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Article · January 1984

DOI: 10.1080/01924036.1984.9688786

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Lessons from the Third World for Understanding American Criminal Justice

LUCIEN X. LOMBARDO
Old Dominion University

This paper argues for and attempts to demonstrate the case for including materials related to the operation of Third World criminal justice in courses dealing with American criminal justice system. The author argues that an examination of the contexts and processes of criminal justice in Third World nations increases one's ability to understand and critique the history and operations of our criminal justice enterprises. The Third World context offers laboratories for testing assumptions about American criminal justice without the implicitly pervasive ideological overtones we come to accept unquestionably in our own system simply because it is the one in which we operate.

Within the context of poverty, "dual societies," chronic political instability, the struggle for economic development, and colonialism, the Third World offers an opportunity to study the interaction and impact of law, politics, economics, social control, and social change on the development and operations of criminal justice. Using examples from the literature of anthropology, law and social change, and political and economic development, the author attempts to demonstrate the usefulness of this interdisciplinary approach and the Third World context in teaching about the criminal justice system.

IF ONE JUDGES from the textbooks available to teach criminal justice courses, criminal justice is almost exclusively an American phenomenon.¹ Except for occasional historical references to England and other parts of Europe, the experiences of peoples outside of the United States are ignored completely. Where comparative perspectives are included in criminal justice curricula, they usually appear in specialized courses something akin to "Comparative Legal Systems." These comparative courses most often draw on European experiences and legal philosophies, again ignoring the greater part of mankind and ignoring the behavior and dynamics of policing, courts, and corrections in the Third World.

Though an ethnocentric approach is understandable in criminal justice programs offering a "technical" or "training" orientation, the author believes it seriously detracts from the quality of undergraduate and graduate programs offering a "social science" approach to the discipline. Programs whose purpose it is to increase the understanding and questioning of criminal justice and not merely to provide technical proficiency should not ignore the experiences of Third World nations.

The author argues and attempts to demonstrate that providing discussion of historical and modern day experiences of "criminal justice" in what is sometimes called the "Third World" teaches American students valuable lessons; lessons which are useful in stimulating creative analysis and evaluation of the American criminal justice system. The myths, symbols, and ideologies which shape our

perceptions and assumptions about the criminal justice system with which we live are absent in the Third World context. In the Third World different assumptions and perceptions surface without clouds of self-involvement. This allows students (and faculty) to ask different and sometimes more important questions about the nature and behavior of American criminal justice.

Background

During the 1980-81 academic year ten faculty members (including the author) participated in an "Interdisciplinary² Faculty Development Seminar" on Third World studies. This program was funded by the International Education office of the U.S. Department of Education and run through Old Dominion University's International Programs office. The purpose of the seminar was fourfold: (1) to increase faculty awareness of contemporary issues related to the Third World; (2) to allow faculty time to research Third World issues related to their individual disciplines; (3) to allow seminar participants to meet with various guest experts in Third World areas to exchange information and viewpoints; and (4) to encourage the development of course specific materials for our own courses and those of our colleagues. In general, then, the seminar hoped to increase student awareness, knowledge, and interest in the Third World by enhancing the expertise and interest of the University's faculty.

The Third World

Before going on to develop the "lessons" about criminal justice which one can derive from the Third World, it is important to touch briefly on some characteristics of the Third World to define the context within which criminal justice operates.

According to one definition the Third World is ". . . what is left over after one has subtracted from the world as a whole the industrialized West and the Communist empires of Russia, China and their satellites" (Beloff, p. 12). This "left-over" part of the world contains nearly 75% of the world's population and according to one estimate, it will include 80% by the year 2000 (Harrison, pp. 217-218). Though many debate the exact make-up of the Third World (e.g., whether or not to include the Peoples' Republic of China), it is generally agreed upon that the nations of Africa, Latin America and the Caribbean, Southeast Asia, and India are squarely within the realm of the Third World.

