

Third Edition

# FOUNDATIONS OF CRIMINAL JUSTICE

STEPHEN S. OWEN   HENRY F. FRADELLA   TOD W. BURKE   JERRY W. JOPLIN



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# Foundations of Criminal Justice



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**Third Edition**

Stephen S. Owen  
*Radford University*

Henry F. Fradella  
*Arizona State University*

Tod W. Burke  
*Radford University, Retired*

Jerry W. Joplin  
*Guilford College, Emeritus*

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# Dedications

Steve: To my family, friends, teachers, and students, all of whom have taught me much,  
and to the criminal justice professionals who are the true philosophers of justice.

Hank: To Kyle Kelley, for his patience, support, love, and friendship.

Tod: To my former students, my parents, Simcha and Stella,  
and especially Steve, without whom this book would not be possible.

Jerry: To my wife, Terrie.

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# Preface

*Understand the core ideas of justice and law.  
Make better real-world decisions in criminal justice.*

## What This Book Is

Criminal justice is the study and practice of society's responses to crime. Within criminal justice, discretion is inevitable. Whether the police officer on patrol, the prosecuting attorney making a charging decision, the judge determining a sentence, or the parole board considering the early release of an inmate, criminal justice professionals are faced with making countless decisions on a daily basis. Most of these decisions involve applying professional judgment (within the bounds of the law) to arrive at the best answer.

To place criminal justice within its most meaningful context, students must engage in the study of two overlapping areas. The first area is *analytical*, focusing on the theories that underlie the practice of criminal justice and the crafting of laws and policies. These include ideas about the nature of law, the meaning of justice, the philosophies of idealism and pragmatism, the history of justice practice, the theoretical foundations of policing, corrections, and judicial decision-making, and more. The second area is *descriptive*, focusing on the structure of the criminal justice system and the particulars of the laws that it enforces. This book explores both and provides students with a foundation for further study of issues related to crime, law, and justice.

An analytical study of theories necessarily enlightens an understanding of how the criminal justice system functions. Without *analyzing* the foundations of criminal justice, it is difficult to *describe* the laws and policies that criminal justice professionals are asked to enforce (and the rationale for doing so) or to understand the full range of ideas that shape—implicitly or explicitly—the discretionary decisions inherent in criminal justice practice. Throughout the text, we challenge students to consider the practical consequences of the material through a series of features, described further in this preface, that seek to apply theory to practice. The study of criminal justice must span its liberal arts foundations with an applied focus, each shaping and reinforcing the other. We hope that the study of these ideas will serve to enrich the study of the criminal justice system and also prepare students to be thoughtful practitioners, decision-makers, and scholars of criminal justice.

## Why We Wrote It

We believe it is imperative for students to study the foundations of criminal justice from their first course in the discipline. Because these ideas underlie so much of current criminal justice policy and practice, they form the bedrock on which subsequent study is grounded. Indeed, the foundational concepts of criminal justice are ideas that apply across a full criminal justice curriculum.

We have titled the book *Foundations of Criminal Justice* not because these are the *only* ideas that are central to the theory and practice of the discipline, but because they are among the most significant conversations that have contributed to the field. Although



discussion of the theoretical roots of criminal justice will no doubt continue and should continue, the ideas and topics surveyed in this text help present a foundational view of criminal justice that can inform the subsequent study of criminal justice structures and processes.

The challenge in teaching the foundations of criminal justice in an introductory course is twofold. First, some of the key ideas are complex, particularly those drawing upon the interdisciplinary roots of criminal justice in areas that may not be very familiar to students, such as policy theory, legal theory, sociology, philosophy, and psychology. Second, there is no single source that collects these ideas, leaving instructors either to assign primary source readings (which can be even more challenging than the ideas) or to summarize materials in lectures without an accompanying textbook.

In writing this text, we have attempted to remedy both of these problems. We have included within the book a collection of ideas that are important for beginning criminal justice students to consider. Furthermore, we have worked to cover complex ideas in a manner that is engaging and accessible but without diluting their meaning. It is our hope that this will contribute not only to meaningful criminal justice pedagogy but also to promoting conversations—among students, professionals, and scholars alike—about the theoretical roots of the discipline of criminal justice and their application in practice.

## Organization

The balance among three ideas represents the basis of our book: (1) the overarching and competing ideas of what an orderly and just society should be; (2) the daily practices of an immensely complex collection of agencies described as criminal justice; and (3) the individual needs of a student going on to become a responsible citizen and perhaps a criminal justice professional. In Chapter 1, “Introducing Crime and Criminal Justice,” we outline various perspectives on criminal justice and consider the nature and extent of crime in American society. In addition, we survey the criminal justice processes that are further developed in later chapters.

In Unit I, “Perspectives on Law,” we begin exploring the ideas that have vexed societies across the globe throughout history. That is, how should people live together in a society? What is right, what is wrong, and how can we act to ensure desired behavior? Working through the very practical idea of discretion as applied to issues that a criminal justice practitioner might see on a regular basis, we address the concepts of law, morality, and formal ways of exploring those concepts.

In Unit II, “Perspectives on Deviance and Crime,” we explore the critical distinctions between behaviors society generally condemns as deviant and behaviors society classifies as criminal. Understanding the behavioral dynamics underlying deviance and criminal activity can shape criminal justice policy.

In Unit III, “Perspectives on Justice,” the ideas in the earlier chapters about law and social control come together as focused on an even more significant and fundamental question: what is justice, and how do we find it as a society? Furthermore, how do harried professionals facing budget cuts, shifting policy priorities, high stress, and split-second decisions find justice in their daily work? In addition, ensuring that actions promote the values of fairness and equality while protecting due process rights is an important responsibility of all those working in criminal justice.

In Unit IV, “Penal Social Control,” we focus on the content of the criminal law and how punishment is used to enforce society’s priorities. These are the tools that ultimately shape the work of the police, courts, and corrections as they respond to crime in society.

Finally, in Unit V, “Overview of Criminal Justice Institutions,” we introduce students to the terminology and procedures that are relevant to the police, courts, and corrections. While issues pertaining to the institutions of criminal justice are included in each of the previous units, as well, this unit focuses specifically on the history, structure, operations, and motivating ideas of the criminal justice system, including contemporary practices.

## What’s New in the Third Edition

The third edition of this book contains a number of substantive changes designed to improve student learning while maintaining currency with policy issues, empirical research, and the continued evolution of justice policy. Throughout the text, statistics and contemporary examples have been updated, including (among other topics) a new emphasis on current debates in drug policy and a discussion of law enforcement use of force and police–community relations. Hundreds of citations to the most current research have been added, across all chapters. The beginning of each chapter has been streamlined by eliminating the listing of key people, while retaining key terms and learning outcomes. Some photos have been replaced; the photos within each chapter continue to provide captions that include a question for the students to reflect upon, related to the content of the photo as connected to concepts from the chapter. In some instances, chapters have been restructured to enhance student engagement with the material. A more detailed listing of changes to individual chapters is provided in the following section.

