



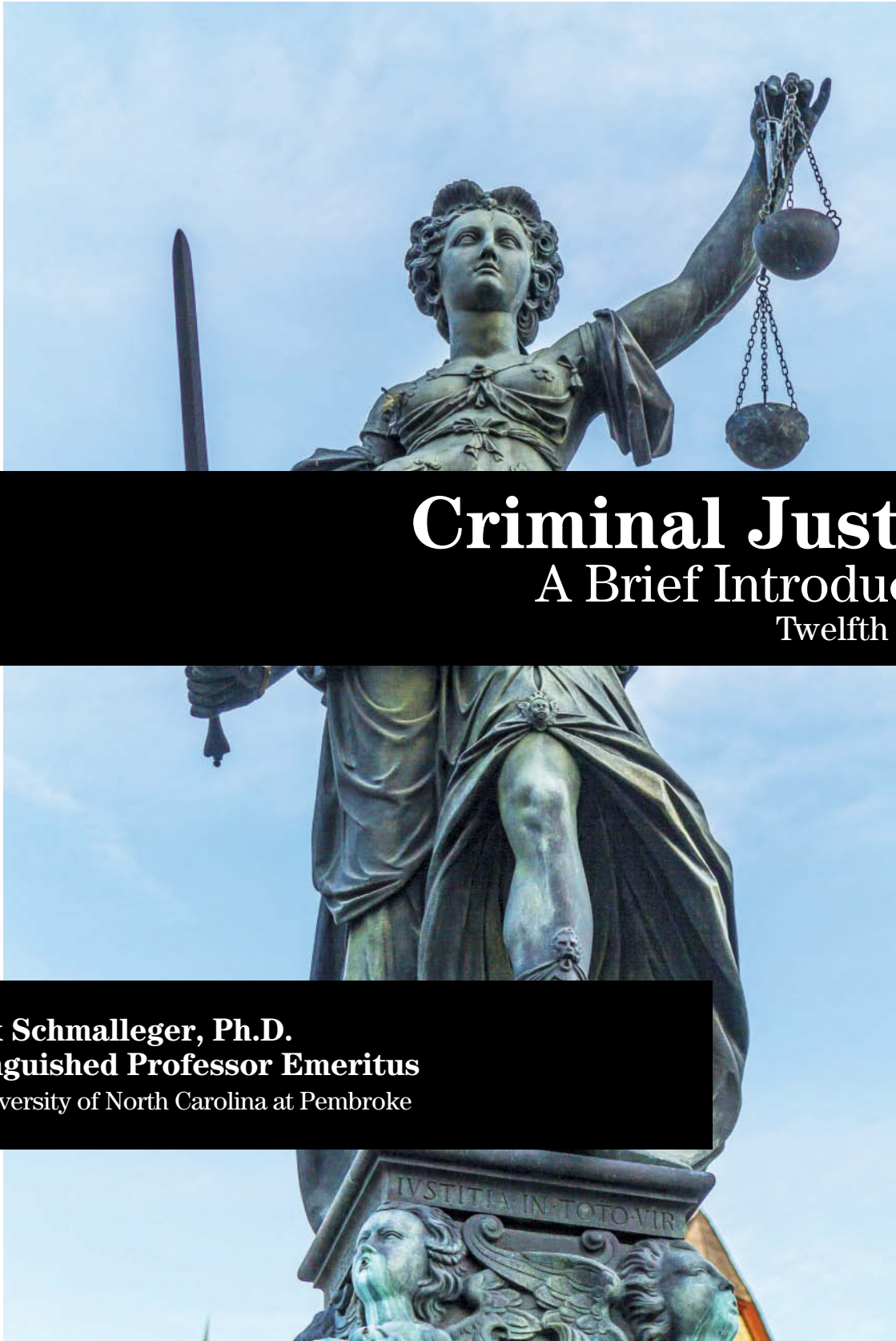
TWELFTH EDITION

CRIMINAL JUSTICE

A **BRIEF** INTRODUCTION

FRANK SCHMALLEGER

 Pearson



Criminal Justice

A Brief Introduction

Twelfth Edition

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The University of North Carolina at Pembroke

For Ava, Malia, Michelle, and Nicole

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Criminal justice is a dynamic field of study. Consider these challenges for instructors and students trying to keep pace with a field that is undergoing continual modification: the ever-evolving nature of crime, our changing understanding of justice, police—community relations in an age of social media, budgetary constraints, ongoing threats to our nation’s security, newly enacted statutes, innovations in enforcement and justice-system technology, precedent-setting U.S. Supreme Court decisions, a changing American society, and rapidly emerging innovations in correctional practice.

As accelerated change engulfs the American criminal justice system today, it is appropriate that a streamlined and up-to-date book like this should be in the hands of students. Quick and easy access to accurate and current information has become a vital part of contemporary life. *Criminal Justice: A Brief Introduction* provides such access through its printed pages and interactive website with videos, point-counterpoint exercises, and numerous other features.

The first edition of *Criminal Justice: A Brief Introduction*, which was published before the Internet had become the ubiquitous tool that it is today, resulted from the realization that justice students need to have current information presented in a concise and affordable source. With each new edition, the availability of up-to-date crime- and justice-related information has increased. Like many of its predecessors, the twelfth edition draws upon the wealth of Internet resources that serve the needs of criminal justice students and practitioners. It ties those important resources to central ideas in the text, expanding learning opportunities far beyond what was possible in the mere 400 pages of the first edition. In particular, URLs printed in the book point the way to criminal justice agencies and organizations on the Internet, as well as to full-text documentation of many critical contemporary issues.

True to its origins, the twelfth edition, which is now available in a variety of print and electronic formats, focuses on the crime picture in America and the three traditional elements of the criminal justice system: police, courts, and corrections. Real-life stories, career information, up-to-date examples and issues, engaging graphics, and interactive media all contribute to this timely and user-friendly introduction to criminal justice. Key features include:

Freedom or Safety? You Decide boxes in each chapter highlight the book’s ever-evolving theme of individual rights versus public order, a hallmark feature of this text since the first edition. In each chapter of the text, Freedom or Safety boxes build on this theme by illustrating some of the personal rights issues that challenge policymakers today. Each box includes critical-thinking questions that ask readers to ponder whether and how the criminal justice system balances individual rights and public safety.

Paying for It boxes, which are found in many chapters, emphasize the financial realities of today’s world—including the need of justice system components to deal with budget shortfalls and limits on available resources.

Evidence-based practices are introduced in early chapters and are stressed throughout the text, including in the book’s sections on policing, the courts, and corrections.

CJ News boxes in each chapter present case stories from the media to bring a true-to-life dimension to the study of criminal justice and allow insight into the everyday workings of the justice system.

CJ Issues boxes that provide the information students need to participate in a discussion of critical issues facing the justice system, such as excessive use of force by the police, the use of mass imprisonment as a tool of social engineering, and coming changes in the juvenile justice process.

CJ Careers boxes outline the characteristics of a variety of criminal justice careers in a Q&A format, to introduce today’s pragmatic students to an assortment of potential career options and assist them in making appropriate career choices.

Multiculturalism and Diversity boxes present aspects of criminal justice that are related to the diverse nature of American society and emphasize the need for justice-system personnel capable of working with culturally diverse groups.

Ethics and Professionalism boxes present ethical codes that criminal justice practitioners are asked to uphold, highlighting the vital role of moral and ethical standards and behavior in their daily lives and to the high social expectations inherent in justice-related careers. Included are the ethical codes of the American Correctional Association, the American Probation and Parole Association, the International Association of Chiefs of Police, the American Bar Association, and the American Jail Association.

