

CRIMINAL JUSTICE AS A SYSTEM

The Basics

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This part consists of four chapters. **Chapter 1** briefly examines why it is important to study criminal justice, the foundations and politics of criminal justice, an overview of the criminal justice process and the person experiencing incarceration's flow through the system, and how discretion and ethics apply to the field.

Chapter 2 considers the sources and nature of law (including substantive and procedural, and criminal and civil), the elements of criminal acts, felonies and misdemeanors, offense definitions and categories, and prevailing methods in use for trying to measure how many crimes are committed.

Chapter 3 examines some of the attempts to explain why people commit crimes (including the classical, positivist, biological, social structure, social process, social conflict, feminist, and environmental criminology theories), as well as field research that has uncovered motivations of people experiencing incarceration for committing specific crimes.

Chapter 4 concerns ethics and includes definitions and problems, with emphases on the kinds of ethical problems that confront the police, the courtroom work group, and corrections staff. Included are an ethical decision-making process; legislative enactments; and judicial decisions involving ethics at the federal, state, and local levels.

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FUNDAMENTALS OF CRIMINAL JUSTICE

Essential Themes and Practices

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 1.1 Describe the foundations of our criminal justice system, including its legal and historical bases and the difference between the consensus and conflict theories of justice.
- 1.2 Compare the crime control and due process models of criminal justice.
- 1.3 Explain the use and importance of discretion throughout the justice system.
- 1.4 Describe the fundamentals of the criminal justice process—the person who is incarcerated’s flow through the police, courts, and corrections components, and the functions of each component.
- 1.5 Explain the wedding cake model of criminal justice.
- 1.6 Discuss the importance of ethics and character in criminal justice.

ASSESS YOUR AWARENESS

Test your knowledge of criminal justice fundamentals by responding to the following six true–false items; check your answers after reading this chapter.

1. Under the U.S. system of justice, people basically join together, form governments (thus surrendering their rights of self-protection), and receive governmental protection in return.
2. Very little, if any, political or discretionary behavior or authority exists in the field of criminal justice; its fixed laws and procedures prevent such influences.
3. All prosecutions for crimes begin with a grand jury indictment.
4. Police make the final decisions concerning the actual crimes with which a suspect will be charged.
5. “Parolee” is the term used to describe one who has been granted early release from prison.
6. The U.S. system of criminal justice is intended to function, and indeed does function in all respects, like a “well-oiled machine.”

Answers can be found on page 401.

“If you’re not outraged, you’re not paying attention.” This was the last Facebook post made by 32-year-old Heather Hayer.¹ On August 12, 2017, Heather traveled to a white supremacist rally in Charlottesville, Virginia, to act as a counter-protester. She was killed when 20-year-old James Alex Fields Jr. drove his Dodge Challenger into the crowd of counterprotesters, injuring a total of 35 people. The incident drew international attention, as well as controversial remarks from then-president Donald Trump, who stated there were “very fine people on both sides.”

Former president Trump was often outspoken about his thoughts on crime and punishment, regularly using social media to express his perception of events or particular criminal justice policies. During his presidential term, Donald Trump tweeted “LAW & ORDER!” more than a dozen times. This aligned with his earlier messages and views, expressed before and during his presidential campaigns, in which he regularly touted the benefits of “tough on crime” policies, including the use of the death penalty and more punitive punishments.² His espoused views stood in stark contrast to the direction of most criminal justice reforms enacted just prior to his presidency meant to alleviate the negative impact of backlogged courts and extreme prison overcrowding.

U.S. presidents' views on crime and criminal justice policy matter a great deal since changes to our justice system are often achieved through laws passed by Congress and signed by the president and through the issuing of presidential executive orders. Trump issued 220 executive orders while in office, many of which dealt with criminal justice policy, including an order aimed at combating transnational drug cartels.³ And while his "tough on crime" stance was well-known, he also signed into law the First Step Act, which reduced prison sentences and improved prison conditions.

As you read this chapter, think about how the criminal law is influenced and how new laws are made and ultimately changed as society and its norms change. What types of laws help to keep residents safe while also protecting taxpayers and persons who are incarcerated from the costs associated with an unnecessarily punitive justice system? What political pressures do lawmakers feel in crafting such laws, and what risks do we face when our justice system does not function as intended?

INTRODUCTION

The U.S. criminal justice system as we know it has existed for more than a century and a half. Interest in crime and our justice system has generated thousands of television series and movies that examine how and why people commit crimes, how the justice system responds, the roles of people who work within our system, various punishments for criminal behavior, and our protections under the Bill of Rights. Some are fictional (*The Wire*, *CSI*, *Law & Order*, *The Shield*, *Sons of Anarchy*, and *NCIS*), while others are based on true stories or follow real-life events (*Tiger King*, *American Crime Story*, *The First 48*, *Making a Murderer*, *Unsolved Mysteries*, and *Cops*). These programs have contributed to society's general knowledge about our justice system, but fictional stories and dramatic editing can produce misleading or inaccurate information.

The criminal justice system is a critical part of our free, democratic society, and for that reason alone, we need to study and understand it. It serves to define our culture and how we live. It also influences the way in which we interact with the rest of the world. The terrorist attacks that occurred on September 11, 2001, changed the way Americans felt about homeland safety and security. The events of 9/11 made people more aware that crime is an international problem. Crime regularly transcends national borders, and the way our federal, state, and local criminal justice agencies must organize and plan to deal with crime has changed in many ways, as this book will show.

Another reason for carefully studying the criminal justice system is that, odds are, you and most Americans will be affected by crime during your lifetime. Just over 8 million serious criminal offenses are reported to the Federal Bureau of Investigation (FBI) each year, with about 1.2 million of them involving violence and 6.9 million involving damaged or stolen property.⁴ Millions more offenses occur that are less serious in nature, and many crimes go unreported. Given the far-reaching and significant impact of criminal activity, Americans should understand how offenders are processed through the three major components of our system—police, courts, and corrections—and know their legal rights.

Finally, by studying the criminal justice system, you will understand how your tax dollars support criminal justice in federal, state, and local governments (which now spend over \$300 billion annually and employ over 2.4 million persons).⁵ A tremendous amount of resources are required to support our criminal justice system. But as the French novelist Alain-René Lesage stated several centuries ago, "Justice is such a fine thing that we cannot pay too dearly for it."⁶ This chapter provides an overview of the foundations of the criminal justice system. You will learn about the legal and historical bases of the system, the crime control and due process models of crime, the stages of the criminal justice process, a four-tier model used to categorize and describe different types of criminal cases, and how discretion and ethics permeate the system.

FOUNDATIONS OF CRIMINAL JUSTICE: LEGAL AND HISTORICAL BASES

The foundation of our criminal justice system is the criminal law: laws that define criminal acts and how such acts will be punished. Indeed, enforcing these laws is what sets in motion the entire criminal justice process. But like most things in our dynamic society, the law is not static. Enactment of new criminal laws and changes to those laws are almost always triggered by social, political, and economic changes. New ways to commit crimes are discovered, new illegal drugs make their way to the marketplace, new weapons and technology (for criminals and police alike) come on the scene, and suddenly, lawmakers and law enforcement officials find themselves needing new tools to prevent and prosecute crimes. We turn first to how the law changes and the historical principles that still guide—and sometimes challenge—that process.

The Criminal Law: How It Changes and How It Changes the System

Kalief Browder was 16 years old when he was accused of stealing a backpack. He was detained at Rikers Island and spent nearly 2 years in solitary confinement, despite never being tried or convicted for his alleged crime. His case faced extreme delays in the clogged Bronx court system. Browder was released after 3 years due to insufficient evidence, but some have argued the abuse he endured during detention caused him to commit suicide at 22 years old in 2015.⁷ Subsequently, President Barack Obama signed an executive order to ban the solitary confinement of juveniles in federal prisons in 2016.

