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CHAPTER 1

FUNDAMENTALS OF CRIMINAL JUSTICE

Essential Themes and Practices

The true administration of justice is the firmest pillar of good government.

—Inscription on the New York State Supreme Court, Foley Square, Manhattan, New York

When we pull back the layers of government services, the most fundamental and indispensable virtues are public safety and social order.

—Hon. David A. Hardy, Washoe County District Court, Reno, Nevada

LEARNING OBJECTIVES

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

1. Explain the importance of studying and understanding our criminal justice system
2. 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
3. Define the crime control and due process models of criminal justice
4. Describe the importance of discretion throughout the justice system
5. Describe the fundamentals of the criminal justice process—the offender's flow through the police, courts, and corrections components, and the functions of each component
6. Explain the wedding cake model of criminal justice
7. 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 293.

In 2015, Kalief Browder, a 22-year-old man from New York City, hanged himself in his parents' home. This suicide drew national attention because much had been publicized, just a year prior, about Mr. Browder and his time spent in detention at Rikers Island. He was arrested at the age of 16 after being accused of stealing a backpack. He was detained on Rikers Island for three years, despite never being tried or convicted for his alleged crime. While enduring repeated delays in the clogged Bronx court system, he was beaten by correctional officers and spent nearly two years in solitary confinement.[1] He was eventually released after the prosecutor determined that there wasn't enough evidence to try Mr. Browder for theft.

Many people claimed that Mr. Browder's suicide was the result of the mental and physical abuse he experienced in prison. His experience inspired New York City to end the use of solitary confinement for juveniles and influenced President Barack Obama's decision to ban juvenile solitary confinement in federal prisons. In 2019, New York City agreed to pay $3.3 million to settle a lawsuit brought on behalf of Mr. Browder's estate.[2]

Mr. Browder, like others with similar experiences of mistreatment, became a symbol of criminal justice system abuse in the United States. His experience, death, and subsequent calls for reform followed years of justice system policies and legislation that promoted a "tough-on-crime" approach to managing crime and criminals. This tough-on-crime approach resulted in backlogged courts and extreme prison overcrowding.

Kalief Browder

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 prisoners from the costs associated with an unnecessarily punitive justice system? What political pressures would 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,* and *NCIS*), while others are based on true stories or follow real-life events (*The People v. O. J. Simpson: American Crime Story, The First 48, 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 manner in which our federal, state, and local criminal justice agencies must organize and plan in order to deal with crime has changed in many ways, as later chapters 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. About 9 million serious criminal offenses are reported to the Federal Bureau of Investigation (FBI) each year, with about 1.3 million of them involving violence and 7.7 million involving damaged or stolen property.[3] 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 about $284 billion annually and employ over 2.4 million persons).[4] 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."[5] 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

In the wake of news reports indicating abuses resulting from an overtaxed criminal justice system (such as the one outlined at the beginning of this chapter), many lawmakers and criminal justice officials have been exploring ways to divert offenders away from traditional system responses. Attempts to find alternatives to arrest, prosecution, and incarceration have included providing treatment to help offenders 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 cannabis 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 violent offenders 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.[6] California voters overwhelmingly approved the measure, and within two years more than 20 states and the federal government had done the same.[7]

Three-strikes law: a crime control strategy whereby an offender who commits three or more violent offenses will be sentenced to a lengthy term in prison, usually 25 years to life.

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.[8]

The law that was finally enacted in California was vastly different from what was originally intended—and with many negative and unanticipated repercussions.[9] 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, 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.[10]

Other studies of the California law found that prisoners added to the prison system in one decade's time would cost taxpayers an additional $8.1 billion in prison and jail expenditures.[11] Furthermore, three-strikes inmates sentenced for nonviolent offenses would serve 143,439 more years behind bars than if they had been convicted prior to the law's passage.[12] A nationwide study of three-strikes laws conducted about a decade after many states had adopted the law found no credible evidence to suggest that the law reduced crime.[13] Nearly 19 years after adoption of the three-strikes law, in November 2012, Californians voted to soften the sentencing law, 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,[14] and it provides redress to mentally ill inmates—who were

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Three-strikes laws, while differing in content somewhat from state to state, all have a simple premise: making violent offenders with three qualifying convictions serve lengthy prison sentences.

