (Peters 1995).
2. This permanent excommunication forces the offender out of the town or village.
3. The main source of ancient Hebrew history is the Bible. The Bible is more than a law book. The pivot of ancient Hebrew law as well as modern Jewish law is the Torah. Torah (law, wisdom, teaching) is the covenant between God and Moses on behalf of the Jews. The Five Books include the Genesis, Exodus, Leviticus, Numbers, and Deuteronomy (Peters 1995:11).
4. Vestal virgins in ancient Rome represent any of the virgin priestesses of Vesta (the goddess of the hearth), who swore to remain chaste and tended the sacred fire in her temple.
5. A presumably respectable member of Umuobom town in Ideato South local government area, Igboland, was punished with a six-inch-long nail hammered down into his skull after he attempted to burglarize a man who received £60 (sixty pound sterling) from a suitor to his daughter as a dowry. Only five kilometers separated the family of the intended victim and the offender. The offender died as soon as he reached his house. This happened in 1955.
6. Bulletin of the International Penal and Penitentiary Commission, new series October

1929. See the League of Nations resolution of September 26, 1934, Official Journal, Special Supplement No. 123, vol. VI, p. 4.

7. Report of the first UN Congress (A/Cong. 121/21/Rev. 1).
8. See report of the seventh Congress (A) Conf 121/21/Rev. 1).
9. The concept “Bangkok Rules” came from the leading role played by Thai government under the leadership of Her Royal Highness, Princess Bajrakitiyabna, in the promotion and adoption of the Rules.

REVIEW QUESTIONS

1. World War II was a wake-up call to global peace and innovation. Discuss.
2. How did atrocities committed by Nazi Germany in the concentration camps and detention facilities influence the treatment of offenders in the post-World War II era?
3. The *Osu* system in the Igbo nation of Nigeria was a lone correctional mechanism in its medieval and early modern period. Discuss.
4. What offenses were defined as abomination among the Igbos in the medieval and early modern era?
5. What are the types of punishment meted out to offenders in ancient and medieval Rome and Athens?
6. Who were the Vestal Virgins?
7. “Let the criminal be mutilated to such a degree that whatever part of his body that remains will be a living sign to all his crime and iniquity.” Which of the following medieval and modern monarchs issued the above decree or order?
 - a. King Henry II of England
 - b. King Henry VIII of England
 - c. William the Conqueror
 - d. King Leopold II
8. Compare and contrast the Abu Ghraib prison torture of 2003 and the ancient and medieval torturous methods of offender disposal in Rome and Athens.
9. What are the consequences of the fall of Constantinople in 1453 AD?
10. General Field Marshal Erwin Rommel died of natural causes. Discuss fully in the light of crimes by heads of state.
11. What steps has the UN taken to ameliorate man’s inhumanity to man?

12. Compare and contrast “transportation” and “exile” as offender disposal mechanisms in the modern era.
13. Since the end of World War II in 1945, which countries of the world have been at war in which the concept of genocide was attributed to one of the warring groups. What was the reason given by the author as the reason why the UN did not intervene in all of the wars until that of the former Yugoslavia in 1992?
14. How does the UN promulgate its laws?
15. Can a non-member state of the UN be held and punished for violation of international law?
16. What do you understand by “The United Nations Standard Minimum Rules for the Treatment of Offenders?”
17. What do you understand by “Bankok Rules?”
18. With regard to penology and corrections, write a short essay on Amnesty International and Penal Reform International.
19. “Prisoners should be given human rights and fundamental freedom” (UN). Discuss.
20. Both the UN and the Classical School of Criminology (Cesare Beccaria) agree that punishment should be commensurate with the gravity of the offense. Discuss and comment.

REFERENCES

- Barnes, H. E. 1972. *They story of punishment: A record of man's inhumanity to man*, 2nd edition. Montclair, NJ: Paterson Smith.
- Drapkin, I. 1989. *Crime and punishment in the ancient world*. Boston, MA: Lexington Books.
- Ebbe, O. N. I. 1990. Heads of State: The Vice Kings and narcotic barons. *International Journal of Comparative and Applied Criminal Justice* 14(2): 281–287.
- Ebbe, O. N. I. 1999. The political-criminal nexus “slicing Nigeria’s national cake”: The Nigerian case. *Trends in Organized Crime* 4(3): 29–59.
- Franklin, H. B. 2006. The American prison and normalization of torture. In *Torture, American style: Publication number 3 of Historians Against the War* (HAW), Margaret Power, ed. Somerville, MA: HAW.
- Peters, E. M. 1995. Prisons before the prison: The ancient and medieval worlds. In *The Oxford history of the prison: The practice of punishment in Western society*, edited by N. Morris and D. J. Rothmen, 3–47. New York, NY: Oxford University Press.
- PRI and QUNO. 2011. Briefing on the U. N. rules for the treatment of women prisoners and Non-custodial measures for women offenders (‘Bangkok rules’). Penal Reform International (PRI) <http://www.penalreform.org> (Accessed June 21, 2011).
- Proal, L. 1898. *Political crime*. New York, NY: D. Appleton and Company.
- Quinney, R. 1977. *Class, state, and crime: On the theory and practice of criminal justice*. New York, NY: David McKay & Company.
- Rodriguez, D. 2006. (Non) scenes of captivity: The common sense of punishment and death. *Radical History Review* 96: 9–32.
- Rommel, E. 1990. *Infantry attacks (with a new introduction by Manfred Rommel)*. London, UK: Greenhill Books.
- Schafer, S. 1977. *Introduction to criminology*. Reston, VA: Reston Publishing House.
- Strasser, S. 2004. *The Abu Ghraib investigations*. New York, NY: Public Affairs.
- UNODC. 2008. Handbook for prison managers and policy-makers on women and imprisonment. <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> (Accessed April 12, 2011).
- Watson, A. 1970. *The law of the ancient Romans*. Dallas, TX: Southern Methodist University Press.
- WHO. 2009. Women’s health in prison: Correcting gender inequity in prison health. http://www.euro.who.int/data/assets/pdf_file/0004/76513/E92347.pdf (Accessed June 21, 2011).

19 Guided Change in Japan

The Correctional Association Prison Industrial Cooperative (CAPIC) and Prison Industry

Elmer H. Johnson

CONTENTS

Introduction.....	251
A Window of Opportunity for Prison Industries.....	251
Factory System and the Prison.....	252
Industrial Model in Japan.....	253
Roots in Japanese History.....	254
Key Importance of Subcontracting.....	254
Oil Shock and Crisis for Prison Labor.....	256
Negotiations Culminating in CAPIC.....	256
Taking Advantage of an Opportunity.....	257
Establishment and Aim of CAPIC.....	257
CAPIC's Place in Prison Industry.....	258
Other Contributions of CAPIC.....	258
Opposing Outcomes: United States and Japan.....	260
Notes.....	261
Review Questions.....	262
References.....	262

INTRODUCTION

In 1973 and from 1979 to 1980, the oil-producing nations of the Middle East increased the price of oil in several stages and gravely dislocated the world economy. Japan, which depends heavily on oil for its energy, suffered huge increases in the costs of imports, inflation of domestic prices, unemployment (despite a history of labor shortages), and an interruption of remarkable economic growth (Beasley 1990, pp. 249–250).

Under the duress of this financial crisis, the national government of Japan told the correction bureau to eliminate the budgetary allocation for purchase of raw materials for prison industries. The prospect of a body blow to prison industries tested the commitment of the national government to continuing industrial operations. As we shall see, this situation turned out to be a window of

opportunity: the Correction Bureau's negotiations culminated in the establishment of the Correctional Association Prison Industrial Cooperative (CAPIC) as an additional participant in the prisons' industrial operation.¹

A WINDOW OF OPPORTUNITY FOR PRISON INDUSTRIES

Penal reform sometimes takes place when demands for changes from outside the correctional agency create a situation favorable for the correctional agency to introduce policies or practices that the executives and personnel of the agency already desire. The reform agenda of the external change-agents provides a window of opportunity for the internal change-agents, because the external agenda is susceptible to modification by the correctional agency.

The correctional bureau's response to the external demand that it should eliminate the budget item for prison industries showed its vulnerability as a reactive institution dependent on developments in society generally and in government specifically. The correction bureau found that a crucial element in its budget had been threatened abruptly by a joint decision of the Ministry of Finance (MOF) and the Ministry of Justice and had to engage in political bargaining to meet this threat.

Windows of opportunity emerge and are exploited through the society's political process of governmental decision-making. Noting that there is no Japanese word for "opposition," Leiserson (1966, p. 346, 394–395) points out that, from the Japanese perspective, political bargaining within the system (*taisei-gai*) is more likely to effect changes in policy than efforts seeking policy change from outside the system (*taisei-nai*): to have any chance for success, *taisei-nai* must strike some sort of alliance with *taisei-gai*. His terms resemble our earlier distinction between external and internal change-agents: internal change-agents must accommodate to the external change agenda to exploit a window of opportunity.

Before CAPIC was accepted as a solution, negotiations followed the usual budget-making process of the Japanese national government. The following circumstances and special conditions combined within that process to lead to the founding of CAPIC.

Several conditions surrounding this window of opportunity made it possible to preserve industrial prisons and provide for their richer future. The industrial prison was defined, its significance noted, and the conditions for its implementation outlined. It was found that prison labor played an important role in the development of modern Japan and that it is vital connection with private industry through subcontracting. Also, the external parties had a stake in the industrial operations. Furthermore, prison industry played an important role in the stability and purposes of the prison.

These conditions made both external and internal change-agents willing to bargain for the creation and implementation of CAPIC. The external change-agents had superior power in negotiations but also had an interest in preserving prison industries. The internal change-agents were indispensable for implementing any change agenda but depended on the external change-agents for necessary resources.

FACTORY SYSTEM AND THE PRISON

In the European putting-out system, the merchant capitalist or his representative visited the homes of each

worker, distributing raw materials, and later collecting the products. The factory system developed during the first industrial revolution (1750–1825) brought workers together in a central shop and assigned each particular task in operating one of a series of specialized machines. Workers sometimes had been assembled in central workshops before 1750, but factor labor as a system arose with the development of suitable machinery. The factory system by definition combines the labor of many kinds of workers who tend with appropriate skills a series of productive machines (Cooke-Taylor 1886, p. 29).

Factory systems require rigorous discipline and regimentation. According to Barnes (1942, p. 107), "It became necessary to issue certain rules defining the hours of labor, the assignment of industrial tasks, the attitude of the employee in his relations with the employer, details of conduct within the factory, and even the matter of orderly entering and leaving." Compared with the putting-out system, the factory system required closer control, supervision, and discipline of labor. A predetermined scheme of production assigned particular tasks to each worker in relation to specialized machines. If any worker came to the factory late or failed to show up, he or she would delay the entire process. Failure to perform an assigned task would frustrate the industrial process, and the worker responsible for the failure could be identified easily.

By 1823, the Auburn Prison in New York had exploited the disciplinary potential of the factory system, providing "for the separate confinement of each prisoner in silence in his individual cell at night and for the work of the prisoners in association during the day" (Lewis 1922, p. 86). Inmates were forbidden ever to converse with one another to prevent ill influences on morale, plotting against the keepers, or escape. Violators were subject to flogging.

The Auburn system enabled the private contractor to transform the prison into a factory at his own expense, to direct the inmate workers, and ultimately to sell their products on the open market. The industrial prison brought orderliness to the prisons, but, as Melossi and Pavarini (1981, pp. 129–130) note, radically changed the form of discipline. Productive work imposes regulations that dictate the form and timing of the interaction of inmate workers; the discipline for work replaces the discipline for purposes of prison custody. To motivate efficient task performance, the prospect of rewards is superior to the threat of punishment. Melossi and Pararini show this principle to have been behind evaluating working ability as a measure of "good conduct," commuting

long sentences, and preferring of long-term prisoners for teaching of new work techniques.

Jeremy Bentham (1843, p. 12) set the tone for arguments in favor of the industrial prison when he commented in 1778 on the proposal before the British Parliament to establish "houses of labor":

The object in view, we see, is partly economical and partly moral: that such a project be drawn from the labor of the convicts as may altogether, or at least in part, compensate the expense of the establishment; and that the morals of the convicts may be improved by a habit of steady and well-directed industry.

INDUSTRIAL MODEL IN JAPAN

Industrial prison operations are favored in Japan by the centralized Japanese correctional administration. All correctional activities are carried out on the national level, unlike the American federal, state, and local subdivisions. Centralized administration encourages fiscal efficiency and uniformity in policy and practice and enables use of a national system for recruiting personnel. Quality of personnel is further assured by a long history of in-service training. The official system for classifying adult prisoners supports the needs of industrial operations.

Japanese inmates' engagement in regular industrial labor contributes noticeably to the orderliness in prisons,² to the Correction Bureau's rehabilitation goals,³ and to national revenue.⁴ Both economical and moral purposes are served.

Violence against other inmates is unusual, and aggression against staff and escape attempts are even more rare. As in all custodial prisons, inmates' conduct is constrained by a regimented routine. Workshop assignments make up the greatest number of tightly scheduled daily activities of inmates who breakfast in their cells, work at 7:20 AM, lunch in the workshop, and march back to their congregate cells at 4:30 PM for dinner. Silence is not required in the congregate cells, which usually have a half-dozen residents. Individuals whose behaviors have caused problems are housed in single-occupancy cells and must assemble paper shopping bags for retail stores. Inmates who are physically unfit for workshop labor assemble paper shopping bags as well, but in congregate cells.

Both threat of punishment and promise of reward motivate task performance. Inmates may not contact one another while at work and must meet a daily work quota. Infractions peculiar to the workshops are violations of safety rules, looking aside while working, leaving the designated place, leaving a machine untended, making

shoddy products, damaging products, and manufacturing unauthorized items.⁵

As positive incentives, inmate workers receive modest "remunerations," promotions in the progressive stage system, privileges earned by exceeding the production quota, and satisfactions for exceeding the quota. Not considered the privilege implied by the word "wage," monetary remunerations come in 10 grades according to task skill, length of time in prison, and work attitudes.⁶ Progressive stages are from the lowest (fourth) at admission to prison to the highest (first), with privileges and chances for parole linked to promotion. If a work quota is exceeded, certain freedoms, such as watching television, are obtained. Competition between workshops in exceeding production quotas expresses the spirit of "*gambare!*" ("persevere" or "endure!") that motivates great effort in every facet of Japanese life.

The influence of Japanese culture on work motivation goes beyond the competitive spirit. Previous socialization and the messages of social institutions prepare most inmates to accept the behavioral standards of the industrial prison. The inmates come from a socio-cultural system that prefers the interests of the group over those of the individual member. Ozaki (1978, p. 183) summarizes Western culture in the statement: "Do your own thing and go your own way." The Japanese statement, on the other hand, would be "find your own group and belong to it. You and the group will rise or sink together. Without belonging, you will be lose in the wilderness. Apart from dependence there is no human happiness."

In Western societies, relationships tend to be along the horizontal dimension, with work colleagues, persons of similar age, and other peers. In the prison factory, Foucault (1977, p. 238) says, inmates "come together in a strict hierarchical framework with no lateral relation, communication being possible only in the vertical direction." The same pattern has been described for the ordinary life in Japan. There, Nakane (1981, pp. 36-37, 44, 68) argues, social ties are vertical rather than horizontal through attachments of *oyabun* (persons of subordinate rank such as child, client, and employee). The vertical dimension favors group cohesion in spite of rank differences among members. Officer-inmate contracts draw on the *oyabun-kobun* relationship, with the officer expected to combine the roles of moral educator, lay counselor, and security monitor. "Although some prisoners try to reject their guard, because of the authority that he carries, the majority accept his guidance and advice, at least on an emotional level" (Shikita 1972, p. 19).

ROOTS IN JAPANESE HISTORY

Japan did not erect a modern prison system until the 1880s, and industrial prisons began even later. Yet, prison labor existed in Japan before the eighth century, when Chinese legal principles were followed in specifying penal measures: death by decapitation or strangulation, exile to Hokkaido, beating with a light stick, beating of offenders who lacked a sense of shame with a heavy stick, and penal servitude. Those sentenced to penal servitude were assigned to local confinement stations and, according to local needs and the individual's strength, were ordered to perform a specific kind of labor for 12, 18, 24, 30, or 36 months. They were paid one-tenth of an ordinary worker's wage, and half of the daily income was held until release.

The Ninsoku-Yoseba (Stockade for Laborers) was established in 1790 on the small island of Ishikawajima at the mouth of the Sumida River. Homeless persons made lime or charcoal balls or paper there and were paid for their work. In 1820, criminals sentenced to forced labor and exile were admitted (Kyokai 1943, p. 813; Hiromatsu 1972, pp. 44–49).