- Chapter 1: “Introducing Crime and Criminal Justice.”** The opening case study was modified slightly. Crime analysis was added as an area of inquiry related to criminal justice. A discussion of potential criminal justice career fields was added. Additional advice was added to the box on criminal justice career tips, particularly in providing guidance on coursework related to criminal justice professions. The section on the five perspectives of criminal justice (e.g., system, profession, bureaucracy, moral agent, and academic discipline) was reworked into a point/counterpoint format, to help students understand that each perspective has been the subject of debate—with a point and corresponding counterpoint—about how criminal justice should be framed; a table was added to summarize the discussion. A concrete example was provided for the discussion of police discretion. A discussion of public service motivation of criminal justice employees was added. A brief discussion of research on the impacts of needle exchange programs was added. The concepts of evidence-based practice and translational criminology, and challenges to them, were introduced. The discussion of police use of deadly force as an example of the five perspectives of criminal justice was expanded significantly, to more fully draw out how each perspective informs an understanding of use of force issues. The discussion of physician-assisted suicide has been updated. All crime data and accompanying figures have been updated. New perspectives on explanations for the post-1990s crime drop has been included.
- Chapter 2: “Criminal Justice, Society, and Morality.”** Numerous revisions have been made to the structure of the chapter with the goal of helping students better understand the relevance of key concepts, in addition to making revisions of existing content. A new section provides a more descriptive discussion of the social contract metaphor and its relationship to justice, including perspectives from philosophers Thomas Hobbes, John Locke, and John Rawls, highlighting the importance of enforcement of laws, preservation of rights, and recognition of fairness as

key criminal justice goals; examples are more explicitly connected to social contract theories. Language has been added to clarify the connection between criminal justice goals, social contract perspectives, strategies, and tactics. The discussion of the relationship between public and academic understandings of criminal justice has been restructured and expanded to clarify the distinctions in how each approaches an assessment of criminal justice issues. The discussion of morality and criminal justice was reorganized to draw the distinction between individuals' private views of morality compared to the overall public mood (or public morality) held by society. As part of this reorganization, the discussion of the five concepts of morality has been condensed substantially and is now presented in a box. The box on patronage in the former edition has now been replaced by the classic case of the speluncan explorers, challenging students to reflect on it as a moral dilemma. The discussion of idealism and pragmatism has been abbreviated; the sections on harmony, truth, and the mind/body relationship have been removed, and focus is placed on the application of idealism and pragmatism to criminal justice issues. The end-of-chapter problem-solving feature has been expanded to include perspectives that reflect debates between empirical and nonempirical perspectives. The chapter has also been renamed to emphasize the focus on how concepts relate to criminal justice.

- **Chapter 3: “Criminal Justice and Legal Philosophy.”** The introduction to the chapter was revised to create a bridge from Chapter 2 and to emphasize the application of theories to criminal justice. The discussion of principles and rules has been revised to more clearly delineate the relationship between the two, including how they shape criminal justice policy. The former box on patronage has been replaced with a new box on public video recording of police activities. The discussion of the six concepts of law has been reorganized to promote greater clarity, including the addition of a table summarizing the concepts, revising some language (e.g., “empirical” vs. “nonempirical” and “judicial activism” vs. “judicial restraint,” rather than the “irrational” vs. “rational” language of prior editions), revised explanations of concepts, and the use of organizational prefaces and a summary to reinforce them. In the discussion of Devlin’s legal moralism and Hart’s legal positivism, the application of the six concepts of law has been abbreviated; for all other legal theories in the chapter, each is described, with criminal justice-related examples, but the discussions of the six concepts of law and accompanying tables from the prior edition have been removed. The box on hate crime has been updated to reflect new research findings since the last edition. A new box has been added, containing examples of legal issues and challenging students to consider how legal theories may apply to them. The chapter concludes with a new problem-solving feature, focused on regulation of violent video games. The chapter has also been renamed to emphasize the focus on how concepts relate to criminal justice.
- **Chapter 4: “Theories of Deviance and Social Control.”** In prior editions, material about the concept of deviance was split between Chapters 4 and 5; all discussion of deviance has now been integrated into Chapter 4, reserving Chapter 5 for a discussion of criminological theory exclusively. The chapter opens with a new case study, and statistics within the chapter have been updated. A new box on crisis intervention teams has been added to prompt student thinking about therapeutic social control. The end-of-chapter problem-solving feature has been updated to reflect developments since the prior edition. The chapter has also been renamed to indicate its primary focus on deviance.
- **Chapter 5: “Theories of Criminal Behavior.”** As noted, this chapter has been revised to focus exclusively on criminological theories, with the prior discussion of deviance moved to Chapter 4. The box on eugenics was updated to reflect Virginia state legislative action for compensation of victims. In the discussion of biological

theories of crime, a discussion of lead exposure and its relationship to crime has been added. A brief perspective on research related to the link between antisocial personality disorder and crime has been added. A discussion of Durkheim's anomie has been added as a preface to strain theory. An updated perspective on the importance of theory-based practice has been included. The box on animal abuse has been updated to reflect current research. A new box has been incorporated, which poses scenarios for students to consider and to identify the likely criminological theory that is associated with each. The chapter has also been renamed to indicate its primary focus on theories of criminal behavior.

- **Chapter 6: “Concepts of Justice.”** The box on wrongful convictions has been updated to reflect current research, particularly about causes of and remedies for wrongful conviction. The chapter retains its structure from the prior (second) edition of the text, but the discussion of transitional justice has been eliminated. Issues related to cybercrime have been added to the discussion of vigilante justice and additional explanation has been added to the discussion of postmodern justice. Additional discussion has also been added for cost-benefit analysis as a concept of utilitarianism and for research regarding the effectiveness of restorative justice interventions. The discussion of the four models of justice (mechanical, authoritarian, compassionate, and participatory) has been revised to include additional examples and explanations to convey content, while framing the discussion as a balance between individual and community needs (in prior editions, it was framed as offender and community needs), in order to emphasize the practical relevance of the theories. The box on pursuing justice has been fully rewritten to consider the scholarship of criminal justice policy on the fiftieth anniversary of the 1967 Commission of Law Enforcement and Administration of Justice.
- **Chapter 7: “Concepts of Justice Policy.”** The chapter-opening case study about the status of state marijuana laws has been updated, including reference to US Attorney General memoranda offering conflicting guidance on enforcing marijuana law. A table has been added to summarize the distinction between criminal justice, civil justice, and social justice. A discussion of social movements, including Occupy and Black Lives Matter, has been incorporated into the discussion of social justice, and updates on *Arizona v. United States* were provided, including a new photo prompting discussion of public policy and social justice perspectives on recent immigration debates. The box on healthcare in California prisons has been updated to reflect new research. The discussion of federalism now includes the concept of home rule cities (in addition to Dillon's Law) and references research on state-level drug policy, to connect back to the chapter-opening case study. Likewise, a discussion of *Gonzales v. Raich* was added to the discussion of federal and state policy, also to connect to the chapter-opening case study. The statistics in the box on global justice (and others in the chapter) have been updated. Additional discussion of school shootings as a policy issue has been incorporated, and material previously included at the end of the chapter on challenges of policymaking has been incorporated into the discussion of politics and politicians. A new end-of-chapter problem-solving feature has been added focusing on drugs and drug policy in the United States, including a review of supply reduction, demand reduction, harm reduction, and legalization/decriminalization as policy options.
- **Chapter 8: “Concepts of Criminal Procedure.”** Additional discussion was added to contextualize the concept of probable cause. New material has been added on special needs searches (e.g., workplace searches, drug testing, sobriety checkpoints, border searches, and public facility screening). A new section on arrest is included that addresses warrant requirements, the distinction from stops, and legal principles guiding the use of force. The box on police searches of cell phones incident to

arrest has been updated to reflect the Supreme Court's opinion in *Riley v. California*. The end-of-chapter problem-solving feature was updated to include the Supreme Court's opinion in *Carpenter v. United States*.

