



EDIE GREENE

KIRK HEILBRUN

WRIGHTSMAN'S

PSYCHOLOGY

and the

LEGAL SYSTEM

EIGHTH EDITION

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WRIGHTSMAN'S

PSYCHOLOGY EIGHTH EDITION
and the **LEGAL SYSTEM**

EDIE GREENE

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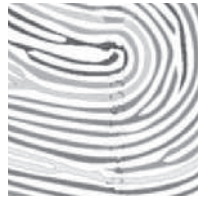
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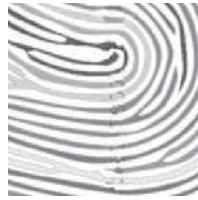
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*Dedicated to the field of psychology and law—
and to all who have worked to develop it into
the mature discipline it has become.*



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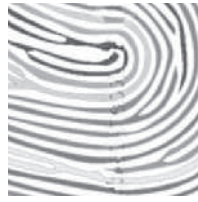
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Preface

This is the 8th edition of *Psychology and the Legal System*. Its longevity is a testament to the incisive, rigorous, and accessible presentation of the various aspects of psychology and law by Lawrence Wrightsman and his colleagues over the first five editions. Although Professor Wrightsman is no longer listed as an active author, the 6th, 7th, and 8th editions incorporate his name into the title to honor his many contributions. As in the 7th edition, the sole authors are Edie Greene and Kirk Heilbrun.

We continue to believe that the law is inherently psychological. It is made by people with varying desires and ambitions, interpreted by individuals with different (sometimes contradictory) perspectives, and experienced—either directly or indirectly—by all of us. Both psychology and the law are about motivation and behavior. Indeed, for centuries the legal system has been a powerful influence on people’s everyday activities. From the Supreme Court’s school desegregation decision of 1954 to its recent decisions concerning the constitutionality of mandatory life without parole sentences for adolescents (all described in this book), the courts have had considerable impact on individual lives.

As we move toward the middle of the second decade of the 21st century, we find it useful to describe the law from the perspective of psychology, a behavioral science that also has a significant applied component. We are not alone. In fact, matters of law and psychology are often cited in the media. Whether they involve training police in specialized responses to individuals with behavioral health problems, criminal trials of the rich and famous, the impact of trauma on human behavior, charges of racism in the criminal justice system, or debates about the utility and morality of capital punishment, headlines and lead stories are often about some aspect of psychology and law. Although this attention appears to cater to an almost insatiable curiosity about crime and other types of legal disputes, it also promotes some ambivalence about the law. Many citizens are suspicious of the police, but police are still the first responders in a crisis. Juries are frequently criticized for their decisions, but most litigants would prefer to have their cases decided by juries rather than judges. Citizens value their constitutionally protected rights, but also demand security in a post-9/11 era. This 8th edition explores these tensions as well as many other captivating and controversial issues that arise at the crossroads of psychology and the law.

The primary audiences for *Psychology and the Legal System* are those students taking a course in psychology and the law, forensic psychology, or the criminal justice system, and others who seek to learn more about the legally relevant science and

practice of psychology. This book (and its individual chapters) may also be used as a supplement in psychology courses that emphasize applied psychology, social issues, or policy analysis. In addition, it covers a number of topics relevant to law school courses that introduce law students to social science research findings and applications.

We have attempted to find the right mix of psychology and legal analysis in the text. The book's emphasis remains on psychological science and practice, but we also summarize the legal history of many key topics and present the current status of relevant legal theories and court decisions. Specific recent topics that are covered in some detail in this edition include new forensic assessment measures, verbal and behavioral cues associated with deception, the effectiveness of diversion strategies of mentally ill individuals, cognitive aspects of trial judges' decisions, the effectiveness of problem-solving courts, sentencing of juvenile offenders, and the community-based correctional rehabilitation of adult and juvenile offenders.

We continue to focus on the psychological dimensions of several topics that remain important in contemporary society, just as they were important when previous editions of this text were written. These topics include social influence effects of interrogations (involving children in investigative interviews and adults in interrogation rooms), clinicians' assessments of competence in various domains, reforms to eyewitness identification procedures based on research in perception, memory and social influence, recovery from victimization in light of our understanding of posttraumatic stress disorder, and racial influences on jury decision making. As in previous editions, we have updated each of these topics using the best available scientific evidence that has been published after our most recent edition went to press.