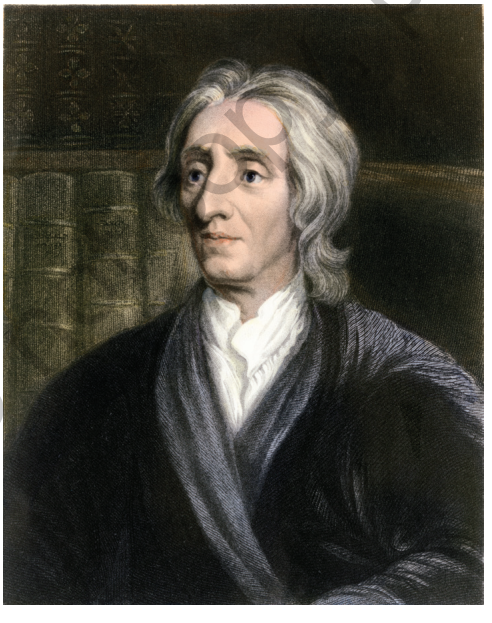
estimated to compose up to 40 percent of those inmates with life sentences under the three-strikes rule.[15]

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 offenders. 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.

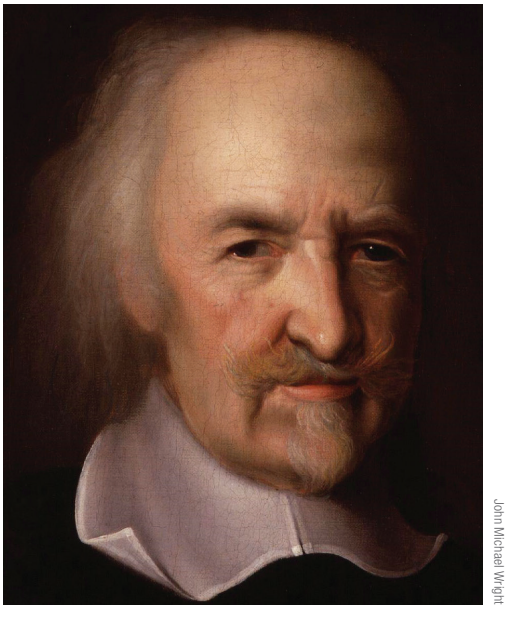
The Consensus- Versus-Conflict Debate

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,



Sir Godfrey Kneller

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.



John Michael Wright

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

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 in light of these competing perspectives.

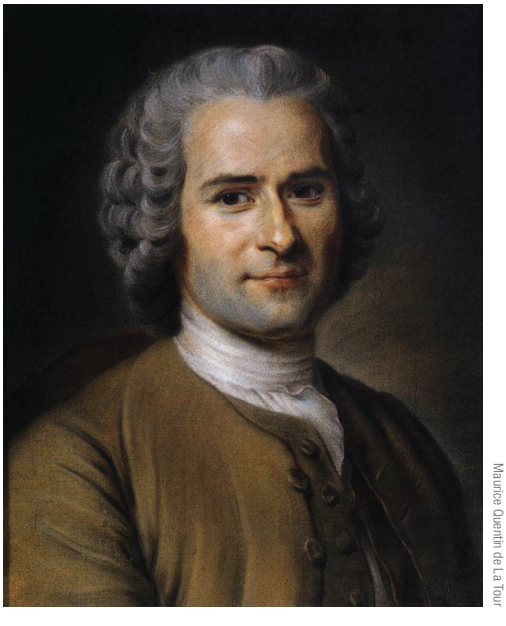
Consensus Theory of Justice

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.[16] 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.

Consensus theory of justice: explains how a society creates laws as a result of common interests and values, which develop largely because people experience similar socialization.

The principles of the Declaration are almost a paraphrase of John Locke's *Second Treatise on Civil Government,* which justifies the acts of government on the basis of Locke's social contract theory. In the state of nature, 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.[17]



Maurice Quentin de La Tour

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."

Locke believed that 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."[18] Locke's theory essentially describes an association of landowners.[19] 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."[20] 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.

