AN EXPEDITION TO LEARN ABOUT JUSTICE

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An Expedition to Learn About Justice

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Licensing

A detailed breakdown of this resource's licensing can be found in ***Back Matter/Detailed Licensing***.

Acknowledgements

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About/ Use of the Text

About the text

This text is specifically designed for the Introduction to Criminal Justice course. This text will provide much of the information needed to do well in the class. The text was designed to present key information needed to understand the field of criminal justice without distracting the reader with tidbits about the field or extraneous information to add to the page count. The text is presented in an electronic format to keep information up-to-date, no-cost for students, and to allow interactive learning exercises and graded activities to be included in conjunction with Blackboard. The interactive exercises are specifically designed to improve understanding and retention of the information, as well as to work on both critical and creative thinking skills.

Use of the text

There is a quiz in Blackboard to complete at the end of each chapter and each quiz consists of four questions. It is important to submit your answer for each question as it is completed. Also submit your answer for the final question in each quiz before exiting Blackboard so answers and scores can be recorded. If there are any problems in using the OER text simply notify the instructor.

About the Authors

About the authors – Dr. Wendelin Hume has been an educator and researcher at the University of North Dakota for over 30 + years. She completed her undergraduate degree at Black Hills State University in Spearfish, South Dakota and her masters and doctoral degrees in Criminal Justice and Criminology at Sam Houston State University in Huntsville, Texas. Based in part on her experiences growing up on an Anishinaabe reservation in Northwestern Ontario and on her work in the criminal justice field her academic interests include: tribal justice, restorative justice, and victim issues ranging from cybercrime to family violence. Dr. Hume designed this text and its exercises to provide up-to-date information about the field of criminal justice and to emphasize the skills of critical and creative thinking in a way that will engage readers and strengthen their active reading skills. Her personal interests center around her family, her ranch, contributing time and energy to the community, and her undergraduate and graduate students.

Sherina Hume is an alumni of the University of North Dakota where she currently contributes as a research assistant. Her racial background of both Scottish, Anishinaabe, and Cherokee, heritage contributes to her interests in: tribal justice, victimology, and cybercrime. Ms. Hume was involved with the overall structure of the text, with the selection of illustrations, and making of the puzzle sets. She also is pleased that this text will not cost anything for students and does not contain fluff which allows students to remain focused on the subject matter.

CHAPTER OVERVIEW

1: The Concept of Criminal Justice - System and Process

1.1: Introduction

Learning Objectives:

- Describe the overall general nature of the CJ field.
- Describe what criminal justice is.
- Think broadly about the nature of crime.
- Describe how the structure of government influences criminal justice.
- Describe the three main types of criminal justice agencies and their roles.
- Explain the use of discretion.
- Know the 15 critical decision points in the criminal justice process.
- Describe the funnel model.
- List the four basic stages of the criminal justice "wedding cake" model.
- Identify the interrelationship between criminal justice system and process.
- Know ways to explore career choices in any field.

Introduction

As the author of your text, as a former practicing professional and a current professional consultant in the field, as an Internship coordinator and educator all the way through the Ph.D. level—I have always been fascinated in criminal justice. Part of my fascination is with the parts of our system which work well at protecting citizens and helping or making people turn their lives around through a variety of ways. Another part of my fascination is with the parts of our system that are corrupt or too quickly resort to violence. In this text, we will be on an expedition to find justice by looking at what is working well and what is not working as well as it could, or perhaps is not working at all.

Most people interested in a criminal justice class are interested just out of curiosity perhaps based on something they watch on television or perhaps just to be better informed about key issues and controversies; some people are interested in the class because they are choosing criminal justice as a major or minor and perhaps they even plan on working in the field in the future; yet other people are interested in criminal justice because they think the system is broken—perhaps they have been victimized, or they had a bad experience with law enforcement or other authorities. All of these reasons are valid though very different. The diversity of opinions and life experiences is another thing that can make this class very interesting as long as we are respectful of each other's opinions and try to approach our expedition to learn about justice with an open mind.

1.2: Criminal Justice Is Dynamic

Criminal Justice Is Dynamic

Criminal justice is a fascinating and ever-changing field of study. The field of criminal justice (for the sake of easier note taking—known as CJ) is not like some fields where one can memorize a chart of elements or understand a few static functions such as division; it is alive with new discoveries and follows elements that are always changing. You may find that many "lay persons" such as the general public or perhaps parents do not understand how diverse and complex CJ is. When they hear the term CJ, they often think, "Oh, so you are studying to be a cop?" without understanding that criminal justice can be studied as a minor, as a major, for a master's degree, for a law degree, or even for a Ph.D.—and a lifetime of continued learning. In the field of criminal justice, there is not just **one** right answer to many of the problems in our field. Should drugs be legalized? Should murderers be executed? Should insanity excuse one's conduct? Is there something magical about setting the age for legal drinking at 21? Although I'm sure you have an opinion on these issues, I encourage you to keep an open mind as we go through the material, so you can look at all sides of an issue and then form a more educated opinion.

No matter your opinion on these issues, I encourage you to keep an open mind as we go through the material, so you can look at all sides of an issue and then form an educated and informed opinion which may be the same or different from the opinion you currently hold.

1.3: Concept of Criminal Justice

Concept of Criminal Justice

The term "criminal justice" refers to the area of study of a just (as in justice/fairness) way of dealing with crime, criminals, and the victims. CJ is a relatively new interdisciplinary field of study. It is new compared to much older fields, such as psychology or biology. In fact, most of the older professors in this field obtained their degrees in other related fields, while the next generation of professors such as myself were able to obtain their Ph.D. specifically in the field of criminal justice. It is interdisciplinary in that it is made up of ideas and concepts from many other fields, such as sociology, psychology, law, public policy, administration, and chemistry—just to name a few.

Broad View of Crime

In addition to having a broad view of the field of criminal justice, it is important to have broad view of crime. Usually, when one hears the word *crime*, some type of street-level crime such as assault is what one thinks of. We need to understand that even similar types of crime can have very different motivations, different impacts on the victims, and need a different system or government approach to deal with it. For instance, when we think about a criminal physically harming a victim, we need more information before we can think about proper investigating techniques, prevention suggestions, or what might be done with the offender. As you can see in this image, there is a difference between one being harmed as part of the gang crime, harming themselves as in a cult, or being hurt by someone you thought you trusted. If the victim were to die, there is even a difference between a serial murder where there may be many victims, but they tend to be targeted one at a time, or a mass murder where there may be many victims targeted altogether. Of course, the image just shows you a few of the many ways victims may be physically harmed, and hopefully you noticed that it does not even include "suite crime," also known as white collar or corporate crime.

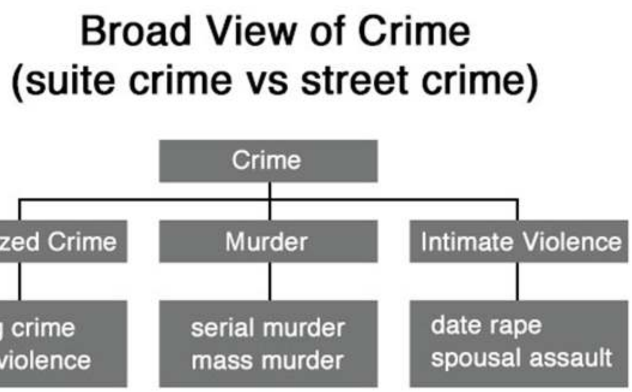

Figure 1.1

Law Enforcement Assistance Administration

Throughout the text and in our field, you will notice that we often use acronyms. Acronyms can make communication more efficient. We have already been using the acronym CJ. Another acronym is LEAA, which stands for Law Enforcement Assistance Administration. LEAA was important through the 1970s for funneling a lot of federal money into the field. In fact, their involvement is what helped invent the field now known as criminal justice. In addition to the money that they contributed, however, perhaps the most long-lasting effect of the LEAA was their emphasis on the importance of research in our field, and the importance of a college education for those working in the field to improve the professionalism of our agents.

Study of Criminal Justice

Of course, when one sets out to study something, we usually start with a definition. So, the study of criminal justice is an attempt to "scientifically examine the methods, procedures, policies, CJ agents, CJ agencies, and the role and impact of crime." There are two main ways in which something can be studied: abstractly (or in other words theoretically, like we are doing in this class) or applied (in other words, lived experience such as doing an internship or working in an agency in the field). We will be looking at the field in an abstract sense, and I encourage you to focus your social-awareness lesson activities around events or people that can share more of the applied side of our field with you.

Government Structure

This you probably remember from high school—what are the three branches of government? The correct answer is legislative, judicial, and executive. Even though this concept is very easy, we need to look at it in a slightly more difficult fashion now. In the field of criminal justice, we interact with and rely on a number of government agencies. To us, it is very important to know what level of government we should interact with. Typically, the levels are broken down into local, state, and/or federal. There is a big difference between violating a local ordinance (like rules against too much noise) compared to a federal law (like interstate transportation of illegal drugs). No matter which level of government we are dealing with, it is important to understand the influence that each of the branches has on the criminal justice system. If there ever is a law we disagree with, it is important to understand that the agents in the field are just following their orders. If we want changes to be made, we, the public, need to use the democratic process to make these changes. The main influences of the three branches of government are summarized in this image.

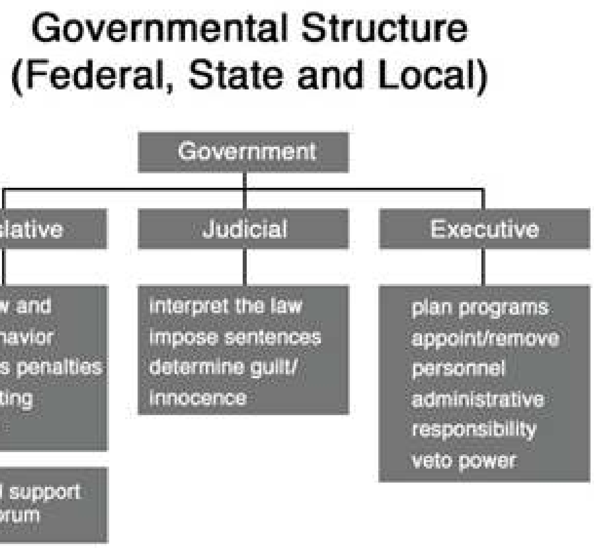

Figure 1.2

US CJ System

There are two different ways of conceptually thinking about criminal justice. One is as a "system" and the other is as a "process." Let us first look at it as a system. The term system implies an organized and integrated array of components. Certainly, the criminal justice elements are interrelated, but throughout this course I would like you to question if they are integrated and well-organized. The criminal justice system in our country is quite large. A few highlights to illustrate the system's magnitude are shown in the bulleted list below.

The Criminal Justice System: Size and Expense

- 55,000 different public agencies
- $200 billion annual budget
- 2.4 million employees
- 18,000 police agencies
- 17,000 courts
- 8,000 prosecutorial agencies
- 6,000 correctional institutions
- 3,500 probation and parole departments
- 15 million arrests per year
- Correctional population of more than 6 million

There are three main components in the criminal justice system. We will examine each of them in more depth later. The three components are police, courts, and corrections. First is a brief overview of police.

Role of The Police

The police are an important component, because they are at the front end of the system. It is their "discretion" which may set the system in motion. Their main duties are to maintain order and to enforce criminal and traffic laws. If they decide to give someone a warning for speeding, the other parts of the system (courts and corrections) will not need to respond. However, if a ticket is issued, the courts will need to respond, and if the ticket remains unpaid, the correctional component may become involved as well.

Role of the Courts

Even if law enforcement believes someone did a crime, it is actually the role of the courts to determine criminal responsibility. When we discuss the court system in more detail later on, I would like you to question if the courts of today are still seeking "truth" or are they so backlogged that now they are dispensing "bargain justice," as the critics claim. Courts are also important for their role in "sentencing" offenders.

Role of Corrections

Even though being apprehended by police and sentenced by the courts might seem like punishment, it is the corrections component that is the actual "sanctioning force." There are many sanctioning options within the corrections component, ranging from incarceration, where one is removed from the community and locked up in a secure setting, to community-based programs such as probation. There are also innovative combination programs such as boot camps and wilderness camps in some areas. We will examine corrections more closely toward the end of this course.

Discretion

It is important to point out that all of the agents of the criminal justice system (not just police) exercise discretion, or the professional choice of how to respond in a particular situation. For instance, judges can decide on what sentence to impose, and correctional officials may decide whether or not to award privileges to the people under their control.

Discretion must always fall within the parameters of what is allowed by law. A judge may not choose to give the death penalty for hosting a loud party and a warden may not choose to let everyone free because they are in a good mood. Despite limits on discretion imposed by law, it is not unusual for cases which are similar in nature to wind up with slightly different outcomes, depending on the discretionary decisions made by the officials involved. Often people wonder why their case was not treated exactly as someone else they knew about. The answer might be that there were important differences in the details of their case, or the answer might simply be discretion.

1.4: CJ Process

CJ Process

As mentioned earlier, criminal justice can also be looked at as a process. From the process perspective, the focus is on the flow of cases or individuals, not on the individual agencies. The process is broken down into 15 separate steps. Besides understanding each of the steps, it is also important to understand that the flow of a case may not necessarily be smooth or proceed through each of these 15 steps. Each of these steps represents a decision point where a criminal justice agent will be deciding whether to release the case or continue it to the next step in the process. Along the way, there is a lot of discretion in the hands of many different individuals. Critics argue this is also where a lot of bargaining takes place, and so critics often refer to it as an “assembly line” process.

Police

1. Initial contact—in most instances, a citizen’s initial contact with the criminal justice system is result of a police action such as pulling someone over, asking questions about a reported incident, responding to a call by a victim, and so on.

2. Investigation—during a criminal investigation, evidence is gathered to both properly identify a suspect and determine if there is sufficient evidence to support a legal arrest. An investigation can be very quick such as observing a crime in progress or some investigations may continue on almost indefinitely until the case goes cold.

3. Arrest—once there is enough evidence also referred to as “probable cause” that the suspect has indeed committed an illegal act the officer may control the suspect and place them under arrest. The arrest does not always involve handcuffs, though it usually does, as sometimes an order for arrest may be issued through a court document.

4. Custody—after an arrest to aid in detaining a suspect, the suspect may be taken into custody. This custody may mean putting someone in a squad car, or a police lineup, or an interrogation room, or a jail cell depending on the decisions of the officers in charge.

Image 1.1

Courts

5. Charging—if the arresting officer or a superior believes that there is enough evidence to officially charged the suspect with a crime the case will then be turned over to the prosecutor’s office. While officers may write down what they think the charges should be on various forms of paperwork, it will actually be the prosecutor’s office which will decide on the official charges.

6. Preliminary hearing—the next step will be to hold a preliminary hearing in front of a judge or to have a meeting of a grand jury. In either case, the purpose of this hearing is to allow the courts to determine if in fact prosecution should continue or if the charges against the citizen are false.

7. Arraignment—if it is determined that the prosecution shall continue than the defendant has the right to know whether formal charges are against them. The defendant has the right to an attorney at this step as well as during any questioning that may have

come earlier. As you will see in the court chapters later, if you cannot afford an attorney, one will be appointed for you. If the case is going to go to trial at this step, typically, the trial date is set.

8. Bail—since a trial date may be scheduled quite far into the future and it is not proven yet that the defendant is guilty bail may be considered as a type of compromise. The accused would like to go free for now and the courts would like to ensure that they will return for trial—a certain amount of money is held by the courts as a type of guarantee. If the defendant returns for the trial, their money will be returned as well. If the defendant does not return for the trial, the money will be forfeited and awarded for their arrest will likely be issued. If the alleged crime is relatively minor such as a speeding ticket often once promise in terms of a signature on the ticket will suffice and money will not have to be paid immediately.

9. Plea bargaining—at some point during the steps between arraignment and trial, sometimes a plea bargain agreement is reached. Typically, a plea bargain involves a guilty plea from the defendant in exchange for reducing the severity of the charges or possible sentence. About 90% of all criminal cases end in a plea bargain rather than a formal criminal trial.

10. Trial—if a plea bargain agreement has not been reached between the prosecution and defense and the prosecution has not dropped the charges, then a trial will be held. The trial may be in front of a jury or simply in front of a judge, but in either case the evidence must show that the defendant is guilty beyond a reasonable doubt or else they will be found innocent.

11. Sentencing—at the conclusion of the criminal trial, if the defendant was found guilty as charged, they will then be returned to court for sentencing. Depending on the severity of the charge, the sentence may be as lenient as a small fine or time served or it may be as severe as the death penalty.

12. Appeal—after a conviction at the conclusion of the trial, the defendants or their attorney may decide that errors were made during the trial or even that their constitutional rights were violated during the trial process. If such claims are made the case may go to an appellate court which will review the transcripts of the case to see if the case was handled appropriately. If errors or right violations are found, the defendant may be given a new trial or even released.

Image 1.2

Corrections

13. Correctional Treatment—the sentence will state where the offender will be placed within the jurisdiction of correctional authorities. Corrections include a wide range of options from fines, to probation, to jail time, to prison or a combination thereof. Some programs are designed more as a type of punishment while others are designed to aid rehabilitation and help the individual readjust successfully back into the community.

14. Release—upon the completion of the sentence and the period of time to be served offenders may be released and given back their freedom or they may be released from an institution but placed in a program such as parole where they still have some elements of supervision but are allowed to resume their lives in the community.

15. Post-release—after being released from a correctional facility, some offenders are given absolute freedom while others may spend some time in a community correctional facility that is less strict than the facility they came from but does not offer absolute freedom in the beginning. If the offender makes good progress in obtaining a job and a place to stay, they may then be released from the community facility and granted their freedom or placed on parole for a period of time. Eventually, if the individual follows the rules and makes progress, they will regain their freedom but if they break the rules or commit new crimes, they will lose their privileges and possibly begin a journey through the steps all over again.

Image 1.3

1.5: Visual Models

Visual Models

One way to visualize the criminal justice system or process is with the criminal justice funnel model illustrated below. This model attempts to show that not every crime that is committed is solved and not every individual who commits a crime winds up in prison. I think of the funnel as more of a sieve, because individuals that are apprehended are seeping out at various places, as decisions in the process described above are being made, not just at the end of the funnel.

Figure 1.3

Another way to visualize this system or process is through the criminal justice wedding-cake model. This model attempts to show us that what criminal justice officials deal with every day is mostly smaller crimes known as misdemeanors. The celebrated cases may get all the media attention and they are typically the crimes that the public knows about and judges the system by, but they are few and far between and not what we actually deal with on a day-to-day basis.

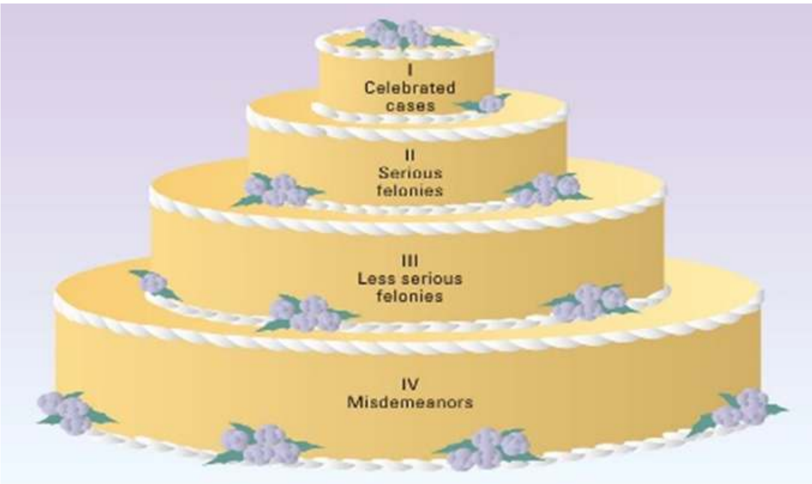

Image 1.4

You can visually merge the system and process perspectives as illustrated in the figure below. By grouping the steps or decision points, you can see that the first four steps belong to the police component; steps 5 through 12 are taken care of by the court system; and steps 13 through 15 fall within the purview of corrections.

Police	Courts	Corrections
Initial contact	Charging	Correctional treatment
Investigation	Preliminary hearing	Release
Arrest	Arraignment	Post-release
Custody	Bail Plea bargaining Trial Sentencing Appeal	

Figure 1.4

1.6: CJ As a Career

CJ AS a Career

While I think the field of criminal justice is important for every citizen in a democracy to understand, I know that many people are interested in this course because they plan to pursue a career in criminal justice. No matter what your field of study is, it is important to begin thinking about your career options in relation to that field. See the career video included in Blackboard with your chapter lecture videos. The World Wide Web has a lot of information about various careers. For instance, you might want to check out www.opm.gov or www.officer.com. Textbooks in your chosen field of study may have more information about careers. You might also wish to communicate with your instructors and ask them about recommended books. You can learn more about a field by job shadowing or talking to people in that field—as you are encouraged to do with your social-awareness activities for this course.

There may be professional associations on your campus, in your community, or even regionally or nationally that you could join. Our regional criminal justice organization is known as the Midwest Criminal Justice Association (MCJA). At the national level, for those interested in theory, we have the American Society of Criminologists (ASC), www.asc41.com. Also at the national level, but with the more applied perspective, we have the Academy of Criminal Justice Sciences (ACJS) and the American Correctional Association (ACA). Associations typically offer reduced membership rates for students.

Whenever you find yourself writing a paper for another class or perhaps completing an independent studies project, you could try to focus this work on career concerns in your field. Individuals are also encouraged to obtain an internship or cooperative education field placement before they graduate.

1.7: Ethics in Criminal Justice

Ethics in Criminal Justice

In parts of this text, we will also examine ethical issues as they relate to the field. In this chapter, we should first think about what "ethics" means. We tend to use the word ethics but often do not fully comprehend what it means.

Definitions

Ethics is a philosophy that examines the principles of right and wrong, good and bad. Trying to make decisions about right and wrong is important but in combination with that we also need **morality**.

Morality is the actual practice of ethical principles on a regular basis which then would result in living a moral life.

Basically, understanding ethics is only a first step. One needs to take the ethical lessons to heart and then live in accordance with those principles. Hopefully, being an ethical person becomes so ingrained that you make ethical decisions and practice ethical actions on a regular basis. That you live a moral life not just when people are watching but even when they are not. That is a lot to ask of someone but in a field dedicated to the concept of justice—it is expected.

So, in summary—we first need to have the capacity to make value judgments about situations and then secondly we need to practice behavior that is consistent with the ethical principles and value judgments made.

Summum Bonum is the principle of the highest good. It is important to understand that the highest good would not be subordinate to **any** other.

Put together these three terms explain that we are seeking what is right and then acting on that in order to support the highest good. In criminal justice, the highest good is often **Justice.** This is why throughout this text and in the class, we are on a expedition to learn about justice.

1.8: Determinism or Intentionalism

Determinism or Intentionalism

In thinking about your own sense of ethics, one of the first things to consider is the issue of responsibility. Do you think that all thoughts and actions are result of forces beyond our control or that we have innate freedom of will and our actions are within our own control? This question is key in terms of assessing responsibility for actions including criminal actions and what should be done about those actions.

Persons that think that actions are not within our control have a **determinism** philosophy. People that hold this philosophy often points to things like poverty or psychological imbalances as causes of crime. If this is true, then ethically the individual criminal should receive help or treatment to correct these conditions.

Persons that think that actions are within our control have an **intentionalism** philosophy. People that hold this philosophy believe that ethically we should each be held responsible for own actions. If our actions are good, then we should be rewarded and if our actions are criminal, then we should be punished.

So, which philosophy do you follow in making decisions in your life as well as when judging the actions of others? Within the criminal justice system professionals have varying philosophies, however, the system itself is set up on the philosophy of intentionalism. The system is set up to find the guilty individual and hold them responsible for their actions.

1.9: Veritas—The Truth

Veritas—The Truth

In struggling to answer the question posed above, you are probably chained to reach an ethical decision based on the truth of things that you know. Which raises the question—how do we know what we think we know? Typically, there are three main ways through which most Americans determine “the truth” of what they know.

One way that many people reach decisions and evaluate the truth of information is through their **religious** teachings. For many people God’s truth is THE truth. Decisions about what is right and wrong and how to live your life are based on these religious teachings.

A second way that many people determine the truth is based on the **scientific** method. The truth becomes pieces of information that can be substantiated with science. If data supports a particular point, than these people are likely to believe it is true.

A third way that many people determine the truth is based on what is known as the **sociological** method. This method could be thought of as a type of compromise. Individuals that follow this method may fluctuate in that some of their thoughts are governed by religion, but many of their other thoughts are governed by science even if that goes against some religious teachings or stories.

1.10: You

YOU

So in studying criminal justice, it can be difficult to decide what is right versus wrong. It can be difficult to live a moral life as a criminal justice professional because there are temptations and shortcuts all around you. Nevertheless, it is important to continue seeking and reaching for justice which is the summum bonum, or highest goal of our system.

In your expedition to learn about justice, you now need to think about where you feel responsibility for criminal actions lies. Additionally, you need to be introspective and think about the messages you have received in your life that have shaped your view of the world and the "truths" that are in it. As the Greek philosopher said "knowledge is virtue" and the first piece of knowledge is to "know thyself." We will pick up this discussion of ethics in the next chapter. Once we have talked about this chapter in class and you have watched the lecture videos for this chapter it will be time to test your understanding by going to Blackboard and completing your end of chapter quiz.

1.11: Image/Figure Citations

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Figure Citations

Figure 1.1 Broad View of Crime

Figure 1.2 Governmental Structure

Figure 1.3 Criminal Justice Funnel

Figure 1.4 Merge the System and Process

2: Measuring Crime and Victimization

2.1: Learning Objectives

Learning Objectives:

- Understand the three theoretical views about how crime is defined in society.
- Recognize some key findings about the crime of carjacking.
- Name the three major sources of crime data.
- Know the similarities and differences between the Uniform Crime Reports, National Crime Victimization Survey, and Self-Report Data.
- Recognize stable patterns in the crime rate and in victimization rates.
- Recognize weaknesses associated with each data set.

If one of the purposes of our criminal justice system is to control and reduce the amount of criminal behavior and crime, we must have accurate, up-to-date information in order to do so. This information should address both the nature (or different types) and extent (or amount) of the phenomena. For instance, if the mayor of your town approached you and asked you to "Do something about the crime problem!", before you passed any new laws, established new policies or started any new programs you would probably want to know which type of crime the mayor was upset about and how big a problem it really is in your community. So you would start by doing some research.

You would probably want to examine the wording of any current laws in place meant to control the problem behavior. While you and I might agree that a certain form of behavior is wrong, if there is not a written law against the behavior, such a behavior may be rude or even harmful but not technically be a crime. Sometimes, it is difficult to get citizens to agree on which types of behaviors should be classified as crimes. For instance, there is usually a diversity of opinion among students and citizens about the following behaviors: industrial pollution, recreational drug use, recording a movie, skipping class.

2.2: Definition of Crime

Definition of Crime

So how do we decide what actions will be written into law? There are three theoretical points of view about this. The three views agree that in American society, we write our laws down for all citizens to see. In our legal statutes, there are a variety of behaviors listed which are controlled or prohibited by law. Some behaviors, such as drinking alcohol, are controlled. The laws state what minimum age you must be, where you can consume the alcohol, when you should not be driving, and so on—but as long as you meet the qualifications, it is not illegal to consume alcohol. Other behaviors, such as killing someone for no particular reason, are prohibited. It would not matter if you are 21, in the privacy of your home, and not planning to drive—the behavior is still illegal and strictly prohibited. What the three views disagree about is how society decides which behaviors to write laws about.

Image 2.1

The Consensus View looks at our society like one big happy family and assumes that we would all agree that behaviors which are harmful to the majority of society should be considered criminal and all other behaviors should be left alone.

The Interactionist View is slightly more pessimistic and feels that those with power at the present time will tell us how to behave in order to protect us, like a parent would watch over their child.

The Conflict View agrees that laws are written by those with power, but it questions if these laws are written for our own good or merely to benefit those with power.

Each view has some merit. The Consensus View is probably fairly accurate in small groups which use a democratic process, but it may not be applicable to our large diverse American society in the year 2006. The Interactionist View would certainly explain laws like seat belt laws which many in society disagree with but which certainly are for our own good. It would also explain changes in laws (such as the upward shift in legal drinking age) as the people in power change. The Conflict View points out how sometimes our society seems to have dual standards. Among the upper class to have a mistress is okay (and we may even make a Pretty movie about it) but among the lower class prostitution is illegal. Other examples might be how gambling on the stock market is okay but other gambling is not; businesses joining together and forming corporations is okay but gangs and sometimes unions are not; corporate crime is often overlooked, but our prisons are full of street-level criminals. We could test this last point by spending the weekend writing thousands of dollars of fraudulent checks (of course—do not actually do this) but unless you are a well-connected Senator (think of the news a few years ago) I doubt we will get away with it. Probably, all three views have merit depending on the circumstances.

2.3: Myths and Realities

Myths and Realities

Before we get into the process of data collection, let’s test your knowledge about a few crime trends. Then you can see if your views have been based on popular myths or statistical realities. It is important in the criminal justice field to base our laws and policies on factual information, not just what a couple of individuals think might be going on.

Once we begin measuring a phenomenon, it is interesting how much we can learn about it. For instance, how much do you know about the crime of “carjacking” which is basically someone stealing your car while you are still in it—a combination of motor vehicle theft and kidnapping? Did you know that victims are injured 24% of the time; about half are committed by groups of males; most occur during evening hours; it is a type of robbery. Let me explain that a “completed” crime is one that was finished and then reported by someone, while an “attempted” crime is one that was started but due to defensive actions of the victim or for some other reason was never completed.

How Crime/Victimization Is Measured

So how do we know what is a myth and what is reality? To understand the crime phenomena, we measure aspects of it in society. No data set or research method is perfect, but they can be used as valuable tools for accurately estimating the scope of the problem.

Survey Data

There are three main methods used to obtain crime/victimization information. One method is through the use of survey data. When using the survey technique, it is important that you have a representative or random sample. Information can be collected in an interview setting or through the use of questionnaires. If I wanted to know something about my students in a traditional classroom, I could randomly ask a few of them to find out what I needed to know. It would be important that I did not just ask the women or just the people in the front of class because their answers may be different than the average student.

Aggregate Record Data

Aggregate record data is a complex sounding term which simply refers to the process of putting together the information from a group (aggregate) of official files (records). For instance, rather than asking my students questions in class, if I had permission, I could look at their official transcripts. In the field of criminal justice, there are a lot of official records (often in triplicate) which we can use to study crime and criminals.

Image 2.2

Other

There is a wide assortment of other methods which are occasionally, but not often used in criminal justice. For instance, you can study something by observing it. Perhaps I would observe note-taking behavior in the class. Some researchers use the experimental method. Perhaps I have given you one set of notes and everyone else a different set of notes and then I will compare how well you do (OK—not really). A few researchers use the life history method which makes for interesting reading to learn about the life of a gang member or a serial killer, but these findings usually cannot be generalized back to a large group.

2.4: Main Criminal Justice Data Sets

Main Criminal Justice Data Sets

In the field of criminal justice, we tend to rely on one or more of three main data sets for most of our information and studies. Because we rely so heavily on these data sets that it is important to understand both their strengths and weaknesses.

Uniform Crime Reports (UCR)

The UCR is the best-known source of official crime statistics. The collection of this information began in 1930 by the International Association of Chiefs of Police (IACP). It is broken into two main parts. Part I contains information on eight main crimes which are thought serious enough and widespread enough to accurately measure. The eight main crimes include homicide, rape, robbery, assault, burglary, larceny (theft), motor vehicle theft, and arson. The first four are considered violent crimes and the last four are considered property crimes. Part II contains information on all other crimes except traffic. It is typically information from only part one that is released to the public. I suspect that when you heard a number about crimes in the United States or saw the ticking clock example that is used in the news, you assumed that it was a measure of all crimes, not eight crimes. Furthermore, if you hear about the violent crime rate or of the property crime rate is actually just four out of the eight recorded crimes. This count of crimes is collected by law enforcement officers in the field based on crimes that have been reported to them. (It is of course important to note that not all crimes are reported.) Each department then forwards its information to the state headquarters who then compiles information for the state and forwards it to the Federal Bureau of Investigation (FBI) in Washington, DC. The FBI then compiles all this information and shares some of the results with the media and the public. The formula used to calculate the “crime rate” is actually quite simple but yet very important so we understand how we can compare the rate of one state to another or the rate of one country to another even though their population sizes may be quite different.