Graphics such as full-color diagrams, illustrations, timelines, and photographs reinforce key concepts for easier understanding and make the chapter topics both understandable and interesting. In recognition of the visual orientation of today’s learners, we have worked to achieve a comprehensive integration of graphic art with the concepts and ideas of criminal justice. Consequently, the layout and design of the text are highly visual, inviting readers to explore its pages while powerfully illustrating the critical concepts that are central to the field of criminal justice.

As the author of numerous books on criminal justice, I have often been amazed at how the end result of the justice process is sometimes barely recognizable as “justice” in any practical sense of the word. It is my sincere hope that the technological and publishing revolutions that have contributed to the creation and development of this book will combine with a growing social awareness to facilitate needed changes in our system and will help replace self-serving, system-perpetuated injustices with new standards of equity, compassion, understanding, fairness, and heartfelt justice for all. If you use this book, I’d like to hear from you. Please write to me at the e-mail address below.

Frank Schmallegger, Ph.D.

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New to the Twelfth Edition

Chapter 1 What Is Criminal Justice?

- A new story about the crisis in the justice system engendered by multiple police shootings of unarmed black men in 2014–2015 now opens the chapter.
- “Procedural fairness” has been added as a new key term.
- The discussion about white-collar and corporate crime has been updated with coverage of Volkswagen’s emissions scandal.
- The new concept of a “sentinel event” that can uncover critical issues in the justice system is now discussed.

Chapter 2 The Crime Picture

- The chapter opening story, which features a sheriff’s department that had to meet the demands of ransom ware hackers, has been changed and updated.
- The table comparing the traditional UCR with the Enhanced UCR/NIBRS Reporting System has been expanded.
- Crime statistics throughout the chapter have been updated.
- The chapter now incorporates the new UCR definition of rape, which is now gender-neutral.

- The discussion about “race and the justice system” has been completely revised.
- The discussion and coverage of identity theft has been updated.
- A new “Freedom or Safety? You Decide” box has been added. It asks the question of whether citizens can have too much privacy.
- The violence against women section has been updated.

Chapter 3 Criminal Law

- A new story about a California physician sent to prison for over-prescribing painkillers now opens the chapter.
- The discussion of the rule of law has been updated.
- The discussion of general categories of crime has been updated and streamlined.
- The illustration of espionage has been updated.
- The section on insanity now includes discussion of Saiqa Akhter, the Texas woman who was found not guilty by reason of insanity in 2014 after admitting to the murder of her two young children by strangulation.

Chapter 4 Policing: Purpose and Organization

- Three new key terms have been added to the chapter: smart policing, hot-spot policing, and predictive policing.
- The chapter opening story has been replaced with one describing the events in Ferguson, Missouri, which held serious ramifications for the justice system.
- A new figure has been added describing the basic purposes of policing in democratic societies.
- A replacement CJ News box now describes the use of social media in policing.
- The discussion of fusion centers has been updated and shortened.
- A new CJ Careers box is now found in the chapter.
- A new CJ Exhibit box describing the President’s Task Force on Policing has been added to this chapter.

Chapter 5 Policing: Legal Aspects

- A new chapter-opening story about Freddie Gray’s death while in the custody of Baltimore police beings the chapter.
- The section on the abuse of police power has been substantially revised an updated.
- A new section describing U.S. Supreme Court philosophy has been added to the chapter.
- A new CJ News box about the 2014 U.S. Supreme Court case of *Riley v. California*, pertaining to the need for police to obtain a warrant before accessing and searching the data stored on a suspect’s cell phone has been added.
- A new Freedom or Safety box about policing the age of social media has been added.
- A section on the new Cybersecurity Information Sharing Act (CISA) has been added.

Chapter 6 Policing: Issues and Challenges

- A story about police corruption in Puerto Rico has been added to the chapter.
- A new box on “rightful policing” has been added to the chapter.
- A new CJ Issues box on the use of social media in policing has been added.
- The case of *Mullenix v. Luna*, dealing with qualified immunity, has been added.
- The section on racially biased policing has been substantially revised.
- The discussion on the police use of force has been expanded and revised.
- The figure on the police use of force continuum has been replaced with more visual diagram.
- Discussion has been added of the Police Executive Research Forum’s new publication, *Use of Force: Taking Policing to a Higher Standard*.

Chapter 7 The Courts

- The chapter begins with a new story.
- A new diagram is used to explain state court systems.
- New key terms have been added, including “courts of limited jurisdiction,” and “courts of general jurisdiction.”

Chapter 8 The Courtroom Work Group and the Criminal Trial

- The graphic on state spending on indigent defense has been replaced with a more visual piece of line art.
- A new figure depicts pretrial activities.

Chapter 9 Sentencing

- Two new key terms and their definitions have been added to the chapter: recidivism and recidivism rates.
- A new section has been added to the chapter called, “Sentencing and Today’s Prison Crisis.”
- Discussion of California’s Proposition 47, passed in 2014, is now discussed. The Proposition changed many crime from felonies to misdemeanors.
- The section on “Modern Sentencing Options” includes a new figure titled “Four Traditional Sentencing Options.”
- Statistics have been updated throughout the chapter, including those on international death-penalty sentences.
- Discussion of the 2016 U.S. Supreme Court case of *Hurst v. Florida* has been added to the chapter. In that case, Florida’s death penalty sentencing scheme was found to be unconstitutional under the Sixth Amendment.
- Discussion of the 2014 U.S. Supreme Court case of *Hall v. Florida* has been added to the chapter. In that case, the Court said that states cannot rely solely on an IQ score to bar an inmate from claiming mental disability in the face of execution.

Chapter 10 Probation, Parole, and Community Corrections

- A new chapter opening story, about former CIA-Director General David Petraeus being sentenced to probation for illegally disclosing classified information now begins the chapter.
- A discussion of the history of probation has been added.
- A new “Paying for It” box has been added, dealing with cost-efficient parole.
- The figure describing 3-year recidivism rates has been replaced with easy-to-comprehend line art.
- A new key term, “desistance” has been added to the chapter.

Chapter 11 Prisons and Jails

- The historical development of prisons is now explained in greater detail.
- Three new key terms and their definitions have been added to the chapter: workhouse, warehousing, and evidence-based corrections (EBC).
- A new graphic showing the stages of prison development in the United States is now found in the chapter.
- Data on the costs of imprisonment, prisoners, and prison capacity have all been updated.
- A new figure describing Federal Bureau of Prisons institutional security levels and terminology has been added to the chapter.
- A new CJ Issues box describing the Charles Colson Task Force on Federal Corrections has been added.

Chapter 12 Prison Life

- The chapter's first five learning objectives have been streamlined and reworded.
- A new graphic depicts the increase in women's incarceration over time.
- Other figures within the chapter have been updated in order to communicate information more clearly.
- The Mothers and Infants Together program in federal prisons is now described.
- A new multiculturalism and diversity box describing the Bangkok Rules on the Treatment of Female Prisons has been added.
- The "Prison Riots" chapter section has been replaced with one on "Security Threat Groups and Prison Riots".
- A new table listing the ten most influential security threat groups in American prisons has been added.
- The 2015 U.S. Supreme Court case of *Holt v. Hobbs* has been added.

Chapter 13 Juvenile Justice

- Statistics throughout the chapter have been updated.
- A new figure showing "perspectives on juveniles through history" has been added.
- Discussion of the 2016 U.S. Supreme Court case of *Montgomery v. Louisiana*, which retroactively applied the Miller decision providing people who had been sentenced to mandatory life without parole as juveniles, the right to have their sentences reviewed.
- A new section on "Trends in Juvenile Justice" has been added.
- A detailed description of a 2015 report by the National Council of State Legislatures has been added. It identifies recent trends in juvenile justice.