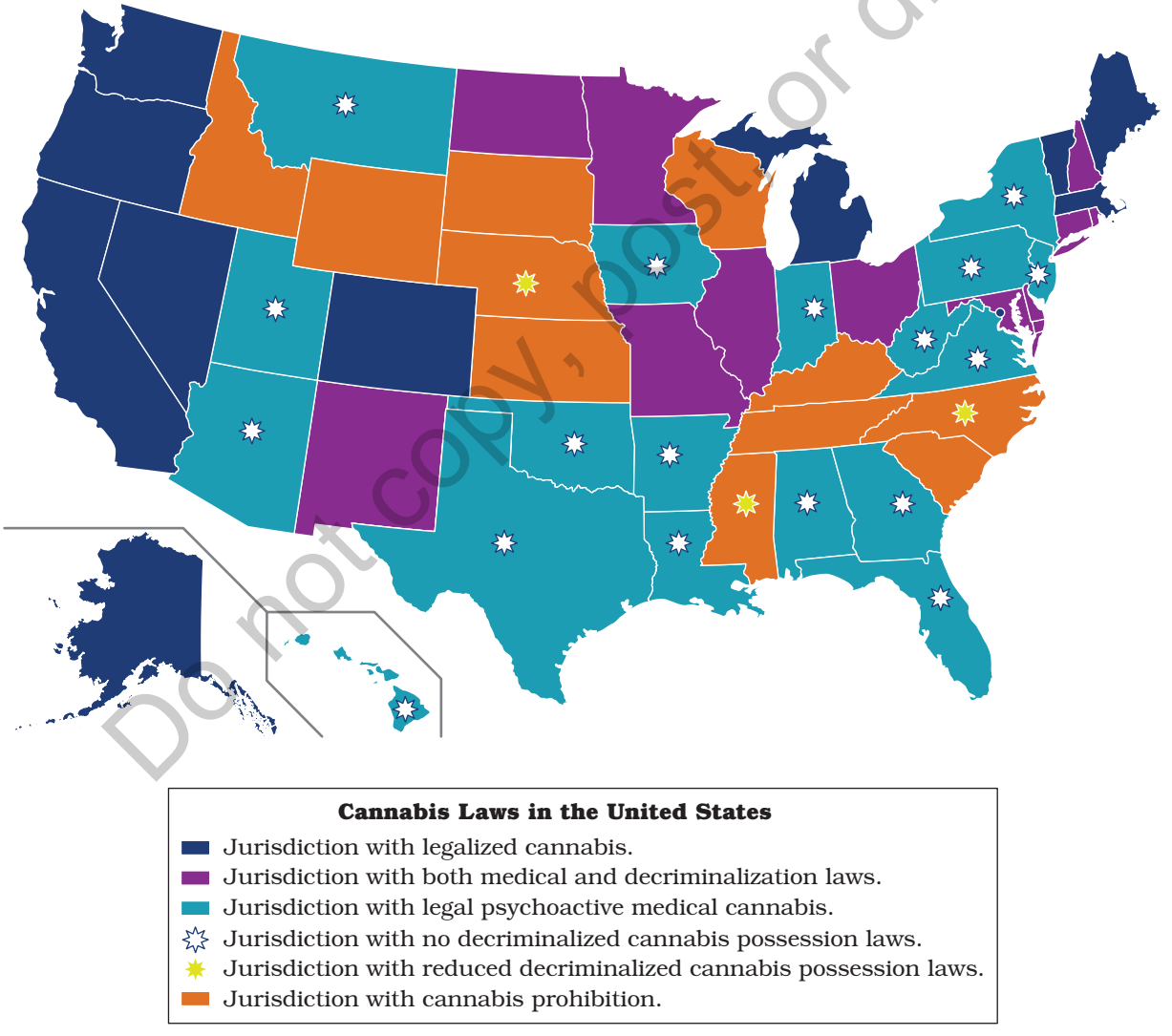
These views are reflected in the law. Society comes together to protect itself from those who threaten the well-being of others by passing laws that prohibit harmful behavior and outlining the punishments for engaging in these acts.

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.[21] Further, what is illegal today might be deemed legal tomorrow. Public attitudes toward marijuana use are shifting. In 2000, only 31 percent of Americans supported the legalization of marijuana, but recent polls show that two-thirds (66 percent) now support it.[22] This shift in public opinion has resulted in the legalization of marijuana use in numerous states, as depicted in Figure 1.1.