Image 2.3

Uniform Crime Reports Formula

The formula is simply the number of reported crimes, divided by the population under study, multiplied by a constant, and then reported as the rate for the constant. For instance, the FBI reports the “crime rate” by taking the total number of reported crimes, dividing it by the total US population as reported by the Census Bureau, multiplied by the constant 100,000 and then the rate is reported per 100,000 people.(number of reported crimes/total US population x 100,000 = rate per 100,000). I once asked my large lecture class how many students had reported a larceny in the past year. Twenty students said they had. So, we would use the formula like this: 20/250 x 100 = 8. Notice that the constant used (100) was smaller since we are studying a smaller population. The end result is that approximately 8 out of every 100 students experienced larceny each year.

Rate Fluctuations

There are many possible reasons why our reported crime rates seem to fluctuate from year to year. Some reasons will tie into our theory chapter such as the number of individuals in the "crime prone" age range of 18 to 25, for the rate of unemployment, or patterns of drug use. Other reasons are more disconcerting from a statistical accuracy point of view. For instance, if the sheriff is doing a good job and interacting well with his community more citizens may be willing to come forward and report crimes. At the end of the year, however, it will look like our sheriff is doing a bad job because the crime rate will appear to have risen compared to previous years, when actually it is just that more people were willing to report.

Crime Trends

There are some crime trends that remain constant from year to year and so weak in healthy and accuracy of these. For instance, consistently crime rates are highest in the West and the Southern portions of our country, crime rates rise dramatically during the summer months, males commit more crimes than females (though the female rate is increasing more rapidly), and younger individuals commit far more crimes than the elderly. The poor and minorities are often reported as committing crime at high levels compared to their proportion in the population. By knowing the crime trends we can allocate our resources more effectively to combat the problem.

Criticisms

No data set is perfect, but it is important to understand the weaknesses of the data set to have faith in certain findings. The main weakness of the UCR has already been mentioned and it is that many crimes, estimated about half the crimes, are not reported. The accuracy and completeness of these police reports may vary and there are few details other than the count of crime. Many states are upgrading their collection of statistics to the National Incident-Based Reporting System or NIBRS for short. The NIBRS system is an expansion of the UCR and is already being used in the state of North Dakota. About 97% of all agencies voluntarily submit their crime statistics, but this means that there are some agencies, mainly rural agencies, that do not. We have also seen in the example above how different enforcement policies, such as encouraging citizen reporting, may influence the recorded crime rates as well.

2.5: Self-Report Data (SR)

Self-Report Data (SR)

Let me start by asking you, have you ever committed a crime? If someone asked you this question in person or on a questionnaire would you answer it honestly? Did you ever participate in a study which asked you about your behavior?

The concept behind SR is that general persons are asked to report about their own activities. Some of the people asked will have committed crimes, while others have not. By guaranteeing anonymity, it is hoped that the individuals will respond honestly. Typically, these studies are conducted on youths in high school settings or even on students in college classrooms. We can use this SR to look at the “dark figure” of crime.

The "Dark Figure"

In other words, we can learn more about crime that has been committed but probably not reported. In this manner, we can see how crime is present throughout our social structure. Much of this information may not be recorded in the UCR statistics thus exploring the “dark figure” of crime. This method of data collection also allows us to explore a variety of personal information such as discipline in the home, economic status, peer groups, and so on—information that is not available in the UCR.

Crime Trends

SR consistently reveals more crime being committed than is recorded in the UCR and it shows that we have individuals committing crime who are from wealthy backgrounds and who are Caucasian as well as some who are poor and/or minorities. Thus, SR reveals about double the amount of crime as the UCR and it reveals that criminals can be found throughout our social structure. Since many people responding to self-report questionnaires have not committed crimes we can compare the differences between reported offenders and non-offenders to see what possible theoretical explanations there may be to explain this difference.

Criticisms

A key potential weakness with this data set is the honesty of the respondents. Since the reporting is anonymous many people respond honestly but there are some who do not wish to admit their wrongdoing and there are some who record far more wrongdoing than they have actually done. Also, with this method there is no national annual data set it is merely a collection of different studies done by independent researchers who ask different questions at different times.

2.6: National Crime Victimization Survey (NCVS)

National Crime Victimization Survey (NCVS)

The last main data set that is commonly used in the field of criminal justice is the National Crime Victimization Survey or NCVS for short. This data set approaches the crime issue from a different direction. Instead of focusing on crime and criminals, it focuses on the victims. Were you a victim of crime in the past year? Did you report it?

The NCVS is the largest and most widely used victim survey in our country. It is conducted by the Bureau of Census in cooperation with the Bureau of Justice Statistics. The NCVS samples about 100,000 individuals each year and it asks these individuals questions twice a year for four years. The questions focus on household and personal victimization for all individuals in the household who are over the age of 12. The NCVS also collects a lot of other information about the victims, any identifying characteristics of the offender, and about the crime situation itself.

Crime Trends

Although the rates of crime reported in the NCVS fluctuate each year, there are many findings which are consistent from year to year. For instance, men have significantly higher rates of crime victimization than women. Minorities tend to have higher victimization rates than non-minorities. Crimes tend to happen more often in the evening hours and many victims do not report the crime to authorities. Some crimes, such as rape, have high rates of non-reporting, whereas other crime types, such as vehicle theft, have high reporting rates because they are not as personal and traumatizing in nature and a report is typically required by insurance companies.

Criticisms

A main weakness with this data set may be the memory of the respondents. Although each respondent is visited twice a year, it is difficult for some to think very far back and remember accurately the details of the traumatizing event. There is still some non-reporting as some victims may not be ready to talk to anyone, including the researcher, about their experience. There may also be some over-reporting by individuals who are somewhat paranoid and tend to think every screen door blown open by the wind is an attempted burglary.

2.7: Major Forms of Crime

Major Forms of Crime

In Chapter 1 we discussed several main forms of crime. While reading this text and the articles in the back matter, please note that the majority of white collar and corporate crime will typically not be measured by any of our three main data sets. The extent of organized crime is also hard to measure, but we do get at some of this category of crime in each of our three data sets.

Public Order or Victimless Crimes

The main question with this category of crime is that if the participants are willing is there really any victim? And if there is no victim should we claim that there has been a crime? The counter side to these questions is that even if the participants were both willing these types of behaviors may offend the morals of many and may lessen the quality of life for people in our community and thus should be considered crimes. The types of behaviors that typically fall under this category of crime include the viewing of pornography, the exchange of sexual services, personal recreational drug/alcohol use, and so on.

Ethics in Criminal Justice

Welcome back to our discussion of ethics. Since the end of Chapter 1, have you made a practice of applying ethical principles on a regular basis and thus living a moral life? Hopefully, you have also had time to consider how much faith you put into the "facts" produced by science. I imagine this chapter, which points out many of the weaknesses in the main data sets we use to develop policies and laws for our criminal justice system, may have had you questioning the reliability of science. Now I have another issue for you to consider and that is the issue of "good" and "evil."

2.8: Types of Goods/Evils

Types of Goods/Evils

There are basically four types of “goods” or “evils.” Each of the four categories uses the word “intrinsic.” In this context, intrinsic means built in or internal and natural to the person, object, or situation.

Intrinsic goods—are objects or actions that are naturally full of qualities that are valuable in themselves. For instance, justice is a goal that is intrinsically good. It doesn’t matter the situation or time of day—justice is good as a goal.

Non-intrinsic goods—are objects or actions that would be good only if they are serving to develop or support some other intrinsic good. For instance, when you think about money, is that good? The commonly accepted answer is that money by itself is not good, however, money can be used to support something that is intrinsically good such as the pursuit of justice or saving a life. Thus, money is a non-intrinsic good. Money is not good by itself, but it can be used to support good goals.

Non-intrinsic evils are objects or actions that are meant to bring about or support evil. Poison for instance could be seen as non-intrinsic evil. By itself it is simply a chemical, but it can be used to kill a person and then it would be supporting evil.

Intrinsic evils—are objects or actions which are evil or harmful in their own right. Slavery is typically thought of as an intrinsic evil as it just naturally goes against the goals of justice and freedom. This would be one reason why our justice system fights against the modern day form of slavery which is known as human trafficking.

Image 2.4

2.9: Theory

Plato's Theory of Knowledge

As we move forward in thinking about ethics, it is important to again question how we know what we think we know. The Greek philosopher Plato discussed four ways that we obtain knowledge. The first way is through conjecture and imagination or in other words the type of gut instinct or impression. When you first meet someone, how do you determine if they are friend or foe? At first, you usually have to go with your first impression which is "conjecture" since you are forming an opinion not totally based on facts.

A second way is one that we mentioned in the first chapter which is religious belief or faith, or what some call superstition. When encountering people throughout the world, it is important to understand how deeply some people believe in their religious teachings. Their whole life and their actions may be guided by these beliefs. Perhaps your religious beliefs, or lack thereof, influence you.

A third way was also mentioned in the first chapter which is through scientific knowledge. With this method, individuals base their decisions and their actions on empirical evidence that is presented as we scientifically study things. Some people do not hold religious beliefs and instead they put their faith in the weighing, counting, and measuring of things with the scientific method.

A fourth way is the way that Plato advocated which is the use of reasoning. Reasoning can be thought of as a type of abstract thinking wherein one balances multiple sources of information and then sifts through them to reach a conclusion. Plato thought this balanced form of thinking was important because he felt there were times when belief can guide people and there are other times when we need to use science to understand something and there are some times when trusting your instincts is a good idea. However, the best method is to combine them all and use your reasoning to reach an ethical conclusion.

Plato felt that we should all seek the virtues of goodness, wisdom, and justice as we exercise our ethical reasoning. It was Plato that stated " Truth is the beginning of every good to the gods, and of every good to man." Basically, seek for truth for the truth shall set you free. By thinking carefully about ourselves and the decisions we make in our lives as reasoned thinkers, we will live more ethical lives.

Image 2.5

Aristotle

Aristotle agreed that the ability to reason abstractly is very important for an ethical thinker. Aristotle referred to it as rationality. It was Aristotle that also discussed the importance of being introspective when judging yourself and others. He stressed that often people have a higher level of potential than what they are actually achieving at the present. He compared a person's current state of being to the capacity of what they could become. He felt that it was important that people live their life in a way to try to achieve their highest potential. He also felt that it was important that leaders encourage others to strive to reach their highest potential.

So, in your life how hard do you push yourself to reach your full potential, to be all that you can be? Would Aristotle be proud of you? How can you encourage others around you to move from their current state to a higher capacity of what they could become?

Aristotle also discussed the concept of the "golden mean." As rational thinkers, he felt that often we should strive to reach the middle point between two extremes. For instance, it is important to try to reach your full potential but yet you must not push yourself too hard or you could become too stressed and fail completely. Instead you should find the golden mean of pushing yourself but not too much.

Courage is another example of where the golden mean can make a lot of sense. In law, enforcement officers need to demonstrate courage in tense and sometimes dangerous circumstances. If you were a law enforcement officer and were called to a residence where there was a man with a gun on the porch waving it around and yelling would it be rational to show courage and simply walk straight up to the porch? Would it be rational to be afraid of firearms pointed in your direction by angry individuals in which case you would get back into your squad car and leave this call for someone else? The best approach to this situation obviously lies somewhere in the middle. Courage is not another word for foolishness, it is also not another word for cowardice. So instead, it might be wise to take cover behind your vehicle while trying to talk the suspect down. The courageous officer would be ready to rush the porch or perhaps shoot the suspect if need be to protect others, but their first attempt would be to talk to the suspect so that rationally no one gets injured. If one is courageous and smart, you are more likely to live to see another day while still performing your professional duties and protecting the community you serve.

Image 2.6

2.10: Image Citations

Image citations

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CHAPTER OVERVIEW

3: Theories of Crime and Victimization

3.1: Learning Objectives

Learning Objectives:

- Understand the predominant theory our American criminal justice system is built upon.
- Understand the theoretical reasoning about why at least some crime seems rational.
- Recognize the differences between general deterrence and specific deterrence.
- Understand from biological factors possibly linked to crime.
- Recognize various psychological factors possibly related to crime.
- Be able to discuss why social and economic factors may influence the crime rate.
- Recognize socio-cultural factors associated with crime.
- Be able to identify behavior patterns that may increase the chances of becoming a crime victim.
- Describe the six dominant perspectives within the contemporary criminal justice field.

Theories

The idea of studying theory often frightens people. However, we all use theory every day. For instance, you probably have theories about the weather which influenced how you dress today. Or you might have theories about friendships which influences how you interact with others.

For the purposes of our studies here, theory is simply an abstract way of studying criminal justice. This abstract study is necessary so that we can think through the issues and have a plan or develop a model before we actually implement strategies meant to reduce or control the crime phenomenon. We need to try to understand that which we wish to change. And we need more than one theory to understand the crime phenomenon since crime covers a wide variety of human behavior ranging all the way from the disobedient child which might be classified as a juvenile delinquent merely for staying out a little late to the mind of a serial killer. Some theories will better explain certain phenomena or types of people than others but they each have something they can offer us. Since this is an introductory level class we will only look at some of the main theories in the criminal justice field. If you wish to study these and other theories further perhaps in the future you could take a criminology, victimology, or criminological theory course.

The graphic shown below provides an overview of the main families of theories we will be covering. As you can see there are a wide variety of possible explanations for crime. The possible explanations range from logical approaches, to inborn traits, to internal biological functions, to understanding the human mind, and/or to examining the society around us.

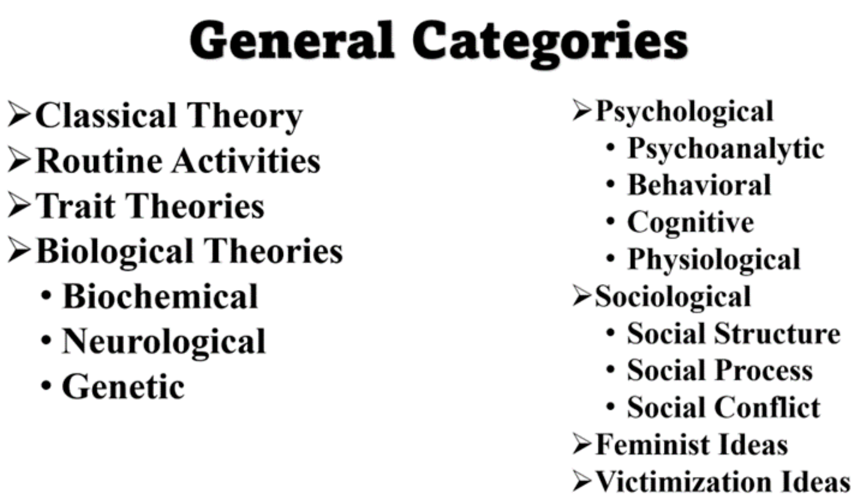

Figure 3.1

We will also take a look at a couple of feminist ideas as most of the theories in the past have been written by men to explain masculine behavior but with an increasing number of girls and women in our criminal justice system we need theories to explain their behaviors as well. We will also take a look at a couple of victimization ideas, as for every crime there is at least one victim. Let us start with the oldest theory, and perhaps the most logic oriented theory, known as classical theory.

3.2: Classical Theory

Classical Theory

The classical school of thought is referred to as "classical" for a couple of reasons. One reason is that at the time this theory was proposed, it was seen as a very radical idea but it has stood the test of time and so it has become a classic. Another reason is that the beginning tenants of this theory were proposed at a time often referred to as classicalism in the art world or other genres because people were just beginning to understand their own creativity, art abilities, and destinies. In the past, it had been the church or your birth order which decided your future. But now, people were insisting that they had a choice in determining what their future might be. Very radical thoughts indeed!

Image 3.1 (Cesare Beccaria)

If you agree that people make choices and in a sense can guide their own destinies than you might find yourself agreeing with classical theory. Classical theory is a rather straightforward and somewhat simple theory. It is also the theory upon which our entire American criminal justice system is founded. Theorists such as Beccaria in Italy and Bentham in England spoke out against the harsh laws imposed by the monarchy on the common people. They insisted that a "just" criminal justice system could be established merely by understanding what motivates human behavior.

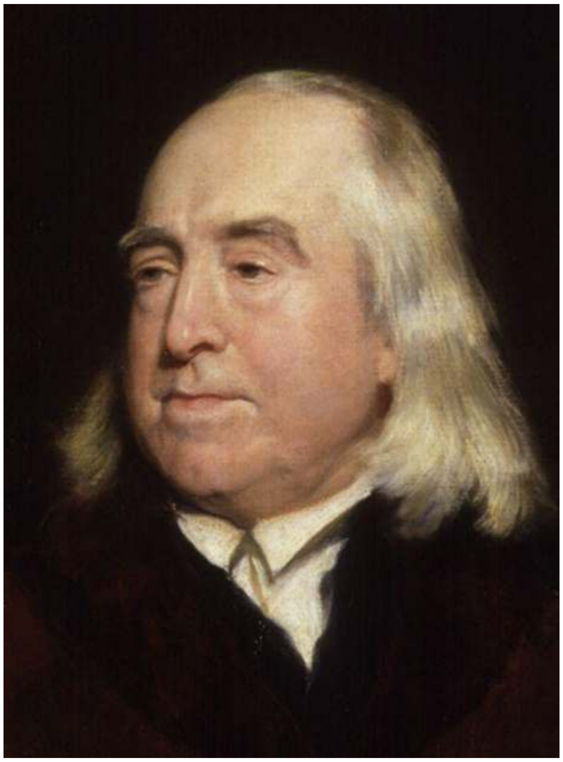

Image 3.2 (Jeremy Bentham)

So what motivates human behavior? According to the classical theorists there are three main tenants to their theory.

1. If people have choices about their careers and their futures, then they also have the option to **choose between law-abiding or lawbreaking behavior**. So what is the difference between a law-abiding citizen and a criminal? A choice about how to behave. But what do we base our choices on? Well that leads us to point 2.
2. The classical theorists argue that all decisions are merely a **cost versus benefit analysis**. Your choice to read these notes was probably based on a decision that you will probably do better on the test if you take the time to read the notes first. The "cost" of reading the notes is outweighed by the benefit you will receive when you earn a good grade. If a person thinks crime will pay, they will probably commit the crime. If they believe the costs outweigh the benefits, then they will not do the crime. Which leads us to point 3.
3. In our criminal justice system **legal punishments are the primary costs**. Now this does not mean that legal punishments need to be extreme, as that is what these theorists were fighting against with the monarchy, but rather they should be balanced based on the **three C's**. Okay, so the words do not all begin with the letter C, but they sound like C. Just like the 3R's of education—reading, writing, and arithmetic—do not begin with the letter R, but it is an easy way to remember it.

Severity

As the crime becomes more severe in nature, the punishment should be more severe to match. For instance, the punishment for bank robbery should be more severe than the punishment for shoplifting a candy bar.

Certainty

The more certain and individual is that they will be caught the less likely they are to do the crime. For instance, if you are not handicapped you would be less likely to park in a handicapped parking spot, even though it is large and close to the entrance, if there was an officer patrolling the lot. If there was no officer around and you are only going to be in store for a moment then maybe you would? Even though you clearly see the sign saying the possible penalty is $500 so the severity is not a question, but the certainty might be.

Celerity (speed)

Celerity is the old English word for speed. The theorists felt that the punishment needs to quickly follow the action for the human being to learn from the event. For instance, if your dog were to bark in the middle of the night for no good reason and you got mad at him in the morning what would he learn? Probably the dog would learn to fear the smell of coffee or the sight of your fuzzy bunny slippers but it would not know that your bad mood was result of its barking during the night. Certainly humans learn in a slightly more complicated fashion than dogs but the general principle still holds. If a criminal is being punished an average of eight months after the commission of the crime do they really understand that this punishment is a result of the poor decision they made eight months ago, or are they likely to blame something more immediate like the "poor quality" of their attorney or the "unfairness" of the judge?

For the visual learners, the above points are summarized in the graphic below. This theory, though among our oldest, is still very influential today. It is often used to justify a get tough policies, an increased number of police on patrol, and the use of incarceration.

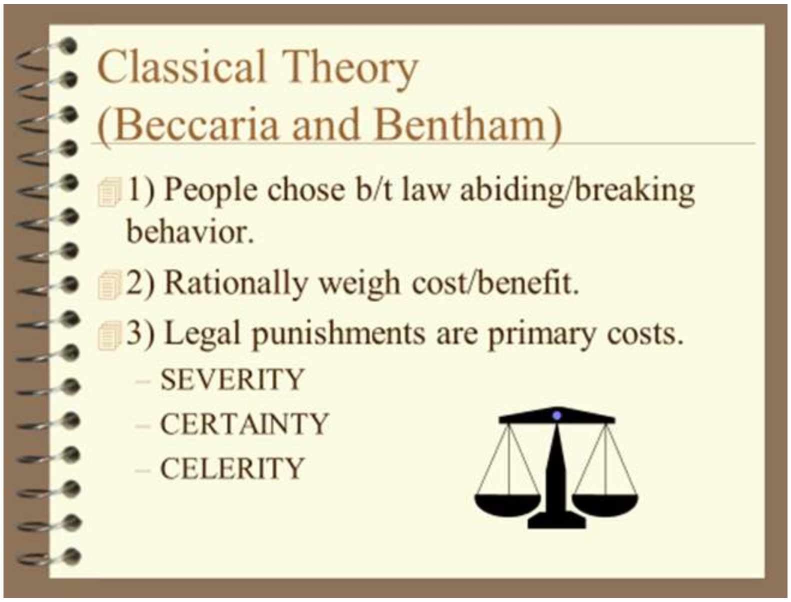

Figure 3.2

This theory though among our oldest, is still very influential today. It is often used to justify a get tough policies, an increased number of police on patrol, and the use of incarceration. If an individual makes a bad decision and commits a crime and gets caught hopefully they will learn from this experience that crime does not pay and they will not commit crime in the future. This notion is referred to as **specific deterrence.** This individual will be scared away, or deterred, from committing crime in the future. When we read or hear about an individual is being punished for the crime they committed, it reinforces our and the general public's idea that crime does not pay. Being scared away from crime after watching what happens to others is referred to as **general deterrence**. For instance, have you ever noticed on a road trip that when one motorist is pulled over for speeding all the cars around them will automatically slow down—at least for a little while? We see someone getting a ticket (specific deterrence) and we know we are afraid of getting one (general deterrence) and so we choose to follow the law.

Social choice theories are contemporary offshoot's of classical theory. They argue that crime is not a random phenomenon but that it is typically well thought out and planned in advance. So is this a good theory? If our justice system is based on this theory perhaps this theory can be tested by seeing if our system is working? Actually, we cannot test the theory by looking at the system because perhaps the system is not implementing the three C's as correctly as the theory would like. Sometimes when a theory is taken to its most extreme we can look at it again and decide if it still makes sense. An Englishman by the name of Graeme Newman wrote a critique of our justice system in a book called *Just and Painful*. In the book, he argues that incarceration is the wrong choice for a deterrent. He feels pain is a much better deterrent. He suggests that everyone should receive electric shock as punishment for their crimes. Electricity can be highly regulated than a mild shock for a minor crime to a shock which would cause death for a major crime. Because our system would save money by not having to run prisons we could instead have more officers out on the streets. Now what do you think?

3.3: Routine Activities

Routine Activities

Routine activities is really a theory of victimization. It does not really attempt to explain why a criminal commits the crime but it does try to explain how we might be able to influence the odds of our becoming a victim. Basically, the theory states that our odds of becoming a victim often depend on our lifestyles and the routine activities which we participate in. There are numerous studies which show that personal theft crimes rose dramatically since the 1960s. What is one way that our lifestyles have changed since that time? One way is that our electronic items have become more valuable and much more portable. While walking down the street with a console television on your shoulder would be obvious, walking away with someone else's laptop tucked in your backpack may not be so obvious. So, to reduce the odds of our victimization we may wish to alter our lifestyle. Have you heard the saying "they were in the wrong place at the wrong time"? This theory states that there are **three factors which must come together in the same time and space** in order for crime to occur. If any one of these three factors is missing, then a crime will not occur.

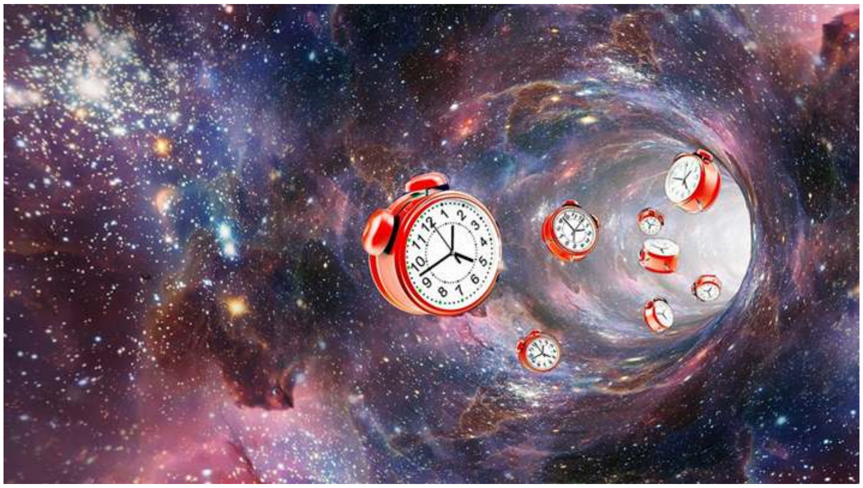

Image 3.3

Motivated Offenders

Since we cannot spot a potential offender merely by looking at people and the theory believes that just about anyone could be an offender if the right target was present, we need to be careful about our surroundings and assume that offenders may always be nearby.

Suitable Target

Not only can items, such as electronics, make suitable targets but so can people. One can make a target less desirable by locking it up, as we might with our cars. Or we can make ourselves less of a target by not flashing our money around and so on.

Absence of Guardians

Guardians can be friends, family, neighbors or even your dog. Guardians can also be non-living entities such as a lock on your door, security cameras, and so on.

This theory is also predicated on the notion that criminals are making logical choices in whom and what they target when they choose to do crime. The youth who sneaks out of the house to hang around with his "crime prone age group" friends away from the watchful eyes of parents or other guardians is putting themselves more at risk than the elderly woman who is at the senior center playing cards or bingo with her friends. A logical concept but do these theories help explain expressive crimes? How about crimes of passion? Any other exceptions you can think of?

3.4: Trait Theories

Trait Theories

Perhaps crime is not always just a logical choice? Maybe there are times that our behavior is determined by factors outside of our immediate control? There was an Italian doctor by the name of Lombroso who worked with wealthy Italian clients as well as with inmates in the prison. Lombroso thought he noticed important differences between the two types of clients so he scientifically measured numerous physical traits like the usual height and weight but also the unusual like how wide set the eyes are in the skull, how sloping the forehead, and how long the arms are in comparison to the torso, in addition to many other things. He found significant differences in his data suggesting that the inmates were more primitive or ape-like in their features and therefore he concluded that they were "born criminal." They were different physically and they had trouble following the laws of civilized society. While later researchers pointed out that Lombroso was studying individuals during a time of civil war so he was mainly measuring racial differences between the winning and losing sides at the time, even more modern researchers may think that criminality is an inborn trait.

Image 3.4 (Cesare Lombroso)

During the 1960s, Sheldon and others decided to study male juvenile offenders and examine their body types to see if they could find similarities. While each of us is probably a mixture of typologies, Sheldon felt most people are predominantly one of three body types. He used rather scientific sounding words to label the three body types. The "mesomorph" is muscular and strong. The "endomorph" is rather soft and round in appearance. Finally, the "ectomorph" is lean and frail. So which are you? Sheldon concluded that the typical juvenile delinquent was a mesomorph, they had the power and the intimidating nature to complete the crime. So would this mean that if we fed all of our children fattening snacks the crime rate would go down? Obviously, there were some flaws in Sheldon's research but the concept that aspects of criminality may be inside of us is what the Biological theories focus on as well.

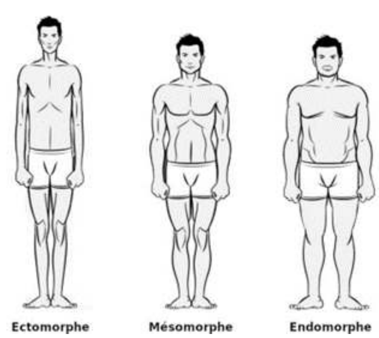

Image 3.5

3.5: Biological Theories

Biological Theories

If you have ever used a medicine, that is a form of tacit admission that some of our behavior does have a physical basis. There are three areas of Biology that have produced findings which may be quite relevant for explaining criminal behavior. One area is biochemical. Individuals in this area have shown how diet can influence behavior. These findings were behind the establishment of breakfast and lunch programs for all students in the public schools as adequate nutrition helps with knowledge retention. If you have ever observed children consume a lot of sugar or caffeine you probably saw the change in their behavior. If you have seen adults consume alcohol or other mind altering drugs you have probably seen changes in behavior as well. One of the intriguing aspects still under study is why people react differently when they are exposed to certain substances. Alcohol for instance, may trigger violence in some people yet it may trigger sadness in others. While alcohol does not excuse bad behavior or crime it is involved in many instances. Speaking of biochemicals not excusing behavior perhaps you have heard of the so-called "Twinkie defense" wherein the defense of the murderer was partly based on the explanation that that he consumed a box of Twinkies and drank Coca-Cola which caused his depression to worsen and his behavior to be erratic. While this defense did not excuse his behavior it may have been part of the reason why the charges were lessened from homicide to voluntary manslaughter.

Image 3.6

Neurological

Another sub area under biological theories is an examination of neurological processes. Basically, the study of brain activity linked with behavior. There have been noteworthy cases over the years where specific brain injuries or tumors have changed one's behavior often for the worse but sometimes for the better. For instance, in 1848 there was an individual by the name of Phineas Gage who had an iron rod go through part of his skull. While he survived, his behavior changed and he became easily angered. In other examples where the brain is injured such as after a stroke at times the injury may trigger unique capabilities that the individual did not display before. Capabilities such as being able to draw, or play the piano, to such a high quality that the individuals are considered to be Savant—someone with remarkable skills.

While studies continue to understand the ways that the brain influences our behavior is highly recommended that individuals take precautions to protect their brains. For instance the wearing of helmets while riding a bike or during sports seems like a wise precaution. There are some preliminary studies which are examining the effects of mild damage to the brain over repeated instances. In particular the scientists are trying to understand the possible effects of repeated instances of physical child abuse and how mild injuries to the brain may trigger violent behavior and the tendency to abuse their children when they are adults, thus continuing the cycle of violence.

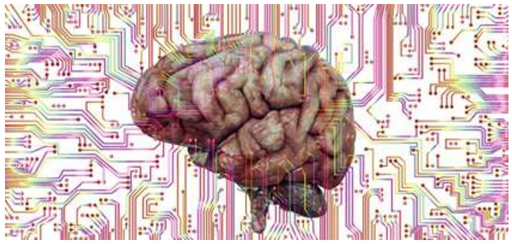

Image 3.7

Genetic

Our last sub area under biological theories focuses on genetics and the role of heredity. It is interesting to question how much of who we are is a matter of things we have learned or choices and how much is a result of our biology. For instance, you probably have a favorite color which you think you chose. Some studies particularly those focusing on twins would argue otherwise. Often twins even those that were raised separately have similar likes and dislikes about colors, foods, and even other people that they have as friends or marry. There have been numerous studies of twins both identical twins as well as fraternal twins but the great debate about whether much of our behavior is something that is learned or inherited has not yet been definitively answered.

Another example of advancement in genetic studies was the discovery of the extra Y chromosome. Typically, males have 46 chromosomes including one X and one Y but occasionally there are males that have 47 chromosomes 2 of which are Y chromosomes. One of the early studies mistakenly concluded that males with the extra Y were particularly violent and it was suggested that newborn males should be tested for the extra Y chromosome and possibly institutionalized to prevent violence. Fortunately other scientists quickly pointed out that not all males with the extra Y chromosome were violent or in need of institutionalization.