NEW FEATURES AND REVISIONS

We have made the following major changes from the last edition:

- We have made *Psychology and the Legal System* more user-friendly by providing more current examples to illustrate the material in a straightforward and accessible way.
- We have reordered some of the chapters so the information is presented more sequentially, in the order that the issues actually arise in the course of criminal investigations and litigation.
- We have added an entirely new chapter on alternatives to traditional prosecutions, which covers arbitration, mediation, summary jury trials, diversion, specialized police responding, and problem-solving courts.
- In each chapter, case summaries in boxes (“The Case of...”) have been updated. These summaries describe cases or trials that illustrate or explain an important legal concept or psychological principle covered in the chapter. Readers will be familiar with many of the recent cases, including those of Jerry Sandusky and Jared Loughner, as well as cases involving the interrogation of terrorist suspects. We also feature the historic cases of Ernest Miranda, Clarence Gideon, John Hinckley, Ted Bundy, and others.

A few cases are either fictional (such as Dexter Morgan from the popular television series *Dexter*) or composites, but still highly applicable to the chapter material.

- We have added a “critical thought question” at the end of each box. This question is intended to draw upon the material presented in the chapter, allowing readers to

apply that material to a specific fact pattern. Although the raw material to answer these questions is available in each chapter, the process of answering each will also require the reader to think in a critical, integrative, and imaginative way.

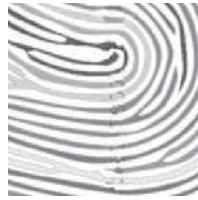
- We have updated our focus on the role of psychologists in the legal system and the ethical issues they face. Chapter 1 also introduces the conflicts that pervade a psychological analysis of the law: the rights of individuals versus the common good, equality versus discretion as ideals that can guide the legal system, discovering the truth or resolving conflicts as the goals that the legal system strives to accomplish, and science versus the law as a source of legal decisions. We return to these conflicts several times throughout the book as we apply them to specific issues.

This edition includes a thorough, authoritative revision of every chapter in light of research and professional literature published since the last edition. Highlights include the following:

- Chapter 1 provides an overview of the field and details the roles that psychologists play in the legal system, including novel aspects of litigation consulting.
- Chapter 4, on the psychology of police, includes expanded coverage of specialized police responses to individuals in behavioral health crisis.
- Chapter 5 updates the reforms to lineup procedures in cases involving eyewitness identification based on recent scientific data on eyewitness memory.
- Chapter 6 covers the psychology of victims of crime and violence. It expands the discussion of posttraumatic stress disorder and the relationship between adverse experience and various outcomes. It also includes a case example of the issues related to political prominence and accusation of sexual assault.
- Chapter 7, on the evaluation of criminal suspects, includes updated discussion of the detection of deception, including brain-based lie detection.
- Chapter 9, an entirely new chapter, discusses alternative dispute resolution in the forms of arbitration, summary jury trial, and mediation. It also addresses community-based alternatives to standard prosecution using the Sequential Intercept Model, with a particular focus on specialized police responding (at the earliest stage) and problem-solving courts such as drug court, mental health court, veterans court, and community court.
- Chapter 11 describes updates on forensic assessment in civil cases, particularly new data on the evaluation of children and parents in the context of child custody litigation.
- Chapter 12 provides a comparison between decisions made by judges and those made by juries, including some new data on these comparisons.
- Chapter 13 expands the discussion of juries in the previous chapter to provide more detailed information about the competence of juries—particularly their ability to understand instructions, apply them, and decide complex cases. Juror bias is discussed in light of the recent highly publicized case of Jerry Sandusky and his conviction of multiple counts of sexual abuse of minors.
- Chapter 14 describes traditional rationales for punishing offenders and also covers restorative approaches that allow victims and offenders to voice their perspectives in order to repair harms and resolve conflicts.
- The appendices for this book are now available online at www.cengagebrain.com. They include the Ethical Principles of Psychologists and Code of Conduct as

well as the Specialty Guidelines for Forensic Psychologists, both of which provide ethical guidance for practice and research in forensic psychology. They also include the Bill of Rights, which describes the amendments to the United States Constitution.

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Chapter

1



Psychology and the Law

Choices and Roles

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Laws as Human Creations

Laws Help Resolve Conflict and Protect the Public

The Changing of Laws

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Summary

Key Terms

ORIENTING QUESTIONS

1. Why do we have laws, and what is the psychological approach to studying law?
2. What choices are reflected in the psychological approach to the law?
3. How do laws reflect the contrast between due process and crime control in the criminal justice system?
4. What are five roles that psychologists may play in the legal system, and what does each entail?