- **Chapter 9: "Criminal Law."** A new case study was added at the beginning of the chapter, focused on the Supreme Court's decision in *Robinson v. California*. Also at the beginning of the chapter, a new discussion reviews and deconstructs Paul Tappan's classic definition of crime as "an intentional act or omission in violation of the criminal law, committed without defense or excuse, and penalized by the state as a felony or misdemeanor," to set the stage for subsequent chapter material. A reference to white-collar crime is included among the tables listing criminal offenses, and cybercrimes and terrorism have been added as new offense types. A brief discussion of the public video-recording police officers has been included in the discussion of First Amendment issues. The box on sex offenders has been replaced with a box addressing concerns related to the opioid epidemic. A new end-of-chapter problem-solving feature is included on the topic of how the law responds to sexually transmitted infections.
- **Chapter 10: "Criminal Punishment."** The opening case study was modified slightly. The discussion of rehabilitation has been updated to reflect research finding renewed public support for rehabilitation, also echoed in the section on the future of punishment. Additional research has been cited regarding the effectiveness of restorative justice. The box on corporal punishment has been updated to reflect new research since the prior edition and the box on juvenile justice has been updated to include the Supreme Court's decision in *Montgomery v. Louisiana*. A new box has been added on the school-to-prison pipeline. *Chicago v. Morales* has been included as an example of a case where a law was struck down as void for vagueness, and several other cases are now referenced as question prompts following that section. The box on cruel and unusual punishment now includes the Supreme Court case *Powell v. Texas*. The discussion of the death penalty in the end-of-chapter problem-solving feature has been significantly revised, incorporating additional research and an expanded discussion of issues surrounding the death penalty.
- **Chapter 11: "Core Concepts of US Policing."** Statistics have been updated throughout the chapter. The chapter now opens with a discussion of public interactions with the police, in terms of the types and perceptions of police-public contact, as well as public opinion toward policing, generally. The discussion of the community problem-solving era was revised to include the emphasis on community partnerships noted in the Task Force on 21<sup>st</sup> Century Policing. The boxes on broken windows, hot spots policing, and Compstat were updated to reflect current research; new research was also added to the discussion of focused deterrence in the end-of-chapter problem-solving feature. A new box on the Ferguson effect and a new section on police-public relations and police legitimacy were added; the latter includes discussion of body-worn cameras and other tools that can address police-public relations.
- **Chapter 12: "Core Concepts of US Court Systems."** A new case study was added at the beginning of the chapter, focused on pretrial detention. Discussion of the members of the courtroom workgroup now includes comments about employment condition. A new section was added to discuss bail, pretrial detention, and bail reform. The conclusion has been modified to include discussion of the challenges of achieving justice.
- **Chapter 13: "Core Concepts of US Correctional Theory and Practice."** Statistics have been updated throughout the chapter. A discussion of the consequences of incarceration has been added. The resurgence in support for rehabilitation has been noted. The correctional mission statements used as examples have been



updated. A box has been added on disproportionate minority confinement. The discussion of the essential tension of research now makes reference to evidence-based practice. The discussion of the essential tension of discretion notes the balance between offender risks and needs. A discussion of options for programming in correctional institutions has been added. The box on supermax prisons has been updated to reflect new research since the last edition. The box on women's prisons has been revised to discuss inmate culture in women's prisons. The discussion of community corrections practice includes updated research on the effectiveness of various alternatives; the discussion of community corrections now closes with a consideration of the future of community-based sanctions. The end-of-chapter problem-solving feature on voter disenfranchisement laws have been updated and with additional explanation of the Supreme Court's decision in *Hunter v. Underwood*.

In addition, each of the photo essays was revised in the following ways:

- The first, "Policing Intimate Partner Violence," presents updated statistics, an expanded discussion of arrest, and a mention of batterer intervention programs.
- The second, "Morality and the Law," was revised and includes additional discussion of homelessness and prison programming.
- The third, "What Behaviors Are Deviant?" adds a discussion of "deflategate," concussions in sports, and the *Morse v. Frederick* Supreme Court case.
- The fourth, "Justice, Privacy, and Enforcement," includes an expanded discussion of license plate scanners, a relocated discussion of closed circuit television systems, a new discussion of drones, and inclusion of the *Birchfield v. North Dakota* Supreme Court case.
- The fifth, "Bullying," now includes statistics on the prevalence of bullying and additional research on anti-bullying programs.
- The final photo essay, "Toward the Future of Criminal Justice," includes new discussion of rescue task forces for active shooter response, naloxone as a response to opioid overdoses, and additional research on the CSI effect.

## To Faculty: Teaching with This Book

This text has been designed to promote numerous opportunities for student engagement with, and reflection on, course material. Throughout the text the inclusion of embedded questions, photo captions, boxed features, and photo essays offer prompts to help students not only assess their grasp of content, but also to consider how it applies in criminal justice practice. As such, one key theme of the text is the nexus between theory and application in criminal justice policy and practice. Instructor ancillary materials are also available, detailed in a subsequent section, to assist in course development and student learning.

Chances are, individual instructors may give different weight to the chapters in this book. Courses seeking a foundation of criminal justice grounded in the liberal arts may focus more heavily on Units I, II, and III, with less time dedicated to material in Units IV and V (which is often covered elsewhere in the criminal justice curriculum in courses on police, courts, corrections, and criminal law). Conversely, courses more heavily focused on the components of the criminal justice system (particularly in programs for which there is not subsequent required coursework in police, courts, corrections, and criminal law) may use Units I, II, and III to set up a more detailed examination of material from



Units IV and V. Still other instructors may seek to incorporate examples of current issues and debates from local criminal justice policies and practices, utilizing the text as a framework for interpreting them.

Of course, chapters are not designed to be mutually exclusive. Content about the criminal justice system is integrated across discussions of Units I, II, and III, and the philosophical underpinnings of criminal justice inform discussions pertaining to Units IV and V. Some courses will give equal weight to all chapters over the course of a semester. We felt strongly, however, that it was important to offer flexibility for instructors and to present in one volume the key information unique to a course on the foundations of criminal justice. Through years of consultation with instructors at a wide variety of schools across the United States, we have settled on this balance between conciseness of presentation and exhaustiveness of concepts that we hope will serve as a firm foundation for a course that allows for individuality of instruction while promoting student engagement.

## To Students: How to Study from This Book

We have designed this book to make the study of criminal justice a very active process. Just as a professional in criminal justice will always need to be actively curious and observant in the field, studying the discipline similarly requires curiosity, inquiry, and a full engagement with the material.

Each unit in the book is introduced by a **Photo Essay**, containing a series of photos accompanied by a thematic narrative with questions for discussion. The topics, photos, and discussion questions were selected to introduce concepts addressed in each unit. Think about how you would respond to these issues before you read the chapters in the unit. Afterward, you may consider how material from the chapters relates back to the issues in the photo essays.

Each chapter begins with a **Case Study** presenting a realistic situation that the criminal justice system has encountered or could encounter. Read the case carefully and discuss the questions at the end with your classmates, your instructor, or in notes to yourself. The Case Study is related to ideas that will be examined as you proceed through the chapter; in fact, some questions in the chapter will ask you to reflect once again on the case study and how concepts from the chapter might apply to it. Your understanding of the rest of the chapter will be enriched by considering this case.

Each main section of the text opens with a **Focusing Question**. These straightforward questions are meant to help you think about the main idea to come in that section and provide you with a framework for the ideas you will examine. The Focusing Questions can help you see the key issue to be addressed in each section of the chapter, rather than reading the chapter as a simple stream of data to memorize.

Each main section of the text concludes with several **In-Text Questions**. These questions are designed to allow you to reflect upon, analyze, or apply the material you have just read. Pause to consider each, even if briefly, to help reinforce chapter content.

In each chapter, you will find several **Boxes** that highlight current or noteworthy issues in criminal justice, related to the content of the chapter. One box in each chapter ("**Ethics in Practice**") is focused specifically on ethical dilemmas that may present themselves to criminal justice practitioners; another box in each chapter ("**Research in Action**") considers how research findings may shape criminal justice policy and practice. A review of these boxes will provide a look at how issues discussed in the chapter are reflected in law, policy, practice, or research.

At the end of each chapter, you will find a section called **Criminal Justice Problem Solving**. Introductory textbooks can sometimes give readers the mistaken

impression that all the answers are already set in stone and that there is nothing new to discover in a discipline. These Problem Solving sections focus on current issues the criminal justice system is still struggling to solve. Chances are, if you become a criminal justice professional, you may become part of the effort to solve these types of issues.

