Chapter outline

• What Is Crime?
• The Criminal Justice System
• Values of the Criminal Justice System
• Criminal Justice in Action—Gun Control versus Gun Rights

Learning objectives

After reading this chapter, you should be able to:

LO1 Describe the two most common models of how society determines which acts are criminal.

LO2 Define crime and identify the different types of crime.

LO3 Outline the three levels of law enforcement.

LO4 List the essential elements of the corrections system.

LO5 Explain the difference between the formal and informal criminal justice processes.

LO6 Describe the layers of the “wedding cake” model.

LO7 Contrast the crime control and due process models.
Lessons Learned

Just after 3 P.M. on February 14, 2008, Stephen Kazmierczak kicked in an exit door that led into a lecture hall on the campus of Northern Illinois University (NIU) in DeKalb, Illinois. The twenty-seven-year-old, armed with a 12-gauge shotgun and three handguns, proceeded to fire more than fifty rounds of buckshot and bullets into the terrified crowd of students before turning one of the weapons on himself. Including the shooter, six people died and sixteen were wounded as a result of Kazmierczak’s violent outburst.

Silver linings were notably absent on that dark day, as the DeKalb community struggled to come to grips with the carnage. NIU’s response to Kazmierczak’s actions did, however, merit praise. Only ten months earlier, another university had become the scene of the deadliest shooting rampage in American history when Cho Seung Hui killed thirty-two people at Virginia Tech in Blacksburg, Virginia. Officials from that school came under widespread criticism for failing to notify the campus community about the first two deaths, providing Cho with several hours of preparation time before continuing his murderous assault in a separate building.

Putting into operation a plan designed in the wake of the Virginia Tech killings, NIU officials placed the campus on alert at 3:07 P.M., with all students and personnel confined to dorms, classrooms, and administrative offices. Within twenty minutes, the university posted a warning on its Web site and through e-mail: “There has been a report of a possible gunman on campus. Get to a safe area and take precautions until given the all clear.” By 4:14 P.M., the school issued another message, announcing that the threat had passed. “Their response time was amazing,” said one appreciative NIU student. “They had this whole campus on lockdown in seven minutes.”

Despite the difference in response times, the situations at Virginia Tech and Northern Illinois University did have a common result: a well-armed gunman was able to kill many people in a relatively short period of time. And putting aside questions of response times altogether, many observers were asking how Stephen Kazmierczak could have been prevented from getting into that classroom with those guns—a Remington shotgun, a Glock 9mm pistol, a Sig Sauer 9mm pistol, and a Hi-Point .380 pistol—in the first place. As it turned out, Kazmierczak had a state-issued Firearms Owner’s Identification Card, giving him the right to purchase and own the weapons. We address the controversial topic of gun control later in this chapter and throughout the textbook.

The rampage at NIU raised a number of other issues as well. Would it be practical for college officials to install metal detectors at school buildings such as dormitories, large halls, and libraries? We examine crime prevention strategies at various points in this course, particularly in Chapters 6 and 15 with regard to law enforcement. The legislatures of twelve states are also considering
new laws that would allow students who obtained concealed-weapons permits to carry their own weapons on campuses—an issue of self-defense, covered in Chapter 4. Finally, why did Kazmierczak do it? After months of intensive investigation by police, Kazmierczak's motives remained a mystery. In Chapter 2, we consider just how difficult it is for experts to determine why any given individual commits a crime.

As you proceed through this textbook, you will see that few aspects of American criminal justice are ever simple, even though you may have clear opinions about them. In this first chapter, we introduce you to the criminal justice system by discussing its structure and the values that it is designed to promote.

What Is Crime?

On June 1, 2008, a new law went into effect in Illinois requiring health professionals to report to state officials any patient "whose mental condition is of such a nature that it is manifested by violent, suicidal, threatening or assaultive behavior." This individual will subsequently be barred from receiving a state gun permit. (It is unlikely that Stephen Kazmierczak's ability to purchase his weapons would have been affected by the statute, despite family members' concerns that he was acting "erratically" in the weeks before the shootings. Kazmierczak had stopped taking antianxiety medication around that time.) Under the new Illinois law, any state gun merchant who sells a firearm to someone who has been designated violent, suicidal, or threatening has committed a felony and faces a year or more in prison. Before June 1, however, the designation did not exist, and any such sale would have been legal.

Does this overnight change in the treatment of certain gun sales mean that the new law is arbitrary or unfair? Not necessarily. It does mean that, in general, an act becomes a crime only when it meets the legal definitions that designate it as such. A crime can thus be defined as a wrong against society proclaimed by law and, if committed under certain circumstances, punishable by society.

The problem with this definition is that it obscures the complex nature of societies. A society is not static—it evolves and changes, and its concept of criminality evolves and changes as well. The Illinois law—along with similar legislation passed by a number of other states and the federal government—was a direct response to the Virginia Tech killings of April 2007. Cho Seung Hui had been found to be mentally unstable by a health care professional about a year and a half before he legally purchased the weapons used in his assault. Many Americans felt that this "loophole" in our nation's gun laws needed to be closed.

To more fully understand the concept of crime, it will help to examine the two most common models of how society "decides" which acts are criminal: the consensus model and the conflict model.

THE CONSENSUS MODEL

The consensus model assumes that as people gather together to form a society, they naturally come to a basic agreement with regard to shared norms and values. Those individuals whose actions deviate from the established norms and values are considered to pose a threat to the well-being of society as a whole and must be sanctioned (punished). The society passes laws to control and prevent deviant behavior, thereby setting the boundaries for acceptable behavior within the group. Use of the term consensus implies that a majority of the citizens agree on what activities should be outlawed and punished as crimes.

The consensus model, to a certain extent, assumes that a diverse group of people can have similar morals—that is, that they share an ideal of what is “right” and “wrong.” Consequently, as public attitudes toward morality change,
In 2001, the Netherlands became the first nation to legalize physician-assisted suicide and euthanasia (“mercy killing”). The new law simply formalized practices that had been taking place since 1973, when this European nation’s courts decided that doctors can help terminate a patient’s life if certain conditions are met: the patient must explicitly request such an action, the request must be voluntary, and the patient’s suffering must be unbearable and without any hope of improvement. The law requires youths aged twelve to sixteen to obtain parental consent before requesting assisted suicide. From the age of sixteen, all patients have the right to discuss the matter with their doctors of their own volition.

In explaining why the Netherlands accepts actions that many other countries would consider objectionable, observers point to several characteristics of Dutch society. First, physicians hold exalted positions, and their actions are rarely questioned. Not only are doctors authorized to terminate “meaningless” lives, but they are also expected to do so. Second, the country lacks a strong religious influence, which might place the question of assisted suicide in a different moral perspective. As it is, hopelessly ill patients who fail to request euthanasia are seen as adhering to outdated ethical values. Third, and most important, is the Dutch emphasis on personal autonomy; the choice to die is considered the responsibility of the individual, not of the state.

In 1998, an elderly Oregon woman whose breast cancer left her unable to breathe easily became the first American to legally commit suicide with the aid of a physician. Oregon’s Death with Dignity Act—which is modeled in many respects after the Dutch system—was upheld by the United States Supreme Court in 2006 in a decision that reconfirmed each state’s authority to legalize assisted suicide. As of September 2008, XXX people have ended their lives with a physician’s help in Oregon, which is still the only state that allows such a practice.