The approximately 130 nations of the Third World share many characteristics which are relevant to issues related to criminal justice: poverty, rapid population growth, gross inequalities in wealth, poor health, sanitation and educational facilities, chronic political instability, rapidly growing urban areas, and the past and present effects of the colonial experience. As similar as these countries are, they also are extremely diverse in their social institutions, political organization, and forms of cultural heritage and expression. The philosophies of Islam, Judaism, Hinduism, Buddhism, Christianity, etc., shape people's ways of thinking in different parts of the Third World. Socialist, Communist, military, democratic, one party and multiparty states, each finds

its place within the Third World. (Generally see Paul Harrison, *Inside the Third World*.)

The similarities and cross-national differences vary considerably within each country. Though poverty is prevalent throughout the Third World, poverty is distributed unequally within individual countries, with *winner*s in the westernized modern sections and *loser*s in rural areas and teeming urban slums. Most Third World nations (indeed most nations on earth) evidence ethnic divisions based on traditional languages, customs, and ethnic or tribal loyalties. Often these loyalties are far more relevant to major sectors of national populations and conflict with the goals and behavioral expectations of the larger national governmental structure (Hall).

Within the overall context of "development" (whether one means economic, social, or political development), populations within Third World nations are divided generally into "modernized" and "traditional" sectors. The former are well integrated into the social, political and economic life of the "nation;" the latter often completely outside or only weakly involved with the institutions of "national life." Indeed, it is from this struggle for "nationhood" and the "penetration" of "national governmental machinery" into the lives of the people of Third World nations that many valuable lessons regarding criminal justice reside. Varying concepts of law and its application to (indeed the definition of) human problems, the nature and development of court systems, and police agencies very often take their shape within the context of the struggle for nationhood and the process of nation building (Anise).

In addition, many Third World nations suffer from internal political violence, a fact which enhances the role of the military in the political lives of the people. Both as administrator and as "keepers" or "restorers," of public order, the relationships of the military (and the police) in the Third World teach us much about the role and place of the police in our own society.

Lessons from the Third World

A. The first lesson that one learns in studying the nature of crimes and criminal justice in Third World countries is that *the law is not simply the law* which criminal justice agencies seek to enforce and apply. Criminal Law quickly emerges (in the context of anthropological literature and political anthropology) as simply one mechanism which is used to solve problems and regulate conflict between individuals. Gordon Post writes in his *Introduction to the Law*:

One of the most wonderful developments in the history of mankind, more important than the wheel, the lever, or the steam engine, *has been the willingness of men to submit their disputes to third parties*. When or how this willingness first manifested itself is known to no one; it is enough that in early accounts of man of which we have reliable knowledge, this tendency has been revealed" (Post, pp. 5-6).

Specifically with regard to the criminal law, questions quickly arise concerning *the nature of the third-party* (the criminal justice system) and about

the *willingness* of individuals (or indeed communities) to permit that particular third party to settle their disputes. In the context of Third World "traditional sectors" one sees that a theft is in essence one person taking the property of another and that the conflict is essentially between the two people. In a village in Mexico, for example, the willingness of the people to submit this dispute to the "state criminal justice apparatus" is limited. Other mechanisms exist at the personal, hamlet, and village level to solve the problem between the parties. Only as a last resort do the "state" authorities, representing the "criminal law" and representing the idea that "Mexican society was somehow *injured*" by the theft enter into the picture (See Collier). This use of "dispute settlement" processes in traditional sectors of Third World countries to resolve conflicts ranging from simple theft to rape and murder (See for example, L. Nader and H. Todd, eds.) forces one to be aware of the and to consider questions concerning the dynamics and development of our modern criminal justice processes. One begins to search for answers to such questions as:

- (1) What did we do about the problems we now call "crimes" before we had modern criminal justice processes?
- (2) What are the dynamics of the process by which people transferred the power to make decisions about certain conflicts to the Criminal Justice agencies?
- (3) In what ways do "plea-bargaining," victim compensation, restitution, and diversion represent modern variants of "dispute settlement" processes so prevalent throughout traditional sectors of Third World nations?