Each chapter also includes several **Photos** connecting material from the text to practical issues or dilemmas faced by the criminal justice system and the professionals working within it. Finally, for easy reference, the text includes a **Glossary** that provides definitions for the key terms and other important vocabulary introduced in each chapter.

We believe that learning should be an active process and have structured this book to provide you with many opportunities to reflect not only on material from the text itself, but also on current criminal justice policy debates. It is our hope that each of the features discussed here will contribute to your understanding of material in the text and your ability to see connections between theoretical ideas and criminal justice practice. We hope the text conveys what a dynamic and important field of study that criminal justice is!

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Oxford University Press is proud to offer a complete and authoritative supplements package for both instructors and students. When you adopt *Foundations of Criminal Justice*, Third Edition, you will have access to a truly exemplary set of ancillary materials to enhance teaching and support students' learning.

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The ARC for *Foundations of Criminal Justice*, Third Edition, contains an enormous variety of materials to aid in teaching, whether at a four-year university or community college, online, or in person. In addition to general ideas for using *Foundations of Criminal Justice*, Third Edition, in an introductory course, the ARC includes:

- **Teaching tips and ideas** customized for instructors working in community colleges and online courses, as well as for those teaching out of sociology departments. New teachers, and those teaching the introductory course in a general education context, will also find specialized suggestions.
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*Foundations of Criminal Justice*, Third Edition, is also accompanied by an extensive **companion website** ([www.oup-arc.com/access/owen](http://www.oup-arc.com/access/owen)), which includes materials to help students with every aspect of the course. For each chapter, you will find:

- **Objectives for learning** that identify, in a clear, concise way, the concepts and subjects that students should understand after reading a given chapter
- A **brief summary** of the broad themes of each chapter, to help students organize their thinking and reading
- **Additional links** to websites providing supplemental information on the topics and ideas covered in the chapter
- **Additional recommended readings** that delve more deeply into the topics discussed in the chapter
- **Self-grading review questions** to help students review the material and assess their own comprehension
- **Case links** to the original text of every case cited in the book
- **Glossary flashcards** to assist students in studying and review

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 Tammy Castle, James Madison University

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 David Clark, University at Albany–SUNY  
 Charles Crawford, Western Michigan University  
 Michael Cretacci, University at Buffalo–SUNY  
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 Randal Davis, Santiago Canyon College  
 Mary Louis Davitt, University of Maine–Augusta  
 Peggy DeStefano, Bakersfield College  
 Kristen DeVall, University of North Carolina–Wilmington  
 Heather Donovan, University of Massachusetts–Dartmouth  
 Martha Earwood, University of Alabama–Birmingham  
 George Eichenberg, Tarleton State University  
 Patricia Erickson, Canisius College

Aaron Fichtelberg, University of Delaware  
 Linda Fleischer, The Community College of Baltimore  
 Laurin Flynn, Guilford College  
 Michelle Foster, Kent State University  
 Alan Frazier, Glendale Community College  
 Natasha Frost, Northeastern University  
 Christie Gardiner, California State University–Fullertown  
 Lior Gideon, John Jay College of Criminal Justice  
 Kay Gillespie, Weber State University  
 Julie Globokar, University of Illinois at Chicago  
 Andrea Hampton, Truman State University  
 Barry Harvey, Alvernia College  
 Stacy Haynes, Mississippi State University  
 Deborah Howard, TESST College of Technology  
 Cyndy Hughes, Western Carolina University  
 Patrick Ibe, Albany State College  
 Fred Jones, Simpson College  
 Mark Jones, East Carolina University  
 Delores Jones-Brown, John Jay College of Criminal Justice  
 Antonia Keane, Loyola University  
 William E. Kelly, Auburn University  
 Ashmini Kerodal, John Jay College of Criminal Justice  
 David Keys, New Mexico State University  
 Fred Kramer, John Jay College  
 Peter Kraska, Eastern Kentucky University  
 Christina Lanier, University of North Carolina–Wilmington  
 Lonn Lanza-Kaduce, University of Florida  
 Minna Laurikkala, Shenandoah University  
 Brian Lawton, George Mason University  
 William Lay, University of Bridgeport  
 Lynette Lee, California State University–Sacramento  
 Jason Levy, Virginia Commonwealth University  
 Elizabeth Lewis, Virginia Western College  
 Melissa A. Logue, Saint Joseph’s University  
 Sean Maddan, University of Tampa  
 Elisha Marr, Calvin College  
 Sanjay Marwah, Guilford College  
 Mary Ellen Mastroilli, Boston University Metropolitan  
 College  
 Carol Mathews, Century College  
 Greg Matoesian, University of Illinois at Chicago  
 Bruce McBride, Utica College  
 Karen McCue, University of Minnesota  
 Alida Merlo, Indiana University of Pennsylvania  
 Eric Metchik, Salem State University  
 Emil Moldovan, Radford University  
 Thomas O’Connor, Austin Peay State University  
 David Orrick, Norwich University  
 Leanne Owen, Holy Family University  
 Allison Payne, Villanova University  
 Terrylynn Pearlman, Marist College  
 Amy Pinero, Baton Rouge Community College  
 Hillary Potter, University of Colorado–Boulder  
 Elaine Rizzo, Saint Anselm College  
 Manuel Roman, Consumnes River College  
 Dennis Santore, Indian River State College  
 Joseph Schafer, Southern Illinois University–Carbondale  
 Donna Schuele, University of California–Irvine  
 Michael Scott, Kaplan University  
 Todd Scott, Schoolcraft College  
 Diane Sjuts, Metropolitan Community College of Omaha  
 Alisa Smith, The University of Tampa  
 Hayden Smith, University of South Carolina  
 Susan Smith-Cunnien, University of St. Thomas  
 Jason Sole, Metropolitan State University  
 Paul Steele, Morehead State University  
 Mark Stelter, Lone Star College–Montgomery Campus  
 Quanda Stevenson, Athens State University  
 David Struckhoff, Lewis University  
 L. Paul Sutton, San Diego State University  
 Chloe Tischler, ITT-Technical Institute  
 Pamela Tontodonato, Kent State University  
 Sheryl Van Horne, Arcadia University  
 Tim Wadsworth, University of Colorado at Boulder  
 Arnold Waggoner, Rose State College  
 Kenneth Wagner, Lynchburg College  
 Kevin Walsh, Aurora University  
 Stephanie Whitus, Aurora University  
 Francis W. Williams, Bridgewater State College  
 Tracey Woodard, University of North Florida  
 Brian Woodworth, Olivet Nazarene University  
 James L. Wright, Dalton State College  
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## Class Test Participants for the First Edition

Brian Woodworth, Olivet Nazarene University, and his students:

Kevin Arthur, Benjamin Backstrom, Seth Barrigear, Amanda Bender, Earl Bentley,  
 Sarah Bodner, Faith Cavender, Simone Coburne, Howard Coleman-Patton, Cassandra  
 Collins, Matthew Compton, Victoria Conley, Sarah Cook, Jonathan Damron, Justin

Fahy, James Funk, Bradley Giamalva, Jessica Hafner, Tyler Hamilton, Erica Hammond, Luke Hasselbring, Jarad Holbrook, Samantha Holmes, Ross Johnson, Andy Knol, Erin Koehn, Randall Koehn, Kim Kratz, Ryan Lalone, Marcel Maiden, Gina Martin, Jerett Martin, Alan Meyers, Bradley Miller, Rhandyl Morris, Kristin Nichols, Andrew Pfundstein, Amy Preston, Jacob Ryan, Lukas Schindler, Laura Shickles, Tim Siadak, Joshua Smarrella, Benjamin Tobey, Lindsey Tobias, Jaclyn Travnik, Amanda Vanderpool, Jessica Voss, Marcus Washington, Michael Williams, and Jeremy Woods.