**FOR CRITICAL ANALYSIS**

What social attitudes make it unlikely that physician-assisted suicide and euthanasia will become widely accepted in this country?

Teaching Tip: In a short writing assignment, ask students to respond to “Questions for Critical Analysis” number one, in which they consider the consensus model. In a country as diverse as the United States, is it possible for a consensus on criminality to be reached?

Discussion Tip: Have students work in small groups to brainstorm examples of offenses that fit the conflict model. Which groups are perceived as holding the power, and which are not?

**Conflict Model**

A criminal justice model in which the content of criminal law is determined by the groups that hold economic, political, and social power in a community.

**THE CONFLICT MODEL**

Some people reject the consensus model on the ground that moral attitudes are not absolute. In large, democratic societies such as the United States, different segments of society will inevitably have different value systems and shared norms. According to the conflict model, these different segments—separated by social class, income, age, and race—struggle constantly with each other for control of society. The victorious groups exercise their power by codifying their value systems into criminal laws.

Consequently, what is deemed criminal activity is determined by whichever group happens to be holding power at any given time. Because certain groups

so do laws. In colonial times, those found guilty of adultery were subjected to corporal punishment. A century ago, a person could walk into a pharmacy and purchase heroin. Today, social attitudes have shifted to consider adultery a personal issue, beyond the purview of the state, and to consider the sale of heroin a criminal act. What happens when no consensus exists as to whether a certain act falls within the parameters of acceptable behavior? Society experiences a period of uncertainty as it struggles to formalize its attitudes as law. (For an example of the consensus model at work, see the feature *International CJ—Doctor-Assisted Death and the Dutch*.)
do not have access to political power, their interests are not served by the criminal justice system. To give one example, until recently the penalty (five years in prison) for possession of 5 grams of crack cocaine was the same as for possession of 500 grams of powdered cocaine. This 1:100 ratio has had widespread implications for African Americans, who represent 90 percent of all defendants charged with crack-related offenses.7 (White users appear to favor cocaine in its powdered form.) In December 2007, the U.S. Sentencing Commission attempted to alleviate this situation by lowering the punishment for those convicted of federal crack-related offenses,8 a controversial decision discussed further in Chapter 10.

AN INTEGRATED DEFINITION OF CRIME

Considering both the consensus and conflict models, we can construct a definition of crime that will be useful throughout this textbook. For our purposes, crime is an action or activity that is:

1. Punishable under criminal law, as determined by the majority or, in some cases, by a powerful minority.
2. Considered an offense against society as a whole and prosecuted by public officials, not by victims and their relatives or friends.
3. Punishable by statutorily determined sanctions that bring about the loss of personal freedom or life.

At this point, it is important to understand the difference between crime and deviance, or behavior that does not conform to the norms of a given community or society. Deviance is a subjective concept; some segments of society may think that smoking marijuana or killing animals for clothing and food is deviant behavior. Deviant acts become crimes only when society as a whole, through its legislatures, determines that those acts should be punished—as is the situation today in the United States with smoking marijuana but not with killing animals for food. Furthermore, not all crimes are considered particularly deviant; little social disapprobation is attached to those who fail to follow the letter of parking laws. In essence, criminal law reflects those acts that we, as a society, agree are so unacceptable that steps must be taken to prevent them from occurring.

TYPES OF CRIME

The manner in which crimes are classified depends on their seriousness. Federal, state, and local legislation has provided for the classification and punishment of hundreds of thousands of different criminal acts, ranging from jaywalking to first degree murder. For general purposes, we can group criminal behavior into six categories: violent crime, property crime, public order crime, white-collar crime, organized crime, and high-tech crime.

Violent Crime Crimes against persons, or violent crimes, have come to dominate our perspectives on crime. There are four major categories of violent crime:

• Murder, or the unlawful killing of a human being.
• Sexual assault, or rape, which refers to coerced actions of a sexual nature against an unwilling participant.
Business-related crimes are popularly referred to as
White-Collar Crime.

White-Collar Crime Business-related crimes are popularly referred to as white-collar crimes. The term white-collar crime is broadly used to describe an illegal act or series of acts committed by an individual or business entity using some nonviolent means to obtain a personal or business advantage.

Teaching Tip: Ask students to research how violent crimes are classified in your state. What criminal circumstances are required for each degree of an offense?

Discussion Tip: Have students debate the concept of victimless crimes. Why are public order crimes referred to as victimless crimes? Ask students if they believe there are any “true” victimless offenses.

- **Assault** and **battery**, two separate acts that cover situations in which one person physically attacks another (battery) or, through threats, intentionally leads another to believe that he or she will be physically harmed (assault).
- **Robbery**, the taking of funds, personal property, or any other article of value from a person by means of force or fear.

As you will see in Chapter 4, these violent crimes are further classified by degree, depending on the circumstances surrounding the criminal act. These circumstances include the intent of the person committing the crime, whether a weapon was used, and (in cases other than murder) the level of pain and suffering experienced by the victim. We take a closer look at the controversy surrounding the regulation of illegal firearms—one of the factors in America's violent crime rate—in the Criminal Justice in Action feature at the end of this chapter.

**Property Crime** The most common form of criminal activity is property crime, in which the goal of the offender is to achieve economic gain or to damage property. Pocket picking, shoplifting, and stealing that is not accomplished by force are covered by laws against larceny, also known as theft. Burglary involves unlawfully entering a structure with the intention of committing a serious crime, such as theft. Motor vehicle theft describes the theft or attempted theft of a motor vehicle, including all cases in which automobiles are taken by persons not having lawful access to them. The willful and malicious burning of a home, automobile, commercial building, or any other construction, known as arson, is also a property crime.

**Public Order Crime** The concept of public order crimes is linked to the consensus model discussed earlier. Historically, societies have always outlawed activities that are considered contrary to public values and morals. Today, the most common public order crimes include public drunkenness, prostitution, gambling, and illicit drug use. These crimes are sometimes referred to as victimless crimes because they often harm only the offender. As you will see throughout this textbook, however, that term is rather misleading. Public order crimes may create an environment that gives rise to property and violent crimes.

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**White-Collar Crime** Business-related crimes are popularly referred to as white-collar crimes. The term white-collar crime is broadly used to describe an illegal act or series of acts committed by an individual or business entity using some nonviolent means to obtain a personal or business advantage.

- Figure 1.1 lists various types of white-collar crimes; note that certain property crimes fall into this category when committed in a business context. Although the extent of this criminal activity is difficult to determine with any certainty, the Association of Certified Fraud Examiners estimates that white-collar crime costs U.S. corporations as much as $652 billion a year.

Traditionally, penalties for white-collar crime have been light. Between 1991 and 2001, the average sentence for a white-collar crime was around twenty months, about a quarter of the average sentence for a drug offense. In the early 2000s, however, four of the six largest corporate bankruptcies in U.S. history took place, fueled by a frenzy of management misconduct. Public attitudes toward business-related crimes hardened, and, consequently, prosecutors began seeking, and getting, harsher punishments for white-collar criminals. For example, in 2006, a judge sentenced former Enron chief Jeffrey Skilling to twenty-four years behind bars for his role in fraudulent business deals that destroyed more than $2 billion worth of employee pension plans. Another case involved former hedge-fund manager Daniel Marino, who defrauded investors of more than $400 million over an eight-year period. “You are as much a . . . criminal as any mobster or any drug kingpin,” scolded U.S. District Judge Colleen McMahon when she handed down a
White-collar crime takes place in the context of legal business. The hierarchical structure of organized crime operations often mirrors that of legitimate businesses, and, like any corporation, these groups attempt to capture a sufficient percentage of any given market to make a profit. For organized crime, the traditional preferred markets are gambling, prostitution, illegal narcotics, and loan sharking (lending money at higher-than-legal interest rates), along with more recent ventures into counterfeiting and credit-card scams. Although much of the public sees “the mob” as little more than a fictional device made popular by media creations such as the television series *The Sopranos* and the *Godfather* films, organized crime is an ongoing concern for law enforcement. In September 2007, for example, a federal jury convicted five men of conducting mob-related activities in Chicago that included eighteen murders.