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."[23] Like Plato, Rousseau associated the loss of freedom and the creation of conflict in modern societies with

Figure 1.1 /// Cannabis Laws in the United States, as of 2019



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.[24]

The **conflict theory of justice** is based on the assumption that 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 made legal across the country following the 1973 U.S. Supreme Court ruling in *Roe v. Wade*.[25] Yearly surveys reveal that opinions regarding abortion have remained relatively stable over time, and the country remains divided on this issue.[26]

Conflict theory of justice: explains how powerful groups create laws to protect their values and interests in diverse societies.

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 poor, minority, and inner-city drug users) was a five-year mandatory prison sentence, but a person in possession of powder cocaine (commonly associated with wealthy, white drug users) would be subject to the same penalty only if the individual was carrying 500 grams of the drug.[27]

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 criminals 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).[28]

Crime control model: a model by Packer that emphasizes law and order and argues that every effort must be made to suppress crime and to try, convict, and incarcerate offenders.

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 offenders 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.

Due process model: a model by Packer that advocates defendants' presumption of innocence, protection of suspects' rights, and limitations placed on police powers to avoid convicting innocent persons.

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' first priority is protecting the constitutional rights of the accused, and law

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 county are considering whether to enhance citizen 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., to require 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.

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.

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

Packer indicated that neither of these models would be found to completely dominate national or local crime policy.[29] 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 in order 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? Is it important that our system be seen as fair and impartial?

The Kalief Browder Case: President Barack Obama signed an executive order to ban the solitary confinement of juveniles in federal prisons in 2016. Does this ban fall under the crime control model or the due process model, and what arguments would you make about why it falls under either category? What types of cases would make new laws—new laws focused on crime control or new laws focused on due process—more likely to be attractive to both the public and politicians?

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 ours is a nation 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 at work in many different ways.

Discretion: authority to make decisions in enforcing the law based on one's observations and judgment ("spirit of the law") rather than the letter of the law.

For example, lawmakers understand that 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.[30]

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 take action, which official response is appropriate, and how the community's attitude toward specific types of criminal acts should influence decisions. For example:

- Police officers exercise extensive discretion in deciding whether to stop, search, or arrest someone (discussed in Chapter 5).
- Prosecuting attorneys decide whether to bring criminal charges against an arrestee, thus making one of the most important judgment calls in the system (Chapter 8).
- Judges exercise discretion in setting or denying bail, and in imposing sentences (even with sentencing guidelines, discussed in Chapter 9).
- Corrections officials decide key issues of where to house convicted criminals, how to discipline them for rules violations on the inside, and whether to grant them early release on parole (Chapters 10 and 11).

The Kalief Browder Case: How does a law that bans the use of solitary confinement for juveniles affect a corrections official's discretion in managing inmate housing assignments? What might be the long-term impacts of solitary confinement bans on inmate mental health? Alternatively, how might limiting the discretion of corrections officials affect the overall safety of a correctional facility? When deciding when and under what conditions an inmate should be separated from other inmates, with whom should the discretion lie?

THE CRIMINAL JUSTICE PROCESS: AN OVERVIEW OF FLOW AND FUNCTIONS

Criminal justice flow and process: the movement of defendants and cases through the criminal justice process, beginning with the commission of a crime, and including stages that involve actions of criminal justice actors working within police, courts, and correctional agencies.

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* of the discussions in the following chapters of this book are based on the *people* and *processes* included in the depicted sequence of events.

The Offender's Pathway Through the Process

As we follow the path of the offender 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 later determine that no crime was committed, and the suspect is released from custody.

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 in order for the case to proceed through the system. Sometimes the offender is apprehended at the scene, but in other cases the police must conduct an investigation to find the perpetrator. Either way, the first formal step for most offenders 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**.