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Ian Berry, Kristina Egitto, Laura Fogg, Taylor Glatzer, John-Patrick Haney, Zachary Iacovino, Brittany Morgado, Miranda Nordell, Leah Paddock, Megan Podschine, Joshua Ratliff, David Saucedo, Allison Streeker, Laura Worrell, Zachary Yaeger, and Kristine Zambito.



## PHOTO ESSAY:

# Policing Intimate Partner Violence

The practice of criminal justice requires striking many balances. Criminal justice must safeguard society while maintaining individual rights. Criminal justice must balance ethical decisions, effective resolution of problems, and cost efficiency. And criminal justice must balance competing philosophies about what the law ought to accomplish. The decisions about how to strike these balances often lie with practitioners in the field, who must make judgments (often quickly) about how to resolve a situation. In many ways this makes police officers, correctional officers, attorneys, and judges the philosophers of justice who profoundly shape how criminal justice is practiced in the United States. However, their work is no easy—or simple—task.

Consider the difficulties in police responses to incidents of intimate partner violence. Intimate partner violence refers to assault and battery between persons who are dating, married, or in long-term relationships. Determining the proper response to intimate partner violence has been a challenge for the criminal justice system.

**Participants in this** candlelight vigil remember the victims of intimate partner violence. Data indicate that “nearly one in four adult women and approximately one in seven adult men report having experienced severe physical violence from an intimate partner in their lifetime” (National Center for Injury Prevention and Control, 2017, p. 1). In addition to harming victims, police officers regard intimate partner violence calls as among the most dangerous calls to which they may respond (Hess & Wroblewski, 2003). Why do you think intimate partner violence calls pose risks to police officers? Can you think of any policies or tactics that would reduce the risk to officers?



**Police officers responding** to an incident of intimate partner violence must consider how to address the crime that has been committed. In the past, law enforcement did not treat intimate partner violence as a serious problem, instead viewing it as a private family matter. This changed



in the mid- to late twentieth century, for several reasons. First, the women's rights movement of the 1960s and 1970s generated public and political support for treating intimate partner violence more seriously, resulting in the adoption and enforcement of tougher laws and penalties (Buzawa & Buzawa, 2003). Second, a key legal event was a 1984 court case in which a police department was held accountable for failing to adequately protect a victim of intimate partner violence (*Thurman v. City of Torrington*). This signaled to police agencies that courts saw the full enforcement of domestic violence laws as a necessary measure for the protection of victims. Third, and the focus of the remainder of this photo essay, research has played an important role in shaping police practice. As intimate partner violence has come to be recognized as a serious problem, one question has been what the best or most appropriate police response should be. Criminologists Lawrence Sherman and Richard Berk (1984) published a study that attempted to shed light on this question. In Minneapolis, police officers responding to intimate partner violence calls were randomly assigned by the researchers to make one of the three responses—each of which some officers had previously used—described in the following paragraphs with the next three images.

**The first potential** response was mediation. Officers would attempt to mediate the dispute between the two parties, hoping to reach a nonviolent resolution that would stop the violence and address any conflicts. What do you think are the risks and benefits of mediation? In what cases, if any, do you think it would be appropriate?

**The second potential** response was separation of the two parties. Officers would require that the abuser leave the home and not return for eight hours. In part, the rationale



was that this would provide a cooling-off period for the abuser, which would lead to the cessation of violence. What do you think are the risks and benefits of a brief separation? In what cases, if any, do you think it would be appropriate?



**The third potential** response was the arrest of the abuser. Officers were required to automatically arrest the abuser and charge him or her with a criminal offense. This was grounded in the idea that all acts of violence merit arrest regardless of whether they occurred in the home or elsewhere. What do you think are the risks and benefits of arrest? In what cases, if any, do you think it would be appropriate?

Sherman and Berk's (1984) research found that arrest was the only option that led to a reduction in reoffending. Based in part on the study, many states passed laws requiring an arrest to be made in cases of intimate partner violence (Sherman & Cohn, 1989);



officers who then did not make an arrest were generally required to file a report explaining their decision not to do so.

In practice, the police do not make arrests in all incidents of domestic violence (e.g., Tatum & Pence, 2015). Subsequent research has found that a variety of factors may affect whether or not arrest actually leads to reductions in repeat offending. For example, arrest appears to reduce offending for employed offenders more than it does for those who are unemployed (see Dixon, 2008). Research continues on this subject, including the effectiveness of responses by the police and efforts to provide rehabilitation programming to offenders (e.g., batterer intervention programs, about which research of effectiveness has been mixed; see Boots, Wareham, Bartula, & Canas, 2015).

**Assume you are** a police officer responding to an incident of intimate partner violence.

Further assume that in such cases the law allows you to make an arrest, but that you are not *required* to do so. However, if you do not make an arrest, you are required to file a report explaining why you did not, and if you are called back within 12 hours to another incident involving the same persons, then you *must* make an arrest (see Arrest for Violation of Order, 2010). As a police officer, this leaves you with tremendous discretion. You have just arrived on the scene of an incident. What factors do you consider as you determine how you might respond to a case of intimate partner violence?

Chapter 1 introduces some of the factors that shape decision-making in criminal justice. These include viewing criminal justice as a system, a profession, a bureaucracy, a moral agent, and an academic discipline. In addition, the chapter defines the concept of crime and explores its prevalence in modern American society.





# 1

## Introducing Crime and Criminal Justice



### LEARNING OBJECTIVES

- 1 Explain the concept of criminal justice.
- 2 Describe the criminal justice process.
- 3 Explain the concept of crime.
- 4 Compare and contrast crime reporting methods.

## Key Terms

criminal justice  
criminology  
emergency management  
forensic science  
homeland security  
law and legal studies  
security administration  
victimology  
criminal justice system  
discretion  
profession

craft  
sworn employee  
bureaucratic agency  
public service motivation  
morality  
Law Enforcement Assistance  
Administration (LEAA)  
Law Enforcement Education Program (LEEP)  
evidence-based practice  
translational criminology  
deviance

*nullum crimen sine lege*  
*nulla poena sine lege*  
crime  
Uniform Crime Report (UCR)  
National Incident-Based Reporting  
System (NIBRS)  
rate  
clearance rate  
National Crime Victimization Survey (NCVS)  
dark figure of crime  
self-report study

## How Would You Spend \$50 Million?

Assume that you have been elected to the state legislature (congratulations). The public is clamoring for you to “do something” about crime. Statistics indicate that the amount of crime in your state has recently been steady, with no dramatic increases, but with no dramatic decreases either. You will soon have to decide how to allocate state funds for criminal justice. You have the following seven options for spending \$50 million.

1. Construct a new prison that will hold 940 inmates (see Clear, Cole, & Reisig, 2009, for information on the cost of prison construction).
2. Allocate the funds to local police departments across the state to purchase equipment and to hire a total of 500 new officers, whose primary task will be the enforcement of drug laws.
3. Fund early education (preschool) programs for low-income families who would not otherwise be able to afford them. Research suggests that over time, children who participate in these programs are 40% less likely to be arrested for a violent crime by the time they are 18 and are 80% less likely to become chronic offenders in adulthood (see van der Does, Newman, & Dawson, 2004).
4. Hire additional judges, public defenders, and prosecuting attorneys so cases can proceed more quickly through the court system.
5. Fund the placement and maintenance of additional lighting on city streets. Research has found that streetlights can reduce crime by 21%, and that the reduction includes both nighttime and daytime crime (Welsh & Farrington, 2008).
6. Allocate the funds to state crime labs so that DNA evidence may be processed more rapidly to aid in identifying offenders in unsolved cases. Currently there are not sufficient resources to process all DNA evidence, which has resulted in a considerable backlog of cases. One study estimated that up to 550,000 unsolved crimes nationwide could be solved if more resources are allocated to DNA testing (Pratt, Gaffney, Lovrich, & Johnson, 2006).
7. Support the development of threat assessment teams, including training, resources, and personnel, at all schools. Threat assessment is a process in which teams receive

## Case Study

and review reports about behaviors of concern displayed by students or staff. The team works to determine if interventions are necessary to aid individuals and to prevent violence. Threat assessment has been associated with reduced student aggression, increased perceptions of safety, and interventions more personalized to student needs (e.g., Nekvasil & Cornell, 2015).