**Organized Crime**  White-collar crime takes place in the context of legal business facilities. In contrast, *organized crime* describes illegal acts by illegal organizations, usually geared toward satisfying the public’s demand for unlawful goods and services. Organized crime broadly implies a conspiratorial and illegal relationship among any number of persons engaged in unlawful acts. More specifically, groups engaged in organized crime employ criminal tactics such as violence, corruption, and intimidation for economic gain.

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**High-Tech Crime**  The newest typology of crime is directly related to the increased presence of computers in everyday life. The Internet, with approximately 1.3 billion users worldwide, is the site of numerous *cyber crimes*, such as selling pornographic

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**Figure 1.1 White-Collar Crimes**

- **Embezzlement**  Embezzlement is a form of employee fraud in which an individual uses his or her position within an organization to *embezzle*, or steal, the organization’s funds, property, or other assets. Pilferage is a less serious form of employee fraud in which the individual steals items from the workplace.

- **Tax Evasion**  Tax evasion occurs when taxpayers underreport (or do not report) their taxable income or otherwise purposefully attempt to evade a tax liability.

- **Credit-Card and Check Fraud**  Credit-card fraud involves obtaining credit-card numbers through a variety of schemes (such as stealing them from the Internet) and using the numbers for personal gain. Check fraud includes writing checks that are not covered by bank funds, forging checks, and stealing traveler’s checks.

- **Mail and Wire Fraud**  This umbrella term covers all schemes that involve the use of mail, radio, television, the Internet, or a telephone to intentionally deceive in a business environment.

- **Securities Fraud**  Securities fraud covers illegal activity in the stock market. Stockbrokers who steal funds from their clients are guilty of securities fraud, as are those who engage in *insider trading*, which involves buying or selling securities on the basis of information that has not been made public.

- **Bribery**  Also known as *influence peddling*, bribery occurs in the business world when somebody within a company sells influence, power, or information to a person outside the company who can benefit. A county official, for example, could give a construction company a lucrative county contract to build a new jail. In return, the construction company would give a sum of money, also known as a *kickback*, to the official.

- **Insurance Fraud**  Insurance fraud involves making false claims in order to collect insurance payments. Faking an injury in order to receive payments from a workers’ compensation program, for example, is a form of insurance fraud.

- **Consumer Fraud**  This term covers a wide variety of activities designed to defraud consumers, from selling counterfeit art to offering “free” items, such as electronic devices or vacations, that include a number of hidden charges.

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**Teaching Tip:** Ask students to brainstorm on the topic of modern-day organized crime. Which criminal groups would students define as organized crime? What level of threat do students think these groups pose to society?

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See the **Computer Crime and Intellectual Property Section** of the U.S. Department of Justice for a wealth of information on cyber crimes. Find this Web site by clicking on *Web Links* under *Chapter Resources* at [www.cjinaction.com](http://www.cjinaction.com).

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**Organized Crime**  Illegal acts carried out by illegal organizations engaged in the market for illegal goods or services, such as illicit drugs or firearms.
Criminal Justice in Action: THE CORE

You Be the Judge The Party’s Over

THE FACTS “There is a relentless push throughout the entire organization to reduce costs in good times and bad,” wrote Parker, the chief executive officer (CEO) of Tyro Corporation, in the company’s annual report. Two months later, he threw a $2 million birthday party for his wife on the Italian island of Sardinia—the party featured models in Roman-style gowns tossing flower petals into the air and a performance by pop star Jimmy Buffett. Because Parker wrote the party off as a business expense, he was able to charge $1 million of its costs to Tyro. Eventually, the sixty-year-old businessman was found guilty of conspiring to steal about $170 million from his company.

THE LAW By law, the judge must sentence Parker to between one and thirty years in prison for his white-collar crimes.

YOUR DECISION Parker’s attorneys argue for leniency, pointing out that Tyro’s economic performance did not suffer because of their client’s “extravagances.” Furthermore, at his advanced age, a lengthy term in prison would amount to a life sentence. Prosecutors counter that a harsh penalty would deter other businesspersons from behaving similarly. How much time behind bars do you think that Parker deserves? Keep in mind that the average sentence for murder in this country is about twenty-two years.

[To see how a New York judge ruled in a case with similar facts, go to Example 1.1 in Appendix B.]

Discussion Tip: Have students work in groups to discuss cyber crimes such as the illegal downloading of movies or music, online pornography, and online gambling. Are these offenses examples of the consensus model or the conflict model? Can these offenses be considered victimless crimes?

materials, soliciting minors, and defrauding consumers with bogus financial investments. The dependence of businesses on computer operations has left corporations vulnerable to sabotage, fraud, embezzlement, and theft of proprietary data. (See Figure 1.2 for a description of several types of cyber crimes.)

Figure 1.2 Types of Cyber Crime

<table>
<thead>
<tr>
<th>Cyber Crimes against Persons and Property</th>
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<tbody>
<tr>
<td>• <strong>CyberFraud:</strong> Any misrepresentation knowingly made over the Internet with the intention of deceiving another person.</td>
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<tr>
<td>• <strong>Identity Theft:</strong> The appropriation of identity information, such as a person’s name, driver’s license, or Social Security number, to illegally access a victim’s financial resources.</td>
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<tr>
<td>• <strong>Cyberstalking:</strong> Use of the Internet, e-mail, or any other form of electronic communication to attempt to contact and/or intimidate another person.</td>
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<th>Cyber Crimes in the Business World</th>
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<tr>
<td>• <strong>Hacking/Cracking:</strong> The act of employing one computer to gain illegal access to the information stored on another computer.</td>
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<td>• <strong>Malware Production:</strong> The creation of programs harmful to computers, such as worms, Trojan horses, and viruses.</td>
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<tr>
<td>• <strong>Intellectual Property Theft:</strong> The illegal appropriation of property that results from intellectual, creative processes, such as films, video games, and software, without compensating.</td>
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<th>Cyber Crimes against the Community</th>
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<tr>
<td>• <strong>Online Child Pornography:</strong> The illegal selling, posting, and distributing of material depicting children engaged in sexually explicit conduct.</td>
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<tr>
<td>• <strong>Online Gambling:</strong> The use of the Internet to conduct gambling operations that would be illegal if carried out in the “real” world.</td>
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Chapter 1
Criminal Justice Today

The Criminal Justice System

Defining which actions are to be labeled “crimes” is only the first step in safeguarding society from criminal behavior. Institutions must be created to apprehend alleged wrongdoers, determine whether these persons have indeed committed crimes, and punish those who are found guilty according to society’s wishes. These institutions combine to form the criminal justice system. As we begin our examination of the American criminal justice system in this introductory chapter, it is important to have an idea of its purpose.

THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM

In 1967, the President’s Commission on Law Enforcement and Administration of Justice stated that the criminal justice system is obliged to enforce accepted standards of conduct so as to “protect individuals and the community.” Given this general mandate, we can further separate the purpose of the modern criminal justice system into three general goals:

1. To control crime
2. To prevent crime
3. To provide and maintain justice

Controlling and Preventing Crime Though many observers differ on the precise methods of reaching them, the first two goals are fairly straightforward. By arresting, prosecuting, and punishing wrongdoers, the criminal justice system attempts to control crime. In the process, the system also hopes to prevent new crimes from taking place. The prevention goal is often used to justify harsh punishments for wrongdoers, which some see as deterring others from committing similar criminal acts.

Maintaining Justice The third goal—providing and maintaining justice—is more complicated, largely because justice is a difficult concept to define. Broadly stated, justice means that all citizens are equal before the law and that they are free from arbitrary arrest or seizure as defined by the law. In other words, the idea of justice is linked with the idea of fairness. Above all, we want our laws and the means by which they are carried out to be fair.

Justice and fairness are subjective terms; different people may have different concepts of what is just and fair. If a woman who has been beaten by her husband retaliates by killing him, what is her just punishment? Reasonable persons could disagree; some might think that the homicide was justified and that she should be treated leniently, while others might insist that she should not have taken the law into her own hands. Police officers, judges, prosecutors, prison administrators, and other employees of the criminal justice system must
decide what is “fair.” Sometimes, their course of action is obvious; often, as we shall see, it is not.

Society places the burden of controlling crime, preventing crime, and determining fairness on those citizens who work in the three main institutions of the criminal justice system: law enforcement, courts, and corrections. In the next section, we take an introductory look at these institutions and their role in the criminal justice system as a whole.

**THE STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM**

To understand the structure of the criminal justice system, you must understand the concept of federalism, which means that government powers are shared by the national (federal) government and the states. The framers of the U.S. Constitution, fearful of tyranny and a too-powerful central government, chose the system of federalism as a compromise. The appeal of federalism was that it allowed for state powers and local traditions while establishing a strong national government capable of handling large-scale problems.

The Constitution gave the national government certain express powers, such as the power to coin money, raise an army, and regulate interstate commerce. All other powers were left to the states, including police power, which allows the states to enact whatever laws are necessary to protect the health, morals, safety, and welfare of their citizens. As the American criminal justice system has evolved, the ideals of federalism have ebbed somewhat; in particular, the powers of the national government have expanded significantly. Crime is still primarily a local concern, however, and the majority of all employees in the criminal justice system work for local government (see Figure 1.3).

**Law Enforcement** The ideals of federalism can be clearly seen in the local, state, and federal levels of law enforcement. Though agencies from the different levels cooperate if the need arises, they have their own organizational structures and tend to operate independently of one another. We briefly introduce each level of law enforcement here and cover them in more detail in Chapters 5, 6, and 7.

**Local Law Enforcement** On the local level, the duties of law enforcement agencies are split between counties and municipalities. The chief law enforcement officer of most counties is the county sheriff. The sheriff is usually an elected post, with a two- or four-year term. In some areas, where city and county governments have merged, there is a county police force, headed by a chief of police.
The bulk of local police officers—nearly 580,000—are employed by municipalities. The majority of these forces consist of fewer than ten officers, but large cities may have thousands of police officers. New York City, for example, has a police force of more than 35,000.

Local police are responsible for the "nuts and bolts" of law enforcement work. They investigate most crimes and attempt to deter crime through patrol activities. They apprehend criminals and participate in trial proceedings, if necessary. Local police are also charged with "keeping the peace," a broad set of duties that includes crowd and traffic control and the resolution of minor conflicts between citizens. In many areas, local police have the added obligation of providing social services, such as dealing with domestic violence and child abuse.

**State Law Enforcement** Hawaii is the only state that does not have a state law enforcement agency. Generally, there are two types of state law enforcement agencies, those designated simply as "state police" and those designated as "highway patrols." State highway patrols concern themselves mainly with infractions on public highways and freeways. Other state law enforcers include fire marshals, who investigate suspicious fires and educate the public on fire prevention, and fish, game, and watercraft wardens, who police a state's natural resources and often oversee its firearms laws. Some states also have alcoholic beverage control officers, as well as agents who investigate welfare and food stamp fraud.

**Federal Law Enforcement** The enactment of new national gun, drug, and violent crime laws over the past thirty years has led to an expansion in the size and scope of the federal government's participation in the criminal justice system. Federal agencies with police powers include the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the U.S. Secret Service, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In fact, almost every federal agency, including the postal service and the forest service, has some kind of police power. In 2002, President George W. Bush created the Department of Homeland Security, which combines the police powers of twenty-two federal agencies in order to protect the United States from terrorist attacks. The crucial law enforcement role of this department is examined in detail in Chapters 5 and 15.

**The Courts** The United States has a *dual court system*; that is, we have two independent judicial systems, one at the federal level and one at the state level. In practice, this translates into fifty-two different court systems: one federal court system and fifty different state court systems, plus that of the District of Columbia. The federal system consists of district courts, circuit courts of appeals, and the United States Supreme Court. The state systems include trial courts at the local and state levels, intermediate courts of appeals, and state supreme courts.

The *criminal court* and its work group—the judge, prosecutors, and defense attorneys—are charged with the weighty responsibility of determining the innocence or guilt of criminal suspects. We cover these important participants, their roles in the criminal trial, and the court system as a whole in Chapters 8, 9, and 10.

**Corrections** Once the court system convicts and sentences an offender, she or he is delegated to the corrections system. Depending on the seriousness of the crime and their individual needs, offenders are placed on probation, incarcerated, or transferred to community-based corrections facilities.
Probation, the most common correctional treatment, allows the offender to return to the community and remain under the supervision of an agent of the court known as a probation officer. While on probation, the offender must follow certain rules of conduct. When probationers fail to follow these rules, they may be incarcerated.

If the offender’s sentence includes a period of incarceration, he or she will be remanded to a corrections facility for a certain amount of time. Jails hold those convicted of minor crimes with relatively short sentences, as well as those awaiting trial or involved in certain court proceedings. Prisons house those convicted of more serious crimes with longer sentences. Generally speaking, counties and municipalities administer jails, while prisons are the domain of federal and state governments.

Community-based corrections have increased in popularity as jails and prisons have been plagued with problems of funding and overcrowding. Community-based correctional facilities include halfway houses, residential centers, and work-release centers; they operate on the assumption that all convicts do not need, and are not benefited by, incarceration in jail or prison.

The majority of those inmates released from incarceration are not finished with the correctional system. The most frequent type of release from a jail or prison is parole, in which an inmate, after serving part of his or her sentence in a correctional facility, is allowed to serve the rest of the term in the community. Like someone on probation, a parolee must conform to certain conditions of freedom, with the same consequences if these conditions are not followed. Issues of probation, incarceration, community-based corrections, and parole are covered in Chapters 11, 12, and 13.

