



# EGUZKILORE

(Flor protectora contra las fuerzas negativas)

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## LXVI CURSO INTERNACIONAL DE CRIMINOLOGÍA

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# CULTURAL INTEGRATION AND GLOBALIZATION OF CRIMINAL JUSTICE

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**Resumen:** Este artículo se centra en un aspecto de la justicia social, la justicia criminal, subrayando el mayor desarrollo de ésta en el ámbito internacional, intentando percibir el alcance de la globalización, y el contexto en que esta globalización puede operar. En este sentido se pretende alcanzar un doble objetivo: por un lado, profundizar en el conocimiento teórico de la globalización de la justicia criminal, y su contexto en la cultura de los derechos humanos; y, por otra parte, proporcionar algunas claves para una comprensión mayor del funcionamiento de esta justicia criminal a nivel global.

**Laburpena:** Justizia kriminalari buruzkoa da artikulu hau. Nazioartean izan duen garapena azpimarratzen saiatu da, globalizazioaren hedadura antzematen saiatu nahian eta globalizazioak non jokatu dezaken ikusiaz. Zentzu honetan bi helburu lor daitezke: alde batetik, justizia kriminalaren globalizazioaren ezagupen teorikoak sakontzea, giza eskubideen kontextuan duen paperean, eta beste alde batetik, justizia kriminalak nola funtzionatzen duen ulertzeko gakoak ematea.

**Résumé:** Cet article est axé sur un aspect de la justice sociale, la justice criminelle, en soulignant le plus grand développement de celle-ci dans le cadre international, en essayant de percevoir l'importance de la globalisation, et le contexte dans lequel cette globalisation peut opérer. En ce sens, on essaie d'atteindre un double objectif: d'une part, approfondir dans la connaissance théorique de la globalisation de la justice criminelle, et son contexte dans la culture des droits de l'homme; et, d'une autre part, adapter quelques clés à la fin d'une meilleure compréhension du fonctionnement de cette justice criminelle au niveau global.

**Summary:** This contribution focuses on one aspect of social justice, namely criminal justice. It studies the growing development of criminal justice at the international level, and wishes to understand to which extent globalization has been achieved, and in what general context this globalization can operate. In this sense, this contribution has a double objective: on the one hand, it is aimed at deepening our theoretical understanding of the globalization of criminal justice, and its context of human rights cultures; on the other hand, it wishes to provide some keys for a more comprehensive functioning of criminal justice at the global level.

**Palabras clave:** Justicia social, Justicia criminal, Globalización, Derechos humanos.

**Hitzik garrantzikoak:** Justizia soziala, Justizia kriminala, Globalizazioa, Giza eskubideak.

**Mots clef:** Justice sociale, Justice criminelle, Globalisation, Droits de l'Homme.

**Key words:** Social justice, Criminal justice, Globalization, Human rights.

## INTRODUCTION

The main theme of this summer course is a very important one, as it investigates the relationship between human rights and social justice, and in doing so, pays due attention to broad trends in society, namely globalization and multiculturalism. Moreover, this theme is not limited to a topic for research, but also acts as a vehicle for a transatlantic dialogue and for transatlantic exchanges between countries of the European Union and Canada.

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### 1. THE GLOBALIZATION OF CRIMINAL JUSTICE: A MULTI-DIMENSIONAL CONCEPT

The last decade, the notion of “globalization” has become common language in a number of sciences, particularly in economics, in sociology, and in political sciences. In law and in criminology, it is mostly referred to as an external trend that is likely to impact on the legal or the criminological field. Here, we look at globalization as a development that is internal to law and criminology, by focusing on the concept of the globalization of criminal justice.

#### 1.1. The Development of International Criminal Justice

As a matter of common understanding, the globalization of criminal justice is often understood as a combination of three developments:

- the development of substantive international criminal law, by defining new international crimes (e.g. crimes against humanity, crimes of aggression), and by encouraging the incorporation into national law of existing crimes (e.g. genocide and war crimes);
- the development of the international responsibility of individuals for criminal acts, as completely separate from the responsibility of states;
- the development of international enforcement institutions, such as the International Criminal Tribunal for ex-Yugoslavia and for Rwanda in the 1990s, and in recent years, the new International Criminal Court, and mixed tribunals such as in Sierra Leone and East Timor.