State funds are limited, so you can select only one of these options. It would not be feasible to mix and match by combining options, as doing so would minimize the overall effectiveness and return on investment.

- Q** How would you rank order these options? Which one do you think is best and should receive the highest funding priority? Which do you think should receive the lowest funding priority? Why? What factors have shaped your answers? Compare your answers with those of your classmates.
- Q** Realistically, most states don't have an extra \$50 million to throw around. Look back at your top funding priority. Would you be willing to cut other items in the state budget (e.g., roads, education, social services, public health, state parks) to fund it? Why or why not? If so, what would you cut? Why?

## Introducing Criminal Justice

What is criminal justice?

### criminal justice

The study of society's response to crime, including crime prevention and the work of the criminal justice system.

At its most basic, **criminal justice** may be defined as society's response to crime. The response may be to facilitate the investigation of criminal activity, leading to the apprehension of offenders, such as options number 2 and 6 in the scenario at the beginning of the chapter. The response may come after the crime has occurred while an offender is being processed through the criminal justice system, such as options number 1 and 4 in the opening scenario. Or the response may be designed to prevent crime from happening in the first place, such as options number 3, 5, and 7 in the opening scenario. Criminal justice also includes other elements, such as maintaining order in society and providing community services (e.g., police officers giving a presentation to an elementary school about bicycle safety or helping homeowners to assess the security of their residences).

While the police, the courts, and correctional agencies play a key role in criminal justice, so do members of the community. Whether through volunteering in youth crime prevention programs, organizing neighborhood cleanup days and neighborhood watch programs, or advocating for policy change, community members are coproducers of criminal justice. Over the past several decades criminal justice agencies have increasingly sought community involvement, including such programs as community-oriented policing (Skogan & Hartnett, 1997; see Chapter 11 in this text), restorative justice (Hahn, 1998; see Chapter 10 in this text), and justice reinvestment (Tucker & Cadora, 2003; see Chapter 6 in this text). In each of these programs, community residents work with criminal justice agencies to determine priorities, goals, and solutions to community crime problems.

Again, criminal justice pertains to society's response to crime. The study of criminal justice is an interdisciplinary endeavor that overlaps with several related areas of inquiry, including the following.

- **Crime analysis** is the study of crime patterns and crime trends, including work with crime maps, to understand how crime is distributed across time and place (see Santos, 2017). Many police agencies employ crime analysts to provide guidance on the strategies and tactics that law enforcement officers should use to help prevent, respond to, and solve criminal activity.
- **Criminology** is the study of why persons commit crime (see Bernard, Snipes, & Gerould, 2015). This is useful to criminal justice because understanding why crime occurs can aid in developing prevention or rehabilitation programs. Criminology also studies and attempts to explain trends in the amount and type of criminal activity.
- **Emergency management** is the study of how to prepare for, respond to, and recover from disaster or crisis situations (see Phillips, Neal, & Webb, 2016). Criminal justice agencies are often at the forefront of emergency response operations.
- **Forensic science** is the application of scientific principles to cases progressing through the legal system (see Saferstein, 2017). Most forensic science work is done in laboratories, where scientists analyze material that was collected by others (police officers, investigators, or evidence technicians) at crime scenes. Forensic science aids in identifying offenders and in making necessary evidence available for trials.
- **Homeland security** involves identifying and responding to threats to national security with a particular emphasis on terrorism (see Nemeth, 2017). Criminal justice agencies often conduct investigations, disseminate information pertinent to homeland security, and respond to identified concerns.
- **Law and legal studies** is a broad subject area, typically presented in law schools or in prelaw programs (see Friedrichs, 2011). Criminal law is only one component of law and legal studies; others include areas such as legal research, contracts, civil law, constitutional law, property law, philosophy of law, and more. In many ways, criminal law forms the basis for criminal justice because it is when laws are broken that the criminal justice process begins.
- **Security administration** focuses extensively on the identification and management of risk in residential or commercial settings (see Purpura, 2013). The use of private security has grown over time and has much in common with public criminal justice professions.
- **Victimology** is the study of why persons or entities (e.g., businesses) become victims of crime (see Karmen, 2016). This can aid in developing crime prevention and risk management programs.

As you can see, there are many potential issues that are relevant to the field of criminal justice. In turn, there are many careers that are related to criminal justice. These may include local, state, or federal law enforcement; local, state, or federal probation and community-based corrections; local, state, or federal institutional corrections (e.g., work in prisons and jails); juvenile justice; victim advocacy; work in the court systems; asset protection and loss prevention; emergency management and planning; evidence collection and preservation; crime analysis; research and statistical work; policy advocacy; and more. Box 1.1 provides some tips for planning a career in criminal justice.

### crime analysis

The study of crime patterns and crime trends, including work with crime maps, to understand how crime is distributed across time and place.

### criminology

The scientific study of crime trends, the nature of crime, and explanations for why persons commit crimes.

### emergency management

The study of the preparation for, response to, and recovery from disaster or crisis situations.

### forensic science

The application of scientific principles to cases progressing through the legal system, generally to aid in investigations and to prepare evidence for trials.

### homeland security

The identification of and response to threats to national security, with a particular emphasis on terrorism.

### law and legal studies

The study of legal issues in law school or prelaw programs, of which criminal law is one component. Also included are legal research, contracts, civil law, constitutional law, property law, philosophy of law, and more.

### security administration

The identification and management of risk in public, commercial, or residential settings. This provides the basis for the private security industry.

### victimology

The study of why persons or entities (e.g., businesses, organizations) become victims of crime.

### BOX 1.1 Criminal Justice Career Tips

Preparing for a career in criminal justice requires careful planning. Start thinking now about how you can begin working toward your career goals, including the following activities:

- *Explore a Range of Career Opportunities:* There are many different criminal justice job titles. There are also many different agencies, each with their own focus. Take some time to explore the numerous options that are available; the resources in the next paragraphs can help you do so.
- *Internships:* If you have the opportunity, seek an internship with an agency of interest. An internship will allow you to witness firsthand the expectations of the job. It will also give you experience that you can reference when you begin to go on job interviews.
- *Visit Your School's Career Center:* If your school has a career center, stop in and visit. Let the staff know your career interests. The career center can also provide assistance in your job search, in preparing a résumé, and more.
- *Attend Career Fairs:* Many colleges and communities offer career fairs, which employers attend to recruit potential employees. Often, criminal justice agencies are represented. This is a great opportunity to speak with the recruiters and obtain valuable information about job opportunities and application requirements for their agencies.

Also remember that you need to make yourself marketable to criminal justice agencies. Here are some ways to do so.

- *Work Toward Physical Fitness:* Some criminal justice agencies (especially in the field of law enforcement) require applicants to pass a physical fitness test as part of the hiring process. Don't wait until your senior year to begin a fitness program, including a healthy diet. This should be started immediately and maintained throughout your career. Also, if you smoke—quit! Many criminal justice agencies now require employees to maintain a tobacco-free lifestyle.
- *Study a Foreign Language:* Become proficient in a foreign language that is valued by criminal justice agencies. Take a sequence of courses in the same foreign language to acquire proficiency. Agencies may differ in the languages they most value, so do some research to see which language would be most beneficial for you to study.
- *Enroll in Elective Coursework Related to Criminal Justice:* If you have the opportunity to take elective (nonrequired) courses, select those that are related to criminal justice, generally, or to your desired career, specifically. This could include, but is certainly not limited to, courses in constitutional law, first aid, forensic anthropology, geographic information systems, improvisational communication, leadership, martial arts, professional ethics, psychology, public administration, sociology, and much more. Your academic or career advisor can help you select meaningful courses to supplement those required for your criminal justice program.