THE CRIMINAL JUSTICE PROCESS

In its 1967 report, the President’s Commission on Law Enforcement and Administration of Justice asserted that the criminal justice system
is not a hodgepodge of random actions. It is rather a continuum—an orderly progression of events—some of which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view.\textsuperscript{13}

The commission’s assertion that the criminal justice system is a “continuum” is one that many observers would challenge.\textsuperscript{14} Some liken the criminal justice system to a sports team, which is the sum of an indeterminable number of decisions, relationships, conflicts, and adjustments.\textsuperscript{15} Such a volatile mix is not what we generally associate with a “system.” For most, the word system indicates a certain degree of order and discipline. That we refer to our law enforcement agencies, courts, and correctional facilities as part of a “system” may reflect our hopes rather than reality.

The Assembly Line Just as there is an idealized image of the criminal justice system as a smooth continuum, there also exists an idealized version of the criminal justice process, or the procedures through which the criminal justice system meets the expectations of society. Professor Herbert Packer, for example, compared the idealized criminal justice process to an assembly line, down which moves an endless stream of cases, never stopping, carrying the cases to workers who stand at fixed stations and who perform on each case as it comes by the same small but essential operation that brings it one step closer to being a finished product, or, to exchange the metaphor for the reality, a closed file.\textsuperscript{16}

As Packer himself was wont to point out, the daily operations of criminal justice are not nearly so perfect. In this textbook, the criminal justice process is presented as the end product of thousands of decisions made by police officers, courtroom
The criminal justice process functions as a continuous balancing act between its formal and informal nature.

The Formal Criminal Justice Process

In Packer’s image of assembly-line justice, each step of the process “involves a series of routinized operations whose success is gauged primarily by their tendency to pass the case along to a successful conclusion.” These “routinized” steps are detailed in the foldout exhibit in this chapter.

The Informal Criminal Justice Process

Each step described in the foldout exhibit is the result of a series of decisions that must be made by those who work in the criminal justice system. This discretion—which can be defined as the authority to choose between and among alternative courses of action—leads to the development of the informal criminal justice process discussed below.

Discretionary Basics

One New York City public defender called his job “a pressure cooker.” That description could apply to the entire spectrum of the criminal justice process. Law enforcement agencies do not have the staff or funds to investigate every crime; they must decide where to direct their restricted resources. Increasing caseloads and a limited amount of time in which to dispose of them constrict many of our nation’s courts. Overcrowding in prisons and jails affects both law enforcement agencies and the courts—there is simply not enough room for all convicts.

The criminal justice system uses discretion to alleviate these pressures. Police decide whether to arrest a suspect; prosecutors decide whether to prosecute; magistrates decide whether there is sufficient probable cause for a case to go to a jury; and judges decide on sentencing, to mention only some of the occasions when discretion is used. (See Figure 1.4 for a description of some of the most important discretionary decisions.) Collectively, these decisions are said to produce an informal criminal justice system because discretion is informally exercised by the individual and is not enclosed within the rigid confines of the law. Even if prosecutors believe that a suspect is guilty, they may decide not to prosecute if the case is weak or if they know that the police erred in the investigatory process. In most instances, prosecutors will not squander the scarce resource of court time on a case they might not win. Some argue that the informal process has made our criminal justice system more just. Given the immense pressure of limited resources, the argument goes, only rarely will an innocent person end up before a judge and jury.

Discretionary Values

Of course, not all discretionary decisions are dictated by the scarcity of resources. Sometimes, discretion is based on political considerations, such as when a police administrator orders a crackdown on public order crimes because of citizen complaints. Furthermore, employees of the criminal justice system may make decisions based on their personal moral values, which, depending on what those values are, may make the system less just in the eyes of some observers. For that reason, discretion is closely connected to questions of ethics in criminal justice and is discussed in that context throughout this textbook. (For a look at the role that personal values play in the criminal justice system, see the feature A Question of Ethics—Death of a Cowgirl.)

Discussion Tip: Ask students to respond to "Questions for Critical Analysis" number five, in which they consider what the results might be if discretion was not an element of the criminal justice process.

- **Figure 1.4 Discretion in the Criminal Justice System**

  Criminal justice officials must use discretion every day. The officials identified in the figure below rely heavily on discretion when meeting the listed responsibilities.

  **Police**
  - Enforce laws
  - Investigate specific crimes
  - Search people or buildings
  - Arrest or detain people

  **Prosecutors**
  - File charges against suspects brought to them by the police
  - Drop cases
  - Reduce charges

  **Judges**
  - Set conditions for pretrial release
  - Accept pleas
  - Dismiss charges
  - Impose sentences

  **Correctional Officials**
  - Assign convicts to prison or jail
  - Punish prisoners who misbehave
  - Reward prisoners who behave well

Chapter 1
Criminal Justice Today

A Question of Ethics
Death of a Cowgirl

THE SITUATION During the annual “Wild West Days” celebration, a homeless man named Bert ignored signs labeled “No Disrupting of Parade Route” and crossed Main Street. In doing so, he unintentionally spooked a horse carrying ten-year-old “cowgirl” Katy. The horse bolted, and Katy was thrown to her death. Parade rules stipulate that no person under the age of twelve years may ride a horse in the parade, but Katy’s mother, an important businesswoman and community leader, managed to circumvent these regulations on her daughter’s behalf. Now, Katy’s mother is insisting that District Attorney Patty Lopez, who is facing a tough reelection battle, bring murder charges against Bert.

WHAT IS THE SOLUTION? What do you think District Attorney Lopez should do? She knows that, legally, she can charge Bert with involuntary manslaughter. But murder trials take up considerable resources that might be better spent prosecuting more dangerous offenders who are charged with more serious crimes. Lopez also knows that, under most circumstances, she would have very little chance of convincing a jury that such an obvious accident requires punishment. In this situation, though, Katy is a very sympathetic victim and Bert is a very unsympathetic suspect. How will District Attorney Lopez’s personal values, and her political considerations, affect her discretion in this matter?

THE ETHICAL DILEMMA Following the letter of the law, District Attorney Lopez could charge Bert with involuntary manslaughter. As you will learn in Chapter 3, this charge requires that the offender’s carelessness caused a death that he or she did not intend. Lopez realizes, however, that hundreds of people cross Main Street during the parade every year and that Bert was more unlucky than careless. At the same time, Lopez is well aware that the support of Katy’s mother is crucial to her reelection campaign. If she fails to bring charges against Bert, she might well lose the election.

Log 6

The “Wedding Cake” Model of Criminal Justice

Some believe that the prevailing informal approach to criminal justice creates a situation in which cases are not treated equally. As anecdotal evidence, they point to a cultural landmark in the American criminal justice system—the highly publicized O. J. Simpson trial of 1994, during which the wealthy, famous defendant had an experience far different from that of most double-murder suspects. To describe this effect, criminal justice researchers Lawrence M. Friedman and Robert V. Percival came up with a “wedding cake” model of criminal justice. This model posits that discretion comes to bear depending on the relative importance of a particular case to the decision makers. Like any wedding cake, Friedman and Percival’s model has the smallest layer at the top and the largest at the bottom (see Figure 1.5).

1. The “top” layer consists of a handful of “celebrity” cases that attract the most attention and publicity. Recent examples of top-level cases include the trials of xxxxxxxxxxxxxxxxxx, convicted of kidnapping, raping, and murdering nine-year-old Jessica Lunsford in Florida; xxxxxxxxxxxxxxxx, the famed music producer charged with murdering a female companion; and xxxxxxx xxxxxxxxxx, found guilty of voluntary manslaughter in the death of her husband, a small-town Tennessee pulpit minister.

