



CJ2017

 Pearson

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CJ2017

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*This book is dedicated to Gretchen,
my wife.*

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Preface

Introducing the Justice Series

When
best-selling
authors

and instructional designers come together focused on one goal—to improve student performance across the CJ curriculum—they come away with a groundbreaking new series of print and digital content: the *Justice Series*.

Several years ago, we embarked on a journey to create affordable texts that engage students without sacrificing academic rigor. We tested this new format with Fagin’s *CJ2010* and Schmallegger’s *Criminology* and received overwhelming support from students and instructors.

The Justice Series expands this format and philosophy to more core CJ and criminology courses, providing affordable, engaging instructor and student resources across the curriculum. As you flip through the pages, you’ll notice that this book doesn’t rely on distracting, overly used photos to add visual appeal. Every piece of art serves a purpose—to help students learn. Our authors and instructional designers worked tirelessly to build engaging infographics, flowcharts, and other visuals that flow with the body of the text, provide context and engagement, and promote recall and understanding.

We organized our content around key learning objectives for each chapter, and tied everything together in a new objective-driven end-of-chapter layout. The content not only is engaging to students but also is easy to follow and focuses students on the key learning objectives.

Although brief, affordable, and visually engaging, the Justice Series is no quick, cheap way to appeal to the lowest common denominator. It’s a series of texts and support tools that are instructionally sound and student-approved.

Additional Highlights to the Author’s Approach

Each instructor has his or her own teaching style and objectives and introductory classes are offered in different formats, including accelerated terms, hybrid and online classes. *CJ 2017* is designed to be flexible in order to be able to meet the needs of each of these formats. Also, chapters in *CJ2017* can be omitted without disrupting the comprehensive nature and unity of the text. Thus, instructors may choose to omit certain topics to meet their learning objectives and still retain a smooth transaction from chapter to chapter.

New to *CJ2017*

CJ2017 retains the outstanding format and supplemental materials associated with the Justice Series. However, there are some exciting changes in *CJ2017*. Among these changes are the following:

- The supplemental materials associated with the Justice Series have been enhanced, especially the alignment of learning outcomes with text material and supplements.
- There have been significant changes in the field of criminal justice in 2015 and 2016. And, as a result, it was necessary to make over 500 changes and updates in *CJ2017*. These changes have included such things as new U.S. Supreme Court cases, new debate about the police and its relationship with the minority community and new developments in homeland security.
- While *CJ2017* has been extensively updated, it has retained the same core of instructional material for each chapter. Thus, instructors will find that they can continue to use instructor-produced PowerPoint slides, lecture outlines, and other instructional lecture material from previous editions with *CJ2017*. However, it may be necessary to update certain data and graphs to reflect the most current data.
- *CJ2017* is designed to provide an overview of the American criminal justice system for the undergraduate student.
- *CJ2017* is designed to facilitate different methods of learning by use of visual graphics and chapter features to help students comprehend the material.
- Each chapter is carefully crafted so that the topics covered can be customized by the instructor. This concept is extended with various e-book options that allow the instructor to customize the text.
- *CJ2017* includes coverage of current issues that have been incorporated by use of the Chapter Introductions, Think About It boxes, and case studies.
- The Think About It boxes and case studies, drawn from the most current media news, encourage students to go beyond memorization to explore applications, conflicts, and ethical issues. These features can be used for online discussion board topics or in-class discussions or short critical thinking paper assignments.
- Graphs, tables, and data have been updated to reflect the most current data available. In some cases, new graphics and figures reflecting more current concerns have been added.
- Learning outcomes are clearly identified for each chapter. This feature allows instructors to link the course learning outcomes to department and university learning outcomes. It also helps students retain the major ideas of the chapter. Learning outcomes, glossary terms, and chapter summaries are integrated to help students comprehend the important points of the chapter.
- The timeline has been updated to include current events that have impacted the criminal justice system. This timeline helps students understand the historical development of the criminal justice system and place events in chronological order.

► Instructor Supplements

Instructor's Manual with Test Bank Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

TestGen

This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

PowerPoint Presentations

Our presentations offer clear, straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code.

Within 48 hours after registering, you will receive a confirming email, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

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► REVEL for CJ 2017 by Fagin

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► Acknowledgments

To be seen
above the
crowd, stand
upon the
shoulders of
others.

The production of a major textbook requires the talents of dozens of persons. This is especially true of *CJ2017* as it is included in Pearson's CJ Series and includes numerous additional instructional resources. As author I have provided the fundamental input in the form of text for *CJ2017*, but it took a team of highly creative and talented persons to turn that text into a highly sophisticated textbook. The production of a high-quality text with many supplements requires a sizable team of talented professionals, some of whom I have never met face-to-face but whose contributions are essential to the final product. I regret that I cannot thank every person who contributed to the successful production of this text by name. The list would be way too extensive. I do extend my appreciation to everyone involved in this project. There are some whom I would like to single out and mention by name because of their continuous input and assistance. I am especially appreciative of the assistance of Gary Bauer. Gary provided personal support and encouragement that made *CJ2017* possible. I cannot express enough appreciation for the tremendous job done by the production team. They took my words and added graphics and a professional layout that is first-rate. Alexis Ferraro and Patrick Walsh were instrumental in developing the quality and visual impact of *CJ2017*. Also, I appreciate the talents of Project Manager Joy Raj Deori, and Carter Smith for his efforts matching video scripts to *CJ 2017*. Akilandeswari Arumugam and Sohail Akhter did a magnificent job of image research and matching images to the text. Eby Sebastian did wonders in translating my descriptions into effective art work and graphics that