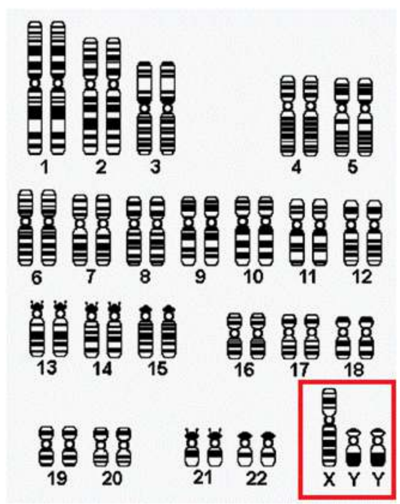

Image 3.8

While we have not yet found the “crime gene”, if such a discovery was ever made do you think it would be fair to test infants and lock people up because they had such a gene before they even showed a tendency to commit crime? This ethical question is the main premise in many science fiction novels and movies about how we will fight crime in the future. As published in April 2003, the entire human genome has been mapped and identified. As the final report pointed out, we now need to think about the ethical, legal, and social implications of this newfound genetic knowledge. While no crime gene was found our understanding of how certain genes may play into a willingness to use violence or commit crime is just beginning.

3.6: Psychological Theories

Psychological Theories

While some scientists study our body chemistry and genetic structures, other scientists have felt that the answers lie inside of our mind. The field of psychology is currently a popular one. For our purposes, we will break down the main psychological theories into four key areas.

Psychoanalytic

No discussion of psychology would be complete without a mention of Sigmund Freud. Dr. Freud developed a psychoanalytic theory. Dr. Freud had a background in both medicine and psychology. He felt that while at times there could be things physically wrong with a person that would trigger depression and other mental health issues, that often times there may not be anything physically wrong but that did not mean that the depression or other ailments were not real. In order to find out what was really wrong Dr. Freud felt that you had to talk to the patient in order to help them. Essentially Dr. Freud felt that there were three main parts to our mind he titled these parts the “Id”, the “Ego”, and the “Super Ego.” He also felt that our mind was partly conscious and partly subconscious. The superego resides in our conscious mind that we are fully aware of, the ego resides primarily in our conscious mind but it can also access our subconscious mind, and that id re-signs deeply in our subconscious.

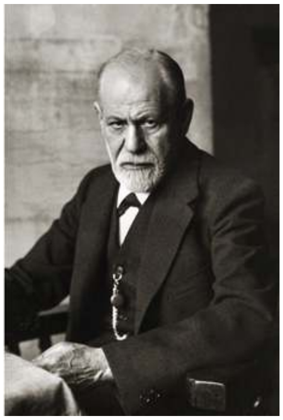

Image 3.9 (Sigmund Freud)

In many movies that id is comically pictured as a devil on someone’s shoulder which encourages a person to do wrong and on the other shoulder is the superego which is an angel encouraging the individual to do what is right. This imagery is not actually correct. The id is not evil it is merely the part of the mind responsible for our rather primitive urges such as pleasure and procreation. Granted if these urges get out of control they certainly could lead to crime such as assault and rape but it is these same urges which give us the power to have to drive and overcome obstacles in our life and not give up.

In contrast, the superego is the part of our mind that encompasses our morals and values it is often thought of as our conscience. While a good conscience would seem rather angelic, being too hard on yourself and believing that you are never good enough can lead to bad consequences in one’s personality. An over active superego may even lead to crime in order to be caught and punished. If you have ever heard of one of those stupid crime stories such as where a bank robber writes the robbery note on the back of their own deposit slip, perhaps this could be the explanation why.

The key to a healthy personality seems to be the ego. The ego is reality based and it serves as a type of referee between the instinctual id and the expectations society presses upon us through the superego. The ego helps the mind and personality be balanced. The ego should help us understand that it is okay to display aggression as an athlete during a sporting event but that it is not okay to display that same aggression to our loved ones. So the problem of crime and aggression should not be solely blamed on the id but rather it would be explained by an unbalanced personality.

Image 3.10

Behavioral

Behavioral psychologists believe that human behavior is learned based on rewards and punishments. This viewpoint emphasizes the importance of proper parenting. If people in power such as teachers or parents clearly set up a system of rewards for good behavior as well as a system of punishments for bad behavior the children are more likely to demonstrate the good behavior in order to earn the reward. It is amazing how the entire classroom of children can be controlled through a chart and some tinfoil stars. These psychologists would state that you are the way you are because of what you have been rewarded for and because of what you were punished for. We should also point out that punishment does not have to be physical it can be things like a timeout or being grounded.

Some behavioral psychologists feel that we also learn by modeling what others do. If we see a sibling or another student being rewarded for a certain type of behavior we are more likely to do that behavior as well. These psychologists often study what influence the media may have on learning. Some studies seem to indicate that watching violent shows or playing violent video games may desensitize youth to violence. Other studies have shown that individuals can clearly tell the difference between fantasy and reality. In either case it may be wise to have parents monitor what young children are watching on television or on the Internet and it is good to have social role models for our youth.

Cognitive

Cognitive psychologists focus more closely on how people perceive and mentally interpret the world. These psychologists argue that we process information differently. Not everyone reading this text for instance will be picking out in memorizing the same pieces of information even though they are presented in identically the same way.

Another example of these differences might be evident when looking at different children in the same family. Often even though the rules of discipline are similar for all the children, the children themselves grow up quite differently. This line of study could explain why the offering of an Oreo as a reward for eating your vegetables at supper may work for one child while it will not work for another child especially if this second child has a stash of snacks in their bedroom.

If we each mentally interpret the world in a slightly different manner then a simple system of rewards and punishments will not be enough to prevent delinquency. This difference in interpretations can even be seen among students some of which are primarily visual learners, others are auditory learners, and some learn best by doing.

Physiological

For our purposes, the last psychological area we will look at is that of physiological. Physiological psychiatrists focus on the relationship between physical characteristics of the brain and human behavior. One interesting area in this realm of study are attempts to understand the autonomic nervous system and possible abnormalities therein.

The autonomic nervous system is the part of our nervous system that we do not consciously control. One part of this system would be our digestive tract. If you have ever had your stomach grumble in the middle of a meeting or class you may have wished that it stopped or even told your stomach to “stop it” but I am sure that did not work. Just as we cannot consciously control our need to breathe or the beating of our heart, these things operate on their own—they are autonomic. Now you may be wondering how this links with criminality but let me first relate this to the animal world.

Imagine you are hiking on a wilderness trail and you encounter a couple of bunnies. Are you afraid? Probably not. We know that rabbits tend to be timid creatures in their natural instinct is to either run away or freeze in place as if you cannot see them. They are hardwired to be timid. Now let's imagine that a little bit further down the trail you encounter a couple of bear cubs. Are you afraid? I would hope so. All the young cubs may not be overly aggressive their mothers are notorious for protecting their young at all costs. Bears are hardwired to be aggressive.

So, are humans hardwired to be timid or aggressive? The answer is that we seem to be a mix. Some humans are just naturally more aggressive than others. If you are wondering which you are, just think about the last time someone jumped out at you from the dark or surprised you when you were not expecting it. Before you could even think, quite was your instinctive reaction—to fight back or to flee? This explanation applies only to those that answered they would fight back. Some people it seems are hardwired to be aggressive. If these people cannot satisfy their need for thrills through legitimate means such as mountain climbing, or skydiving, or active sports it may be that crime would give them the adrenaline rush they seek. Perhaps it is this difference in physiological hardwiring that explains psychopaths.

Image 3.11

3.7: Sociological Theories

Sociological Theories

Sociologists tend to look at the surrounding society to explain the influence on human behavior. Some sociologists feel that it is the broad structure of society such as the effects of poverty and unequal opportunities that influences the lives of humans. Other sociologists focus on the social process and the socialization experiences as youths mature into adults.

Social Structure

Social structure theorists utilize data such as information derived from the uniform crime reports and the national crime victimization survey which we have discussed in an earlier chapter. By examining this and other data sources they can see that there is an interrelationship between the crime rate and various social factors such as gender, race, age, income, lifestyle, and so on. Their findings seemed to indicate that the United States is what is known as a stratified society this means that rather than members of a society, there are actually different categories such as the upper class, the middle class, and the lower class or those that live in poverty. It is thought that this culture of poverty may be passed on from generation to generation. It would be quite unlikely to see someone who is very wealthy suddenly become very poor just as it would be highly unlikely to see someone who is currently homeless and unemployed suddenly become a multimillionaire. Within the various social structure and theories there are different explanations for why this stratification occurs and why deviance arises.

Cultural Deviance

Some theorists such as Miller are interested why more deviance seems to come from the lower class. His theory is that the things that the different classes value either encourage their members to participate in crime or to stay away from it. For instance these “focal concerns” among the middle-class include the value of a good education, stable employment, working hard, supporting your family, and preparing for the future.

When Miller studied the values or focal concerns of the lower class he found that they valued things such as excitement, smartness, trouble, toughness, autonomy, and fate. For the people in his study he found that they valued street-smarts over education, they thought you built a reputation by getting into trouble not staying away from it, that committing crime was exciting, and standing up for yourself in front of law enforcement or the courts showed your autonomy and however this all turned out was just a matter of fate. I should point out that he did not actually study all lower-class people; he actually sampled a small number of inner-city minority gang members. So perhaps these values are not the values held by all lower-class individuals but interestingly they may be some common values held amongst gang members.

Image 3.12

Anomie and Strain Theory

Another well-known social structure theory was the one developed by Emile Durkheim, known as Anomie. Durkheim felt that normally society guides its people through various rules and norms to help them reach social and financial success. However, during times of rapid social change the government and leaders made it themselves struggling to survive and they do not provide very good guidance on rules for the people to follow. This state of “normlessness” can cause frustration in the people. For instance, people were taught to save their money in banks but during the Great Depression the banking system collapsed and the people lost all their money. People were taught in America to work hard and passed their business and land on to their children, but during the great dust bowl all the crops died and the land was lost since no money could be made for the payments. Does a good parent stay with their hungry cold children where there is no employment to be found or do they leave their family to go somewhere where they might find employment? The time of the Great Depression, the dustbowl, threatening collapse of American economy, as well as World War I and II was a very confusing time. Some people argue that our society is still in a state of anomie given the rapid technological advances and the financial instabilities. Durkheim theorized that during these times of unknown norms and rules, crime would increase.

An American terrorist by the name of Robert Merton developed his theory of Strain. Merton felt that society typically did have norms about the appropriate goals and ways to reach those goals which is known as means that citizens should have and should follow. He theorized that in America the number one goal was money. The legitimate means to achieve this goal were things such as a good education, stable employment, and hard work. The problem comes about when citizens try to follow the legitimate means and they either cannot because of things such as high unemployment or even when they do, they do not achieve very much money —that citizens may turn to crime because of the strain.

Subculture

Some theorists examine the idea of subculture, which is smaller unique cultures that exist within the larger culture. Cohen for instance compared the middle and lower classes. Cohen felt in the middle-class was made better with competition he viewed this competition like game measuring rod that people would use to see if they measured up to their neighbors and coworkers. If their house was not as nice or their clothes were not as new, they would simply try harder so they could achieve these things. Cohen believed that when the lower classes did not measure of they became frustrated and rather than trying harder they would band together and often commit crime to get what they wanted.

The theorists Cloward and Ohlin agreed that subcultures existed and they had important differences. They pointed out that often these differences in values and beliefs may lead to conflict. This conflict does not just take place in the lower-class. That's crime and a willingness to use violence is not something seen only in the lower-class, it can be found in the middle-class and upper classes as well.

Ecological

The final social structure area is referred to as Ecological. These theorists examine the social forces particularly those found in urban areas where crime rates tend to be higher. These theorists have found that in the high-crime rate areas there tends to be greater levels of what they call social disorganization. Areas experiencing social disorganization often look more run down and dangerous. It is not only how these areas look that contributes to the crime rate but the fact that the people in this area typically are anxious to move out as soon as they can save up enough money and so no one invests in repairing the broken down areas or in providing activities and structure for the community members.

Simply repairing buildings in these rundown areas typically does not reduce the crime rate. It seems that it is not just the condition of the buildings but the mindset of the people. Not all poor people to crime but the crime rate tends to be higher in the poorer neighborhoods. One explanation for this may be the concept of "relative deprivation." Often students tend to be rather poor but campuses usually do not have high rates of crime. The theory is because the mindset of the students is that their financial future will be better. Many inner-city residents do not have this optimism relatively speaking they feel even more deprived. When some buildings are repaired and theirs is not, they may feel even more angered and desperate than before and may resort to crime.

3.8: Social Process

Social Process

Social process theorists point to data that supports the conclusion that criminal activity is found in all strata of society not just amongst the lower-class. They theorize that one thing that is common to all social classes is the idea of socialization experiences. We all learn as we grow up. Their theories suggest that whether one turns to crime as they grow up or stays away from it, depends in large part on the quality of their socialization experiences.

Learning Theory

A theorist by the name of an Edwin Sutherland developed the idea of Differential Association. According to Sutherland the difference in whether we turn to crime or not is largely based on who we associate with and if those people communicate that crime is a good thing or if those people frown upon criminal activity. This difference may explain why crime rates are high among young people who may communicate with each other and various crimes like underage drinking are okay whereas when people get older and want to keep their jobs the communication is that you must stay away from crime.

My some theorized that most people feel a bond with society. We want to be accepted by society and therefore with our society's rules. However, some people learn to neutralize these moral constraints to be good which then allows them to commit delinquent or criminal activities. It is important to understand that these neutralizations are how some people look at the world, they do not just say this as a handy excuse after-the-fact. These "techniques of neutralization" include:

- denying responsibility—someone else should have taken care of it then it's not your fault
- denying injury—if no one is really hurt, like driving with no license then that's okay
- denying a victim—if there is no victim, for instance if they want to drink underage
- condemning the condemners—if the store charges such high prices, they are the thieves
- appeal to higher loyalties -my friends wanted me to do it.

Control Theory

Travis Hirschi theorized that once bond with society was very important in keeping them away from criminal activity. If one had a strong bond with society they could benefit from what society had taught for such as with jobs, membership on a team, and future educational goals. He theorized that if the bond was broken that was when people would engage in deviance. He also theorized that there are different levels of the bond. The first level he called Attachment. One of the first things about being involved with society you join or become attached to a group or element in society. The next level is Commitment. By understanding the rules of the group and still choosing to be a part of it shows commitment. The third level is Involvement. Going beyond being just a member of actually contributing through your effort and time choose involvement. The final level is Belief. When you feel that you have benefited from being a part of the group and you believe that so strongly that you recruit new members you definitely have a strong bond.

Labeling

Some theorists suggest that society tends to label individuals, particularly those individuals that do not have much power in society. If you think about it you probably know some groups that were labeled in high school. Typically labels from society are not positive and if one believes the label that is put upon them they often act out which can result in crime. If someone is called something negative often enough, often that person will believe it. If someone is called delinquent, even when they're not, after a period of time they may become one.


knowledge
training
ability
education
growth
skills
competence
goals
advanced training
experience
potential
learning

Image 3.13

3.9: Social Conflict

Social Conflict

A final broad sociological area is that of social conflict. These theorists focus on a variety of conflicts that exist in society such as the conflicts between various races, genders, sexual orientations and/or social classes, and so on. One interesting point that these theorists make is that often our system of laws and the criminal justice system itself is sometimes manipulated and used as a tool by the rich to control the poor while excusing their own behavior. If nothing else this perspective encourages criminal justice professionals to be sure to stick with their ethics and to question their role when using discretion. To decide to pull someone over because of their speed and the road conditions is a fair use of discretion. To pull over only people with "beater" cars is discrimination. To decide to let a youth go with a warning because this is their first offense may be a fair use of discretion. To let a youth go because their family is wealthy or well-connected while you retain all the other youths at the party is discrimination. In your future role in the justice system will not be able to correct all wrongs but you can think carefully about the decisions you make.

Feminist Views

Most of the theories presented thus far have been developed by men and the primary hypotheses are pertaining to men. However, women do represent approximately 51% of the population. It makes sense to have the use about why some women do commit crime and why many others do not. In many instances it is believed that the theories we just discussed would apply equally well to women although, this has not always been supported by research. Furthermore, given that historically society has treated women differently and given them fewer rights their interactions are bound to be different as well.

Most current theorists agree that the women's liberation movement has provided women with more opportunities to pursue education or employment at higher levels and more often than in the past. There are two main different views though about whether this increased involvement by women in the public spheres will result in increased or reduced crime committed by women. Given that women are more than half the population but they commit less than a third of the crime, this is an important question to consider.

Some theorists think that the increased involvement of women in the workforce means that more women will be involved in criminal enterprises as well. Given women's tendency to commit non-violent financial crimes, perhaps we will see an increase in corporate crime at the hands of women. Perhaps women will advance to leadership positions in drug cartels, gangs, and embezzlement rings.

Other theorists point out that women have tended to be victims more than offenders. When women are offenders they are often used and controlled by men in situations such as being a prostitute controlled by a pimp, or being made to smuggle drugs by a drug-ring leader. In most gangs the role of women is more about treating them like sexual property with ownership or sharing. Perhaps, increased opportunities for women in the legitimate employment world will allow these and other women to slowly rise out of poverty and control their own destinies.

3.10: Victimization Views

Victimization Views

The role of victims during criminal activity is another aspect to be studied and theorized about. Typically we view victims as innocent members of society who have randomly been confronted with crime and victimization. We do not want to blame crime victims for what has happened to them, but if we can understand if crime is random or are there patterns in choosing a victim perhaps such knowledge could lead to better prevention efforts for future would-be victims.

One area of study has been on the role of the victim prior to the crime. As we know from our data sets most victims actually know the offender, they are not targeted by a stranger. By examining the interactions prior to the victimization we can see if certain variables are present which if the variable was not present, perhaps the victimization would not have occurred. Alcohol for instance is found to be present in many sexual assaults. The use of alcohol never excuses the offender's behavior but perhaps it could be seen as a warning sign that people could try to avoid when protecting themselves. Other actions of the victim may place them at greater risk such as leaving the key in a running car in a high-crime rate neighborhood and walking away. Is this person a victim or is it possible that they wanted the car stolen to collect the insurance money? Do victims ever precipitate the crime?

Another area of study is where in the city the crime rates are highest and the most victims are found. It seems that often we are targeted by people we know that we thought we could trust. This nearness of victims and offender has led to the proximity hypothesis. Many criminal investigations begin by questioning people that the victim know or at least recognizes like friends, neighbors, and coworkers or ex-lovers.

Some theorists argue that the distinction between victim and offender as completely separate categories is rather false. Most people have been victimized by something in their life whether it be bullying, theft, or assault. At the same time, most individuals have broken the law on at least one occasion, so would that make people criminals or victims? It is sometimes found that people do not report a victimization because they were doing something criminal at the time. For instance, someone who is drinking underage and is assaulted at a party would be both criminal and victim supporting the equivalent group hypothesis. It should be pointed out that typically law enforcement would be more concerned about the serious crime, the assault, than the minor crime of minor in consumption. The rule is even more important in sexual assaults where victims are encouraged to report the crime which is far more serious than underage drinking, so the true criminal does not get away with their crime.

3.11: System Perspectives

System Perspectives

Like a continuation of the theories discussed already in this chapter, there are six main perspectives or views of what the criminal justice system should be accomplishing. Depending on the perspective(s) you choose there will be key differences in deciding what the goals, purposes and direction of the system should be. For instance are we here to punish the offender, or help the offender turn their life around, or help the victim, or protect the public? We try to do all things but what should be our primary focus? Let's take a look at the six perspectives and you can decide which you agree with most.

1. Crime Control

This perspective is one of the first and is still the dominant perspective today. It has roots in the classical theory and thus states that our system should attempt to control crime through deterrence and the use of mandatory sentences and harsh prisons. Justice should be swift and sure, not full of legal technicalities.

2. Rehabilitation

This perspective states that criminals are really victims of the poverty, racism, drugs, unemployment, and other ills of our society. Since society owes them, we should care for and treat those who could not control themselves. We should help put them back on a better path in life.

3. Due Process

This perspective states that the concern should be with legal fairness. It is the duty of our system to provide fair and equitable hearings, treatments, or sanctions. Discretion should be strictly monitored as it can lead to injustices. Legal fairness as per the American constitution should be the goal.

4. Nonintervention

This perspective states that the CJ system often produces unintended harmful results and so should limit involvement with offenders. For instance, a jail term which is meant simply to curtail freedom may actually result in assaults or sexual assaults and a record which harms being able to obtain employment or housing for years to come. To minimize the negative impact victimless crimes should be decriminalized, more offenders should be in community programs rather than prison, and some minor offenses should be handled informally rather than with a trial.

5. Justice

This perspective argues that currently our system tries to punish and rehabilitate at the same time which cannot be done. Instead, punishment should focus on the current behavior only, not what someone predicts may happen in the future. Also, states should adopt determinate sentencing models which will constrain the discretion of judges and insure more fair and consistent sentencing.

6. Radical

This perspective points out that the "Justice" system can be misused by those with money and power. There is a lot of discrimination in society and so poor and minority persons are investigated and sentenced far more often than there are inquiries into government actions or investigations into wealthy citizens or corporate crime. The sensitivity of CJ personnel needs to be sharpened around these issues so discretion is used more fairly.

Each of these perspectives currently influences our system to greater or lesser extent. No matter which perspectives you support they each give us a basis to think critically and creatively about changes we would like to see in the system. Perhaps it will be a combination of perspectives that is enacted in the future as we continually quest for "Justice."

3.12: Ethics in Criminal Justice

Ethics in Criminal Justice

As you went through the theories in this chapter you may have noticed how many theories placed responsibility on the offender but yet other theories placed the responsibility on a variety of factors ranging from poverty, to body type, to urban decay, to parenting styles, and more. Given the multitude of possibilities of why people have committed crime it may be difficult to reach decisions of how to handle people in situations you encounter. Fortunately, there are some ethical guidelines that can guide us.

Reach decisions

To ethically reach a decision it is suggested that you combine several things. First, when trying to reach a decision one should use their intellect. People that can use their critical and creative thinking skills are better positioned to use the same skills in reaching a decision. In addition to using your intellect, however, you also should add moral reasoning. Moral reasoning helps us stay grounded so that we not only can assess a situation with our intellect but we can understand it with our reasoning. For instance, we may arrest a youth who shoplifted a candy bar and our intellect can clearly sift through the facts to make sure we have the right youth and that they were in fact stealing the candy bar but beyond that we can engage our moral reasoning to try to understand, why the youth did this and what a good response from us would be. Our response would likely differ depending on whether the youth shoplifted just to avoid paying for the youth shoplifted because they are neglected at home and have not eaten in some time and do not have the money to pay for food.

In addition to intellect and moral reasoning, we should also reach decisions by using a heightened sense of conscience. In the above scenario, if the use is in fact neglected our conscience would probably guide us to make sure that they are fed quickly after the booking procedures at the juvenile detention center. Our conscience would also guide us to make notes in our files that an investigation of the parents should probably be started so that the youth can be better cared for.

By using the elements of intellect, reasoning, and conscience we can reach decisions that are ethical and support the quest for justice.

Don’ts

While trying to reach decisions not only are there guidelines about what to do there are three suggestions about what you should not do. When trying to reach a decision don’t rely on emotion. In the heat of an argument or the pain of rejection, emotion would encourage us to lash out and say or do something that is unethical and that we would likely regret later. Particularly, in tense situations in the field, it is important to control your emotions and keep your head clear.

The next general rule is “don’t rely on popular feelings.” This rule may make you imagine when your mother or father may have said something like “if all your friends jumped off a bridge would you do it?”. While this may be a sarcastic way of stating it, the principle is the same—just because something is popular or other people are doing it does not necessarily make it right. If the popular feeling is to pick on the handicap student and make fun of them to increase your own popularity, while this might be popular this is known as bullying and is highly unethical.

The third general rule is don’t support immoral principles. It can be very difficult to speak out when you see something that is wrong. It would be easier to just go along with it. The problem is that by going along with it, you have inadvertently supported that behavior. We see this concept with bullying. Once the bullying starts many other people will do it as well because it is easier to go along with it than be the individual that stands out against it. Ethically, however, the correct the ethical though difficult decision would be to refuse to participate in the bullying and instead perhaps help the victim or at least report the behavior to someone with authority.

3.13: Rule of Reasonableness

Rule of Reasonableness

So now that, we have shared the do's and don'ts there is one final thing to consider when reaching your decision. The final thing is known as the rule of reasonableness. There are three aspects within this rule. To ultimately make a reasonable decision it should be consistent within itself. Meaning, that you should think through your decision and all aspects of it to make sure it is logical and consistent. For instance, if you were a law enforcement officer out on patrol ready to give out speeding tickets you would have decisions to make. Let's suppose that you decide to pull over anyone that is going 5 miles or more over the speed limit. Is that a reasonable decision? Well part of deciding if this decision is reasonable is making sure that when we exercise this rule we are consistent. If you pull over a vehicle and the driver is very nice and attractive, so you decide to give a warning rather than a ticket but with the next vehicle the driver is nice but not attractive, so you give a ticket we would say this is not reasonable because your behavior is not consistent.

The second part of the rule of reasonableness is that your decision should include all relevant facts. In reaching your decision about pulling drivers over your decision about—5 miles or more over the speed limit would result in a ticket—may change if you are tasked with patrolling near an elementary school with several school crossings where the little children walk and there have been two traffic fatalities in the past week. If this was the circumstance, now that you have all the relevant facts, would this alter your decision? Reasonably, in this district you might pull over anyone that is speeding at all.

The final part of the rule of reasonableness is that your decision also needs to fit the human experience. Perhaps you are in the countryside and you are using your rule of—5 miles or more over results in a ticket—and you catch an individual exceeding the speed limit by 10 miles over the limit so you pull them over. In talking with the driver and their passenger you find out that the woman is in labor and they are rushing to the hospital. While you normally try to be consistent with your rule and include all relevant facts and this person was speeding, would you give them a ticket? Ethically, a more humane choice might be to summon an ambulance for them or to help guide them to the hospital yourself.

Hopefully, you can use these guidelines in making good decisions in your personal life as well as later in your professional life. It is important to make rules and guidelines to help guide your decisions but ultimately at the same time we do need to remain flexible. The professional training you will receive in your future line of work will help prepare you for many circumstances, but there typically will be some unusual circumstances that you will need to figure out on your own in an ethical manner.

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Figure Citations

Figure 3.1 General Categories

Figure 3.2 Classical Theory

CHAPTER OVERVIEW

4: History of Police

4.1: Learning Objectives

Learning Objectives

- Recount the early development of police in England, the Eastern United States, and the Western US territories.
- Recognize the problems of the early police agencies and how that may contribute to problems today.
- Identify numerous early reforms of law enforcement.
- Understand the four main impetuses for change in the 1960s–1980s and what those changes were.

Now that we have looked at an overview of the entire criminal justice system, we have examined research and statistical issues, and we covered many different theories—it is time to move into the various subsections of the criminal justice system namely Police, Courts, and Corrections. The first subsection we will look at is Police and we will have three chapters focusing on this aspect of the justice system. This chapter will provide an overview of law enforcement including both its history and how it operates in modern-day America. In the next chapter, we'll delve more deeply into the organization of law enforcement agencies and in the final chapter we will examine various issues within the realm of law enforcement.

Often many students are most interested in the law enforcement component. Whether this is true or not for you, this is the component we will start with because it is in fact their discretion which either put the rest of the system into motion or not. If an officer chooses not to pull over a speeder then there will not be a ticket and will be no need for court date nor will there be any payment or other form of corrections. You do not see Judges or Wardens jumping out of their vehicles to enforce the law. Typically, it is the discretion of law enforcement to have a citizen be involved with the justice system or not.

4.2: Importance

Importance

Law enforcement could be considered one of the most important components of the American criminal justice system for variety of reasons. For one thing, this component has the largest number of personnel which then makes it the largest element of our system. When we use the term law enforcement or police we are not just referring to local police departments, but all types of police agencies which include all sworn personnel or those who can carry a badge as well as all civilian support staff. Thus law enforcement refers to local police departments all across the nation, as well as all Sheriffs departments, all state-level law enforcement, and all federal agents. This is indeed a very large component within our system.

Image 4.1

Another reason that law enforcement might be considered the most important component is that they are the most visible element. Because the officers themselves wear distinctive uniforms and typically they are driving well-marked cars, citizens often see this component at work and may even fear it especially if they are driving right behind you. Often citizens make judgments about the system by watching what law enforcement does. If law enforcement drives around without using their blinkers or perhaps speeding a negative opinion is formed not just about law enforcement but about the whole justice system. Have you ever noticed how even something as simple as taking a lunch break catches the public's attention when you are law enforcement officer in a local restaurant eating with a fellow officer. Suddenly, the simple act of eating lunch becomes almost a sideshow attraction and again civilians are forming opinions.

This leads us to the third reason why law enforcement is perhaps the most important component and that they are the closest contact with citizens. Most individuals have met or talked with a law enforcement officer though many they never have spoken to a judge or a jailer. Almost every day we see law enforcement patrolling the streets or we hear their sirens. Even though the court systems work daily as do probation officers and prisons the other elements of our justice system often go unnoticed. When you notice a law enforcement officer pulling up behind you while you are driving, this makes you feel safe or nervous? Most individuals feel nervous even if they have done nothing wrong. Some people in some parts of the country feel more than just nervous when they see law enforcement. Perhaps some of the difficulties between police and civilian ties lie in the history of the development of law enforcement.

4.3: English History

English History

Like most elements of our American criminal justice system the roots of police can be traced back to early England. Of course, there was a time in our history that there was no organized law enforcement available. In the past, citizens would have to rely on one another if a disaster like a fire broke out or thieves came and stole their livestock. Most communities had a method to call out to one another whether it was the ringing of the church bell or someone with a loud voice running down the street and calling out for help. As communities began to grow, it seemed logical that perhaps government should appoint someone to look out for the citizens so they would not just have to rely on themselves.

Constable

One of the early forms of "police officer" around 1066s or earlier was an English Constable. This Constable was supposed to look out over 100 families. The English chose the number 100 as it fit their tything method, or method of governing neighborhoods. Obviously having one person trying to take care of 100 families was a very large task and so the Constable only focused on the most serious offenses. Any type of offense or issue that they deemed not important was just not dealt with at all or it was up to the families to handle it themselves. This early precedent of law enforcement making the decision of what is important or not rather than realizing that it is important to the victim may contribute to some of the problems between police and community members today.

Image 4.2

Shire Reeves

In the more rural areas of England another type of police officer that developed around 1000 A.D., was called the Shire Reeve. In England, the land was often divided up into small areas known as shires. These shires would be similar to our counties. The Shire Reeve was the law enforcement individual in charge of the entire Shire. Later, when we bring this form of law enforcement to America, we will use the term counties instead of shires but we will keep the term Shire Reeve only slurring it a little and turning it into Sheriff. Thus, the Shire Reeve became the precedent for establishing a Sheriffs Department which would provide law enforcement to the entire county primarily focusing on the rural areas.

Watch System

In the more urban areas of England, another type of police officer that developed around the 1300s, was referred to as the Watch System. Under this system individual officers known as night watchmen were supposed to patrol the cities and interact with citizens in a manner similar to our modern-day foot patrols. In the 1300s, the night watchmen would perform various duties such as checking that the doors to establishments were locked at night, lighting the torches that lined the streets, dispensing the drunkards as they left the pub, and helping noble women into their carriages. In general, they try to assist the citizens while maintaining an orderly environment.

4.4: Problems

Problems

Unfortunately, these early forms of law enforcement tended to be quite corrupt. In some jurisdictions, citizens actually feared law enforcement more than they feared the common thieves. Corrupt law enforcement would not only steal from you, they had the power to arrest you, perhaps kill you, and at the very least ruin your reputation. Often the corrupt officers only accepted employment as law enforcement, so that they could abuse their powers and profit from their own crimes. Do any of these early problems sound familiar in the United States today?