2. The second layer consists of “high-profile” felonies. A felony is a serious crime such as murder, rape, or burglary. This layer includes crimes committed by persons with criminal records, crimes in which the victim was seriously injured, and crimes in which a weapon was used, as well as crimes in which the offender and the victim were strangers. These types of felonies are considered “high profile” because they usually draw a certain amount of public attention, which puts pressure on prosecutors to bring such a case to trial instead of accepting a guilty plea for a lesser sentence.

Figure 1.5 The “Wedding Cake” Model

I. The celebrity cases

II. Serious or “high-profile” felonies

III. Less serious or “ordinary” felonies

IV. Misdemeanors
3. The third layer consists of “ordinary” felonies, which include less violent crimes such as burglaries and thefts or robberies in which no weapon was used. Because of the low profile of the accused—usually a first-time offender who has had a prior relationship with his or her victim—these “ordinary” felonies often do not receive the full, formal process of a trial.

4. Finally, the fourth layer consists of misdemeanors, or crimes less serious than felonies. Misdemeanors include petty offenses such as shoplifting, disturbing the peace, and violations of local ordinances. More than three-quarters of all arrests made by police are for misdemeanors.

The irony of the wedding cake model is that the cases on the top level come closest to meeting our standards of ideal criminal justice. In these celebrity trials, we get to see committed (and expensive) attorneys argue minute technicalities of the law, sometimes for days on end. The further one moves down the layers of the cake, the more informal the process becomes. Though many of the cases in the second layer are brought to trial, only rarely does this occur for the less serious felonies in the third level of the wedding cake. By the fourth level, cases are dealt with almost completely informally, and the end goal appears to be speed rather than what can be called “justice.”

Public fascination with celebrity cases obscures a truth of the informal criminal justice process: trial by jury is relatively rare (only about 5 percent of those arrested for felonies go to trial), and most cases are disposed of with an eye more toward convenience than ideals of justice or fairness. Consequently, the summary of the criminal justice system provided by the wedding cake model is much more realistic than the impression many Americans have obtained from the media.

To protect against a too-powerful central government, the framers of the U.S. Constitution relied on the principle of ______ to balance power between the national government and the states. Consequently, the United States has a ____ court system—one at the federal level and one at the _____ level. At every level, the criminal justice system relies on the ______ of its employees to keep it from being bogged down by formal rules. Some critics think that this freedom to make decisions leads to the ______ model of court proceedings, in which only the “top” layer of criminal court cases meets ideal standards. Check your answers on page 23.

Values of the Criminal Justice System

If the general conclusion of the wedding cake model—that some defendants are treated differently than others—bothers you, then you probably question the values of the system. Just as individuals have values—a belief structure governing individual conduct—our criminal justice system can be said to have values, too. These values form the foundation for Herbert Packer’s two models of the criminal justice system, which we discuss next.

CRIME CONTROL AND DUE PROCESS: TO PUNISH OR PROTECT?

In his landmark book *The Limits of the Criminal Sanction*, Packer introduced two models for the American criminal justice system: the crime control model and the due process model.20 The underlying value of the crime control model is that the
The most important function of the criminal justice process is to punish and repress criminal conduct. Though not in direct conflict with crime control, the underlying values of the due process model focus more on protecting the civil rights of the accused through legal constraints on police, courts, and corrections. Civil rights are those rights guaranteed to all Americans in the U.S. Constitution.

**The Crime Control Model** Under the crime control model, law enforcement must be counted on to control criminal activity. “Controlling” criminal activity is at best difficult, and probably impossible. For the crime control model to operate successfully, Packer writes, it must produce a high rate of apprehension and conviction, and must do so in a context where the magnitudes being dealt with are very large and the resources for dealing with them are very limited.\(^2\)

In other words, the system must be quick and efficient. In the ideal crime control model, any suspect who most likely did not commit a crime is quickly jetisoned from the system, while those who are transferred to the trial process are convicted as quickly as possible. It was in this context that Packer referred to the criminal justice process as an assembly line.

The crime control model also assumes that the police are in a better position than the courts to determine the guilt of arrested suspects. Therefore, not only should judges operate on a “presumption of guilt” (that is, any suspect brought before the court is more likely guilty than not), but as few restrictions as possible should be placed on police investigative and fact-gathering activities. The crime control model relies on the informality in the criminal justice system, as discussed earlier.

**The Due Process Model** Packer likened the due process model to an obstacle course instead of an assembly line. Rather than expediting cases through the system, as is preferable in the crime control model, the due process model strives to make it more difficult to prove guilt. It rests on the belief that it is more desirable for society that ninety-nine guilty suspects go free than that a single innocent person be condemned.\(^2\)

The due process model is based on the assumption that the absolute efficiency that is the goal of the crime control model can be realized only if the power of the state is absolute. Because fairness, and not efficiency, is the ultimate goal of the due process model, it rejects the idea of a criminal justice system with unlimited powers. As a practical matter, the model also cautions that human error in any process is inevitable. The members of the criminal justice system must be aware of this fallibility and take all necessary measures to protect the rights of the citizenry from any of its ill effects.

Finally, whereas the crime control model relies heavily on the police, the due process model relies just as heavily on the courts and their role in upholding the legal procedures of establishing guilt. The due process model is willing to accept that a person who is factually guilty will go free if the criminal justice system does not follow legally prescribed procedures in proving her or his culpability.\(^2\) Therefore, the due process model relies on formality in the criminal justice system. Mastering Concepts on the following page compares and contrasts the two models.

**WHICH MODEL PREVAILS TODAY?**

Though both the crime control and the due process models have always been present to a certain degree, during different time periods one has taken precedence over the other. The twentieth century saw such an ebb and flow. The influx of immigrants and problems of urbanization in the early 1900s caused something of a panic within the American upper class. Considering that most, if not all, politicians and legal theorists were members of this class, it is not surprising that crime control principles prevailed during the first half of the last century.
The Pendulum Swings  As the nation became more secure and prosperous in the 1950s and 1960s, a “due process revolution” took place. Under the leadership of Chief Justice Earl Warren, the United States Supreme Court significantly expanded the rights of the accused in a series of landmark cases. (These cases are referred to throughout this textbook, and some of them are featured in the timeline on the back of the foldout exhibit in this chapter.) Suspected offenders were guaranteed, among other things, that an attorney would be provided to them by the state if they could not afford one and that they would be notified of their right to remain silent and retain counsel on being arrested. The 1960s also saw severe limits placed on the power of the police, as the Court required law enforcement officers to strictly follow specific guidelines on gathering evidence or risk having that evidence invalidated.

**Goals of the Criminal Justice System:**
- Deter crime.
- Protect the public from crime.
- Incapacitate criminals.
- Provide quick and efficient justice.

**Goals Can Best Be Met by:**
- Promoting discretion and limiting bureaucratic red tape in criminal justice institutions.
- Making it easier for police to arrest criminals.
- Reducing legal restrictions on proving guilt in a criminal trial.

**Favored Policies:**
- More police.
- More jails and prisons.
- Harsher penalties (including increased use of the death penalty) and longer sentences.

**View of Criminality:**
- Wrongdoers are responsible for their own actions.
- Wrongdoers have violated the social contract and can therefore be deprived of many of the rights afforded to law-abiding citizens.

**Case in Point:**
- *Ohio v. Robinette* (519 U.S. 33 [1996]), which allows police greater freedom to search the automobile of a driver stopped for speeding.

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**Goals of the Criminal Justice System:**
- Protect the individual against the immense power of the state.
- Rehabilitate those convicted of crimes.