In the wake of similar and numerous news reports indicating abuses resulting from an overtaxed criminal justice system, many lawmakers and criminal justice officials have been exploring ways to divert persons experiencing incarceration away from traditional system responses. Attempts to find alternatives to arrest, prosecution, and incarceration have included providing treatment to help people experiencing the criminal justice system deal with underlying issues that cause criminal behavior (e.g., mental health or substance abuse issues), as well as decriminalizing nonviolent, low-level crimes (consider the discussion of marijuana law changes that follows later in this chapter). You will learn more about recent diversion laws and programs throughout this book.

The search for alternative approaches to crime and justice indicates a significant shift away from the many “tough-on-crime” laws that were enacted in the 1990s. Most politicians wanted to appear tough on crime, particularly following high-profile violent cases, like the kidnapping, sexual assault, and murder of 12-year-old Polly Klaas. Polly was abducted from her home in Petaluma, California, by Richard Allen Davis in 1993. California lawmakers responded just months after Davis confessed to his crimes by proposing the nation’s first **three-strikes law**—a seemingly simple solution giving people committing violent crimes only two chances to turn themselves around. If they did not and they committed another crime, the third crime would be the final “strike” and the state could lock them up and throw away the key for 25 years to life.⁸ California voters overwhelmingly approved the measure, and within 2 years, more than 20 states and the federal government had done the same.⁹

Supporters predicted the new law would curb crime and protect society by incapacitating the worst offenders for a long period of time, while opponents argued that offenders facing their third strike would demand trials (rather than plea bargain) and send prison populations skyrocketing.¹⁰

The law that was finally enacted in California was vastly different from what was originally intended—and with many negative and unanticipated repercussions.¹¹ According to *The New York Times*, the law was unfairly punitive and created a cruel and unfair criminal justice system that lost all sense of proportion, doling out life sentences disproportionately to Black defendants. Under the statute,



Kalief Browder, of the Bronx, New York, was sent to Rikers Island jail at the age of 16, accused of stealing a backpack. He would eventually spend 3 years at Rikers, two of which were in solitary confinement. Two years after his release, Browder hanged himself at his mother’s home—the result, some say, of mental, physical, and sexual abuse sustained while in custody.

the third offense that could result in a life sentence could be any number of low-level felony convictions, like stealing a jack from the back of a tow truck, shoplifting a pair of work gloves from a department store, pilfering small change from a parked car, or passing a bad check.¹² Some research suggests there is greater public support of punitive policies, like the three-strikes law, if Black defendants, rather than white defendants, are disproportionately affected by such policies.¹³ This finding might help explain the initial broad public support for the law¹⁴ despite strong objections from justice-focused organizations, including the American Civil Liberties Union.¹⁵

Studies of the California law found that prisoners added to the prison system in 1 decade's time would cost taxpayers an additional \$8.1 billion in prison and jail expenditures.¹⁶ Furthermore, persons incarcerated after three strikes and sentenced for nonviolent offenses would serve 143,439 more years behind bars than if they had been convicted prior to the law's passage.¹⁷ A nationwide study of three-strikes laws conducted about a decade after many states had adopted the law found no credible evidence to suggest the law reduced crime.¹⁸ Nearly 19 years after adoption of the three-strikes law, in November 2012 Californians voted to soften the sentencing law and to impose a life sentence only when the third felony offense is serious or violent, as defined in state law. The law also authorizes the courts to resentence thousands of people who were sent away for low-level third offenses and who present no danger to the public,¹⁹ and it provides redress to incarcerated persons who are mentally ill—who were estimated to compose up to 40% of those incarcerated persons with life sentences under the three-strikes rule.²⁰

As you will read throughout this book, the adoption of laws and the processing of cases through our justice system is heavily influenced by politics. Many lawmakers and other politicians want to do what is right for society, but their decisions can also be influenced by their desire to be reelected, made with limited or inaccurate information, or prompted by a “knee-jerk” response to a high-profile event, like Kalief Browder's detention experience or Polly Klaas's murder.

The Browder and Klaas cases provide excellent illustrations of the national impact of injustice and crime, the legislative process, and the democratic system of criminal justice that exists to deal with persons committing illegal offenses. These cases also prompt us to consider questions about the interaction of government and the justice system: What is the source of legislative and law enforcement powers? How can governments presume to maintain a system of laws that effectively governs its people and, moreover, a legal and just system that exists to punish persons who willfully violate those laws? We now consider those questions.

The Consensus Versus Conflict Debate

The criminal justice system plays a central role in our democratic society. We enact criminal laws to maintain order and to punish those who violate the democratically decided rules. But is order maintained through consensus—agreement—or is it preserved through conflict, the exercise of power by certain groups over others? This debate is important because it forces us to look at how laws are created, to whom they are meant to apply, and the impact of our justice system when considering these competing perspectives.

Consensus Theory of Justice

Our society contains innumerable lawbreakers—many of whom are more violent than Richard Allen Davis. Most of them consent to police power in a cooperative manner, without challenging the legitimacy of the law if arrested and incarcerated. Nor do they challenge the system of government that enacts the laws or the justice agencies that carry them out. The stability of our government for more than 200 years is a testament to the existence of a fair degree of consensus as to its legitimacy.²¹ Thomas Jefferson's statements in the Declaration of Independence are as true today as when he wrote them and are accepted as common sense:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit

of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it.

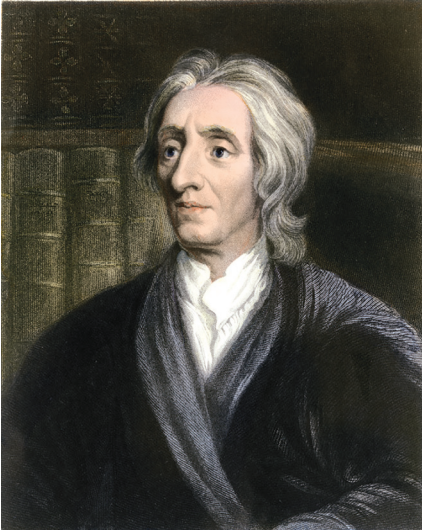
The principles of the Declaration are almost a paraphrase of John Locke's *Second Treatise on Civil Government*, which justifies the acts of government based on Locke's social contract theory. People, according to Locke, were created by God to be free, equal, and independent, and to have inherent inalienable rights to life, liberty, and property. Each person had the right of self-protection against those who would infringe on these liberties. In Locke's view, although most people were good, some would be likely to prey on others, who in turn would constantly have to be on guard against those who might harm them. To avoid this brutish existence, people joined together, forming

governments to which they surrendered their rights of self-protection. In return, they received governmental protection of their lives, property, and liberty. As with any contract, each side has benefits and considerations; people give up their rights to protect themselves and receive protection in return. Governments give protection and receive loyalty and obedience in return.²²

Locke believed the chief purpose of government was the protection of property. Properties would be joined together to form a commonwealth. Once the people unite into a commonwealth, they cannot withdraw from it, nor can their lands be removed from it. Property holders become members of that commonwealth only with their express consent to submit to its government. This is Locke's famous theory of tacit consent: "Every Man . . . doth hereby give his tacit consent, and is as far forth obliged to Obedience to the Laws of the Government."²³ Locke's theory essentially describes an association of landowners.²⁴ Another theorist connected with the social contract theory is Thomas Hobbes, who argued that all people were essentially irrational and selfish. He maintained that people had just enough rationality to recognize their situation and to come together to form governments for self-protection, agreeing "amongst themselves to submit to some Man, or Assembly of men, voluntarily, on confidence to be protected by him against all others."²⁵ Therefore, they existed in a state of consensus with their governments.