## 1.2. Internationalization vs. Globalization?

However, do these international trends amount to globalization? Following Manuel Castells, the new “guru” of the network society, it is argued here that globalization encompasses more, namely “*the capacity to work as a unity, in real time and on a planetary scale*”<sup>1</sup>. Globalization, conceived as such, has far-reaching consequences: rigidity is replaced by fluidity, territoriality by non-territoriality, and hierarchy by non-hierarchy. In sum, the “new architecture” is no longer based on structures of the nation-state but on networks in international spheres.

Hence, in the area of criminal justice, globalization is more than the development of international criminal law, the international criminal responsibility of individuals, and international enforcement institutions. It also encompasses the capacity to work as a unity, in real time, and on a planetary scale. With the removal of the boundaries of time and space in current-day criminal justice mechanisms, the latter two requirements seem fairly well established. The problem, however, remains with the idea of unity. Sometimes, clear lacunae exist, for example when national institutions of criminal justice manifestly fail to deal with criminal cases, for lack of efficiency or political will. Treating these cases in third countries, under their universal jurisdiction laws, is only possible in rare cases, and usually with many loopholes attached for political reasons. Treating them before international tribunals or courts is only possible under strict conditions, related to the legal competences and the practical constraints of such bodies. At other times, overlaps may exist, between the competences of international and national institutions to deal with criminal cases, without the possibility of reaching a consensus between the two levels, e.g. for lack of cooperation by the national authorities. Both the lacuna and the overlaps point at the absence of mechanisms for coordination, in law or in practice, and thus they suggest that globalization has not yet been achieved.

## 2. TOWARDS A HUMAN RIGHTS CULTURE

But the problem is more fundamental. The question is whether the existence of, and the coordination among, international and national mechanisms of criminal justice is sufficient to build a truly global system of criminal justice. It can be argued that such system cannot operate in splendid isolation, but requires a comprehensive environment to flourish. For this reason, it is useful to expand our framework to the notion of human rights cultures, a notion well known in law. Although criminal justice only refers to a small portion of human rights, namely to hard core rights the violation of which constitute international crimes, the notion of a human rights culture is particularly useful for further exploration. In this section, I will analyze it through the looking class of organizational cultures.

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1. Castells, Manuel (1996): *The Information Age: Economy, Society and Culture, vol. 1: The Rise of the Network Society*, Oxford, Blackwell, 556 pp., p. 92 e.v.

## 2.1. What Is a Human Rights Culture?

In general, a human rights culture refers to an environment in which human rights are promoted, protected, and fostered. In other words, a fertile breeding ground for fundamental rights and freedoms in all their dimensions. According to Jeremy Sarkin, a South African human rights scholar and activist, the Apartheid regime did not allow a human rights culture to develop because “*the system bred intolerance, a culture of violence, and lack of respect for life and, indeed, rights in general*”<sup>2</sup>.

In this contribution, I will not deconstruct the notion of culture in an anthropological sense (indigenous, modern, minorities, multicultural environments), nor in a religious sense (judeo-christian, Islamic, bouddhist or hindu), nor even in a legal sense (common law vs. civil law). Rather, I will look at it from an organizational point of view.

## 2.2. The Looking Glass of “Organizational Cultures”

In the organizational literature, more and more attention is being paid to aspects that go beyond structures and strategies. Culture in particular has been “discovered” as a very important variable, thought to possess three main functions: it is “the creator of meaning” for an organization and for its employees, it creates integration and thus coherence for the members of the group, and it provides direction, particularly for newcomers in an organization.

The American organizational theorist, Edgar Schein, is thought to be the “father” of the idea of organizational cultures. His definition is still widely used as “*the shared pattern of thinking, ideas, feelings and values as the result of shared experiences and joint learning*”<sup>3</sup>. Schein went on to deconstruct the notion of culture by comparing it to an onion, that consists of various skins, the content of which becomes more fundamental as they are peeled off. This “onion of culture” holds four skins: the first relates to “symbols” (such as logos, dress, architecture), the second to “heroes” (e.g. important persons or events for the organization), the third to “rituals” (such as greetings, time management), and the fourth to “values and norms” (such as politeness, creativity, self-development). Schein shows us that culture consists of several layers, the outer ones more tangible, the inner ones less tangible. Nevertheless, organizational cultures are extremely important, and exert considerable influence on the functioning of an organization, next to strategy or structure. Schein also suggests that cultures can be stronger, if they possess strong characteristics in each skin, or weaker, if they do not.

A second way of looking at organizational cultures is by trying to identify certain types of cultures, and thus to construct a typology. This approach, taken by another

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2. Sarkin, Jeremy (1998): *The Development of a Human Rights Culture in South Africa*, 20 *Human Rights Quarterly* 628-665, 628.