Instructor Supplements

- ▶ **Instructor's Manual with Test Bank.** Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.
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Distinguished Professor Emeritus
The University of North Carolina at Pembroke

About the Author

Frank Schmalleger, Ph.D., is Distinguished Professor Emeritus at the University of North Carolina at Pembroke, where he taught criminal justice courses for 20 years and chaired the university's Department of Sociology, Social Work, and Criminal Justice for 16 of those years. In 1991 the university awarded him the title of Distinguished Professor, and the university named him Professor Emeritus in 2001.

Dr. Schmalleger holds degrees from the University of Notre Dame and Ohio State University, having earned both a master's (1970) and a doctorate in sociology (1974) with a special emphasis in criminology from Ohio State University.

As an adjunct professor with Webster University in St. Louis, Missouri, Schmalleger helped develop the university's graduate program in security administration and loss prevention. He taught courses in that curriculum for more than a decade. Schmalleger has also taught in the online graduate program of the New School for Social Research, helping to build the world's first electronic classrooms in support of distance learning through computer telecommunications. An avid Web user, Schmalleger is the creator of a number of award-winning websites, including one that supports this textbook.

Frank Schmalleger is the author of numerous articles and many books, including the widely used *Criminal Justice Today* (Pearson, 2017), *Criminology Today* (Pearson, 2017); *Criminal Law Today* (Pearson, 2016), and *The Definitive Guide to Criminal Justice and Criminology on the World Wide Web* (Pearson, 2009).

Schmalleger is also founding editor of the journal *Criminal Justice Studies*. He has served as editor for the Pearson series *Criminal Justice in the Twenty-First Century* and as imprint adviser for Greenwood Publishing Group's criminal justice reference series.

Schmalleger's philosophy of both teaching and writing can be summed up in these words: "In order to communicate knowledge, we must first catch, then hold, a person's interest—be it student, colleague, or policymaker. Our writing, our speaking, and our teaching must be relevant to the problems facing people today, and they must in some way help solve those problems."



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“Justice is truth in action!”

—Benjamin Disraeli

“Injustice anywhere is a threat
to justice everywhere.”

—Martin Luther King, Jr.