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► About the Author

Dr. James A. Fagin has taught in the criminal justice field since 1973. He has taught undergraduate and graduate classes and has taught criminal justice classes for military officers at Command and General Staff College. Dr. Fagin has authored over a dozen criminal justice texts. One of the things that has helped Dr. Fagin in producing an introductory textbook is the fact that he has had the opportunity to be associated with the entire spectrum of the criminal justice system during his career. In addition to his academic career, Dr. Fagin has been a professional consultant to local and federal law enforcement agencies, the state courts, and local, state, and federal correctional facilities. In addition to teaching university classes, Dr. Fagin has taught at police and correctional academies. During his career, he has been a professor of criminal justice studies and Program Director at Lincoln College–Normal (LCN), located in Normal, Illinois; professor and Chair of the Criminal Justice Department at Chaminade University of Honolulu, the oldest and largest criminal justice program in Hawaii; and assistant professor and Director of Outreach Programs at Wichita State University. In addition to his experience in criminal justice, Jim served as Graduate School Dean at East Stroudsburg University and was Acting President of Kima International Theological College, a three-year college in Kenya, East Africa. Dr. James Fagin is a pioneer in criminal justice education and has been involved in innovative criminal justice education programs for over four decades. He developed one of the early models of statewide delivery of criminal justice undergraduate and graduate degrees for Kansas. During the developing years of criminal justice education, Jim worked as a consultant and instructor for the Law Enforcement Assistance Administration (LEAA) to develop model criminal justice curriculum in research,

administration, and planning to promote quality nationwide education in criminal justice. Under the oversight of LEAA, these model curriculums were developed by an elite team of practitioners and educators and were field-tested throughout the United States. Dr. Fagin wrote some of the classical literature on computer crime, police bargaining and unions, presidential candidate security, domestic disturbance resolution, and hostage negotiations. His articles on international terrorism have been translated and published in major criminal justice journals in Japan. He received the American Society of Criminal Justice Hawai'i chapter's award for outstanding contributions to Public Administration for his achievement in establishing a master's degree in public administration at Chaminade University of Honolulu. He has received numerous other awards for contributions to hotel security, forensic investigations, and excellence in teaching. These works emerged from active involvement with federal, state, and local criminal justice agencies. Jim was a commissioned deputy sheriff training officer and polygraph examiner for the Wyandotte County (Kansas) Sheriff's Department and a Commissioned Reserve Police Officer in the Kansas City (Kansas) Police Department. He served on the Kansas Victims' Rights Commission to help establish the charter victims' rights legislation for the state. He assisted in implementing the first domestic disturbance response policy for the Wichita, Kansas Police Department. He received his B.A. degree from the University of Nevada, Las Vegas, and his M.S. and Ph.D. from Southern Illinois University–Carbondale, Illinois. Textbooks such as this are an ongoing work in progress, and the author welcomes communication and correspondence about his work. Dr. Fagin can be contacted at jamesfagin@gmail.com.

Introduction to Criminal Justice



- 1 Understand the concepts of limited government powers and checks and balances.
- 2 Explain the difference between the crime control model and the due process model.
- 3 Describe the five stages of the criminal justice system.
- 4 Describe the five meta-influences upon the criminal justice system and their influence upon the criminal justice system.
- 5 Explain how the academic field of criminal justice developed and how it differs from closely related fields such as sociology and law.



INTRO

FIRST AMENDMENT RIGHTS VERSUS INSTITUTIONAL INEQUITY

During the “Amherst Uprising” in the fall of 2015, hundreds of students protested racial injustice and victimization claiming Amherst was an institutional legacy of white supremacy. Student protestors issued a list of demands that among other things called for students who had posted “Free Speech” and “All Lives Matter” posters to undergo racial and cultural counseling and possibly discipline.¹ Protests against racism and injustice are widespread across American colleges. For example, in 2015, student protestors at the University of Missouri succeeded in ousting the school’s president and at Claremont McKenna College (CA) the dean of students resigned when she became the target of protesters. Student demands at Yale resulted in policies regulating the choice of Halloween costumes. At other colleges, play productions have been cancelled, student newspaper defunded, and prominent commencement speakers have been disinvited based on the allegation that students would feel “aggrieved” or “wounded.”² Claiming to promote a “safe and nurturing environment,” some colleges have instituted policies regarding “trigger words” requiring professors to issue warning or avoid discussion of issues that may cause students to feel marginalized or victimized. At other colleges, students have claimed to feel victimized when presented with opinions contrary to their

beliefs and have demanded limits on free speech and intellectual dissent.