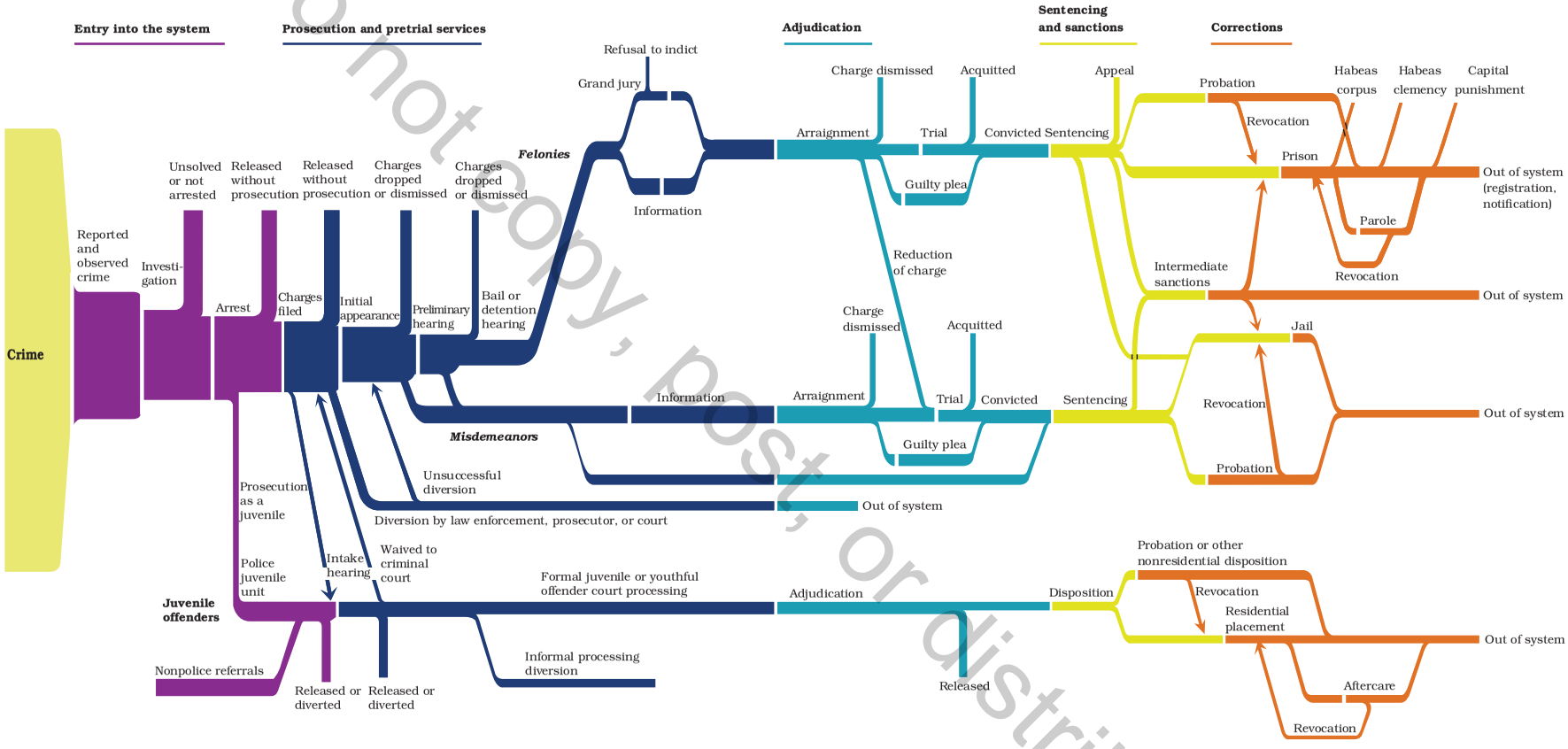
Arrest: the taking into custody or detaining of one who is suspected of committing a crime.

Prosecution and Pretrial Activities

Prosecution: the bringing of charges against an individual, based on probable cause, so as to bring the matter before a court.

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 his or her 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 he or she determines that the probable cause and/or evidence in the matter is weak. (Probable cause, discussed more fully in Chapter 6, is a legal term that basically refers 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 subject to the completion of specific conditions such as drug treatment. Successful completion of the conditions may result in charges

Figure 1.2 /// The Sequence of Events in the Criminal Justice System



Source: Adapted from President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: 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 case-flow through the criminal justice system. Procedures vary among jurisdictions. The weights of lines are not intended to show actual size of caseloads.