3. Schein, Edgar (1985): *Organizational Culture and Leadership*, San Francisco, Jossey-Bass, 50 (2<sup>nd</sup> edition in 1997).

American author, Robert Quinn, and further developed by an international group of organizational psychologists, is based on two fundamental distinctions in organizations, the first between control and flexibility, and the second between attention paid to the organization vs. the individuals<sup>4</sup>. As a result, four types of organizational cultures arise: the “supportive” culture, that values individual growth and cooperation and trust between participants, the “innovative” culture, that is very future-oriented and emphasizes creativity and competition, the “goal-oriented” culture, that puts the accent on rational planning in order to reach efficiency and effectiveness, and the “rule-oriented” culture for which consistency and stability is of prime importance as evidenced by the respect for rules and procedures. This typology is not purely conceptual, but it can also be tested empirically on the basis of questionnaires. Then, it becomes clear what kind of culture is prevailing in an organization, most often a combination of several cultures, and what kind of culture is aspired to by the employees. As such, this typology goes beyond being a diagnostic instrument, but also serves as a tool for change management in organizations.

### **2.3. An Integrated Concept of Human Rights Culture**

It is not difficult to transpose the ideas of organizational culture to the field of human rights. First of all, a human rights culture has very similar functions, as the “creator of meaning” for communities and societies, as providing coherence to individuals and to groups, and as giving a sense of direction to newcomers.

Furthermore, the image of the onion is particularly interesting for a human rights culture. Communities, cities, countries, societies, and all social entities, hold several cultural layers that relate to human rights, ranging from symbols (e.g. the logo of the UN or the Red Cross), and heroes (e.g. Henri Dunant, modern-day NGOs), to rituals (e.g. proceedings before tribunals and courts, human rights discussions in political bodies), and values and norms (e.g. truth, accountability, reparation, reconciliation). In some social entities, these elements are stronger, in others they are weaker. In any case, a human rights culture conceived this way exerts considerable influence on the making of a community or a society.

Finally, the typological approach reveals that a human rights culture may consist of very different subcultures, each emphasizing specific aspects: a supportive culture will value measures and initiatives for individual growth and cooperation between its members, an innovative culture emphasizes the need for creativity in the long run, the goal-oriented culture wishes to see tangible results by putting forward clear objectives and a tangible planning, and a rule-oriented culture is paying most attention to following rules and procedures in view of consistency. Subcultures are not always supporting one another, but may also be contradictory, e.g. rule-oriented cultures may hinder more innovative experiments. Members of a group, a community or a society can be asked what kind of culture(s) actually exist, and in which direction they wish to go.

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4. Quinn, Robert, discussed in: VAN MUIJEN, Jaap, KOOPMAN, Paul & DE WITTE, Karel (1996): *Focus op organisatiecultuur* (Focus on Organizational Culture), 23-62. Schoonhoven: Academic Service.

### 3. THE GLOBALIZATION OF A CULTURE OF CRIMINAL JUSTICE

In this contribution, I have discussed the notion of globalization, and the notion of a human rights culture. It is clear that these are not separate realities, but that they can easily be interlinked through the argument that the globalization of criminal justice is not viable without the existence of a strong culture of criminal justice.

First, the full-fledged globalization of criminal justice requires more coordination between various institutions, international, national and in third countries, in order to avoid both lacunae and overlaps. Here, the idea of a triptych of mechanisms, each with their own competences and particularities, may be a fruitful image to start weaving a net of criminal justice at a global level<sup>5</sup>.

However, the construction of an intricate and complex network of criminal justice structures and institutions around the world in itself does not suffice unless similar energy is invested into the development of a culture of criminal justice. Inspiration can be found through the lens of “organizational cultures”. Through this lens, a criminal justice culture can be seen to consist of various layers, ranging from visible and tangible elements, such as logos and role models, to more abstract elements, both to be combined in stronger or weaker fashions. Moreover, a criminal justice culture can be subdivided in various types, e.g. rule-oriented vs. goal-oriented or innovative, and these types may even conflict with one another. But just as much as the typology enables the reflection of an actual situation, it also allows for pointing at desirable developments in the future.

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5. See The Brussels Principles against impunity and for international justice, in: X., *Combating Impunity. Proceedings of the symposium held in Brussels from 11 to 13 March*, Brussels: Bruylant (multilingual edition Français-English-Nederlands-Español).