On January 3, 1868, a group of feudal lords engaged in a successful coup d'état in Kyoto terminating the Tokugawa Shogunate that had isolated Japan from the outside world for almost two and a half centuries. The ensuing reform movement known as the Meiji Restoration made great efforts to modernize the socio-economic infrastructure of Japan. Delegations were sent to Europe and the United States for quick studies of Western social institutions, including laws and prisons. Modern Japan gradually evolved as a combination of lessons from the West and indigenous customs (Beasley 1972, pp. 1–2; Noda 1976, pp. 41–48; Beasley 1990, pp. 22–30, 85–88).

The central prisons of France were a model for Kosuge Prison near Tokyo, and the prison at Miyagi (still existing in modified form) duplicated the Central Prison at Leuven, Belgium. The central prisons in France, at the time of the Meiji Reformation, had initiated a version of the Auburn system in the mid-nineteenth century with its reliance on contracting, although in France and the United States, the industrial prison was under political attack and suffered general decline in the 1880s and later (O'Brien 1982, p. 23, 152–190).

The Meiji reformers began to establish a modern prison system while laboriously suppressing the 1877 Satsuma Rebellion by imprisoning 27,000 dissident samurai: rice warehouses and stables had to be hastily converted into provisional confinement sites. Rioting, arson, and

escapes were frequent, until new prisons were constructed (Hiromatsu 1973, pp. 31–32).

Prisoners participated directly in the development of Japan's infrastructure. They reclaimed land, labored in mines, and constructed the Asahikawa-Abashiri highway (1886–1891) in the northern island of Hokkaido while farmed out from Kabato Prison (opened 1881) and Kushiro Prison (opened 1885). Sorachi Prison (opened 1882) provided labor for coal mines. The government began operating the Miike coal mines in Kyushu in 1873 with both free workers and prisoners. Although privatized in 1888, the mines continued to employ prisoners but in declining numbers, until their use was discontinued in 1933 (Hiromatsu 1973, pp. 35–36; Hane 1982, p. 227).

Factory organization and techniques existed in Japanese prisons at the time of the Meiji Restoration. Sometime during the last two decades of the nineteenth century, Griffiths (n.d., pp. 235–238) reported that Japanese prisons were places of detention, of reformation, and of profitable work. The visitors were surprised to find a couple of hundred prisoners making machinery and steam boilers in the first workshop. One warder, carrying only a sword, was in charge of every 15 men. The prisoners were working on contract orders for private firms, under the supervision of one skilled master and one representative of the firm giving the contract. Another shop contained wood-carvers. There were also paper-makers, weavers (who were making fabric for prison clothing), fan-makers, lantern-makers, and workers in baskets, mats, and nets. In one of the shops, *jirikishas* were being made, in another umbrellas were being elaborately carved, and in another every kind of pottery was being turned out.

KEY IMPORTANCE OF SUBCONTRACTING

Small businesses were a powerful force in the nineteenth-century industrial revolution of Japan, and they now account for a larger percentage of total enterprises than in any other industrialized nation (Tadao 1979, pp. 157–158).⁷ In the years immediately before and during World War II, manufacturers of military equipment shifted from producing everything themselves to relying on smaller firms through contracts (Nakamura 1981, p. 15).⁸ Contracting had existed in Japan before the war, but its popularity was stimulated afterward by advantages to "parent" companies such as lower wages, managerial skills in small firms, and willingness to work longer hours (Dore 1987, pp. 172–173).

Primary contractors have direct ties with the parent companies; secondary and tertiary subcontractors

are related indirectly to primary contractors. "It is not unusual to find several 'layers' of hierarchically organized subcontractors in a pyramid-like pattern. Most commonly, the lower its stratum, the smaller the establishment" (Yoshino 1968, p. 155).

Parent companies contract with small firms, because when the economy is depressed, they then have the option of canceling the contracts while maintaining the jobs of regular employees, of postponing payments to contractors, or of lowering the rate paid to them (Nakamura 1981, p. 175). Kosai and Ogino (1984, p. 72) present a different perspective: "In reality, a great number of Japan's small companies boast a high level of technology and efficiency and are valued by their parent company as a vital link in the organization." The parent company enters an agreement with such small firms when only a small order is needed and when the small firm is reliable in delivery and product quality. The advantages for the small firm, Kosai and Ogino say, are avoiding the costs of sales promotion, gaining the benefits of stable work and profits, and being guided otherwise by the parent company.

By acting as secondary or tertiary subcontractors, the adult prisons of Japan are able to sustain their heavy involvement in industrial production. Their wide range of products generate different amounts of annual income (Table 19.1). Metal work, tailoring, woodcraft (largely furniture), and printing contributed 74% of the 1990 total income. The table distinguishes projects using equipment supplied by the government from projects using equipment supplied by private contractors. For the four major industries, private firms supplied the equipment for 99.5% of project income. For total projects, privately supplied equipment accounted for 96.5% of the income. Government-supplied equipment was prominent in farming and stockraising, vocational training,⁹ papermaking, and forestry, but only 0.4% of all income was obtained from those industries.

The staff of each prison, especially its industrial division, plays the primary role in obtaining subcontracts. All sectors of the staff have a keen interest in replacing an expiring subcontract to maintain an active inmate labor force. Some headquarters of the correction region may refer a contractor to an appropriate prison, or a local

TABLE 19.1
Income from Prison Industries by Types of Products and State's versus Contractors' Resources, 1990

Types of Products	Total Income (Million Yen)	State Resources	Private Resources
		Percentages	
Metal work	5421.9	0.7	99.3
(Assembly)	(3164.9)	(—)	(100.0)
(Production)	(2257.0)	(1.6)	(98.4)
Tailoring	3622.9	—	100.0
Woodcraft	1990.3	1.3	98.7
Printing	1364.3	0.2	99.8
Leather work	997.6	—	100.0
Paper products	685.8	0.1	99.9
Farm stock raising	413.9	96.5	3.5
Chemical products	277.3	—	100.0
Paper bags	159.9	—	100.0
Auto repair	145.3	0.8	—
Ceramics	142.0	5.4	94.6
Vocational training	124.6	47.0	53.0
Spinning	90.8	—	100.0
Paper making	72.7	30.7	69.3
Forestry	24.6	100.0	—
Food processing	22.1	11.3	88.7
Others	1195.5	—	100.0
Total	16,751,63.5	3.5	96.5

Source: Ministry of Justice, *Annual Report of Japanese Prison Income Revenue for 1991*, Secretariat, Ministry of Justice, Tokyo, 1991, pp. 238–239.

company may approach the prison, seeking an arrangement in its own interest. The prison's correction fair, displaying its goods, may awaken a company's interest. Newspaper advertisements and suggestions by volunteers serving the prison also spread the word.

OIL SHOCK AND CRISIS FOR PRISON LABOR

The oil crisis of 1973 occurred after a long period of economic growth and expanding government revenue in Japan. The ensuing financial setback was especially untimely, because the fiscal budget of 1973 initiated an unprecedented public investment in social services. Pension benefits for employees almost doubled, insurance coverage of medical care for dependents increased, and free medical care was introduced for the aged (Collick 1988, pp. 214–215). The government debated whether expenditures should be significantly reduced or whether they should be retained to prime the economy. Increased taxes were found to be politically impractical (Woronoff 1986, pp. 241–246). When Finance Minister Aichi Kiichi died, Prime Minister Kakuei Tanaka appointed in his place Takeo Fukuda, a fiscal conservative. The fiscal year 1974 thus saw, for the first time, a prime minister and minister of finance who both wanted to reverse the growth of expenditures during the framing of the national budget (Campbell 1977, pp. 259–260).

The national budget undergoes a year-long process in Japan. In April (the beginning of the fiscal year), the ministries begin drafting their budget requests for the following fiscal year. Usually the MOF expects an increase in budgets, although each ministry is asked to limit requests to no more than a 25% gain. The requests reach the MOF by August 31 and then are reviewed by the Budget Bureau of the MOF and discussed with responsible officials of the requesting ministries. In early December, the draft budget is ratified, and sometimes modified, in a ministerial conference of the MOF. In the weeks immediately following, the MOF receives appeals and doles out small amounts of supplementary funds. Diet members of the dominant political party also make requests in favor of their political constituencies. The Cabinet ratifies the final version of the budget that is sent to the Diet for passage (Campbell 1977, pp. 9–11). The relative positions of the Diet and MOF in the budget-making process have changed at various times since the end of World War II (Campbell 1977, pp. 9–11), but since 1955, the Diet had modified the MOF draft only three or four times, and all such changes had been minor. The MOF gained influence during the postwar reconstruction and after the oil shock of 1973.

The budget for fiscal year 1974 limited growth of expenditures but did not impose zero growth. In 1975, the government obtained authority from the Diet to issue bonds in addition to its usual "red national bonds" for construction of bridges and similar projects, bonds that would help to bring revenue up to expenditures. Deficit financing rose from 11% of expenditures in 1974 to almost 35% in 1979 (Woronoff 1986, pp. 241–246).

The drafting of the 1982 budget brought extraordinary fiscal pressures on the ministries from sources external to the government, for the mounting fiscal deficit necessitated zero growth in budgetary allocations. Furthermore, a semiprivate entity was introduced into the process. The Provisional Commission on Administrative Reform (RINCHO) was established temporarily in March 1981 to advise on improving public administration.¹⁰ It issued five reports before being dissolved in May 1983. In addressing the opening session of the Commission, Prime Minister Zenko Suzuki instructed its members to assume the additional responsibility of helping to draw up the budget for the 1982 fiscal year to eliminate deficit financing (Daiichi 1988, pp. 77–80).

NEGOTIATIONS CULMINATING IN CAPIC

In July 1982, the MOF requested all ministries to reduce their requests for the 1983 fiscal year by 10% of the previous fiscal year's budget. The imposed ceiling enabled the ministries to decide on cuts "during the relatively private and quiet process of request preparation during the summer, rather than in the noisy and highly political hubbub of final budget negotiations" (Campbell 1985, p. 512).

During negotiations at the ministry level, the MOF and the head of the Accounting Section of the Ministry of Justice noticed an item in the correction bureau's budget for 4 billion yen. The allocation for purchase of raw materials for prison industries amounted to 10% of the total budget for the Ministry of Justice. This discovery led to a demand from several parties outside the control of the correction bureau that the expenditure for raw materials be eliminated from the Correction Bureau's 1983 budget. Agents of external pressure here included the prime minister and the minister of finance, who had initiated the framing of a zero growth budget for the fiscal year 1983; RINCHO, which had been pressed unexpectedly into short-term assisting of the MOF in that budget program; and the Ministry of Justice itself, of which the correction bureau is a component, although that ministry also negotiated for preservation of prison industries.

The head of the correction bureau accounting section told the MOF that eliminating the item would have profoundly adverse consequences for the correction bureau and for the government in general. Unless raw materials were available, the bureau would not comply with Article 24 of the prison law: "Prison labor shall be imposed upon inmates, the sanitary condition and general economy of the prison taken into consideration, and also with due attention paid to the term of their penalty and to their health, ability, occupation, and future life, etc." The MOF would have an interest in the continued operation of prison industries, because Article 27 of the prison law requires that all proceeds from prison labor "shall be vested in the national treasury" rather than retained by the Correction Bureau.¹¹ Also, the employment of the majority of inmates in industrial production is a key element in the management of prisoners, the noteworthy tranquility of prison life, and the official position that inmates are being prepared for return to the free world.

The head of the accounting section had also consulted with officials experienced in prison industrial operations and was impressed with the possibilities of involving a private organization in the financing of raw materials and expanding the market. In usual practice, the funds for purchase of raw materials would result in the sale of the finished products, but the proceeds of such sales would go into the national treasury without replenishing correction bureau funds for further purchase of raw materials. A semiprivate organization would not be subject to this practice, but could furnish raw materials as a private contractor sells the products and could compensate the correction bureau for the contribution of inmate labor.

To introduce a semiprivate organization into the budgetary process, funds would have to be provided for initial purchase of raw material. The semiprivate organization would be able to retain the raw material investment when the correction bureau's share of expenses was submitted to the national treasury. By retaining that portion of the proceeds, the semiprivate organization would be able to purchase raw materials at least twice during a fiscal year. The consequence would be that 2 billion yen a year—not 4 billion yen—would be sufficient to provide raw materials.

MOF agreed to provide a subsidy of 2 billion yen but insisted that it be spread over the years 1983–1988. Four hundred million yen would be paid each of 5 years for a total of 2 billion yen. There would be a shortage of 1.6 billion yen in 1983. MOF agreed to provide additional money for administrative and personnel expenses, (especially) for paying interest on the 1.6 billion yen debt.

TAKING ADVANTAGE OF AN OPPORTUNITY

The head of the accounting section faced two problems in accomplishing the proposed arrangement: the Correction Bureau had to be persuaded to introduce the plan and a semiprivate organization had to be recruited. The emergence of CAPIC was accomplished in developments that demonstrate how a window of opportunity can be exploited successfully.

The executives and staff of an agency must be receptive to a change agenda proposed from an external source. After the bureau accepted the change-agenda, its personnel contributed actively and indispensably to CAPIC's success, especially the industrial sections of the Bureau's headquarters and the prisons themselves. Retired prison executives, especially those experienced in prison industries, make up an important sector of CAPIC managers.

Because there was not enough time to create a completely new semiprivate organization, the correction bureau had recourse to the Japanese Correctional Association (JCA), a society founded in 1888 to improve prison practices and serve prison personnel. The JCA leadership and most of its staff are retired personnel, with the rest of its membership composed of active personnel and retirees. Its headquarters are located on the same grounds as those of the Tokyo Correction Region in Nakano.

The JCA is one of the *gaikaku dantai* (public corporations or extradepartmental groups), incorporated private associations, foundations, or unions initiated by the government bureaucracy. Each is an institutionalized private interest group that has an affiliated section of government as a client and is staffed predominately by retired government officials.¹² In varying degrees, they rely on government funding (George 1988, pp. 124–125). Through CAPIC, JCA received government funds; otherwise, JCA has had the correction bureau as a client for a long time.

The directors were reluctant to allow JCA to become a semiprivate organization as proposed. Membership dues were sufficient to support the association's projects, and the large scale of the subsidized industrial activities made the directors doubt that JCA could manage them successfully. After a series of conferences with the industrial section in the correction bureau's headquarters, JCA agreed to add a special unit to its organization: CAPIC.

ESTABLISHMENT AND AIM OF CAPIC

The head office and executive director of CAPIC are located in the JCA headquarters. Divisional CAPIC offices have been established in each headquarters of the bureau's correction regions, and 68 local branches have been

established at each of the prisons with industrial activities. Subsidy payments, including loads to CAPIC, were 1034 million yen in 1983, 930 million yen in 1984, 767 million yen in 1985, 210 million yen in 1986, and 189 million yen in 1987. Of the total sum of 3130 million yen, interest charges and administrative costs drew 1130 million yen.

According to the Japan Correctional Association (cited in Johnson 1997), CAPIC has two major goals: "In the first place, it becomes possible to increase the opportunities of prisons receiving orders from outside through the flexible appropriation of funds for raw materials, without being bound by the budget, which serves for securing the stability of the value of work for inmates. Secondly, the introduction of corporate management systems makes it possible to strengthen the production control, time limits of delivery, costs, etc., and also to promote the development and research in new products and high value-added products."

CAPIC was expected to broaden access to the free market for prison-made goods. As a semiprivate organization, it would be more acceptable to the public than a government agency. To increase the volume of sales and to create a more stable market, private enterprises and individual consumers would be assured of a dependable supply and prompt delivery of high-quality products. A catalog of products is issued, and CAPIC participates in a large-scale annual fair displaying prison-made goods. The correction bureau has held a national fair in Tokyo for more than 30 years, attracting thousands of individual consumers. Many modest fairs are held at prisons throughout the country each year. Retail stores are located in Tokyo, in Nagoya, and at some prisons.

Economic returns would be enhanced by paying more attention to higher-value products and by introducing more sophisticated technology. The national government contributes to the renovation of workshop equipment and sponsors training of workshop supervisors to help them in their duties and in their improvement of inmate skills. CAPIC pays their secondary expenses for attending courses and seminars. The system's emphasis on prison industries makes regularity of production very important, and CAPIC ultimately hopes to safeguard such regularity by providing 20% of prison employment through its own projects.

CAPIC'S PLACE IN PRISON INDUSTRY

CAPIC reports considerable progress in accomplishing its goals, but more progress is necessary. The costs of administration and of transportation of finished goods must be reduced.¹³ Changes in markets and customer needs require constant monitoring. The nationwide operations involve an inventory of some 400 products. For

systematic management, plans should be advanced for developing a computerized database.

CAPIC uses three methods to increase sales and stabilize the market. First, CAPIC furnishes raw materials, uses prison labor, and sells the products. Second, CAPIC obtains orders from customers, provides raw materials, and the prison makes the products. Third, CAPIC purchases raw materials from the contractor and relays them to the prison and then receives the finished products and sells them to the contractor.