THE CRIMINAL

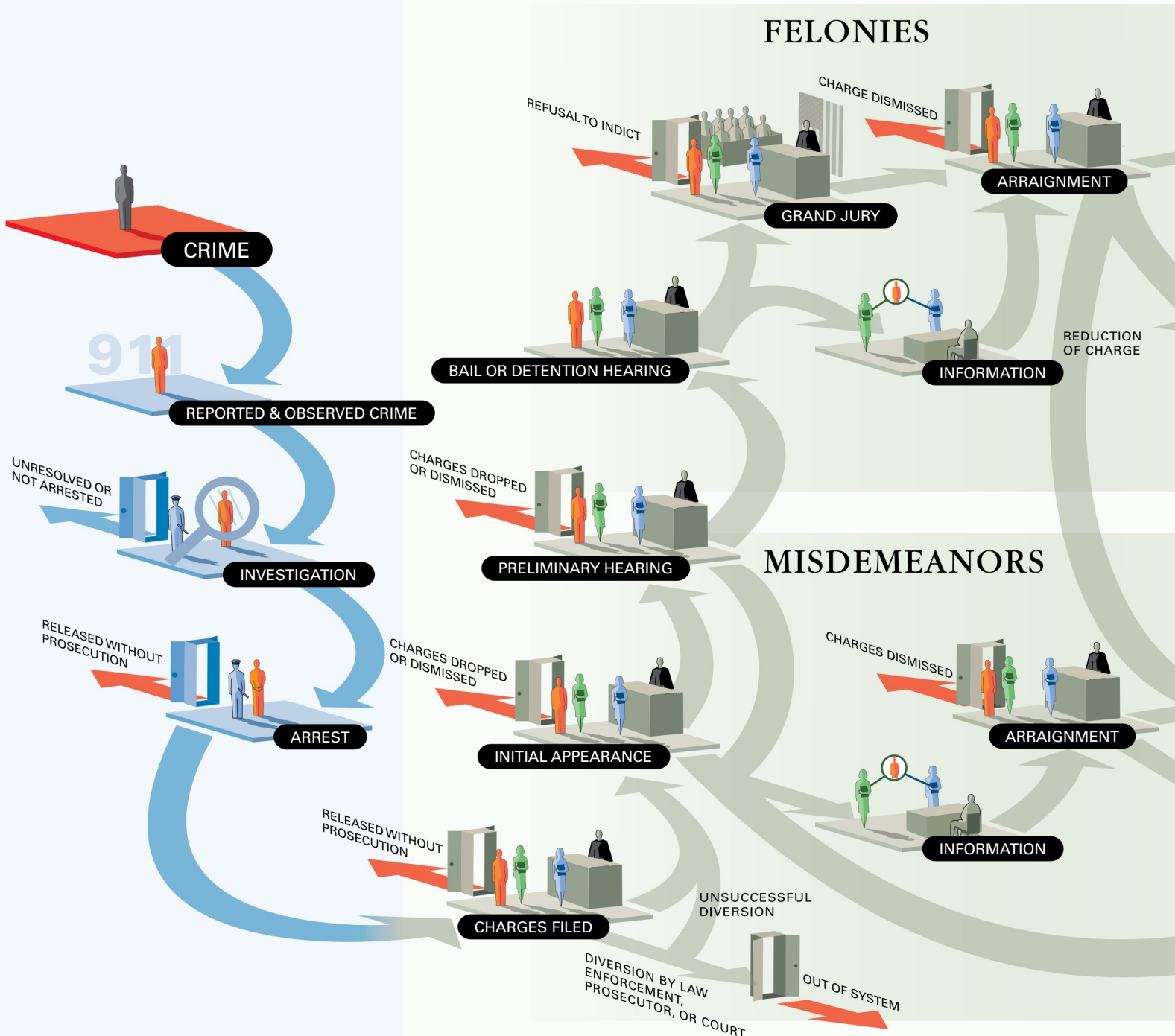
POLICE

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JUSTICE SYSTEM

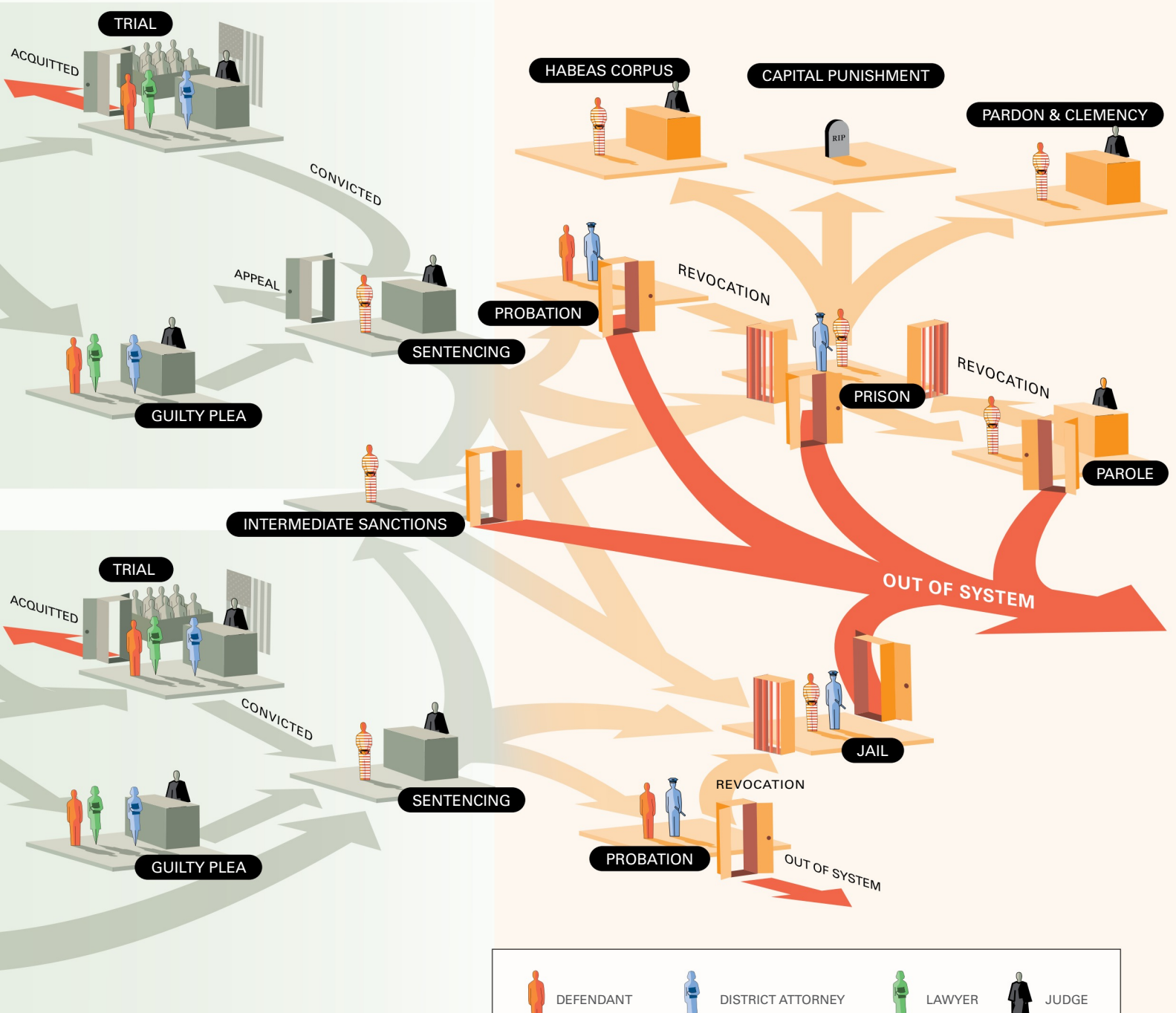
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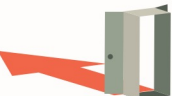
SENTENCING & SANCTIONS

PROBATION

PRISON

PAROLE



	DEFENDANT		DISTRICT ATTORNEY		LAWYER		JUDGE
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What Is Criminal Justice?

People expect both safety and justice and do not want to sacrifice one for the other.

—Christopher Stone, President,
Open Society Foundations

CHAPTER

1

Learning Objectives

After reading this chapter, you should be able to:

1. Summarize the history of crime in America and corresponding changes in the American criminal justice system. **3**
2. Describe the public-order (crime-control) and individual-rights (due-process) perspectives of criminal justice, concluding with how the criminal justice system balances the two perspectives. **6**
3. Explain the relationship of criminal justice to general concepts of equity and fairness. **8**
4. Describe the American criminal justice system in terms of its three major components and their respective functions. **10**
5. Describe the process of American criminal justice, including the stages of criminal case processing. **12**
6. Define due process of law, including where the American legal system guarantees due process. **13**
7. Describe the role of evidence-based practice in contemporary criminal justice. **15**
8. Explain how multiculturalism and diversity present challenges to and opportunities for the American system of criminal justice. **16**

crime

Conduct in violation of the criminal laws of a state, the federal government, or a local jurisdiction, for which there is no legally acceptable justification or excuse.¹

Introduction

Ask anyone who has come into contact with it, and you will hear that the American criminal justice system wields a lot of power. Agencies of the justice system have the authority to arrest (the police), to convict (the courts), and to imprison (corrections). In the most serious cases, the system even has control over who lives and who dies (capital punishment). For those who commit **crimes**, the “full weight and power” of the system comes crashing down on them, beginning with arrest. Yet, for all of its power, the American system of justice is a consensual system that relies upon both public acceptance and public cooperation for it to function effectively. Were citizens to lose faith in the justice process and question its legitimacy, then the day-to-day work of law enforcement officers, court personnel, and corrections officers would become insurmountably difficult—and their jobs would be impossible to perform.

From late 2014 to 2017, the criminal justice system in this country was teetering on the edge of just such a crisis. It was a crisis that arose quickly and spontaneously, fed in large part by social media, following refusals by grand jurors in Missouri and New York to indict police officers in the death of two black suspects in separate incidents. The first involved Michael Brown, an 18-year-old unarmed African-American man who died in hail of bullets fired by a Ferguson, Missouri, police officer after an initial confrontation between the two turned violent.¹ The second involved Eric Garner, another unarmed black man who died after an NYPD officer placed him in a chokehold while they struggled—apparently preventing him from

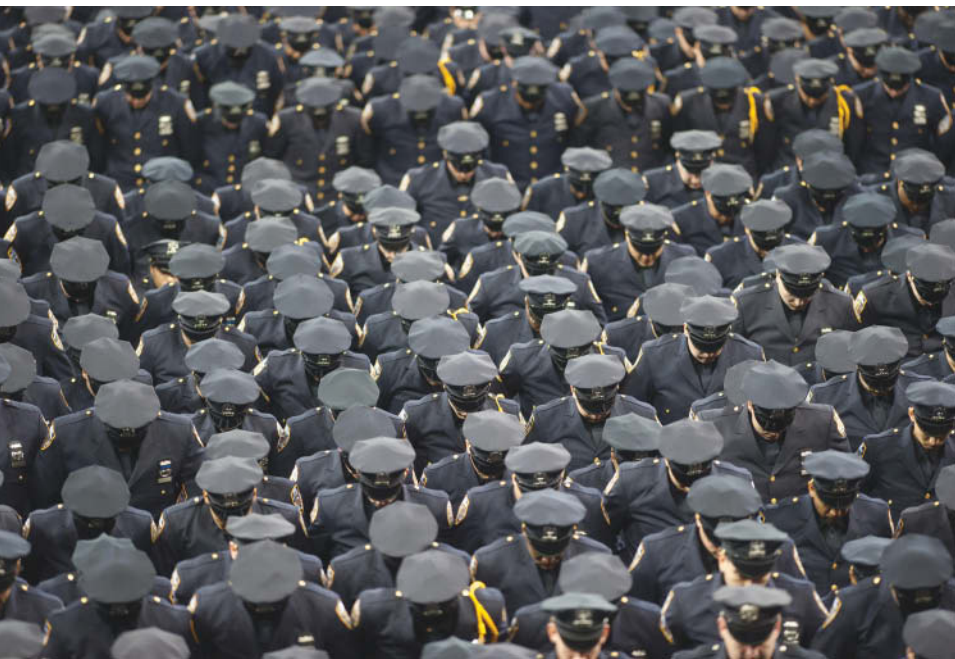
being able to breathe.² Garner, a father of six, had been arrested numerous times before the fatal encounter for illegally selling cigarettes on city streets—a minor offense.

Protests followed both grand jury decisions, with demonstrators in Ferguson rioting, looting, and burning down stores over a period of days. New York City protestors emblazoned the slogan “No Justice, No Peace” on placards they carried, and Missouri protestors chanted “Hands up, don’t shoot!” in the belief that Brown was surrendering to police when he was shot (the grand jury, however, concluded otherwise).

Confrontations between police and demonstrators remained largely peaceful, but led to an especially surprising result. Police officers in Ferguson made no arrests during the first few nights of looting and rioting, even though arsonists and thieves were in plain sight; and NYPD officers stopped making “quality-of-life arrests”—or arrests for minor crimes. By the start of 2015, arrests in New

York City for minor crimes, such as traffic violations, and public drinking and urination, had plummeted 94% from the year before.³ Arrests for other crimes nosedived by 66% from only a week earlier. Police in New York City were reported to be making arrests “only when they have to.”⁴ In Seattle, police chief Kathleen O’Toole made the rounds of her department’s stations telling officers that it was OK to arrest people. “If you get agitators who threaten the police or the public, you have to arrest them,” she said.⁵ It was as though police officers in Ferguson, New York City, and elsewhere—perhaps wary of stoking more public unrest—had become afraid to enforce the law.