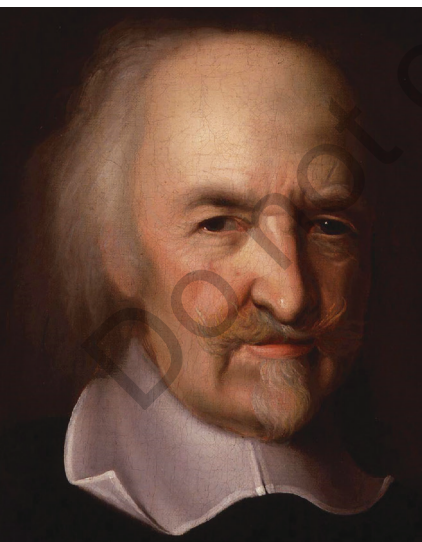
The **consensus theory of justice** assumes that most citizens in society share similar values and beliefs. It is based on the premise that even a diverse population of individuals hold the same morals or views concerning what should be labeled as "right" or "wrong" behavior. These views are reflected in the law. Society comes together to protect itself from those who threaten the well-being of others by passing laws that prohibit harmful behavior and outlining the punishments for engaging in these acts.

Consensus theory acknowledges that perspectives and values can change over time. Some behaviors that were previously illegal are legal today. For example, adultery, same-sex marriage, drinking alcohol, and conducting business on Sundays were all labeled as criminal activity in the past.²⁶ Further, what is illegal today might be deemed legal tomorrow. Public attitudes toward marijuana, also called cannabis, have shifted dramatically. In 2000, only 31% of Americans supported the legalization of marijuana, but recent polls show that more than two thirds (68%) now support it.²⁷ This shift in public opinion has resulted in the legalization or decriminalization of marijuana use in numerous states, as depicted in Figure 1.1. While most Americans (more than 67%) now live where medical marijuana use is legal, public support has also prompted changes to recreational marijuana use laws. In 2012, Colorado was the first state to legalize recreational marijuana. As of January 2022, 18 states and Washington, D.C., had legalized recreational marijuana use, while 13 states had decriminalized recreational marijuana use.²⁸



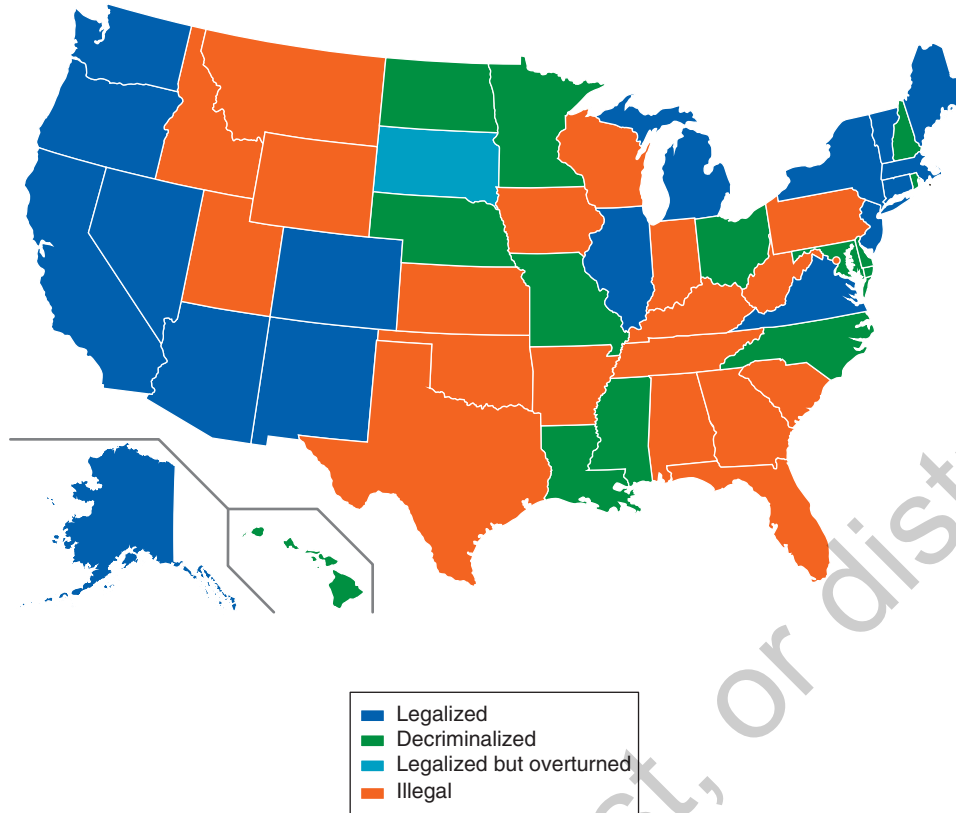
John Locke, an English philosopher and physician and one of the most influential thinkers of his day, developed two influential theories concerning government and natural law: social contract and tacit consent.

Sir Godfrey Kneller



Another English philosopher and social contract theorist, Thomas Hobbes, believed in individual rights and representative government.

John Michael Wright

FIGURE 1.1 ■ Cannabis Laws in the United States, 2022**Going Global 1.1****Marijuana Legalization Around the World**

In 2013, Uruguay (in South America) became the first country in the world to legalize cannabis for recreational use nationwide. Canada followed suit in 2018 and became the first major world economy to legalize recreational marijuana. Although British Columbia's minister of public safety noted there are still many unknown health risks associated with the drug, there was broad public support across the country for marijuana legalization. News reporters shared stories of Canadians waiting in line for hours to buy the first state-approved marijuana cigarettes. Although medical marijuana had been legal in Canada since 2001, the new legislation allows adults to possess and carry up to 30 grams of dried cannabis, or enough to roll about 60 average joints. Most provinces also permit up to four homegrown marijuana plants per household.

Debates concerning legalization continue as more countries consider whether to decriminalize marijuana and how to regulate the drug's growth, distribution, and sale. Even in Canada, legalization debates continue. Dried cannabis can be purchased from government retailers in physical stores and online, but the federal government delayed approval of sales of cannabis edibles (marijuana infused food and liquid) for an additional year. The government is allowing the country's 13 provinces and territories to establish their own rules, creating discrepancies in regulations across the country. Physical and mental health risks, dangers of intoxication while driving, benefits of projected tax revenues, and the pardoning of previous drug offenders are among many issues being discussed as part of a larger national conversation.

Source: Adapted from Dan Bilefsky, "Legalizing Recreational Marijuana, Canada Begins a National Experiment," *New York Times*, October 17, 2018, <https://www.nytimes.com/2018/10/17/world/canada/marijuana-pot-cannabis-legalization.html>.

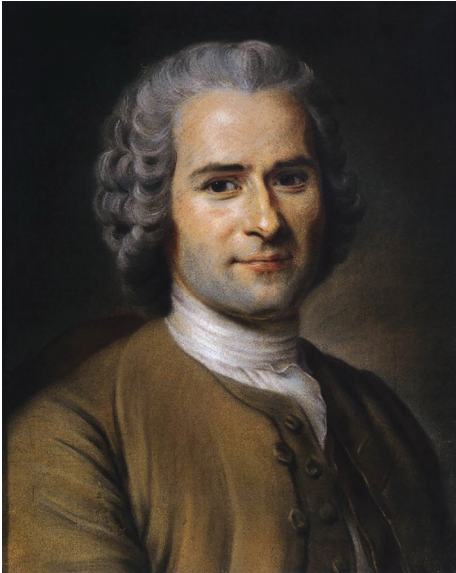
Conflict Theory of Justice

Jean-Jacques Rousseau, a conflict theorist, differed substantively from both Hobbes and Locke, arguing that “man is born free, but everywhere he is in chains.”²⁹ Like Plato, Rousseau associated the loss of freedom and the creation of conflict in modern societies with the development of private property and the unequal distribution of resources. Rousseau described conflict between the ruling group and the other groups in society, whereas Locke described consensus within the ruling group and the need to use force and other means to ensure the compliance of the other groups.³⁰

The **conflict theory of justice** assumes there will always be competing interests and viewpoints among members of society. People’s beliefs can differ greatly and, as such, consensus is not possible.