**Goals Can Best Be Met by:**
- Limiting state power by assuring the constitutional rights of the accused.
- Providing even guilty offenders with full protection of the law and allowing those offenders to go free if due process procedures are not followed.
- Assuring that all accused criminals receive the same treatment from the law, regardless of class, race, gender, or sexual orientation.
- Protecting the civil rights of prisoners.

**Favored Policies:**
- Open the criminal justice process to public scrutiny.
- Abolish the death penalty.
- Limit police powers to arbitrarily search, interrogate, and seize criminal suspects.
- Limit discretion and formalize criminal justice procedures so that all suspects and convicted offenders receive the same treatment.
- Increase funding for rehabilitation and education programs in jails and prisons.

**View of Criminality:**
- Criminal behavior can be attributed to social and biological factors.
- Criminals can be rehabilitated and returned to the community after incarceration.

**Case in Point:**
- *Mapp v. Ohio* (367 U.S. 643 [1961]), which invalidates evidence improperly gathered by the police, even if the evidence proves the suspect’s guilt.
Rising crime rates in the late 1970s and early 1980s led to increased pressure on politicians and judges to “get tough on crime.” This development slowed down the due process revolution and returned the principles of the crime control model to our criminal justice system. In 1984, for example, three Supreme Court cases reinstated the investigatory leeway that police had enjoyed in the first half of the century. Even if evidence was obtained illegally, the Court ruled, it could be admitted at trial if the police officers could prove they would have obtained the evidence legally anyway.27 Furthermore, in two separate cases the Court created the “good faith” exception to evidence-gathering rules, which basically allowed illegally obtained evidence to be admitted if the police officers were unaware that they were acting unconstitutionally.28 According to many criminal law experts, the values of crime control gained undue leverage as a result of this trio of cases.29 (The role of the Bill of Rights in determining police power is covered in Chapter 7.)

Responding to Terrorism The values of the criminal justice system are reflected not only in court decisions but also in public policy. On September 11, 2001, terrorists hijacked four commercial airliners and used the planes to kill 3,021 people in New York City, northern Virginia, and rural Pennsylvania. Broadly defined as the random use of staged violence to achieve political goals, terrorism suddenly became a crucial issue in criminal justice. Six weeks after the attacks, President George W. Bush signed the Patriot Act into law.30 In an effort to prevent future strikes, the law strengthened the ability of federal law enforcement agencies to investigate and incarcerate suspects; thus, it represented a dramatic shift toward the crime control model (see Figure 1.6). Other efforts to support homeland security, or the national effort to prevent future terrorist strikes, have generally reflected crime control values as well.

Even though many Americans recognize that the government must take strong steps to protect the United States from terrorist attacks, the Patriot Act has been intensely criticized for “going too far” in infringing on individual civil rights. Several incidents have intensified this backlash. First, in 2005, the National Security Agency admitted that it had been eavesdropping on Americans without first obtaining a court order (a topic we discuss in Chapter 7) since the September 11 attacks. Then, as you will see in Chapter 15, in 2007 the FBI conceded that its agents had been misusing the Patriot Act to gather records on telephone company and Internet service provider customers. Although President Bush expressed “concern” over civil rights abuses connected with antiterrorism efforts, he also signaled that his administration remained committed to the values of crime control in the post-9/11 criminal justice landscape.

Self Check Fill in the Blanks

The _______ model of criminal justice places great importance on high rates of apprehension and conviction of criminal suspects. In contrast, the _______ model emphasizes the rights of the _______ over the powers of the state. On September 11, 2001, the pendulum swung toward the _______ model, as our government responded to the challenges of fighting acts of violence motivated by political grievances, also known as _______. Check your answers on page 23.
For many Americans, gun ownership provides a comforting feeling of safety. In the six-month period following the terrorist attacks of September 11, 2001, for example, handgun sales increased by 455,000 over the same period the year before. The vast majority of Americans who own guns are law-abiding citizens who keep their firearms at home for self-protection. This chapter’s Criminal Justice in Action feature deals with the thorny issue of how best to protect the rights of this group while at the same time limiting the harm done by the illegal or improper use of firearms in the United States.

The Second Amendment to the U.S. Constitution states, “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.” Forty-four states have added similar guarantees to their constitutions, as well as giving gun owners various rights—such as the rights to carry a concealed weapon and to shoot at intruders—not found in the original document. Law enforcement efforts in this area are mostly concerned with keeping guns out of the hands of those—such as children, the mentally ill, and criminals—who might use guns to harm themselves or others.

Critics of our nation’s relatively lax gun laws argue for greater restrictions on ownership. They consider gun use to be a public health problem with disastrous consequences for American society. According to government data, on an average day in the United States firearms are used to kill about 80 people and wound 160 more. Nevertheless, in the entire country, only the cities of Washington, D.C., and Chicago, Illinois, have passed local ordinances banning firearms.

The Case for More Restrictive Gun Laws

- Guns kill. A recent survey found that homicide rates are highest in states with the highest levels of gun ownership.
- Guns in a household are more likely to harm the occupants than protect them. A household that contains guns is three times more likely to be the site of a fatal shooting and five times more likely to experience a suicide than households that have no firearms.

Furthermore, according to the federal government, guns are used for defensive purposes only about 108,000 times each year—a figure that is dwarfed by the 1.3 million gun crimes occurring each year.

- The Second Amendment protects the rights of states to maintain militias without federal government interference, not the rights of individual citizens to have guns.

The Case against More Restrictive Gun Laws

- Gun control laws do not decrease crime, for the simple reason that someone who is going to commit a crime with a gun is probably going to obtain that firearm illegally. So, for example, fifteen years after Washington, D.C.’s ban went into effect in 1977, the city’s murder rate had increased 300 percent. In 2006, District police confiscated more than 2,600 guns. As one observer points out, “the D.C. gun control laws irrationally prevent only law-abiding citizens from owning handguns.”
- Handguns offer protection from criminal attacks beyond that provided by public law enforcement.
- About a quarter of a billion handguns are privately and legally owned in this country. Putting restrictions on that ownership would create a huge new criminal class in this country, not to mention the anger toward the government that such measures would provoke.

Your Opinion—Writing Assignment

In an historic 2008 decision, the United States Supreme Court struck down Washington, D.C.’s handgun ban, ruling that the Second Amendment provides individuals with a constitutional right to bear arms. The Court ruled that while the federal government and require registration cannot prevent private ownership in the home, as the D.C. statute did.

Following the decision, city officials in Chicago insisted that its ban remained valid, as the Supreme Court’s decision only applied to the federal law that covered Washington, D.C. Do you think that the Court should allow states and cities to restrict gun ownership if a majority of citizens in those jurisdictions wish to do so? Do you agree with the Court’s recent decision, or would our society benefit from stricter gun control provisions? Before responding, you can review our discussions in this chapter concerning:

- Consensus and conflict models of crime (pages 5–7).
- Federalism and the structure of the criminal justice system (pages 12–14).
- The purpose of the criminal justice system (pages 11–12).

Your answer should include at least three full paragraphs.
Describe the two most common models of how society determines which acts are criminal.
The consensus model argues that the majority of citizens will agree on which activities should be outlawed and punished as crimes; it rests on the assumption that a diverse group of people can have similar morals. In contrast, the conflict model argues that in a diverse society, the dominant groups exercise power by codifying their value systems into criminal laws.