Justice of the Peace

As more problems developed within these early forms of law enforcement in England, it was decided that a member of the judiciary, or in other words court system, should oversee some of the actions of law enforcement. And so, the position of Justice of the Peace was established. The Constable was now supposed to report their activities to the Justice of the Peace. This early link between police and the judiciary is continued in our current system in the United States. Now law enforcement officers need the approval of a judge who is a member of the court in order to obtain a search warrant and enter someone's house or other property without violating their rights. If sufficient probable cause is not presented to a judge and the judge does not grant a search warrant than the police are to respect the public's expectation of privacy. This link is meant to provide a type of checks and balances to control the power of the police in modern society.

Sir Robert Peel

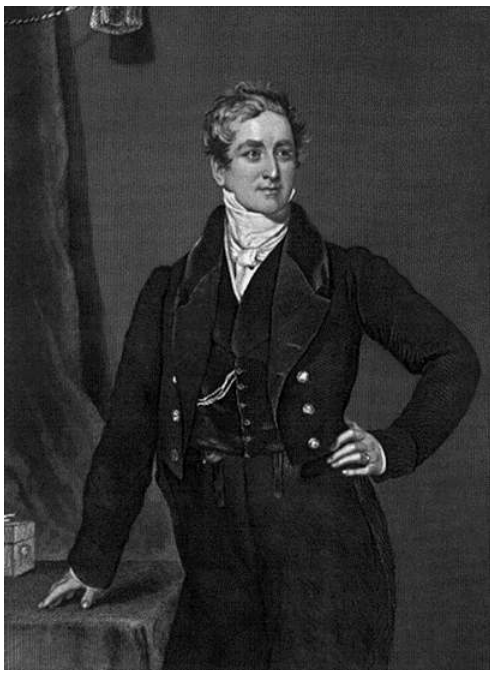

Image 4.3

Despite the numerous problems such as corruption and abuse of force was present in the early law enforcement efforts in England, the system still seemed better than no government protections at all. Therefore, with the help of Sir Robert Peel who was a British statesman and served twice as prime minister, the first official organized police force was established in London in 1829, with the passage of the Metropolitan Police Act. These early efforts of social reform and organizing police forces were deemed so successful that by 1856 every Shire was required to have its own police force. Many individuals considered Sir Robert Peel to be an un-corruptible individual who tried to protect the people. The officers in London were often referred to as Bobby's boys, since Bobby is a nickname for Robert. This nickname was later shortened to "Bobbies" to honor Sir Robert Peel. The London Metropolitan police continue to exist today may often is still referred to as English Bobbies.

4.5: In America

In America

The newly established colonies in America brought with them British ways of establishing government and law enforcement. In the American colonies there was usually a village authority who typically was the one who had the money to sponsor the voyage for many of the residents across the seas and to the new colonies. Their money and position allow them to further their power by choosing who they would have served as their Sheriff or Constable.

Given that there was not a lot of crime in the beginning in the early colonies, these law enforcement personnel typically only worked part time and they were also responsible for any other duties that the village leader wanted. One typical duty was the collection of tax money from the citizens in order to send it back to the royalty in England. Many early settlers were very busy trying simply to survive and erect shelters; they had no new income with which to pay the taxes. Therefore, law enforcement would often enter the homes against the settlers' wishes and take any items of value that they could find in order to settle the tax debt. This established a long-standing habit of thinking that nothing good will ever happen if law enforcement is at your door.

Fee System

When the early law enforcement officials were actually performing criminal duties such as trying to find a robber or arrest of violent individual, the duties were primarily reactive or in other words after-the-fact. The officers themselves often had secondary jobs and were busy creating shelter for themselves to survive. So, in early dilemma was how to know when to pay a law enforcement officer for actually performing law enforcement duties since they were not being paid full-time. This dilemma was solved by setting up the method known as the fee system. Under this system law enforcement officers would be paid once it was demonstrated that they had performed their duties well by investigating any reported incidents, solving the crime, and thereby arresting the perpetrator. So, the officer was paid a fee for each arrest that was made. The more arrests that were made, the more money that was made. As you can imagine while this system makes sense on the surface it also could easily be abused if the officer was unethical. Notice that with this method the arrested individual did not have to be found guilty—the officer was paid for each arrest no matter the outcome. Some corrupt officers abused this system and simply arrested anyone they wished in order to make more money. Even today, some citizens believe that officers have a quota about the number of arrests they must make each month. And so, at certain times of the month when a lot of officers are visible citizens complain that the officers must be desperate to make their quota. Some disgruntled citizens even suggest that officers may make a commission off each arrest. Today officers are paid a salary and there is no commission for any arrests they do or do not make. Most jurisdictions do not have a quota system although it has been documented that some jurisdictions, certainly not most, do attempt to establish quotas.

Image 4.4

Boston

Despite some of the early problems with American law enforcement, the city of Boston created the first formal American Police Department about 177 years ago, in 1838. This trend spread quickly and New York City established their first Police Department in 1845. Despite such changes as paying for a 24 hour police force, many law enforcement officers were still quite brutal and many were corrupt. Not all the fault for this lies on law enforcement as at the time law enforcement officers were paid very poor wages, they were offered no training, and they were given almost unlimited power.

Image 4.5

The Posse

As citizens of early American society expanded westward, some unique aspects of law enforcement appeared. For instance, the use of the posse was more common in the Wild West. Contrary to the image often presented by Hollywood wherein brave citizens volunteered to be a part of the posse, the use of the posse was more like a type of martial law. In a state of emergency the entire village could be placed under the control of the Sheriff. This gave the Sheriff the right to take whatever weapons or supplies would be needed to perform his duties. It also allowed the Sheriff to select citizens who would be mandated to become deputies.

In many small towns there was only one law enforcement officer. So, if someone came and robbed the town and fled there would probably be the need for posse. In the early days of our country money that was in banks was not guaranteed. And so, if the town was robbed the citizens would lose everything. If the Sheriff pursued the robbers the town would be left unguarded. If the Sheriff statyed to protect the town, everyone's savings would be gone. That is, in such a state of emergency the Sheriff would need equipment to chase the robbers, they would need citizens to help them, and they would need citizens that they would leave in charge of guarding the town. Sometimes the Sheriff would stay with the town and send the selected citizens to apprehend the robbers. Often, the robbers did not come back alive and sometimes citizens who were granted this new power became vigilantes and performed crimes themselves.

Image 4.6

Rangers

As many citizens continued to head West, some citizens settled in parts of the continent that did not technically belong to the new United States at the time. These areas are often referred to as territories. Even though many of the citizens were settling in these new territories that technically belong to other countries at the time, they wanted American law to be enforced and they also wanted protection from the indigenous people known as “Indians”—whose lands they had invaded. This also presented a dilemma since citizens that were technically breaking laws wanted American laws enforced in a land that did not yet belong to America. In an attempt to protect the citizens and perhaps incorporate the land into the United States, territorial police agencies known as Rangers were established.

One of the most notable Ranger groups is the Texas Rangers. The Texas Rangers were formed in 1835. The initial group of Texas Rangers consisted of about 60 people. As the population of the Texas territory began to grow so did the number of Texas Rangers. These early Rangers often held roles similar to police force that since they were also charged with protecting the borders they often served roles much like the military as well. Many of the other Ranger groups no longer exist of the Texas Rangers still do. Today, the Texas Ranger division still exists and it is a major division within the Texas Department of Public safety employing 150 commissioned Rangers.

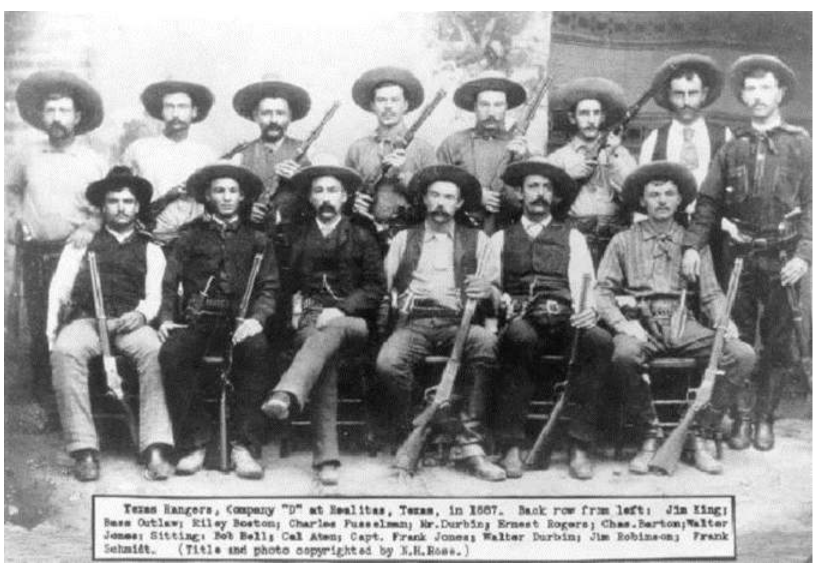

Image 4.7

Marshals

City and town Marshals also often existed out in the West. These Marshals served like community law men similar to local police in the Eastern states. Out West there tended to be more violence and gun fights than were seen back in the East. A common skill set needed to survive as a city Marshall was a quick "draw and shoot" of your weapon before you got shot. This shoot first asks questions later philosophy was often needed if you did not want to die on the job. While the position of city and town Marshals no longer exists, some of the dangers of serving in law enforcement do. Even today, there may be times when officers need to use their weapons to protect their lives.

Federal marshals are the oldest federal law enforcement agency. President George Washington himself appointed the first 13 US Marshals in 1789. In the beginning, the Marshals were to carry out all lawful orders issued by judges, Congress, or the president. Today, the federal Marshals served as the enforcement arm of the federal courts. The Marshals protect the federal judges, apprehend federal fugitives, transport federal prisoners, and operate the witness security program. In 2015, there were 94 US Marshals, one for each federal court district. There were also 3843 deputy Marshals and investigators. The officers, along with civilians, resulted in 5410 employees.

Image 4.8

4.6: Reform

Reform

As the United States became its own country and the number of citizens expanded, numerous reforms will take place with American law enforcement. According to the principles of the United States Constitution the various police departments in the United States were to be decentralized, not under the control of the federal government. Since the various municipal police departments were managed locally, broad differences in how the various police departments operate, function, and interact with their citizens have become established. Despite these differences from department to department some common early reforms can be discussed.

1854- Uniforms

The first uniforms were introduced. While the use of uniforms would alert deviant individuals to police presence, uniforms also allowed general members of the public to know who to turn to for assistance and who they should be able to trust. Uniforms also allow officers to recognize one another and based on the insignia on the uniforms, be able to identify who is on charge at the scene. While uniforms vary from one jurisdiction to another, common elements such as the use of a badge or shield, have evolved.

1867- Telegraph

One of the first police telegraph boxes was installed. The use of the telegraph allowed officers to be informed of urgent matters as well as ask for assistance from other officers (back-up) when needed. This use of telegraph technology occurred about 20 years after the invention of the telegraph. This use of technology by law enforcement several years after many citizens in society already had access to a particular technology is a trend that has often been repeated.

Image 4.9

1892-Bicycles

Prior to the use of the bicycle for patrol, many early constables patrolled about 20 miles a day for weeks on foot often without a day off. The earliest use of the bicycle by police reportedly occurred in 1869 in an Illinois sheriff department but the bicycles were heavy and not very comfortable to ride on poor quality roads, they were also quite expensive. By 1892 bicycles had improved to essentially its modern form and so in this year both in New Jersey and Connecticut officers were officially being trained for bicycle patrol.

1893-IACP

International Association of Chiefs of Police (IACP) was founded in 1893, meaning it has advanced the science and art of police services for over 100 years. The IACP advocated for the use of data collection, such as the UCR, to monitor police practices, foster police cooperation, and provide information which could be used in police work around the globe. The use of fingerprints was also advocated by the IACP early in the 20th century.

1900's- Vollmer

In the early 20th century August Vollmer was a leading figure in the development of the field of criminal justice in the United States. Vollmer is often credited with modernizing American policing. He served as Berkeley California's first chief of police from 1909 to 1931. While in office Vollmer band bribery and gifts among the officers and instituted many reforms which transformed policing into a modern profession. Despite having only a sixth grade education himself he started police schools where officers could learn about the laws of evidence and he encouraged University training for police. In fact he was one of the first police chiefs to require officers to get college degrees.

1909- Police Car

In 1909 Detroit was testing a form of police car to supplement their bicycle and mounted units. The need for police cars was in response to a need to keep up with the motorized vehicles that were being driven by offenders. There were motorized patrol wagons around 1904. These wagons were large enough to transport an entire squad perhaps leading to the term squad car. Though motorcycles were probably used more than cars from about 1911 through 1930s by the end of the 1930s the use of cars for police transportation was the norm.

1919-Boston Police Strike

Just as Boston was the first formal American Police Department, it also was home for the infamous Boston police strike which caused an uproar around the nation as they sought recognition for their trade union and asked for an improvement in wages. The police commissioner at the time denied that they had a right to form a union and so the officers went on strike. Several nights of lawlessness ensued the state guard restored order. The striking officers tried to return to work but were not rehired. This strike served as a lesson of the importance of law enforcement to the public peace and while officers may form unions currently many states do not allow public employees to have the right to strike.

Image 4.10

1920's- O.W. Wilson

Orlando Winfield Wilson was also an influential leader in policing having served in several high-ranking positions such as superintendent of police and chief of police in several departments. OW Wilson also authored several books on policing. As a reformer of police Mr. Wilson focused on the importance of police administration in getting rid of corruption and influencing departments to adopt methods in community policing.

1931- Wickersham Commission

The national commission on law observance and enforcement was appointed by Pres. Herbert Hoover in 1929. The commission was chaired by George W Wickersham and so the commission commonly became known as the Wickersham commission. This commission conducted the first national study of the administration of justice in the United States. The commission issued 14 reports one of which focused on the police. Crime had begun to emerge as the national problem in the late 1920s in part because of prohibition enforcement and it was hoped that this commission could scientifically study these national problems and develop suggestions how to deal with them.

1929-39 The Great Depression

Despite the efforts to reform policing and study policing the nation was also facing the deepest and long-lasting economic downturn in the history of the Western industrialized world starting with the 1929 stock market crash. During this period in history the country was trying to recover from the effects globally of World War I and it was drawn into the costs and consequences of World War II from roughly 1939 to 1945. Thus the nation had many problems to focus on other than concerns with local police and other law enforcement agencies.

Image 4.11

4.7: A Time of Change

A Time of Change

Starting in the 1960s and running through the 1980s, there were four main issues that finally spurred important changes in the field of law enforcement.

1. **Supreme Court**. Starting in the 1960's much of the change for law enforcement was pushed from the outside, specifically through decisions issued by the Supreme Court of the United States. Many of these decisions were to control various police operations and procedures. One noteworthy case was Miranda V Arizona which resulted in the need for Miranda warnings in all police departments nationwide. The Supreme Court required that police officers when making arrests must remind the suspect that they have the right to remain silent, that anything they say may be used against them, that they can have a lawyer present during questioning, and that a lawyer will be provided if they cannot afford one.
2. **Civil Rights Movement**. While the movement to and racial segregation and racial oppression began long before this time it was in the 1960s that major civil rights legislation was passed particularly the Civil Rights Act of 1964 which banned discrimination in public accommodations and the workplace. Despite these attempts at legal equality not everyone in the nation agreed and there were many protests and violent demonstrations both for and against equality, as well as violent reactions by police to the demonstrations and demonstrators, especially those of the minority community.
3. **Riots and Demonstrations**. this was a turbulent time in our nation's history as citizens struggled with opinions about race relations as well as opinions about whether protests should be nonviolent or not. One of the noteworthy demonstrations became known as the Birmingham demonstrations. In 1963 Martin Luther King Jr. and his colleagues received national media attention when the public safety commissioner sent in police attack dogs on marchers that were undertaking a nonviolent protest. A federal court decision barred further demonstrations and when King violated that order and participated in a demonstration, he and many others were arrested. Another peaceful demonstration in the same town which was organized primarily by students was broken up by high pressure fire hoses, which provoked national outrage. President Kennedy helped negotiate a settlement but the very next day clansmen bombed the home of Rev. King. Despite all the violence and loss, the Birmingham events are said to have helped galvanize national support for civil rights reform leading to the passage of the Civil Rights Act of 1964 and later the voting rights act of 1965.
4. **Crime Rate.** Changes in the number of crimes are typically examined by using data from the UCR which was discussed in chapter 2. Based on the index crime rate, the reported crime rate was fairly level during the 1930s, 1940s, and 1950s before sharply increasing until the early 1970s. So, not only were their problems with police tactics, police violence, and the inability of police to settle broader social issues [assuming this responsibility is theirs], but the data seemed to indicate that the main purpose of police which was to control crime – was not working either. Together these four issues lead to a public dissatisfaction with police.

As public pressure mounted law enforcement agencies responded to the pressure to change. The changes which began in the 1960s continue even into today. The number and type of changes varies from department to department but overall there are six key changes which are rather commonplace throughout the country.

1. **Special Services.** In an attempt to be responsive to community needs many departments divided their officers into groups and created specialized services. It was realized that in modern society it is unrealistic to assume that every officer can know every aspect of policing. So instead groups of officers will receive specialized training and thus be able to offer specialized services to the public. For instance, in many departments it is not uncommon to see a bomb squad, or a K-9 unit, or a crime victims unit, or drug task force and so on. By specializing it is hoped that certain officers can be sent to handle certain circumstances and their advanced training and tactics will allow them to do a better job and offer more well-rounded services to the public.
2. **Increased federal support.** Typically, to create changes in any employment group financial support will be needed. The changes and improvements that were needed in law enforcement were often too expensive for local jurisdictions to pay for on their own. Thus, it was important when the federal government started providing support to other law enforcement agencies. This support included the formation of the Law Enforcement Assistance Administration which was discussed in Chapter 1, as well as providing training, education, and equipment grants to a wide assortment of agencies.
3. **Increased Recruitment.** Given the successful fight for rights of minority groups and women, efforts have been made to have law enforcement agencies reflect the communities they serve. Thus, increased efforts have been made, and continue to be made

to increase the number of women and minorities in the field of law enforcement.

4. **Community Policing.** there has been a change that instead of envisioning law enforcement strictly as crime fighters to view them as working with the public to protect the public order. This emphasis on community policing promotes partnerships and ties with the public to cooperatively and proactively problem solve and address issues such as crime, but also social disorder, and even fear of crime.
5. **Technical Innovations.** Working smarter not just harder is also important to improvements in law enforcement. Many improvements have been made in terms of improved cars, improved use of the computers for things such as searching fingerprint and warrant databases or even automated license plate recognition, improved use of radios not just in the cars but on the officers and now even recording through body worn cameras, as well as innovative investigation techniques like GPS tagging and monitoring communications to and from targeted individuals, and so on.
6. **Police Unions.** Part of the improvement of law enforcement includes improvement in the pay and benefits for personnel employed in law enforcement in some jurisdictions police unions are an important part of pushing for improvements in pay, protective uniforms, appropriate schedules, needed training, and so on. One notable union is the Fraternal Order of Police (FOP) which reports over 325,000 members organized in 2100 different local chapters. The organization states that they attempt to improve the working conditions of law enforcement officers and the safety of those they serve. Unions such as the FOP often push for improved education, legislation to protect law enforcement officers, employee representation in negotiations and special legal defense for officers who have complaints filed against him.

It has been a long and sometimes difficult evolution which has resulted in the law enforcement agencies that we see across the United States today. From the early English Constable patrolling on foot to the modern law enforcement officer equipped with a range of modern technologies the occupation of law enforcement has become far more professional. The occupation of law enforcement is not without its dangers however. Some of these dangers such as violent gangs are from individuals in the local communities while other dangers such as drug cartels and human trafficking have international implications to understand how law enforcement operates we need to examine police organization which is the subject of the next chapter.

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CHAPTER OVERVIEW

5: Police Organization

5.1: Learning Objectives

Learning Objectives

- Identify the various levels of law enforcement and understand the concept of decentralization.
- Discuss differences and similarities among local, county, state, and federal law enforcement agencies.
- Know how well different levels of law enforcement are at dealing with women and minority recruitment.
- Be familiar with the concepts of private policing and community self policing.
- Awareness of other law enforcement agencies such as Tribal and University police forces.
- Be familiar with the concept of private policing.
- Understand the difference between community policing and community-oriented policing.
- Identify the benefits of having a diverse police force.

Now that we have looked at the early forms of policing and several of the early problems and resulting changes in American policing, it is time to take a look at the organization of law enforcement. Understanding law enforcement today can be a big task as there are approximately 18,000 law enforcement agencies employing more than 1.1 million persons on a full-time basis. By looking at how police departments are organized and how varied they are across our country, we can begin to question how we can better quest for justice through improvements or changes to law enforcement.

5.2: Quasi-military

Quasi-military

One way to generically describe the organization of most police departments is to say that they are much like how the military are organized. We call this similarity to the military “quasi-military”, meaning it is somewhat like the military but not exactly. There are several similarities with the military as described below.

Hierarchy

Similar to the military, most police departments are organized in a pyramid configuration, with one person at the top of the pyramid who is in charge and an expanding number of people at positions as we go down the pyramid all the way to the base of the pyramid where the basic patrol officers make up the largest number of personnel. Even the titles of the individuals within the ranks are similar to the military. For instance, starting at the bottom a department might have a corporal who is above the general line officers, above them might be a detective, above that a sergeant, then a lieutenant, then a captain, then a deputy chief, then the chief of police. Some departments have even more rank differentiations than this. The number of positions in the higher ranks is smaller than the number of positions of line officers resulting in the pyramid shape of hierarchy.

Image 5.1

Uniforms

As we noted in the history of our last chapter, most law enforcement officers now wear distinctive uniforms. Their uniforms will identify which department they are from for instance the local police department versus the County Sheriff’s office. The uniforms will also have insignia on them demonstrating the rank of the particular officer. In general, the more insignia such as chevron’s on a uniform, typically the higher the rank of the officer. Members of the military were wearing uniform and displaying rank before law enforcement picked up this practice.

Image 5.2

Ranking Office

As mentioned above, the rank of an officer is typically visible on the uniform but it is important to remember that this distinction in rank can also tell you who is in charge at any particular crime scene or in a particular circumstance. If a civilian has a concern or a complement against or for a particular officer, they can report this to the individual supervisor who will be someone higher in rank.

Divisions

Sometimes within a Police Department it is helpful to put groups of officers together, these groups are often referred to as divisions. Similar to the military, these divisions will have unique skill sets and purposes. For instance, in law enforcement the divisions may be various platoons or squads such as the bomb squad.

Image 5.3

Briefing

Again, similar to the military at the end and start of shifts or after any critical incident there are usually briefings and debriefings. Briefings typically provide the information needed to direct the deployed resources in an appropriate manner and toward the correct target or resolution. Debriefing of personnel after an incident can also be important in order to obtain further relevant available information in a timely manner.

Inspections

Though few people look forward to inspections, they can be an important part of maintaining order amongst individuals and their equipment and uniforms. Conducting inspections can make sure that personnel are in compliance with established policies and procedures. The purpose is to uncover potential problems and develop solutions within the agency before the problems reach proportions that would have a negative impact.

Chain of Command

Another important point to realize in any agency that has a pyramid administrative structure is that typically there is a lot of standard operating procedure (SOP). Standard procedures help ensure that important responsibilities and law enforcement activities are routinely followed and the action taken is done in a safe and professional manner. This hierarchy also typically means that orders come from the top and work their way down and that information, or requests, or complaints from the field are filtered through many levels before it reaches the top, if it ever does.

5.3: Problems with a Hierarchy

Problems with a Hierarchy

While following a Quasi-Military style of organization did help overcome some of the early problems of law enforcement in terms of hiring and promotion based on who you know not how you perform this rather rigid structure can have some drawbacks.

Promotion

Having a rather rigid hierarchy configuration is different than how many businesses are structured. For instance, if you had a highly qualified officer that is succeeding and advancing in their skills at a higher rate than everyone else in some business settings they would be quickly promoted. In the hierarchy setting there is typically the SOP that you must spend a certain number of years in rank no matter how well you perform before you are considered for promotion. Once your number of years are served you are then eligible to take a promotion examination. Depending on your score on the examination and the number of openings in the next higher rank you may or may not be promoted until the next testing period.

Demotion

In the business world if you were not performing up to standard it is quite possible that you would be demoted in rank or have your pay cut or perhaps fired. With the hierarchy model once you have achieved a higher rank while you may face a pay freeze or be fired if appropriate, demotion is not one of the options. In the hierarchy once your period of “leave” is expired you will return to service at the same rank.

Career Officers

Because of the rigidness of the pyramid structure, individuals that wish to spend their entire lives in the career of law enforcement face some difficult decisions. If someone has spent some time in the field, has completed numerous trainings and has excelled in their work and feels they are ready for advancement, if they stay in the same agency that they are currently in it may be a number of years before they are “eligible” to test for promotion. What often happens is that the superior officers leave their current employment and get hired on at a different department that is willing to hire them in at a higher rank. This method of switching agencies means he will advance more quickly than those that are loyal to one agency and need to spend a number of years before advancing. This difficulty also means that many agencies lose some of their best officers because they are not able to reward them with an advancement even if it is deserved until they have spent the procedurally dictated number of years in the field.

Another way of examining the organization of law enforcement in the United States is to divide it into the levels of government which oversee and finance the relevant law enforcement agencies. Typically the levels are Metro or local level law enforcement such as a Police Department, County level law enforcement such as a Sheriff’s Department, state level law enforcement such as the state Highway Patrol, and federal law enforcement such as the FBI. While these will be the main divisions of law enforcement that we will examine, one should not forget that there are other law enforcement agencies as well such as tribal law enforcement and sometimes even campus level law enforcement.

5.4: Tribal

Tribal

It is interesting that American Indian tribes operate approximately 178 law enforcement agencies. Determining jurisdiction in tribal communities can be quite complex depending on the area where the crime happened, the severity of the crime, if the perpetrator is a member of the tribe and/or if the victim is a member of the tribe, as well as if that particular tribe has its own law enforcement agency or not. If the tribe does not have jurisdiction, typically the jurisdiction reverts to the federal government since tribal nations are considered sovereign nations within the United States.

Tribally operated agencies employed more than 4,500 full-time personnel including about 3,000 sworn officers. Some of the largest tribal law enforcement agencies serve jurisdictions covering more than 1,000 square miles. These tribal agencies often provide a broad range of public safety services such as responding to calls for service, investigating crimes, enforcing traffic laws, executing arrest warrants, serving process papers, providing court security, and conducting search and rescue operations.

Image 5.4

5.5: Campus

Campus

Just like many tribal communities, but not all, have law enforcement of their own, many campus communities also have their own campus law enforcement. The majority of the more than 900 US four-year colleges and universities which have 2,500 or more students used their own sworn police officers to provide law enforcement services on campus. The sworn campus law enforcement officers typically have full arrest powers granted by a state or local authority. Two thirds of these campuses with law enforcement have armed officers. Most sworn campus police officers are authorized to use a sidearm, chemical or pepper spray, and a baton. Additionally, most sworn campus officers have both arrest and patrol jurisdictions that extend beyond campus boundaries. Most campus law enforcement agencies have a memoranda of understanding with the other law enforcement agencies, so that their jurisdiction can extend off the campus proper. Most campus is now also have a mass notification system that uses e-mail, text messages, and other methods to alert and instruct students, faculty, and staff in emergency situations.

Image 5.5

We will now take a look at the typical different levels of public law enforcement. If you are interested in learning about the different salary levels throughout our country, feel free to take a look at the Office of Personnel Management website (OPM.gov) or simply Google, “LEO salaries” and you can take a look at the average salaries and differences in salary by locality.

5.6: Metro

Metro

Metropolitan or city level Police Department are typically what most people think of when you mention law enforcement. This is rational as the majority of law enforcement personnel work at the local level. Across the United States there is great range in the size, policies, and practice of the various law enforcement departments. Departments can range in size from New York City Police Department (NYPD) which is the largest municipal police force in the United States with over 34,000 authorized uniformed officers and several thousand civilian employees to small towns like Gaines Township which has a one-man police force.

Image 5.6

Typically the jurisdiction of most natural level Police Department is the geographical jurisdiction of their city limits, although they may have agreements with surrounding communities and this cooperates beyond their city limits though this is not always the case. In some communities they may be assisted by outside departments such as a member of the sheriff department assisting an officer that needs backup. Despite their great variation in size most of the tasks and services of responding to calls, enforcing municipal, County, state, and federal laws that are provided are quite similar across the country.

It is also interesting to note that there are over 12,500 local police departments. About half of the local police department are rather small and employing fewer than 10 full-time sworn personnel. Approximately 90% of local level law enforcement serves populations less than 25,000. Starting salaries vary greatly by the area of the country but average around $35,000. Roughly 12% of local departments require at least some college for their entry level officers, 8% require a degree and only 1% require a four-year degree. While improvements have been made in recruiting women and minorities currently approximately 81% of officers are Caucasian, 11.3% are African-American, 6.2 are Hispanic, and 1.3 are other. Overall, only 8.8% of officers are women.

5.7: County

County

At the county level the senior officer is usually referred to as a Sheriff. The sheriff is typically elected as a political official and you may remember some of the English history that establishes this position of the Shire Reeve. The office of sheriff exists in nearly every county in the United States with a total of over 3000 offices nationwide. At the county level the sheriff's department is often in charge of a vast amount of territory. The jurisdiction of the sheriff department is typically an entire county outside the major city limits. Again the size of counties can range greatly across our nation. The largest sheriff department is the Los Angeles County Sheriff's Department which is the seventh largest law enforcement agency in the United States and employs over 16,000 members. Some small Sheriff's Department may have one or two persons in their departments.

In addition to the often large amount of territory that they must patrol and cases to investigate, sheriff departments often have a number of additional duties as well. Most sheriff departments are in charge of taking care of the county jail, they typically serve warrants and eviction papers, they may also be responsible for providing court rooms security and transporting prisoners,. Some specialized duties exist within many departments such as boating, snow skiing, underwater diving, and emergency medicine.

Image 5.7

Sometimes pay is a little less at the county level and so entry level requirements are reduced as well. Again rates vary across the country but an average starting salary at the county level averages around $25,000. Most sheriff departments require a high school diploma or equivalent and only about 4% require some college. A large number of the employees at this level are civilian to help with all the additional duties outside of typical law enforcement. Nationwide there are about 170,000 civilian employees working within the sheriff departments. The diversity by race tends to be a little less at this level but by gender it tends to be a little higher. Approximately 84.5% of the employees are Caucasian, 9.8% African-American, 4.7% Hispanic, and 1% other. Approximately 15% are women.

5.8: State

State

There is at least one of primary law enforcement agency in each of the 50 states. In many of the states several agencies exist such as a state police agency, a highway patrol agency, or a department of public safety or some combination. State police do not have as lengthy a history as the other forms of police since they were legislatively created due to the use of automobiles in conducting crimes and then trying to get away. The Texas Rangers are the oldest state law enforcement agency in North Dakota and we discussed them in the previous chapter. In general, the jurisdiction of state police are the state to boundaries and they perform most functions outside the jurisdiction of major cities and county sheriff that focuses on enforcing traffic laws on state highways and interstates as well as providing backup to local level and county level law enforcement and providing security at their state capital. In addition to patrol and traffic functions many states have a state level investigation agency or are in charge of training for officers throughout the state.

Nationwide the 50 primary state law enforcement agencies had over 93,000 full-time employees including about 61,000 full-time sworn personnel with the rest being civilian employees. Many law enforcement agencies at the state level are working on encouraging women and minority recruitment and retention. Presently, state level law enforcement is approximately 87% Caucasian, 7.5% African-American, 4.4% Hispanic, and 1% other, with less than 5% being women. Depending on the position, the average starting salary is around $37,000. Approximately 18% of the agencies require some college, 12% require a two-year degree, and 2% require a four-year degree for entry-level positions.