Women’s right to abortion has been heavily debated since it was first made legal across the country following the 1973 U.S. Supreme Court ruling in *Roe v. Wade*.³¹ In 1992, the U.S. Supreme Court generally confirmed the federal constitutional protections of abortion rights in *Planned Parenthood v. Casey*,³² but, in 2022, took up the issue again in *Dobbs v. Jackson Women’s Health Organization*.³³ By a vote of 6–3, the Court reversed its position and held that the U.S. Constitution does not confer a right to abortion. Yearly surveys reveal that public opinion regarding abortion has remained relatively stable over time.³⁴ Like our U.S. Supreme Court Justices, the public remains divided on this issue.

Since people do not share a common belief in what should or should not be legal, conflict theory maintains that laws reflect the interests of the most powerful people in society. Characteristics of certain groups make them more or less likely to be subjected to laws and criminal sanctions. These characteristics include age, class, race, and gender, as well as combinations of these attributes. The difference in laws governing crack cocaine and powder cocaine use is an example commonly used to support conflict theory. Prior to the Fair Sentencing Act of 2010, the penalty for possession of 5 grams of crack cocaine (commonly associated with people who are poor, underrepresented, and inner-city drug users) was a 5-year mandatory prison sentence, but a person in possession of powder cocaine (commonly associated with wealthy white people who are drug users) would be subject to the same penalty only if the individual was carrying 500 grams of the drug.³⁵



Jean-Jacques Rousseau, a Genevan conflict theorist, argued that while the coexistence of human beings in equality and freedom is possible, it is unlikely that humanity can escape alienation, oppression, and lack of freedom: “Everywhere he is in chains.”

Maurice Quentin de La Tour

CRIME CONTROL AND DUE PROCESS: DO ENDS JUSTIFY MEANS?

Before learning about the specifics of the criminal justice process, it is important to consider how our system can serve the two seemingly competing goals of controlling crime and protecting the rights of persons accused of crime. How do we operate a system that is tough on crime and persons committing criminal acts while preserving the constitutional rights of those being accused? Crime control is an obvious and understandable goal for any society, but in a country founded on the ideals of freedom, liberty, and equality, we must be concerned about violating individual rights in our quest to achieve justice—we must ask whether the ends justify the means. For example, if the police illegally search a house and find clear evidence of several crimes, should the state be able to use that evidence to convict someone, or should the evidence be excluded because the police violated the defendant’s constitutional rights in the pursuit of crime control?

You will become familiar with these debates and conflicting objectives within the justice system as you learn more about the criminal justice process and the laws that govern police actions and ethics. By considering two different approaches to our criminal justice system, we can better understand how those accused of crimes move through the system and the different results—intended and otherwise—we might expect. In 1968, Herbert Packer described the two now-classic models of the criminal justice process in terms of two competing value systems: crime control and due process (see Table 1.1).³⁶

TABLE 1.1 ■ Packer's Crime Control and Due Process Models

	Crime Control Model	Due Process Model
Views criminal justice system as an . . .	Assembly line	Obstacle course
Goal of criminal justice system	Controlling crime	Protecting rights of defendants
Values emphasized	Efficiency, speed, finality	Reliability
Process of adjudication	Informal screening by police and prosecutor	Formal, adversarial procedures
Focuses on . . .	Factual guilt	Legal guilt

The **crime control model** follows a highly traditional philosophy that Packer likened to an assembly line. The primary goal of this model is to deter criminal conduct and thus protect society. The accused is presumed guilty, police and prosecutors should have extensive freedom to exercise their own discretion (judgment) in the interest of crime control, legal loopholes should be eliminated, and persons committing a criminal offense should be punished swiftly. This model views crime as a breakdown of individual responsibility; as such, only swift and certain punishment will deter and control crime.

In contrast, the **due process model**—likened to an obstacle course by some authors—focuses on fairness as its primary goal. In this model, criminal defendants should be presumed innocent, the courts' priority is protecting the constitutional rights of the accused, and law enforcement officials—the police and prosecutors—must be held in check to preserve freedom and civil liberties for all Americans. As such, this model is designed to present “obstacles” for government actors at every stage, slowing down the process and affording an opportunity to uncover mistakes made in the pursuit of justice. This view also stresses that crime is not a result of individual moral failure but is driven by social influences (such as unemployment, racial discrimination, and other factors that disadvantage the poor); thus, courts that do not follow this philosophy are fundamentally unfair to these defendants. Furthermore, rehabilitation aimed at individual problems is embraced as a strategy to prevent future crime.

Packer indicated that neither of these models would be found to completely dominate national or local crime policy.³⁷ To argue that one of these models is superior to the other requires an individual to make a value judgment. How much leeway should be given to the police? Should they be allowed to “bend” the laws to get criminals off the streets? Do the ends justify the means? Or should criminal justice officials be required to follow rules and be held to higher standards than criminals? How important is it that our system be seen as fair and impartial?

YOU BE THE . . . LEGISLATOR

Gun violence is a major concern in the United States. In addition to recent school shootings and mass shootings at public events and workplaces, many communities (particularly disadvantaged communities) suffer from high numbers of gun-related violent crimes. We do not have a complete database of all U.S. gun violence incidents, but some estimates suggest that firearms are involved in more than 22,000 suicides, just under 13,000 homicides, and almost 500 unintentional deaths in America annually. Further, the average number of injuries per year involving guns is almost 100,000.

Concerns over gun violence must be balanced with the rights afforded by the Second Amendment of our U.S. Constitution, which reads, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” While there is considerable debate regarding the amendment’s intended scope, lawmakers across the country are considering whether to enhance citizens’ rights to bear arms (e.g., by supporting laws that allow citizens to openly carry firearms) or to introduce legislation focused on enhancing gun control (e.g., by requiring background checks to purchase firearms).

1. Do laws that establish background check requirements, such as those proposed by the Bipartisan Background Checks Act of 2019, follow the consensus or conflict theory of justice?

2. What recent news stories might make lawmakers more likely to introduce gun rights or gun control legislation?
3. Does gun control legislation align more closely with the crime control model or the due process model?

Sources: Everytown for Gun Safety, "Gun Violence in America," <https://everytownresearch.org/gun-violence-america/>; H.R.8—Bipartisan Background Checks Act of 2019, 116th Congress (2019–2020), <https://www.congress.gov/bill/116th-congress/house-bill/8>.

DISCRETION: MAKING AND APPLYING THE LAW

After considering the two competing criminal justice models, you may wonder why the two models are even possible—in other words, how can criminal justice professionals follow different procedures in different situations when our nation functions under the rule of law and due process? The answer is that players throughout the system exercise **discretion**, making decisions based on their own judgments in particular situations. As you consider the processes and cases presented throughout this book, you will see discretion applied in many ways.