## Perspectives on Criminal Justice

How do understandings of criminal justice vary based on whether it is viewed as a system, a profession, a bureaucracy, a moral agent, or an academic discipline?

As a complex societal response to crime, there are multiple ways we can view criminal justice. The following discussion identifies several theoretical lenses that may be used to do so. Each represents one way that criminal justice professionals can understand their work or that criminal justice scholars can understand criminal justice processes and policies. The purpose is not to suggest that any single approach is better or worse than another but instead to see how, taken together, these



- *Build Your Communication Skills:* One of the most important skill sets you can have is the ability to communicate, orally and in writing. In the profession of criminal justice, much of your day will be spent talking to people and writing reports about what you saw, heard, or learned. Look for opportunities to practice and build your proficiency in these areas. You may also wish to consider classes in public speaking and professional writing.
- *Obtain Leadership Experience:* Join clubs and organizations. This not only includes student organizations in the field of criminal justice but also those in other areas of interest. Pursue opportunities to hold offices, to do community service, and to build your leadership skills. Employers value this type of experience, but it's also something that you can enjoy and to which you can make a meaningful contribution during your college career.
- *Consider Graduate Education:* It's not too soon to think about attending graduate school. Many criminal justice agencies prefer applicants with a graduate degree, and particularly for promotional opportunities within the agency. To be admitted to a graduate program, you will need to maintain high academic standards throughout your undergraduate experience.
- *Stay Out of Trouble:* It is likely that as part of the job application process, you will undergo an extensive background investigation, including a polygraph examination. During the hiring process, a background investigator will inquire as to your life experiences, including your frequency and duration of legal and illegal drug and alcohol use; any prior record of illegal activity, whether or not it resulted in arrest (from childhood to current day); and your credit rating and financial status (e.g., Do you live within your means? Are you in debt?), to name just a few.
- *Be Careful with Social Networks:* Be extremely careful about what material you place on social networking sites. Employers may check your sites and postings as part of their background investigation. Remember, the entire world can see and read what you place on the web as well as what others post to your sites.

Take some time to research a career that you find interesting or to visit the website for an agency where you might like to work. What did you learn about it?

- Q In what ways do you think communities can, or should, work with criminal justice agencies in order to prevent crime? What do you think are the advantages and disadvantages of partnerships between criminal justice agencies and the community?
- Q What do you most hope to learn about criminal justice? What topics most interest you? Why?
- Q Are there any criminal justice career areas that interest you more than others? Why?

viewpoints provide a broad context for the field of criminal justice in both theory and in practice.

A consideration of these perspectives can also help us understand disagreements that sometimes occur about justice policy based on differences of opinion about how the criminal justice system should be viewed and about what its priorities should be. In fact, each perspective is phrased as a question with a point and counterpoint response to indicate that there remains some debate about how they impact criminal justice practice.

## Is Criminal Justice a System?

**POINT: CRIMINAL JUSTICE IS A SYSTEM.** You will often hear of the **criminal justice system**. This refers to the ways criminal justice agencies—that is, the police, courts, and corrections—work together to process a case from start to finish. The concept of

### criminal justice system

The collection of criminal justice agencies (e.g., police, courts, corrections) and how they are structured to work together in processing criminal cases.

a system suggests several important ideas. First, labeling criminal justice as a system implies that there is a process through which all cases progress, defined by a series of steps or activities that must occur in each case. Second, the system is perceived as orderly and predictable, meaning that the steps do not change and that there is clear communication between agencies as a case is processed. Third, viewing criminal justice from a systems perspective suggests that agencies carefully collaborate to ensure that cases are processed efficiently, which also requires that all agencies share a common set of goals and philosophies about what criminal justice should (or should not) do and how it should (or should not) operate. A diagram of the criminal justice system is included in Figure 1.5 (see the Appendix to this chapter), with accompanying explanation. You should take some time to familiarize yourself with this model, as it illustrates the standard sequence through which criminal cases are processed.

The primary advantage to a systems perspective is that it outlines the basic criminal justice process with a common vocabulary that professionals within the criminal justice system use on a daily basis.

**COUNTERPOINT: CRIMINAL JUSTICE IS NOT A SYSTEM.** On the other hand, some scholars have argued that criminal justice is a nonsystem (see Cohn, 1974, p. 32). There are at least three observations that may support this view. First, in reality, criminal justice agencies are not neatly networked into a cohesive single unit; indeed, there is no single authority that oversees all criminal justice agencies and processes in the United States. In fact, there are sometimes tensions between agencies. For instance, while better in more recent years than in the past, there have sometimes been conflicts between law enforcement agencies over which agency should have primary responsibility for an investigation, which agency should receive more resources, disagreements among agencies about what strategies and tactics are most appropriate to utilize, and so on (see Erickson, Carr, & Herbert, 2006; Geller & Morris, 1992).

Second, although the systems model appears fairly rigid, it is important to recognize that there is discretion at every decision point. **Discretion** refers to a criminal justice professional's ability to decide how the case should proceed at each turn rather than mandating a certain outcome. Of course, no laws or rules can be violated in making discretionary decisions, but criminal justice professionals usually have fairly wide latitude. For instance, a police officer can decide whether to give a speeding motorist a ticket or a warning; a prosecuting attorney can decide what the formal criminal charge should be in a case; a judge can decide whether to sentence an offender to prison or probation. Because each case presents different circumstances, it is generally accepted that discretion is an unavoidable part of criminal justice, but this also means that the process is not quite as systematic as it might initially appear.

Finally, agreement does not exist on philosophies or system goals among all criminal justice agencies or even among all persons within an agency. Differences can exist between individual officers who might use their discretion differently, a theme to which we will return in Chapter 2. For instance, research on how police address juvenile offenders in rural areas found that officers “who were non-white, better educated, and had children provided more support to juveniles” (Skaggs & Sun, 2017, p. 255), as did female officers. This means that they were more likely to offer sympathy, to assist in seeking resources to help the juvenile, and to attempt to provide mediation rather than resolving an incident with interrogation, arrest, and threatening language. Differences can also exist between agencies. For instance, research has found that variables such as local government policies, proportion of the local population that is foreign-born, and the political party affiliation of local residents can influence how strictly a local police department enforces immigration law (Lewis, Provine, Varsanyi, & Decker, 2013).

It is also possible for different components of the criminal justice process to have different perspectives. For instance, assume that a judge believes in sentencing offenders

### discretion

A criminal justice professional's ability to use professional judgment rather than being constrained by rigid rules when making decisions about how to handle a case. Discretion is common throughout the criminal justice system.

to prison time because she believes that prison environments ought to be harsh environments focused on punishment. However, the warden of the prison to which offenders are sent could decide to offer counseling and recreational programming to reform inmates, rather than just punish them, regardless of what the judge thinks should happen. If the offender is released early on parole, the parole officer could decide to emphasize other goals, regardless of what either the judge or the warden thought. Diversity of ideas can and does exist within criminal justice.

Competing goals are not necessarily bad, and full agreement on goals may be impossible. In fact, discussions and debates about competing goals can be helpful for the criminal justice system, as they may generate new ideas for policies or programs. These new ideas can lead to innovative and effective strategies, advancing criminal justice as a result—due, in part, to the initial lack of consensus about the criminal justice system (see generally Wright, 1981) and a willingness to consider multiple perspectives.

## Is Criminal Justice a Profession?

**POINT: CRIMINAL JUSTICE IS A PROFESSION.** The term **profession** is often used as a synonym for “job” or “career.” However, that is not an entirely accurate definition of the term. To qualify as a profession, a career field must meet a set of criteria, including those that follow (from Henry, 1995; Wilson, 1989). Well-established professions, such as law and medicine, meet each criterion listed here.