Consider the following stories, all of which were prominently featured in the news:

- Wearing body armor, a gas mask, and a tactical helmet, and dressed entirely in black, gunman James Holmes opened fire in a movie theater near Denver during the premiere of the Batman movie, *The Dark Knight Rises*. In one of the deadliest shooting rampages in American history, Holmes killed 12 and wounded nearly 60 others. What impelled a quiet, reclusive Ph.D. student, who graduated with honors in neuroscience from the University of California, to kill with such wild abandon? One possibility is that Holmes was distraught over events in his life, prompting his withdrawal from graduate school. Another is that Holmes harbored psychopathic traits that went undetected by those around him.
- A controversial Arizona law requires law enforcement officers to determine the immigration status of any person they detain or arrest if they believe that person is in the country illegally. Psychological research suggests that the law may render residents less likely to report crimes and may subject Hispanic and Hispanic-looking citizens to extra police attention, influencing their perceptions of justice and fairness.
- A drunken driver who killed a 10-year-old boy in suburban Dallas was sentenced to spend 180 days in jail over the next 10 years, including every Christmas Day, New Year's Day, and June 8, the child's birthday. The judge said he wanted to remind the defendant of the family's loss on these important family holidays.
- In late 2011, Representative Marsha Blackburn introduced a bill in Congress dubbed the STRIP act (Stop TSA's Reach In Policy) which would prohibit Transportation Security Administration employees from using the title "officer" and

wearing uniforms and badges that resemble those worn by law enforcement personnel. TSA officials claim that uniforms and badges represent "the professionalism of our employees and the seriousness of our work," while consumer advocacy groups claim that TSA workers intimidate passengers by presenting an image of themselves that is untrue. Both assertions involve public perceptions and beliefs—issues that can be examined via psychological research.

These stories illustrate a few of the psycholegal topics that we consider in this book: the motivations of offenders, police–community relations and discrimination, discretion in judges' sentencing decisions, and public perceptions of security and law enforcement officials. They show the real flesh and blood of some of the psychological issues that arise in the law.

THE IMPORTANCE OF LAWS

These examples also illustrate the pervasiveness of the law in our society. But how does the law work? This book will help you understand how the legal system operates by applying psychological concepts, theories, findings, and methods to its study.

Laws as Human Creations

Laws are everywhere. They affect everything from birth to death. Laws regulate our private lives and our public actions. Laws dictate how long we must stay in school, how fast we can drive, when (and, to some extent, whom) we can marry, and whether we are allowed to play our car stereos at full blast or let our boisterous dog romp through the neighbors' yards and gardens. Given that the body of laws has such a

widespread impact, we might expect that the law is a part of nature, that it was originally discovered by a set of archaeologists or explorers. Perhaps we think of Moses carrying the Ten Commandments down from the mountain.

But our laws are not chiseled in stone. Rather, laws are human creations that evolve out of the needs for order and consistency. To be responsive to a constantly changing society, our laws must also change. As some become outdated, others take their place. For example, before there were shootings on school grounds, no laws forbade the presence of weapons in schools. But after a series of deadly incidents, laws that banned weapons from school property proliferated. On occasion, the reach of these zero-tolerance policies has been excessive, as Zachary Christie, a Delaware first-grader, learned. Zachary was suspended and ordered to enroll in an alternative program for troubled youths because he took to school a Cub Scout utensil that included a small folding knife. When this sort of overreaching occurs, the public reacts, and the policies are revised again.

Laws Help Resolve Conflict and Protect the Public

Many standards of acceptable behavior—not purposely touching strangers on elevators, for example—seem universally supported. But in some situations, people have differences of opinion about what is considered appropriate and disagreements result. When this occurs, society must have mechanisms to resolve the disagreements. Thus, societies develop laws and regulations to function as conflict resolution mechanisms. Customs and rules of conduct evolve partly to deal with the conflict between one person’s impulses and desires and other people’s rights. Similarly, laws are developed to manage and resolve those conflicts that cannot be prevented.

Public safety is always an important consideration in a civilized society. In earlier times, before laws were established to deter and punish unacceptable behavior, people “took the law into their own hands,” acting as vigilantes to secure the peace and impose punishment on offenders. Now, in the United States and most other nations, all governmental entities—federal, state, county, borough, and municipal, and even some neighborhoods—have enacted laws to protect the public.