For example, lawmakers understand they cannot anticipate the range of circumstances surrounding each crime or create laws that reflect all local attitudes and priorities concerning crime control. Further, they cannot possibly enact enough laws to cover all potentially harmful behavior, with exceptions described for every possible scenario where strict application of the law would result in injustice. The report of the President's Commission on Law Enforcement and Administration of Justice (published in 1967) made a pertinent comment in this regard:

Crime does not look the same on the street as it does in a legislative chamber. How much noise or profanity makes conduct "disorderly" within the meaning of the law? When must a quarrel be treated as a criminal assault: at the first threat, or at the first shove, or at the first blow, or after blood is drawn, or when a serious injury is inflicted? How suspicious must conduct be before there is "probable cause," the constitutional basis for an arrest? Every [officer], however sketchy or incomplete his education, is an interpreter of the law.³⁸

Accordingly, enacting laws is just a first step, and persons charged with the day-to-day response to crime must exercise their own judgment within the limits set by those laws. Basically, they must decide whether to act, which official response is appropriate, and how the community's attitude toward specific types of criminal acts should influence decisions. You will further explore the context surrounding the following examples of discretion throughout this book:

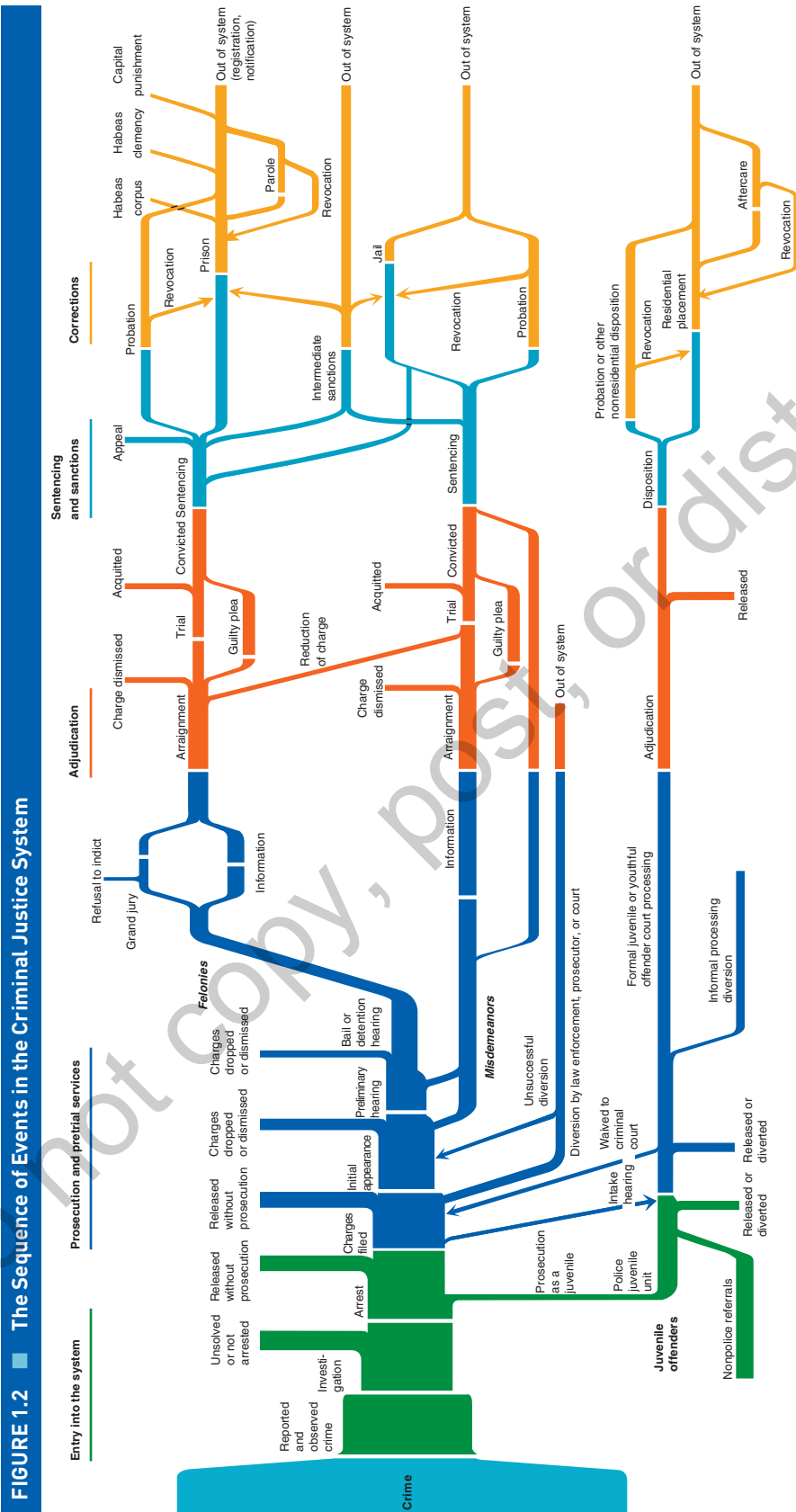
- Police officers exercise extensive discretion in deciding whether to stop, search, or arrest someone.
- Prosecuting attorneys decide whether to bring criminal charges against an arrestee, thus making one of the most important judgment calls in the system.
- Judges exercise discretion in setting or denying bail and in imposing sentences (even with sentencing guidelines).
- Corrections officials decide where to house persons convicted of crimes, how to discipline them for rules violations, and whether to grant them early release on parole.

THE CRIMINAL JUSTICE PROCESS: AN OVERVIEW OF FLOW AND FUNCTIONS

What follows is a brief description of the **criminal justice flow and process** in the United States. Figure 1.2 shows a flowchart of that system and summarizes the major stages of the process, including entry into the criminal justice system, prosecution and pretrial services, adjudication, sentencing and sanctions, and corrections. Note that *all* discussions in this book are based on the people and processes included in the depicted sequence of events.

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Source: Adapted from President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (U.S. Government Printing Office, 1967). This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of lines are not intended to show actual size of caseloads.

The Pathway Through the Process for the Person Experiencing the Criminal Justice System

As we follow the person experiencing the criminal justice system's path through the process, note that Figure 1.2 also depicts vertical pathways out of the criminal justice system. That is because many crimes fall out of the system for one of a variety of reasons—the crime is not discovered or reported to the police (the so-called dark figure of crime); no perpetrator is identified or apprehended; or, in some instances, a suspect is arrested, but the police release the suspect from custody if they later determine that no crime was committed.

Law Enforcement: Investigation/Arrest

The flowchart in Figure 1.2 begins with “reported and observed crime.” Police agencies learn about crime from the reports of victims or other citizens, from discovery by a police officer in the field, from informants, or from investigative and intelligence work. Once a law enforcement agency has established that a crime has been committed, the perpetrator must be identified and apprehended before the case can proceed through the system. Sometimes the person committing the crime is apprehended at the scene, but in other cases, the police must find the perpetrator through an investigation. Either way, the first formal step for most persons committing a crime in the criminal justice system is when the police take a suspect into custody for purposes of charging that person with a crime, known as an **arrest**.

PRACTITIONER'S PERSPECTIVE

POLICE OFFICER



Name: Kevin Wilmott

Position: Police Officer

Location: Southern California

What advice would you give to someone either wishing to study, or now studying, criminal justice and wanting to become a practitioner in this position? My biggest advice for students who are pursuing a career in law enforcement is to start looking into going on ride-alongs with agencies that they're interested in working for. A lot of times, agencies will offer civilian ride-alongs. Just call the department and ask if you can go on a ride-along. Because that's the best way to really see if this is something that you're interested in. You can watch it on TV, you can read about it in a book, but until you actually go out in the field and shadow an officer and see what his or her “day in the life” is like, you don't really have a good idea. So I think the biggest thing is to go on ride-alongs and experience them firsthand.

