International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

Contemporary Criminal Justice Systems. Absence of a Social Inclusion Approach[1]

Anabel Cerezo Domínguez
University of Malaga

Pablo Rando Casermeiro
University of Seville

https://doi.org/10.1387/inecs.29248

Abstract: In recent decades, comparative criminal policy studies have enriched the discussion on how to evaluate criminal justice systems from different perspectives. This special issue takes a novel comparative approach to the socially exclusionary manifestations of contemporary criminal policy. First, it presents the criminal policy model of social inclusion, offering a theoretical and methodological proposal for reconsidering the current configuration of criminal policy in the Global North. Alongside this, the exploratory application of the proposed framework in South American jurisdictions enriches the discussion from a Global South perspective. Subsequently, the usefulness of comparative criminal policy is demonstrated by exploring various areas of the criminal justice system in Europe and the Americas. The book reflects on various socially exclusionary criminal manifestations in areas such as immigration, mental health in prison, social benefits and the management of poverty through penal control. Taken together, this issue contributes to filling a gap in the literature on comparative criminal policy studies.

Keywords: *Social Exclusion, Comparative Penal Policy, Criminal Justice System, Criminal Policy, Comparative Studies, Rimes*

Comparative criminal policy is currently one of the most promising and ambitious areas of research in criminal law and criminology. Significant differences between jurisdictions therefore persist, notwithstanding the well-known and increasingly influence of international and supranational bodies on domestic criminal policy. Although comparative criminal policy studies entail a hight number of difficulties, they are nevertheless valuable insofar as they allow for an examination of how a given country responds to criminal phenomena in a broader, socioeconomical and sociopolitical context. Typically, the parameter used in such comparative analyses is the degree of severity or punitiveness in penal treatment. While severity or punitivism is undoubtedly a determining factor, some authors consider it insufficient to fully capture how criminal justice systems are structured. One of these scholars is Díez-Ripollés, who have argued that employing a broader comparative parameter—namely, the criterion of social exclusion—would provide a more comprehensive picture of the criminal justice system and its effects on individuals. This approach involves assessing whether criminal justice systems across different states are more or less socially exclusionary for those who come into contact with them (suspects, defendants, offenders or ex-offenders).

In this way, the RIMES research team at the University of Malaga has, over the past twenty years, devoted its efforts to constructing a comparative instrument, applying it to a

[1]Grant PID2024-158413NB-100 funded by MICIU/AEI/10.13039/501100011033, and by ERDF/EU.

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

substantial number of countries, and demonstrating its suitability for enabling increasingly robust comparisons. Currently the RIMES instrument consists of a set of rules and practices defined through a series of items.

Although, at the initial design stage of the RIMES instrument, the number of identified socially exclusionary rules and practices was very large, some were subsequently discarded over time in order to produce a more refined and manageable instrument. Thus, the final version of the RIMES instrument comprises 39 rules and practices, organised into nine thematic pools:

> **Pool 1.** *Control of Public Spaces* (arrest for repeating begging on the streets, arrest for loitering, discriminatory police restrictions on certain people accessing certain public spaces, discriminatory police stops)
>
> **Pool 2.** *Legal Safeguards* (absence of public defence for the indigent, payment of court fees for review of sentences, police custody time exceeding 5 days, high percentage of mentally ill people serving sentences in ordinary prisons)
>
> **Pool 3.** *Sentencing and Sanctions System* (no alternatives to imprisonment or suspension of imprisonment, no alternatives to imprisonment, imprisonment is the only alternative to non-payment of fines, imprisonment rate above 120 per 100,000 inhabitants, three quarters of prisoners serve their sentences in closed institutions)
>
> **Pool 4.** *Harshest Penalties* (death penalty, life imprisonment, more than 20 years for life sentence review, more than 20 years served on life imprisonment)
>
> **Pool 5.** *Prison Rules* (lack of a specific prison regime for juveniles, lack of legal provision for prison legal aid, payment of fees by prisoners for the review of judicial decisions, parole)
>
> **Pool 6**. *Preventive Intervention* (pre-trial detention, post-sentence preventive detention)
>
> **Pool 7.** *Legal and Social Status of Offenders and Ex-offenders* (deprivation of political participation rights, deprivation of other civil rights, access to social resources, deportation of foreign convicted persons)
>
> **Pool 8.** *Police and Criminal Records* (expansion and accessibility of criminal records, media publish personal data or photos of ex-convicts)
>
> **Pool 9.** *Youth Criminal Justice* (age limits, differentiated treatment of adults, deportation of foreign juvenile offenders).

In defining the thematic pools and the items, care was taken in the selection of items to ensure that they possess sufficient discriminatory capacity, that is, that they have the ability to reveal significant contrasts between different countries.

In an initial phase, the instrument was tested in Spain and was subsequently extended to various Western countries, both within the European and Anglo-Saxon contexts. In a first round, the instrument was applied to Germany, Italy, England and Wales, Poland, and the states of both New York and California. In a second stage, it was applied to Finland, Romania, Portugal, France, and the states of both Florida and Texas. Over time, its progressive extension to other countries can be expected.