(See D. Black, "The Mobilization of the Law," for discussion of similar issues.)

B. In addressing these questions in the context of the Third World, one quickly gains an *appreciation for the highly political nature of criminal justice*. Most criminal justice textbooks explicitly acknowledge the role of legislatures in "passing the laws" and authorizing various criminal justice agencies to enforce the laws. However, the dynamics of the process of "legislating criminal law" and the function of the criminal law in the larger socio-political structure and process is generally taken for granted or ignored (for an exception see Blumberg, *Criminal Justice*).

In the Third World, however, such political considerations *are often the essence of the criminal law and justice processes*, and this essence is highly visible. In the nations of Africa, Latin America, and Asia the relationship between and among the criminal law, the "state," and individual behavior surface without the benefit of our traditional guiding principle, alluded to by Post above, "the law is the will of the people." In Third World contexts one is hard pressed to argue the relative merits of both the "consensus" and the "conflict" approaches to the derivation of criminal law and its processes. Colonization and the "imposition" of external problem solving mechanisms (the criminal justice system among them) on indigenous populations already equipped with processes designed to handle conflict makes a "consensus" model difficult to envision. Colonial powers

dominated geographical area and essentially imposed their wills by force and "pacification" movements. With independence new indigenous governments faced and continue to face the problems of "nation building," and of building allegiance to the state governmental apparatus. Here, one learns that the *legitimacy of those who "pass the laws" cannot be readily assumed*. As Landum Anise observes with regard to West African nations:

The choice of mobilization systems toward autocracy and illiberal attitudes in West Africa was not derived from prior analysis of institutional requirements for building a coherent political community from the sociostructural givens of ethnic pluralism or of primordial attachments, but rather from assumptions of unexamined constitutional legitimacy of the new nation State. This was a singular failing and a false premise. In effect, political integration was assumed and hence the emergence of the coincidence of multi-primordial cleavages was perceived as a *treasonable* departure from the assumed natural evaluation of the nation-state into a homogeneous social and political order. More simply put, calling a given geographical area a nation does not make it one. Other more esteemed characteristics may continue to divide people in a corral, more than a national name can unite (Anise, 315).

In the context of this paper, the concept of "political penetration" means the spread of government institutions of criminal justice. The police, for example, replace neighbors as mechanisms of order maintenance;³ become essential in paramilitary operations attempting to detect and neutralize insurgent political groups; assume regulatory activities (licensing, currency control, immigration, and passport inspection); and serve as agents of political socialization linking the central government to its citizens (Potholm). Rationalized external court systems replace "council of elders" dispute settlement; zero-sum decisions and winning or losing a case replace mediation and the discovery of solutions acceptable to both parties in a conflict; and criminal prosecution begins to replace civil litigations as the state becomes more active and the individual more passive (Abel). Punishment becomes time served in an institution operated by the state (prisons) and replaces psychological sanctions of public shaming, or payment of damages (Pospisil, pp. 140, 141; Williams). Such developments teach us that the emergence of American criminal justice in its social, political, and economic contexts is worthy of examination if we are to understand fully and appreciate its modern applications.

C. In examining the nature of crime in the Third World, one learns that the "traditional street crimes" with which we in America are so preoccupied have relatively little relevance in comparison to other "crime problems" faced by their populations. Though Third World nations are generally more violent than developed countries and there are fewer predatory economic crimes in terms of crime rates (E. Vetere and G. Newman), these patterns are changing. Modernization and economic development appear to be altering the crime patterns traditionally associated with these nations (See Shelley, Clinard, and Abbott). Though "street crime" in the Third World has occupied the interest of

some criminologists (Shelley, Clinard and Abbott), other forms of "crime" only beginning to gather the interest of criminologists in the United States form an important focus for studies of crime in the Third World.