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Scott Dekraai (L), sits next to his attorney, Assistant Public Defender Scott Sanders, at Orange County Superior Court in Santa Ana, California. The former tugboat worker pleaded guilty to first-degree murder for killing eight people in a Southern California hair salon where his ex-wife worked. Under the United States' system of justice, all criminal defendants prosecuted for serious crimes have the right to be represented by an attorney.

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.

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 he or she has a permanent residence, a job, and family ties. If the accused is likely to appear at trial, the court may decide that he or she 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 he or she 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 that 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 more in Chapter 7.

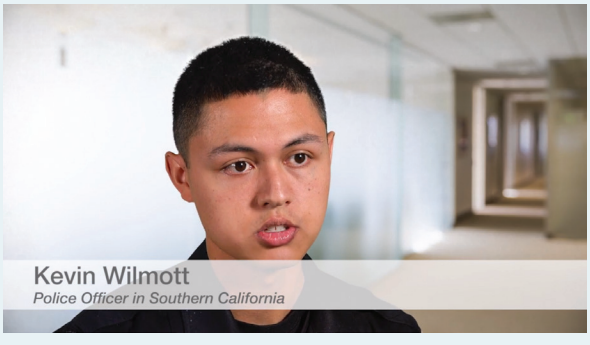
Adjudication

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 him or her, requires the government to prove its case (if the defendant claims that he or she is 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.

Adjudication: the legal resolution of a dispute—for example, when one is declared guilty or not guilty—by a judge or jury.

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 first-hand.

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 two years. A lot of times there are positions for cadets, traffic enforcement 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 transciency, 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 three to five in the morning, so those are the times I try to catch up on all my reports.

To learn more about Kevin Wilmott's experiences as a police officer, watch the Practitioner's Perspective video in SAGE Vantage.

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).

©REUTERS/Reuters/POOL New

Gary Leon Ridgway and his attorneys look over the plea agreement allowing him to escape the death penalty by pleading guilty to 48 counts of aggravated first-degree murder in the Green River serial killing cases.

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 his or her constitutional right to a trial, no trial is held, and sentencing occurs at this proceeding or at a later date. But contrary to popular media depictions, not guilty pleas and trials are very rare; approximately 95 percent of criminal defendants plead guilty as a result of plea bargaining between the prosecutor and the defendant.

Trial

If the accused pleads not guilty or not guilty by reason of insanity, he or she is 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.

Acquittal: a court or jury's judgment or verdict of not guilty of the offenses charged.

Conviction: the legal finding, by a jury or judge, or through a guilty plea, that a criminal defendant is guilty.

Sentencing and Sanctions, Generally

After a conviction, a sentence is imposed. With the exception of 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 offender's blame, such as use of torture; mitigators tend to reduce blame, such as youthfulness and lack of prior criminal record; these are discussed more in Chapter 9). 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).

Aggravating circumstances: elements of a crime that enhance its seriousness, such as the infliction of torture, killing of a police or corrections officer, and so on.

Mitigating circumstances: circumstances that would tend to lessen the severity of the sentence, such as one's youthfulness, mental instability, not having a prior criminal record, and so on.

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)

Sanction: a penalty or punishment.

Sentences and punishment are discussed in Chapter 9, whereas intermediate sanctions, probation, and parole are examined in Chapter 11.

Scott Olson/Getty Images News/Getty Images

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.

Appellate Review

Following trial and sentencing, a defendant may appeal his or her 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 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

The next phase into which the offender enters is corrections, as shown in Figure 1.2. Offenders sentenced to incarceration usually serve time in a local jail or a state prison. Offenders sentenced to less than one year generally go to jail; those sentenced to more than one year go to prison.

A prisoner may become eligible for parole after serving a portion of his or her **indeterminate sentence** (a range, such as 5–10 years). **Parole** is the conditional release of a prisoner before the prisoner's 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, offenders serving what is called a **determinate sentence**—a fixed number of years in prison—will not come before a paroling authority, because each offender 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).

Indeterminate sentence: a scheme whereby one is sentenced for a flexible time period (e.g., 5–10 years) so as to be released when rehabilitated or when the opportunity for rehabilitation is presented.