5.9: Federal

Federal

There are approximately 50 different agencies focusing on law enforcement in the United States at the federal level. At this level there jurisdiction is not bound by a map but instead is based on specific sets of laws and types of problems. The agencies are organized primarily under the US Department of Justice which is considered the legal arm of the federal government. There are several divisions under the Department of Justice but the primary one that concerns us is the criminal division though this division often works with the tax division and or civil rights division in the prosecution of criminals. While these agencies exist independently with no particular hierarchy they do often worked together as planned with the reorganization under the relatively new Department of Homeland Security.

Unlike many other countries that have fewer departments of law enforcement with more of the functions centralized under a single department or two for their entire country our government and agencies are organized under the philosophy of decentralization. Under decentralization the idea is that the delegation of power does not just sit in one central authority but instead is to be delegated across several different agencies and handed down to regional and local authorities. This philosophy can make for a rather complex system of law enforcement, but it also allows flexibility so that the citizens in each jurisdiction can have some say in how they want their law enforcement to be organized and operate.

At the federal level there are too many agencies to cover them all however, we can cover a few of the agencies that we should be familiar with. In no particular order:

FBI

The FBI or Federal Bureau of Investigation is a national security organization with both intelligence and law enforcement responsibilities. The FBI employees nearly 35,000 people including special agents and support professionals such as scientists and language specialists. The range of duties is very broad to protect our country from terrorist attack as well as combat public corruption and combat major white-collar crime. As we discussed in Chapter 2, part of their duties include analyzing the data for the uniform crime report.

Image 5.8

DEA

The DEA or Drug Enforcement Administration has a mission to enforce the controlled substances laws and regulations of the United States. This mission includes combating the growing, manufacturer, or distribution of controlled substances. The Drug Enforcement Administration was created by Pres. Richard Nixon in 1973 to combat “an all out global war on the drug menace.” Today this agency has nearly 5,000 special agents and a budget of around $2 billion annually.

ICE

The United States immigration and customs enforcement enforces federal laws governing border control, customs, trade, and immigration in order to promote homeland security and public safety. ICE was created under the Homeland security act in 2003.

The former Bureau of immigration and customs enforcement was reorganized into the new immigration and customs enforcement or ICE. ICE was created based on the concept that global threats have become more dangerous, and a new approach was needed to ensure the security of the US homeland and the American people.

Image 5.9

IOC-2

The International Organized Crime Intelligence and Operations Center combines the resources and information of nine US law enforcement agencies to collectively combat the threats posed by international criminal organizations to domestic safety and security. This center was created in 2009 to combat international organized crime and crackdown on international criminal organizations.

ATF

The select ATF is now referred to as the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The word explosives was recently added but the ATF has always focused on firearms and everything that explodes. In particular, the ATF attempts to protect our communities from violent criminals, criminal organizations, illegal use and trafficking of firearms, as well as acts of arson and bombings, and the diversion of alcohol and tobacco products, among other things.

Image 5.10

IRS

The Internal Revenue Service is an agency most people have heard of but you may not have been aware of their role in cracking down on crime. There are many times when certain criminals cannot be caught in the act of committing the crime they are being investigated for but they can be caught with tax evasion. Better this punishment then no punishment for their criminal activities.

CBP

The former agencies of both the Border Patrol and Customs Service were reorganized under Homeland security into the new US Customs and Border Protection. CBP has more than 60,000 employees and is one of the world's largest law enforcement organizations charged with keeping terrorists and their weapons out of the United States while facilitating lawful international travel and trade.

Image 5.11

CIA

The Central Intelligence Agency's primary mission is to collect, analyze, evaluate, and disseminate foreign intelligence to assist government policymakers in making decisions relating to national security. The agency was established in 1947. The number of people working for the CIA remains classified.

Image 5.12

As mentioned above this list is partial there are many other organizations that you might be interested in exploring on your own such as the US marshals service, the forest service, or the Coast Guard.

5.10: Private Policing

Private Policing

While our focus has been on public law enforcement agencies at all the different levels of government another interesting development has been the growth of private policing. Private policing can be thought of as personal security. We see malls that hire their own private security and we see movie stars that hire their own bodyguards. There are also communities that build walls around their own communities and have locked gates that restrict entrance into their communities. Many of these communities also hire their own law enforcement for the community members.

These individuals that are hired by private citizens are not true law enforcement professionals. Most states do not have specific regulations of who can claim that they have the qualifications to be hired as private law enforcement or security. There also are no consistent training standards unlike what we have for public paid law enforcement. While the individuals that hire these private bodyguards may feel safer they do not necessarily increase the safety of the overall public. In fact often times when there are concerns with the actions of these individuals people will call the local public police to complain about “their officers” when in fact the hiring of these individuals had nothing to do with the public police department. Some problems are also seen when private security companies in all specialized alarm systems for a very expensive rate and tell the individuals purchasing them that when an alarm sounds the police will respond. When the alarm sounds and the public police do not respond, since they had no way of knowing that the alarm went off, they then receive complaints. In both instances, the complaints should be filed with the individual hiring the private security officer or the company installing the faulty alarms.

Despite these problems with private police and security companies this area of possible employment and moneymaking opportunities is growing more rapidly than the number of hires within public police department. Some private security agencies such as the loss prevention departments in several of the major retail chains are very careful in who they hire and offer extensive training to their specialized employees. However, not all private agencies are so careful in their selection and training so be careful who you trust and what you pay for.

5.11: Community Policing

Community Policing

The final form of policing to discuss is what is known as community policing. This is when many public citizens band together and form their own type of policing or patrolling force in the community. One of the problems with these groups is that again they do not have training and there was very little screening in terms of who can join. Additionally, increasingly these groups are armed and may be overly aggressive in confronting anyone they are not familiar with. This over-aggressiveness may lead to vigilantism and the citizens themselves may now be breaking the law.

Image 5.13

Many public police departments encourage citizens to work with them when forming any type of self group. By working with the public police the individuals can be taught some safety information and primarily they are informed to look out for one another, straighten up their neighborhoods, and call them immediately if they notice something suspicious rather than addressing it themselves. You have probably seen in many neighborhoods, the neighborhood watch signs in the community. These signs show that there is a group of citizens who are working with the police in their community to try to keep their community safe.

Image 5.14

5.12: Image Citations

Image Citations

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CHAPTER OVERVIEW

6: Issues in Policing

6.1: Learning Objectives

Learning Objectives

- Understand how police use discretion.
- Explain the concept of a police culture.
- Recognize the different predominant police officer styles.
- Recognize the possible detrimental effects of police stress.
- Know which Law Enforcement trends are likely to continue into the near future.
- Understand the typical Law Enforcement hiring process.

Now that we have examined the history of law enforcement as well as how it is currently organized, and the various agencies at all the different governmental levels, today it is time to take a closer look at what the police role really is and some of the issues encountered in modern policing.

6.2: Police Role

Police Role

Many individuals have already formed an opinion of what officers do during a typical shift by watching television or movies. Most television shows and other form of media get very creative in describing the police role so as to keep the audience interested. Often when students do a ride along with a police department they are surprised about the meetings, the amount of paperwork, and how much time there is between activities on the shift. It is definitely not nonstop action unlike the television shows.

The actual police role could probably be best thought of as a continuum. On the low end of the continuum would be actions that the police officer takes that are very much like social work such as reminding the juvenile that it is almost time for curfew and they need to head home. An important task for the safety of the youth and the neighborhood but is not really a “bad boys” scenario. On the other end of the spectrum would be active crime-fighting like a robbery in progress. One of the challenges in law enforcement is that as you approach a situation you never know which it is going to be and to protect yourself and others you often assume the worst.

Even when performing routine activities such as a traffic stop you may notice the cautiousness of the officer in approaching your vehicle. This cautiousness is needed because while it may be as simple as handing out a ticket the situation may be complex for instance there may be a kidnap victim in the car or the individuals were speeding away from the scene of the crime and they have evidence in view within the car. It can be stressful never knowing quite what to expect.

When responding to calls such as domestic disputes this can be a dangerous situation as well. The individuals are probably highly agitated at the moment and will not be happy to see a law enforcement officer. It is not unusual that even the victim will act aggressive toward the law enforcement officer who is trying to help them. All law enforcement officers need to approach situations with caution.

Typically, today a law enforcement officer needs to bring a variety of skill sets to the tasks at hand. While the Academy will train the individual in law enforcement techniques many of the calls actually require other skills as well. Thus, a modern law enforcement professional needs to be able to combine skills in law enforcement, crisis management, the ability to provide referral services, and basic human relation and people skills. When an officer asks professionally and is regarded positively in the community, their own self image about their capabilities improves. When officers work in communities that do not respect law enforcement, sometimes despite the best efforts of those officers, this stress and dangerousness encountered daily can affect police performance and eventually their concept of police professionalism.

6.3: Police Function

Police Function

Another way to understand what law enforcement officers do is to look at some of their typical functions. In most situations encountered the officer can use their own trained professional discretion to decide what to do in that circumstance. The use of discretion is often influenced by four aspects.

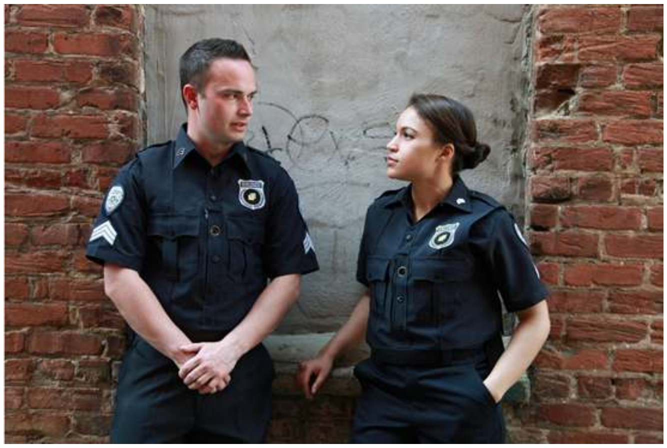


Image 6.1

Working Environment

An individual officer’s discretion is often influenced by the particular community and the department that they work within. If they work within a department that is very community oriented and the community itself has established many programs to help youth, this would influence an officer when they encounter a youth out near curfew. In the supportive community scenario the officer would probably talk with the youth and encourage them to head home. If the officer worked in a community known for its gang violence and threats toward law enforcement when the officer encounters a youth the officer will probably question the youth, check for gang tattoos or symbols and run a background check for wants and warrants.

Personal Bias

Personal bias should not influence an officer’s discretionary decisions but officers are only human and we each have our own biases. The important thing is to be able to realize your biases and then make sure that they do not influence your decisions. In law enforcement, it can be difficult to catch an officer who is making biased decisions because it is hard to show that it is bias that influenced the decision versus other possible variables. The tendency of some officers to pull over minority individuals more often has created the situation known as “driving while black.” Yet, not all minority individuals that are pulled over are being discriminated against because, members of all races may have violations such as speeding, obstructed view, expired tabs, failure to use the turn signal, and so on.

Departmental Practices

If an officer works within a department where they are told not to arrest prostitutes because more time is spent in processing the paperwork than the time they will spend in jail anyway then despite what the officer may personally wish to do, their discretion will be limited and they probably will not arrest prostitutes under normal circumstances. If on the other hand an officer works within a department where prostitutes are treated like victims than the officer will tend to offer referrals and services to prostitutes to help get them off the streets.

Situation

While police officers have many functions depending on their specialized training and the community that they serve; we shall discuss six of the common functions.

Information Gathering

Officers tend to look at the world a little differently than most civilians. To an officer every phone call or discussion with the citizen is a type of information gathering. Within these conversations are clues about person's level of fear and problems that may be present in the community. A lot of an officer's time is spent taking calls, responding to complaints, talking to citizens, performing indirect investigations, and completing a lot of paperwork. All of these duties pertain to information gathering.

Service

Officers often provide many services to their community in addition to their law enforcement function. Officers are often the first to respond to the scene of an accident even if no crime was involved because they may be able to render aid until an ambulance or other services arrive. Occasionally, officers may assist people that are locked out of their homes or car or stores depending on departmental policy regarding these incidences. Police officers are also often found speaking to community groups, going into local schools, speaking at Boy Scout meetings, and doing a variety of information services and activities with the public.

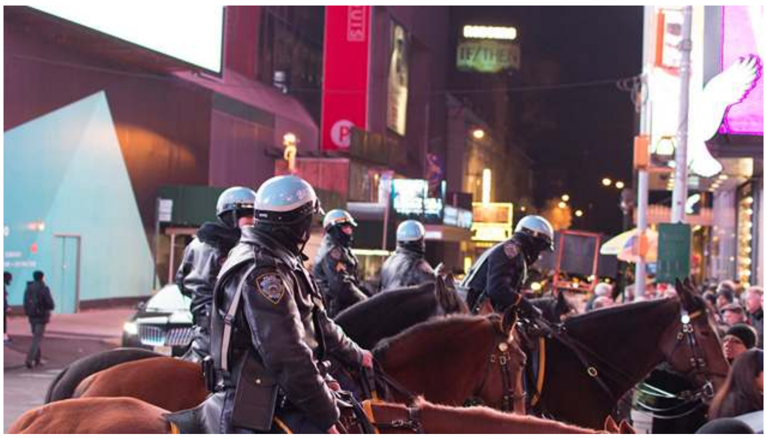


Image 6.2

Order Maintenance

Though it may not sound exciting, officers are also in charge of basic order maintenance issues. By dealing with these issues in a prompt and professional manner, it may avoid escalation into violence between citizens. Order maintenance calls include things such as barking dogs, loud parties, and basic public disorder complaints.

Traffic Control

For most citizens, if they have encountered law enforcement personally it has typically been through the traffic control function. Law enforcement should tend to both parking and moving violations, pay attention to appropriate registration and current plates on vehicles, you often see them enforcing speed limits near school zones, and you may even see them providing crowd control services and traffic control during parades and at large football games, and so on.

Image 6.3

Law Enforcement

Yes, active crime-fighting is part of law enforcement functions as well. Responding to calls about crimes, actively investigating crimes, performing arrests, and even writing tickets are all considered law enforcement functions. Typically only about 17% of an officer's time is spent on these types of functions.

Image 6.4

Other

The various police functions have been studied to see if these are important or can be improved. One notable study was the Minneapolis domestic violence experiment. This experiment attempted to find out what the best response would be when officers response to domestic violence situations. When a domestic violence call was not a dire emergency the experiment was to randomly offer one of four different interventions. The address of the call was then monitored for the following six months to see if repeated calls for domestic violence incidences increased or decreased. The possible interventions included giving a warning, conducting an arrest, referring the couples to counseling, or even bringing a domestic violence advocate to the scene immediately. The experimenters concluded that arrest was the most effective response. While many departments have adopted the policy of arrest if any violence is seen or seems reasonable, other studies in areas apart from Minneapolis found different results. So it seems we are still uncertain about the best way to handle domestic violence calls.

There was another experiment no one as the Kansas City preventive patrol study which attempted to see if officers' patrolling around in their cars was an important function. To study this they created sections of Kansas City that would have increased patrol and some sections would have decreased patrol unless there was a call to respond to. The researchers concluded that increased patrol did not seem to deter criminals, that the citizens did not notice the decreased patrol since the squad cars were often driving through the area to get to another destination anyway and having cars in random locations did not seem to increase response time. However, having officers on patrol was a necessary part of many other duties such as traffic control and so on. Citizens also reported that they felt safe for and were happier in their communities when they saw and noticed police presence in general protecting them.

6.4: Police Culture

Police Culture

Another important aspect to understand about law enforcement is the culture that can develop amongst individuals in the same profession especially when that profession can risk your own life in an attempt to save others. This concept of a police culture is often referred to as a blue curtain or blue line. Symbolically, there is a filter that officers put up that they do not want citizens to see behind. Out on the street they need to be cautious and critical. Amongst other officers they may let their guard down and be humorous and caring. There is often a bonding that takes place between officers based on their job since it entails aspects of honor, loyalty, and individualism.

The honor is the honor for the type of job, where citizens put their trust in you and you wear a badge. The loyalty is both to your sense of professionalism and the department but also to other officers. Whenever an officer needs backup it does not matter if you know the officer responding all law enforcement officers look out for each other. At the same time that you are part of a group, you also need to be a strong individual. Typically, you are on patrol on your own, you make your discretionary decisions on your own, if necessary you will testify in court on your own, and you deal with the psychological stresses of this job on your own.

This concept of a police culture is often the why civilians do not put much faith in the testimony of a second officer because they believe that all officers would be willing to lie in order to cover for one another. The individualism of the culture may make the officer withdraw from their family and friends because they cannot share details of ongoing cases and yet it may be those cases that are causing them such stress. Overall, the police culture may encourage people to become cynical and secretive or it may be a source of support.

Image 6.5

6.5: Police Styles

Police Styles

Many types of individuals are attracted to a career in law enforcement. Based on personality traits and habits, officers tend to adopt certain styles in handling their duties. These police styles can be broken down into four main categories. A good department should have a mixture of officers within each of the category and a good administrator knows when to assign which type of officer to which tasks.

Crime Fighter

The crime fighter police style feels that police work should pertain only to serious crimes. Because of the serious nature of the types of crimes they choose to respond to they also feel that force and violence are a necessary part of their work. Officers that adopted this style typically have no said sympathy for citizens and instead view them as potential perpetrators. Officers that adopt this style may feel that occasionally it is necessary to “bend the rules” to get information or solve a crime.

Social Agent

The officer with this style feels that police work should entail a broad range of activities which would include traditional law enforcement but not be limited to it. These officers typically like the community policing concept and work well with members of the public in creatively designing prevention programs and other policies that will help the community. These officers typically have teddy bears and their trunks to give to youths that they encounter that have witnessed an accident or other traumatic situation.

Law Enforcer

The law enforcement officer paid careful attention during academy training. They believe that all laws should be enforced equally with little or no room for discretion. These officers are well known for following strict guidelines having checklists, and playing it strictly by the book.

Watchmen

Officers in this category often are those who have served a number of years for the department and are awaiting retirement. These officers like to maintain the order, and for speeding within city limits, and simple assignments that are less risky to themselves and require little physical effort.

6.6: Social Factors

Social Factors

Image 6.6

Education

To improve law enforcement and reduce some of the issues inherent with occupation, several trends that were begun decades ago continue to be important and emphasized. One of those trends is the encouragement of higher education for all police officers. As you may remember from the history chapter, an emphasis on education has been ongoing for nearly 100 years and yet only a small percent of departments require a four-year degree to hire. Numerous studies have shown that higher education improves numerous social factors such as communication skills, broader types of thinking, improved interpersonal skills, and improve decision-making ability. All of these skill sets are important in the field of law enforcement and so, slowly more and more departments are requiring four-year degrees for hiring. It is difficult to think of any other profession that does not require a college.

Recruitment

Another way to improve the law-enforcement profession and strengthen ties with the community is to improve the recruitment of women and minority members so that it does not seem that it is only white men enforcing the law on all citizens. Despite efforts to increase the recruitment of women and minority members there are also problems with the retention, or keeping those individuals employed within the department. Often those that are not members of the majority face problems with resentment by the existing officers, they are less likely to be promoted, women are typically paid less than men, and there are additional stressors. On the positive side, studies have shown that women and minority members tend to have better community relations and fewer complaints of abuse of force. It can often be very helpful when dealing with victims to be able to have an assortment of officers that can respond. Thus, if the victim is a member of a particular minority community and officer that looks and acts like them can come and talk to them. Often women who are victims of sexual violence crimes would prefer to talk to a female officer when recounting what has happened to them.

It is important to realize that most of the Caucasian males in the police force are doing a very good and professional job. Also, there are some women and or minority members that have abused their use of force or have been found to be corrupt and accepting bribes. Having a diverse police force helps but it is not a perfect solution.

Despite efforts to professionalize, offer advanced education, and diversify modern law enforcement continuing issues still exist. Simply want your nightly news and you will see charges of corruption, and abusive force against police officers. Sometimes these charges and the way the news is showing is rather biased and inaccurate. At other times, it is the truth and so efforts are being made to enhance the screening methods used when hiring and offer counseling and other services to members of the force that may be suffering due to the stresses of the job.

6.7: Effects of Stress

Effects of Stress

Numerous studies have shown that there are several typical problems that arise because of the stress encountered in the field of law enforcement. There are four main effects of stress in this particular occupation.

Alcoholism

Law enforcement officers come face-to-face with life-threatening situations, victims of traumatic incidents, and unpredictability of the job on a regular basis. In an attempt to cope with these experiences some officers turned to alcohol as a seemingly acceptable response to deal with their emotions. Studies have shown one that law enforcement officers drink in greater quantities and have higher rates of binge drinking compared to non-officers. Given the higher quantities of alcohol and the high levels of stress, law enforcement officers tend to be three times greater to develop alcoholism than average citizens.

Image 6.7

Divorce

Law enforcement officers have one of the highest divorce rates when compared with other groups of professionals. Many departments are developing interventions such as marriage education as a first step in increasing the likelihood of long-term marital satisfaction for its officers. Law enforcement officers face challenges in their relationship due to factors such as chronic job stress and irregular work schedule. Officers who experience ongoing stress are more likely to display anger and distance themselves from family members and friends. Over time this distancing leads to higher rates of divorce.

Violence

Studies have found that at least 40% of police officer families experience domestic violence compared to 10% of families in the general population. Not only does this violence lead to the higher divorce rates as mentioned above, but it can also be very traumatic to the victim involved given the officers ability to cover up the crime. It is also questionable how well that officer will serve and protect other domestic violence victims in the community.

Image 6.8

Suicide

Some studies report that a law enforcement officer is more likely to die by suicide then by homicide; however, the exact number of officers that take their own lives every year is not available. Numerous other studies also show that the rate of law enforcement officer suicide is somewhat higher than the general population. It is also possible that some deaths are misclassified as accidental death rather than suicides in order to protect the family and the agency from the stigma of suicide. Relationship problems and the constant stressors of a dangerous line of work as well as near constant exposure to human suffering is likely to take a toll on one's mental health. Also, there is the factor that a firearm is immediately available and over 95% of all law enforcement officers that committed suicide used a firearm.

6.8: Future

Future

The future of law enforcement is both intriguing and challenging. As we have seen in the last three chapters, law enforcement has progressed into something much better than where it started and yet there are still difficulties to be faced. It is difficult to predict what exactly will happen to law enforcement in the future but based on current trends two current movements stand out.

Technology

The future of law enforcement will most certainly entail an increasing use of technology. Already we are making better use of computers, enhanced mobile communications, simulation training using rubber bullets and moving targets, automated fingerprinting, improved investigations using current forensic techniques, use of electronic surveillance, improvement in weapons and less lethal weaponry, as well as improvement in the protection value of uniforms and much more. As the general public has access to more sophisticated technology law enforcement is ever ready to adapt those technologies to aid it in its efforts to protect society.

Image 6.9

Community Policing

Community Policing is clear that there is much work to be done in making the public more pleased with the services provided by their public law enforcement. Improved community policing means there needs to be better relations between the community and members of law enforcement; it has been showing that when communities respond positively to their law enforcement officers they experience a reduction in fear of crime. This close cooperation also encourages citizens to be willing to report when they witness crime and even serve as witnesses during the investigation and court phases of prosecuting the crime. Better citizen law enforcement interactions also enhance prevention efforts in the local communities and increase the morale of the officers involved.


WARNING
ALL SUSPICIOUS PERSONS AND
ACTIVITIES ARE IMMEDIATELY REPORTED
TO OUR POLICE DEPARTMENT
NEIGHBORHOOD WATCH
WE LOOK OUT FOR EACH OTHER!

Image 6.10

6.9: Law Enforcement Hiring Process

Law Enforcement Hiring Process

Part of having a quality police force is hiring quality new officers. The chart below shows the number of steps that are routinely taken by most police departments in their hiring process. While there can be differences from agency to agency, most of the steps are commonplace.

First a paper or on-line electronic application needs to be completed. Depending on the quality of the application, the application may be accepted or the applicant may be declined and will have to wait until the next time the agency is hiring to reapply, which may be a year away.

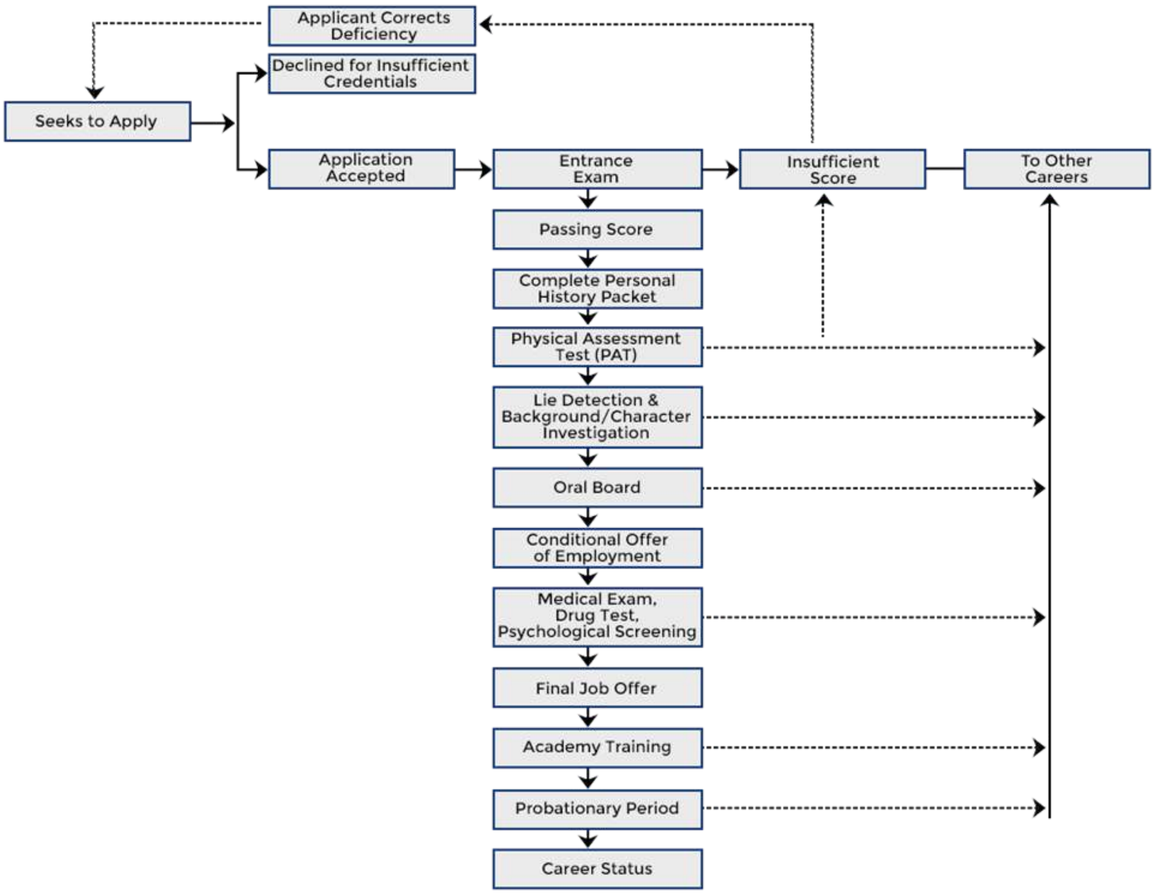
If the application is accepted the applicant will need to register for the entrance exam and show up at the time set by the agency, as all applicants typically test at the same time. A minimum score is set by the agency. For those whose test score meets or beats the minimum they will move to the next step. If the applicant does not meet the cut-off score they can reapply in the future.

If the score was passing, the applicant will fill out a lengthy application packet by a specified date and sign up for a physical agility test typically administered by the Police Department to all applicants still in the pool. Again a minimum score or time may be set and those who pass will move forward in the process while those who do not can reapply or may wish to consider other careers.

After the physical agility test, a background investigation of the applicant will take place and they may be administered a polygraph examination about anything found in their past. If this examination is satisfactory, the applicant will be interviewed by a Board or panel of numerous ranking members of the Department. If the Board approves the candidate, they will move forward and be conditionally offered employment. However, if the Board does not approve they are out of consideration.

Once initially offered employment the applicant will undergo a medical examination, a drug test, and a psychological screening. If each of these exams is satisfactory, the applicant will be offered a job but if any significant problems are found they will be declined.

For those with a final job offer they will still need to pass academy training to be a sworn officer unless they had already completed this training recently. After the Academy the applicant will be an Officer but they will be under direct supervision of a Field Training Officer and considered to be on Probation. If they can successfully complete the tasks given to them by their training officer they will be allowed—after 6 months to a year—to work on their own. If they do not complete their probationary period successfully, they will be dismissed from the force.


Applicant Corrects Deficiency
Declined for Insufficient Credentials
Seeks to Apply
Application Accepted
Entrance Exam
Insufficient Score
To Other Careers
Passing Score
Complete Personal History Packet
Physical Assessment Test (PAT)
Lie Detection & Background/Character Investigation
Oral Board
Conditional Offer of Employment
Medical Exam, Drug Test, Psychological Screening
Final Job Offer
Academy Training
Probationary Period
Career Status

Finger 6.1

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Finger Citation

Finger 6.1. Chart of Hiring Process

CHAPTER OVERVIEW

7: Courts

7.1: Learning Objectives

Learning Objectives

- Recognize the subsystems involved with the American court system.
- Note which decision points fall within the purview of the court system.
- Explain the three primary models of the courts.
- Understand the state and federal court structure.
- Know the differences between limited and general jurisdiction courts.
- Know the function of the appellate court system.
- Explain the various levels of North Dakota courts.
- Explain the various levels of federal courts.
- Describe how a case gets selected by the US Supreme Court.
- Know the criticisms associated with our court system.
- Discuss the duties of a judge.
- Be able to describe the Missouri/Merit plan.
- Identify the different types of judicial selection.

Image 7.1

Now it is time to move on to the second component of our criminal justice system—the courts. In the United States, our court system is quite complicated and not similar to the court systems of many other countries. When thinking about our court system it is also important to realize that there are many subsystems that interact with the courts. For instance, even though we will discuss both prosecution and defense in a separate chapter, their roles center around the procedures of the court. Even the police, which we recently discussed, interact with the courts in terms of requesting search warrants and preparing cases for the prosecutor's office. The corrections component, particularly probation officers, also interact with the court both in providing services to judges in some states, as well as having revocation hearings for unruly clients being held within the court system and overseen and ruled upon by a judge.

Figure 7.1

7.2: Two Models

Two Models

Many individuals have never been inside a real court room and so instead they form an opinion of what happens in court by watching television or movies. A different way of understanding what happens in the courts is by examining the dominant models. There are two main models and one primary critique model that we can use to enhance our understanding of American courts.

Traditional Model

The traditional model of the American court system is similar to a classic Hollywood portrayal of the intense drama that takes place inside a courtroom when attempting to determine the truth. Under the traditional model the court room provides a setting for what will be an adversarial process. The adversarial battle that will take place is between the defendant (which is the person accused of the crime) and the state. Currently in our country in criminal courts, it is not the victim that brings charges against an individual but rather the state brings forth the charges on behalf of the victim and on behalf of all the residents of the state who might be threatened by the alleged actions of the defendant.

Since the battle is a little lopsided with just the defendant against the victim, the police, the prosecutors, the investigators, and so on—it is important that a very fair and formalized process is followed. Part of that process is to ensure that the defendant has the assistance of a defense attorney and that the process is overseen by a judge who is not biased toward one party or the other. The judge will oversee the process to ensure its fairness as well as rule on questions regarding criminal procedure and rules of evidence.

Systems/Justice Model

According to this traditional model, the judge will oversee the battle between the defendant and the state. Even if the battle seems a little lopsided, as long as the process is followed, we can be assured that justice will prevail in the end. It may sound a little bit like a Hollywood drama but according to this model as long as all parties put their best efforts into the case the truth will be revealed and justice will prevail.

According to the systems model, most cases that are heard in a courtroom setting are not that complicated and full of drama. According to this model, the reality is that the prosecution, the defense, and the judge are individuals that often work together in the courtroom setting. Given how often they work together they are not actually mortal enemies, but instead they form a type of work group in order to get through the cases before them on any given day. Each of these individuals within the court room wants the cases settled in the quickest and simplest way. Rather than a focus on a long and drawn out battle this model focuses on simply handling the cases as efficiently as possible to reach a quick conclusion. While this model does not sound like the setting for Hollywood drama, it may mirror the reality of an overloaded court system it is simply trying to settle the cases as quickly as possible.

