

BETWEEN JUSTICE AND LAW: LAW AND CRIMINALITY IN BRAZIL AND JAPAN

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SUMMARY

1. Introduction; 2. Comparing Brazilian and Japanese legal systems.

RESUMO

Estudo comparativo entre os sistemas jurídicos brasileiro e japonês, com enfoque nas semelhanças das estruturas da Justiça Criminal.

ABSTRACT

This article intends to develop a comparative study between Brazilian and Japanese legal systems, focusing on the criminal justice behavior.

Palavras-chaves: Estudo comparado. Brasil. Japão. Sistemas Legais. Legislação Criminal.

Keywords: Comparative study. Brazil. Japan. Legal systems. Criminal Law.

1. INTRODUCTION

The classes ministered during “Summer Program for Peace and Law 2013 in Hiroshima University” not only were worthfull for us to learn general matters regarding Japanese legal system, but also were decisive for us to understand better the Brazilian Law and society.

In order to comprehend Japanese law the classes of Professor Hajime Nishitani were fundamental, describing the recent development of the Japanese legal system after a brief but important description of its evolution since Tordesilhas Treaty until the recent territorial dispute against China and Korea (Takeshima and Senkaku Islands), passing through the whaling issue and the influences from Second World War within constitutional and international Japanese Law.

2. COMPARING BRAZILIAN AND JAPANESE LEGAL SYSTEMS

After observing clear differences between Brazilian and Japanese legal systems, there was a great surprise during classes ministered by Professor Nobushito Yoshinaka when we were presented to a criminal justice in great part identical to the

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Brazilian one, especially related to its General Principles and the so called “Theory of Crime”², both directly influenced from Germany Criminal Law³.

Except for death penalty⁴ and life imprisonment, which are not present with- in Brazilian law, the identity between both criminal systems is practically total, with exception the distinct quantification of penalties.

The question that immediately emerged from this identity was the huge dif- ference between criminality rates in both countries. How could countries with identi- cal legal treatment towards crime present social results so different?

Brazil is one of the twenty most violent countries of the world according to United Nations Office on Drugs and Crime (UNODC)⁵, with an overwhelming number of 22,4 murders⁶ per 100.000 inhabitants in the year 2010, 26,8 in 2011 and 27,4 in 2012. The increasing number of murders locates Brazil among a “War Zone” classifica- tion, which is even more astonishing if considered that there is not a declared armed conflict in Brazil. Its violence is more concentrated in its huge urban centers, with fif- teen of the most fifty violent cities of the world in number of homicides⁷.

On the other hand, Japan is leading the less violent countries ranking, with a rate that varies between 0,3 (2008) and 0,4 (2009) homicides per 100.000 inhabitants.

² German criminal law Straftatsystem based on Tatbestandsmassigkeit (hypothetic definition of the of- fense), Rechtswidrigkeit (wrongfulness or unlawfulness) and Schuld (culpability).

³ In 1868 the Shogunate collapsed, and government was restored to the Emperor. As the *Meiji* Govern- ment proceeded to modernize Japan, revolutionary changes were brought about in the area of criminal justice. Such procedures as rendering judgments solely upon confession were abolished, and torture was prohibited. The judicial system as a whole started to approximate Western approaches. In 1880 the Government enacted *Chizaiho*, modeled on the French Code of Criminal Procedure established by Napoleon. In 1890 *Chizaiho* was revised to the Code of Criminal Procedure with some amendments, the first Western-style comprehensive criminal justice system adopted in Japan. In 1922 a new Code of Criminal Procedure was enacted under the influence of German law. It can be said that the criminal procedure system following the *Meiji* period was based completely upon the continental European system. (Supreme Court of Japan – OUTLINE OF CRIMINAL JUSTICE IN JAPAN. Hystory of Criminal Justice in Japan. In http://www.courts.go.jp/english/judicial_sys/criminal_justice_index/criminal_justice/index.html#1)

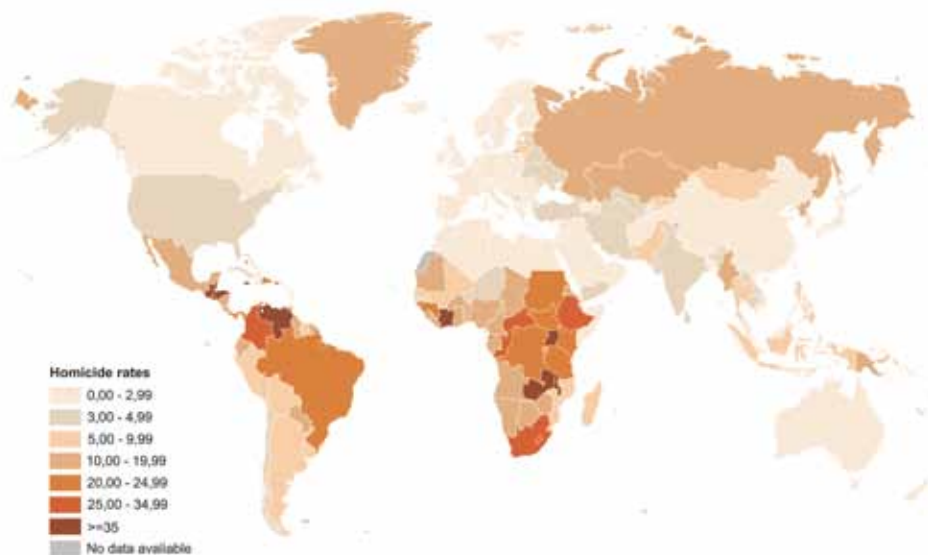
⁴ Constitution of the Federative Republic of Brazil – Title II, Fundamental Rights and Guarantees. article 5. XLVII – there shall be no punishment:

- a) of death, save in case of declared war, under the terms of article 84, XIX;
- b) of life imprisonment;
- c) of hard labour;
- d) of banishment;
- e) which is cruel;

⁵ UNODC – United Nations Office on Drugs and Crime <http://www.unodc.org/unodc/en/about-unodc/annual-report.html?ref=menu-top>

⁶ Intentional homicide: unlawfulldeath purpose inflicted on a person by another person.

⁷ <http://www.seguridadjusticiaypaz.org.mx/biblioteca/prensa/viewdownload/5-prensa/163-san-pedro-sula-otra-vez-primer-lugar-mundial-acapulco-el-segundo>

Homicide rates by country (2010 or latest available year)

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Source: UNODC Homicide Statistics.

(apud⁸)

This huge difference between these countries is more likely to be understood when one puts aside strict legal analysis and considers other social features that contribute to this result more clearly and efficient than a mere law making process and general penalties predictions. Educational rates and human development index, and not a menace of criminal sanction, prove to be much efficient towards combat against criminality.

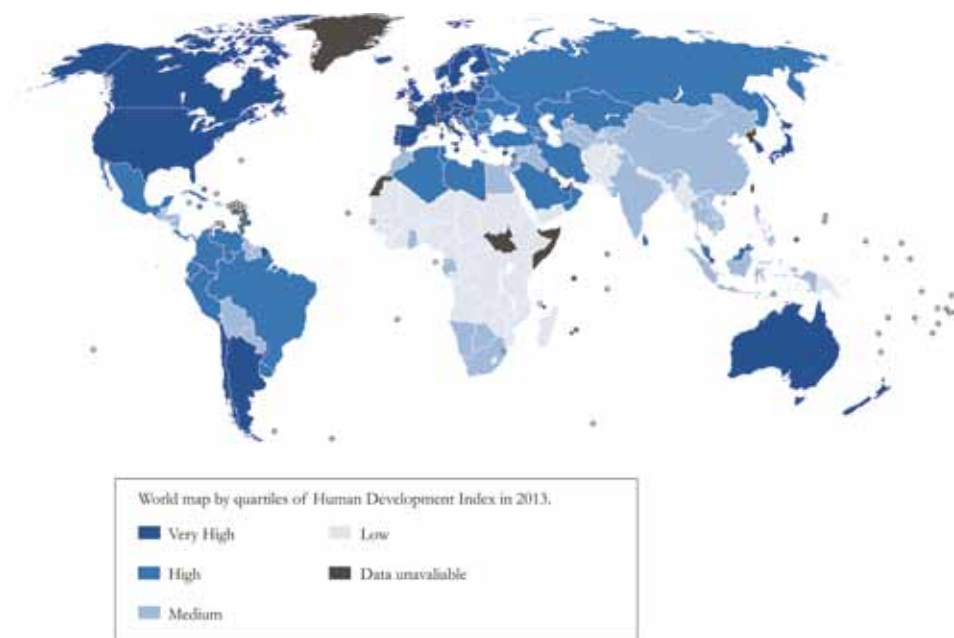
While Japan⁹ is the fourth country regarding general education index (grade 0.89) according to Pearson's analysis¹⁰, Brazil occupies only the thirty ninth position (grade -1.65).

⁸ Source: UNODC Homicide Statistics.- The 2011 *Global Study on Homicide* – United Nations Office on Drugs and Crime (UNODC) in: www.unodc.org/documents/; p. 11, em 10.11.2013.

⁹ EDUCATION IN JAPAN COMMUNITY Blog – “Japan comes up fourth in newly launched Pearson education index-rankings” – in: <http://educationinjapan.wordpress.com/2012/11/28/japan-comes-up-fourth-in-newly-launched-pearsons-education-index-rankings/>