The Changing of Laws

The raw material for the construction and the revision of laws is human experience. As our experiences and opportunities change, laws must be developed, interpreted, reinterpreted, and modified to keep up with these rapid changes in our lives. As George Will (1984) put it, “Fitting the law to a technologically dynamic society often is like fitting trousers to a 10-year-old: Adjustments are constantly needed” (p. 6).

The framers of the U.S. Constitution, and even legislators of 30 years ago, could never have anticipated the ways that laws have changed and will continue to change. They probably never contemplated the possibility that advances in neuroscience, for example, would affect how police investigate cases, attorneys represent their clients, and juries and judges make decisions. But brain-imaging technology is now used to detect brain injuries and assess pain in accident sufferers, determine mental state and capacity for rational thought in offenders, and detect lies and deception in suspects under interrogation. Although the correspondence between brain activity and behavior is far from clear at this point, neuroimaging will undoubtedly raise thorny questions for the legal system. New rules, policies, and laws will have to be created to address them.

Similarly, no one could have anticipated the ways that DNA testing would change laws involving criminal investigations. Legislatures have passed statutes that mandate the collection of DNA samples from millions of Americans, including those who have simply been arrested and are awaiting trial. Some of these individuals have objected to having their DNA collected and catalogued. But law enforcement officials claim that widespread testing will help them solve more crimes and exonerate people who were wrongly convicted. (We describe the role of DNA analysis in the exoneration of convicted criminals in Chapter 5.)

Legislators must now consider what, if any, restrictions should be placed on online activities. (Cyberlaw, virtually unheard of 25 years ago, has become an important subfield of the law.) For example, individuals have been convicted of sexually abusing minors after they “sexted” nude and seminude pictures on their cellphones, and drivers have been ticketed for sneaking a peek at their smartphones when stopped at red lights, thereby violating their

states' hands-free phone requirements. Should laws regulate these activities? Many people believe that these laws protect the dignity and safety of the public, yet others claim that they interfere with constitutionally protected speech and privacy rights. But most people would agree that vast changes in society have necessitated far-reaching adjustments in the law.

The technological development of the automobile produced several new potential adversarial relationships, including pedestrians versus drivers, and hence new laws. Car accidents—even minor ones—cause conflicts over basic rights. Consider a driver whose car strikes and injures a pedestrian. Does this driver have a legal responsibility to report the incident to the police? Yes. But doesn't this requirement violate the Fifth Amendment to the U.S. Constitution, which safeguards each of us against self-incrimination, against being a witness in conflict with our own best interests?

Shortly after automobiles became popular in the first two decades of the 20th century, a man named Edward Rosenheimer was charged with violating the newly necessary reporting laws. He did not contest the charge that he had caused an accident that injured another person, but he claimed that the law requiring him to report it to the police was unconstitutional because it forced him to incriminate himself. Therefore, he argued, this particular law should be removed from the books, and he should not be jailed on the charge of leaving the scene of an accident. Surprisingly, a New York judge agreed with him and released him from custody.

But authorities in New York were unhappy with a decision that permitted a person who had caused an injury to avoid being apprehended, so they appealed the decision to a higher court, the New York Court of Appeals. This court, recognizing that the Constitution and the recent law clashed with each other, ruled in favor of the state and overturned the previous decision. This appeals court concluded that rights to “constitutional privilege”—that is, to avoid self-incrimination—must give way to the competing principle of the right of injured persons to seek redress for their sufferings (Post, 1963).

These examples illustrate that the law is an evolving human creation, designed to arbitrate between values in opposition to each other. Before the advent of automobiles, hit-and-run accidents seldom occurred. Before the invention of smartphones, texting at stoplights (or worse, while driving) never occurred. However, once cars and smartphones became a part of society,

new laws were enacted to regulate their use, and courts have determined that most of these new laws are constitutional.

THE PSYCHOLOGICAL STUDY OF LAW

Laws and legal systems are studied by several traditional disciplines other than psychology. For example, anthropologists compare laws (and mechanisms for instituting and altering laws) in different societies and relate them to other characteristics of these societies. They may be interested in how frequently women are raped in different types of societies and in the relationship between rape and other factors, such as the extent of separation of the sexes during childhood or the degree to which males dominate females.

Sociologists, in contrast, usually study a specific society and examine its institutions (e.g., the family, the church, or the subculture) to determine their role in developing adherence to the law. The sociologist might study the role that social class plays in criminal behavior. This approach tries to predict and explain social behavior by focusing on groups of people rather than on individuals.