Image 7.2

Assembly Line Justice Model

Critics of the current American justice system point out the extensive backlog of cases and how unfair that is to both the alleged victims as well as all of the alleged offenders. Since it may take up to a year to settle some cases, this model points out how there is probably actually very little concern for efficiency or procedure as all parties are simply trying to take care of the overwhelming number of cases as fast as possible. Under this model there are no heated debates or lengthy speeches, but rather a small group of overworked court officials who are not particularly concerned about the lives they are impacting. The willingness to accept plea bargains in order to skip several typical steps in the court process with little concern to the wishes of the victim, or the rights of the defendant, is an example of a common practice that might support the accuracy of this model.

Perhaps all of these models have some accuracy within them as how a case is handled may very depending on the geographic location, the severity of the offense, and the public attention the case has gathered. No matter which model you feel is the more accurate one, or perhaps which model you feel is what our courts should be doing, the American court system is quite complex. Each state has a court system some with numerous separate branches, and others which are more unified. There are also several levels of federal court systems.

7.3: Court Structure

Court Structure

The criminal court structure can be thought of as being arranged like a pyramid. The largest layer of courts is the bottom base layer and these courts are often referred to as lower courts, or inferior courts, or courts of limited jurisdiction. Above this layer would be a slightly smaller layer of courts which are referred to as higher courts, superior courts, felony courts, or courts of general jurisdiction. Above this layer of courts would be the appellate courts and ultimately the court structure does in with one court of “last resort” for the entire nation. There may also be some specialty courts such as gun court or drug court but these are usually found at the lower levels of the pyramid. In each instance, it is not the victim or defendant that chooses what court they want to go into but rather, the law defines which jurisdiction a particular case will fall under.

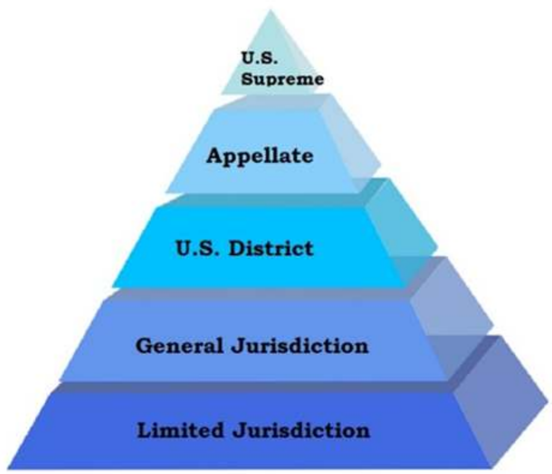

Figure 7.2

Courts of Limited Jurisdiction

There are approximately 13,500 courts of limited jurisdiction most of which are organized at the town, municipal, or county level. The jurisdiction is determined in part by the type of offense as well as the jurisdiction along town or county lines where the crime took place. These courts are referred to as lower courts, misdemeanor courts, or municipal court depending on what area of the country you are in. These courts typically handle cases involving misdemeanor crimes, minor civil lawsuits and they may occasionally handle the preliminary steps of a felony hearing that will then be heard in a higher-level court. Given the smaller nature of the crimes that are typically dealt with at this level of court, the maximum sanctions are usually fines of $2,500 or less and possible jail terms of one year or less. This level of court is the largest level since it is at the bottom of the pyramid and it is typically this level of court that is the most run down in terms of appearance and over docketed in terms of scheduling. Some critics argue that given the backlog of cases at this level of court, and how long it takes for a case to get settled, that the process is often more punishing than the punishment itself. If in fact the “process is the punishment” then the question arises are we punishing only those who are guilty or are we also punishing those who are innocent and wish to have their rights upheld within the courts?

Some criticisms of the American courts are the overcrowded dockets or in other words the inability to schedule cases quickly, as well as the critiques that there are too few jury trials, too many inducements to plead guilty, that we are experiencing assembly-line justice, and speedy trials are unattainable. Despite the criticisms of this level of court this is where majority of cases are handled. If you recall the wedding cake model shared in an earlier chapter you will see how since most crimes are of a minor or misdemeanor nature as illustrated by the bottom layer of the wedding cake, so too most crimes will be heard at the lower level of the pyramid court structure.

Courts of General Jurisdiction

As we move up the pyramid structure of the courts, this higher level of court is fewer in number. There are about 2,000 general jurisdiction or felony courts in the United States. Given the serious nature of the crimes referred to as felonies, the crimes typically are in violation of state law not a simple city ordinance and so these courts are controlled by state law. At this level of court, we see both the preliminary activities for felonies and serious civil cases, if this was not taken care of at the lower level of court, as well as the trial for both felonies and serious civil cases.

Appellate Courts

In order to ensure that, the rights of the defendant are upheld and not violated within the court room, it is possible to appeal a case if it is determined that the defendant’s constitutional rights were violated or the judge made a grievous error in the handling of the case within the court room. A person cannot appeal their case simply because they did not like the outcome, there must be an allegation that constitutional rights were violated.

An appeal is typically not a new trial. Rather a higher-level court reviews the proceedings from the previous court and looks through the written documentation for procedural errors, judicial errors, or other violations of constitutional rights. Just like a consumer might ask to talk to a workers supervisor if they feel that they are not being treated fairly by the worker, in order to ensure fairness a defendant can petition the court to have their case reviewed in an appellate court. The appellate court has several different options for decision. If they feel that justice was not served they can order a new trial to be held at the lower-level court. Depending on what the appellate court finds they may decide to allow the defendant to go free without redoing the trial. The appellate court could instead decide to sustain or uphold the original verdict if they did not find any errors or violation of rights.

Image 7.3

Within some states and at the federal level there are actually two levels of appeals courts. At the state level, the highest level of appeal court is usually the state Supreme or state Superior Court. At the federal level, there is a circuit Court of Appeals with the second level being the US Supreme Court. Some people think that a solution to how long court cases can take and to rid the backlog in the docket is to get rid of the appellate courts. It is important however that our court system is careful not to violate the constitutional rights of citizens thus necessitating an appeal process. Additionally, only about 17% of the appeals at the federal level are criminal in nature or criminals trying to get out of their charges. The vast majority of appeals which are taking up the court’s time are civil in nature and pertaining to lawsuits. This fact is part of the argument in saying that America is a lawsuit happy society.

Federal Court Structure

There are three basic levels to the federal court structure. At the bottom level are the US District Courts, above that are the US Courts of Appeal, and ultimately the pyramid ends with US Supreme Court.

United States District Courts

There are 94 districts throughout the United States so each state is covered by at least one Federal District Court. This is the primary trial court of the US federal system. These courts have jurisdiction over federal cases, disputes between states, and cases involving aliens or persons from another country. At the federal level these courts are usually operated by a judge with no jury. In complex civil cases, there may be a three-judge panel.

United States Courts of Appeal

At this level of court there are 13 jurisdictions. Multiple states may fall within a single jurisdiction but every state does fall within a jurisdiction. This level of court was traditionally called a circuit court as the federal judges would ride in a circuit to get to the various court houses in their jurisdiction. In modern times with our large number of cases judges no longer ride in a circuit but instead they are headquartered at a particular court which is usually housed in one of the major cities within their jurisdiction. Since this is an appellate level court they typically do not try cases but instead review the transcript from the lower courts. In particular, the appellate judges are looking for violations of citizen's constitutional rights within the lower courts.

United States Supreme Court

The US Supreme Court is referred to as the highest court in the land since it stands at the top of the pyramid and it is a citizen's last chance to obtain justice if they feel it has been denied them in the other courts. Typically, the US Supreme Court serves as an appellate court but there have been moments in US history when it has served as a trial court instead. Given the important nature of the cases at this level and the fact that a decision by the Supreme Court affects not only the case it is looking at but all similar cases housed anywhere in the country these decisions do not rest in the hands of the single judge. Instead, the Supreme Court is served by nine justices one of which is referred to as the Chief Justice and the other eight are referred to as Associate Justices. All justices are entitled to one vote regardless of their rank and all justices serve for "life."

Given the large volume of cases that rise to this level the justices do not hear all cases. In fact, they do not hear most cases. The full court hears on average about 100 cases per year which they deemed to be of national significance. If they choose not to hear a case that in a way is a decision as what ever the last decision was on the case stands, even though the Supreme Court did not look at it. In order for a case to be selected to be heard by the court four justices must vote in favor of hearing the case. If there are not four judges which agree to hear the case, then the case is not heard, and the previous decision stands. The Supreme Court issues a writ of certiorari when a case is selected to be heard. When the judges write out their decisions on a case all points of view are represented within either the majority, the minority, or the dissenting opinions. It is important to understand the justices' rationales as these decisions become precedents for future cases. These decisions also leave their mark across the country and so key decisions are often referred to as "landmark" decisions.

Image 7.4

7.4: Judges

Judges

Image 7.5

Duties

Regardless of their age, the judge is always the senior officer within the court room. It is the judge's obligation to oversee the conduct in the courtroom so as to maintain an orderly courtroom environment. It is the judge that settled questions of evidence and procedure, as well as guides the questioning of witnesses, and instructs the jury about long before they reach their decision. When a jury is not used then the judge needs to ultimately decide on guilt in what is known as a bench trial. It is typically also the judge that the sides on the sentence which includes decisions about the type of sentence, the length of the sentence, and any special conditions such as to stay away from drugs or alcohol, that are part of the sentence.

Judicial Qualifications

The qualifications to be a judge, other than a Supreme Court justice, vary from state to state. The qualifications also vary depending on if you are a municipal court judge compared to a federal appellate judge for instance. Typical qualifications include: being a resident of the state or jurisdiction that you are serving, being licensed to practice law, being a member of the appropriate state bar association, and being at least 25 years old but less than 70 years old.

Judicial Selection Systems

The methods of selecting a judge also vary from area to area. Some areas select their judges through elections. Some jurisdictions choose to have partisan elections where the judge must be a member of a dominant political party while some jurisdictions allow judges to be elected while not being a member of a particular political party, which is known as non-partisan elections.

In some jurisdictions, they do not want to rely on the election process and instead their judges are appointed. Other jurisdictions feel that the appointment of a powerful judge by people in power does not seem fair and so their judges are chosen by a panel. Many states have moved to using the Merit Plan which was a method first derived in Missouri which uses a combination of appointment to the ballot and then election by the people of the screened judges who made it onto the ballot. At the present time, the merit selection method is the predominant method used followed by non-partisan elections.

Image 7.6

Court Administrator

In larger jurisdictions another key member of the court is the court administrator. A court administrator typically has more authority and obligation than the usual "clerk of court" found in many jurisdictions. A court administrator not only handles the administration and docketing of cases, but they are also responsible for the hiring, retention, and promotion of all courtroom personnel from the janitorial staff to the secretaries, they are responsible for the maintenance and upkeep of the facilities, for all purchasing, for all financial records, and they serve as an important liaison between the courts and the general public. A person in this position does not need to have a law degree but they do need strong public administration and management skills.

7.5: Technology

Technology

Current technology can also help with the administration and management of modern court systems. Computer networks can aid with the rapid retrieval and storage of key legal documents. Electronic recordings can be used as evidence, they can be used help capture the testimony of children in a less formal setting than the courtroom, video technology can be used in the arraignment of individuals currently housed in a jail facility, and some jurisdictions are experimenting with the electronic recording of trial records. Fax technology can also improve the efficiency and speed of document retrieval and sharing such as when a warrant is issued and the officer can retrieve it without leaving the scene.

Alternatives

It is also important to be aware that there are alternatives to the traditional American court system. Some alternatives include things such as dispute resolution and conflict mediation. These types of hearings are usually held in quasi-official settings and both parties agree to follow whatever ruling is decided. This type of alternative is usually used with more minor cases. In the realm of civil law settlement conferences are often used as this allows negotiation between teams of lawyers resulting in an out-of-court settlement. Some jurisdictions are expanding the courts that are offered and are developing specialty courts which focus on one type of criminal act only and often have expanded or evening hours to make best use of the facilities available. Typical specialty courts include gun court, drug court, and domestic violence or family violence court.

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Figure Citations

Figure 7.1 Police, Courts & Corrections

Figure 7.2 Layer of Courts

CHAPTER OVERVIEW

8: Prosecution and Defense

8.1: Learning Objectives

Learning Objectives

- Understand the role and duties of the prosecutor.
- Recognize the role of prosecutorial discretion in the justice system.
- Explain the political influences on prosecutorial discretion.
- Discuss the concept of constitutional right to counsel.
- Describe the different types of defender services.
- Describe the role and duties of the defense attorney.
- Understand the issues involved in legal ethics.

Now that we have examined the structure of the courts in the United States, and examined the role of the judges within them, it is time to look at the other two key court system roles namely prosecution and defense. We will first look at the party that represents the people of their jurisdiction—not just the victim. The role of bringing the case forward on behalf of the people lies with the prosecution.

8.2: Prosecutor

Prosecutor

The prosecutor is usually the most visible member of the court system. They usually are a member of the practicing bar and they achieved their position either through political appointment or election, depending on the jurisdiction. While they are obligated to work with others in the courtroom, their primary duty is to bring the government's case against the accused on behalf of the members of society. The title the prosecutor carries depends on what level of government they serve. Typically, prosecutors are referred to as attorneys since they can prosecute a case but they can also serve as an attorney for the government in drafting laws and other documents. So, prosecutors at the county level are known as "County Attorney," at the state level they are referred to as "State's Attorney," at the district level "District Attorney," at the federal level "US Attorney."

Politics and Prosecutors

Prosecutors usually secure their position through either political appointment or election. Either way politics is involved with their physician. Often there is political pressure on prosecutors to win their cases at all costs and sometimes even to the heart to help their party, and themselves, win the next election or to continue the security of their appointment. While there may be political pressures to win at all costs or to push a certain type of case, such as drug dealing or suspected terrorist activity, even when there is not probable cause—such political pressures often are not ethical. Ethically, prosecutors are not out to win cases but rather to do justice. For instance, if the prosecutor discovers evidence that the accused is innocent ethically they must bring it forward not hide it to win their case. Thus, justice is more important than winning. This emphasis on justice not only prevents the railroading of potentially innocent defendants but it is also focused on keeping society safe from true criminals.

8.3: Prosecutorial Duties

Prosecutorial Duties

The prosecutor has a number of duties in addition to appearing in court.

Enforce The Law

One of the prosecutor's main duties is to enforce the law. This is a broad ranging duty which means they may cooperate in investigations, they may initiate special investigations as needed, and they interview witnesses. They may also be involved in training police officers, or probation officers, or even parole officers in the proper way of obtaining warrants and proceeding with revocation hearings. It is the prosecutor who also makes the important decision in deciding what charges, if any, will actually be filed against the potential defendant and their decision may or may not be the same as what the police felt should happen. They also may be view applications for both search warrants and arrest warrants.

Represent The People

As mentioned earlier the prosecutor does not directly represent the victim but rather they represent the government, or in other words the people, of the jurisdiction they serve. As part of this duty they participate in numerous pretrial hearings and various motion procedures they also represent the government if any cases are up on appeal.

Maintain Proper Standards

Given that the prosecutor is one of the most visible members of the court system it is important that they maintain proper standards both in the courtroom as well as outside of it. Being professional means that they should cooperate with courtroom workers in a professional capacity whether they agree with them or not, it is also important that they conduct a proper trial, that they not be overly politically persuaded in their decisions, and that they not withhold evidence.

Develop Programs and Reforms

Since the prosecutor is serving for the benefit of the people, it is important that they think about changes in the laws which would help the people. For instance, often the prosecutor's office is involved with victim advocate program or witness protection program and so on. Additionally, if they encounter laws that are outdated and need to be removed from the box or changed in some way the prosecutor is in the perfect position to bring this issue forward.

Public Spokesperson

Since the prosecutor serves for the people, it is also important that they are willing to address various civic groups who wish to learn more about the courtroom process or various laws. They should also develop mechanisms to solicit input and take time to listen to business as well as citizen legal or law related concerns in their community. While interacting with the public they must always remember that while in the public eye they are representing the entire court component of the criminal justice system. Many citizens will form an opinion about the criminal justice system based on their interactions with the prosecutor's office or on the image of the prosecutor in the public media.

8.4: Prosecutorial Discretion

Prosecutorial Discretion

Given the broad range of duties and the types of decisions the prosecutor must make, similar to the police, this agent of our justice system exercises a broad range of discretion. The prosecutor will exercise their discretion at many of the staff in the criminal justice process. One of their first decisions is in deciding who to prosecute and whether they will file formal charges or perhaps drop the case. They also make discretionary decisions whether or not to enter into a plea bargain for push for trial. If they win the case, they also use their discretion in trying to decide what type of sentence to recommend to the judge.

Positive Discretionary Factors

These prosecutorial decisions should be based on sound legal reasoning and the decisions will vary from case to case. For instance, some cases have very strong evidence whereas in other cases perhaps evidence is not strong and there may be problems with witnesses. The prosecutor will also base their decision on whether or not there were due process problems encountered in the case, whether or not the defendant is willing to plea on another case as well, if there are alternative sanctions available which are appropriate, and so on.

Negative Discretionary Factors

While most prosecutors use their discretion in logical and legally appropriate ways, this variability in decision making can be influenced by bias and other negative factors. A possible negative factor for instance might be the demeanor of the defendant. While an average person might be easily swayed by someone who seems really sorry for what they did, a true legal professional will leave the determination of guilt or innocence to the court process rather than making that decision themselves based on defendants tears, which of course may be very fake. Reaching a decision in a case based on whether or not it will attract political attention for their own reelection for the benefit of their political party would also be a negative on ethical factor. Using their role and power to be vindictive, or get even with, a particular race or group of people would also be an unethical use of discretion.

8.5: Defense Attorney

Defense Attorney

The other key player in the courtroom is the defense attorney. The defense attorney serves as opposition to the prosecutor. While the prosecutor is trying to convict the defendant, the defense attorney is attempting to defend the defendant. In defending the defendant, the role is not always to obtain a verdict of not guilty, but rather to make sure that the accused has a fair court process wherein all their rights are upheld. The rights of the defendant are stated in the US Constitution. Thus, the defense attorney is in upholder of the constitutional rights of the accused. Even the right to have a defense attorney is stated in the sixth amendment to the Constitution. While the defense attorney is to zealously defend their client, they must also balance their duties to the accused with their duties to legal ethics. The defense attorney can be a private attorney hired by the client or they may be a public defender who is hired by the government to offer services to indigent or poor citizens that cannot afford an attorney themselves.

8.6: Defense Duties

Defense Duties

The defense attorney has a number of duties since they need to examine the case from the very beginning. They cannot rely solely on the information provided by a police report are coming from the prosecutor's office as obviously that information will have a particular slant to it that will not be in support of their client.

Investigate Incident

The defense attorney needs to approach their case from their own perspective which means that they must begin at the beginning. One of the first beginning steps is to investigate the incident beyond what is described in the police report. What are the questions that the police did not ask and are there other witnesses available that the police chose not to use in pushing forward their agenda. There are usually at least two sides each story has and they need to develop the other side.

Interview All

The defense attorney should also interview all parties involved including their client, as well as the victim, and any others that can share information that is relevant or a professional point of view that is in opposition to the prosecutor.

Discuss with Prosecutor

While the prosecutor is the opposition, it is important that a good defense attorney be professional and interacts with the prosecutor when needed. By interacting with the prosecutor, information about the prosecutorial point of view on a case can be obtained which can then help guide strategy with the case. It may also be possible to make plea bargain arrangements which can then be presented to the client for their consideration. The decision whether or not to accept a plea agreement always rests with the defendant though they will likely ask their attorney what they would recommend.

Represent

The attorney should represent the defendant at all procedures both pretrial and during the trial. During the pretrial stages assistant should be provided in terms of filing motion and obtaining subpoenas as well as assisting in deciding on a plea and if there are any possible plea bargain arrangements. If the case goes to court the defense attorney must prepare their side of the case as well as represent the defendant during the actual trial.

Assistance

If the defendant is found guilty, the defense can still provide assistance at sentencing. Not only should they be present at the sentencing to offer moral support to their client but prior to sentencing they can also suggest alternative sentencing or lesser sentencing options to the judge compared to what the prosecutor might have recommended to the judge. Even after the sentencing, the defense attorney can provide assistance to their client by determining if there is a basis for appeal of the case if they think the defendant's rights were violated or there were significant judicial errors.

8.7: Indigent Defender Systems

Indigent Defender Systems

It is important in a democratic society that all are treated equally in the eyes of the law. Thus, it is important that regardless of one's financial status all citizens that are accused of crime should have the right to legal representation. This representation serves as a type of equalizer between the power and resources of the state versus that of the defendant.

In order to provide legal representation to those who cannot afford it themselves different jurisdictions have developed different systems to handle this need. There are three main indigent defender systems: public defender system, assigned counsel systems, and contract systems. Some jurisdictions also mix these systems and have more than one method which they use.

Public Defender Systems

The public defender system is used primarily in larger urban areas where the demand for government appointed defense attorneys is consistent and rather high. This method is used in only about 34% of the court systems yet it covers approximately 68% of the American population. In the larger metropolitan areas there may be an entire office of public defender attorney similar to a law firm.

Two of the key differences with this model are that the only clients that these attorneys serve are alleged criminals, and their salaries are paid not by their clients but with tax dollars. Typically, public defender offices are organized along county or state lines. The lawyers that work in the public defender office tend to develop extensive expertise because of their daily contact with criminal law.

Assigned Counsel Systems

There tend to be two possible kinds of assigned counsel: ad hoc and coordinated. With both of these methods there are not full-time attorneys always on staff but rather, attorneys in the community will be chosen to be assigned to particular cases, if the attorney agrees. The ad hoc method is often found in smaller communities where there are not a lot of criminal cases. When the need arises, attorneys in the community will be randomly selected and asked if they will be willing to be hired for the case, until one of the attorneys accepts. With the coordinated method typically there is a list prepared in advance of attorneys who have stated their willingness to take on these criminal cases and one of the attorneys off the coordinated list will be contacted.

With this assigned counsel method it is possible to obtain one of the best attorneys in town however, since typically the fees paid by the government are quite low usually it is the attorneys with little experience which accept the offer to serve. Also with this method, there are no supportive services such as secretarial support staff or investigators that are provided.

Contract System

As the title implies, this method is based upon a contract, for an entire year. With this method a jurisdiction keeps track of the number of cases typically defended in a year as well as the estimated cost per case. This information is then shared with the local attorneys who are invited to submit a closed bid to the government of how much they would charge to handle all the criminal cases for the upcoming year. Whichever attorney or firm provides the lowest bid, they will be selected to represent the cases for the next year.

With this contract method, it is possible to obtain a very good local attorney or firm which wishes to have more exposure with criminal law. On the other hand, it is also possible that you get what you pay for and by always going with the lowest bid the representation may not be the best available.

Mixed Systems

In a mixed system, both public defenders and private attorneys are used. Typically, there will be a mixed system when the public defender caseload is too high and the government needs to temporarily bring on extra attorneys. A mixed system may also be necessary if there is a conflict of interest with the existing public defender. Occasionally, a mixed defender system may be necessary if there are a number of codefendants and they each need separate counsel and there may not be that many public defenders on staff so again a private attorney will need to be hired to temporarily.

8.8: Costs of Defending Indigents

Costs of Defending Indigents

The costs of defending indigent defendants can be quite high. Additionally, the number of cases involving indigent defendants is increasing. It can be quite difficult to find attorney which are qualified and willing to accept the very low fees offered when they could be earning more in private practice. One possibility to improve the quality of attorneys hired for indigent defendants is to increase the funding available.

However, most government officials see funding these programs as politically unpopular. It can be a challenge to explain to the citizenry that their tax money is being used to both apprehend alleged offenders and prosecute them as well as defend them. However, it is only when both opposing teams bring their best effort into the court room that the actual truths of the case will become evident to the jury or judge and justice can truly be served.

8.9: Ethical Conflicts of Defense

Ethical Conflicts of Defense

There are challenges facing government paid defense attorneys. One of the challenges is that you are paid by the government and yet your duty and obligation is to the person accused by that same government. The lack of experience by many defense attorneys willing to accept the low fees can raise ethical questions about the quality of representation provided. Many public defenders use their experience in the office as a steppingstone toward higher achievements in their career which may detract from their focus on the duties of the job at hand. The typical low wages, poor working environment, and low self-esteem from others in the legal profession may lessen one’s sense of professionalism and negatively effect the interaction with the client. Finally, many public defense attorneys have very high caseloads and so they struggle with balancing the demands of these caseloads with the opportunity to provide in-depth counsel to some but not all of their clients.

8.10: Other Court Personnel

Other Court Personnel

Before we move on to the next chapter wherein we talk about pretrial and trial procedures, it is important to note that there are several other court personnel which also help the courts run smoothly. These additional personnel typically include the clerk, the bailiff, and the court reporter.

Clerk of Court

The clerk of court may not always be present in the courtroom but they often run the show behind the scenes. Typically, the clerk of court has a range of duties and responsibilities such as maintaining and updating all the files handled by the court. They typically collect fines and other payments to the court as well as determine when an individual is to be considered indigent. The clerk also is typically in charge of the judge's calendar and they are in charge of scheduling cases on the docket as well.

Bailiff

Typically, the bailiff is uniformed law enforcement personnel who are present to provide security for the judge and everyone in the courtroom. In many court houses there may be more than one bailiff. There may be a bailiff near the metal detectors which are typically near the entrance of the courthouse and there may be one or more bailiffs present in the hallways of the courthouse as well as at least one bailiff present in the courtroom.

Court Reporter

The court reporter seldom interacts with the members of the court yet they observe and record all that is said for the record. Many court reporters use a special machine which helps them take shorthand notes and therefore make accurate typed recordings of the proceedings. Occasionally, the court reporter may be asked to read something back, out loud, word for word, to the courtroom. An accurate transcription of the entire proceeding can provide very important documentation if the case comes up on appeal or as precedent for other cases.

8.11: Image Citations

CHAPTER OVERVIEW

9: Pretrial and Trial Procedures

9.1: Learning Objectives

Learning Objectives

- Understand the importance of pretrial procedures.
- Identify the various pretrial procedures.
- Understand the concepts of preliminary hearings and grand juries.
- Discuss the advantages and disadvantages of the various types of pretrial release options and bail systems.
- Identify the different types of pleas.
- Explain what is meant by the term "plea-bargain."
- Explain the factors affecting the decision to plea-bargain.
- Explain the role of the prosecutor, defense attorney, defendant, and judge in plea negotiations.
- Understand the concept of the trial process.
- Know the constitutional amendment regarding the trial process.
- Know the rights involved with the trial process.
- Explain the steps in a jury trial.
- Identify the different ways that evidence is presented in criminal trials.
- Know the various forms of evidentiary standards including proof beyond a reasonable doubt.
- Identify the various possible verdicts.

Now we are ready to take a look at the steps both before as well as during a typical trial process. While most individuals are somewhat familiar with the trial steps, due in large part to the number of legal shows available on television, often very little is known about the steps that take place before the trial. An understanding of these pretrial steps is very important since the majority of cases are settled during these steps instead of going to a full formal trial.

9.2: Pretrial Procedures

Pretrial Procedures

The exact pretrial procedures will differ depending on the level of court, the area of country one is in, and especially whether the charge is a felony or misdemeanor. Typically, misdemeanor charges are less serious and so many of these cases are handled more quickly and more informally than felony cases.

Typical pretrial procedures are: arraignments, grand jury investigations, bail hearing, pleas and plea-bargaining, and predisposition treatment efforts. Typically in misdemeanor cases a grand jury investigation is not necessary and treatment efforts might be sought. In felony cases a grand jury investigation may be held and usually treatment efforts are not sought.

9.3: Pretrial Release Options

Pretrial Release Options

Since the pretrial and trial steps they take up to a year, and the individual being charged is presumed innocent until proven guilty in the eyes of the law, the question of what to do with the defendant in terms of keep them in the custody of the government or allow them to be released may come up numerous times.

(ROR)

One option is known as Release On Recognizance (ROR). This option is similar to when someone receives a traffic citation. The person receiving the ticket is told to either pay the ticket or show up in court on a certain date. The person then gets their word of honor and signs the form. In essence, the system is trusting the citizens to follow through on their obligations. When the charges are minor or the person is a trusted individual in the community often they will be released on their word of honor that they will return to the court when called upon to do so.

Third-Party Custody Release

Another option is to release the individual into the custody of another such as the defendant employer or attorney or family member. This third-party is then responsible to oversee the behavior of the defendant and to ensure that the defendant returns to the court when called upon to do so.

Conditional Release

Another option is to release the individual based on certain conditions. A typical condition is the payment of a certain amount of bail money. If the defendant posts the required amount of money they will be released. If the defendant cooperates and returns to the court when called upon to do so the bail money will be returned to them at the conclusion of the trial. If the defendant fails to cooperate or return to the court they will forfeit all right to the money that they posted and a warrant will be issued for their arrest.

Supervised Release

In this context supervised release refers to the defendant being released into the community but at the same time being supervised by members of the criminal justice system. For instance, someone may be released but then told they must stay at home at all times other than for work or court or health appointments. This particular option is often referred to as house arrest. Another option is that the individual may be supervised by a probation officer, particularly if they were already on probation, and need to meet with them regularly until the conclusion of the court proceedings.

9.4: Arraignment

Arraignment

Whether the defendant is on some form of pretrial release or remains in custody, one of the first pretrial steps is that of arraignment. The arraignment is often referred to as the initial hearing or the preliminary hearing or pre-lims for short. This particular hearing is an open proceeding conducted before a judge.

Both the prosecution and defense will attend the arraignment the accused are advised of their right and rules of evidence apply. It is possible so unlikely that witnesses may be confronted. If the accused cannot afford an attorney assigned counsel will be provided for them. Once the accused have counsel, if they wish it, they will be asked how they plead to the charges against them which are read out loud to the court. The defendant will make their plea and the judge will decide on whether to bind the case over for trial. The possible pleas are: guilty, not guilty, nolo contendere, and not guilty by reason of insanity.

9.5: Pleas

Guilty

If the defendant pleads guilty, there will be no need for trial or all of the steps involved. The plea must be entered verbally by the defendant or their attorney. The judge will inform the accused that they will lose their right to a trial but maintain their right to counsel and they will also inform the consequences of being found guilty and the possible sentences they face. Once the judge establishes that the plea is voluntary, the defendant may be sentenced immediately or a date for a sentencing hearing may be set. The decision to allow the individual to remain in the community since they have admitted their guilt may be revisited.

Not Guilty

With this plea the defendant is denying guilt and maintaining their innocence. Even if the person is not innocent but they wish to have the chance to have a trial to explain the circumstances, they will likely plead not guilty. If this is the plea, the case will move forward to the next steps and the trial date will be set. The decision whether to allow the individual to remain out on release to prepare for their trial, may be considered again.

Nolo Contendere

This plea is similar to the guilty plea because it basically means that the individual is not going to fight the allegations against them. While this plea is similar to a guilty plea in criminal court the important difference becomes evident in civil court. If one admits guilt in criminal court it would be easy to sue them and probably win civil court. With the plea of nolo contendere while the individual will not fight the charges in criminal court, they have not actually admitted guilt and therefore have grounds to fight any lawsuit in civil court.

Not Guilty by Reason of Insanity

While this plea has been made popular in Hollywood productions it is actually used in less than 1% of cases. In that 1% of cases it typically is successful less than .5% of the time. It is difficult to get both prosecution and defense to agree that the defendant is insane and even if both parties agree, this plea is not always successful.

9.6: Grand Jury

Grand Jury

If the defendant is accused of a felony and or is a notable individual the preliminary step of a grand jury may be used even before the initial hearing. The idea of a grand jury is derived from the Magna Carta. The idea is that a group of citizens representing the people of the area will determine if probable cause exists for the accused to be bound over for trial.

The grand jury session is controlled by the prosecutor and is a closed and secret deliberation not in open court. Because this hearing is held by the prosecutor and neither the accused nor their attorney are allowed to attend it is considered a one-sided procedure. Initially, this step was meant to serve as a checks and balance of government powers over accused citizens.