The subtitle of a section of the Sixth United Nations Conference on the Prevention of Crime and the Treatment of Offenders held in Caracas, Venezuela, in 1980 states the problem: "Crime and the Abuse of Power in Third World Settings: Offenders and Offences Beyond the Reach of the Law." At this session of the Congress member nations were concerned with ". . . actions where no specific victim was easily identifiable but where there exists a substantial number of powerful perpetrators of harmful acts who wield their power and influence with impunity to the detriment of society as a whole" (U.N. Document No. A/Conf. 87/14/Add. 1, p. 45). In this statement the U.N. Conference expanded the legal concept of crime from an individual harming society to the reality of individuals with political and/or economic power adversely affecting the lives of whole communities for individual or corporate economic gain. *In this concept of crime, social harm is in reality social harm.*

Though many of the behaviors involved may be classified as "white collar crime" or "high level corruption," the extent of their impact on the people of the Third World places them in a separate category. Far more extensive than the petty corruption of minor government officials (a pervasive cost of business in the Third World), the behaviors referred to here include such practices as: tax evasion, credit and customs fraud, embezzlement and misappropriation of public funds, speculation and swindling in land transactions, labor exploitation (especially migrant labor), and export-import fraud. Also included are behaviors which extend beyond the borders of individual countries and involve international and business concerns and government policies of other nations. The "dumping" of pesticides and other harmful products banned in the U.S. and Europe in Third World nations is a prime example (See Weir and Schapiro, *The Circle of Poison*). Andreski calls such behaviors "parasitism—where people succeed in obtaining a large share of a nation's wealth without contributing in any way to its production" (p. 12). Victor Owusu, a member of parliament in Ghana, describes a similar problem in his country in 1961:

Half-starved people are being daily admonished to tighten their belts, when members of the new Chanian aristocracy and their hangers-on, who tell them to do this, are fast developing potbellies and paunches and their wives and sweet-hearts double chins in direct proportion to the rate at which people tighten their belts (Lavine, p. v).

The lesson here is that while affluent nations may be able to afford such practices since they consume a much smaller proportion of a rich nation's income, in the poor nations of the Third World *scarce* resources are being siphoned out of the general economy reducing their "social impact" as they are diverted to individual use.

One final form of "crime" prevalent in Third World nations is what the U.N. conference calls "abuse of public and political powers" (p. 48). Here

violations of human rights including police brutality, torture, political imprisonment and murder, abduction and "disappearance" can be cited as examples. Timmerman estimates that between 1973 and 1976, 10,000 people perished and another 15,000 "disappeared" in Argentina's national political struggle (p. 15).

In Brazil the last fifteen years have seen the development of "Death Squads" formed within and tacitly approved of by the Brazilian police. These death squads brutally beat and often kill marginal criminals in the *Favelas* (slums) surrounding many of Brazil's larger cities. The existence of such squads may be seen as a conscious resolution by the police to provide justice and eliminate many common criminals not successfully handled by the courts. Jakubs suggests that these "police" activities represent an increased public tolerance for official violence in times of political and social unrest (Jakubs).

Here, the behaviors engaged in by government officials are not crimes per se, that is, they are not carried out while a statute forbids them. Rather they are carried out with at least the tacit support of those in power. However interpreted, the experiences of Argentina and Brazil and other nations (El Salvador and Iran to name others) teach us to *appreciate and safeguard the limitations and controls which our constitution, case law, and administrative regulations place on the use of state power by police, courts, and correctional officials.*

The experiences of Third World peoples suffering "harm" at the hands of government officials most strikingly warn us to be aware of the potential abuses of state power. Such luxuries as appellate review, right to counsel, access to bail and pre-trial release, and freedom from unreasonable searches and seizures take on new meaning when compared to the abuses so readily visible in Third World nations.