Matters became even uglier when assaults on police officers rose significantly following the protests. On December 20, 2014, two uniformed NYPD police officers were shot dead as they sat in their marked police cruiser on a Brooklyn street corner.⁶ The assassination-style attack was carried out by 28-year-old Ismaaiyl Brinsley, who soon shot and killed himself on a nearby subway platform. Prior to the killings, Brinsley had posted anti-police threats on his



▲ New York City police officers mourn the loss of two of their own. In late December 2014, NYPD officers Rafael Ramos and Wenjian Liu were assassinated while they sat in their marked patrol car on a Brooklyn Street. The shooter, 28-year-old Ismaaiyl Brinsley, may have wanted to avenge the deaths of two unarmed black men at the hands of police months earlier. The killings led to debates over the fairness of the American criminal justice system. How would you assess that system’s fairness?

ZUMA Press, Inc./Alamy Stock Photo

American society is built upon a delicate balance between the demand for *personal freedoms* and the need for *public safety*.

Instagram page, referencing the “unjust” killings of Garner and Brown. “I’m putting wings on pigs today,” he wrote, “They take 1 of ours . . . Let’s take 2 of Theirs.” Soon, police officers around the country were doubling up on patrol, and bracing for further attacks.

Attacks on the police continued to escalate. On New Year’s Eve, as 2015 was about to begin, activists stormed St. Louis police headquarters and pushed their way inside, saying that they had an eviction notice and were reclaiming the building for “the people.” Protestors were pepper sprayed, and five ended up being arrested.⁷

Attacks on police culminated in 2016, when five Dallas police officers were shot and killed in a sniper attack, and six others wounded.⁸ The officers had been providing security for an anti-violence demonstration that drew attention to the recent police shootings of two black men in Louisiana and Minnesota.

Although the anti-police movement was embraced by only a relatively small portion of the American population, it not only signified distrust of the police, but also reflected a fundamental sense of injustice about how suspects—especially African Americans—were being treated by the entire justice system. Some saw the protests as releasing pent-up frustration that resulted from a decades-long war on drugs, during which a hugely disproportionate number of young blacks were arrested, and a get-tough-on-crime era that resulted in dramatically overcrowded prisons throughout the country. Whatever the cause, it soon became clear that public acceptance of the justice system’s authority is based significantly on the perception of fair and equitable treatment by all of its component agencies.⁹ One of the lessons learned from the events of 2014–2016 was that fairness has a wider meaning than ensuring just outcomes and upholding due process (issues that we will later discuss).

As we shall see throughout this text, **procedural fairness**, which is the process by which decisions that *feel* fair are made, is a vital component of our American justice system.

A Brief History of Crime in America

What we call *criminal activity* has undoubtedly been with us since the dawn of history, and crime control has long been a primary concern of politicians and government leaders worldwide. Still, the American experience with crime during the last half century has been especially influential in shaping the criminal justice system of today (Figure 1–1). In this country, crime waves have come and gone, including an 1850–1880 crime epidemic that was apparently related to social upheaval caused by large-scale immigration and the Civil War.¹⁰ A spurt of widespread organized criminal activity was associated with the Prohibition years of the early twentieth century. Following World War II, however, American crime rates remained relatively stable until the 1960s.

1

Summarize the history of crime in America and corresponding changes in the American criminal justice system.

The 1960s and 1970s saw a burgeoning concern for the rights of ethnic and racial minorities, women, people with physical and mental challenges, and many other groups. The civil rights movement of the period emphasized equality of opportunity and respect for individuals, regardless of race, color, creed, gender, or personal attributes. As new laws were passed and suits filed, court involvement in the movement grew. Soon a plethora of hard-won individual rights and prerogatives, based on the U.S. Constitution, the Bill of Rights, and new federal and state legislation, were recognized and guaranteed. By the 1980s, the civil rights movement had profoundly affected all areas of social life—from education and employment to the activities of the criminal justice system.

This emphasis on **individual rights** was accompanied by a dramatic increase in reported criminal activity. Although some researchers doubted the accuracy of official accounts,

procedural fairness

The process by which procedures that feel fair to those involved are made.

Lecture Note Provide a brief history of crime in America.

individual rights

The rights guaranteed to all members of American society by the U.S. Constitution (especially those rights found in the first ten amendments to the Constitution, known as the *Bill of Rights*). These rights are particularly important to criminal defendants facing formal processing by the criminal justice system.

FIGURE 1–1
Milestones in Crime History

1850–1880 A crime epidemic spurred by social upheaval brought on by large-scale immigration and the Civil War.

1920–1933 Prohibition spurs the growth of organized crime.

Following World War II, American crime rates remained relatively stable until the 1960s.

1960–1970 The civil rights movement of the period emphasized equality of opportunity and respect for individuals regardless of race, color, creed, gender, or personal attributes. This period also saw a dramatic increase in reported criminal activity.

1970s Reports of crimes such as murder, rape, and assault increased considerably.

1980s By the mid-1980s, the dramatic increase in sale and use of illicit drugs led to increased crime. Large cities became havens for drug gangs and cities experienced dramatic declines in property values and quality of life. President Reagan declared a “war on drugs.”

1992 The videotaped beating of Rodney King, an African American, by Los Angeles-area police officers was seen as an example of the abuse of police power.

By the late **1990s**, the public perception was that crime rates were growing and that many offenders went unpunished. This led to a growing emphasis on responsibility and punishment and the development of a “get-tough-on-crime” era.



2001 A series of terrorist attacks on New York City, Washington, D.C., and elsewhere changed the focus of law enforcement to a proactive and more global approach.

2001 USA PATRIOT Act dramatically increases the investigatory authority of federal, state, and local police agencies.

The incidence of personal crime declined throughout the 1990s.

2009 Bernard Madoff pleads guilty to the largest Ponzi scheme in history. The crimes of Madoff, and widespread suspicions about the activities of Wall Street financiers, led to a number of white-collar crime investigations. White-collar crime came into focus as a serious threat to the American way of life.

2011 FBI most-wanted terrorist Osama Bin Laden was killed by U.S. special operations forces in Pakistan, leading to fears of a renewed terrorist onslaught on American targets throughout the world.

2012–2016 Epidemic of mass shootings and random violence sweeps public venues across the United States.

2016–present Cybercrimes become commonplace and threaten both national security and corporate and personal financial integrity.

*Library of Congress Prints and Photographs Division [LC-DIG-ppm-sca-47366]; Everett Collection/Super-Stock; Universal Images Group/Super-Stock; Steven Hirsch/Splash News/Newscom; NetPics/Alamy Stock Photo
Source: Pearson Education, Inc.*

social disorganization

A condition said to exist when a group is faced with social change, uneven development of culture, maladaptiveness, disharmony, conflict, and lack of consensus.

Thematic Question Why do you think the increased emphasis on individual rights beginning in the 1960s was associated with an increase in reported crime?

reports by the FBI of “traditional” crimes such as murder, rape, and assault increased considerably during the 1970s and into the 1980s. Many theories were advanced to explain this leap in observed criminality. Some analysts of American culture, for example, suggested that the combination of newfound freedoms and long-pent-up hostilities of the socially and economically deprived worked to produce **social disorganization**, which in turn increased criminality.

By the mid-1980s, the dramatic increase in the sale and use of illicit drugs threatened the foundation of American society. Cocaine, and later laboratory-processed “crack,” spread to every corner of America. Large cities became havens for drug gangs, and many inner-city areas were all but abandoned to highly armed and well-financed drug racketeers. Cities experienced dramatic declines in property values, and residents wrestled with an eroding quality of life.