Many individuals question if this is a necessary step in modern times as it is costly and creates delays for the court system. Additionally, many individuals question if a random group of average citizens would tell the prosecutor that they do not have a case when they are trying to convince the citizens that they do. This grand jury does not determine guilt or innocence they only determine if there is probable cause for the prosecutor to continue prosecuting the case.

9.7: Bail

Bail

With pretrial release of any form, at issue are the sometimes conflicting rights of the accused to be free before trial, and the need of the state to protect citizens from the accused prior to trial. One method of trying to ensure that the accused will cooperate and not harm citizens is the use of money or other form of security which is offered as a guarantee by the accused. This offering of money as a guarantee that the accused will return for all trial procedures if released from custody now, is often called bail.

Some people mistakenly assume that citizens are guaranteed the right to bail. While bail is mentioned in the eighth amendment to the constitution it does not guarantee the right to bail but rather it states that if bail is granted it should not be excessive. So basically, if the crime is small the amount of bail should be small but if the crime is serious, bail could be set high or denied completely. Bail is not a punishment because at this phase of the court steps the individual is still presumed to be innocent.

Problems with Bail

While bail is a creative way to attempt to ensure compliance, it is not without problems. One problem is that not all individuals can afford bail even when it is set relatively low. Another problem is that some individuals will run away or abscond when released and it is often hard to predict which individuals this will be. Worse yet is when individuals continue to commit more offenses while they are out on release.

Bail bonds persons make their living off the plight of the poor individuals caught up in the criminal justice system. If a poor individual cannot make their full bail payment they can make arrangements with bail bonds persons who will make the payment on their behalf. The problem in that the person that can afford the bail payment will have their bail returned to them at the end of court proceedings. On the other hand, those who paid the bail bonds person will not have their money returned even if they are found innocent in court.

Because of the expense of bail many individuals both guilty and innocent await their trial by remaining in jail. This means that potentially innocent individuals are being punished before their chance to prove their innocence and given that some jails are very dangerous, these dangerous conditions may be imposed on innocent people as well.

Bail Reform

To counteract some of the problems with bail, some jurisdictions are looking at family ties and work history in order to expand the use of ROR. In other jurisdictions they are developing bail guidelines which offer suggested rates of bail based on the lifestyle, in terms of prior criminal history, and the offense of the accused in order to limit judicial discretion and overly high or low bail amounts.

9.8: Plea Bargaining

Plea Bargaining

A key element of pretrial justice is the concept of plea-bargaining. A plea bargain is an arrangement to exchange a plea of guilty for either prosecutorial or judicial discretions. This arrangement can take place during the pretrial steps or occasionally during the trial stages. It is estimated that 90% of all convictions occur because of plea-bargaining.

Concessions of Plea-Bargaining

Some of the concessions that are offered in exchange for a plea of guilty can include a reduction in terms of the initial degree of the charges. Whether the jurisdiction uses a category such as1, 2, 3 or A, B, C to denote the severity of the charges the option to lessen the severity of the charges can serve as an inducement to plead guilty. The number of charges against an individual might also be reduced. So if an individual was being charged for three burglaries the prosecution might offer to charge them with only one in exchange for a guilty plea. The prosecution might also recommend to the judge that the individual receive a lighter sentence. While the prosecution is in charge of determining what the charges will be at the number of charges they are not in a position to guarantee what sentence a judge will hand down. Less typically, the prosecution may also offer to rename the charges so that a drug possession offense might be changed to disorderly conduct a student will not lose their financial aid. Occasionally, the prosecution may agree to move the case to be heard in front of a judge that is known to be more lenient.

Pro and Cons

In deciding how you feel about the concept of plea-bargaining and if it helps us attain justice and may be helpful to look at some of the pros and cons. On the pro side being able to obtain a guilty plea without having to go through a full trial greatly reduces costs and improves the efficiency of courtroom procedures. By allowing prosecutors to decide to offer a plea bargain on left serious cases this can free up some of their time to focus on more serious cases that they wish to push to a full trial. Additionally, by working with the defendant in reducing their charges and obtaining the guilty plea the defendant can avoid pretrial detention and the court can avoid delays.

In terms of the cons plea-bargaining encourages defendant to waive their constitutional rights to a trial. Offering this procedure to some people but not all may result in lesser sentences for those that are offered plea bargains and result in sentencing disparity compared to those that are not offered a plea bargain or who turn down the plea bargain because they wish to have a trial. This form of intense negotiation may also coerce many innocent people to plead guilty in order to avoid the more severe sanctions they could face if they insist on a trial and lose.

9.9: Plea-Bargaining Factors

Prosecutorial Plea-Bargaining Factors

For a plea-bargain to take place, the prosecutor must decide whether or not to offer such a bargain. Some factors which will affect the prosecutor's decision include the seriousness of the offense, the attitude of the victim especially in terms of if they wish to avoid trial, as well as the type, strength, and admissibility of evidence available in a particular case. If you have a weak case that you might lose in trial it might be better to get a guilty plea on a lesser charge so at least there will be some accountability. The prosecution may also consider the defendant's prior record if any and their current age. All prosecutors must operate within their own departmental guidelines and occasionally the defense will approach the prosecution with an additional type of settlement such as information on another more dangerous criminal in exchange for leniency in their case. Several studies have found that prosecutors in areas with low population are more likely to take the time to plea bargain with defendants.

Defense Plea-Bargaining Factors

If the prosecutor offers a plea-bargain the defense attorney needs to make sure that their client understand what the agreement entails as well as the fact that there then will be no trial. While it is not up to the defense attorney whether to accept the plea bargain or not they will need to act as counsel offering advice to the defendant as they reach their decision. When offering advice typically the defense attorney will weigh the strength of their case with what they feel the strength of the prosecutor's case is to determine if they stand a chance of winning if they went to a full trial. While the defense attorney can certainly offer their opinion, the ultimate decision of whether or not to accept the plea bargain rests with the defendant.

Reforms of Plea-Bargaining

Some jurisdictions are reforming their plea bargaining process to make it more visible, understandable, and fair. Other jurisdictions are creating specific guidelines to guide the prosecutorial decisions. In any case, a plea-bargain requires judicial supervision and agreement about the process. Some jurisdictions are also placing limits on the process in terms of what crimes can be renamed or how many charges can be dropped. Some areas have experimented with eliminating plea-bargaining but typically it seems that the discretion still exists, it just moves, in terms of the prosecutors doing charge bargaining instead of plea-bargaining or the judges having a greater role in the determining of sentencing.

9.10: Pretrial Diversion

Pretrial Diversion

In some misdemeanor cases it may be decided that rather than push a criminal prosecution if the individual agrees to obtaining treatment, or counseling, or participating in an employment program, and so on, the trial may be temporarily postponed. If the individual successfully completes their treatment and the charges are dismissed the individual can avoid the stigma of conviction, this reduces the cost to the system, and it alleviates jail and prison overcrowding. If the individual does not follow through on the agreed treatment program then the trial can resume as soon as it is scheduled.

9.11: The Trial Process

The Trial Process

Once the pretrial steps are completed, if appropriate, the case will move on to the trial process. The basic rights to be maintained during the trial process are included in the Sixth Amendment to the constitution. It should be pointed out that only about 5% of all cases are actually heard by a jury trial. About 3% are bench trials, heard in front of a judge without a jury.

Right To a Jury Trial

The defendant is allowed to choose whether they would like their trial in front of a jury or the judge. The types of cases which allow for a jury vary. Jury sizes also vary from 6 to 12 jurors with 12 being the norm. Despite the number of jurors typically the decision must be unanimous. The jurors are chosen from the community wherein the trial is held after going through a selection process “voir dire” wherein both the defense and the prosecution has some say in terms of who will be allowed to be on the jury. The members of the jury are two ways the different facts that were presented to them and only reach a conclusion of guilty if they felt there was proof “beyond a reasonable doubt.”

Right to Counsel

The right to counsel has already been discussed. If you can afford your own attorney you can certainly hire one. If you cannot afford an attorney then as per our indigent counsel discussion above one will be appointed for you.

Right to Self Representation

Just as an individual can choose to exercise their right to a jury trial or not an individual can choose to have counsel at trial or to represent themselves. This option is seldom used as most people are too emotionally connected to their case and are not as familiar with the law as an attorney would be. If an individual handles their own case they must conduct themselves in an orderly fashion. The judge can overrule this right at any time if they feel that the defendant is not fit to conduct their own defense.

Right to a Speedy Trail

The constitution does not specify a specific time for this stipulation. Most states have adopted statutes which define reasonable limits but it is understood that the other rights take precedent. Even though a trial would be more “speedy” if we did not take time to get an attorney, or pick the jury, obviously those rights are more important than speed alone. Even the federal government established the Federal Speedy Trial Act of 1974 to provide time limits the various stages of the adjudication process. Under this act defense counsel can be fined if it is determined that they are causing unneeded delays.

Right to a Fair Trial

In order for trial to be fundamentally fair, the case must be held before an impartial judge and jury in an environment of judicial restraint and orderliness with fair decision-making. Numerous Supreme Court decisions have pointed out things that are not fair such as a hostile courtroom cloud, prejudicial behavior toward the defendant, and improper pressure on witnesses.

Right to a Public Trail

While the public has a right to know what is going on during the trial and having the trial made public can ensure that we are protecting the defendant’s right by making a trial public we may be interfering with the defendant’s right to a fair process and our obligation to protect the accused from angry citizens. Trying to find a balance between these competing right is why sometimes judges restrict the press in the courtroom or at least restrict cameras and microphones. If there is too much adverse pretrial publicity the trial may be moved to a different location thus allowing it to remain public while hopefully also keeping it a fair trial.

9.12: Steps in a Jury Trial

Steps in a Jury Trial

In order to preserve all the rights discussed above, the following steps in a jury trial are followed.

Voir Dire

If the trial is to be a jury trial the very first step is jury selection or "voir dire."

Opening Statements

Next the prosecution presents their opening statements to the jury about the basic charges and facts as well as how they will proceed during the trial. It was determined that the prosecution should go first since they represent the people. Next the defense attorney will present their opening statements, basic facts and discussion of how they will proceed showing their point of view.

Prosecutorial Evidence

Now it is time for the prosecutor to present their evidence whether that is testimonial evidence from witnesses, real or physical evidence or other types of evidence such as circumstantial or indirect. It will be up to the judge to determine the admissibility of evidence based on whether or not they feel the material is relevant in helping determine the issues of the case. After each piece of evidence is presented by the prosecution the defense attorney can choose to cross-examine or not.

Directed Verdict

Once the prosecution is done presenting all of their evidence, the defense may call for a directed verdict. With a directed verdict the jury is asked to go make their decision before even hearing the defense side of the case. This step is typically only used if the defense is pretty certain that the prosecution did not really even have a case. If the jury decides on a verdict of guilty the trial continues if however the jury can decide not guilty then there is no need to continue the trial. Because of the risk of the jury coming back with a guilty verdict and needing to change their minds this step is usually skipped.

Defense Evidence

It is now time for the defense attorney to present their evidence. Again after each piece of evidence is introduced the prosecutor can choose to cross-examine.

Closing Statements

Then it is time for closing statements to the jury. The defense will go first with their closing arguments and the prosecutor typically goes last with their closing statements or summation.

Instructions to the Jury

Now the judge will provide instructions to the jury on any rules of law, evidence that should be considered, and a reminder about the standard of proof which is "guilty beyond a reasonable doubt."

Jury Deliberations

The jury will deliberate and vote. Sometimes the decision will come quickly and at other times it can take days. Once the jury has reached their decision they will return to the courtroom and pronounce the verdict. The verdict may be one of guilt in which case the judge will typically set a date for sentencing and ask for a presentence investigation (PSI) about the defendant in order to determine what an appropriate sentence would be. The verdict may be not guilty in which case the charges are nullified and the defendant is free to leave. Sometimes the jury may not be able to reach a decision in which case it is considered a hung jury. If the jury cannot reach a decision the prosecution can choose to retry the case or not.

9.13: Image Citations

CHAPTER OVERVIEW

10: Punishment and Sentencing

10.1: Learning Objectives

Learning Objectives:

- Understand the concept of criminal punishment.
- Know the different stages of punishment used throughout history.
- Identify the most common forms of punishment in the US today.
- Relay the common goals of punishment.
- Recognize the differences between concurrent and consecutive sentences.
- Discuss the concepts of determinate and indeterminate sentencing.
- Describe sentencing guidelines and their purposes.
- Understand the concept of mandatory sentencing.
- Explain the purpose of habitual criminal statutes and some of their weaknesses.

This chapter and topic provides the bridge between the court component and the final component of corrections. Once the defendant is found guilty whether that is by their own admission, through a plea bargain, as a result of a jury verdict, or a judge's decision—the state has the right or perhaps even a duty to impose a sanction or punishment. Ideas about what punishments are appropriate, have changed over time. In this chapter, we will take a look at some of the historical ideas about punishment as well as current trends in terms of punishment in the United States.

10.2: Classical Goals of Punishment

Classical Goals of Punishment

There is a lot of debate not only about what punishments should be, but also about the goals we are trying to accomplish through the use of punishment or treatment. If we think back to the primary theory that our justice system is established on Classical Theory, it pointed out that one of the primary goals of punishment was deterrence. According to the classical school, there are two types of deterrence (1) specific deterrence which focuses on the individual and (2) general deterrence which focuses on society. With specific deterrence the purpose of punishment would be to prevent recidivism by the convicted offender. With general deterrence the purpose of punishment would be to frighten other society members away from committing crimes themselves.

10.3: Historical Punishments

Historical Punishments

Historically, most punishments were harsh and physical. In some instances, the punishment started even before a finding of guilt, in order to torture someone to confess. Once they confessed to make the torture stop, the punishment was seemingly justified and so the torture/punishment would continue. It was theorized that if the offender lived through the punishment they would never commit the crime again and since most punishments were public all the citizens doing the punishment would also be deterred.

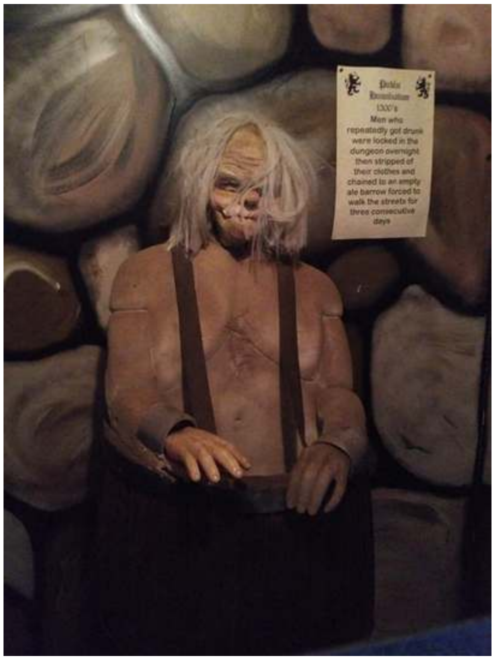

Image 10.1

Each of the European countries had various methods they used to physically punish citizens. Methods included various ways of burning, cutting, hanging, or beating the offender. Many of these punishments led to the death of the offender either somewhat quickly or sometimes much later due to blood loss and infection. Sometimes the death of the offender was planned but at other times it was just a consequence of the brutal methods used. It should be pointed out that in some countries around the globe even today their punishments are still harsh and quite physical.

Image 10.2

10.4: Contemporary US Punishments

Contemporary US Punishments

When speaking about punishment in the United States, most people think about prisons. While Americans do make extensive use of prisons this punishment option is neither the most common nor the most extreme. There are four primary categories of punishment in the United States today.

Fines

Fine, or the payment of money to the court, is one of the most common punishments. Many Americans have had to pay a fine for minor infractions ranging from speeding in their automobile to not paying the parking meter. Many minor infractions are punishable by fines. Many major infractions may have another form of punishment, such as jail time, but also include a payment that needs to be made to the court. It is thought that taking an individual's money has a deterrent effect and this emphasizes to the offender their responsibility to pay society back for the loss or harm that they caused.

Image 10.3

Community Sentences

There is a later chapter focusing on community sentences but for now we can explain that typically they entail a period of supervision within the community. During this period of supervision they may need to follow additional rules and will probably have some of their freedoms curtailed. For instance, they may need to stay away from alcohol and their car may not start until after they blow into an attached breathalyzer. It is thought that the restricted freedoms and enhanced supervision will deter the offender from future crimes and yet will allow them to continue living in the community.

Incarceration

Incarceration broadly refers to confinement in some type of a secure setting. The secure setting might be a treatment facility, a youth state school, a jail, a prison, or a halfway house or other facility. We will talk more about incarceration in a later chapter. For those that might be a threat to themselves or others, a secure setting restricting their access to the general public may be needed. Depending on the type of crime and severity, incarceration may be mandatory. It is thought that depriving an individual of their freedoms will have a deterrent effect and the time spent in the institution will allow this effect to sink in. Having institutions is also thought to scare others the way from doing crime because of the high cost this would have on them personally.

Capital Punishment

The most severe sentence in American society is a sentence to death, which is what capital punishment means. Support for capital punishment is not uniform within the United States or around the globe. In the United States, some states do not have capital punishment as an option, other states have it on the books but they have not used it in quite a while, and yet other states use capital punishment and have a number of people on death row. The Supreme Court has primarily limited use of the death penalty to first-degree murder with aggravating circumstances. There are number of arguments both for and against capital punishment. Current research does not support the deterrent effect of this punishment and so it is primarily a moral issue. One particular area of concern with this punishment is the disproportionate number of minority citizens on death row.

10.5: Historical Development of Punishment

Historical Development of Punishment

Over the course of time, methods of punishment have changed. Perhaps the changes occurred as humanity became more civilized and adopted a stronger sense of morality. Perhaps the changes came about almost by accident or in order to meet changing social conditions. Perhaps it is a little bit of both.

Greece and Rome

When examining the police and court components of our justice system we saw that we often borrowed the concepts from English history. When it comes to punishment, however, some of our methods are modeled on ideas present in historical Greek and Roman societies. These societies were an interesting contrast of some of the most barbaric methods of punishment, such as being thrown into a pit with lions, and also some of the more advanced methods of punishment such as a complex system of both fines and forfeitures.

Image 10.4

England

England primarily utilized harsh physical punishments. In the English society, one of the most serious crimes would be any kind of offense against royalty. A breach of faith with a feudal lord was referred to as a Felonia. The commission of a crime against royalty even something small such as poaching a deer out of their forest, was considered more serious than even the death of a commoner. In American society a felony is still thought of as a serious crime but it no longer has to do with one's nobility status.

Another advantage that England gave nobility was that they were often able to pay money in order to avoid physical punishments. Then, if you are wealthy you could buy your way out of punishment whereas if you were poor would likely become mutilated or killed. In some instances wealthy individuals could even make their servants take the punishment on their behalf and that way they themselves were not harmed, and they did not have to pay any money. Some people question whether wealthy individuals in American society are also treated differently than the poor, though it is not to this extent.

Image 10.5

Poor Laws

By the end of the 16th century England needed laborers to meet rising markets for new goods and to serve in sea duty in her Majesty's Navy. To obtain laborers they passed "Poor Laws" wherein it was against the law to be poor. In essence, poor citizens became slaves to the government because of their financial status. If convicted of being poor the citizens would be sentenced to hard labor where the government needed them to work.

New Colonies

As England established new colonies in America, Australia, and other places the colonies also needed labor. So the English government legalized deportation of its sentenced citizens. If the citizen lived long enough in performing hard labor overseas, they could eventually become free again so they would never be allowed to return to their home country or families. Men that were deported often worked on ships or in mines and women that were deported were forced into prostitution to serve officers or select inmates. Many of the sentenced individuals did not live for long even though their crime was not punishable by death.

Less Need For Labor

Eventually the colonies grew, machines were invented, and African slaves were imported so convict labor was no longer needed. Still many citizens were poor so England reverted back to the use of harsh physical punishment and death. By the end of the 18th century over 350 crimes were punishable with the death penalty.

Workhouses

For a small number of crimes that were not punishable by death, a common punishment was to put the poor individual into a workhouse. This workhouse was like an early form of jail. The idea was that the citizen would be held there until work could be found for them to complete in repayment to the government for the burden of them being poor. Not surprisingly, these workhouses soon became full and then overfilled. Some individuals that were to be sentenced to a workhouse were instead crammed onto abandoned ship and anchored out at sea, typically to die.

Penitentiaries

It was not until around 1820 when a new solution surfaced. The idea was to rename some of the workhouses as Penitentiaries. The concept of the penitentiary is a religious one. The idea is that the incarcerated individual would become penitent or sorry for what they have done and then turn away from wickedness and be a new and better citizen when they were released. So the solution to the overfull workhouses was to let people out of them after they stayed in it for a period of time. To sit in an institution doing nothing while waiting for work that never came did not seem logical. However, to sit in an institution becoming penitent may be a solution. This idea of locking a citizen in a penitentiary, or prison, or house of correction and then later releasing them, is still a common mode of punishment for serious crimes in America.

Image 10.6

10.6: Goals of Punishment in America

Goals of Punishment in America

Why do we punish offenders? There is no consensus on the answer to this crucial question. As a result the American system of justice attempts to accomplish six general punishment goals, some of which are rather contrary to one another.

1. General Deterrence

As previously discussed, the classical school goal of general deterrence is still held by many to be an important goal. The idea is that by punishing a particular individual many more society members are deterred from committing crime themselves. The key is thought to be that the punishment must not be too severe so as to be seen as unjust by the public but yet it must be severe enough to be a threat.

2. Incapacitation

The goal of incapacitation is to put the convicted individual under some type of control so that they will not recommit the crime and so that they are not a risk to society. It is difficult to predict which individuals pose a risk to society and which sanction will disable the convicted individual from re-committing the crime.

3. Specific Deterrence

As the classical school suggested, a primary purpose of punishment would be to deter the specific convicted individual from committing crime again, the preventing recidivism. The difficulty still is in determining the severity of the needed sanction and addressing the concept of certainty. If most people were convinced that they were certain to be caught if they tried a crime again, it is doubtful that they would do the crime. However, if a person thinks they can do a crime and not get caught, then deterrence is not as effective.

4. Retribution

Retribution refers to the idea of getting even, of making an individual pay, typically through some type of suffering, for the crime they committed. Based off the biblical notion of “an eye for an eye,” the thought is that the punishment should fit the crime. The difficulty is in determining what fair punishment is and if there is any way to pay back for some types of crime.

5. Rehabilitation

This goal is to provide treatment to the convicted individual that will allow them to eventually readjust to society and function in it in a legal way in the future. Since many individuals will remain in society or return to it once released, the thought is to provide them with treatment and skills which will allow them to succeed in the future without turning to crime. The juvenile justice system in particular is built on the concept.

6. Restitution

This goal focuses on the importance of paying back victims for the harm done to them. Typically, the restitution is in the form of a monetary payment though sometimes it is in the form of labor or other public service. Sometimes the convicted individual is to pay the victim directly for damage done to them or their property and other times convicted individuals pay into a general government fund which is then used to provide payments and services to a broad range of victims.

10.7: Choosing the Sentence

Choosing the Sentence

In choosing the sentence, the judge will be influenced by at least some of the goals mentioned above. In addition to the broad goals the judge can be influenced by many things such as: the Pre-Sentence Investigation (PSI), state statutes, and their own discretion.

PSI

Often, before determining a sentence, the judge will order a PSI or presentence investigation to be conducted, written up, and delivered to them. This investigatory report is typically prepared by a probation officer. The report will include details about the convicted offenders' background. These details may not have come out during the case as they were not necessary in determining guilt or innocence but they might be important factors in determining the sentence.

Some of the information included in the PSI report are things such as drug or alcohol problems in their past, employment history, educational history, if they have children, if they support their family, and so on. Information will also be collected about the victim and any concerns they may have such as, if leaving the offender in the community will pose a greater risk to them or not. Important information from police reports will be included, as will statements from any other individuals talked to for the report such as teachers, employers, and landlords.

State Statutes

The sentence that the judge is considering will need to follow the laws of the state in which the judge operates. If state laws have some type of mandatory minimum sentence for the offense committed, then the judge must honor that and select a sentence that is the minimum required by law or something more. We will examine state statutes in more detail in a moment.

Own Discretion

While the judge can use the factual information presented in the PSI, and they may be constrained by the laws of the state if they cannot think of ways to get around the guidelines when they want to, ultimately the sentence will be greatly influenced by their own discussion. Typically, the judge will try to balance their own beliefs about the goals of punishment with the dominant goals of the community wherein they serve. The judge should try to be equitable or equal in the selection of sentence from offender to offender, but of course there may be an occasional judge who has personal biases that may influence their sentencing decision. Because of the natural variability in sentencing, it may be difficult to know if unprofessional biases are influencing the sentencing decisions. This possibility of judicial bias is one of the reasons for the availability of appeals.

10.8: Basic Sentencing Strategies

Basic Sentencing Strategies

Sentencing strategies are models that were developed by legislative bodies in order to help determine the appropriate sanctions for criminal behavior. The development of the sentencing strategies often means that the discretion of the judge is limited by the decisions made previously by legislative lawmakers who may have no professional experience themselves in criminal law. There are five basic sentencing strategies used by various states. The strategies are: indeterminate sentencing, determinate sentencing, structured sentencing, mandatory minimums, and habitual criminal statutes.

Indeterminate Sentencing

An example of an indeterminate sentence might be “2 to 10 years in prison.” The philosophy behind indeterminate sentencing is that the sentence should be based on the treatment philosophy and so the sentence will vary depending on the particular offender. Because the system recognizes that the offender will eventually be released from prison and return to society the wish is that the convicted individual will focus on self improvement. As a way to motivate the individual the judge will give a range for the sentence which includes a minimum and a maximum; while the actual length of the sentence will be determined by prison officials later as we judge the inmates progress towards rehabilitation and improving their behavior.

So in our example, the inmate would serve a minimum of two years in prison but if they were well behaved while in prison and they took advantage of any prison programs available in order to improve their skills and education they may be out very near the two-year mark. However, if the inmate was caught smuggling in contraband or getting into fights and so on then they would have to stay in the institution longer but not over the 10 years which was set by the judge.

Whether the judge set the minimum sentence or perhaps there was a minimum sentence written into the law and the judge set the maximum sentence, the actual length of the sentence will be determined by prison officials once the minimum sentence has been served. This concept is behind the idea of “good behavior” time, wherein an inmate will reduce their sentence for having good behavior in the institution. If the inmate is released early they will still have supervision by a parole officer in the community. This is still the dominant form of sentence used in the United States.

Determinate Sentencing

An example of a determinate sentence might be 10 years, 11 months, and one day. In this example the sentence is very specific and very determined. With this type of sentence the judge would need to consider if there was any mandatory minimum sentence required by law as well as an understanding of what the maximum sentence passed by the legislature into law for the particular offense is. The judge could then select any sentencing term that meets or exceeds the minimum sentence and also does not exceed any maximum sentence established by law.

Once the convicted individual serves the entire sentence, then the prisoner is simply released. There is no continued supervision in the community. Also, there is no discretion exercised by officials in the prison to let the inmate out earlier, as the length of the sentence was determined exactly on the day of sentencing.

This broad range of discretion by each judge may result in significant sentencing disparity or different sentence lengths for similar offenses. Additionally, from a treatment perspective it may be possible that the inmate is not ready to be released, for how could the judge have known more than a decade before, exactly when the inmate should get out. It is also possible that the inmate was ready to be released far earlier into their sentence but since prison officials who work with the inmate have no say in the sentence, the inmate would stay in prison at taxpayer expense anyway for the remainder of their sentence.

Structured Sentencing

With structured sentencing the legislature rather than judges develop a grid or guideline of all sentences in advance. This guideline or structured sentencing sets both a minimum and a maximum sentence within each cell of the grid. The judge is to find the appropriate place in the grid follow the sentence that is listed. If the judge wishes to deviate from the sentence set by the legislature they need to justify such a deviation. The judge may consider aggravating circumstances that are different from the usual crime in making an argument to sentence more harshly than the guidelines. The judge may also consider mitigating circumstances in order to sentence less harshly than what is stated in the guidelines. This system greatly diminishes the discretion that could be used by judges and it also diminishes the discretion used by prison officials since discretionary parole is abolished.

The grid was developed with two axes. In developing the grid each crime is placed into a severity category and this ranking of severity of crimes is one axis. The criminal being sentenced is also placed into a category based on any previous criminal history that they may have. The criminal history is given a score and his range of scores is the other axis. The judge merely needs to look at the chart and find the right crime category and then follow that row along until we find the right criminal history score. Once they find the right cell in the grid they look at the sentence listed and pick something within the range that is listed. The judge then states a determinate sentence and it is that sentence which is then served.

Mandatory Sentences

Some legislatures have decided that in their jurisdiction certain crimes are punishable by prison and are not eligible to stay in the community on probation. This mandatory sentence to prison will be one of the factors influencing the judge's sentencing decision. Some legislatures have decided to add a mandatory number of years onto a sentence given by a judge. For instance, if a firearm is used during the commission of a felony in some jurisdictions an additional two years is tacked onto the judges' sentence. So a sentence of five years in prison would become a sentenced to seven years in prison if a firearm had been used.

Habitual Criminal Sentencing

This form of sentencing was designed to deal with chronic and habitual offenders by enhancing the punishment for any particular crime if the offender had committed a certain number of felonies previously. With this form of sentencing you do not just look at the crime and the offender but you look at how many times the offender has previously committed a serious crime. At some point the sentencing needs to become much more severe is the theory. The three strike rule is an example of this form of sentencing wherein the punishment will be more severe during the third time that the offender appears in court for a felony.

Some studies predicted that this form of sentencing may reduce serious felonies but other studies indicate that so far it is not having the desired effects. In some instances individuals are receiving severe sentences for somewhat minor violations but since it is their third time in court the sentence is severe.

10.9: Type of Sentence

Type of Sentence

Often when an individual is sentenced they may be convicted and sentenced for more than one crime. For instance, they may have violently assaulted someone and had drugs in their possession. In instances where an individual is being punished for more than one crime at the same time how long their sentence will be depends on whether it is a consecutive sentence or a concurrent sentence. If the aggravated assault was punishable by five years in prison and the possession of drugs was punishable by three years in prison the two different types of sentencing would still result in different sentences.

With consecutive sentencing each sentence is served one after the other. So the offender would serve five years for the aggravated assault and then three years for the drug possession, equaling a total of eight years in prison. With concurrent sentencing all sentences are served simultaneously. So using our example, while the offender was surveying their five years for aggravated assault they would have more than served the three years for the drug possession equaling a total of five years in prison.

Sentencing Disparity

Clearly these different types of sentences and sentencing strategies can result in very different sentences for similar crimes. Some people look at the varied sentences and say that they are an example of unfairness in our adjudicatory system. Other people look at those same varied sentences and say that it is an example of how our system is flexible and justice can be tailored to the situation.

Since there is debate about which opinion is correct, or perhaps there are elements of truth in both, the system is trying to improve by trying various new techniques and studying their effects on rates of recidivism. Some jurisdictions are providing more training for judges and providing times for meetings, so judges can compare how they sentence with other judges in an attempt to lessen disparity. Given that the system is not perfect, this is another reason why those who have been found guilty may exercise their right to appeal if they feel the rights have been violated or that there is evidence of a judicial mistake.

10.10: Image Citations

Image Citations

Main Chapter Personal Image at Minnesota Renaissance Festival

Image 10.1. Personal Image at Minnesota Renaissance Festival

Image 10.2. Personal Image at Minnesota Renaissance Festival

Image 10.3. Image courtesy of 6266684 under CC0 1.0 via Pixabay.

Image 10.4. Personal Image at Minnesota Renaissance Festival

Image 10.5. Personal Image at Minnesota Renaissance Festival

Image 10.6. Personal Image of Alcatraz Island

CHAPTER OVERVIEW

11: Correctional History

11.1: Learning Objectives

Learning Objectives:

- Describe the history of penal institutions.
- Compare and contrast the Pennsylvania and Auburn systems.
- Know the range of facilities in use.
- Describe jails and the inmates they hold.
- Describe the different levels of prison security.
- Discuss current concerns in our nation’s correctional system.
- Understand the experience of living in prison.
- Identify ways the prison experience is different for women and men.