A psychological approach to the law emphasizes its human determinants. The focus in the psychological approach is on the individual as the unit of analysis. Individuals are seen as responsible for their own conduct and as contributing to its causation. Psychology examines the thoughts and actions of individuals—drug abusers, petty thieves, police officers, victims, jurors, expert witnesses, corporate lawyers, judges, defendants, prison guards, and parole officers, for example—involved in the legal system. Psychology assumes that characteristics of these participants affect how the system operates, and it also recognizes that the law, in turn, can affect individuals' characteristics and behavior (Ogloff & Finkelman, 1999). By *characteristics*, we mean these persons' abilities, perspectives, values, and experiences—all the factors that influence their behavior. These characteristics determine whether a defendant and his or her attorney will accept a plea bargain or go to trial. They determine whether a Hispanic juror will be more sympathetic toward a Hispanic defendant than toward a non-Hispanic defendant. They determine whether a

juvenile offender will fare better in a residential treatment facility or a correctional institution.

But the behavior of participants in the legal system is not just a result of their personal qualities. The setting in which they operate matters as well. Kurt Lewin, a founder of social psychology, proposed the equation $B = f(p, e)$: behavior is a function of the person and the environment. Qualities of the external environment and pressures from the situation affect an individual's behavior. A prosecuting attorney may recommend a harsher sentence for a convicted felon if the case has been highly publicized, the community is outraged over the crime, and the prosecutor happens to be waging a reelection campaign. A juror holding out for a guilty verdict may yield if all the other jurors passionately proclaim the defendant's innocence. A juvenile offender may desist from criminal behavior if his gang affiliations are severed. The social environment affects legally relevant choices and conduct.

This book concentrates on the behavior of participants in the legal system. As the examples at the beginning of this chapter indicate, we are all active participants in the system, even if we do not work in occupations directly tied to the administration of justice. We all face daily choices that are affected by the law—whether to speed through a school zone because we are late to class, whether to report the person who removes someone else's laptop from a table at the library, whether to vote in favor of or against a proposal to end capital punishment. Hence, this book will also devote some attention to the determinants of our conceptions of justice and the moral dilemmas we all face.

But this book will pay particular attention to the role of psychology in the criminal and civil justice systems and to the central participants in those settings: defendants and witnesses, civil and criminal lawyers, judges and juries, convicts and parole boards. It will also focus on the activities of **forensic psychologists**, professionals who generate and communicate information to answer specific legal questions or to help resolve legal disputes (Heilbrun, Grisso, & Goldstein, 2009; Melton, Petrila, Poythress, & Slobogin, 2007). Most forensic psychologists are trained as clinical psychologists, whose specialty involves the psychological evaluation and treatment of others. Forensic psychologists are often asked to evaluate a person and then prepare a report for a court, and sometimes provide expert testimony in a hearing

or trial. For example, they may evaluate adult criminal defendants or children involved with the juvenile justice system and offer the court information relevant to determining whether the defendant has a mental disorder that prevents him from going to trial, what the defendant's mental state was at the time of the offense, or what treatment might be appropriate for a particular defendant. But psychologists can play many other roles in the legal system, as well. We describe these roles later in the chapter.

BASIC CHOICES IN THE PSYCHOLOGICAL STUDY OF THE LAW

Just as each of us has to make decisions about personal values, society must decide which values it wants its laws to reflect. Choices lead to conflict, and often the resulting dilemmas are difficult to resolve. Should the laws uphold the rights of specific individuals or protect society in general? Should each of us be able to impose our preferences on others, or must we be attentive to other people's needs? You may have pondered this question while stopped at a traffic light next to a car with a deafening subwoofer. One of Madonna's neighbors in a posh New York City apartment building certainly pondered this question. She filed a lawsuit against the pop icon, claiming that her music was so loud that the neighbor had to leave several times a day. Whose rights prevail? A commonly asked question that taps that dilemma is whether it is better for ten murderers to go free than for one innocent person to be sentenced to death. The law struggles with the fact that rights desirable for some individuals may be problematic for others.

This tension between individual rights and the common good is one example of the basic choices that pervade the psychological study of the law. But there are others. In this chapter, we highlight four basic choices inherent in laws and that apply to each of us in the United States, Canada, and many other countries. Each choice creates a dilemma and has psychological implications. No decision about these choices will be completely satisfactory because no decision can simultaneously attain two incompatible goals—such as individual rights and societal rights—both of which we value. These four choices (and the

tension inherent in their competing values) are so basic that they surface repeatedly throughout this book.