Define crime and identify the different types of crime. Crime is any action punishable under criminal statutes. Because crime is considered an offense against society, alleged criminals are prosecuted by the state rather than by victims. Crimes are punishable by sanctions that bring about a loss of personal freedom or, in some cases, fines. There are six groups of crimes: (a) violent crimes—murder, rape, assault, battery, robbery; (b) property crimes—pocket picking, shoplifting, larceny/theft, burglary, and arson; (c) public order crimes—public drunkenness, prostitution, gambling, and illicit drug use; (d) white-collar crime—fraud and embezzlement; (e) organized crime—crime undertaken by a number of persons who operate their activities much as legal businesses do; and (f) high-tech crime—sabotage, fraud, embezzlement, and theft of proprietary data from computer systems, as well as cyber crimes, such as selling child pornography over the Internet.

Outline the three levels of law enforcement. Because we have a federal system of government, law enforcement occurs at the (a) national, or federal, level and the (b) state level and within the states at the (c) local level. Because crime is mostly a local concern, most employees in the criminal justice system work for local governments. Agencies at the federal level include the FBI, the DEA, and the U.S. Secret Service, among others.

List the essential elements of the corrections system. Criminal offenders may be placed on probation, incarcerated in a jail or prison, transferred to community-based corrections facilities, or released on parole.

Explain the difference between the formal and informal criminal justice processes. The formal criminal justice process involves prescribed procedures such as booking, setting bail, and the like. For every step in the formal process, though, someone has discretion, and such discretion leads to an informal process. Even when prosecutors believe that a suspect is guilty, they have the discretion not to prosecute, for example.

Describe the layers of the “wedding cake” model. The top layer consists of celebrity cases, which are most highly publicized; the second layer involves high-profile felonies, such as rape and murder; the third layer consists of property crimes such as larcenies and burglaries; and the fourth layer consists of misdemeanors.

Contrast the crime control and due process models. The crime control model assumes that the criminal justice system is designed to protect the public from criminals; thus, its most important function is to punish and repress criminal conduct. The due process model presumes that the accused are innocent and provides them with the most complete safeguards, usually within the court system.

Key Terms

- assault 8
- battery 8
- burglary 8
- civil rights 19
- conflict model 6
- consensus model 5
- crime 5
- crime control model 19
- criminal justice system 11
- deviance 7
- discretion 16
- due process model 19
- federalism 12
- homeland security 21
- larceny 8
- organized crime 9
- public order crime 8
- murder 7
- robbery 8
- sexual assault 7
- terrorism 21
- “wedding cake” model 17
- white-collar crime 8
Questions for Critical Analysis

1. How is it possible to have a consensus about what should or should not be illegal in a country with several hundred million adults from all races, religions, and walks of life?

2. Why are criminals prosecuted by the state, through its public officials, rather than by the victims themselves?

3. Why are public order crimes sometimes referred to as victimless crimes?

4. At what political level is most law enforcement carried out? Relate your answer to the concept of federalism.

5. Suppose that all of the officials involved in the criminal justice process were deprived of the discretion they now have. What might some of the results be?

6. What is the name of the federal legislation passed in 2001 to enhance the federal government’s ability to combat terrorism? What are some of the “tools” this law provides law enforcement officers to aid their antiterrorism efforts?

Maximize Your Best Possible Outcome for Chapter 1

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3. Learn about Potential Criminal Justice Careers discussed in this chapter by exploring careers online at www.cjinaction.com. You will find career descriptions and information about job requirements, training, salary and benefits, and the application process. You can also watch video profiles featuring criminal justice professionals.

Notes

1. Tim Rutten, ”Prayers’ Just Won’t Do,” Los Angeles Times (February 16, 2008), 25.
2. TO COME
11. Patricia Hurtado and David Glovin, ”Bayou’s Marino Gets 20 Years for Hedge Fund Fraud” (February 11, 2008), at www.bloomberg.com/apps/news?pid=206010877&sid=aWb_2wN49b2I&refer=home.
13. Ibid.
17. Ibid.
18. Daniel Givelber, ”Meaningless Acquittals, Meaningful Convictions: Do We Reliably Acquit the Innocent?” Rutgers Law Review 49 (Summer 1997), 1317.
21. Ibid.
22. Givelber, 1317.
24. Gideon v. Wainwright, 372 U.S. 335 (1963). Many United States Supreme Court cases will be cited in this book, and it is important to understand these citations. Gideon v. Wainwright refers to the parties in the case that the Court is reviewing. “U.S.” is the abbreviation for United States Reports, the official publication of United States Supreme Court decisions. “372” refers to the volume of the United States Reports where the case appears, and “335” refers to the page.
number. The citation ends with the year the case was decided in parentheses. Most, though not all, case citations in this book will follow this formula. For general information on how to read case citations and find court decisions, see the appendix at the end of this chapter.

Chapter One Appendix

HOW TO READ CASE CITATIONS AND FIND COURT DECISIONS

Many important court cases are discussed throughout this book. Every time a court case is mentioned, you will be able to check its citation using the endnotes on the final pages of the chapter. Court decisions are recorded and published on paper and on the Internet. When a court case is mentioned, the notation that is used to refer to, or to cite, the case denotes where the published decision can be found.

Decisions of state courts of appeals are usually published in two places, the state reports of that particular state and the more widely used National Reporter System published by West Group. Some states no longer publish their own reports. The National Reporter System divides the states into the following geographic areas: Atlantic (A. or A.2d), North Eastern (N.E. or N.E.2d), North Western (N.W. or N.W.2d), Pacific (P., P.2d, or P.3d), Southern (So. or So.2d), and South Western (S.W., S.W.2d, or S.W.3d). The 2d and 3d in these abbreviations refer to the Second Series and Third Series, respectively.

Federal trial court decisions are published unofficially in West's Federal Supplement (F.Supp. or F.Supp.2d), and opinions from the circuit courts of appeals are reported unofficially in West's Federal Reporter (F., F.2d, or F.3d). Opinions from the United States Supreme Court are reported in the United States Reports (U.S.), the Lawyers' Edition of the Supreme Court Reports (L.Ed.), West's Supreme Court Reporter (S.Ct.), and other publications. The United States Reports is the official publication of United States Supreme Court decisions. It is published by the federal government. Many early decisions are missing from these volumes. The citations of the early volumes of the United States Reports include the names of the actual reporters, such as Dallas, Cranch, or Wheaton. McCulloch v. Maryland, for example, is cited as 17 U.S. (4 Wheat.) 316. Only after 1874 did the present citation system, in which cases are cited based solely on their volume and page numbers in the United States Reports, come into being. The Lawyers' Edition of the Supreme Court Reports is an unofficial and more complete edition of Supreme Court decisions. West's Supreme Court Reporter is an unofficial edition of decisions dating from October 1882. These volumes contain headnotes and numerous brief editorial statements of the law involved in the case.

Citations to decisions of state courts of appeals give the name of the case; the volume, name, and page number of the state's official report (if the state publishes its own reports); and the volume, unit, and page number of the National Reporter. Federal court citations also include the name of the case and the volume, name, and page number of the report. In addition to the citation, this textbook lists the year of the decision in parentheses. Consider, for example, the case Miranda v. Arizona, 384 U.S. 436 (1966). The Supreme Court's decision in this case may be found in volume 384 of the United States Reports on page 436. The case was decided in 1966.