Also, if you're not quite the age yet—typically the age is 21 for most agencies to be a police officer—a really good idea that I recommend is to look at civilian jobs in a police department. I started as a police dispatcher for 2 years. A lot of times there are positions for cadets, traffic or parking

enforcement, dispatchers, records, whatever it may be. There are definitely civilian jobs where a lot of times the minimum age requirement is 18. So between 18 and 21 you can do that, and that actually gets you a foot in the door, as you get to see what it's like to work at a police department, and you can get to know the department and the community that you want to eventually work for as a police officer. It helps build your name and reputation with the department.

In general, what does a typical day look like for a practitioner in this position? Granted, our days are never quite routine, and every day is different. But typically, a day in the life for me, for the most part, would start with going to briefing. In our briefing, we go over what's going on in our community, what to look out for, if there have been any recent crimes or crime trends that we need to be aware of. We also get our assignments, which area of the city we'll be working, what car we're going to be in. After briefing, we get our vehicle ready, and that means putting all of our equipment in the patrol car, and then we go out and begin our shift. I currently work nights and weekends, so I personally am looking for impaired drivers. Some officers look out for drug users or traffic enforcement, and some are interested in working with quality-of-life issues with transiency, loitering, and things of that nature. But I personally am interested in DUI enforcement. So a lot of times, when I'm not responding to a call for service, I'm out on the roads looking for people that may be impaired. And every so often, we get dispatch for calls for service. Then at the conclusion of my shift, I gas up the vehicle, put it away, and take all the gear out of it. I also make sure I'm caught up on all my reports because there's definitely a lot of report writing involved. The quieter hours are around 3 to 5 in the morning, so those are the times I try to catch up on all my reports.

Prosecution and Pretrial Activities

Next, we enter the **prosecution** and pretrial services phase of the process—and the realm of the powerful individuals who “control the floodgates” of the courts process. After an arrest, police present information concerning the case and the accused (typically in the form of an official offense/arrest report) to the prosecutor, who will decide—at their discretion—if formal charges will be filed with the court. If no charges are filed, the accused must be released. The prosecutor can also elect, after initially filing charges, to drop charges (*nolle prosequi*) if they determine the probable cause and/or evidence in the matter is weak. (Probable cause, discussed later in this book, is a legal term referring to information that would lead a reasonable person to believe that a person has committed, is committing, or is about to commit a crime.) Furthermore, in some jurisdictions, defendants—often those without a prior criminal record—may be eligible for diversion from prosecution if they complete a specific condition, such as drug treatment. Successful completion of the conditions may result in charges being dropped or the record of the crime being expunged (meaning to legally strike or erase).

Initial Appearance

Persons charged with a crime must be taken for an initial appearance before a judge or magistrate without unnecessary delay (the amount of time is typically specified in the state's statutes or in municipal ordinances). There, the judge will inform the accused of the charges and decide whether there was probable cause for the police to make an arrest. If the offense is not very serious, the determination of guilt and assessment of a penalty may also occur at this stage.

Often, a defense attorney is also assigned at the initial appearance. All defendants who are prosecuted for serious crimes have a right to be represented by an attorney. If the court determines the defendant is indigent and cannot afford such representation, the court will assign counsel at the public's expense.



Jonissa Jones, looks at a document with her attorney, Ray Hanna of the Yuma County Public Defender's Office. Jones was charged with the murder of Derek Runnion and pleaded guilty in April 2022. Under the U.S. system of justice, all criminal defendants prosecuted for serious crimes have the right to be represented by an attorney.

Randy Hoefl/The Yuma Sun via AP

A decision about whether to release the defendant on bail or some other conditional release may also be made at the initial appearance. The court considers factors such as the seriousness of the charge; whether the defendant is a flight risk; and if they have a permanent residence, a job, and family ties. If the accused is likely to appear at trial, the court may decide they should be released on recognizance (often termed “ROR,” meaning that the defendant is released without having to provide bail, upon promising to appear and answer the criminal charge) or into the custody of a third party after the posting of a financial bond.

Preliminary Hearing or Grand Jury

The next step is to determine whether there is probable cause to believe the accused committed the crime and whether they should be tried. Depending on the jurisdiction and the case, this determination is made in one of two ways: through a preliminary hearing or through a grand jury. In a preliminary hearing, a judge determines if there is probable cause to believe the accused committed the crime. If so, the case moves forward to trial, also known as “binding the defendant over” for trial. If the judge does not find probable cause, the case is dismissed.

In other jurisdictions and cases, the prosecutor presents evidence to a grand jury, which decides if there is sufficient evidence to bring the accused to trial. If the grand jury finds sufficient evidence, it submits to the court an indictment, a written statement of the essential facts of the offense charged against the accused. Misdemeanor cases and some felony cases proceed by the issuance of an “information,” which is a formal, written accusation submitted to the court by a prosecutor (rather than an indictment from the grand jury). In some jurisdictions, indictments may be required in felony cases. Grand juries are discussed later in this book.

Adjudication

Next, in the middle of the flowchart shown in Figure 1.2, is the **adjudication** process. The adjudication process allows the defendant to respond to the charges brought against them, requires the government to prove its case (if the defendant claims they are not guilty), and allows a judge or jury to decide whether the defendant is legally guilty or not guilty. Once an indictment or information has been filed with the trial court, the accused is scheduled for arraignment.

Arraignment

At the arraignment, the accused is informed of the charges, advised of the rights of criminal defendants, and asked to enter a plea to the charges. Generally, defendants enter a plea of guilty, not guilty, or *nolo contendere* (no contest).

If the accused pleads guilty or *nolo contendere* (accepts penalty without admitting guilt), the judge may accept or reject the plea. If the plea is accepted, the defendant has, in effect, given up their constitutional right to a trial, no trial is held, and sentencing occurs at this proceeding or soon after. But contrary to popular media depictions, not guilty pleas and trials are very rare; approximately 95% of criminal defendants plead guilty because of plea bargaining between the prosecutor and the defendant.

Trial

If the accused pleads not guilty or not guilty by reason of insanity, they are basically forcing the government to prove its case—to prove the defendant’s guilt beyond a reasonable doubt. A person accused of a serious crime is guaranteed a trial by jury but may request a bench trial where the judge alone, rather than a jury, will hear both sides of the case. In both instances, the prosecution and the defense are permitted to present physical evidence and question witnesses, while the judge decides on issues of law. The trial results in an **acquittal** (not guilty) or a **conviction** (guilty) on the original charges or on lesser included offenses.

Sentencing and Sanctions, Generally

After a conviction, a sentence is imposed. Except for capital cases where the death penalty is being sought and the jury decides the punishment, the judge determines the sentence.

In arriving at an appropriate sentence, a sentencing hearing may be held at which time evidence of **aggravating** or **mitigating circumstances** is considered (aggravators are elements that tend to increase the incarcerated person's blame, such as use of torture; mitigators tend to reduce blame, such as youthfulness and lack of prior criminal record). Here, the court may rely on presentence investigations by probation agencies and consider victim impact statements (a written or oral statement by the victim concerning the pain, anguish, and financial devastation the crime has caused).



The U.S. Supreme Court has held that trial juries may hear and consider victim impact statements (concerning such factors as the pain, anguish, and suffering the defendant's crime has caused) when making sentencing decisions.

Sean D. Elliot/The Day via AP

The sentencing choices that may be available to judges and juries include one or more of the following:

- Death penalty (only in first-degree murder cases and only in certain states)
- Incarceration in a prison (for sentences of a year or longer), a jail (for sentences of up to a year), or another confinement facility
- Probation: allowing the convicted person to remain at liberty but subject to certain conditions and restrictions such as drug testing or drug treatment
- Fine: applied primarily as penalties in minor offenses
- Restitution: requiring the offender to pay compensation to the victim
- Intermediate **sanction** (used in some jurisdictions): an alternative to incarceration that is considered more severe than straight probation but less severe than a prison term (e.g., boot camps, intense supervision often with drug treatment and testing, house arrest and electronic monitoring, and community service)

Appellate Review

Following trial and sentencing, a defendant may appeal their conviction or sentence by requesting that a higher court review the arrest and trial (a process known as appellate review). The appellate process provides checks on the criminal justice system by ensuring that errors at trial (except for those considered to be “harmless”) did not adversely affect the fairness of trial processes and the defendant's

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constitutional rights. In death penalty cases, appeals of convictions are automatic. In other cases, the appellate court has sole discretion over whether to review the case.