CAPIC has not increased its share of total contracts obtained, but its financial contribution has been enhanced. From 1985 to 1991, CAPIC reports that its share of net revenue rose from 24.8% to 32.4%, and its share of inmate man-days from 13.2% to 23.4%. Its sales increased from 4.17 billion yen in 1983 to 15.89 billion yen in 1991, a 387% gain. For fiscal years 1989–1990, the customers were long-term contractors (46.4%), large-scale contractors (8.3%), government agencies (8.9%), the general public (23.5%), and annual fairs (12.9%). Gross profits were 3.9% of sales in 1983 and 11.2% of 1989 sales. However, operating costs also increased at a rate of 374%. In the initial years, net income was negative, but it has been positive ever since, reaching 442,784,000 yen in 1991.

For all prison industries in Japan, metal work and tailoring alone employed 37% of all inmate workers in 1988 and made 53.7% of the revenue (Table 19.2). Woodcraft (chiefly furniture), printing, and leather work employed 14% and supplied 25.9% of the revenue. Those five industries were disproportionately "profitable." Unlike proportions in non-CAPIC revenue, woodcraft and printing brought CAPIC more revenue than metal work and tailoring. The ratios in Table 19.2 indicate that (in addition to woodcraft and printing), CAPIC draws revenue most advantageously from industries contributing relatively less to total revenue: automobile repair and ceramics. CAPIC was especially helpful in vocational training programs that incidentally generated revenue.

Between 1986 and 1991, the value of CAPIC sales rose an impressive 37% (Table 19.3). In 1986, woodcraft and printing brought the greatest financial return, but tailoring, metal work, and leather work scored greater gains. Woodcraft continued to accrue the most revenue of all industrial categories in spite of a very modest gain proportionately. Printing made a small increase in absolute value of sales but failed to keep pace with other categories.

OTHER CONTRIBUTIONS OF CAPIC

CAPIC contributed a total of 347,323,000 yen to various projects for the personnel and programs of the correction

TABLE 19.2**Inmate Workers by Kind of Products; Comparing CAPIC and All Prison Industry by Revenue and Kind of Products, 1988**

Total Revenue: CAPIC

All Industry from

Industries Revenue

Kind of Products	Inmates in all Industry		Total Revenue from Industries		CAPIC Revenue	
	In Ratio ^a	Number Pct.	In Million Pct.	Million	Yen	Yen
Metal work	8909	20.7	5389.9	32.6	726.8	.16
Tailoring	7045	16.4	3495.8	21.1	761.0	.28
Woodcraft	2657	6.2	2012.6	12.2	1450.0	2.58
Printing	1776	4.1	1391.6	8.4	1054.4	3.13
Leather work	1595	3.7	878.1	5.3	207.4	.31
Vocational training	1062	2.5	116.4	0.7	94.8	4.39
Farm forestry	228	0.5	257.5	1.6	24.1	.10
Ceramics	186	0.4	130.3	0.8	93.7	2.56
Auto repair	122	0.3	123.0	0.7	116.1	16.83
Paper work	68	0.2	74.1	0.5	19.8	.36
Others	19,395	45.0	2666.0	16.1	49.4	.02
Total	43,043	100.0	16,535.3	100.0	4597.4	.38

Source: Correctional Association Prison Industrial Cooperative (CAPIC) Report 1988.^a For the ratio, CAPIC revenue was subtracted from total revenue. The ratio is CAPIC revenue divided by non-CAPIC revenue.**TABLE 19.3****CAPIC Sales by Products, 1986–1991^a**

Types of Products	1986		1991		Pct. Change
	Sales	Pct.	Sales	Pct.	
Woodcraft	4176.7	35.0	5800.5	35.4	38.9
Printing	2153.5	18.0	2270.6	13.9	5.4
Tailoring	2084.1	17.5	3272.8	20.0	57.0
Metal work	1800.7	15.1	2695.6	16.5	49.7
Leather work	704.0	5.9	1127.8	6.9	60.2
Ceramics	235.4	2.0	328.6	2.0	39.6
Auto repair	218.1	1.8	241.8	1.5	10.9
Other products	444.7	3.7	498.2	3.0	12.0
Vocational training	119.0	1.0	127.1	0.8	6.8
Total	11,936.2	100.0	16,363.3	100.0	37.1

Source: CAPIC.^a Sales are in million yen.

bureau in the 1985–1991 period. Among the projects are financial support of overseas study tours for selected correction bureau personnel, sponsorship of an athletic marathon, sponsorship of a contest in word processing, and establishment of a research institute.

While president of JCA, Yoshiho Yasuhara, suggests that CAPIC sponsors a new research unit, the Correctional Association Research Institute for Criminology. The Institute is designed to remedy a lack of private research centers in Japan dealing with the field of corrections and

criminology and has 14 staff members. Governmentally sponsored variations on the Institute have been developed by the Ministry of Justice and the National Police Agency.

The institute has five divisions. General affairs is responsible for administrative support. The investigation division negotiates with other research units in planning projects, publishes a journal (*The Bulletin of Correctional Research Institute for Criminology*), reports on the institute's projects, and prepares teaching materials for personnel training conducted by the Correction Bureau. Three of the five divisions specialize in particular areas of research.

The First Research Division examines the causes of crime and delinquency, the methodologies of prediction and trend identification, and crime prevention. In one project, analysis of event-history was examined as a method for follow-up studies. In another project, the eight correctional regions of the Correction Bureau gathered data for an evaluation of treatment methods.

The Second Research Division concentrates on the practical aspects of crime prevention systems such as punitive and protective measures taken against offenders and rehabilitation-oriented programs. One project studied how prison industries are organized; another followed up prisoners who had completed vocational training.

The Third Research Division considers theories concerning therapeutic responses to offenders, the characteristics of criminals and delinquents, and the development of staff skills for treating offenders. Among the projects are studies of the drawings of family members by female inmates at juvenile training schools, problems encountered in counseling prison inmates suffering from AIDS, and characteristic responses of training school inmates in a sentence-comprehension test.

OPPOSING OUTCOMES: UNITED STATES AND JAPAN

In nineteenth-century America, some three dozen states adopted the industrial prison in the mode of the Auburn system, but opposition appeared soon after the system was created. As the decades passed, the share of inmates employed in industries declined consistently: 90% in 1885, 72% in 1895, 53% in 1932, and 10% in 1979 (Funke, Wayson, and Miller 1982, pp. 20–21).

Americans have a historical proclivity for joining associations, including political interest groups that mobilize efforts to gain advantages from government in a particular public issue. The American scene is especially congenial to the competition among interest groups.

Federalism divides power between the national and the state governments, offering several targets for exerting influence. Power is decentralized within two major political parties; politicians of various ideological persuasions are found in both major parties. Party discipline is weakened, and candidates for political office are very susceptible to the demands of interest groups (Keefe et al. 1990, pp. 306–311).

The decline in industrial employment of prisoners reflects the growing success of lobbying that persuaded state and national lawmakers to restrict prison-made goods. The prosperous contract industries attracted major opposition in the northern states. There were a series of investigations in 11 states during the 1870s and 1880s. Manufacturers in certain industries organized the National Anti-Contract Association in 1886. Reports prepared in 1905 and 1923, Gill (1931, p. 84) declares, set forth “an array of evidence which leaves no doubt that prison industries, by underselling, by dumping, by false labeling, by unfair advertising, by unscientific accounting, by brutal treatment of labor, and by bad management, have been able to take advantage of free industry to the detriment of both labor and capital.”

By 1950, the state-use and the public-works-and-ways systems¹⁴ were the dominant forms of inmate employment. The final blow to the industrial prison was struck during the Great Depression with the Hawes-Cooper Act (1929) and the Ashurst-Sumners Acts (1935 and 1940) of the National Congress. These authorized state legislatures to prohibit in their jurisdiction the sale of goods made in prisons of other states as an exception to the U.S. Constitutional reservation of interstate commerce control to the federal government. The state legislatures reacted enthusiastically to the opportunity and also abetted lobbyists by pursuing further sanctions against the sale of goods made in their own prison (Flynn 1951, pp. 239–241).

In Japan, there has been incidental opposition to prisoner-made goods, but resistance is uncommon, especially in times of prosperity and labor shortage. “Japan has experienced neither systematic opposition to prison industries from outsiders, representing business and labor unions, nor legislative action to limit the inmate’s employment in order to protect the free market” (Yanigimoto 1970, p. 216). Primary or secondary contractors would seem the most likely opponents, but they are the primary sources of agreements with prisons. These agreements are general affirmations of prison-made goods as Japan has consistently lacked an adequate supply of blue-collar workers and skilled manpower.

Japanese political experts usually favor the elitist model of policymaking with a tripartite power group composed of the leaders of the Liberal Democratic Party (LDP), senior bureaucrats, and big businessmen. The LDP has ruled the national Diet almost without interruption since 1954,¹⁵ but the Party depends on interest groups (especially “big business”) for campaign funds and on government bureaucracy for expertise and implementation of policy (Fukui 1977, pp. 22–24). “Although organized economic interests, including big business and the agricultural lobby, enjoy an astonishing level of access to policymaking in Japan” Pharr (1990, pp. xi–xii) notes, “when it comes to noneconomic interests, the story is quite different.” Interest groups especially concerned about prison issues would be among those noneconomic groups with limited access to policymaking at the national level. They have little incentive to amass the resources of an effective protest group.

CAPIC shows the correction bureau’s ability to succeed in negotiations when the viability of the industrial prison is threatened. The organization did not emerge from a struggle between political interest groups, but from bargaining between ministries in an unusual but general fiscal crisis. The correction bureau was vulnerable to external pressures but was able to justify its advantageous functions within the structures of government and private industry.

One could say that all of the circumstances of the case were uniquely Japanese: the history of prison labor’s contribution to the nation’s economy, the contemporary linkage with private industry through subcontracting, the absence of vigorous and organized opposition to prison-made goods, the fundamental position of prison industry in the prison’s operations, CAPIC as another example of *gaikaku dantai*, and the correction bureau’s orientation toward *taisei-gai* bargaining.

We have seen why prison industry failed in the United States. However, is prison industry the same after over 15 years since its inception in Japan in terms of reducing recidivism in comparison with our system of corrections in the United States? There is a need for a review of prison industry and CAPIC in the twenty-first-century Japan.

NOTES

1. This chapter, when it was published as a paper, was among the products of research financed by a Fulbright Award for 1990–1991. Collection of information was especially assisted by Kazuo Kawakani, former director general of the

correction bureau, Keisei Miyamoto, head of CAPIC, and Takehisa Kihara, director of the industrial division, the correction bureau’s headquarters in Tokyo.

2. In 1834, a prison director in France responded to an official inquiry: “I do not know how to concede that work exercises an essentially reforming effect on them (the inmates). But I do consider work in any large prison to be the surest guarantee or order, peace, and quiet” (quoted by O’Brien 1982, pp. 183–184).
3. The Ministry of Justice (1990 pp. 35–36) addresses the rehabilitative purpose. “Prison industry is organized so as to serve constructive purposes in the treatment of prisoners. Its objective is not only to provide inmates with vocational knowledge and skills, but also to strengthen their will to work, sense of self-help, and spirit of co-operation through working together in well-regulated circumstances. Thus, prison industry contributes to the correctional aims of re-socializing offenders.”
4. The budget for adult institutions in 1990 was \$1,028,391,361 and the “settled revenue” from prison industries \$127,635,408 (130 yen per US\$1).
5. The rules resemble those of a Japanese automobile factory in 1927: “Don’t lose your spirit for work. Don’t look around while working. Don’t think about anything else while working. Talking to someone who is working is prohibited in this factory” (quoted by Allison 1975, p. 104).
6. When released from prison in 1990, a male inmate averaged 25,961 yen and a woman inmate accumulated 28,449 yen, remuneration. The average increased consistently with length of sentence: from 1,686 yen for less than 3 months to 53,923 yen for sentences over 3 years for males; equivalent range for women was 1500–54,897 yen (Ministry of Justice, 1991, p. 180). In 1990, the exchange rate was 134 yen per U.S. dollar.
7. “In large areas of Tokyo and Osaka back streets rarely visited by outsiders,” Van Wolferen (1989, p. 171) comments, “one hears the same incessant clickety-clack of small machines behind hundreds of wooden doors as one did ten or twenty years ago; but the clickety-clack produces entirely different things today.”
8. Convinced that small and medium-sized firms would play the key role in postwar economic reconstruction, Yoshisuke Ayukawa purchased a commercial bank in 1952 and organized

- loans to small companies (Van Wolferen 1989, pp. 388–389).
9. Income accrued from products made incidentally to vocational training courses.
 10. Campbell (1985, pp. 507–511) related the effort to deal with the deficit to the more general movement to reduce the size of the national government. He describes RINCHO as a blue-ribbon commission representing “big business” and this direct participation of big business in governmental affairs to be “actually quite a new development.” However, RINCHO backed off from rigorous administrative reform in the face of “generally hostile bureaucracy.”
 11. MOF collects monies from several governmental institutions: primarily postal savings, insurance, national pensions, and welfare pensions (Woronoff 1986, p. 127).
 12. Public corporations pay their own way, provide services, and thus help to keep the Japanese tax rate comparatively low (Johnson 1978, pp. 144–146).
 13. By improved administration and accounting methods, the prisons were able, by the end of 1992, to stabilize these costs, which previously had been increasing.
 14. The state-use system produces goods and services exclusively for agencies and political subdivisions of the given state. Public works and ways include road construction and repair, reforestation, soil-erosion control, and other similar services.
 15. At the time of this writing, LDP has lost control of Diet.

REVIEW QUESTIONS

1. What are the advantages and disadvantages of the factory system of corrections prevalent in Japan, China, and Denmark?
2. Why did the factory system of corrections collapse in the United States but survive in major Asian and European countries?
3. Compare and contrast the Japanese congregate cells system and the American Auburn plan.
4. What are the goals of the CAPIC?
5. The Japanese prisons system is self-sustaining. Discuss.
6. What are the reasons why Japanese prisoners accept the behavioral standards of the industrial prisons?
7. How is a stable amount of productivity maintained in Japanese industrial prisons?
8. What is the role of physically unfit inmates in the Japanese industrial prison system?
9. How are Japanese industrial prison products marketed?
10. What are the main unique features of the Japanese prison system?
11. What is CAPIC? How did it emerge in Japan?
12. What are the basic requirements of the factory system of prisons in Japan?
13. How did Jeremy Bentham set the tone for industrial prison in Great Britain?
14. Why is violence against other inmates and aggression against staff in Japanese prisons a rare occurrence?
15. When did Japan start to erect modern prisons?
16. How did the Meiji Restoration emerge in Japan?
17. CAPIC uses three methods to increase sales and stabilize the market. What are the three ways?

REFERENCES

- Allison, G. D. 1975. *Japanese urbanism: Industry and politics in Kariya, 1873–1972*. Berkeley, MI: University of California Press.
- Barnes, H. E. 1942. *Social institutions in the era of world upheaval*. New York, NY: Prentice-Hall.
- Beasley, W. G. 1972. *The Meiji Restoration*. Stanford, CA: Stanford University Press.
- Beasley, W. G. 1990. *The rise of modern Japan*. Tokyo: Charles E. Tuttle.
- Bentham, J. 1843. A view of the hard labor bill. In *Works of Jeremy Bentham*, vol. 4, edited by J. Bowring (reprinted in 1962). New York, NY: Russell Sage Foundation.
- Campbell, J. C. 1977. *Contemporary Japanese budget politics*. Berkeley, MI: University of California Press.
- Campbell, J. C. 1985. Governmental responses to budget scarcity: Japan. *Policy Studies Journal* 13: 506–516.
- Collick, M. 1988. Social policy: Pressures and responses. In *Dynamics and immobilist politics in Japan*, edited by J. A. A. Stockwin, 205–236. Honolulu, HI: University of Hawaii Press.
- Cooke-Taylor, R. W. 1886. *Introduction to the history of the factory system*. London, UK: Bentley and Son.
- Daiichi, I. 1988. Policy implications of administrative reform. In *Dynamics and immobilist politics in Japan*, edited by J. A. A. Stockwin, 77–105. Honolulu, HI: University of Hawaii Press.
- Dore, R. 1987. *Taking Japan seriously: A Confucian perspective on leading economic issues*. London, UK: Athlone Press.
- Flynn, F. T. 1951. Employment and labor. In *Contemporary corrections*, edited by P. W. Tappan, 238–253. New York, NY: McGraw-Hill.