Consider another choice, that between individual freedom (or discretion) and equality for all. Our society champions both freedom and equality, but it is hard to achieve these aspirations at the same time. Ponder the small-town civic organization that has always had a “males-only” policy at its Friday night dinners and is also a vehicle by which prominent citizens transact their business. The men enjoy the “freedom” to act like “good ole boys” in the company of their own gender. But what if a woman starts a new insurance agency in town? Doesn’t she have the right to “equality”—to full and equal participation in the civic organization that is influential in the success of any business in this community? It is hard to see how a resolution of this conflict could fully meet both of these goals (freedom of existing members and equality among all comers). The balance in such cases often shifts from one value to another, emphasizing the attainment of first one and then the other goal.

The First Choice: Rights of Individuals versus the Common Good

Consider the following:

- Smokers have long been restricted to smoky airport lounges and back sections of restaurants, and often huddle together outside of workplace doors. But now smokers are banned from lighting up in some public parks and beaches, and along shorelines and trails. When New York City enacted a ban on smoking in its 1,700 public parks in 2011, Lauren Johnston was ecstatic. She blogged about smokers polluting the air along her running loop. But Bill Saar saw it differently: “It’s the most idiotic law they ever made. I’ve been a smoker for over 20 years. I’m not going to stop,” said Saar as he puffed on a cigar while selling figurines in Union Square (Durkin, 2011). Should cities be able to limit smoking in parks shared by all? Whose rights prevail?
- In 2012, six states—Massachusetts, Connecticut, Vermont, New Hampshire, New York and Iowa—as well as the District of Columbia allowed same-sex marriage, and legislatures in Washington State and Maryland passed laws, subject to voter approval, granting same-sex couples the right to marry. Yet laws and



Alex Wong/Staff/Getty Images

A lesbian couple celebrating their marriage

initiatives passed in several other states barred same-sex couples from marrying. Americans are clearly divided on this issue: According to a 2011 Gallup poll, 53% of Americans favor same-sex marriage, with young people being considerably more supportive than older people. This issue raises complex questions about individual rights to marry whom one wishes versus traditional definitions of the family.

- In a less serious sort of dispute, a growing number of cities have made it a crime to wear “sagging pants,” and some cases have actually gone to trial. Three defendants were charged with violating the “decency ordinance” in Riviera Beach, Florida. Their public defenders argued that the law violated principles of freedom of expression. But the town’s mayor, Thomas Masters, said that voters “just got tired of having to look at people’s behinds or their undergarments . . . I think society has the right to draw the line” (Newton, 2009).

Values in Conflict. The preceding vignettes share a common theme. On the one hand, individuals possess rights, and one function of the law is to ensure that these rights are protected. The United States is perhaps the most individualistic society in the world. People can deviate from the norm, or “do their own thing,” to a greater degree in the United States than virtually anywhere else. Freedom and personal autonomy are two of our most deeply desired values; “the right to liberty” is a key phrase in the U.S. Constitution.

On the other hand, our society also has expectations. People need to feel secure. They need to believe that potential lawbreakers are discouraged from breaking laws because they know they will be punished. All of us have rights to a peaceful, safe existence. Likewise, society claims a vested interest in restricting those who take risks that may injure themselves or others, because these actions can create burdens on individuals and on society. The tension between individual rights and the collective good is illustrated in the case we describe in Box 1.1.

It is clear that two sets of rights and two goals for the law are often in conflict. The tension between the rights of the individual and the constraints that may be placed on the individual for the collective good is always present. It has factored prominently into various U.S. Supreme Court decisions since the 1960s with respect to the rights of criminal suspects and defendants versus the rights of crime victims and the power of the police.

In the 1960s, the Supreme Court established a number of principles that provided or expanded

explicit rights for those suspected of breaking the law. The *Miranda* rule, guaranteeing the right to remain silent (detailed in Chapter 7), was established in 1966. About the same time, the courts required that criminal defendants, in all cases in which incarceration was possible, have the right to an attorney, even if they cannot afford to pay for one. These and other rights were established in an effort to redress a perceived imbalance between a lowly defendant and a powerful government.

But many of these rights were trimmed in subsequent years, when courts frequently ruled in favor of the police. For example, in 1996, the Supreme Court ruled that the police can properly stop a motorist whom they believe has violated traffic laws even if their ulterior motive is to investigate the possibility of illegal drug dealing (*Whren v. United States*, 1996). In 2012, the Court ruled that jail officials can strip search petty offenders even if there is no suspicion they are concealing weapons or contraband (*Florence v. Board of Chosen Freeholders*, 2012).

