*Comparing Constitutions*. By S. E. FINER, VERNON BOGDANOR and BERNARD RUDDEN. [Oxford: Clarendon Press. 1995. x + 395 pp. ISBN 0–19–876345–X. No price given]

*Comparing Constitutions* gives a good comparative overview of the basic features of the British, American, German, French and Russian Constitutions. It contains a comparative chapter dealing with the major characteristics of constitutional law (e.g. amendments, federalism, governance, etc.) and a very good comparative chapter on the UK Constitution. Over two-thirds of the book is not analytical, but devoted simply to reproducing the full texts of the five constitutions it examines. The chapter on the UK Constitution is obviously of particular interest to the foreign reader, who will be pleased to find a concise, easy-to-read outline of the fundamental structures of UK constitutional law. Unfortunately, the book suffers from a drawback with regard to the German Basic Law: the version printed in the book does not include all the amendments made since December 1993. This is a pity because the amendments, particularly those made in October 1994, are numerous and apply to essential features of the German Constitution (e.g. allocation of legislative competences). However, the book is extremely useful to the English-speaking reader simply because it makes available to him or her translations of the texts of the constitutions. Finally, the Treaties establishing the European Community and the European Union as well as the European Convention on Human Rights are reproduced in the book. This may come as a surprise because the EU is not a single State so that these documents are not constitutions in the traditional sense. Yet the authors have included these documents in order to enable the reader to study in embryo the formation of a United States of Europe. This is a very progressive approach, as such a development is nowhere on the political agenda in Europe. In a nutshell, despite the drawbacks mentioned, the book is very useful when making a first comparative approach to the area of constitutional law. However, a second edition which includes the latest version of the German Basic Law would be a good idea.

SVEN RECKEWERTH

*Criminal Justice in Europe: A Comparative Study*. Edited by C. HARDING, P. FENNEL, N. JÖRG and B. SWART. [Oxford: Clarendon Press. 1995. xix + 404 pp. ISBN 0–19–825807–0. £45]

THIS interesting volume is the product of a long-standing co-operation between the Willem Pompe Institute for Criminal Law and Criminology at the University of Utrecht and the Law Schools of the University of Wales at Aberystwyth and Cardiff. Its aim is to compare various aspects of criminal justice in the Netherlands and England and Wales. In doing so the authors seek to study the convergence between civil law and common law jurisdictions and the growing Europeanisation of criminal justice in these two European countries.

The book starts with two chapters in which the basic contours of the two criminal justice systems are outlined, by Constantijn Kelk (the Netherlands) and Gavin S. Dingwall and Alan Davenport (the United Kingdom).

Whereas the Netherlands has an inquisitorial system of justice (as do most countries on the continent), England and Wales have an accusatorial system. Nevertheless, a comparison between the Dutch and English systems of criminal justice cannot be taken to represent a comparison between the inquisitorial and accusatorial systems in general. The differences within the families of both common law and continental law countries are too big to validate such an assumption.

The two countries differ not only in the general legal structure of their respective criminal justice systems but also in their policy towards crime. The Netherlands has a reputation for being mild and tolerant towards crime, which goes well beyond its borders. The criminal justice system of England and Wales takes a more robust stance towards crime. This difference becomes especially clear in the chapter on the drug problem, which is fittingly entitled

"Managing the Drug Problem: Tolerance or Prohibition?" (Jos Silvis and Katherine Williams).

The discrepancy in criminal policy between the Netherlands and England and Wales is also evident in the chapter on sentencing practice, policy and discretion. Nevertheless Constantijn Kelk, Laurence Koffman and Jos Silvis convincingly argue that also in the field of sentencing, where judges have traditionally enjoyed considerable freedom, some measure of Europeanisation is apparent. The trend towards sanctioning that is more proportionate to the seriousness of the offence is prompted by, among other things, internationalisation. The willingness to use alternative sanctions, such as community service, is also part of an international trend.

When studying to what extent there is a convergence between different criminal justice systems in Europe, the question of Europeanisation of criminal justice inevitably arises. Because of its intrinsic relation to sovereignty (Max Weber said the State has the monopoly of legitimate power) and because of its symbiotic relationship to the social, political and cultural features of the society in which it functions, criminal law has, probably more than any other field of law, resisted attempts at harmonisation. The book challenges the traditional concept that the criminal law is therefore free from any European influence. The process of Europeanisation is driven by various factors.