Parole: early release from prison, with conditions attached and under supervision of a parole agency.

Determinate sentence: a specific, fixed-period sentence ordered by a court.

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 his or her 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, he or she 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.[31] The "Juvenile Justice Journal" boxes throughout this book examine the juvenile justice system.

Status offense: a crime committed by a juvenile that would not be a crime if committed by an adult; examples would be purchasing alcohol and tobacco products, truancy, and violating curfew.

Juvenile Justice Journal: A Brief History

Our society has long been concerned with its minors (usually defined as those persons between the ages of 10 and 18) who violate the law; such persons—commonly termed *juvenile delinquents*—have often been faced with adverse and traumatic home situations. As result of this concern, a U.S. juvenile justice system has developed that functions quite differently from the system that addresses crimes committed by adults. Therefore, as mentioned in the preface to this book, in several chapters we briefly discuss (in boxed features like this one) different facets of this system.

History of Juvenile Justice

In the early part of the 19th century, to the chagrin of prosecutors and many citizens, juries were acquitting children who were charged with crimes—not wishing to see children incarcerated with adults in ramshackle facilities. Quakers in New York City sought to establish a balance between those two camps—people wanting to see justice done with child offenders, and those not wanting them to be incarcerated—and founded the first house of refuge in 1825. The children worked an eight-hour day at various trades in addition to attending school for another four hours.

At about the middle of the 19th century, the house of refuge movement evolved into the slightly more punitive reform school, or reformatory, approach, which served to segregate young offenders from adult criminals; imprison the young and remove them from adverse home environments until the youths were reformed; help youth avoid idleness through military drills, physical exercise, and supervision; focus on education—preferably vocational and religious; and teach sobriety, thrift, industry, and prudence.

In 1899, the Illinois legislature enacted the Illinois Juvenile Court Act, creating the first separate juvenile court. At that time in the United States, juveniles were tried along with adults in criminal courts and sometimes sentenced to prison and occasionally to death. Prior to 1900, at least 10 children were executed in the United States for crimes committed before their 14th birthdays. Other children died in adult prisons. These deaths shocked the public conscience. Accordingly, Americans in the 20th century sought more pervasive reform than the infancy defense (a defense used when a person is too young to be held liable for his or her actions) to address the distinctive nature of children and youth.

Although the Illinois act did not fundamentally change procedures in the courts that were then sitting as juvenile courts to adjudicate cases involving children, it did emphasize the *parens patriae* ("state is the ultimate parent") philosophy (discussed in Chapter 2) to govern such cases. The act gave the courts jurisdiction over children charged with crimes, as well as children who lived in unsafe or harmful conditions. For example, courts were given jurisdiction over children who were homeless, lacked guardianship, needed public support, lived with disreputable persons or within unfit living conditions, habitually begged public for assistance, or, if under the age of 8, sold items or performed on the street. The act thus defined a rehabilitative rather than punishment purpose for that court, established the confidentiality of juveniles' court records to minimize stigma, required that juveniles be separated from adults when placed in the same institution in addition to barring altogether the detention of children under age 12 in jails, and provided for the informality of procedures within the court.

Status Offenses

The post–World War II period witnessed further developments, as the status offense became a separate category, covering acts that would not be criminal if committed by an adult (e.g., purchasing alcohol and tobacco products, truancy, and violating curfew). New York created a new jurisdictional category for persons in need of supervision (PINS): runaways, truants, and other youths who committed status offenses. Other states followed New York's lead. Then came the enactment of the very powerful and far-reaching Juvenile Justice and Delinquency Prevention Act of 1974, which removed status offenders from secure detention and correctional facilities, and more significant, perhaps, prevented the placement of any juveniles in any institutions where they would have regular contact with adults convicted of criminal charges.

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 offender 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).[32]

Wedding cake model of criminal justice: a model of the criminal justice process whereby a four-tiered hierarchy exists, with a few celebrated cases at the top, and lower tiers increasing in size as the seriousness of cases declines and informal processes (use of discretion) become more likely to occur.