D. In the area of "corrections" the Third World experience instructs us to be on the look out for the *links between the development of "prisons" and the use of prisoners for labor.* Rehabilitation, deterrence, and more "humane" forms of treatment as justification for imprisonment become pale next to the ability of "prisons" to bring large groups of people together for the purpose of performing some common task or tasks without pay. In Tanganyika in 1922 an Annual Report to the German government calls natives "indolent and unreliable" as laborers. The report goes on to suggest a solution to this problem:

In the distant future economics will automatically compel every native to do more than he is doing now, but before that state is reached, for his own good and training for the hard work ahead of him, *surely a little compulsion*, on the right line should, when example and advice fail, be permitted. (Williams, p. 28)

This "little compulsion" took various forms: overt violence, hut taxation, and the use of the criminal law. Declaring indolence (vagrancy) a crime subjected many to arrest. Arrest subjected them to the penalty of working on plantations or settler farms to produce products for the colonial powers to sell on the world market. Obviously natives not used to or having no reason to produce above a subsistence level could not produce a surplus needed for "economic growth."

In New Guinea, the Dutch were unable to persuade natives to build roads either "for their own benefit" or for pay based on hourly contracts:

Exasperated by broken promises and the lack of labor, the official in charge of road building sent out police to round up recalcitrant workers from various communities. (Pospisil, p. 143)

Such practices in the Third World teach us to search our own history for links among poverty, welfare, and crime, and among institutions such as prisons, workhouses, almshouses, and the definition of crime and the forms of punishment used by a particular society/polity.

Summary

Adding to our understanding of American criminal justice, the Third World context provides a "control group" of nations with people attempting to define and deal with behaviors and conditions problematic in their national and personal lives. Studying the origins, uses, and processes of criminal justice in these nations allows us to examine critically the assumptions of our own criminal justice system and its operation. The experiences of Third World nations undergoing rapid and constant social, economic, and political change serve as laboratories where the assumptions and political and economic realities of criminal justice operations emerge. The criminal justice system becomes simply one "problem solving" mechanism among a host of others. In the Third World, the relationships among government, power, politics, economics, and "social justice," and social harm clearly emerge, as governments seek to build nations and direct the destinies of their people.

NOTES

¹George F. Cole, *The American system of criminal justice*, 2nd ed. (North Scituate, Mass: Duxbury, 1979); Donald J. Newman, *Introduction to criminal justice*, 2nd ed. (N.Y.: Lippincott, 1982); James P. Levine, et al., *Criminal justice: A public policy approach* (N.Y.: Harcourt Brace Jovanovich, 1980); G. D. Robin, *Introduction to the criminal justice system* (N.Y.: Harper and Row, 1980); J. Senna and L. Siegel, *Introduction to criminal justice*, 2nd ed. (St. Paul: West Publishing Co., 1981); Ronald Waldron, et al. *The criminal justice system: An introduction* (Boston: Houghton Mifflin, 1980).

²Faculty in the seminar represented the following disciplines: Anthropology, English Literature, Women's Studies, Vocational Education, Education, Engineering, Biology, Economics, Sociology, and Criminal Justice. Seminar directors represented Geography and History.

³Here it is interesting to note the differences in the substance of order maintenance activities between the American and Third World contexts. U.S.

... in order maintenance capacity, the police are involved in non-crime assignments such as referring the disadvantaged to social agencies furnishing information to citizens, providing emergency ambulance service, preventing suicide, aiding the physical disabled and mentally ill, giving shelter to drunks who might otherwise freeze to death on the streets, and assisting disaster victims. (Robin, 57) In the Third World order maintenance takes on political rather than service overtones, here "domestic order" is seen as a prerequisite for evolutionary social, political and economic change. As Potholm observes: "The United States and other highly developed nations may have the institutional framework to permit some extra legal

(political) activities and to provide for highly charged demand pressures. Many political systems, however, lack these buffers, and the police force and legal framework may be the only forces standing between the powerful pressure groups and the nerves of the political system. I refer particularly to a government bent upon reform and change being overwhelmed in the early stages of its activities by groups viewing politics as a zero-sum game and willing to use extra legal force even if it means the destruction of the political system" (Potholm, p. 141).

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