We have covered the law enforcement component and the court component of our justice system. Now we are ready to take a look at the correctional component. In order to examine this component we will take a brief look at some of the current issues facing our system and then explore a little bit of correctional history in an attempt to understand how we got to where we are today.

11.2: Correctional Overview

Correctional Overview

In the United States, when we talk about corrections there are a wide range of options available. In this chapter, we will primarily focus on institutional corrections, community-based correction options will be covered in a later chapter. Even when focusing on institutional corrections there are still a wide range of options and how these institutions are run varies depending upon the level of government overseeing the operation and the geographic area it is located in. Institutional corrections are practiced at the federal, state, and local levels. In each instance, the institutions are meant to control and keep the convicted individual secure but also at times to rehabilitate and treat that individual. Since funding has been tight for the criminal justice system the correctional component is typically the most underfunded part of all. Typically, the institutions are understaffed, underfunded, overcrowded, and outdated. Many facilities are very old with some being built before 1875. This rather lengthy list of challenges leads some critics to believe that the majority of institutions are little more than “human warehouses.”

An additional concern to the expense of running the institutions which are for overcapacity is the question of whether or not institutions are working. Most of the institutions seem to be working in terms of keeping the convicted individual controlled and secure, but the question arises about whether or not they are rehabilitating and treating the individuals. One way of measuring the success of rehabilitation is to see how often the individual succeed back in the outside world versus how often they return to prison. The concept of an inmate being released and then committing a new crime, being caught, being convicted, and being sent back to prison is known as “recidivism.” Nationwide, the current estimate is that 50%—65% of all inmates will be back in prison within six years of their release. Whether this statistic is indicative of success or failure depends on your level of optimism, but generally it is not viewed as a satisfactory rate. Perhaps by looking at the history of our institutions we can examine if they have been improving over time and if there are areas for additional improvement.

11.3: Early History

Early History

Much of the history of our institutions can easily be traced back to early English history. In the beginning of English institutions the conditions were typically very brutal and quite unsanitary. They did not separate inmates by age, gender, or even type of offense and so many individuals did not survive the experience. In English history, they did not feel that the government should look out for those in institutions but rather they felt that the people in the institutions owed the government.

Fee System

The Shire reeves that we spoke about in an earlier chapter, often ran the early institutions and they based it on a fee system. There was a fee for admission, you had to pay for any food you wanted to eat, you would have to pay if you needed medicine, and there was even a fee for discharge to have your shackles removed even if you had been found innocent in court. For those who had money this was still a terrible ordeal but those without money often died of starvation, illness, or attacks by other inmates or even the guards.

Penitentiary Act

By the end of the 18th century in England they passed the Penitentiary Act, which established an orderly penal system, eliminated the fee system, implemented periodic inspections, and stated that there needed to be greater consideration for inmates. This is greater consideration for inmates was about the level of consideration you would give livestock still that was an improvement compared to how the human inmates were being treated before.

11.4: American History

American History

With both the police and the court components of our justice system we saw how developments in England took place before improvements in our system. However, institutional correction is one instance where American developments were more advanced than developments in England. While most of the change to the English system happened at the end of the 18^{th} century, many notable changes taking place in the American system by the end of the 17^{th} century.

Willam Penn

In many ways, William Penn of Pennsylvania was the leader ahead of his time. William Penn was a devout Quaker and he believed that we should treat other human being as we would want to be treated. Under his leadership, the typical practices of torture and mutilation were instead replaced by imprisonment at hard labor. These early houses of correction were much like a typical county jail however the condition were rather sparse and the inmates spent much of their day doing physical labor.

These houses of corrections seemed to be working and so William Penn ordered each county in Pennsylvania to build one. This method of correction lasted until 1718, shortly after his death. After William Penn died and thus no longer provided leadership many of the counties reverted to the use of public punishment and physical brutality rather than the relatively humane conditions in the houses of correction.

Image 11.1

Dr. Rush

Around 1787, the Quakers once again tried to bring humane and orderly treatment to the growing penal system. This movement was led by Dr. Benjamin Rush. Dr. Rush was given the opportunity to develop a penitentiary system which he attempted to do with the Walnut Street Jail. The method developed by Dr. Benjamin Rush is often referred to as the Pennsylvania system. The Pennsylvania system emphasized solitary confinement with the in-cell labor. The cell were fairly large by existing standards and included a bad, table, chair, fecal waste bucket, and Quaker Bible. It was hoped that in this place the convict would reflect on their wrongdoings and try to improve their moral character and thereby get right with God.

Before too long, a couple of problems began to surface. Fairly quickly the institution became overcrowded. By putting one inmate per cell, and making the cells somewhat large, it was not long before the institution ran out of space for the incoming inmates. Another problem that became evident little later was the understanding that humans are social creatures. To force humans to live by themselves in silence for an extended period of time with little to occupy them was a terrible psychological ordeal. In the present day, solitary confinement is actually used as a specific type of punishment because it is psychologically difficult to endure. In the case of the Walnut Street Jail, many of the inmates were psychologically much worse off when they left the institution then when they entered.

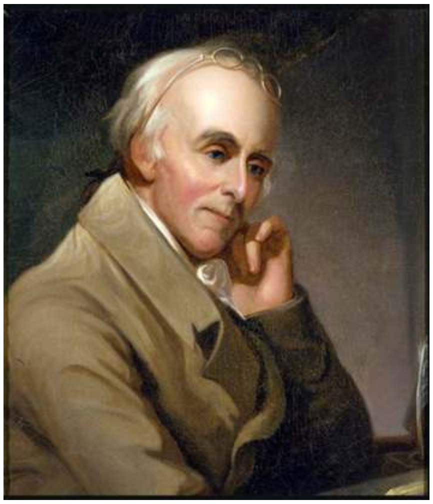

Image 11.2

Auburn System

In 1816, in Auburn New York a new type of prison system was being developed. With this new system the decision was to change the architecture of the building by making the building several floors tall. Inside the institution, this meant that the cells were stacked vertically one over another, floor after floor. This stacking of cells became known as a tier system. In the tier system rather the cells were smaller and rather than bringing food and work to each cell, the inmates were moved in small groups from one place to another such as to eat, to work, to shower, and back to the cells. This small group system became known as the congregate system. Moving the inmates around meant there had to be strict regimentation about how to eat, how to sit, how to walk in step, and how to stay silent at all times unless spoken to by a person in authority. Discipline was maintained through fear of harsh physical punishment and fear of solitary confinement.

Over time the Auburn system became more common than the Pennsylvania system though features of both types of systems are still found within our modern institutions. There is some debate whether prisons, and especially the early prisons, were any better than corporal punishment or was it simply that the harsh violence and torture was moved indoors where it was not seen by others and it could be even more savage.

Reforms

Some individuals in free society encouraged reform within the institutions. These individuals thought that rather than isolating prisoners from society, they could try to bring the best of society in to the prisoners. So, pastors were allowed to provide services, educators were allowed to offer classes, and professional are hired to provide treatment to some inmates. Eventually, the whip and lash were replaced by solitary confinement that was typically in a “hole” which was bare and dark so the inmate could not tell the passage of time, and they were served water and bread rations.

By the 1930s, the code of silence was eliminated and inmates were allowed to mingle with each other in common spaces such as where food was served or inmates could exercise. Because the inmates were now allowed to mingle, uniforms were introduced so inmates could be quickly identified compared to guards or civilians that might be in the institution. Over time, movies and radios were brought into the institutions and first-time offenders were separated from the hard-core offenders on the various floors of the institution.

By the 1960s, a prisoner’s rights movement had begun. Some states and numerous court decisions guaranteed to certain rights to the offender rather than always having guards or prison administrators determine what would or would not be allowed. It was at about this same time that the violence taking place in prisons either by guards on inmates or by inmates on each other became a national concern. By the late 1980s, there was concern about overcrowding in the institutions. The situation had grown so dire that at times 37 states have been under court order relating to inhumane overcrowding in the institutions. Even rural states such as North Dakota are not immune, being at 150% over capacity at the present time.

11.5: Prisoner Rights

Prisoner Rights

While inmates lose most of their rights compared to American citizens in the free world, the courts have granted some of the most essential rights. One of those rights is access to the courts, legal services, and legal materials. All inmates must be allowed access to the courts. To a limited degree inmates may also have freedom of press and expression. If they wish to write a letter to the editor or a poem to themselves, they typically are allowed to do so. Inmates are also granted freedom of religion so long as it does not interfere with security. The decision whether or not to grant particular religious requests is decided by the prison administration. Inmates also have basic medical rights such that the administration should not show “deliberate indifference” to illness or injury. Overall inmates also should not suffer “cruel and unusual punishment” though punishment is allowed if there is a legitimate peneological interest.

11.6: Types of Correctional Facilities

Types of Correctional Facilities

There are a number of types of correctional facilities which are also known as incarceration facilities. Some of the common types of correctional facilities includes jail, prison, community facilities, and private institutions. According to the Bureau of Justice statistics, an estimated 1,561,500 prisoners were in state and federal custody at the end of 2014. Roughly 37% of the inmates were black males, 32% were white males, 22% were Hispanic males, and 7% were females. The United States has the highest incarcerated population in the world. In fact, the United States has more jails and prisons than degree granting colleges and universities.

Jail

There are about 3,400 jails in the United States which currently hold approximately 744,600 individuals. Over the course of the year, there are nearly 12 million jail admissions. Approximately, 47% of the jail inmates are white, about 35% are black, and 15% are Hispanic. There are about 4,200 juvenile age 17 or younger being held in local jail which is less than 1% of the jail population. Jails are typically meant to be short-term facilities and they are typically administered by a local law enforcement agency. Jail inmates typically have a sentence of less than one year, or are being held before the trial, are awaiting sentencing, or are awaiting transfer to another facility after their conviction.

Many of the nation's jails are overcrowded and we are over 100% capacity nationwide. These institutions hold youth, and the innocent, as well as those sentenced to jail or those spending time in jail because the state prisons are full. Since this is typically a transient population with only short-term stays, little if any treatment, recreation, or educational efforts are made. These institutions are often understaffed and the officers serving as guards often have little or no formal training in correctional procedures.

Prison

There are 4,575 prisons in operation in the United States. Approximately, 1,508,600 individuals are housed in state and federal correctional facilities. The US prison population decreased by 1% in 2014 compared to 2013. This 1% decline was the second largest decline in more than 35 years. The federal prison system is the nation's largest followed by Texas and California respectively. In 2014, 19 jurisdictions were operating their prison facilities at more than 100% maximum capacity. Prisons are typically classified by three different security levels.

Maximum/Super Max

Maximum-security institutions are the most strict. They seem fortress like in appearance with armed guards towers, coiled razor wire, tall walls, and a series of gates with the entire facility carefully controlled throughout the day and night. Many of these facilities house 1,000 inmates or more together.

Image 11.3

Medium

Medium security facilities may be similar in appearance to maximum facilities from the outside but there are a few differences both inside and outside. On the outside the guard towers may not be staffed at all times and often the guards are not armed, **the security** on the outside of the facility may be a little less as well. On the inside of the facility and atmosphere are a bit more relaxed and typically there are greater treatment efforts at these institutions as well.

Minimum

It may be difficult to spot a minimum security facility as often they look more like a compound or university setting than a typical prison. There may be a fence but typically there are not walls or armed guards towers. The inmates may live in dormitory style arrangements or have private cells.

Community Facilities

Many communities have halfway houses or other types of facilities within their midst. By housing inmates in community facilities there tends to be less need for reintegration once they are released since their ties may be a little more intact in terms of visitation with family members that are nearby and so on. These facilities may also serve as a way for inmates to become reintegrated into the society after serving a term in prison. While there is still typically strict rules and a regimen to follow inmates may be allowed to search for employment in community, attend treatment, have visitation, and so on.

Private Institution

A private institution is a prison facility run by a business for a profit rather than by the government. These businesses are usually paid by the state based on the number of beds used by the inmates housed there. In 2014, 131,300 inmates were held in private prison facilities under the jurisdiction of 30 states and the Bureau of prisons.

11.7: Inmate Profile and Prison Life

Inmate Profile

Typically, inmates are individuals who have faced the most social obstacles out in broader society. Inmates tend to be young, single, poorly educated, often a minority member, male sentenced for violent crime or drug offenses, and if female in prison for property crimes or drug offenses.

Prison Life

Prison is what is known as a “total institution.” Within the prison you lose your freedom, before long your ties to the outside world, any relationships you had, you have no expectations of privacy and it is very difficult to maintain any dignity. You are under constant scrutiny, there is a myriad of complicated official rules, and you are left with very little decision-making of your-own. You must learn very quickly how to identify friends from enemies, you might want to befriend a particular race and there is often violence along racial lines, and even men need to learn very quickly how to avoid sexual attack which happens to roughly 5% of inmates annually. You might try to get along with the guards but you must not get too friendly or you will raise the ire of fellow inmates and other guards. You need to learn how to hide disappointments or you may face merciless ridicule, and unlike in the outside world where there is never enough time to do everything, in the inside world of the prison you need to learn how to kill time as boredom becomes an enemy.

Image 11.4

11.8: Female Institutions

Female Institutions

When most female institutions were built they were built smaller than male institutions as it was assumed that fewer women would go to prison. Most female institutions are also minimum security and appear similar to college dorm. Because of their small size most female institutions are now overcrowded and many face a lack of treatment programs, education programs, or other rehabilitation efforts. If training is provided it typically focuses on "women's work" such as cooking, cutting hair, and laundry services. The typical female inmate is young, previously physically or sexually abused, and an African-American or Native American. About three fourths of the female inmates have children that they had to leave and about 85% will return to their children after release.

The female subculture tends to be less violent toward staff than the male inmates subculture. Instead, most female aggressive tendencies are toward themselves and their often higher instances of self-mutilation and suicide attempts. Many women will bond together and form a type of make-believe family while in the institution. Unlike many popular television shows, many of these family groups do not have a sexual orientation along with them.

11.9: Institutional Treatment

Institutional Treatment

If treatment programs are available within the institution they may take different forms. Occasionally the program may be counseling oriented particularly in terms of group counseling. There are many special needs inmates such as the mentally ill, elderly, addicts, and inmates with AIDS. There typically are not special programs for these unique inmates. There may be educational training available, typically training to receive your GED is provided but some institutions offer enough courses that an individual can obtain a college degree. There may also be vocational training programs such as work release or an industry within the prison such as making furniture or license plates. Additionally, some institutions make arrangements for conjugal and or family visits on special weekends.

There are some problems with these attempts at providing treatment programs. One of the primary weaknesses is that not all institutions have programs and in those institutions that have programs these programs are not available to all inmates. Typically, 30% or less of the inmate population at an institution will be able to participate in one of the program. Additionally, there is a lack of qualified staff to offer therapy, work skills, or education. This lack of programmatic availability is primarily because the philosophy of less eligibility. Some citizens do not think it is fair that an inmate may have access to treatment or education that their own child would not have access to if they do not break the law.

11.10: Correctional Officers

Correctional Officers

The majority of correctional officers are mainly men although most positions are open to women as well. Typically the minimum requirements are a high school education, being an adult at 21 years of age or more, having a relatively clean criminal record and being in good physical health. Some institutions will train on the job whereas others provide one to six weeks of training in advance of actually working at the institution. There typically are opportunities for advancement and supervisory roles. Often correctional officers serve as escorts on medical transport, they may serve on hearing boards or in other bureaucratic positions. The starting salary varies across the nation but is often around $30,000 annually.

11.11: Image Citations

Image Citations

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Image 11.2. Image courtesy of Benjamin Rush under CC0 1.0 via Wiki.

Image 11.3. Personal Image at Alcatraz Island

Image 11.4. Personal Image at Alcatraz Cell.

CHAPTER OVERVIEW

12: Community Corrections

12.1: Learning Objectives

Learning Objectives:

- Describe the punishment ladder.
- Understand the concept of alternative sanctions.
- Understand the concept of community sentencing.
- Know how probation developed.
- Recognize the different levels of probation supervision.
- Compare and contrast probation and parole.
- Explain the purpose of “conditions” of probation or parole.
- Discuss the issue of revocation.

Now that we have discussed incarceration options, it is time to examine some of the alternatives to incarceration. When community corrections are combined with incarceration options as well as other forms of punishment we start to see if there is a vast array of punishment and treatment options. There are a number of different types of punishments available in the American correctional system and if these punishments were to be rank ordered in severity, they might be thought of as steps on a punishment ladder.

12.2: The Punishment Ladder

The Punishment Ladder

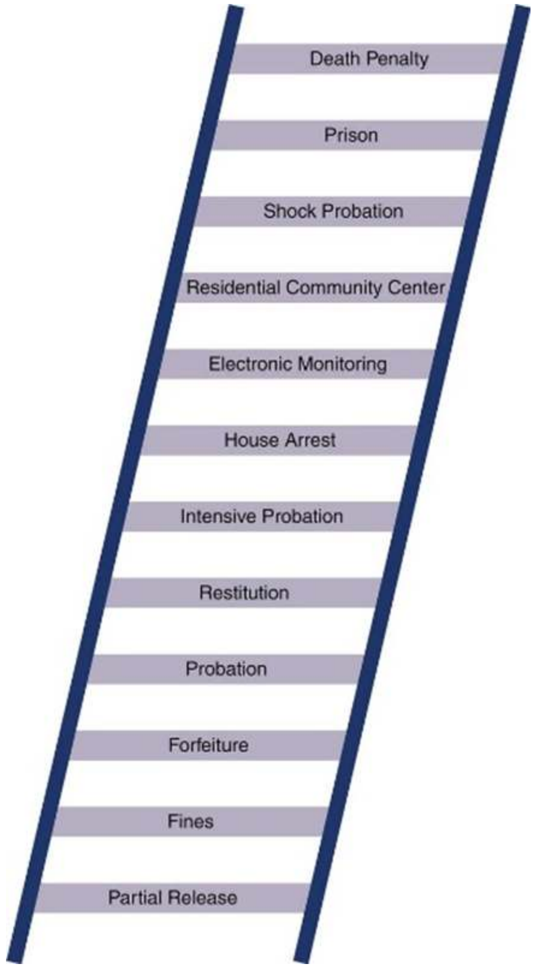

Figure 12.1

Pretrial Release

One of our least punitive steps or the bottom rung of the ladder would be pretrial release. Pretrial release would be considered one of the least severe sanctions because if all conditions are met then they will not be a need for formal trial or a formal conviction.

Fines and Forfeiture

The next rung on the punishment ladder would be fines. While a payment of money may not be pleasant, it does not in any way jeopardize a person's freedoms or rights. Above fines would be the rung of forfeiture. With forfeiture the individual being punished gives up there right to various equipment, possessions, or paraphernalia and those items are instead given to the state. Typically, one must forfeit their possessions if those possessions were obtained in an illegal manner or through an illegal activity.

Probation

The next rung would be probation. We will discuss probation in more detail a little later in this chapter but basically it is a form of supervision in the community which may also be combined with certain additional requirements that typical citizens do not need to follow such as submitting to drug testing.

Restitution

The next rung would be restitution. Restitution is like a payment of a fine however this payment goes either directly to a victim or into a victim fund. Restitution is thought to be more severe than a payment of fines because it is also an acknowledgment that the offender has harmed another human being.

Intensive Probation

Next on the punishment ladder would be intensive probation. Like the name indicates this is a type of probation which is more intensive—meaning the visits may occur more often—or there may be more conditions that must be met while on probation.

House Arrest

House arrest is next on the ladder. With house arrest an individual is confined in their own home except for certain times when they are allowed to leave such as to attend school or go to work. At all other times they are to remain in their home and there are limits in terms of who can visit and what activities may take place in the home. With house arrest it is the offender who must pay the rent, buy and cook food, and so on rather than the taxpayer if the offender was to be locked up in jail.

Electronic Monitoring

Electronic monitoring is next on the list. As with all of the sanctions they may be combined. Electronic monitoring is usually a form of anklet or bracelet that is securely attached to the offender to monitor their movement or to alert a probation officer if they leave a premise without permission. Electronic monitoring is often combined with house arrest as an electronic way to ensure that the offender is within their home at the times that they are supposed to be in the home.

Residential Community Centers

Residential community centers or treatment programs are next on the ladder. These centers are not as secure as a jail but they are more secure than allowing someone to remain in their own home. These facilities are staffed both night and day and there are a number of rules which must be followed by residents at the center.

Shock Probation

Next is shock probation. The shock referred to here is not electrical but rather psychological. With shock probation an individual may initially be sentenced to a short period in prison. The offender may not realize that they will only spend a short amount of time in prison and instead they are afraid that they will be spending years in prison. The shock happens when they are told weeks after being in prison that they are being considered to be let out within a few months on early probation. It is thought that by spending a few months in prison the shock of that environment will make them thankful for the opportunities they would have in being on probation. By being thankful the offender will be careful to follow all the rules and conditions of probation and cooperate fully with their probation officer. This is kind of like a scared straight program to have them appreciate the opportunity they are given by being on probation.

Prison

The rung above shock probation would be a stay in prison as we discussed in the last chapter.

Image 12.1

Death Penalty

The highest rung on the punishment ladder is the death penalty. The highest punishment is the loss of one's life.

Image 12.2

12.3: Probation

Probation

Probation is one of the most common alternatives to incarceration. Probation is often viewed as effective and economical especially for first-time offenders and less serious offenses as this allows society to exert some level of control and additional rules over the offender and yet is far less costly than jail or prison. Probation allows the offender to maintain ties in their community, keep productive employment, and maintain relationships with their family. The rules of probation can be altered to fit the level of supervision needed as well as other needs of specific offenders.

John Augustus

John Augustus is known as the father of probation. John was a successful retired businessman in Boston in the 1800s. John would often watch live court as a form of entertainment yet he was frustrated with how many convicted criminals were treated. He felt that many individuals could be helped and set on a better path in life. He arranged with the judge to take one of the sentenced individuals into his care to see if he could set their life straight. He asked the judge to give him a little bit of time to work with the individual and after that period of time they would appear back in court. If the judge liked what he had done with the individual then the individual would be released and if the judge was not pleased then he could sentence them at that time anyway. Fortunately, John was successful in helping individuals find lawful employment and learn legitimate trades. Massachusetts developed the first statewide probation system in 1878 and by 1951 all states had working probation systems.

Modern Probation

In modern times probation officers do not take offenders home with them but they are in charge of supervising the offender who remains in the community. The offender must report to the officer a certain number of time each week or month for however long the judge determined. While on probation there may be additional conditions such as attending AA meetings, finding a job, staying out of bars, and so on. If the offender does not meet with their officer or does not follow the conditions they can be brought back in front of the court for a revocation hearing and resentenced to a more harsh punishment if their probation is revoked. The level of supervision an individual receives depends in part on their previous history with crime as well as the seriousness of the current offense.

In 2022, about 3,668,800 individuals were under a sentence of probation. Probation is a more common sentence than jail or prison combined. Many jurisdictions have a high number of individuals on probation as a potential solution for some of the overcrowding in their institution. Even the most intensive probation is less costly than a stay in jail or prison. Probation can be combined with other types of punishment such as the payment of fines and the use of electronic monitoring.

12.4: Parole

Parole

Parole is similar in many ways to probation; however, there are some important differences. One key difference is that probation is a sentence given as an alternative of going to prison. Parole is a form of early release after a stay in prison. Probation is a type of deferred sentence given by a judge whereas parole is granted by a parole board after a stay in prison. If a person violates the conditions of their probation they may be sentenced to prison. If a person violates the conditions of their parole they may be returned to prison to serve the remainder of their prison term and if there was a new offense they will be tried for that offense as well. Probation is available in all states for various offenses whereas parole has been abolished or is not allowed in some states and it was abolished at the federal level in 1984.

Parole is similar to probation in that there are varying levels of supervision that may be required and the parolee may be subject to a strict set of rules and guidelines that other citizens do not need to follow. In 2014, the number of individuals on parole was 856,900 which is more than the number of individuals held in local jails but less than the other forms of correction.

12.5: Probation and Parole Officers

Probation and Parole Officers

Both probation and parole officers often have very large caseloads. There is a significant amount of paperwork entailed in this occupation as every meeting, home visit, and drug test needs to be documented. Most officers have a four-year degree and while salaries vary, they typically start at a little over $48,000 a year. There tends to be a fair amount of stress in this occupation as you are both trying to help the offender get their life back on track but at the same time protecting the public from this individual if they turn back to a life of crime. Many officers like working with the offenders and helping them turn their lives around. Unfortunately, despite the best efforts of the officers, some offenders continue using drugs or committing crimes which is disheartening to the officers and can lead to burnout in this occupation.

12.6: Image Citations

Image Citations

Image 12.1. Personal Image of Alcatraz Island

Image 12.2. Personal Image at Minnesota Renaissance Festival

Figure Citations

Figure 12.1. The Punishment Ladder

CHAPTER OVERVIEW

13: Legal Aspects

13.1: Learning Objectives

Learning Objectives:

- Understand the concepts of procedural and substantive criminal law.
- Know the main purposes of criminal law.
- Recognize the differences between felonies and misdemeanors.
- Name the various elements of a crime.
- Discuss the concept of intent.
- Discuss the five major justifications or defenses.
- Describe the role of the Bill of Rights.
- Know which constitutional amendments are the most important to the criminal justice system and what they are.
- Explain the Miranda v Arizona decision.
- Explain the Exclusionary Rule.

As we wrap up our overview of the criminal justice system, it is important to revisit a few legal aspects as they affect all American citizens. One important concept is the idea of stare decisis—or in Latin, the way that decisions on current cases are made based on what the court said about similar cases in the past. In other words building on a foundation. Understanding this foundation can help us understand how our legal system operates and what our rights are.

13.2: Criminal Law

Criminal Law

Our interest in criminal law is both substantive and procedural. Substantive criminal laws are all the various laws that regulate the substance of society and apply to the general citizenry. Procedural criminal law is a smaller section of law that regulates how judicial and criminal justice agents administer the justice system.

Purposes of Criminal Law

There are five main purposes of criminal law. One purpose is the identification of public wrong. By putting in writing what we view as bad, it allows us to place limits on certain behaviors, such as drinking alcohol. By putting our laws in writing and allows all citizens to be aware of the expectations of our society. A second purpose is to allow the exertion of social control. By identifying behaviors that we deem criminal it allows government through the criminal justice system to enforce those same laws. A third purpose is the hope of deterring antisocial behavior. By telling citizens what is not allowed and warning them of the punishment which might follow it is hoped that most citizens will be law-abiding and choose not to commit crime. A fourth purpose is to clearly regulate the punishments that will be meted against those who commit crime. By making clear what the punishments might be it is hoped this will deter criminals and at the same time it will prevent the punishments from being excessive or arbitrary. The fifth purpose is to help maintain the social order. It is hoped that by showing the boundaries of acceptable behavior that most individuals in society will try to fit within those expectations. As society changes our laws can be adapted to adjust to those new types of deviant behavior so as to establish boundaries around these new behaviors such as computer crime, credit card fraud, and so on.

Two Types of Crime

In the eyes of the law, there are essentially two types of crime. The first type of crime is mala en se; crimes that are bad in and of themselves and that are evil or wrong by nature such as rape, murder, and aggravated assault. The second type of crime is referred to as mala prohibitum or crime that are bad that by definition, and they are bad because they are prohibited by the rules of government such as speeding or drinking under age. Previously, we had ranked crimes based on seriousness using the terms felony to indicate more serious crimes and misdemeanors to indicate those that are not as serious. Mala en se crimes are typically felonies and mala prohibitum crimes are often misdemeanors.

Corpus Delicti

This Latin term refers to the body of a crime. Legally speaking, to hold someone accountable for a crime, there must be a combination of two parts. The first part is known as actus reus—or the guilty act. Most people are aware that there must be a guilty act for crime to occur; however, conspiracy to commit a crime can also be considered a crime. Additionally, not acting when one had an obligation to act, such as a parent needing to feed their child, can also be considered a crime. The second part is known as mens rea, which refers to the guilty mind. In the eyes of the law, someone’s intent is very important. If someone is too young to understand that what he or she did is wrong than the law would not hold him or her accountable. Therefore, in the eyes of the law, it is important to have both of these aspects to make up an entire body of crime.

13.3: Criminal Defenses

Criminal Defenses

By understanding what makes up the body of a crime, we can better understand the reasoning behind several common criminal defenses. These defenses are not just excuses to get out of something but instead they may actually justify or excuse someone's actions.

Consent

If it can be shown that the alleged victim actually gave consent than this speaks to the idea that there was no guilty mind. If you borrow someone's car with his or her permission, then you would not be found to be a car thief. If two consenting adults have sex, then it is just sex; however, if there is not consent, then it is rape.

Self-Defense

If one person harms another based on the reasonable belief that they felt they were in danger of great harm or death and could not escape, then our laws allow the defense known as self-defense. If we are not able to escape the situation and we are facing serious harm or death, we have the right to defend ourselves and not be brought up on criminal charges.

Entrapment

If government agents trick ordinary citizens into committing crime, then through this defense those citizens would not be held accountable because they themselves did not have a guilty mind. While government agents can have sting operations if they become so tricky that ordinary law-abiding citizens would commit the action, then they have gone too far.

Double Jeopardy

This refers to the rule that essentially a citizen cannot be tried for the same offense twice. If a citizen was brought up on charges and found not guilty, the government cannot repeatedly file the same charges as the type of harassment.

Mistake, Compulsion, and Necessity

While ignorance of the law is no excuse, if an act was truly a mistake, then the individual would not have a guilty mind. Compulsion is when someone is being threatened to commit an offense against his or her will. Again, the individual did not have a guilty mind because only the one threatening him or her did. With necessity if the potential harm is a greater if one does not act, then acting might not be seen as a crime. For instance, breaking into a winter cabin for shelter if you are stranded in the mountains after an avalanche and you would die without shelter, the break-in would probably not be prosecuted as the saving of a life is more important.

13.4: Bill of Rights

Bill of Rights

The Bill of Rights are the first 10 Amendments to the Constitution. These Amendments were made to protect the legal rights of American citizens from being abused by criminal justice and other authorities in power. It is important for all American citizens to understand their constitutional rights. As it relates to criminal law, there are four main Amendments that are applicable.

Fourth Amendment

The Fourth Amendment focuses on citizens' rights against unreasonable search and seizure. Typically, terminal justice officials must have a valid search warrant issued, and in order to obtain a search warrant, they must demonstrate probable cause. The warrant should state specifically the place to be searched and the items being searched for. Of course, there are exceptions such as when one is being placed under arrest and needs to be searched for weapons and contraband, or in the field when contraband is clearly present, or when one consent to a search. If consent is given, law enforcement can look for any violation in any place that was consenting to such as throughout the entire home or your entire automobile. Every citizen has the right to insist that officers obtain a search warrant even if they are not guilty of any wrongdoing. Right to insist that officers obtain a search warrant even if they are not guilty of any wrongdoing.

Fifth Amendment

The Fifth Amendment addresses a citizen's right against self-incrimination. According to the Constitution law enforcement, officers cannot make a subject talk by using torture and they must be informed of their right to remain silent.

Sixth Amendment

As discussed in earlier chapters, it is the Sixth Amendment that goes over every citizen's right to a fair trial as well as what the aspects of fairness are such as being speedy, public, have representation, the ability to confront witnesses, and have a jury.

Eighth Amendment

The Eighth Amendment mentions that, if bail is granted, it should not be excessive, and it is also the amendment that states that there should be no cruel and unusual punishments.

13.5: Exclusionary Rule

Exclusionary Rule

If a citizen has his or her rights violated, he or she can certainly report the incident to a supervising officer. It is possible that the guilty officer would be reprimanded within his or her agency; however, sometimes, he or she might not. In an effort to ensure that police are professional and not violating the rights of citizens, the courts can enforce the exclusionary rule. This rule states that any evidence or confessions that were obtained illegally can be excluded from being used during a trial. It is hoped that this rule will effectively deter police misconduct. Sometimes, however, by exercising this rule, guilty individuals may get away with their crime if key evidence is thrown out. Currently, the Supreme Court usually exercises the exclusionary rule only in cases of gross violations of police misconduct.

13.6: Image Citations

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