- Foucault, M. 1977. *Discipline and punish: The birth of the prison*. Translated by A. Sheridan. New York, NY: Pantheon Books.
- Fukui, H. 1977. Studies in policy-making: A review of the literature. In *Policy-making in contemporary Japan*, edited by T. J. Pempel, 22–59. Ithaca, NY: Cornell University Press.
- Funke, G. S., B. L. Wayson, and N. Miller. 1982. *Assets and liabilities of correctional industries*. Lexington, MA: Lexington Books.
- George, A. A. 1988. Japanese interest group behavior: An institutional approach. In *Dynamics and immobilist politics in Japan*, edited by J. A. A. Stockwin, 106–137. Honolulu, HI: University of Hawaii Press.
- Gill, H. B. 1931. The prison labor problems. *Annals of the American Academy of Political and Social Science* 157: 83–101.
- Griffiths, A. n.d. *Oriental prisons: Prisons and crime in India, the Andaman Islands, Burmah, China, Japan, Turkey*. London: Grolier Society.
- Hane, M. 1982. *Peasants, rebels, and outcastes*. New York, NY: Pantheon Books.
- Hiromatsu, Y. 1972. *History of penal theory and practice of penalties (in Japanese)*. Tokyo: Sobunsha.
- Hiromatsu, Y. 1973. History of penal institutions in Japan. *Law in Japan* 6: 1–48.
- Johnson, C. 1978. *Japan's public policy companies*. Washington, D.C.: American Enterprises Institute for Public Policy Research.
- Johnson, E. H. 1997. *Criminalization and criminals in Japan: Six contrary cohorts*. Carbondale, IL: Southern Illinois University Press.
- Keefe, W. J., W. H. Flanigan, M. S. Ogul, H. J. Abraham, C. O. Jones, and J. W. Spanier. 1990. *Criminal Justice*. New York: Harper & Row.
- Kosai, Y., and Y. Ogino. 1984. *The contemporary Japanese economy*. Translated by R. Thompson. London, UK: Macmillan.
- Kyokai, K. 1943. *Manuscript for history of Japanese prison administration in modern age (in Japanese)*, vol. 2. Tokyo: Keimu Kyokai.
- Leiserson, M. 1966. Political opposition and political development in Japan. In *Regimes and oppositions*, edited by R. Dahl, 341–398. New Haven, CT: Yale University Press.
- Lewis, O. F. 1922. *The development of American prisons and prison customs, 1776–1845*. Montclair, NJ: Patterson Smith.
- Melossi, D., and M. Pavarini. 1981. *The prison and the factory: Origins of the penitentiary system*. Translated by G. Cousin. London, UK: Macmillan.
- Ministry of Justice. 1991. *Annual report of Japanese prison income revenue for 1991*. Tokyo: Secretariat, Ministry of Justice.
- Nakamura, T. 1981. *The post-war Japanese economy*. Tokyo: University of Tokyo Press.
- Nakane, C. 1981. *Japanese society*. Tokyo: Charles E. Tuttle.
- Noda, T. 1976. *Introduction to Japanese law*. Translated by A. H. Angelo. Tokyo: University of Tokyo Press.
- O'Brien, P. 1982. *The promise of punishment: Prisons in nineteenth-century France*. Princeton, NJ: Princeton University Press.
- Ozaki, R. S. 1978. *The Japanese: A cultural portrait*. Tokyo: Charles E. Tuttle.
- Pharr, S. J. 1990. *Losing face: Status politics in Japan*. Berkeley, CA: University of California Press.
- Shikita, M. 1972. The rehabilitative programmes in the adult prison of Japan. *International Review of Criminal Policy* 30: 11–19.
- Tadao, K. 1979. Small businesses. In *Politics and economics in contemporary Japan*, edited by M. Hyoe and J. Hirschmeier, 157–182. Tokyo: Japan Culture Institute.
- Van Wolferen, K. 1989. *The enigma of Japanese power*. London, UK: Macmillan.
- Woronoff, J. 1986. *Politics the Japanese way*. Tokyo: Lotus Press.
- Yanigimoto, M. 1970. Some features of the Japanese prison system. *British Journal of Criminology* 10: 209–244.
- Yoshino, M. Y. 1968. *Japan's managerial system: Tradition and innovation*. Cambridge, MA: The MIT Press.

20 Treatment of Offenders in Denmark and Brazil

Zelma W. Henriques

CONTENTS

Denmark: An Overview	265
Philosophy of the Social Welfare State	266
Criminal Justice Policy in Denmark	266
Organizations of Prisons and Penal Sanctions	266
Treatment of Inmates	267
Brazil: An Overview.....	268
A Legacy of Authoritarianism and Violence	268
Criminal Justice Policy in Brazil.....	268
Penal Conditions	269
Treatment of Inmates	269
Brazilian Penal Policy in Contrast with Danish Penal Methods.....	269
Review Questions.....	270
References.....	270

Certain forces shape the nature of a given society, influencing the philosophy and policies which that society embraces. This paper identifies and examines the forces that have shaped two very different societies—those of Denmark and Brazil. Further, it provides a descriptive analysis of the organization of prisons and the treatment of offenders in each of these societies. Because of the significant differences between these societies, we will focus on contrasts rather than comparisons.

Among the benefits of a contrasting approach are the following:

- It enables us to learn about other systems, and in so doing, we broaden our perspective.
- We gain a greater understanding of the approaches used in other societies to address problems similar to our own.
- It helps us to deal with international crime problems (Fairchild 1993).

DENMARK: AN OVERVIEW

The Kingdom of Denmark is situated in northern Europe between the North Sea to the west, the Baltic Sea to the east,

Norway to the north, and Germany to the south. Denmark's only land frontier is with the Federal Republic of Germany. The Faroe Islands (18 islands, 16 of which are inhabited) are Danish external territories. Denmark is ethnically a Scandinavian country and occupies an area of 16,638 square miles. Its capital is Copenhagen, and its population is 5,529,888, as of September 2012, making it the most densely populated of the Scandinavian countries (Hoffman 1991).

Denmark is a constitutional monarchy. Under its 1953 constitutional charter, the hereditary monarch and the unicameral parliament (called Folketing) jointly hold legislative power. For several decades, Denmark has ranked among those countries of the world that enjoy the highest standard of living.

The small size of Denmark and its excellent system of identifying and tracking citizens make it an ideal setting for sociological and criminological research. A personal code number is assigned to every individual domiciled in Denmark (Hornum 1986:3).

During World War II, Denmark was under German occupation. This fact is significant because the events of the war have helped to shape policies in Denmark and have influenced the philosophy of the country in the important area of citizens' rights.

During the period of German occupation, many innocent Danish citizens were imprisoned, their only crime being resistance and opposition to the German presence. The civil rights of these confined citizens were extremely restricted. Danish citizens found the experience intolerable and have not forgotten it. As a result, when they later addressed the issue of restricting the rights of their own citizens, they carefully designed and implemented a system in which individual rights were emphasized.

Today, Denmark stresses the protection of civil rights and humane treatment. Although the Danes imprison their convicted offenders, they are careful to ensure that the rights of all citizens are protected. The parliament appoints an ombudsman who is assigned the responsibility of monitoring Danish law and ensuring that any defects in the law are corrected. The ombudsman also has the power to take action against public officials on behalf of the citizens. In criminal justice matters, the ombudsman may lodge complaints with the department of corrections or with the ministry of justice regarding procedures or prison conditions (Jepsen 1991:132).

PHILOSOPHY OF THE SOCIAL WELFARE STATE

The most important feature of Danish society is the idea of collective responsibility—all citizens are considered responsible for each other in all areas of life. For those experiencing hardship, there are social welfare programs that cover family allowance, rent subsidies, health care, unemployment benefits, accident, maternity benefits, institutional care, and retirement pensions. This ideology is particularly suited to countries with little structural or cultural diversity, and Denmark is racially, ethnically, and religiously homogeneous. Danish is the official language and English is taught in schools as a second language. There is almost no illiteracy in Denmark because of its free and compulsory education from ages 7–16. A large majority of the Danish population lives in cities and towns.

CRIMINAL JUSTICE POLICY IN DENMARK

Criminal justice policy in Denmark must be viewed in the context of social and cultural homogeneity. The Danish penal system results from a process of reform that began under the First Danish Criminal Code of 1866. The present criminal code was introduced in 1930 and has been revised several times. Important changes include the abolition of capital punishment and corporal punishment, the abolition of imprisonment with hard labor, the introduction of youth prisons in the form that reflects the English

Borstal system, and the reintroduction of special forms of detention for professional and habitual offenders.

These changes led to a need for open institutions and overall changes in the penal system. The criminal justice system of Denmark reflects a high degree of centralization, cohesion, and consistency. The country has low rates of interpersonal victimizations and crimes of violence, with most crimes being property crimes. The prison system policies supported by parliament and the government are very liberal—capital punishment was abolished over 100 years ago. However, pretrial detention continues to be very restrictive. For example, Denmark currently uses lengthy pretrial detention, with total isolation of the defendant to keep evidence “pure” (Umbreit 1980:27).

ORGANIZATIONS OF PRISONS AND PENAL SANCTIONS

The Danish prison and probation service (*Direktoratet for Kriminalforsorgen*) is organized in a directorate under the ministry of justice, with the director responsible to the minister of justice. The directorate has a hierarchical structure, including two departments—an administrative department and a department concerned with the treatment of inmates, probationers, and parolees (Greve et al. 1984:3).

The department responsible for the treatment of inmates deals with the use of prison and probation services, treatment programs, research, statistics, and international cooperation in the field of criminal policy. Within this department, there are six special sections:

1. A section in charge of cases concerning inmate release on parole, complaints, and furloughs
2. A section for the formulation of general rules governing the treatment of inmates
3. A social service and welfare unit
4. An inmate education unit
5. A prison factories unit that handles orders for their factory products from other government agencies and organizes work for inmates
6. A section for the total economic management of the institution (directorate)

The department of prison and probation is the agency responsible for the enforcement of all criminal sanctions in Denmark. Consequently, it is responsible for probation and aftercare as well as for prisons and local jails. As of September 2012, while the prison population rate was 63 per 100,000, approximately 4988 prison and probation officers handle the offenders (European Organization for Probation report 2012).

There are 14 prisons and 36 local jails. Of the 14 prisons, 5 are closed prisons, equivalent to maximum security prisons in the United States, and 9 (mostly older structures) are open prisons, that is, minimum security prisons. Most of the prisons in Denmark are small, with the largest accommodating 230 inmates. A population of 90 inmates in prison is considered normal in size. Small prisons are maintained in order for staff to get to know the inmates and to work with them toward a better understanding of their problems.

The total prison capacity is approximately 3597 spaces, allocated as follows:

8	Open state prisons	1299
5	Closed state prisons	1305
	Local jails	993
Total prison capacity		3597

The prison at Copenhagen (a closed institution for remand prisoners) has a capacity for 570 inmates. The total present prison population in 1993 was 3516. There are 68 inmates per 100,000 population. The average length of sentence is 6.2 months of imprisonment; 4.9 months for ordinary imprisonment; and 18 days for lenient imprisonment. The staff–inmate ratio is 83.4 per 100 inmates.

Ordinary imprisonment and lenient imprisonment are the most common incarcerative sanctions used in Denmark. To the Danes, the penal feature of a sentence of imprisonment is the deprivation of liberty to move about in society. Therefore, when the Danes imprison, their major concern is with humane treatment (Umbreit 1980:25). According to Erik Andersen (former Danish prisons administrator), “prisons are used in Denmark because we do not have a better solution. The goal is to abolish prisons.” The Danes view imprisonment as a brutally negative experience, because it separates the individual from family and the community and leads to the disintegration of social ties. Hence, in every case, incarceration is used only when inevitable, and in such cases, every attempt is made to keep the offender in or near his or her local community.

Furthermore, the policy is to impose the shortest sentence possible. Most of the inmates are sentenced to open prisons, but are transferred to closed prisons if they violate the rules. Convicted offenders can receive sentences from 1 month to life. Lenient imprisonment is the most common of all incarcerative sanctions used in Denmark. Eighty-five percent of persons sentenced to lenient imprisonment are drunken drivers. Violations of the penal code—especially various offenses against

property—are the most common crimes leading to sentences of imprisonment.

Two percent of all sentences are for 2 years or longer. Most sanctions are fines and suspended sentences, sometimes combined with probation, lenient imprisonment, ordinary imprisonment, day fines (related to the individual’s income and assets), and restitution.

Rather than emphasizing punishment for offenders, the Danes believe that it is in the interest of society to provide for inmate education and rehabilitative treatment. Standard officers—the equivalent of correction officers in the United States—are assigned to duty in each wing of the prison and work closely with each inmate. They are assisted by professional officers, such as welfare officers, who act as consultants to provide special services. This staff enables a single group of officers with professional skills in a variety of areas to perform all duties related to prison services. These include security work, instructing of inmates at work, and service as guards and as welfare officers.

During her numerous visits to prisons in Denmark, this researcher observed inmates engaging in a range of activities, many of which related to their interests and/or abilities. The prison industries include furniture making, boat building and repair, and construction of a solar-power system.

TREATMENT OF INMATES

The rights of Danish inmates while incarcerated are determined by rehabilitative goals. Inmates have the right to vote, to own private property, to be accommodated, to have free time activities, and to have contact with the outside world. They wear their own personal clothes, have personal possessions, plan their free time, receive money, make unlimited telephone calls, and have the keys to their own rooms. These privileges provide the inmates with a sense of responsibility and allow them considerable personal influence in their daily routine.

At Ringe, a closed prison, male and female inmates live next to each other and are free to interact. Here, inmates cook their daily meals in a kitchen where they live, using their meal payment to buy the food items in a shop in the prison complex operated by a local store owner. Once a week, inmates receive cash as wages for work and to pay for meals. They are responsible for budgeting their funds, and a local bank operates a prison “bank room,” where payments are made.

Leave policies for prisoners are quite liberal; however, prisoners cannot go on leave whenever they want and for any reason whatsoever. Instead, certain time conditions

must be fulfilled, and there must be special reasons for each inmate's wish to go on leave of absence (Greve et al. 1984:115). One can go on leave after serving 4 weeks of one's sentence. There are also "day leaves," which are granted for employment or vocational training, whenever such a job or training is not available in the institution. All inmates are required to work and be productive in prison, as established in Section 35 of the Danish Penal Code (Jepsen 1991:132). Prisoners may fulfill their work requirement by participating in basic and advanced vocational training courses that are designed to help the inmate even after release from prison.

It is not difficult to understand why Danish prisons are highly esteemed internationally and represent the fond dreams of prison reformers everywhere (Serrill 1977).

BRAZIL: AN OVERVIEW

The Federal Republic of Brazil is in South America and is bounded by Venezuela, Guyana, Suriname, French Guiana, and the Atlantic Ocean to the north; by the Atlantic Ocean to the east; by Uruguay to the south; and by Argentina, Paraguay, Bolivia, Peru, and Colombia to the west. The capital is Brasilia. Brazil occupies a total area of 3,286,488 square miles, and its population is approximately 150 million (Hoffman 1991). Sixty percent of the population is of European descent, 25% are mulattoes and mestizos, 10% are of African descent, 3% are Asians, and 2% are native Indians (Information Please Almanac, 1981). In 1993, Brazil had a population of 193,364,000, but as of 2008, Brazil recorded a population of 197,000,000 (World Resources Population Report 2008).

Brazil operated under a military dictatorship for 21 years (1964–1985). A new constitution was prepared in 1988, which provided for the election of a president every 5 years. In 1989, Fernando Collor De Mello became the first democratically elected president in 30 years. He resigned in 1992, following his conviction on charges of corruption (Heikers 1993). Brazil's National Congress maintains a bicameral structure, and the country is moving slowly toward civilian democracy.

Portuguese is the official Brazilian language, but many speak German and Italian, especially in the southern cities. For years, Brazil glossed over its racial divisions with the concept of a "racial democracy," which is based on the idea that the black Brazilian man or woman knows his or her "place" (Santos 1993), that is, that black people know their role in Brazil is not leadership in government and business, but a concentration in service and nonintellectual employment. They know that they are not supposed to aspire beyond blue-collar and janitorial careers.

A LEGACY OF AUTHORITARIANISM AND VIOLENCE

Many believe that violence became a way of life in Brazil during its period of military dictatorship. Some, however, question this explanation, contending that violence was present even before military rule, and that the popular classes, including petty criminals, were victimized in order to enforce social hierarchies. The recently installed democratic government was not able to modify the situation coercively, lest it risk its popularity in future elections—as one critic has noted, the democratization of government does not lead automatically to victory of the principles over repressive apparatus (Pinheiro 1992). In the case of Brazil, illegal practices were strengthened during the move toward democracy.

In Brazil, the law has never served the interest of the poor, the miserable, the indigent, the black, or the mulatto, and in practice there is little difference between arbitrary extralegal power and the rule of law. Brazilian values include violence as a legitimate, imperative, and effective behavior in many sectors of social life (Pinheiro 1992). The middle and ruling classes have established the use of force as a means to subordinate the poor.

Violent death is common. A substantial proportion of these deaths continued even after the end of the military regime and *lante* groups, and to *justiceiros* (gunmen). On the peripheries of big cities, there are approximately 200 extermination groups. In most cases, they are financed by local communities and business owners (Brooke 1992b).

In Brazil, the fight against crime follows the illegal lines of the period before democracy, although there are some innovative practices, such as the militarization of the police patrol approved by the democratic constitution of 1988. Brazil currently leads the democratic countries of the world in the number of deaths in police conflicts with the masses (Brooke 1992a). Clearly, the legacy of authoritarianism continues to influence Brazilian society, and this includes the functioning of its prisons.