A major factor is the formidable influence of the European Convention on Human Rights, drafted by the Council of Europe. Both the United Kingdom and the Netherlands adhered to the Convention in the early 1950s. The influence the Convention has had on the shaping of the criminal law and procedure of both countries differs, however, significantly. In their stimulating contribution Bert Swart and James Young research the extent to which the Convention has influenced the law, notably the case law, of both countries. The greater influence the Convention has had in the Netherlands is due to the constitutional status it enjoys. The absence of constitutional review, which both countries have in common, does not restrain Dutch courts from taking into account human rights conventions and putting aside domestic legislation where it contravenes provisions of the human rights conventions. Owing to the fact that the Convention is not incorporated into domestic law in the United Kingdom, it cannot be taken into account by English courts, except in a very limited way in clarifying unclear aspects of the law. Nevertheless, the influence of the Convention is considerable in both countries: this is due mainly to the case law of the European Court of Human Rights. The authors give an overview of this case law with regard to both countries and point out how it has led to a change of the law, either by a change of domestic case law or through parliamentary intervention. As the Convention is not justiciable in the United Kingdom, the attitude and reaction of the government towards case law from the Strasbourg Court are crucial. The authors conclude that the case law of the European Court does lead to a certain degree of harmonisation and convergence between the adversarial and the inquisitorial systems.

A further interesting example of the different ways the case law of the European Court of Human Rights influences domestic legislation is to be found in the paper on police detention. Alan Davenport and Peter Baauw arrive at the somewhat surprising conclusion that the judgment of the Court in the case of *Brogan* v. *United Kingdom* (29 November 1988, (1989) 11 E.H.R.R. 1117) has had more influence on Dutch law than it has had in the United Kingdom. This is again to be explained by the different status the Convention enjoys in the two countries.

Of course convergence or Europeanisation is not an end in itself. The paper on the protection and compensation of victims (Jane Morgan, Frans W. Winkel and Katherine S. William) warns that increasing the role of the victim, which traditionally played only a minor part in the criminal justice process, should not happen to the detriment of the procedural rights of the defence. Nor should they be an alibi for the State to privatise some of its traditional functions with regard to law enforcement.

The Europeanisation of criminal justice has also progressed under the aegis of the European Community. It is common currency that the Community has no powers in relation to

criminal law and that domestic criminal justice systems therefore exist independently of any Community law influence. In their contribution René Guldenmund, Christopher Harding and Ann Sherlock give an outline of the different ways in which domestic criminal law systems can be influenced by Community law. Due to the supremacy of Community law and its prevalence over domestic legislation (which has been acknowledged only recently by the House of Lords: *Factortame* v. *Secretary of State for Transport* [1991] 1 A.C. 603), negative and positive obligations can be conferred on member States in relation to criminal law also. Furthermore, individuals may have duties under European legislation which in most cases are enforced through domestic law, including possibly criminal law. Because the European Community is almost always (competition law taken aside) dependent on domestic (criminal) law for the enforcement of European law, the member States are bound to respect their European commitments (most notably the *Bundestreue*, laid down in Article 5 of the EEC Treaty). The case law of the European Court of Justice has on different occasions stressed the member States' obligations, among others, to provide for effective, proportionate and dissuasive sanctions for breach of Community law (see e.g. *Commission* v. *Greece* [1989] E.C.R. 2979).

The influence of the European Community is also notable in another area, namely that of intergovernmental co-operation with regard to combating different types of crime. The co-operation in criminal matters between European countries has a long history, which is sketched in an article by Christopher Harding and Bert Swart. Until recently the most important work in this field took place in the institutional framework of the Council of Europe. The importance of the activities of the European Community and recently the European Union, with regard to international co-operation in criminal matters, is steadily growing, however. The European institutional chaos which existed in this field has been somewhat clarified by the Treaty on European Union (better known as the Maastricht Treaty), which in its Article K sets up an institutional structure to deal with the various aspects of co-operation in this field. The authors give a good overview of this, but it is regrettable that some of the more recent developments have not been included in the book.

This volume of interesting papers does not start from a determined European perspective; rather, it arrives at it at the end. Questions as to the compatibility of national and European policy, the desirability of arriving at a unified, European criminal policy, are asked in the final chapter, by the editor of the book. Answers to such questions require a thorough analysis of domestic criminal justice systems and the possibility and impact of convergence. A detailed insight into the development of national criminal justice systems and their reaction to outside factors such as Europeanisation is a *sine qua non* for any attempt to create a European criminal justice policy. The emphasis on the deeply rooted and local character of some features of criminal justice systems may serve as a reminder of the difficulties which are inherent in any such attempt. In this respect, this volume provides unparalleled and fascinating evidence of the convergence of two criminal justice systems and their attitude to Europeanisation. This book will therefore be useful to anyone with an interest in comparative law and criminal justice in Europe.

GUY STESSENS

*Directives in European Community Law—A Study of Directives and their Enforcement in National Courts*. By SACHA PRECHAL. [Oxford: Clarendon Press. 1995. xxviii + 394 pp. ISBN 0-19-826016-4. £45]

THE Community directive, a legal instrument without exact parallel in other legal systems, embodies many of the tensions between the European Community and its member States. The Community legislature is heavily reliant upon it for the achievement of a number of Treaty aims; yet the binding force of the directive is limited by the Treaty itself, and dependent at least in part on implementation by national authorities.