By the close of the 1980s, neighborhoods and towns were fighting for their communal lives. Huge rents had been torn in the national social fabric, and the American way of life, long taken for granted, was under the gun. Traditional values appeared in danger of going up in smoke along with the “crack” being consumed openly in some parks and resorts. Looking for a way to stem the tide of increased criminality, many took up the call for “law and order.” In response, President Ronald Reagan created a cabinet-level “drug czar” position to coordinate the “war on drugs.” Careful thought was given at the highest levels to using the military to patrol the sea-lanes and air corridors through which many of the illegal drugs entered the country. President George H. W. Bush, who followed Reagan into office, quickly embraced and expanded the government’s anti-drug efforts.

A decade later, a few spectacular crimes that received widespread coverage in the news media fostered a sense among the American public that crime in the United States was out of hand and that strict new measures were needed to combat it. One such crime was the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City by anti-government extremists. Another was the 1999 Columbine High School massacre in Colorado that left 12 students and 1 teacher dead.¹¹

The public’s perception that crime rates were growing, coupled with a belief that offenders frequently went unpunished or received only a judicial slap on the wrist, led to a burgeoning emphasis on responsibility and punishment. By the late 1990s, a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization. Growing calls for enhanced responsibility quickly began to replace the previous emphasis on individual rights. As a juggernaut of conservative opinion made itself felt on the political scene, Senator Phil Gramm of Texas observed that the public wants to “grab violent criminals by the throat, put them in prison [and] stop building prisons like Holiday Inns.”¹²

Then, in an event that changed the course of our society, public tragedy became forever joined with private victimization in our collective consciousness after a series of highly destructive and well-coordinated terrorist attacks on New York City and Washington, D.C., on September 11, 2001. Those attacks resulted in the collapse and total destruction of the

twin 110-story towers of the World Trade Center and a devastating explosion at the Pentagon. Thousands of people perished, and many were injured. Although law enforcement and security agencies were unable to prevent the September 11 attacks, many have since moved from a reactive to a proactive posture in the fight against terrorism—a change that is discussed in more detail in Chapter 6.

The September 11 attacks also made clear that adequate law enforcement involves a global effort at controlling crime and reducing the risk of injury and loss to law-abiding people both at home and abroad. The attacks showed that criminal incidents that take place on the other side of the globe can impact those of us living in the United States,

By the late 1990s, a newfound emphasis on individual accountability began to blossom among an American public fed up with crime and fearful of its own victimization.

and they illustrated how the acquisition of skills needed to understand diverse cultures can help in the fight against crime and terrorism. As Chapter 2 points out, terrorism is a criminal act, and preventing terrorism and investigating terrorist incidents after they occur are highly important roles for local, state, and federal law enforcement agencies.

A different kind of offending, corporate and white-collar crime, took center stage in 2002 and 2003 as Congress stiffened penalties for unscrupulous business executives who knowingly falsify their company's financial reports.¹³ The changes came amidst declining stock market values, shaken investor confidence, and threats to the viability of employee pension plans in the wake of a corporate crime wave involving criminal activities that had been planned and undertaken by executives at a number of leading corporations. In an effort to restore order to American financial markets, President George W. Bush signed the Sarbanes—Oxley Act on July 30, 2002.¹⁴ The law, which has been called “the single most important piece of legislation affecting corporate governance, financial disclosure and the practice of public accounting since the US securities laws of the early 1930s,”¹⁵ is intended to deter corporate fraud and to hold business executives accountable for their actions.

Today, white-collar crime continues to be a focus of federal prosecutors. In 2015, for example, Volkswagen AG faced billions of dollars of potential penalties after it was shown that the company had used software in some of its cars that was designed to improve exhaust emissions tests. VW executives were accused of perpetrating a massive fraud, and the U.S. Justice Department filed a civil lawsuit asking for as much as \$18 billion in compensation from the company. Although officials at the Justice Department have not yet said whether they will bring criminal charges against the company, many observers think it likely.¹⁶

Also, in a 2009 story that most readers will remember, investment fund manager Bernard Madoff pleaded guilty to operating a Ponzi scheme that defrauded investors out of as much as \$50 billion.¹⁷ Madoff pleaded guilty to 11 felony counts, including securities fraud, mail fraud, wire fraud, money laundering, and perjury. Following the plea, he was sentenced to serve 150 years in federal prison—three times as long as federal probation officers had recommended.¹⁸ White-collar crime is discussed in more detail in Chapter 2.

The current era is characterized by low and declining rates of “traditional” crimes, such as rape, robbery, and burglary (see Chapter 2 for more details), but the specter of random mass shootings, a high number of inner-city murders, and novel forms of criminal activity complicates today's crime picture. In 2016, for example, the year of the Pulse nightclub shootings in Orlando, Florida, Chicago, Illinois, Compton, California, Flint, Michigan, Newark, New Jersey, Baltimore, Maryland, and many other American cities, reported more murders than at any time in their history.¹⁹ Similarly, as Chapter 2 explains in greater detail, many other types of crimes today are Internet-based or involve other forms of high technology. Criminal perpetrators who illegally gain access to digital information (and money) through social media or Internet-based transaction, are responsible for a significant level of criminal activity in the virtual world. Such crimes can have very significant impact on real people. Moreover, crimes committed through the medium of cyberspace frequently remain undiscovered, or are found out only with the passage of time. If we were to examine all forms of crime, we would find that crimes today have undergone a significant shift away from historical forms of offending to more innovative



▲ Freedom Tower shown under construction at the World Trade Center site in New York City. The tower stands 1,776 feet tall and is surrounded by several other buildings, and a memorial to the nearly 3,000 people who were killed in the terrorist attacks that demolished the Twin Towers in 2001. How did those attacks change the American justice system?

Frank Schmalleger/Justice Research Association

🐦 Follow the author's tweets about the latest crime and justice news @schmalleger

Class Activity Have students collect clippings and stories from the Web, newspapers, and magazines, and do a short report or presentation noting which criminal justice–related topics (such as individual rights, social control, policing, terrorism, and violent crime) receive the most coverage. A useful website for criminal justice–specific current events is <http://thecrimereport.org>.

◀ Ponzi schemer Bernard Madoff being escorted by police as he leaves a U.S. federal court in New York after a hearing. Madoff, whose financial crimes may have cost investors as much as \$50 billion, was sentenced to 150 years in prison in 2009. Should corporate criminals be treated differently from other offenders?

Bryan Smith/ZUMA Press/Newscom

schemes involving computers and other digital devices. For a detailed look at crimes, both historical and contemporary, visit <http://www.trutv.com/library/crime>.

The Theme of This Book

2

Describe the public-order (crime-control) and individual-rights (due-process) perspectives of criminal justice, concluding with how the criminal justice system balances the two perspectives.

Lecture Note Identify the theme on which this text builds, and highlight the differences between the individual-rights and public-order perspectives.

Class Activity Poll students to determine their identification with either the individual-rights perspective or the public-order perspective. After polling is complete, assign students to presentation groups by asking those who most closely identify with the public-order perspective to defend individual rights, and vice versa. Such role reversal can be interesting in its own right, but it may also serve to broaden students' appreciation for the values of others.

Thematic Question Do you see a trend in our society in favor of individual-rights or public-order interests? What recent examples support your opinion?

By the start of the twenty-first century, public opinion had shifted away from seeing the criminal as an unfortunate victim of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights to seeing him or her as a dangerous social predator who usurps the rights and privileges of law-abiding citizens.

This book examines the American system of criminal justice and the agencies and processes that constitute it. It builds on a theme that is especially valuable for studying criminal justice today: *individual rights versus public order*. This theme draws on historical developments that have shaped our legal system and our understandings of crime and justice. It is one of the primary determinants of the nature of contemporary criminal justice—including criminal law, police practice, sentencing, and corrections.