CRIMINAL JUSTICE POLICY IN BRAZIL

The penal system of Brazil is based on the Penal Code of 1940, which has two sections, the first of which addresses general principles, distinctions among various types of crimes, and specifications of various kinds of punishments.

Capital punishment (in the form of execution by firing squad) was revoked by the constitutions of 1946, 1964, and 1967, but was reintroduced by a constitutional amendment in 1969. At the present time, the Constitution

of Brazil prohibits capital punishment; however, there has been talk of reintroducing the death penalty because of increasing rates of violence (Kowalski 1993).

Decree number 898 stipulates a maximum of 30 years in prison as equivalent to life imprisonment for serious felonious offenses. First offenders may be paroled after serving half of their sentences. The prison population in Brazil is 110,000 inmates (Luiz 1993), with the overall prisoner-to-population ratio being 82 per 100,000 (Weschler 1993:132).

There are approximately 5000 penal institutions in Brazil, including 51 correctional institutions, 27 penitentiaries, 6 houses of custody and treatment, 12 agricultural colonies, and 6 houses of correction. There are 12 military prisons, 1580 regular adult prisons (*cadeias*), 2803 jails (*xadrezes*), and five institutions for minors. Fourteen of these institutions have a capacity of over 500.

A shortage of prison space has caused extensive overcrowding, with prisons in Brazil holding more than twice the number of prisoners they were designed to accommodate (Weschler 1993:132). The states of São Paulo and Minas Geras have begun a major building program to construct medium- and maximum-security regional prisons. First-time offenders are often housed with those convicted of the most serious crimes, resulting in the homosexual rape of younger prisoners. Young people are sold by guards who then place them in the same cells as the buyers (Americas Watch 1989). Brazil has been cited frequently for human rights violation in its treatment of inmates (Pinheiro 1992).

A system of murder by lottery is operated by inmates in some prisons as a means of relieving overcrowding. In Belo Horizonte, 17 inmates were ritually murdered over a 2-month period by fellow inmates in a "death lottery" designed to protest prison conditions. Prison riots in Brazil claim the lives of many inmates. The São Paulo prison riot of October 1992 ended with the deaths of 111 inmates at the hands of the police. Human rights workers said the prison killings manifested a "shoot to kill" policy (Brooke 1992b). Among the 111 known fatalities of the 1992 São Paulo prison riot, 84 were pretrial detainees, while the rest were serving sentences ranging from 2–30 years. All were housed together (Americas Watch 1989:15–16).

Penal institutions for women are somewhat different. They are operated by religious orders and are not called prisons. Conjugal visitation is allowed, and children are accommodated with their mothers. Clothing for both the inmate and family member(s) and a family allowance are provided by the state.

PENAL CONDITIONS

Because of overcrowding, prison conditions are poor. Sanitation is primitive—the toilet is a pan on the floor, and water for drinking and washing runs through a pipe that drips. Cells are poorly ventilated, and most of them have bare concrete floors with no bed or mattress; others have beds without mattresses. Inmates are fed one meal a day and are often beaten. Many spend their time in semi-darkness, never being allowed outside their cells to exercise or to breathe fresh air. Inmates complain that cells are hot and stuffy in summer, and cold and damp in winter (Americas Watch 1989:7). Medical care is poor or nonexistent, and AIDS-infected inmates are mixed with the noninfected inmate population. Traditional prison industries include the manufacture of clothing and straw mattresses, carpentry shops, and machine and welding shops; but because the system is overcrowded, it is not unusual for some inmates to be idle.

TREATMENT OF INMATES

Inmates are controlled by violent beatings brutally meted out by prison guards. Such beatings are an "extra-official punishment for disciplinary infractions—ranging from arguing with a guard to attempted escape—as well as a means of intimidating and controlling prisoners" (Weschler 1993:133). Inmates have no rights and may expect to serve longer sentences than those determined by the court or the penal code, especially those in police lock-ups. Bureaucratic chaos reigns throughout the system.

São Paulo's house of detention (DEIC) is designed to hold prisoners for a few days, but many of its 214 inmates serve out their entire lengthy sentences in this short-term stay, where the needs of inmates are poorly addressed. The DEIC also happens to have a reputation as a torture center. Police routinely extract confessions from criminal suspects with beatings, electric shock, water torture, and the infamous "parrot's perch," where a tied person is suspended on a cross-bar by the knees and abused. Generally, inmates are treated in brutal fashion and have no legal recourse to address these human rights violations.

BRAZILIAN PENAL POLICY IN CONTRAST WITH DANISH PENAL METHODS

We will now contrast Brazil's system with Denmark's. With its high standard of living and its social welfare philosophy and programs, Denmark operates on a model

based on inclusion and responsibility for all citizens. This model functions effectively because the population is both small and homogeneous. Brazil, on the other hand, with a distinctly different population in terms of both composition and size, is faced with the problems of inequality, poverty, and inhumane treatment. In reaction to the restriction of its citizens' rights during World War II, Denmark designed a humane and liberal system for the treatment of all citizens, including inmates. These policies have the support of both the Danish government and its populace. Brazil, on the other hand, having experienced strict militarism and harsh controls for a period of 30 years, has become accustomed to the use of force and violence, resulting in disregard for the rights of a significant portion of its citizens, particularly the rights of political offenders and members of the lower socioeconomic classes.

There is support in Brazil for the killing of criminal suspects, especially in São Paulo's impoverished working-class periphery. Very often, it appears that the police have been given a license to kill poor people, or those considered marginal in Brazilian society. The level of force used by police in the São Paulo prison riot was extremely high: 5000 bullets were fired in the space of 1 hour, resulting in the death of 111 inmates (Brooke 1992a), but São Paulo's military police commander described the police operation as "perfect." Brazilian prisons, furthermore, are poorly maintained and managed and need overall improvement in organization, administration, quality of training for personnel, and respect for human dignity. Denmark honors human rights with its institutional ombudsman; Brazil, on the other hand, casually violates human rights, and there is no internal agency charged with monitoring such violations. This has resulted in a lack of concern over human rights, especially for those who are disenfranchised. As Chevigny (1990) has noted, the elites and the polity as a whole in societies marked by extreme economic inequality may perceive a need for a show of violent force to discourage civil disturbances.

External organizations such as Americas Watch are monitoring human rights violations in Brazil, and it is hoped that pressure for change can be brought on those who regard violent response to deviants as a primary mechanism to induce conformity in society.

REVIEW QUESTIONS

1. What are the major benefits of contrasting criminal justice systems?
2. What is a constitutional monarchy?

3. Compare and contrast unicameral and bicameral parliaments.
4. Why is protection of individual rights very significant in Denmark? What events led to the emphasis on individual citizens' rights over societal rights?
5. The ombudsman in Denmark occupies a pivotal position in the maintenance of social order. Discuss.
6. Despite the fact that Denmark has a liberal prison system in the treatment of offenders, pre-trial detention continues to be very restrictive. Why?
7. Compare and contrast the organization and administration of prisons in the United States and Denmark.
8. Prisons in Denmark are designed to be small in inmate population. What are the administrative reasons for this approach?
9. What types of factories are found in Danish prisons?
10. Compare and contrast the rights of prison inmates in Denmark and the United States.
11. Compare and contrast women's prisons in the United States and Brazil.
12. What are the contrasting features of organization and administration of prisons in Denmark and Brazil?
13. What is the "parrot's perch," used in Brazil?
14. Discuss in detail the rights of prison inmates in Brazil and in Denmark.
15. What do you understand the term "death lottery" to mean, as applied in Brazilian prisons?
16. Discuss and comment on the social conditions in Brazilian prisons.
17. The Brazilian penal policy is a shock to Americas Watch. Discuss.

REFERENCES

- Americas Watch. 1989. *Prison Conditions in Brazil*. New York, NY: Human Rights Watch.
- Brooke, J. 1992a. Brazil's police enforce a law: Death. *New York Times*, November 4: A22.
- Brooke, J. 1992b. Looting Brazil. *New York Times*, November 8: 31–33, 42, 45, 70.
- Chevigny, P. 1990. Police use of deadly force as social control: Jamaica, Argentina, and Brazil.
- Fairchild, E. 1993. *Comparative Criminal Justice Systems*. Belmont, CA: Wadsworth Publishing Company.
- Greve, V., O. Ingstrup, S. V. G. Jensen, and M. Spencer. 1984. The Danish system of criminal justice: An outline. Paper delivered at the Fourth Colloquy on the use of computers

- in the administration of justice and computers in correctional administration and links with criminal justice, sponsored by the Council of Europe, Copenhagen.
- Heikers, D. 1993. Fernando Collor De Mello. U.S. News and World Report 114 (January 11): 12.
- Hoffman, M. S. (ed.). 1991. *World Almanac and Book of Facts*. New York: Pharos Books.
- Hornum, F. 1986. The criminal justice system of Denmark. In *International Criminal Justice Systems*, edited by D. H. Bracey and C. R. Fenwic, 2–4. Omaha, NE: The Academy of Criminal Justice Sciences.
- Information Please Almanac. 1981. *Information Please Almanac*. New York: McGraw-Hill.
- Jepsen, J. 1991. Denmark. In *Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions*, edited by D. van Z. Smit and F. Dunkel, 99–160. Boston, MA: Kluwer Law and taxation.
- Kowalski, B. J. 1993. Death penalty debate. *World Press Review* 40(4): 28.
- Luiz, A. F. 1993. Penal philosophy: A perspective from Brazil. *American Jails* 6: 70–71.
- Pinheiro, P. S. 1992. The legacy of authoritarianism in democratic Brazil. Paper presented at the Fifth University Seminar on Human Rights, December 8, 2011. Columbia University, New York, NY.
- Population Reference Bureau. 2011/2012 World Population Data Sheet. Retrieved from http://www.nationsonline.org/oneworld/world_population.htm. Accessed February 13, 2013.
- Santos, R. J. J. 1993. The new beat of black Brazil sets the pace for self-affirmation. *New York Times*, April 1.
- Serrill, M. S. 1977. Profile Denmark. *Corrections Magazine* 3: 23–29, 34–43.
- Umbreit, M. 1980. Danish use of prisons and community alternatives. *Federal Probation* 44(2): 24–28.
- Weschler, J. 1993. *The Human Rights Watch Global Report*. New York, NY: Human Rights Watch.

Section VII

Conclusion

21 The Unique and Comparative Features of the Criminal Justice Systems, International Law, and the United Nations Criminal Courts

A Synthesis

Obi N. I. Ebbe

CONTENTS

Introduction.....	275
Political Experiences and the Laws of Nations.....	275
Judiciary and Criminal Procedure of Nations.....	277
United Nations Courts and Tribunals.....	279
International Law and World Community	279
Crime Rate	279
Policing	280
Correctional Perspectives.....	282
Conclusion	284
Review Questions.....	284
References.....	285

INTRODUCTION

This book has presented the dynamics in the criminal justice systems and criminal justice agencies of 14 countries located in Africa, Asia, Europe, the Middle East, and North and South America, the role of Interpol and Europol in global policing, and the impact of the United Nations in global criminal justice. We have seen the similarities and dissimilarities in the policing, judicial, and correctional philosophies, structures, and approaches of various nations. Also, we have seen some of the factors mentioned in Chapter 1 that cause the similarities and dissimilarities: nations' historical experiences such as civil war, ethnic or racial conflicts, economic structure, political organization, religious beliefs, and custom and tradition. Now let us look at these similarities and dissimilarities between and among nations in depth.

POLITICAL EXPERIENCES AND THE LAWS OF NATIONS

In all of the countries studied, their political experiences mainly played a significant role in shaping their laws, the nature of crimes, and their systems of justice. For instance, the English common law tradition came from the conquest of England by the Normans under William the Conqueror in 1066 AD. At that time, each borough (municipal corporation or county) in England had its own laws and a legislative council. Consequently, the laws varied from borough to borough, and the court judges' decisions varied from borough to borough as well, because they applied different laws to the same offense in different boroughs. The Norman king of England had to send representatives to each borough to bring him the decisions of the judges in each case. In the process of time, the king got fed up with the different decisions of

the judges on the same offenses. As a result, the king ordered that any judgment passed by a court judge in one borough be upheld and applied by other court judges in similar offenses in other boroughs. The laws must be common to all boroughs and so should all court decisions in the boroughs be. Thus, we have the birth of the common law of England (*stare decisis et non queta movere*, which means “adhere to precedents and do not unsettle things established”).

It stands to reason that when England went into the wars of colonization in the eighteenth and nineteenth centuries, it introduced the common law tradition to all of its colonies and protectorates. Among the former English colonies covered in this book are the United States of America, Sierra Leone, Ireland, and Nigeria. Although Israel was not a British colony, some of its laws came from British mandate laws with their common law tradition. Unmistakably, of the 13 countries studied in this book, five of them are common law countries. Every one of the five countries attributed the source of its laws to English law.

As the Normans imposed their laws on England, similarly, when England conquered and colonized other nations, it imposed English law upon them. Take note of bigamy law in Nigeria (Chapter 15) and the British rule in Ireland (Chapter 5).

In China, its imperial history ended in 1911 when the Qing dynasty was overthrown. Thereafter, postimperial China was engulfed in warlordism, civil wars, and corruption under the tutelage of the Kuomintang (Chinese Nationalist) regime, which overthrew the Qing dynasty. When the Communist Party, under the leadership of Chairman Mao Tse-tung, overthrew the Kuomintang in 1949, they abolished all the laws of the Kuomintang regime. The Communists believe that the Kuomintang laws represented only the interests of the capitalist ruling class, the landlords, and the feudal estates (Chapter 8). They replaced the Kuomintang laws with Communist Party laws that protected their own interests.

Similarly, in colonial America, Ireland, Nigeria, Sierra Leone, and other British West African nations, England introduced laws that represented their cultural values and protected their own economic, religious, and political interests (Ebbe 1985b).

Undeniably, law is dynamic because human behaviors are dynamic and not static. When Chairman Mao died in 1976, thereby ending Maoism in China, the emerging communist party leaders abolished Maoism (the Communist theories and policies of Mao Tse-tung). They replace Maoist laws and policies with more democratic and liberal laws and polices than the Maoist regime. Of

course, the post-Mao laws represent the values and interests of the new Communist regime. Similarly, in postcolonial nations from the United States of America (1776) to Nigeria (1960), the English colonial, repressive laws were quickly revoked, and some new laws that represented the interests of the postindependence governments were promulgated (Ebbe 1985b, 1996). In the United States, internal conflicts emanating from the American Civil War (1861–1865), the Aboriginal American (Indian) insurrections, the slaves’ rebellion, hysteria over Jim Crow laws, and civil rights campaigns played significant roles in shaping the nature and structure of American criminal law.

In other former British colonial dependencies such as Sierra Leone, Ireland, and other British West African nations (Ghana and Gambia), the end of the colonial hegemony brought temporary democracy. Shortly after independence, some political parties in these countries engaged themselves in political coup d’état. This was done by annihilating other opposing political parties and creating a one-party system of government. The party leaders formed the government and threw leaders of the opposition into jail for very insignificant reasons or for no reasons at all or get them assassinated. At the same time, they set aside colonial laws and made their own laws to protect their own interests (Nigeria, under Tafawa Balewa [1960–1966]; Kenya, under Jomo Kenyatta [1964–1978]; Ghana, under Kwame Nkrumah [1957–1966]; and Sierra Leone, under Siaka Stevens [1968–1985]). The one-party system of government consequently created totalitarian regimes with their concomitant nullification of the rule of law.

The one-party system of government or government policies that weakened opposition parties spurred the emergence of military coup d’état in Ghana, Nigeria, Sierra Leone, Gambia, Uganda, and so on. When the military took over the government, they ruled by decrees, thereby making laws that served the interests of the military regime. The military junta, like the civilian totalitarian regime before it, suspended the rule of law. Consequently, the military junta became a new totalitarian regime.

From the brief history of each of the countries discussed in this book, we have seen the role political, economic, and religious powers played in the shaping of the criminal laws of nations. The data presented here attest to the fact that although norms, values, beliefs, customs, traditions, and standards may represent the sources of traditional laws, modern laws, in the main, are “ideological constructions of those who are in positions of power to protect their own interests through legislation” (Ebbe

1985b). We see this argument as a truism not only on the basis of data presented in this book, but in the first term of President Bill Clinton's administration, when the Democrats had a majority in the House, and a law was passed, which required a waiting period from the time one applies to buy an assault weapon to the time of purchase. The Republicans opposed the bill. But because they did not have a majority in the House, they lost their attempt to block it from becoming a law. However, in 1994, when the Republican Party members got majority seats in both Houses of Congress, they moved to revoke the law on assault weapons. What does that tell us? It tells us that most modern legislators represent the interests of the most powerful in politics, government, and business in the countries involved.