Corrections

Figure 1.2 shows the next phase into which the person experiencing the criminal justice system enters is corrections. Persons convicted of a criminal offense who are sentenced to incarceration usually serve time in a local jail or a state prison. Persons convicted of a criminal offense who are sentenced to less than 1 year generally go to jail; those sentenced to more than 1 year go to prison.

An incarcerated person may become eligible for parole after serving a portion of their **indeterminate sentence** (a range, such as 5–10 years). **Parole** is the conditional release of an incarcerated person before their full sentence has been served. The decision to grant parole is made by an authority such as a parole board, which has power to grant or revoke parole (i.e., return the parolee to prison) or to discharge a parolee altogether. In some jurisdictions, incarcerated persons serving what is called a **determinate sentence**—a fixed number of years in prison—will not come before a paroling authority because each incarcerated person is required to serve out the full sentence prior to release, less any earned “good time credits” (a reduction in the time served in jail or prison due to good behavior, participation in programs, and other activities).

If released by a parole board or through mandatory release, the parolee will be under the supervision of a parole officer in the community for the balance of their unexpired sentence. This supervision is governed by specific conditions of release, and the parolee may be returned to prison (“parole revocation”) for violations of such conditions.

Once a person who is suspected of committing a crime is released from the jurisdiction of a criminal justice agency, they may commit a new crime (recidivate) and thus need to be processed again through the criminal justice system. Studies show that individuals with prior criminal histories are more likely to be rearrested than those without a prior history.

The Juvenile Justice System

Juvenile courts usually have jurisdiction over matters concerning children, including delinquency, neglect, and adoption. They also handle “status offenses” such as truancy and running away, which are not applicable to adults. State statutes define which persons are under the original jurisdiction of the juvenile court. The maximum age of original juvenile court jurisdiction in delinquency matters is 17 in most states.³⁹

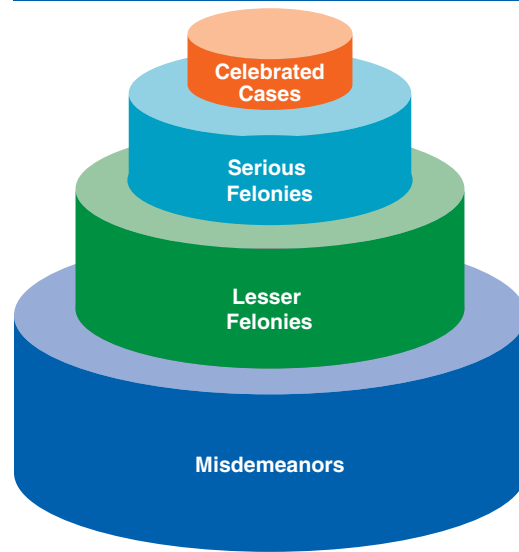
THE WEDDING CAKE MODEL OF CRIMINAL JUSTICE

The criminal justice system flowchart shown in Figure 1.2 makes it easy to see the steps through which the person experiencing the criminal justice system moves through the process horizontally. It is also helpful to see how the system treats cases differently by viewing it vertically, as shown in the **wedding cake model of criminal justice**, developed by Samuel Walker (see Figure 1.3).⁴⁰

This approach begins with the premise that not all criminal cases are viewed or handled in the same manner—by either the police or the judiciary. The type of treatment given to a particular case, including its outcome, is determined mostly by factors such as the seriousness of the charge, current policies and political influences, and the defendant’s status and resources. Some cases are run-of-the-mill and are treated as such, but some involve high-profile crimes and/or criminals and command much more attention.

As shown in Figure 1.3, the wedding cake model divides criminal justice system proceedings into four different categories: celebrated cases, serious felonies, lesser felonies, and misdemeanors. This partitioning of cases allows for a closer analysis of how the criminal justice system deals with them.

FIGURE 1.3 ■ The Wedding Cake Model of Criminal Justice



Layer 1: Celebrated Cases

The top layer of the wedding cake model includes the “celebrated cases.” These cases command a great deal of media attention because the crimes are unusual (such as when James Holmes killed 12 people and injured 70 others in a mass shooting at a movie theater in Aurora, Colorado; or when Dzhokhar Tsarnaev, along with his brother, detonated two bombs at the Boston Marathon, killed a police officer, kidnapped a man, and engaged in a shoot-out with police) or because the defendants are celebrities or high-ranking officials (consider actor Jussie Smollett’s hate crime hoax trial; O. J. Simpson, the celebrated athlete and actor whose “trial of the century” has been the topic of numerous books and documentaries; and Derek Chauvin, the former police officer convicted of George Floyd’s murder). The legal process for these types of cases is not different from that of the “usual” case, but because of their complexity or high-profile nature, many more resources are devoted in the form of forensic tests, use of expert witnesses, jury sequestering (seclusion), cameras in the courtroom, and crowd control. At the same time, due to the widespread media and public attention given to the cases, extra care is taken to ensure that defendants’ rights are protected and the accused are not given preferential treatment based on their status.

Layer 2: Serious Felonies

The second layer of the wedding cake includes serious felonies, which are violent crimes committed by people with lengthy criminal records and who often prey on people they do not know. These are viewed by the police and prosecutors as the cases that are most deserving of “heavy” treatment and punishment, and there is not as great a chance that the defendant will be allowed to enter into a plea agreement before trial.

Layer 3: Lesser Felonies

On the third layer of the wedding cake are the lesser felonies, which tend to be nonviolent and typically viewed as less important than the felonies in Layer 2. These persons who have committed a crime might have no criminal record; might have had a prior relationship with the victim; and might be charged with drug-related, financial, or other such crimes. A good portion of these cases will be filtered out of the system prior to trial and end in plea agreements.

Layer 4: Misdemeanors

Layer 4 consists of misdemeanor cases, which make up about 90% of all criminal matters. They include less serious and public-order crimes: public drunkenness, minor theft, disturbing the peace, and so on. Police are more likely to deal with these cases informally and use their discretion to determine whether an arrest is necessary. When arrests are made, they will be handled by the lower courts—where the large number of cases handled by these courts require quick case processing, making trials rare. Many misdemeanor cases are resolved with plea agreements and penalties that involve fines, probation, or short-term jail sentences.⁴¹

ETHICS THROUGHOUT THE CRIMINAL JUSTICE SYSTEM

Robert F. Kennedy, in his 1960 book *The Enemy Within: The McClellan Committee's Crusade Against Jimmy Hoffa and Corrupt Labor Unions*, stated that

in the fall of 1959 I spoke at one of the country's most respected law schools. The professor in charge of teaching ethics told me the big question up for discussion among his students was whether, as a lawyer, you could lie to a judge. I told the professor . . . that I thought we had all been taught the answer to that question when we were six years old.⁴²

As Kennedy, the late U.S. attorney general and U.S. senator, implied, by the time people reach the point of being college or university students, it is hoped that everyone—in particular, those studying the field of criminal justice—will have had deeply ingrained in them the need to practice exemplary and ethical behavior. Ethical behavior is often reemphasized in postsecondary education when instructors explain the need for academic honesty. The importance of ethics is often reinforced in other social settings—for example, in work environments (employees are entrusted with property and other responsibilities), at home (parents and other caregivers explain the importance of treating others with respect), in sports (coaches emphasize the importance of fair play), and at church (treating others as you want to be treated is often taught as a guiding principle).