Critics of this protest movement argue that these students are trying to stifle exercise of First Amendment freedoms and using the language of victimization inappropriately. Everett Piper, President of Oklahoma Wesleyan University, is harsher in his criticism saying, “Our culture has actually taught our kids to be this self-absorbed and narcissistic. Any time their feelings are hurt, they are the victims.” In response to Yale’s policies regarding the feelings of marginalized and minority students, critics have protested that Yale’s policies “threaten to undermine or destroy universities as a place of learning.”³ Other critics ask, “Is Yale letting in 8-year-olds?” Wesleyan President Dr. Piper’s response to students claiming they “feel bad” or are “victimized” was more direct: “This is not a day care. This is a university.”

DISCUSS What is the balance between First Amendment freedoms and intellectual diversity and policies to promote a safe environment for marginalized students and eradicate institutional inequity?

▶ Government by the People

LEARNING OUTCOMES

1

Understand the concepts of limited government powers and checks and balances.

Most people do not need laws or a criminal justice system to know that certain actions are wrong. Most people recognize that murder, sexual

assault, robbery, theft, and violence against others are wrong. Also, most people have a sense of what is fair and just. They know that the law should not treat people differently because of their socioeconomic status, race, religion, or other factors not

related to the alleged offense. Finally, most people have a sense of what individual freedoms and rights they believe the government should not infringe upon.

Philosophers and politicians have long discussed the concepts of right and wrong and the role of the government. In *Two Treaties of Government* (1690), philosopher John Locke argued that all human beings are endowed with what he called “natural rights.” These rights are given by a power higher than government and he argued people cannot be deprived of them.

TIMELINE



Timeline of Key Events

1788

The Constitution of the newly formed U.S. government is ratified by the States.

1789

Judiciary Act of 1789 establishes the U.S. federal judiciary.

1791

The first ten amendments, known as the **Bill of Rights**, are added to the U.S. Constitution. These amendments are the foundation of the civil rights and due process rights of citizens.

1865

The Thirteenth Amendment abolishes slavery.

1868

The Fourteenth Amendment guarantees U.S. citizenship and is the basis for the due process clause of civil rights.

1870

The Fifteenth Amendment prohibits the denial of voting rights based on race, color, or previous state of servitude. The Fifteenth Amendment does not extend voting rights to women, only to men.

Governments exist, according to Locke, to serve individuals. People surrender certain rights with the understanding that they will receive as much, or more, in other benefits, such as safety, order, and preservation of property rights. Locke conceded that the government must have the power of physical force to protect people and their property. However, this power was to be balanced against the need to preserve individual liberty.

When these concepts of justice and fairness are perceived to be violated, protests and even violence can result. For example, in the late eighteenth century the American colonists claimed that the British government exceeded its legitimate powers in its governing of the colonies and in 1776 declared their independence from the British government resulting in the American Revolutionary War. After successfully overthrowing the British government, the former colonists established a new government. The founding fathers declared that their purpose was to establish a “more perfect union.” The principles of this “more perfect union” were incorporated into the Declaration of Independence and the U.S. Constitution. Thomas Jefferson authored the Declaration of Independence and he was influenced by John Locke’s philosophy of “natural rights.” Thus, the Declaration of Independence set limits on government’s role and power.

► Order Maintenance versus Individual Liberties

In the opening discussion of the “Amherst Uprising,” students protested what they called institutional racism. These protests are part of a larger movement across colleges and universities nationwide. Some demands of the students include changing the name of athletic teams that students allege reflect racism, changing terminology used on campus, sanctions for academic discussion and opinions that are deemed racist, offensive, or hurtful, and warnings or prohibitions regarding “trigger words,” especially by professors during lectures. Examples of demands include the call for sanctions and cultural training for persons expressing opposition to the Black Lives Matter movement, the dropping of the name “house master,” and requirements that professors advise students in advance if his or her lecture will include discussion of subject matter that minorities

or “victims” may find hurtful or offensive—especially if the discussion puts forth opinions or facts contrary to beliefs held by the students.

Those opposed to the movement and the demands of the students argue that these demands seek to abridge First Amendment rights of free speech and expression of ideas. For the most part, the requests of students seeking these changes are denied by college administrators. At times, even alumni express strong opinions against the changes and threaten to withhold donations if the college consents to the changes. As a result, students hold protests and demonstrations.

At the beginning of this chapter, it was said that most people have a sense of right and wrong—fair and just. What happens when there is a clash of opinions? What happens when the concern is not so clearly right or wrong such as murder or violent crime? What happens when students hold an opinion in good faith that is opposed and denied by those in power?

Society uses several means to balance conflicting rights and social values. In general, these means can be divided into informal and formal sanctions. **Informal sanctions** include social norms that are enforced through the social forces of the family, school, government, and religion. These social institutions teach people what is expected for normative behavior. In addition to teaching normative behavior, these primary social institutions also provide punishment when people violate **social norms**, that is to say the unwritten rules of society. In the informal system, parents punish children for disobedience, bosses reprimand employees, teachers discipline students, and religious authorities call for offenders to repent of their sins.