JUDICIARY AND CRIMINAL PROCEDURE OF NATIONS

In the judiciary and criminal procedure, the role of the powerful in the countries studied is unequivocal in the appointments of court judges, prosecutors, and directors of strategic law enforcement agencies. In virtually all countries studied, court judges are appointed by the head of government or the head of state (the United States, Nigeria, Argentina, etc.). Such a head of state will not appoint a person who does not agree with him or who will not protect his interests or political ideology. Look at what happened when Spiro Agnew, former governor of the state of Maryland (1967–1968) and former vice president to Richard Nixon, was indicted in 1973 for receiving kickbacks from contractors when he was governor of Maryland and for tax evasion. In court, when the Federal Bureau of Investigation (FBI) presented irrefutable evidence against him, he stated “*nolo contendere*” (no contest). What was his penalty? The penalty for his heinous crime was 5-year unsupervised probation and a \$10,000 fine (McCaghy 1980). That is what we call the role of power in criminal justice. Unmistakably, the United States has too many laws, too many lawyers, and very little justice. Also, the O. J. Simpson case in 1995 showed that when you have the money (economic power), you have the justice.

The practice of prosecutors and criminal court judges letting the powerful walk away with their crimes is more widespread in developing countries than in more advanced nations such as the United States and the United Kingdom. For instance, in every military regime in Nigeria, there was a political/criminal nexus, and each of the regimes from 1966 to 1979 and from 1983 to 2010 was a predatory state (the head of state operating

like a Mafia family boss) (Ebbe 1997, 1999a, 2003). The military regimes passed decrees, then turned around and violated those decrees with impunity (Chapter 15), because they had already nullified law enforcement by appointing their cronies to be judges of the high court and the Supreme Court and to be directors of strategic law enforcement agencies (Ebbe 1996, p. 210). In fact, the powerful in some of the countries studied, such as Nigeria, Ghana, and Sierra Leone in the West African region, use the law enforcement agencies to commit various property and personal crimes. It has been recorded that the late President Abacha of Nigeria (1993–1998) used law enforcement agents to loot the Nigerian Treasury (Central Bank) and to assassinate some of his political opponents; others were thrown into detention and poisoned there by his agents (Onyema 1984, 1996; Ebbe 1997).

In all of the countries studied, the criminal justice system is in a state of legitimation crisis. This is because the rich can use their money or their political or economic positions to prevent being arrested for their crimes. When they are arrested, they are less likely to be indicted. If indicted, they are less likely to be convicted and less likely to be imprisoned if convicted. The few who get jail terms are out on parole in 1 or 2 years after their incarceration. But a poor man who breaks a bank and steals \$5000 does not say “*nolo contendere*” and receive a 5-year unsupervised probation. No, he gets 10–25 years in prison. Two different persons committed the same type of crime; one was sentenced to 15–25 years, and the other was sentenced to 5–10 years, because his father is a naval officer and his mother a professor (Attica prison 1996). This is an example of what a traditionalist Nigerian titled man, “Echie” Osita Obieke, calls “criminal injustice” and not “criminal justice.” This situation is found in almost all countries studied and that is why the criminal justice system in these countries is viewed as unreliable, especially in developing countries. This “criminal injustice” is what Jeffrey Reiman (1998) meant when he titled his book *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*.

Each of the countries studied has a Supreme Court as its final court of appeal. In some cases, the Supreme Court is given a name that represents the language of the people in form of a final arbiter of the constitution or the laws of the land. Jury trial is found only in four of the countries: the United States, United Kingdom, Ireland, and Israel. Jury trial, however, is not required in the lower courts in Israel and Ireland. China has lower courts that operate like a jury, but they are committees of lay judges.

For instance, the people's courts in China are made up of an integrated, hierarchical system of four courts: (1) the basic people's court, which has other subordinate courts such as criminal tribunals, civil tribunals, and economic tribunals that are committees of lay judges; (2) intermediate people's courts, which also have criminal tribunals, civil tribunals, and economic tribunals; (3) the higher people's courts, which also have the three tribunals as the above two in addition to setting up other tribunals as the situation arises; and (4) the Supreme People's Courts, which also have the three tribunals that are set up as the situation warrants. In all of the courts, there is no court where only a single judge sits in a case as one would find in some criminal courts in the United States, Great Britain, Sierra Leone, Nigerian, Ghana, Ireland, or Israel.

Furthermore, the formal and informal court systems of China are found in Nigeria, Ghana, Sierra Leone, and other West African countries. As in China, the informal courts in West African countries are courts of lay judges. In the West African nations studied, the police and lawyers are not part of the formal and informal customary court sessions. The laws applied are customary laws that emanated from traditional religious beliefs, immemorial customs, traditions, and practices of the people (Ebbe 1999b, p. 72, 1999c, p. 122). Whereas dual and tripartite systems of criminal justice are typical of former African, Asian, and Middle Eastern colonial countries, the Chinese dual system of criminal justice is a product of Confucianism, immemorial customs, and modernization. For both the Chinese and the Japanese, the informal system of justice is far better than the technocratic, formalized system. The informal approach in criminal justice in both China and Japan is sustained by the two countries' emphasis on social cohesion. In both China and Japan, unlike the United States, Great Britain, and the other western European countries, society's rights precede individual rights (Ozaki 1978, p. 183; see Chapter 19 in this book). In effect, a whole country operates and relates to one another like members of the same family.

The use of lay judges in criminal cases, however, is not the practice in Ireland, the United States, and Israel. However, status offenses are found only in the United States. Also, whereas the United States requires unanimous vote in a jury trial in order to get a conviction or find a defendant guilty of an offense, Hong Kong requires 5:2 or 7:2 votes. And the jury composition is seven or nine, as against 12 in the United States. The former British West African countries abolished trial by jury immediately after their independence. In most of the countries studied, only a single judge, who must be a certified member of the bar association of the country, sits at the district

courts, magistrates' courts, and the high courts. In some situations, a high court session may require more than one judge. In all of the countries' Supreme Courts, there are multiple judges presided over by a chief justice.

As mentioned in Chapter 1, some countries may have many criminals in their populations because of the way they handle their offenders. The area of prosecution itself can be criminogenic if the position of the prosecutor is an elected one. When the position of a prosecutor is an elected one as in some states of the United States (New York, California, Michigan, etc.), very often innocent persons are convicted and incarcerated for crimes they did not commit, because, may be, the district attorney (DA) wants to be reelected. When a DA is campaigning to be reelected, he may proclaim to voters the number of indictments he made in the county and the percentage of convictions he got. He might have got the high percentage of convictions by hiding some of the evidence and manipulating police records of the cases. The county will only learn what actually happened some years after he has left office (Brown 1990). This is a serious problem in the U.S. criminal justice system. In the United States, there are many cases of innocent persons serving 20–26 years in prison for a crime they did not commit, such as Betty Tyson in Rochester, New York (*Democrat and Chronicle* 1999). When some investigative journalists reveal the truth about the miscarriage of justice, the state involved often must pay millions of dollars in damages. In some cases, the state denies any wrongdoing (Champion 1991).

Many countries are aware of the possible manipulation of evidence to get a conviction, if the position of prosecutor is an elected one. Of the 14 countries studied in this book, only the United States has an electoral system for prosecutors generally called DAs. In the 13 other countries, including the United Kingdom, the state or national prosecutor is a member of the state's or nation's civil service and is called the director of public prosecution (DPP). In China, he or she is called the procurator general. In the United States, the DA appoints some lawyers to serve as assistant DAs. They prosecute cases for the DA, and they work at the DA's pleasure and only during the term of his or her office. Therefore, these assistant DAs prosecute cases according to the interests of the DA.

In contrast, the DPP in Israel, Ireland, Argentina, Brazil, the United Kingdom, Japan, Nigeria, Denmark, Sierra Leone, Ghana, and so on assign cases to other lawyers fully employed by the state to serve under the DPP as prosecutors. This is also the case in the procuratorate in China. The procurator general has procurators

who are employed by the government to serve under him or her. In some cases in United Kingdom, Nigeria, Ghana, Sierra Leone, and so on, the DPP may ask a senior police officer to serve as a prosecutor. In effect, in China and all of the other countries that use the DPP, prosecuting a criminal case is not a do or die situation, as in the United States. There is no pressure on the DPP or the procurator general and their teams of prosecutors to get a conviction by any means. Consequently, in DPP and procuratorate general countries, persons are not charged with criminal violations until the office is about 95% sure of the evidence against the accused. This is the way it should be in the United States if we are going to reduce the rate of incarceration of innocent citizens.

Furthermore, China's insurance against misdirection of justice is demonstrated in their control of the nation's bar association. There is no private practice of law in China. There are law firms controlled by the government. With the negation of solo practice of law or private practice, defense of an accused is not to "get the suspect free from conviction" by all means, as is the case in some countries of the world. This is a unique aspect of the comparative criminal justice systems. In fact, in China, it is a crime for a defense attorney to knowingly hide the guilt of his client from the court. The rich in China have little chance of using their money to direct the course of justice.

UNITED NATIONS COURTS AND TRIBUNALS

Since 1994, the United Nations converted the International Military Tribunal into International Criminal Tribunal (ICT) thereby creating the ICT for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to indict, possibly convict, and sentence national leaders, politicians, and journalists accused of war crimes, genocide, and crimes against humanity, in the former Yugoslavia and Rwanda wars. The two criminal tribunals have demonstrated to the world that no head of state will ever be beyond incrimination. This fact was demonstrated when Prime Minister Slobodan Milosevic became the first sitting head of state to be indicted for war crimes in modern history (ICTY). Similar indictments were made against Rwandan leaders in the Rwanda genocide (ICTR). To cap it all, the emergence of the permanent International Criminal Court (ICC) crushed the hopes of dictators and potential dictators around the world. So far, ICC has indicted and convicted some former heads of states from Liberia, Sierra Leone, and so on, of war crimes and acts of genocide.

INTERNATIONAL LAW AND WORLD COMMUNITY

The era of some heads of state and other individuals violating international law with impunity has gone. The permanent ICC, unmistakably, is the new world watchdog against violations of international law especially in the areas of war crimes, crimes against humanity, and genocide.

Undeniably, the emergence of the ICTs and the permanent ICC with global jurisdiction in war crimes, crimes against humanity, and genocide has added a heavy weight to the criminal justice systems of nations around the world. Beyond doubt, the ICTY, ICTR, and the creation of a permanent ICC have made the world a more peaceful community than ever before. As the former Secretary-General of the United Nations, Kofi Annan, puts it, the creation of the permanent ICC is the greatest achievement of the United Nations.

CRIME RATE

It is very hard to measure crime rate across cultures. In fact, it is unreliable. But one fact is clear. In all of the countries studied, including Russia and Poland, property crimes are committed more frequently than personal crimes, even in the Communist country of China. However, the rate of property crime is higher in all of the other countries studied than in China, even with its leadership in world population.

Undeniably, economic conditions in a capitalist system coupled with malintegration can explain higher crime rates in the United States and other capitalist economies than in China. However, an industrialized country, Japan, records lower crime rates than some nonindustrialized countries such as Nigeria, Argentina, and Brazil because of the Japanese emphasis on social integration. Presently, of all the countries studied, Russia has higher incidence of corruption and organized crime more than others (see Chapter 10).

Another factor in crime rates of these countries is the minimum age of criminal responsibility: 7 in Ireland, 10 in China, 10 in England and Wales (United Kingdom), 8 in Scotland (United Kingdom), 7 in Nigeria, 7 in Russia, and 7 in Poland (Newman 1999, pp. 263–264). These figures appear reasonable given that in 1994, a 10-year-old shot and killed Jeremy Bullock, an 11-year-old, in Butte, Montana; a 12-year-old boy and a 14-year-old girl were convicted of murder in the second degree in Monroe County (New York) and Livingston County (New York) in 1997 and 1999, respectively. Consider also the high school members in

Littleton, Colorado, in April 1999; shootings in Jonesboro, Arkansas, and Mississippi and Kentucky high schools; and a 15-year-old sophomore Thomas J. "T.J." Solomon, shooting and wounding six high school students at Conyers, Georgia, in May, 1999. The United States is recorded as having 17 years as its minimum age of criminal responsibility (Newman 1999, p. 164). Crime rates are far lower in Ireland, Nigeria, China, Japan, and the United Kingdom than they are in the United States. But these five countries realized that it is necessary to let today's youngsters know *ahead of time* that they will be tried as adults when they commit felonious crimes. The United States should be in company of these five countries, given that crime rates are far higher in the United States than in each of the other 13 countries studied. Take, for instance, the homicide rate per million population in 1994 recorded by the United Nations Office for Drug Control and Crime Prevention (Newman 1999, pp. 285–286), shown as follows:

Denmark	51
Hong Kong	16
Israel	72
Japan	3
United Kingdom (England and Wales)	14
United Kingdom (Scotland)	22
United States	90

Murder rates for Ireland, Brazil, Argentina, China, Nigeria, and Sierra Leone are not reported. However, based on previous studies, homicide rates are lower in all of the countries studied than in the United States. For instance, in 1992, Ireland recorded 12 homicides per million and the United States 98 homicides per million (FBI 1992).

POLICING

Each of the countries studied lays emphasis on community policing. But community policing is more developed in some countries than in others. China appears to be a leader in community policing, followed by Israel, Japan, the United Kingdom, Denmark, Ireland, and the United States. Community policing countries are countries where the police and the members of each community or district cooperate harmoniously in solving criminal and noncriminal problems aimed at maintaining social order and social cohesion. In such countries, the police and the community try to identify sources of problems in advance. In such countries, the police see the members of the community as partners in crime prevention efforts and offender apprehension.

In countries such as Nigeria, Sierra Leone, Argentina, Brazil, and other areas of West Africa, the police are still seen as colonial instruments of repression, and the police in those countries, in fact, tend to act as oppressive instruments. This is because true democracy has been very hard to come by in those countries. This is because colonial regime was a dictatorship. Those countries have endured, and some still endure, totalitarian regimes. Undeniably, totalitarian regimes are dictatorships and more oppressive than colonial regimes. In both regimes, the police are antagonistic to the communities and are estranged from the communities. In effect, modern community policing approach is very hard to introduce in those countries today.

With the exception of the United States, the United Kingdom, and Argentina, all of the countries studied have a centralized system of policing. That means every policeman and policewoman in the country is a member of the national police force. For instance, the Israeli National Police, the Nigerian Police Force, the Chinese Ministry of Public Security as the most important of the People's Police Agencies and other centralized systems of policing have one thing in common: the national police organization is under a single director called the inspector general of police, the director general of police, or any other name. The national police organization may have many other subunits, but all of the subunits are under the control and administration of the national police headquarters.

In most of these centralized police organizations, the inspector general or the director general rose from the ranks of police officers.

There is a serious problem in a centralized system of policing in a country where there is no single language spoken by all the citizens and where there are multiple ethnic groups with distinct languages of their own—such as Nigeria, Sierra Leone, and Ghana. Such countries should have regional police forces designed to suit the environment of each particular region. It is foolhardy to expect a police officer who does not speak the language of a community or region of the country to effectively enforce the law in the area. But in Nigeria, with more than 250 ethnic and language groups, there are no regional or state police forces. Each of Nigeria's 36 states should have its own police force just as in the United States. The problem is that military dictators are afraid of such decentralization in policing. Unmistakably, of all the 14 countries studied in this book, Nigeria has the poorest law enforcement record. The records of countries with decentralized system of policing show that the more

decentralized the policing strategy, the more effective the law enforcement efforts.

In the United Kingdom, there are three branches of the police organization. The England and Wales Police Force is controlled through 43 constabularies; Scotland is administered and controlled through eight regional forces; and Northern Ireland has a single national police force—the Royal Ulster Constabulary. The Scotland Yard, like the FBI, stands as a strategic law enforcement agency for all of the regions of the country.

Argentina, like United Kingdom and the United States, has a decentralized system of policing. It has a national police as well as provincial police forces. Unlike the inspector generals of police in Nigeria, Sierra Leone, Ireland, and Israel, the chief of police in Argentina is not a member of the police force. He is a civilian appointed by the president of Argentina to administer the police at the pleasure of the president. In other words, the Argentina chief of police is not a trained police officer. He did not rise from the ranks.

In the United States, there are many police forces. A state in the United States may have as many as 200 police forces or more, depending on the number of metropolitan cities and counties in the state. Every city or town in the United States with a population over 10,000 people has a police force in addition to the county and state police organizations. Every county in the United States has its own police force operating side by side with the state police. Furthermore, universities and colleges in the United States have security forces, and in some states such as New York, the state university security forces are accorded full police powers. Top businesses, service companies, and manufacturing companies in the United States have armed security units. On top of all these law enforcement forces are at least 63 federal law enforcement agencies in the United States. Topmost among U.S. federal law enforcement agencies are the FBI, the United States Marshals, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Agency, and the Secret Service. No other country among the 14 countries studied has a multifarious network of law enforcement agencies like that of the United States.