This special issue takes a novel comparative approach to the socially exclusionary manifestations of contemporary criminal policy. Additionally, comparing criminal justice systems from the social exclusion perspective, has laid the groundwork for rethinking

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

contemporary criminal policy from a social inclusion approach. In doing so, comparative analysis of national penal systems will be enriched by examining criminal policies realities across 13 jurisdictions from both social exclusion and social inclusion perspectives.

Accordingly, the first article, signed by José Luis Díez-Ripollés, presents the criminal policy model of social inclusion, offering a theoretical and methodological proposal for reconsidering the current configuration of criminal policy in the Global North. The second one, signed by José Becerra-Muñoz, evaluates composite indices that measures criminal policy from a comparative perspective. The overarching goal is to assess RIMES Index within its conceptual context and to provide a reasoned argument regarding its quality. The overall objective of the third article, signed by Anabel Cerezo & Pablo Rando-Casermeiro, is to present the results of applying RIMES in 13 jurisdictions and the position of each of them on a continuum from least to most social exclusion. Alongside this, in the fourth article, signed by Bertha Verónica Prado-Manrique, the exploratory application of the proposed framework in South American jurisdictions enriches the discussion from a Global South perspective. Subsequently, the usefulness of comparative criminal policy is demonstrated by exploring various areas of the criminal justice system in Europe and the Americas.

This special issue reflects also on various penal socially exclusionary manifestations across criminal justice systems. Related to **criminal sanctions** for offenders, there are 3 articles. The first one, signed by Noelia Corral, analyses comparative criminal policy with regard to life imprisonment. The second one, signed by Patricia Rossetto, examines the constraints imposed on life sentences by Article 3 of the European Convention on Human Rights as interpreted by the European Court of Human Rights. Rather than questioning the permissibility of life imprisonment per se, the analysis focuses on the conditions under which life sentences and other long-term custodial penalties become incompatible with the prohibition of inhuman or degrading punishment due to their irreducible character. In the third article, signed by Patricia San-Juan, the implications that the availability of non-custodial sanctions in criminal justice systems has in terms of social exclusion are examined. It also addresses the analytical and interpretative challenges involved in identifying functionally equivalent offence categories and comparing such alternatives within different legal contexts.

Regarding **prison conditions** of inmates, there are another 3 articles. The first one, signed by María Izco, identifies similarities and differences among the 13 jurisdictions composing our sample in relation with the incarceration rate, the percentage of inmates serving sentences in closed prisons, the existence of a specific prison regime for young adults, the legal provision for inmates of legal assistance and the legal obligation to pay fees before claiming judicial review of penitentiary decisions. The second one, signed by Cristina Palomino, analyses the circumstances of individuals with mental illness in prison, concluding that a significant number of them serve their sentences in regular correctional facilities. The article concludes with a critical reflection on the relevance of applying a gender perspective to more effectively address the social exclusion that imprisonment may engender. Thirdly, the regulations in prisons of family and intimate visits affect the physical and mental well-being of inmates, the maintenance of social ties, and, ultimately, their opportunities for reintegration. Despite the importance of this practice, there are notable contrasts in

International e-Journal of Criminal Sciences

ISSN: 1988-7949 UPV/EHU Press www.ehu.eus/inecs

permissiveness among national penitentiary authorities. This article is signed by Lorea Arenas.

In this special issue, there is also a mention related to ex-offenders and the **post-conviction consequences.** The first article in this regard, signed by Elena Casado, examines the extent to which the regulation and practice of post-conviction security detention prolong deprivation of liberty based on notions of future dangerousness. It further shows that the systems most aligned with socially acceptable prevention are those that strictly limit or refrain from using such measures. The article signed by María Contreras & Angie Rojas shows that access to social housing is a cornerstone of reintegration and a key factor in preventing recidivism. However, an increasing number of countries are imposing legal limits that restrict this right as a collateral consequence of conviction.

There is an article that examines the relationship between data protection, **criminal records**, and media practices from a comparative international perspective. Jacqueline Carvalho compares legal systems that allow public access to criminal records with those that impose restrictions, assessing whether personal data of ex-offenders is nevertheless disclosed in media reporting.

Two articles of this special issue are related to **juvenile justice**. In the first one, Fátima Pérez & Gabriel López analyse how penal social exclusionary criminal policy approach is implemented within juvenile justice systems across different legal contexts. The findings reveal a general tendency to approximate the treatment of juveniles to that of adults in cases involving serious offences. The second article, signed by Carmen Rodríguez-Hidalgo, aims to understand, on the one hand, how early criminal intervention can contribute to the stigmatization of minors and, on the other, to study how the centrality of deprivation of liberty as one of the most commonly applied measures weakens young people's social, educational and family ties.

Finally, Pablo Rando-Casermeiro examines the punishment of loitering as a technique for controlling public spaces. The study highlights the significant differences between common law countries and civil law countries, seeking to identify explanatory patterns and current trends in regulatory interventions related to these offenses.