The balancing of rights and public safety can also be achieved through use of **formal sanctions** (such as laws) found within the criminal justice system. Frequently, the norms and values embedded in informal systems are reflected in the formal system of **order maintenance**. The more homogeneous and stable the people and their belief systems, the fewer the violations of social norms. In a homogeneous, stable society with a common belief system, there is less need for reliance on a formal **system of social control** to maintain order and regulate interactions. Social control systems operate most effectively and efficiently where there is constant and unified, overt and covert, and cultural and social support from all control agencies. However, contemporary U.S. society is not characterized

1896

The U.S. Supreme Court case of **Plessy v. Ferguson** establishes the “separate but equal” doctrine of racial discrimination that permitted the legal separation of whites and blacks.

1920

The Nineteenth Amendment extends voting rights to women.

1941

Broadcast television begins in the United States.

1954

Brown v. Board of Education declares state laws establishing separate public schools for black and white students unconstitutional. The decision overturned the *Plessy v. Ferguson* decision of 1896 that established the doctrine of “separate but equal” racial segregation.

1955

Rosa Parks is arrested and convicted for refusing to give up her seat to a white passenger on a bus. Her arrest initiates the 381-day Montgomery bus boycott and many acts of civil disobedience.

**1961**

Civil rights workers attempt to desegregate bus stations and waiting rooms in the South. A bus in which they are traveling is fire-bombed, and the demonstrators are beaten. NAACP leader Medgar Evers is murdered.

1963

Martin Luther King, Jr. (1929–1968) delivers his “I Have a Dream” speech in the March on Washington.

1964

The Civil Rights Act of 1964 bans discrimination on the bases of race by facilities that are open to the public, such as hotels, restaurants, theaters, retail stores, and similar establishments. Also, it extends greater protection for the right to vote. The Civil Rights Act of 1964 does not extend the ban on racial discrimination to state and local governments. Thus, state and local law enforcement agencies and correctional agencies are not prohibited from racial discrimination.

1964

Martin Luther King, Jr. is the youngest person to receive the Nobel Peace Prize for his work to end racial segregation and racial discrimination through civil disobedience and other nonviolent means.

by a homogeneous and stable group of people with a common belief system. Rather, the United States is characterized by great diversity in race, religion, ethnicity, and values.

When there is conflict, especially if the conflict threatens or involves violence, usually the conflict is handled by the criminal justice system. Thus, students protesting racism at colleges and universities can attempt to have their demands met by negotiations. However, if negotiations fail and the students engage in protests, especially protests that may threaten violence, the conflict will be resolved through the criminal justice system.

The criminal justice system is a complex and extensive network of agencies, processes, and personnel. It is so complex that few laypersons understand all of the workings and interactions of the criminal justice system. Furthermore, the criminal justice system can be contradictory, flawed, and biased. Finally, the criminal justice system is constantly changing. The criminal justice system of the twenty-first century is not the criminal justice system of twentieth or mid-twentieth century. While many people identify law enforcement—the police—as the center of the criminal justice system, in reality the courts are the center of the criminal justice system. The courts have the authority to decide what the law means, which laws are unconstitutional, and which social values and

individual rights will be upheld in law. Furthermore, the courts play a central role. One of the important roles of the courts is crafting the balance between government power and individual rights and freedoms. This balance, which is normally a restriction of government power, is frequently referred to as due process rights.

This chapter will provide an overview of due process rights, discuss the organizational structure of the criminal justice system, discuss changes that have impacted the criminal justice system, and will close with a brief discussion of the academic discipline known as criminal justice. The following chapters will discuss the various agencies and processes of the criminal justice system in greater detail. A timeline of landmark events is provided to help readers relate to various events that have impacted the criminal justice system. Throughout the text in each chapter, the reader will find feature boxes labeled “Think About It.” These boxes address contemporary events and controversies that may have a significant influence on the criminal justice system in the future. The reader is invited to consider how these events may impact the criminal justice system. Finally, at the end of each chapter is a case study that explores an issue raised in the chapter in greater depth and the reader is invited to answer questions regarding the issues raised in the case study.

**1968**

Martin Luther King, Jr. is assassinated.

1968

The Omnibus Crime Control and Safe Streets Act is passed. The act establishes the Law Enforcement Administration Assistance (LEAA), which provides funding, training, and professionalization of the criminal justice system. LEAA implements many of its standards through the power of the “purse strings.” Agencies lose LEAA funding if they do not adopt the standards advocated by LEAA. LEAA is abolished in 1982.

1968–1982

The Law Enforcement Education Program (LEEP), under the Law Enforcement Administration Assistance, undertakes the mission of raising the educational level of criminal justice personnel by funding grants and loans to those seeking college degrees.

1970

On the **Kent State University (Ohio)** campus, National Guard troops open fire on unarmed students protesting U.S. involvement in the Vietnam War. Four students are killed.

1965

Malcolm X (1925–1965), also known as Malcolm Little and El Haji Malik El-Shabazz, is assassinated by members of the Nation of Islam, an activist group that advocates black supremacy and separation of blacks and whites in the United States. Until a year before his murder, Malcolm X was a leader in the Nation of Islam, when he renounced the Nation of Islam and advocated more peaceful coexistence of the races.

1965

A Gallup Poll reports that Americans view crime as the most serious problem in the country.

1965

President Lyndon Johnson declares War on Crime.

1965–1973

U.S. troops are committed to the Vietnam War. In 1975, North Vietnam captures Saigon, South Vietnam, and Vietnam are united under a communist government.