And yet the United States has a higher crime rate than the other 13 countries. Why? This is because American society is criminogenic (breeds crime). There are many contradictions in our values, in our laws, and in our interpretation of freedom. Besides, we have a culture of violence. We cherish it in many ways (Hollywood movies, sports, and toys we manufacture). We have a right to bear arms, and we do not want to leave handguns and

assault weapons for the law enforcement officers and the military. Then we turn around and complain about violence in society. Parents have no right to discipline their children. We teach our children from kindergarten to dial 911 to report parental correctional disciplines as child abuse. Worst of all, the teachers cannot severely discipline their students for wrongful acts at school. The student and his or her parents could take the teacher to court for disciplining their child. The kids celebrate their unfettered freedom by shooting other students when their girlfriends dump them (Heritage High School, Conyers, Georgia, May 1999); or drive their cars and run down and crush to death another 14-year-old girl who snatched their boyfriends from them (Livingston Country, New York, 1998); or shoot and kill fellow students who surpass them in academics and sports or who happen to be African-Americans (Littleton, Colorado, 1999). And we turn around and complain about the youth violence. Beyond controversy, those who make our laws deserve 80% of the blame. As stated earlier, America has too many laws, too many lawyers, and very little justice. In fact, all of the agencies of child socialization in the United States share the blame on youth violence. A society portrays its moral values in the behaviors of its youths.

All of those violent youth incidents happened in the United States. Of all the countries studied, none permits private citizens to possess handguns or assault weapons other than the United States. In the other 13 countries, parents and school teachers can still discipline their students without fear of a lawsuit or police intervention. In those countries, school is not a place for violent crimes. In most of those other countries, a simple assault against another student leads to a suspension without prior warnings, and in some high schools, the student may be expelled indefinitely.

Even some U.S. youths have no respect for the police. On May 8, 1999, “a twenty year old male was arrested for disorderly conduct after he approached a police officer and repeatedly yelled obscenities, and Brockport, New York police issued appearance ticket” (Westside News 1999). In Nigeria, Sierra Leone, Brazil, Argentina, and elsewhere, this Brockport incident is the type of behavior that leads to police brutality.

Common to all of the countries studied are complaints of police brutality. But the police brutality is less in developed countries than in developing countries. Also common to all of the countries is the presence of fewer women than men in the police forces. In all of the countries, women police officers are struggling for acceptance both within the police force and among the members of

the public. It is not a phenomenon of developing countries. It is a traditional attitude that women are not meant for forceful careers, and that attitude is what causes the problem of nonchalance toward female police officers worldwide. When the first woman was recruited into the Nigerian Police Force in 1960, it made headlines. As a small boy, I heard some adults saying: "God forbid, my daughter will never be a police officer." And this occurred at the tail end of colonial administration in Nigeria when public perception of the Nigerian Police Force as a colonial instrument of repression was still fresh in people's minds. Although there are many female police officers today in the Nigerian Police Force, as in many of the other countries studied, they are not assigned to SWAT teams or rigorous investigative operations. In Nigeria, Sierra Leone, Ghana, and other West African countries, you find them mostly in offices and city traffic control posts.

The Interpol has played a wonderful role in controlling transnational crimes. It has helped many countries' police forces in dealing with their crime control problems through its regional Central Bureau. Additionally, Interpol and Europol have made international police cooperation a strong instrument of global law enforcement.

CORRECTIONAL PERSPECTIVES

The best way to deal with a lawbreaker is a problem in all of the countries studied. Some of them still have the death penalty: Nigeria, Sierra Leone, China, Brazil, Argentina, and 38 states in the United States. The United Kingdom abolished it in 1966, other than for treason. Israel has the death penalty only for treason, terrorism, and crimes against humanity, and Ireland abolished the death penalty in 1964, but left it for killing a law enforcement officer until 1990, when it was entirely abolished.

Some of the countries have minimum and maximum life sentences. In Ireland, the minimum life sentence is 40 years. Compare this with some states in the United States where we have 25 years to life. That means the individual with 25 years to life can go for parole 13 years later. Nigeria has a life imprisonment statute, but Nigeria's life imprisonment statute does not allow the possibility of parole. Israel, like Nigeria, has life imprisonment without parole. In 1980, the average life sentence in Ireland was 10 years. But the average life imprisonment is higher in Russia than in all of the other countries studied. And in Ireland, an offender serving a life sentence can be released on a license. Why is the sentence called a life sentence when the offender has a possibility of parole or can be released on a license? Life imprisonment connotes

the offender spending the rest of his life in prison. That is what it is in Sierra Leone, Ghana, Kenya, Nigeria, Israel, and some other countries. Some states in the United States, such as Texas, avoid releasing depraved murderers on parole by giving such offenders 200 years of imprisonment, so that there will be no chance of paroling him or her.

Interestingly, China and Ireland have community sentences as a form of offender disposal. This is not the same as a judge in Nigeria, the United Kingdom, the United States, Israel, or Sierra Leone ordering a convicted offender to do some community service for misdemeanors or less serious felonious offenses. Instead, a community sentence in China or a community service order in Ireland is a formalized system of minimum-security sentence short of imprisonment. But unlike the minimum-security prison, in a community sentence or community service order, the offender lives in his house while he does some service to the community at specified times and days and holds his subsistent employment (job). In the case of a Chinese community sentence, the offender may not be required to do any service to the community, but he is restricted to live in his present residence without changing to another location for a certain period, usually not more than 5 years. It is a form of probation in "which the offender is strictly monitored by the whole community."

All of the countries studied have maximum-security prisons. But some countries are more humane in their prison system than others. Japan and China would like to do away with the prison system if they could find a better alternative. This perception is understandable given their Confucian philosophies. Prisoners are treated more nicely in Japan, China, and Denmark than in other countries studied. Prisons and prisoners are neglected in Brazil, Argentina, Nigeria, and Sierra Leone. Ireland and Israel give mild, tolerable treatments to incarcerated offenders. The United Kingdom and the United States have prisons as industries for contractors. *They* throw too many persons in prison and deny them rehabilitation. The building construction companies who build new prisons; textile manufacturing companies who supply uniforms for the inmates; contractors who supply all kinds of food for the inmates; pharmaceutical companies who supply medicines for the hundreds of thousands of service personnel, prison wardens, wardresses, and superintendents; the supply of color television to the inmates; and the provision of legal services for already convicted and incarcerated offenders all these absorb millions of taxpayer dollars annually. This makes the prison systems of the United Kingdom and the United States lucrative

industries for the political and business ruling classes. In effect, rehabilitation of the offender becomes a taboo, because rehabilitation of the offender would lead to less recidivism and reduction in the amount of money spent on maintaining the prison system.

This ruling class idea of the prison industry is relevant to maintaining the capitalist system. As capitalism requires, they continuously create surplus population to lower wages. Unmistakably, capitalism cannot survive without surplus population (a large population of semi employed and unemployed persons) (Quinney 1975).

When Republicans gained control of both houses of Congress in 1994, they cut off "Pell grants" for prison inmates' education. In 1996, in the state of New York, the newly elected Republican governor, George Pataki, cut state prison Pell grants for the education of state prison inmates. That means no rehabilitation for inmates. Inmates should have been allowed to continue to use the Pell grant and be required to pay the grant money back to the government after they complete their terms of sentence, and inmates with no possibility of parole should not be allowed to use the Pell grant. Instead, the Pell grant was totally abolished for prison inmates. We know, beyond controversy, that there is an inverse correlation between level of education and criminal involvement (Ebbe 1982, 1985a). Besides, an unpublished study by New York State Department of Corrections of recidivism rate among former prison inmates five years after their release showed a far higher recidivism rate among inmates who did not receive a college degree or an associate's diploma before their release than among those who did do so.

Part of the reason for high recidivism rate in the United States is relative deprivation. When incarcerated offenders are released after their terms of incarceration with an empty grocery bag to carry all of their life possessions and \$30 to take a bus back to the same environment that caused their incarceration, what keeps them from becoming involved in crime again and returning to prison? In developing countries such as Nigeria, rural populations of Hispanics in Brazil and Argentina, Sierra Leone, and developed countries such as Japan and China, informal relationships are still prevalent. Previously incarcerated relatives are received with open arms back into the community and given help to stand on their feet again. Thus, those countries do not have very high recidivism rates. In West Africa, in particular, the prison system was a colonial idea. It was imported. Africans believe that an offender is a member of the community and should be corrected in the community and not outside it. The community insists on the offender paying a fine coupled with

a communion feast and sacrifices to propitiate the gods, depending on the gravity of the offense. Undeniably, in Africa south of the Sahara, public offenses such as incest, patricide, fratricide, matricide, or desecration of a holy shrine would demand a sacrifice to appease the gods in addition to the communion feast and other communal penalties. This is why most criminal cases do not reach the attention of formalized, English-based courts in the West African countries, and the offender remains in the community. Offenders are tried and disposed at the formal customary courts (Ebbe 1999b, p. 72). This is because these customary courts do not sentence an offender to a prison term. Incarceration of the offender had never been a system of offender disposal in Africa south of the Sahara.

Japan, China, Denmark, and other Scandinavian countries have the lowest recidivism rates among their criminal populations. This is because of the humane way they treat their incarcerated offenders (though violent criminals and murderers have no freedom in those countries). For instance, in Japan, on the day a prison inmate is being released from incarceration, his community members come and stand on both sides of the prison exit door and clap their hands as the inmate trots out of the prison, and they take him home in joy and jubilation. He is still a member of the community, whether he is inside or outside of the prison walls. But take note that Japan punishes women more severely than men for the same offense. This is because Japan sees women as producers and nurturers of future generations, so women should set good examples. Similarly, in Nigeria, Sierra Leone, and other West African nations, the sight of a female criminal offender in police handcuffs provokes greater outrage among the masses than a sight of a male criminal. This differential perception of male and female offenders in Japan and in West African countries is still sustained, because sex roles (gender roles) are still maintained. They do not suffer gender distortion as in the United States.

In Denmark prison, inmates hold keys to their cells and receive a salary to feed themselves so that they learn how to manage their incomes. If any inmate uses up his salary, he goes hungry (Chapter 20). Unmistakably, when prison inmates are rejected by society, the inmates in turn reject the society. In effect, when they come out of their state of imprisonment, they join their own kind and fight against the society. They may be caught and thrown into prison again. That is the revolving door of poor and ineffective penal policy. We should learn the truth from Japan, China, and Denmark.

Given the ruthless treatment of offenders in ancient, medieval, and modern times, the United Nations stepped

in and gave guidelines for humane treatment of offenders. We saw in Chapter 18 the various merciless methods with which some offenders were treated in history. This text demonstrated how the United Nations provided guidelines for treatment of offenders, prisoners of war, and female offenders. Surely, the United Nations guidelines have helped ameliorate the pains of prisoners in countries around the world.

CONCLUSION

Criminal justice systems vary from culture to culture because of differential values and historical experiences of the various countries. The nature of criminal law is demonstrated in this book and better understood through the analysis of the historical and political developments in the various countries. Criminal law is not a divine construct, and it does not wholly and entirely emanate from or represent the norms, beliefs, values, and standards of the people as consensus theorists claimed (Durkheim 1933; Parsons 1951). Instead, modern criminal law, in many cases, represents the efforts of those who are in power to protect their own interests through legislation (Quinney 1975; Chambliss and Mankoff 1976; Ebbe 1985b).

The police are an instrument of the government in all countries to control the masses. However, military regimes and other totalitarian regimes use the police to achieve their illegal ends. Policing the masses today is a universal problem, but community policing is proving to be the solution in many countries. There is a need to control the police use of excessive force while enforcing the law in all countries. In Israel, the Krenmitzer Committee was set up to investigate the excessive use of the force by police. This is an attempt to maintain good police/community relations. In Hong Kong, a measure to check police brutality involves the establishment of an Independent Complainant Council, which handles complaints against police officers and carries out internal investigation of police officers. This Hong Kong approach is needed in every police department or national police force of every country.

As with their police systems, most of the countries studied have a centralized prison system. But prison reform should be geared toward inmate rehabilitation to reduce the recidivism rate.

In this text, we have seen the relevance of and wealth in Islamic system of criminal justice. Unmistakably, the Islamic system of criminal justice is not all draconian. Their philosophy of punishment should be looked upon in terms of utilitarianism and recidivism rates, which

are measures of effectiveness in correctional ideology, because recidivism rates in Islamic states are near zero.

Finally, data show that the masses have lost faith in the criminal justice system, because in some countries those who have power nullify effective law enforcement policies by motivating differential law enforcement and using their money to get undeserved justice in court. The solution to the loss of faith in the criminal justice system is establishment and stringent enforcement of checks and balances within each law enforcement agency and across the network of law enforcement agencies in each country, coupled with accountability within each law enforcement agency and among the politicians.

REVIEW QUESTIONS

1. Compare and contrast adversarial and inquisitorial approaches in criminal justice.
2. What are the advantages and disadvantages of state-employed prosecutorial systems of justice, DAs versus directors of public prosecution?
3. What is the role of the procuratorate general in the Chinese criminal justice system?
4. What do you understand by “veto power”?
5. What are the merits and demerits of the discretionary power of the police?
6. What do you understand by “court of first instance”?
7. In what ways can politics influence community policing in Argentina?
8. What legislative problems are there relating to the Islas Malvinas (Falkland Islands) with regard to the Argentine claim to territorial integrity of the area?
9. The author described the prison system in the United States and Britain as industries for the political and business ruling class. What is your position in this argument?
10. Rehabilitation ideology is marooned in the U.S. prison system. Discuss.
11. In Japan in 1989, only 4.7% of all felonious offenders were sentenced to prison terms and a little over 92% of them were fined. What is the relevance of this Japanese offender disposal approach?
12. While the use of the death penalty as an offender disposal mechanism is declining in the Western world, it is increasing in the United States. Why? What do you think the United States should do to reduce the high incidence of capital offenses?

13. Bigamy law is a cultural universal. Do you agree? Compare and contrast bigamy and adultery.
14. What factors led to the existence of paramilitary police in Ireland and Israel?
15. Should juveniles who committed murder be tried as adults? What steps should be taken to ensure the absence of guns at U.S. elementary and high schools?
16. Why is it that in other parts of the world, especially developing countries, high school students shooting other students is unthinkable?
17. What is a predatory state?
18. What is meant by "political-criminal nexus"?
19. Can some government officials be involved in organized crime?
20. In the United Kingdom, why is it that the police could maintain law and order without the use of firearms?
21. Write a short essay on the following:
 - a. Informal customary criminal justice in Nigeria
 - b. Formal customary justice in Nigeria
 - c. Informal courts in China
 - d. Mediation in China
 - e. CAPIC in Japan

REFERENCES

- Brown, J. A. 1990. *Joyce Ann Brown: Justice denied*. Chicago, IL: The Noble Press, Inc.
- Chambliss, W., and M. Mankoff. 1976. *Whose law? What order?: A conflict approach to criminology*. New York, NY: John Wiley & Sons.
- Champion, D. 1991. Jail inmate litigation in the 1990s. In *American jails: Public policy issues*, edited by J. A. Thompson and L. Mays, 197–215. Chicago, IL: Nelson-Hall Publishers.
- Democrat and Chronicle*. 1999. Betty Tyson free at last. *Democrat and Chronicle*, June 3, 1999, 1B.
- Durkheim, E. 1933. *The division of labor in society*. New York, NY: Free Press.
- Ebbe, O. N. I. 1982. *Crime in Nigeria: An analysis of characteristics offenders incarcerated in Nigerian prisons*. Ann Arbor, MI: University Microfilm International.
- Ebbe, O. N. I. 1985a. The correlates of female criminality in Nigeria. *International Journal of Comparative and Applied Criminal Justice* 9(1): 83–95.
- Ebbe, O. N. I. 1985b. Power and criminal law: criminalization of conduct norms in a colonial regime. *International Journal of Comparative and Applied Criminal Justice* 9(2): 113–122.
- Ebbe, O. N. I. 1996. The judiciary and criminal procedure in Nigeria. In *Comparative and International criminal justice: Policing, judiciary, and corrections*, edited by O. N. I. Ebbe, 103–122. Boston, MA: Butterworth/Heinemann.
- Ebbe, O. N. I. 1997. Political-criminal nexus in Nigeria: An excerpt. *Trends in Organized Crime* 3(1): 73–77.
- Ebbe, O. N. I. 1999a. The political-criminal nexus "slicing Nigeria's national cake": The Nigerian case. *Trends in Organized Crime* 4(3): 29–59.
- Ebbe, O. N. I. 1999b. Customary justice: A day in an informal court of justice in Nigeria. In *Global report on crime and justice (United Nations Office for Drug Control and Crime Prevention)*, edited by G. Newman, 72. New York, NY: Oxford University Press.
- Ebbe, O. N. I. 1999c. Informal customary justice in Nigeria. In *Global report on crime and justice (United Nations Office for Drug Control and Crime Prevention)*, edited by G. Newman, 122. New York, NY: Oxford University Press.
- Ebbe, O. N. I. 2003. Slicing Nigeria's "National cake." In *Menace to society: Political-criminal collaborations around the world*, edited by R. Godson, 137–174. New Brunswick, NJ: Transaction Publishers.
- FBI. 1992. *Uniform Crime Reporting Handbook, 1992*. Washington, D.C. Federal Bureau of Investigation.
- McCaghy, C. H. 1980. *Crime in American society*. New York, NY: Macmillan.
- Newman, G. 1999. *Global report on crime and justice (United Nations Office for Drug Control and Crime Prevention)*. New York, NY: Oxford University Press.
- Onyema, U. 1984. The return of the Military. *West Africa* (9 January): 53–56.
- Onyema, U. 1996. Fraud in Nigeria: Naijanews at the University of Michigan (Internet news).
- Ozaki, R. S. 1978. *The Japanese: A cultural portrait*. Tokyo: Charles E. Tuttle.
- Parsons, T. 1951. *The social system*. New York, NY: Free Press.
- Quinney, R. 1975. *Class, state, and crime: On the theory and practice of criminal justice*. New York, NY: David McKay Company.
- Reiman, J. 1998. *The rich get richer and the poor get prison: Ideology, class, and criminal justice*, 5th edition. Boston, MA: Allyn & Bacon.
- Westside News. 1999. Incurable kid. *Hamlin Clarkson Herald*, May 24, 1999, p. 8.