A strong emphasis on individual rights rose to the forefront of American social thought during the 1960s and 1970s, a period known as the *civil rights era*. The civil rights era led to the recognition of fundamental personal rights that had previously been denied illegally to many people on the basis of race, ethnicity, gender, sexual preference, or disability. The civil rights movement soon expanded to include the rights of many other groups, including criminal suspects, parolees and probationers, trial participants, prison and jail inmates, and victims. As the emphasis on civil rights grew, new laws and court decisions broadened the rights available to many.

The treatment of criminal suspects was afforded special attention by those who argued that the purpose of any civilized society should be to secure rights and freedoms for each of its citizens—including those suspected and convicted of crimes. Rights advocates feared unnecessarily restrictive government action and viewed it as an assault on basic human dignity and individual liberty. They believed that at times it was necessary to sacrifice some degree of public safety and predictability to guarantee basic freedoms. Hence, criminal rights activists demanded a justice system that limits police powers and that holds justice agencies accountable to the highest procedural standards.

During the 1960s and 1970s, the dominant philosophy in American criminal justice focused on guaranteeing the rights of criminal defendants while seeking to understand the root causes of crime and violence. The past 30 years, however, have witnessed increased interest in an ordered society, in public safety, and in the rights of crime victims. This change in attitudes was likely brought about by national frustration with the perceived inability of our society and its justice system to prevent crimes and to consistently hold offenders to heartfelt standards of right and wrong. Increased conservatism in the public-policy arena was given new life by the September 11, 2001, terrorist attacks and by widely publicized instances of sexual offenses targeting children. It continues to be sustained by the many stories of violent victimization, such as random mass shootings, that seem to be the current mainstay of the American media.

By the start of the twenty-first century, public opinion had shifted away from seeing the criminal as an unfortunate victim of poor social and personal circumstances who is inherently protected by fundamental human and constitutional rights to seeing him or her as a dangerous social predator who usurps the rights and privileges of law-abiding citizens. Reflecting the “get-tough-on-crime” attitudes of recent times, many Americans demand to know how offenders can better be held accountable for violating the criminal law. In late 2010, for example, California state senators unanimously passed Chelsea’s Law, a bill intended to increase prison sentences and extend parole terms for offenders who commit sex crimes against minors. The bill, named after 17-year-old Chelsea King, who was raped and murdered by a convicted sex offender earlier in 2010, was signed into law by the state’s governor soon after it passed the legislature.²⁰ Even in an era of difficult budgetary challenges, a number of states are continuing to extend prison sentences for sex offenders, restrict where released sex offenders can live, and improve public notification of their whereabouts.²¹

Freedom or Safety? You Decide

Clarence Thomas Says: “Freedom Means Responsibility”

In 2009, U.S. Supreme Court Justice Clarence Thomas spoke to a group of high school essay contest winners in a Washington, D.C., hotel ballroom. Thomas used the occasion, which was dedicated to our nation’s Bill of Rights, to point out the importance of obligations as well as rights. “Today there is much focus on our rights,” said Thomas. “Indeed, I think there is a proliferation of rights.” But then he went on to say, “I am often surprised by the virtual nobility that seems to be accorded those with grievances. Shouldn’t there at least be equal time for our Bill of Obligations and our Bill of Responsibilities?”

The challenge for the criminal justice system today, it seems, is to balance individual rights and personal freedoms with social control and respect for legitimate authority. Years ago, during the height of what was then a powerful movement to win back control of our nation’s cities and to rein in skyrocketing crime rates, the *New York Post* sponsored a conference on crime and civil rights. The keynote speaker at that conference was the mayor of New York, Rudolph W. Giuliani. In his speech, Giuliani, who sought the Republican nomination as a presidential candidate in 2008, identified the tension between personal freedoms and individual responsibilities as the crux of the crime problem then facing his city and the nation. We mistakenly look to government and

elected officials, Giuliani said, to assume responsibility for solving the problem of crime when, instead, each individual citizen must become accountable for fixing what is wrong with our society. “We only see the oppressive side of authority. . . . What we don’t see is that freedom is not a concept in which people can do anything they want, be anything they can be. Freedom is about authority. Freedom is about the willingness of every single human being to cede to lawful authority a great deal of discretion about what you do.”

YOU DECIDE

How can we, as suggested by Justice Thomas, achieve a balance of rights and obligations in American society? What did Giuliani mean when he said, “What we don’t see is that freedom is not a concept in which people can do anything they want, be anything they can be”? Is it possible to balance individual rights and personal freedoms with social control and respect for legitimate authority?

References: Adam Liptak, “Reticent Justice Opens up to a Group of Students,” *New York Times*, April 13, 2009, <http://www.nytimes.com/2009/04/14/us/14bar.html> (accessed June 2, 2012); and Philip Taylor, “Civil Libertarians: Giuliani’s Efforts Threaten First Amendment,” *Freedom Forum Online*, <http://www.freedomforum.org>.

Although today’s financial constraints, soaring imprisonment rates, and social concerns like those identified in the story that opens this chapter have tempered the zeal of legislators to expand criminal punishments, the tension between individual rights and social responsibility still forms the basis for most policymaking activity in the criminal justice arena. Those who fight for individual rights continue to carry the banner of civil and criminal rights for the accused and the convicted, while public-order activists proclaim the rights of the victimized and call for an increased emphasis on social responsibility and criminal punishment for convicted criminals. In keeping with these realizations, the theme of this book can be stated as follows:

There is widespread recognition in contemporary society of the need to balance (1) the freedoms and privileges of our nation’s citizens and the respect accorded the rights of individuals faced with criminal prosecution against (2) the valid interests that society has in preventing future crimes, in maintaining public safety, and in reducing the harm caused by criminal activity. While the personal freedoms guaranteed to law-abiding citizens as well as to criminal suspects by the Constitution, as interpreted by the U.S. Supreme Court, must be closely guarded, the urgent social needs of communities for controlling unacceptable behavior and protecting law-abiding citizens from harm must be recognized. Still to be adequately addressed are the needs and interests of victims and the fear of crime and personal victimization often prevalent in the minds of many law-abiding citizens. It is important to recognize, however, that the drama between individual rights and public safety advocates now plays out in a tenuous economic environment characterized by financial constraints and a concern with effective public policy.

Figure 1–2 represents our theme and shows that most people today who intelligently consider the criminal justice system assume one of two viewpoints. We will refer to those who seek to protect personal freedoms and civil rights within society, and especially within the criminal justice process, as **individual-rights advocates**. Those who suggest that, under certain circumstances involving criminal threats to public safety, the interests of society

Thematic Question Do you identify more with what the book calls the individual-rights perspective or the public-order perspective? What experiences have you had that might explain your affinity for that perspective?

individual-rights advocate

One who seeks to protect personal freedoms within the process of criminal justice.

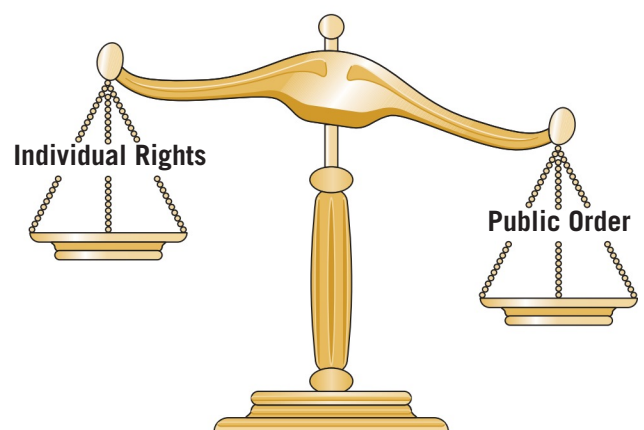


FIGURE 1–2
The Theme of This Book

Note: Balancing the concern for individual rights with the need for public order through the administration of criminal justice is the theme of this book.