► **Crime Control versus Due Process**

In the Declaration of Independence, Thomas Jefferson embedded Locke's arguments that government is limited in its power. This philosophy was further asserted in the Constitution and its amendments. The government is charged with maintaining harmony among conflicting interests and sanctioning those who violate the rights of others. However, the government is restricted in the powers and actions it may use in its pursuit of maintaining law and order in society.

LEARNING OUTCOMES
2 Explain the difference between the crime control model and the due process model.

The rights guaranteed to persons by the Constitution and its amendments are called **due process rights**. The primary sources of due process rights are the state constitutions of the 50 states, the U.S. Constitution, the Bill of Rights, and decisions of the U.S. Supreme Court (case law). Most of these due process rights are contained in the first ten amendments and in the Thirteenth and Fourteenth Amendments of the U.S. Constitution. In fact, the Fourteenth Amendment is sometimes called the due process amendment because its language prohibits state and local governments from depriving persons of life, liberty, or

property without due process. The due process clause requires the government to recognize substantive and procedural rights of people and to apply the law equally to everyone. Substantive due process refers to the constitutionality of laws, and procedural due process refers to the process and procedure the government can use to seek a conviction for violation of a law.

The due process rights granted to the accused have varied throughout history. The protection of the due process rights guaranteed by the U.S. Constitution does not extend to state and local criminal justice systems unless the U.S. Supreme Court incorporates the federal rights defined by the U.S. Constitution. State constitutions may grant the accused due process rights independently from the U.S. Constitution. However, if the state constitution does not grant a right and the right has not been incorporated, the accused can only claim this right in federal court. The due process rights in the U.S. Constitution have been incorporated right by right and amendment by amendment throughout history.

Among the best known rights is the First Amendment that guarantees the right of freedom of speech, religion, and the press and the right of the people to assemble and to petition the government for a redress of grievances. The major due process rights granted by various other amendments as interpreted by the U.S. Supreme Court guarantee protections against unreasonable searches (Fourth Amendment), forced and

1971

The Twenty-Sixth Amendment lowers the voting age from 21 to 18.

1972

The Equal Rights Amendment (ERA) is introduced. The Amendment would ban discrimination on the basis of gender. Despite a three-year extension, the Amendment fails to obtain ratification by a sufficient number of states to become law, and the proposal dies in 1982.

1972

The Equal Employment Opportunity Act of 1972 extends the provisions of the Civil Rights Act of 1964. The act gives the Equal Employment Opportunity Commission the authority to file class-action lawsuits and extends the jurisdiction of the act to cover state and local governments. The effect is to require state and local law enforcement agencies and correctional agencies, which had previously been exempt from the prohibitions against discrimination based on race, to abolish discriminatory hiring, employment, and promotional practices. Also, the Act prohibited discrimination based on gender.



1972	1995	2001	2001	2010	2014
<p>The President's Commission on Law Enforcement and Administration of Justice concludes that most people have lost confidence in the police.</p>	<p>The number of serious violent crimes begins a decline that continues through the beginning of the twenty-first century.</p>	<p>Hijacked commercial airplanes strike the towers of the World Trade Center and the Pentagon. A fourth plane crashes in Pennsylvania.</p>	<p>President George W. Bush declares War on Terrorism. The USA PATRIOT Act is passed. Accused terrorists (enemy combatants) are denied due process rights.</p>	<p>The Second Amendment is incorporated. The U.S. Supreme Court rules that the Second Amendment provides individuals the right to own firearms.</p>	<p>August 9, Micheal Brown, an 18-year-old, unarmed black male, is shot by police in Ferguson, Missouri, resulting in a wave of nationwide protests.</p>

self-incriminating testimony (Fifth Amendment), excessive bail and fines (Eighth Amendment), and cruel or unusual punishment (Eighth Amendment), as well as the right to a speedy public trial by jury. The way the U.S. Supreme Court guarantees these rights is to define through case law whether a law or an action violated a constitutional right.

Often these rights are incorporated by U.S. Supreme Court **landmark decisions**. A landmark decision occurs when the U.S. Supreme Court declares a significantly different interpretation of the rights guaranteed by the U.S. Constitution. Landmark decisions define rights the federal and state courts must recognize even if the law or previous court decisions do not recognize the right. For example, the First Amendment right of free speech did not apply to the states until *Gitlow v. New York* (1925), when the U.S. Supreme Court ruled state laws unconstitutional if they arbitrarily infringed upon free speech. The First, Fourth, and Sixth Amendments have been fully incorporated, and states must guarantee these rights to accused persons.

The Second Amendment (the right of individuals to bear arms) is the most recent amendment to be incorporated. It was incorporated in *District of Columbia v. Heller* (2008) and *McDonald v. City of Chicago, et al.* (2010). (See Figure 1–4 for a summary of the due process rights of the accused.)

Some rights guaranteed in the U.S. Constitution are not incorporated. For example, parts of the Seventh Amendment have not been incorporated. In part, the Seventh Amendment states, “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . .” While this amendment has not been repealed, federal and state defendants are not guaranteed a right of trial by jury for all lawsuits exceeding \$20.

Some would give the government more power and citizens few rights to tip the scale toward greater public order. Others would give the government less power and citizens more rights to achieve an acceptable level of crime control but maintain strict limits on government power.