Glossary

Actus reus: A wrongful deed that renders the actor criminally liable if combined with *mens rea*, a guilty intention.

Addendum: A thing added or to be added.

Ad litem: For the lawsuit.

Advocate: A person who pleads or speaks in favor of another person in a matter or case.

Alkhali court: The lowest Muslim court in Northern Nigeria, where cases involving Muslims are tried. The judge is well versed in Islamic law.

Allotment: Share; portion; something set apart for a purpose.

APC: All People's Congress. This was a political party that ruled Sierra Leone from 1968 through April 29, 1992, when it was overthrown in a coup d'état by the present (1995) military regime.

Appellant: The person who challenges the correctness of a court order or judgment by seeking a review and relief in a higher court having appellate jurisdiction, or the person on whose behalf this is done.

Appellate court: A court that has the primary function of reviewing the judgments of lower courts in a country or state. It may not act as a trial court or court of first instance.

Arcane: Secret; hidden; intended only for the initiated.

Assessor: An expert in customary law who helped colonial court judges in interpreting the law of the land. In China, a lay member of the court such as a juror, but (unlike a juror in the United States) having equal power with the court judge in adjudication of a case. An advisory assistant.

Biafra: A country that emerged in southeastern Nigeria (1967–1970) after a 1966 pogrom that took the life of over 100,000 Igbos and other natives of eastern Nigeria, which led to a civil war and eastern Nigeria's secession from Nigeria. The war lasted for two and a half years before Biafra was conquered due to internal sabotage by the Osu caste of the Igbo nation.

Bicameral: Literally, two-chambered, referring to a parliament or congress divided into a lower house and an upper house—for example, the Senate and the national assembly or the Senate and the parliament.

Bona fide: In good faith; legally valid; genuine; sincere.

Buraku-kai: Rural traditional communities in Japan.

Caliph: Supreme ruler; it is a title taken by Muhammad's successors as secular and religious heads of Islam.

Certiorari: A writ issued from an appellate court for the purpose of obtaining from a lower court the record of its proceedings in a particular case.

Chonai-kai: In Japanese, district or block associations of 400 to 600 households.

Circulus vitiosus: Vicious circle.

Criminal code: Written substantive criminal law specifying acts that are crimes and punishments for violations.

Cultural genocide: A program of action deliberately designed to destroy the values, standards, beliefs, and norms of a whole country, race, or ethnic group by replacing the indigenous cultural values with alien values, through alien-based education. The result is total disorganization of the indigenous society.

Customary court: A court where rules and regulations (laws) emanating from the immemorial customs and traditions of the people are enforced by a chief, or an elder, or a council of elders. Such courts are found throughout sub-Saharan Africa.

Daimyo (daimio): During the Japanese feudal era, a hereditary Japanese nobleman.

Danwei: A Chinese work unit that assigns income and housing to its members.

Day leave: A type of leave granted to a Danish prisoner for the purpose of employment or job training outside of the prison. It can be granted if such employment or job training is not available in the prison institution.

De novo: Anew; from the beginning.

Denunciation: An act of public condemnation or accusation.

Depraved heart: One morally bad, corrupt, and perverted. In murder, the offender has no regard for the value of human life; thus, depraved-heart murder.

Disparate treatment case: A case involving a charge against an employer for basing a decision not to hire or promote a person on unjustifiable or discriminatory grounds.

- Diya:** Crimes that demand compensation in Islamic criminal justice. They are crimes against the person.
- Double jeopardy:** The danger of being tried and, perhaps, convicted and punished, twice for the same offense.
- DPP:** Director of public prosecution. This is an individual who heads the prosecution department of the ministry of justice in countries such as England, Nigeria, Kenya, Ghana, and Sierra Leone. He or she decides whether an accused in a felonious offense should be indicted or not. The DPP is a civil service position, but is not elected like a prosecutor in the United States.
- Due process of law:** The due course of legal proceedings according to the rules and forms that have been established for the protection of private rights. These are rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution.
- Duress:** Unlawful threats of harm or other pressure used to force someone against his or her will. Duress may also mean illegal imprisonment, or legal imprisonment for an illegal purpose.
- Enza:** (Japanese) relatives; opposite of *renza*.
- Exclusionary rule:** In law of evidence, this is the principle applicable in both state and federal courts in the United States; the evidence illegally obtained may not properly be received at the trial.
- Ex parte:** One-sided; on, or in the interest of, one side only.
- Extradition:** The turning over of an alleged criminal, fugitive, or prisoner by one country or state, etc., to another for trial in a court.
- Federal'noe sobranie:** Russian Federal Assembly.
- Felony murder rule or felony murder doctrine:** At common law, one who, without intent, kills another with an intent to commit another felony, was guilty of murder. Although some states in the United States still follow the common law rule, today, the law of felony murder varies substantially throughout the country.
- Fief:** An inheritable piece of land in the feudal period held from an overlord in return for service. The right to possess such land.
- Fudai:** (Japanese) Allies of the Tokugawa regime (*Shogunate*).
- Gaikaku:** (Japanese) A public corporation.
- Gaikaku dantai:** (Japanese) Public corporations or extradepartmental groups; small community characterized by personalized, face-to-face relationships, such as those found in the family, rural villages, and very small towns where everyone knows everyone else. Interpersonal relationships are informal.
- Gesellschaft:** Ferdinand Tonnies's concept for societies, usually urban, where interpersonal relationships are formal and contractual.
- Gonin-gumi:** (Japanese) Household groups, usually five households together.
- Grand Khadi:** The judge of an Alkhali court in Northern Nigeria (see Alkhali court).
- Habeas corpus:** (Latin: You have the body) The name given to a variety of writs having as their object to bring a party before a court or judge. The primary function of the writ is to release a person from unlawful imprisonment, or to determine whether a person in the custody of legal authorities is being lawfully detained.
- Hogoshi:** (Japanese) Representatives of the government.
- Hudud:** Set penalty crimes. They are crimes against the law of God. There are seven of them in Islamic jurisprudence (see Chapter 16).
- Igbo (Ibo):** A large ethnic group in southeastern Nigeria known for their love of Western education.
- Importunate:** Urgent or persistent in demanding or asking for something.
- Indictable offense:** A relatively serious offense that may be tried on indictment, that is, before a grand jury.
- Interlocutory:** Provisional; temporary; not final.
- Interlocutory appeal:** An appeal that does not resolve the controversy, but which is essential for a later adjudication of the case on its merits.
- Interlocutory decree:** A preliminary or provisional order. It is a decree made during a lawsuit to ascertain a matter of law or fact in preparation for a final decree.
- Interlocutory judgment:** A judgment of the court that does not determine all the issues relating to all the parties, but instead leaves something to be further adjudicated at a later proceeding.
- Junta:** A group of political intriguers, especially such a group of military men in power after a coup d'état.
- Khadi (Qadi):** A judge in the basic Islamic court of original jurisdiction.
- Knesset:** The Israeli Parliament.
- Krai:** Russian word for large regions or territories.
- Mohammedanism:** Total submission to the will of God.
- Mufti:** In Islamic states, an interpreter or expounder of religious law.

Muhtasib: Religious police who conduct criminal investigation in an Islamic state.

Mutatis mutandis: The necessary changes having been made in compliance with one major change.

Naira: The name given to Nigeria's money in 1973, a change from the country's original "pound" medium of exchange. In 1985, one Naira (N1.00) was equal to \$1.80.

Nolle prosequi: (Latin: To be unwilling to prosecute) A mechanism by which the prosecution service terminates criminal proceedings on indictment. The decision is made on grounds such as lack of sufficient evidence or that prosecution is not in the public interest. Unlike an acquittal, a *nolle prosequi* does not bar further prosecution.

Oblast: Russian word for provinces or regions.

Opprobrium: Shame, or anything that brings shame or disgrace.

Ordinary imprisonment: An imprisonment from one month to life in Denmark.

Organic solidarity: Emile Durkheim's term for an urban society where interpersonal relationships are contractual and formalized. Cities exemplify Durkheim's organic solidarity type of collectivity.

Osù: An outdated caste system in Igbo traditional culture. An untouchable.

Ostracize: To exclude somebody from a community, group, or society as a form of punishment for crime or a breach of norms. The group refuses to meet or talk to the individual.

Oyabun: (Japanese) Persons of superior rank; opposite of *kabun*.

Jinrikisha: A small, two-wheeled carriage with a hood, pulled by one or two men in Japan or in other Far Eastern societies.

Jurisdiction: Authority by which courts and judicial officers hear and determine cases. The geographical delimitation of a given court's power to hear and determine cases.

Justice of the Peace: A judicial officer of lesser rank who has jurisdiction over minor criminal and civil cases. A person who judges less serious cases in a local court of law; a magistrate.

Kabun: (Japanese) Persons of subordinate rank; opposite of *oyabun*.

Lay advocate: One versed in the customary law of his land who pleads or speaks on behalf of another in Chinese courts or African customary courts.

Lenient imprisonment: In Denmark, imprisonment for not more than 18 days.

Maliki law: The source of Islamic law in Africa.

Mandamus: (Latin: We command) A writ or order issued by courts to a public official or corporation, commanding the performance of some public duty required by statute.

Mechanical solidarity: Emile Durkheim's concept describing a community with personalized, face-to-face interaction, such as is found in more traditional societies. There is mutual obligation among the members of the community and peace and harmony prevail.

Parrot's perch: A type of punishment in which an offender is tied up and suspended on a cross-bar by the knees, and then abused; commonly practiced in Brazilian prisons.

Penal code: A body of law dealing with the punishments for various crimes or offenses.

Perestroika: Reconstruction. A term used by former Russian head of state, President Gorbachev, to mean "openness" and reform of communism for neo-democracy.

PPO: Professional probation officer; to be contrasted with "volunteer probation officer," VPO, in Japanese corrections.

Predatory extortion: Leading a person to dispose of own or someone else's property or to stop an economic activity by the means of obtaining a financial gain.

Prefecture: The office, authority, territory, or residence of a prefect or administrative official.

Preposterous: Ridiculous; so contrary to nature, reason, or common sense as to be laughable; absurd.

Presumption of innocence: An important principle of criminal law in the United States holding that the state (government) has the burden of proving every element of a crime beyond a reasonable doubt, and that the accused has no burden to prove his or her innocence.

Prima facie: (Latin: On its face) Describing a fact convincing on first examination, without any further proof of validity.

Prima facie case: A case in which the plaintiff presented sufficient evidence to entitle him to a decision by the judge or jury; a case that compels a favorable decision when no contrary or rebutting evidence is presented.

Procurator: In China, a person who manages the prosecution division (procuratorate) of the Chinese criminal justice system. He or she resembles the DPP in England or Nigeria (but has more power), represents the government in all

criminal matters, and is not an elected official. (In general terms, a procurator is one employed to manage the affairs of another, an agent.)

Procuratorate: The office and powers of a procurator.

Prohibition: An act or law making some thing or behavior illegal; especially, the prohibition of the manufacture, sale, or transportation of intoxicating liquors except for medicinal purposes by the Eighteenth Amendment to the U.S. Constitution (1920). (This prohibition amendment was repealed by the Twenty-First Amendment in 1933.)

Proportional representation: A system aimed at giving political parties a representation in parliament as proportional as possible to their voting strength. For example, in Ireland, there is a transferable vote and the second and subsequent choice votes of candidates come into play once the candidate is eliminated or is elected with surplus votes above a calculated quota.

Qesas/Qisas: Just retaliation or parity of punishment crimes. There are five of them in Islamic states.

Qu'ran/Koran: The Holy Book of Islam which emanated from the Prophet Muhammad.

Raison d'être: Reason for being; justification for existence.

Recidivism: Repeated criminal involvements and penalties by an individual.

Referendum: The practice of submitting a question directly to the electorate or the people of a country of state to decide a national or constitutional issue by a vote, as in Ireland, where the constitution can be amended only if the majority of the voters agree.

Renza: (Japanese) Unrelated persons; opposite of *enza*.

Sahib al Shurta: Regular police commissioner.

Samurai: The aristocrats of the pre-Tokugawa era who became the bureaucrats of the Tokugawa regime in Japan.

Self-incrimination: Any action or admission made by a person, either before trial or at trial, which implicates him/her in the commission of a crime.

Sharia: Court in Northern Nigeria and Middle Eastern nations, a court where only Islamic laws are applied.

Sharia law: Synonymous with Maliki law or Islamic law.

Shogun: Any of the feudal military governors of Japan who made up a quasi-dynasty, exercised absolute power, and relegated the emperors to a titular head of state.

Shogunate: The powers, territories, and reign of a Shogun.

Sovet Federatsiy: Russian Council of Federation.

Summary offense: A minor offense that cannot be tried before a jury, but is dealt with directly by a magistrate or a judge in the lower court.

Stare decisis: (Latin): To stand by decided cases; to follow precedent.

Ta'azir crimes: Behaviors defined as deviance by the caliph to meet the emerging needs of an Islamic society.

Taisei-gai: (Japanese): Within the system.

Taisei-nai: (Japanese): Outside the system.

Tozama: Those samurai who submitted to the Tokugawa regime in Japan only after the Tokugawa gained control over Japanese affairs.

Tribunal: A court of justice, or any seat of judgment.

Ultra vires: (Latin): Beyond granted powers. Conduct that exceeds the powers given to an officeholder, such as a prime minister, president, or CEO of a corporation.

UNCLOS: United Nations Commission on the Laws of the Sea.

VPO: Volunteer probation officer (used in Japanese corrections).

Waku: (Japanese): The social control system in which group interest is superior to self-interest.

Zakonodatel'noe sobranie: A lower chamber of the Russian Federation.

Third Edition

Comparative and International Criminal Justice Systems

Policing, Judiciary, and Corrections

Comparative and International Criminal Justice Systems: Policing, Judiciary, and Corrections, Third Edition examines the history, dynamics, structure, organization, and processes in the criminal justice systems in a number of selected countries. Designed for courses in comparative criminal justice systems, comparative criminology, and international criminal law, it explores systems in the United States, Ireland, Israel, Argentina, Sierra Leone, China, Russia, and Poland.

A descriptive and quantitative analysis of criminal justice processes, this text goes beyond a mere analysis of individual systems. Instead, the book compares these criminal justice models with each other and contrasts them with:

- United Nations conventions
- World Courts of Justice
- International Court of Justice
- International Military Tribunal
- International Criminal Tribunal
- International Criminal Court

Understanding these comparisons is crucial for a proper grasp of transnational crimes. The book shows how the national criminal justice systems and the United Nations judicial systems complement each other when adjudicating transnational crimes in the international community. It analyzes the nature of crime and criminal law, explores basic theories of crime, and discusses the various sources of international law. It also examines the inherent pitfalls in comparing international crime rates and discusses terrorism and its control. Unique to this edition is a thorough, unbiased study of the Islamic justice system.

Each chapter focuses on a select region and includes crime data and arrest, prosecution, and conviction rates where appropriate. This allows readers looking for information on the criminal justice systems of any part of the world to easily find the relevant section. A sound approach to understanding the laws of various nations, and international, criminal, and humanitarian laws, this volume provides sage insight into the sociological explanations of criminal law and crime.

K15887



CRC Press
Taylor & Francis Group
an informa business

www.taylorandfrancisgroup.com

6000 Broken Sound Parkway, NW
Suite 300, Boca Raton, FL 33487
711 Third Avenue
New York, NY 10017
2 Park Square, Milton Park
Abingdon, Oxon OX14 4RN, UK

ISBN: 978-1-4665-6033-8



www.crcpress.com