Source: Frank Schmalleger, *Criminal Justice: A Brief Introduction*, 12e, © 2018. Pearson Education, Inc., New York, NY.

Class Activity Ask students whether a random act of violence has recently occurred in their community. You can also ask about an event they might have heard about recently on the news or read about on the Web. Ask them to discuss their initial response, and ask whether they are concerned about possibly becoming a victim of such random violence.

Thematic Question What are the relative merits of the individual-rights perspective, and what are the merits of the public-order point of view? How can the goals of both perspectives be balanced in contemporary society?

social order

The condition of a society characterized by social integration, consensus, smooth functioning, and lack of interpersonal and institutional conflict. Also, a lack of social disorganization.

public-order advocate

One who believes that under certain circumstances involving a criminal threat to public safety, the interests of society should take precedence over individual rights.

3

Explain the relationship of criminal justice to general concepts of equity and fairness.

Thematic Question What does justice mean to you? Is “justice for all” a reasonable expectation of our system of criminal justice?

Lecture Note Explain that the word “justice” in “criminal justice” implies a sense of basic fairness, and that no criminal justice system will seem fair to the citizens it serves unless it rings true to the basic sense of fairness to which those citizens hold.



▲ Demonstrators gathering on the steps of New York City's Federal Hall to protest passage of the 2001 USA PATRIOT Act. Federal Hall served as the venue for President George Washington's inauguration in 1789 and was the meeting place of the First Congress, which wrote our nation's Bill of Rights. The PATRIOT Act was passed by Congress with little debate just 45 days after the terrorist attacks of September 11, 2001. Rights advocates claim that the act, which has since been modified, unfairly restricts individual liberties. What do you think?

Scout Tufankjian/AP Images

(especially crime control and **social order**) should take precedence over individual rights will be called **public-order advocates**. Recently, retired U.S. Supreme Court Justice Sandra Day O'Connor summed up the differences between these two perspectives by asking, “At what point does the cost to civil liberties from legislation designed to prevent terrorism [and crime] outweigh the added security that that legislation provides?”²² We seek to look at ways in which the individual-rights and public-order perspectives can be balanced to serve both sets of needs. Hence, you will find our theme discussed throughout this text and within “Freedom or Safety?” boxes.

Criminal Justice and Basic Fairness

In a 1967 speech that Martin Luther King, Jr., made before the Southern Christian Leadership Conference, he said, “The arc of the moral universe is long; but it bends toward justice.”²³

There is no denying that the word *justice* is powerful, and speaks to all Americans. The reality, however, is that *justice* is an elusive term. Although most listeners came away inspired that night, few who heard the president's speech knew exactly what justice might mean and what form it might eventually take. Even to those living within the same society, *justice* means different things. And just as *justice* can be an ambiguous term for politicians, it is not always clear how justice can be achieved in the criminal justice system. For example, is “justice for all” a reasonable expectation of today's—or tomorrow's—system of criminal justice? The answer is unclear because individual interests and social needs often diverge. From the perspective of a society or an entire nation, justice can look very different than it does from the perspective of

The arc of the moral universe is long, but it bends towards justice.

—Martin Luther King, Jr.
(1929–1968)

an individual or a small group of people. Because of this dilemma, we now turn our attention to the nature of justice.

British philosopher and statesman Benjamin Disraeli (1804–1881) defined **justice** as “truth in action,” and noted that it also encompasses the principle of moral rightness. A popular dictionary defines it as “conformity to truth, fact, or reason.”²⁴ **Social justice** is a concept that embraces all aspects of civilized life. It is linked to notions of fairness and to cultural beliefs about right and wrong. Questions of social justice can arise about relationships between individuals, between parties (such as corporations and agencies of government), between the rich and the poor, between the sexes, between ethnic groups and minorities—between social connections of all sorts. In the abstract, the concept of social justice embodies the highest personal and cultural ideals.

Civil justice, one component of social justice, concerns itself with fairness in relationships between citizens, government agencies, and businesses in private matters, such as those involving contractual obligations, business dealings, hiring, and equality of treatment. **Criminal justice**, on the other hand, refers to the aspects of social justice that concern violations of the criminal law. As mentioned earlier, community interests in the criminal justice sphere demand the apprehension and punishment of law violators. At the same time, criminal justice ideals extend to the protection of the innocent, the fair treatment of offenders, and fair play by the agencies of law enforcement, including courts and correctional institutions.

Criminal justice, ideally speaking, is “truth in action” within the process that we call the **administration of justice**. It is therefore vital to remember that justice, in the truest and most satisfying sense of the word, is the ultimate goal of criminal justice—and of the day-to-day practices and challenges that characterize the American criminal justice system. Reality, unfortunately, typically falls short of the ideal and is severely complicated by the fact that justice seems to wear different guises when viewed from diverse vantage points. To some people, the criminal justice system and criminal justice agencies often seem biased in favor of the powerful. The laws they enforce seem to emanate more from well-financed, organized, and vocal interest groups than they do from any idealized sense of social justice. As a consequence, disenfranchised groups, those who do not feel as though they share in the political and economic power of society, are often wary of the agencies of justice, seeing them more as enemies than as benefactors.

On the other hand, justice practitioners, including police officers, prosecutors, judges, and corrections officials, frequently complain that their efforts to uphold the law garner unfair public criticism. The realities of law enforcement and of “doing justice,” they say, are often overlooked by critics of the system who have little experience in dealing with offenders and victims. We must recognize, practitioners often tell us, that those accused of violating the criminal law face an elaborate process built around numerous legislative, administrative, and organizational concerns. Viewed realistically, although the criminal justice process can be fine-tuned to take into consideration the interests of ever-larger numbers of people, it rarely pleases everyone. The outcome of the criminal justice process in any particular case is a social product, and like any product that is the result of group effort, it must inevitably be a patchwork quilt of human emotions, reasoning, and concerns.

Whichever side we choose in the ongoing debate over the nature and quality of criminal justice in America, it is vital that we recognize the plethora of pragmatic issues involved in the administration of justice while also keeping a clear focus on the justice ideal.²⁵ Was justice done, for example, in the 2005 criminal trial of pop music superstar Michael Jackson on charges of child molestation, or after Jackson’s death in the 2011 trial of his personal physician, Conrad Murray? Was justice served in the case of Casey Anthony, who authorities say killed her young daughter; or in the case of Jody Arias or George Zimmerman? Similarly, we might ask whether justice was done in the 2014 trial (and 2016 resentencing) of Oscar Pistorius, the South African Paralympic athlete known as the “Blade Runner,” who was convicted of the shooting death of his model girlfriend, Reeva Steenkamp.²⁶ While answers to such questions may reveal a great deal about the American criminal justice system, they also have much to say about the perspectives of those who provide them.

Lecture Note Explain that criminal justice is the study of how fairness is achieved in criminal courts. Contrast formal criminal justice case processing with alternatives, such as vigilante justice and kangaroo courts. Consider other ways of achieving justice, and examine the meaning of justice itself.

justice

The principle of fairness; the ideal of moral equity.

social justice

An ideal that embraces all aspects of civilized life and that is linked to fundamental notions of fairness and to cultural beliefs about right and wrong.

civil justice

The civil law, the law of civil procedure, and the array of procedures and activities having to do with private rights and remedies sought by civil action. Civil justice cannot be separated from social justice because the justice enacted in our nation’s civil courts reflects basic American understandings of right and wrong.

criminal justice

In the strictest sense, the criminal (penal) law, the law of criminal procedure, and the array of procedures and activities having to do with the enforcement of this body of law. Criminal justice cannot be separated from social justice because the justice enacted in our nation’s criminal courts reflects basic American understandings of right and wrong.

administration of justice

The performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.ⁱⁱ

Lecture Note Explain the relationship of criminal justice to fundamental notion of fairness and to the wider notions of equity and morality.