Character in the criminal justice arena is of utmost importance. Without it, nothing else matters. Character, it might be said, is who we are when no one is watching. Having character means that people do not betray their fellow human beings or violate oaths of office or public trust. Unfortunately, character of mind and actions cannot be taught solely in a college or university classroom, nor can it be implanted in a doctor's office, administered intravenously, or ingested as a pill.

Prior to commencing your journey into the field of criminal justice, you might do well to first ask yourself these questions: Should police officers receive free coffee from restaurants and quick-stop establishments? What about free or half-priced meals? What about judges or prison wardens? If judges, wardens, or other criminal justice professionals are not “rewarded” with such “freebies,” then should police officers be able to accept such “gifts” while on or off duty? On what grounds do many police officers expect such favored treatment? And can this lead to ethical problems with respect to their work?

At its root, the field of criminal justice is about people and their activities; and in the end, the primary responsibilities of people engaged in this field is to ensure they be of the highest ethical character and treat everyone with dignity and respect. Therefore, this book, unlike most or all others of its kind, focuses heavily on the subject of **ethics**—or what essentially constitutes “correct” or “moral” behavior in criminal justice.

YOU BE THE . . . JUDGE

Four male juveniles were burglarizing a home when Baltimore County Police Officer Amy Caprio was called to the scene. Officer Caprio approached a stolen vehicle the teens drove to the neighborhood. When she reached the vehicle, she encountered one of the juveniles behind the wheel. She drew her weapon and fired once after the vehicle accelerated toward her. The juvenile struck her with

the vehicle and fled the scene. Officer Caprio, who had served on the department for 3 years and 10 months, was rushed to the hospital, where she was pronounced dead. Further investigation revealed the juvenile who killed the officer was waiting in the driver's seat of the stolen vehicle while his three associates carried out the burglary. All four teens were eventually charged with felony murder.

1. The juveniles were tried as adults for this crime. Does this decision by the prosecutor most closely align with the crime control or due process model of justice?
2. Should the prosecutor have had the discretion to try these juveniles as adults? Would it change your mind if they had been 12-year-olds rather than 17-year-olds?
3. Do you believe politics played a part in the decision to charge all four with murder?
4. What aggravating or mitigating circumstances of this case might be discussed at trial?
5. Where would this type of case fit on the wedding cake model of criminal justice?

Source: For more information, see Jessica Anderson, "Jury Sees Video Showing Moments Before Baltimore County Officer Amy Caprio's Death," *Baltimore Sun*, April 23, 2019, <https://www.baltimoresun.com/news/crime/bs-md-co-caprio-trial-openings-20190422-story.html>.

IN A NUTSHELL

- It is important to study the criminal justice system not only because it serves to shape our government and culture, but because all of us are potential victims, witnesses, and taxpaying supporters of our justice system. Furthermore, we need to understand the rights afforded to us by our Constitution.
- The consensus theory of justice argues that laws reflect the values and beliefs shared by most people in society, whereas the conflict theory of justice maintains that laws are created to protect the interests of the most powerful people in society.
- The crime control model, likened to an assembly line, emphasizes deterring criminal conduct and protecting society, eliminating legal loopholes, swiftly punishing persons committing crimes, and granting a high degree of discretion to police and prosecutors. Conversely, the due process model, likened to an obstacle course, holds that criminal defendants should be presumed innocent and constitutional rights of the accused should be emphasized over conviction of the guilty. Neither of these models, however, completely dominates national or local crime policy.
- Discretion is exercised throughout the criminal justice system because violations of laws vary in their seriousness, and there are not enough human and financial resources to enforce all laws equally. Therefore, persons charged with enforcing laws, adjudicating cases, and punishing persons who have committed crimes exercise considerable judgment in terms of deciding whether to act, which official response is appropriate, and to what extent the community's attitude toward specific types of criminal acts should affect such decisions.
- Although the person experiencing the criminal justice system's path through the criminal justice process may be viewed as horizontal in nature with various stages occurring in a specific sequence, there are many points through which an offender can take a vertical pathway out of the system.
- The wedding cake model of criminal justice argues that not all criminal cases are viewed or handled in the same manner by either the police or the courts—some are treated with more discretion, while others are subjected to more formal processes. The processing of cases by the criminal justice system is divided into four categories: celebrated cases, serious felonies, lesser felonies, and misdemeanors. The type of treatment given to a particular case is determined by factors such as the seriousness of the charge, current policies and political influences, and the defendant's status and resources.
- Criminal justice officials must behave ethically. People engaged in this field must be of the highest ethical character and treat everyone with dignity and respect.

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KEY TERMS

Acquittal (p. 16)	Discretion (p. 12)
Adjudication (p. 16)	Due process model (p. 11)
Aggravating circumstances (p. 17)	Ethics (p. 20)
Arrest (p. 14)	Indeterminate sentence (p. 18)
Conflict theory of justice (p. 10)	Mitigating circumstances (p. 17)
Consensus theory of justice (p. 8)	Parole (p. 18)
Conviction (p. 16)	Prosecution (p. 15)
Crime control model (p. 11)	Sanction (p. 17)
Criminal justice flow and process (p. 12)	Three-strikes law (p. 6)
Determinate sentence (p. 18)	Wedding cake model of criminal justice (p. 18)

REVIEW QUESTIONS

1. Having read the chapter, do you believe it is important for you to study the structure and function of our criminal justice system? Why or why not?
2. How and why are laws created according to the consensus model of criminal justice? According to the conflict model of criminal justice?
3. How would you describe the crime control and due process models of criminal justice? What indicators might be present in your local community that would help you determine the most dominant model?
4. What are the major points at which someone accused or convicted of a crime is dealt with in the criminal justice process as they move through the police, courts, and corrections components?
5. What are the four tiers of the wedding cake model of criminal justice, and how is discretion by criminal justice officials used differently at each stage?
6. How would you characterize the importance of discretion and ethics throughout the justice system?

LEARN BY DOING

This Learn by Doing section, as well as those at the end of subsequent chapters, is an outgrowth of teachings by famed educator John Dewey, who advocated the “learning by doing” or problem-based approach to education. It also follows the popular learning method espoused by Benjamin Bloom, known as Bloom’s taxonomy, in which he called for “higher-order thinking skills”—critical and creative thinking that involves analysis, synthesis, and evaluation.⁴³

The following scenarios and activities will shift your attention from textbook-centered instruction and move the emphasis to student-centered projects. By being placed in these hypothetical situations, you can thus learn—and apply—some of the concepts covered in this chapter, develop skills in communication and self-management, at times become a problem solver, and learn about and address current community issues.

1. Assume you are an officer in your campus criminal justice honor society and are invited to speak at the society’s monthly meeting concerning your view of how crime is perceived and dealt with in your community. You opt to approach the question from Packer’s crime control and due process perspectives. Given what you know about crime and criminal justice in your community, what will you say in your presentation?

2. Your criminal justice professor asks you to prepare your own succinct diagram of the criminal justice process, including brief descriptions of each of the major stages (arrest, initial appearance, etc.) to illustrate how cases flow through the system. What will your final product look like?
3. As part of a class group project concerning the nature of crime and punishment, you are asked by your fellow group members to develop a 10-minute presentation on the wedding cake model of criminal justice. How will you describe it?
4. You have been asked to serve as a community representative on a task force aimed at proposing new criminal justice reforms. The other task force members nominate you to serve as the ethics chair. They ask you to identify the three most pressing ethical issues faced by criminal justice professionals today. How would you go about learning more about this topic before reporting back to the task force?

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