There must be a balance between law and order and due process rights. Law without order is anarchy, but order without law is tyranny. In the United States, the emphasis on public order or crime control versus emphasis on due process rights resembles a pendulum that swings back and forth between the two values.

For example, when running for President Richard Nixon (1969–1974) based his campaign on a promise of a return to “law and order.” Nixon’s term as president (1969–1974) was characterized by a period of social unrest, violent protests and demonstrations, and high crime rates. Crime was the number one fear of citizens, and many people were receptive to the promise of crime control, public order, and swift—preferably harsh—justice for the offender. This emphasis on efficient and effective justice is known as the **crime-control (public-order) model** of criminal justice.

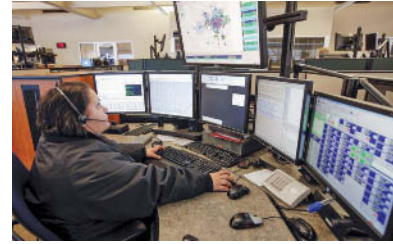
However, crime control cannot be achieved at the expense of constitutionally protected liberties. The emphasis on ensuring that individuals are protected from arbitrary and excessive abuse of power by the government is known as the **due process model** of criminal justice. Due process means that in the quest for crime control and public order, the government is bound to follow certain rules and procedures. Even if a person is guilty, if the government does not follow the rules and procedures in obtaining a conviction, the courts can refuse to prosecute the alleged offender or void a conviction obtained in violation of these rights.

For example, the U.S. Supreme Court under Chief Justice Earl Warren (1953–1969) created many new due process rights for the accused. When the Court tends to create new due process rights, it is referred to as a “liberal court.” When the Court tends to make decisions that support public safety rather than due process, it is referred to as a “conservative court.” Under the leadership of Chief Justice John Roberts (2005–), the U.S. Supreme Court has tended to be a conservative court in that its decisions emphasize crime control. As a result, the Roberts Court has often ruled to allow law enforcement greater latitude in arrest, interrogation, and search and seizure than the U.S. Supreme Court did under Chief Justice Earl Warren.

One of the primary roles of the state and federal courts and laws is to provide authoritative guidance as to the proper balance between due process and crime control that should be exercised by criminal justice personnel and agencies. Often the guidelines of the Court are the result of cases of alleged violation of constitutional and due process rights by law enforcement, the courts, or correctional personnel. For example, one of the best-known guidelines issued by the U.S. Supreme Court came from *Miranda v. Arizona* (1966), in which the Court

Think About It...

In addition to agencies, people and processes the criminal justice system is defined by the use of technology. Some examples include police patrol cars, mobile radios, fingerprints and DNA. A recent technological adoption is the 911 emergency response system for police, fire and ambulance. The 911 system established in 1999, is only about two decades old but already is obsolete and in need of immediate and comprehensive updating. The 911 system uses decades-old telephone technology rather than broadband networks used by smartphones. As a result, 911 systems cannot receive a text, photo, or video. This technology is more vulnerable to cyberattacks, has problems locating cellphone callers and is limited in the volume of calls it can handle. The replacement for this out-of-date technology is Next Generation 911 or NG911. NG911 is Internet Protocol-based and can use mapping databases and software and has the ability to handle text, photos and video. The challenge of implementing NG911 is simple—MONEY. Local governments simply do not have the funds to transition to NG911. This financial shortcoming results in a serious gap in providing protection and public safety. The Federal Communications Commission suggests that the solution, perhaps the only solution, is for the Federal government to provide state and local authorities funding assistance to enable them to adopt NG911.⁴ Most likely this would be in the form of a tax paid by telephone users. Would you support this tax to upgrade to NG911? Why?



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mandated the specific due process rights that law enforcement must follow in arrest and interrogation of accused persons.

Due process rights protect the accused against abuse of power by police, prosecutors, courts, and corrections at the expense of swift and sure justice for the victim. By insisting that the government operate within certain limitations in securing the conviction of the accused, citizens are protected against the misuse of the power of the government that could be brought to bear in prosecuting the individual. The central premise of due process rights is the presumption of innocence. Regardless of overwhelming evidence against the accused, the court proceeds on the presumption that until the guilt of the accused is proven beyond a reasonable doubt in a court of law, the defendant is treated as if he or she is not guilty of the charges in regard to the rights afforded to individual. In other words, an accused person cannot be denied constitutional rights simply because he or she is accused of a crime or because of the apparent overwhelming belief in his or her guilt prior to trial.

Due process rights are based upon the assumption that given the overwhelming resources of the government compared to those of the accused to be fair the scales of justice must restrict the power of the government. This philosophy is reflected in such rules that the prosecutor under the rules of discovery must reveal all of its information to the defense. In a sense, the due process model does not focus on justice but on protecting the accused from possible abusive power of the government. The due process model reflects belief in the saying that it is better that a guilty person should escape the punishment of justice than an innocent person be wrongfully punished.