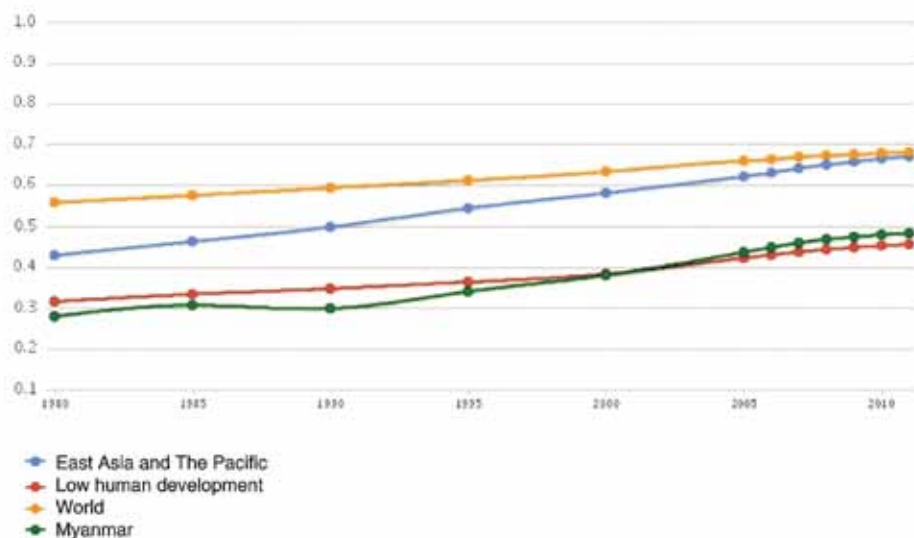
¹⁰ <http://www.pearson.com/news/2012/november/pearson-launches-the-learning-curve.html>

When are considered more complex social figures, such as HDI (Human Development Index)¹¹, Japan appears as the tenth country, Brazil occupies only the eighty fifth position.



However, despite the fact that there is an evident logical connection between human development, education, poverty and criminality, still there remain some paradoxical features which do not allow a simplistic conclusion of a “cause and effect”, especially when it is considered that Brazil possess an increasing HDI factor, which improvement pace is much higher than the regional and global average since the last twenty years, but yet verifies a further elevation of violence rates at the same period.

¹¹ UNDP Human Development Report Office – The Human Development Index (HDI) is a composite measure of health, education and income that was introduced in the first Human Development Report in 1990 as an alternative to purely economic assessments of national progress, such as GDP growth. It soon became the most widely accepted and cited measure of its kind, and has been adapted for national use by many countries. HDI values and rankings in the global Human Development Report are calculated using the latest internationally comparable data from mandated international data providers. Previous HDI values and rankings are retroactively recalculated using the same updated data sets and current methodologies, and are presented in Table 2 of the Statistical Annex of the 2013 Report. The HDI rankings and values in the 2013 Human Development Report cannot therefore be compared directly to HDI rankings and values published in previous Human Development Reports. <http://hdr.undp.org/en/statistics/hdi/>, em 10.3.2013.



From: www.aph.ga.au. Burma; Human Development Trends, 1980-2011, em 10.03.2013

Such mathematics seems even more difficult to be explained when are studied the same rates (criminality *vis-à-vis* HDI) from a developed country such as the USA, which, in 2010, had the rate of 4,8 homicides per 100.000 inhabitants, the highest rate among developed countries (industrialized). In that country, as well as Japan, death penalty and life imprisonment are previed in Law. During 2002, there were nine death penalty executions in Japan, while there were forty two in the US.

Basing upon these figures, it seems to exist other factor that influences decisively statistics and rates regarding the low criminality rates in Japan when compared to Brazil and to the US. Besides the general social feature, cultural matters gather a huge impact regarding criminality control.

Nonetheless, in the class ministered by Professor Taiji Hotta Phd., “Japanese Culture and Development”, we could observe the deep influence that the four main religion in Japan cause within both japanese culture and social structures.

The influence of Buddhism, Confucianism, Taoism and the Shintoism within the entire society elevates to a high level of respect typical values of Japanese society.

The recognition of the great importance of group harmony (WA – Group Harmony) avoids the exaggerated individualism and success quest nurtured with strong influence from north-American culture which generate the seek for success by means of any costs.

The valorization of the personal efforts and hard work as legitimate means towards success achievement expressed on DORYOKU and ISSHOKENMEI ideals, undoubtedly are factors that avoid population from illegal and criminal ways of obtaining success, or even from the “easiest way”.

It is important to mention, however, that this exaggerated seek for the ideal of maximum effort towards perfection and elevated personal challenge yet causes negative impacts, such as the death caused by exhaustion, “death from overwork”, also known as Karoshi, and the alarming suicidal rates, especially amongst young people.

It is possible to conclude, therefore, that criminal law is not the most important feature to prevent crime, once crime is also an issue that involves wider social and cultural problems.

The Japanese society collective consciousness¹², associated to the country high level of development and education, further than criminal sanctions and penalty menaces, are, in our understanding, features that allow to this country to occupy a privileged position considering criminality rates worldwide. This is definitely an example to Brazil, which might aim these positive aspects of Japanese people in order to gather economic and social development towards a society based upon high values to achieve its goals, in special to protect its citizens from the growing urban violence and criminality.

¹² “The totality of beliefs and sentiments common to the average members of a society forms a determinate system with a life of its own. It can be termed the collective or common consciousness.” Emile Durkheim – *The Division of Labor in Society* (1893).