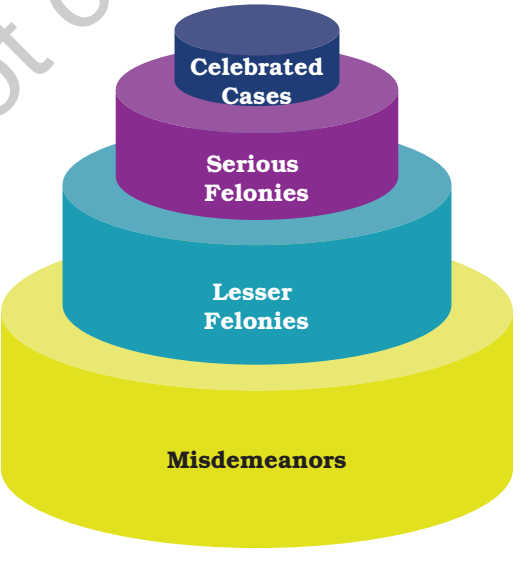
This approach begins with the premise that not all criminal cases are viewed or handled in the same manner—by either the police or the judiciary. The type of treatment given to a particular case, including its outcome, is determined mostly by factors such as the seriousness of the charge, current policies 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.

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 shootout with police) or because the defendants are celebrities or high-ranking officials (consider singer R. Kelly's criminal sexual abuse trial; O. J. Simpson, the celebrated athlete and actor whose "trial of the century" has been the topic of numerous books and documentaries; and Aaron Hernandez, the former NFL player who was convicted of 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

Figure 1.3 /// The Wedding Cake Model of Criminal Justice



© iStockphoto.com/FrankvandenBergh

Convicted offenders who are to be incarcerated will serve time in either a local jail (typically for misdemeanants serving less than one year) or a federal or state prison (for felons, and usually for more than one year).

attention given to the cases, extra care is taken to ensure that defendants' rights are protected and that 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 offenders 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 percent 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.[33]

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.[34]

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 (and, later, reading Chapter 3, concerning ethics), you might do well to first ask yourself these questions: Should police officers receive free coffee from restaurants and quick-stop establishments? Free or half-priced meals? What about judges? 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 are to ensure that they be of the highest ethical character and treat everyone with dignity and respect. Therefore, as indicated earlier, this textbook, unlike most or all others of its kind, devotes an entire chapter to the subject of **ethics**—or what essentially constitutes "correct" behavior in criminal justice.

Ethics: a set of rules or values that spell out appropriate human conduct.

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 that 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 mostly 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 because it serves to shape our government and culture, and 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 due process model of criminal justice holds that criminal defendants should be presumed innocent and constitutional rights of the accused should be emphasized over conviction of the guilty. Conversely, the crime control model, likened to an assembly line, emphasizes deterring criminal conduct and protecting society; eliminating legal loopholes, swiftly punishing offenders, and granting a high degree of discretion to police and prosecutors. 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 offenders exercise considerable judgment in terms of deciding whether to take action, 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 offender's path through the criminal justice process may be viewed as horizontal in nature, 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.

/// KEY TERMS & CONCEPTS

Review key terms with eFlashcards at **edge.sagepub.com/peakbrief**.

Acquittal 16
Adjudication 14
Aggravating circumstances 16
Arrest 12
Conflict theory of justice 9
Consensus theory of justice 7
Conviction 16
Crime control model 9
Criminal justice flow and process 12
Determinate sentence 17
Discretion 11
Due process model 9
Ethics 21
Indeterminate sentence 17
Mitigating circumstances 16
Parole 17
Prosecution 12
Sanction 16
Status offenses 17
Three-strikes law 5
Wedding cake model of criminal justice 19

/// REVIEW QUESTIONS

Test your understanding of chapter content. Take the practice quiz at **edge.sagepub.com/peakbrief**.

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 an offender is dealt with in the criminal justice process, as he or she moves 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

As indicated in this textbook's preface, 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 in 1956, known as Bloom's Taxonomy, in which he called for "higher-order thinking skills"—critical and creative thinking that involves analysis, synthesis, and evaluation.[35]

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 that 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. As a member of your campus criminal justice honor society, you are asked to speak at a meeting of your local police department's Citizens' Police Academy, focusing on the general need for citizens to "become involved" in addressing crime. What will you say?
3. 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, and so on) as a case flows through the process. What will your final product look like?
4. 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?

/// STUDY SITE

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