► **The Structure of the Criminal Justice System**

During the 1960s, the public lost faith in the criminal justice system. Rising crime rates, riots, demonstrations against the Vietnam War, and racial conflict resulted in many people

believing that the criminal justice system was “broken” or was a “nonsystem.” Concerned over the public’s ebbing faith in the ability of government to maintain public safety, President Lyndon Johnson appointed a commission of experts from the criminal justice system, government, public, and academic community to examine the **criminal justice system**, describe the criminal justice process, and make recommendations to improve it. The commission was called the President’s Commission on Law Enforcement and Administration of Justice. One of the main charges of the Commission was to determine whether the process of administration of justice in the United States was a system and, if so, to define the criminal justice system. The Commission issued a report in 1967 entitled *The Challenge of Crime in a Free Society*. The Commission’s report concluded that there was indeed a criminal justice system and provided an outline of the agencies and processes that comprised it.⁵

The Commission concluded that the criminal justice system was composed of (1) the agencies and people involved in the criminal justice system and (2) the processes and flow of the criminal justice system. Furthermore, the Commission concluded that the criminal justice system was a dynamic system, constantly adjusting and changing. This dynamic nature was due in large part to the interactions between agencies, the operation of checks and balances within the system, and changing environments such as new laws and U.S. Supreme Court decisions. Also, the Commission acknowledged the dual nature of the criminal justice system; that is, the criminal justice system is not a single system but is comprised of the criminal justice system of each of the 50 states and the federal criminal justice system.

Today, the criminal justice system is widely recognized as a significant component of federal, state, and local governments. The criminal justice system employs more than 2.5 million people and spends more than \$261 billion per year.

LEARNING OUTCOMES
3 Describe the five stages of the criminal justice system.

Agencies in the Criminal Justice System

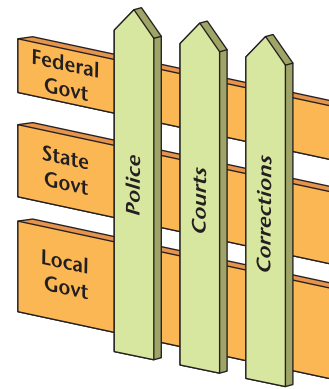
Criminal justice agencies can be divided into (1) law enforcement; (2) prosecutors and the courts; (3) the probation and parole agencies; and (4) the jails, prisons, and other correctional agencies. These agencies exist in the local, state, and federal levels of government. Each level of government has its own criminal justice agencies and process. Thus, there is not a single criminal justice system, but an interconnected system of criminal justice agencies at the local, state, and federal levels. Also, there is a separate but interconnected criminal justice system for adults and juveniles at both the state and the federal level of government. In addition, there is a separate criminal justice system for Native Americans on tribal lands and military personnel. Finally, the criminal justice system is with the civil justice system.

Dual Criminal Justice System

The U.S. criminal justice system is distinct from criminal justice systems of other nations in which there is a centralized system of oversight and command from top to bottom. The American system can be described as a dual system, which refers to the fact that the federal government and the states each have the power to create their own semiautonomous criminal justice system. While all criminal justice systems must preserve the rights guaranteed by the U.S. Constitution, there is great diversity between states and the federal government in the details of their criminal justice systems.

Thus, while 2.5 million people are employed by the criminal justice system, each of the thousands of criminal justice agencies hires its own employees. There is no central employment agency for the criminal justice system. Each agency sets standards of employment, defines job responsibilities and duties, and pays its employees independently of central control. As a result, there is great diversity in the educational achievement, skills, knowledge, and abilities of the people who work in the criminal justice system. One law enforcement agency may require officers to have only a high school diploma, whereas another law enforcement agency may require a bachelor's degree. One state may have no requirements of legal training for its municipal judges, whereas another state may require that municipal judges meet strict standards for education and other qualifications.

Sometimes the interrelationship of local, state, and federal criminal justice agencies is described in a hierarchical relationship by comparing them to a three-layer cake—a broad layer consisting of local agencies at the bottom, a small layer of state agencies on top of that layer, and a smaller layer consisting of federal agencies on the top. However, the analogy of a three-layer cake suggests that each political entity is separate and that there is a hierarchy with local political entities at the bottom and federal government at the top. This analogy does not accurately describe the criminal justice system. Because of the semiautonomous nature of criminal justice agencies, although the agencies may interact often, the agencies are independent and there is no hierarchical authoritative relationship between them. For example, the Federal Bureau of



Picket Fence Model

Investigation does not have administrative powers over state law enforcement agencies and state law agencies do not have administrative powers over local law enforcement agencies. The court system does have a hierarchical relationship in that higher courts can overturn the decisions of lower courts, but separation and independence still exist among the various local, state, and federal courts.

A better analogy to describe the relationship between the local, state, and federal criminal justice agencies is the **picket fence model**. In this analogy, the three horizontal boards in the fence represent the local, state, and federal governments and the vertical boards represent the various criminal justice agencies, such as law enforcement, courts, and corrections. Although separate autonomy of each agency is represented by the space between criminal justice agencies at each level of government, an interrelationship is represented by the vertical pickets.

Checks and Balances

One of the characteristics of the criminal justice system is that it reflects the mistrust of a strong centralized government by the early founders of the United States. As a result, the U.S. government was created with numerous checks and balances. Each person and agency in the criminal justice system has a certain amount of autonomy, but each also is controlled by interactions with other criminal justice agencies. The balance of authority exercised over other agencies and the authority of agencies to void actions of other criminal justice agencies is called the power of **checks and balances**.