Two Models of the Criminal Justice System.

The conflict between the rights of individuals and the rights of society is related to a distinction between two models of the criminal justice system. This distinction is between the due process model and the crime control model (Packer, 1964). The values underlying each of these models are legitimate, and the goal of our society is to achieve a balance between them. But because different priorities are important to each model, there is constant tension between them.

Box 1.1 THE CASE OF THE WESTBORO BAPTIST CHURCH: DO INDIVIDUALS HAVE THE RIGHT TO USE OFFENSIVE SPEECH?

In March 2006, Lance Corporal Matthew Snyder, age 20, was killed in Iraq. His funeral was held at a Roman Catholic church in Westminster, Maryland. Protesting outside of the church were seven members of the Westboro Baptist Church, a fringe group based in Topeka, Kansas that attends military funerals across the country to broadcast their belief that God is punishing troops because America tolerates homosexuality. They carry signs that read, “God hates fags” and “Thank God for dead soldiers.” Snyder’s father sued Westboro, alleging that picketers invaded his privacy and caused emotional distress that compounded his loss. He claimed that he wanted to protect other families from the pain inflicted on his family by members of the Westboro Baptist Church.

But the U.S. Supreme Court ruled against Snyder (*Snyder v. Phelps*, 2011), upholding Westboro’s right to freely express itself. In his majority opinion, Chief Justice John Roberts reasoned that the words on Westboro’s signs were “matters of public import” and thus were protected by the First Amendment. He wrote that to ensure that public debate is not stifled, even hurtful and offensive speech must be protected. Snyder reacted with sadness, saying there is something very wrong with allowing these protesters to desecrate a Marine’s funeral. Westboro vowed to quadruple its efforts at military funerals in the future.

Critical Thought Question

What two values were in conflict in this case?

The **due process model**, favored in the 1960s, places primary value on the protection of citizens, including criminal suspects, from possible abuses by the police and the law enforcement system generally. It assumes the innocence of suspects and requires that they be treated fairly (receive “due process”) by the criminal justice system. This model’s proponents subscribe to the maxim that “it is better that 10 guilty persons shall go free than that one innocent person should suffer.” Thus the due process model emphasizes the rights of individuals, especially those suspected of crimes, over the temptation by society to assume suspects are guilty even before a trial.

In contrast, the **crime control model**, favored in the 1990s, seeks the apprehension and punishment of lawbreakers. It emphasizes the efficient detection of suspects and the effective prosecution of defendants, to help ensure that criminal activity is being contained or reduced. The crime control model is exemplified by a statement by former U.S. Attorney General William P. Barr with respect to career criminals. He noted that the goal is “incapacitation through incarceration” (Barr, 1992)—that is, removing such criminals permanently from circulation.

When the crime control model is dominant in society, laws are passed that in other times would be seen as unacceptable violations of individual rights. The Arizona immigration law described at the beginning of the chapter and similar laws in other states are examples. They raise complicated questions about the rights of individuals to be free from police scrutiny and the obligation of the government to provide safety and security to its citizens.

Despite the drop in crime rates in recent years, vestiges of the crime control model still linger in the United States, more so than in Canada, Europe, or Australia. As we point out in Chapter 14, the United States incarcerates a higher percentage of its citizens than any other country (currently 1 of every 32 Americans are imprisoned or on probation or parole). According to the Center on Juvenile and Criminal Justice, the United States has only 5% of the world’s population but nearly 25% of its prisoners.

The global recession may slowly be changing societal options for dealing with crime, however. As federal and state budgets tighten, legislators and law enforcement officials have begun to reevaluate many “tough-on-crime” policies. These strategies boosted spending on prisons but did little to prevent repeat offending by released inmates (Dvoskin, Skeem, Novaco, & Douglas, 2011). Because of reduced resources, officials have

become attentive to the need to find cheaper and more effective alternatives for controlling crime and ensuring public safety. Some new programs have already been shown to reduce repeat offending. Crime rates in Texas dropped after it began investing in treatment programs for parolees. The prison population in Mississippi was reduced by 22% after it allowed inmates to earn time off their sentences for participating in educational and reentry programs. Other proven alternatives include providing employment counseling and substance abuse and mental health treatment for inmates, and diverting offenders from the criminal justice system and into community-based treatment programs. We describe many of these alternatives in Chapter 9.

The Second Choice: Equality versus Discretion

Kenneth Peacock was a long-distance trucker who was caught in an ice storm and came home at the wrong time. He walked in the door to find his wife Sandra in bed with another man. Peacock chased the man away and some four hours later, in the heat of an argument, shot his wife in the head with a hunting rifle. Peacock pled guilty to voluntary manslaughter and was sentenced to 18 months in prison. At the sentencing, Baltimore County Circuit Court Judge Robert E. Cahill said he wished he did not have to send Peacock to prison at all but knew that he must to “keep the system honest” (Lewin, 1994). He continued, “I seriously wonder how many men ... would have the strength to walk away without inflicting some corporal punishment.”

Move the clock ahead one day. A female defendant pleads guilty to voluntary manslaughter in a different Baltimore courtroom. She killed her husband after 11 years of abuse and was given a 3-year sentence, three times longer than that sought by prosecutors (Lewin, 1994). Some people find no inconsistency in the severity of these punishments, believing that each case should be judged on its own merits. However, psychology analyzes these decisions as examples of a choice between the goals of equality and discretion.

What should be the underlying principle guiding the response to persons accused of violating the law? Again, we discover that two equally desirable values—equality and discretion—are often incompatible and hence create conflict. The principle of **equality** means that all people who commit the same crime or misdeed should receive the same consequences. But blind pursuit of equality can lead to unfairness in

situations in which the particular characteristics of offender, victim, or offense matter. For example, most people would think differently about punishing someone who killed randomly, ruthlessly, and without remorse, and someone else who killed a loved one suffering from a painful and terminal illness. In this example, discretion is called for. **Discretion** in the legal system involves considering the circumstances of certain offenders and offenses to determine the appropriate consequences for wrongdoing. Psychology provides concepts through which this conflict can be studied and better understood.

The Principle of Equality. Fundamental to our legal system is the assumption advanced by the founders of the American republic that “all men are created equal.” In fact, the Equal Protection Clause of the Fourteenth Amendment states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” This statement is frequently interpreted to mean that all people should be treated equally and that no one should receive special treatment by the courts simply because he or she is rich, influential, or otherwise advantaged. We cherish the belief that in the United States, politically powerful or affluent people are brought before the courts and, if guilty, convicted and punished just like anyone else who commits similar offenses. Consider the example of disgraced financier Bernard Madoff. A former chairman of the NASDAQ Stock Exchange, Madoff pled guilty in 2009 to perpetrating the largest investor fraud in history, and exchanged his three homes and a yacht on the French Riviera for a cell in the federal prison system.



Bernard Madoff

But this value of equality before the law is not always implemented. In the last three decades, Americans have witnessed a series of incidents that—at least on the surface—seem to indicate unequal treatment of citizens by the legal system. A common practice among police and state patrols in the United States is *profiling*—viewing certain characteristics as indicators of criminal behavior. African-American and Latino motorists have filed numerous lawsuits over the practice of profiling, alleging that the police, in an effort to seize illegal drugs and weapons or find undocumented immigrants, apply a race-based profile to stop and search them more frequently than White drivers. Said Michigan Congressman John Conyers, Jr., “There are virtually no African-American males—including Congressmen, actors, athletes and office workers—who have not been stopped at one time or another for ... driving while black” (Barovick, 1998).

The issue is not limited to driving. It affects people when they shop, eat in restaurants, travel in trains and airplanes, hail a cab, and walk through their neighborhoods. New York City police officers stopped approximately 3 million people between 2004 and 2009, questioning all and frisking and arresting some. But police department statistics show that the stops were not race neutral. Black people accounted for 52% of the stops, and Hispanics for 30%. According to columnist Bob Herbert, “[T]he people getting stopped and frisked are mostly young, and most of them are black or brown and poor ... If the police officers were treating white middle-class or wealthy individuals this way, the movers and shakers in this town would be apoplectic” (Herbert, 2010).

Since police agencies have started gathering statistics on the racial makeup of people targeted for traffic stops, border inspections, and other routine searches, and these disparities have come to light, some courts have ruled that a person’s appearance may not be the basis for such stops. Psychologists also have a role to play on this issue, gathering data on the psychological consequences to victims of racial profiling, improving police training so that cultural and racial awareness is enhanced, and examining how decision makers form implicit judgments of others on the basis of race.

In keeping with the laudable goal of equality under the law, the U.S. Supreme Court has occasionally applied a **principle of proportionality** to its analysis of cases involving criminal sentencing. This principle means that the punishment should be consistently related to the magnitude of the offense. More