The flowchart created by the President's Commission identifies five stages in the criminal justice system: (1) entry into the system, (2) prosecution and pretrial services, (3) adjudication, (4) sentencing and sanctions, and (5) corrections. The agencies that compose these stages are semiautonomous, and as discussed earlier, no one agency has the oversight powers to supervise and regulate the processing of an accused person through the criminal justice system. This separation of power acts as checks and balances to ensure fairness and to minimize the arbitrary exercise of power or abuse of power by one of the agencies.

One of the ways this power of checks and balance works is that when an accused person is transferred from one stage of the criminal justice system to another, there is the opportunity for a review of the charges against the accused. Often at these transition points, the receiving agency has the authority to refuse to continue the processing of the accused in the criminal justice system. For example, the prosecutor may alter the charges the police filed against the accused or may dismiss all charges and free the accused. The prosecutor must obtain permission of the court before the defendant can be formally tried for the alleged criminal activity. After the trial and sentencing, the defendant can appeal both the verdict and sentence. Finally, due process rights ensure that when a defendant is transferred to a correctional facility, his or her rights regarding cruel and unusual punishment and due process rights to appeal revocation of probation or parole are protected.

► **The Criminal Justice Process**

As mentioned, there is no single criminal justice system. Thus, a discussion of the criminal justice process cannot accurately describe the criminal justice process used by each state and the federal government. However, the criminal justice system of each state and the federal government must provide that the constitutional rights of people who have come in contact with the criminal justice system are protected. Each person must be treated with fairness and equality, and due process rights cannot be abridged. Thus, despite the differences between the criminal justice systems of the various states and the federal government, there is a commonality as governments must ensure that accused people are treated in accordance with the rights proscribed by the Constitution and that their journey through the criminal justice system is without bias and conforms to the guidelines provided by the Constitution and the U.S. Supreme Court.

In 1967, the President's Commission on Law Enforcement and Administration of Justice undertook one of the first attempts to describe the process of the American criminal justice system.⁶ Prior to the Commission's study, there was little research as to the process of the criminal justice system. The Commission produced a flowchart of the criminal justice system. The flowchart was not reflective of every state's system, but it did provide a visual depiction of a generalized understanding of the process of the criminal justice system. Since the publication of the Commission's flowchart, the process described by the 1967 report has been updated by other studies and the Bureau of Justice Statistics.⁷ Thus, the flowchart (Figure 1–1) has become a standard for depicting the criminal justice process.

The flowchart of the President's Commission describes the criminal justice system as a classical **input–output model**. In this model, the process describes how people are processed into the criminal justice system and then move through the system until they exit from it. (See Figure 1–2 for a description of the five stages in the criminal justice process and Figure 1–3 for the roles and functions of criminal justice personnel.)

Entry into the System

The criminal justice system only handles formal sanctions. As a result, entry into the adult criminal justice system usually requires that someone is suspected or accused of a violation of the law. (Juveniles may enter the juvenile system under other circumstances and this will be discussed in Chapter 13.) Law enforcement agencies are the primary officials responsible for detecting crime violators and bringing these individuals into the criminal justice system. Often the process of detecting crimes is a partnership between law enforcement and the public. To a large degree, law enforcement must depend on the public to report crime, to cooperate as witnesses, and to work with law enforcement in crime-prevention programs.

The arrest of a suspected criminal may be spontaneous, as when a patrolling law enforcement officer chances upon a crime in progress, or it may be the result of months, perhaps years, of planning that involves many different law enforcement agencies. Often arrests for major crimes, especially ongoing criminal enterprises, are characterized by extensive effort, resources, and collaboration by multiple criminal justice agencies. **Arrest** means that law enforcement can restrict the freedom of people by taking them into custody. A person who is arrested can be “unarrested” even prior to booking. If the police realize they have made a mistake and arrested the wrong suspect, they can simply release the person.

When a person is arrested, that individual must be transported to a facility where he or she can be booked. **Booking** is the process whereby law enforcement formally accuses a person of committing a crime. The purpose of booking is not to establish guilt, but (1) to establish the identity of the person and (2) to charge the person with a specific violation of the criminal law.

Booking acts as the transition point to determine whether the accused will be further processed by the criminal justice system.

Prosecution and Pretrial Services

In the next stage of the sequence of events in the criminal justice system, the government agency must decide whether the evidence presented by the police is sufficient to pursue prosecution of the alleged offender and must ensure that the due process rights of the defendant are protected. The decision to move the accused from booking to prosecution often is decided by collaboration between law enforcement officials and officials of the prosecutor's office. The government official responsible for charging and prosecuting the defendant is known by different names from state to state. Some common titles are prosecuting attorney, district attorney, and state's attorney. The prosecutor's office has complete autonomy to accept, modify, or dismiss the charges upon which the defendant was booked. If the prosecutor does not seek criminal charges against the defendant, law enforcement has no authority to bring charges against the defendant. If the prosecutor decides to bring the defendant to trial for the alleged offense(s), a number of preliminary steps must occur. The purpose of these steps is, in part, to guarantee the due process rights of the defendant.