- *Require a common educational background, generally associated with a college degree.* In fact, the completion of required education is often viewed as the primary credential for entry to the profession.
- *Adopt an ethical code to guide professional practice.* Professional fields generally come with a great deal of discretionary decision-making powers. A code of ethics can help guide discretionary decisions and establish the broad values and principles of the profession. See Box 1.2 for additional discussion of professional ethics.
- *Engage in specialized tasks that cannot be accomplished by those outside the profession.* Through their education and experience, professionals acquire expertise in their fields that is not easily available to others. As a result, they are the experts upon whom others must rely when their professional services are required.
- *Contain internal mechanisms for quality control.* Accreditation may be available, in which members of the profession themselves certify that a particular agency has met the standards of quality established by a professional organization. Likewise, individual members of a profession may need to be certified or licensed by other professionals in the field to show that they meet their profession’s standards.
- *Be members of the profession for their lifetime, unless they are removed due to professional misconduct.* This does not mean that persons will work in the same office or for the same agency for the duration of their careers (although some do). Rather, it signifies that once persons have entered the field, they have the rights and privileges to continue their work within it.
- *Acquire prestige based on their status as a member of the profession.* Being a member of a profession carries prestige in the community. The profession, as a whole, generally carries respect, and members of the profession are likewise presumed to receive respect.

There has long been debate about whether criminal justice occupations are (or should be) professions. In the past, criminal justice occupations have often been regarded as **crafts** based on the view that “it is best to have the majority of training/mentoring undertaken by experienced officers in a master/apprentice arrangement” (Murray, 2005, p. 352). The benefit of such an arrangement is that it allows experienced practitioners to disseminate their knowledge in an applied setting. For this reason, even

### profession

A career field that meets criteria including a common educational background, adoption of an ethical code, performing specialized tasks, having mechanisms for quality control, prestige as a member of the profession, and lifetime membership in the profession.

### craft

A career field in which entry into and training for the occupation are accomplished through an apprenticeship model, with current practitioners mentoring others into the field. Some have debated whether criminal justice is a profession or a craft.

## BOX 1.2 Ethics in Practice

### DOING ETHICAL ANALYSIS: WHAT ARE THE ETHICS OF WHISTLE-BLOWING?

Because of the central role that ethics plays in professionalism, each chapter will feature an “Ethics in Practice” box to encourage you to reflect upon ethical issues in criminal justice. In this box, we first provide an introduction to the techniques of ethical analysis. It is important to note that ethical questions are normative rather than empirical. Empirical questions are those that may be answered through the collection and analysis of data, as illustrated in the “Research in Action” boxes in each chapter. Normative questions are those based on the identification, interpretation, and application of values. There is more room for debate and controversy surrounding normative questions, because there are no fixed answers to be found in data; instead, normative questions deal with individual beliefs about right and wrong that are often deeply held. Indeed, some of the most heavily debated issues in criminal justice have a normative basis (e.g., Is the death penalty right or wrong? Should the law regulate morality? Should there be gun control, and if so, to what extent?).

Ethical questions are one subset of normative questions that focus most specifically on “right” or “wrong” conduct, or “good” or “bad” policies, within a profession. Ethical questions are answered through a process in which positions are stated and then supported with logical and sound argumentation (see generally Markkula Center, 2009). Data may inform this argumentation, but again, data do not directly answer normative ethical questions. It is important to begin by understanding the ethical question and collecting any facts or information necessary to better understand it. Then, consider how various commonly used ethical frameworks (see generally Rachels & Rachels, 2010), such as those identified here, might address the question—recognizing that different frameworks may lead to different answers. Finally, after careful reflection, determine what you think is the best answer, and explain your reasoning. Here are some of the most commonly used ethical frameworks (you will also encounter others if you take philosophy courses about ethics):

- *Relativism.* This approach suggests that there is no single right answer, but that different individuals or different cultures will reach different conclusions based on their own unique circumstances and preferences. As such, relativism does not offer a firm answer, but says, “it depends.”
- *Utilitarianism.* Based on a cost-benefit analysis, utilitarianism upholds as ethical that which provides the greatest good for the greatest number, so the benefits outweigh the costs. This means that while some persons may be harmed or disadvantaged by a decision, or that there may be costs or trade-offs associated with it, the ethical decision is the one from which most persons will benefit. The results and outcomes of a decision are therefore most significant in shaping an ethical analysis of it.
- *Divine Commandment.* This perspective holds that ethics are derived from religious principles. As such, individuals consult their religious texts and beliefs in order to determine what is ethical.

in professions, there is sometimes a period of mentoring or field training to prepare a new employee for the job.

Some concerns arise, however, if criminal justice were to be treated purely as a craft with the majority of training conducted in on-the-job mentorships. The educational background (focused on theory as well as practice, so professionals can understand the “why” of the job in addition to the “how to”), emphasis on ethics, and standards for peer review that underlie a profession can go a long way toward guiding both discretionary decision-making and the development and implementation of effective justice policy. This can then help to promote public trust and confidence in the criminal justice system and its processes.

- *Deontology*. This perspective is heavily influenced by Immanuel Kant's Categorical Imperative, which requires two things. First, persons are directed to assume that an action is ethical only if they wish that same action to "become a universal law" (Kant, [1873] 2004, p. 311). Only if it is good for *all* persons in *all* circumstances is it ethical. Second, individual persons must be valued and treated with respect, and not used simply as tools to be taken advantage of. As such, deontology holds that ethics are driven by absolute rules that persons have a duty to follow.
- *Virtue*. The first step in this type of ethical analysis is to identify character traits we admire, or virtues we value. They can be general or specific to a particular occupation or position (or even to a specific person). Those traits and virtues would then be applied in order to consider how they would shape the resolution of the ethical question.
- *Egoism*. This is the idea that individuals should act according to their own self-interest. Another way of viewing this perspective is that an individual cannot ethically be compelled to do something contrary to his or her own self-interest.
- *Justice*. This approach suggests that in order to be ethical, a behavior or practice must be just. Of course, this raises the follow-up question of what justice means, which will be the topic of Chapter 6. One commonly accepted definition of justice is that it is synonymous with "fairness" (Rawls, 2001, p. xvi).
- *Ethical Codes*. As noted in the text, many professions have established ethical codes. These can be used as a guide to determine what is or is not ethical.
- *What Would Others Think?* One quick test sometimes used for ethical analysis is to consider what persons whose opinions you value (i.e., friends, family) would think of your decision, or how you would feel if it were presented to the public by the news media.

Test your understanding of these theories by considering the issue of whistle-blowing. As defined by Blonder (2010), whistle-blowing refers to "unauthorized disclosures of information by employees" related to "non-compliant, wasteful, or illegal activities within an organization" (p. 258). These disclosures can be to persons within an agency or to the public and news media. Some jurisdictions have enacted protections for whistle-blowers (see National Conference of State Legislatures, 2010), in the hope of encouraging reports about wrongdoing in the agency. At the same time, the US Supreme Court has held that government employees may be disciplined based on "statements [made] pursuant to their official duties" (*Garcetti v. Ceballos*, 2006, p. 421), which could discourage some whistle-blowers.

Assume that you are working in a prison and you observe what you believe to be wrongdoing, in terms of officers' use of force against inmates. Would you report it? If so, why and to whom? If not, why? What factors enter into your decision? As you process the answer, consider what the different frameworks presented here would suggest about the ethically appropriate action and which you think yields the best answer (for an analysis of an actual case, see Dryburgh, 2009).

**COUNTERPOINT: CRIMINAL JUSTICE DOES NOT MEET ALL ELEMENTS OF A PROFESSION.** Currently, criminal justice may best be classified as a quasi-profession. While it retains elements of the craft approach described earlier, it also meets some of the characteristics of a profession. Various fields within criminal justice, including policing, courts, corrections, and forensic science, have established ethical codes. Practitioners in each of these fields participate in specialized tasks and generally must be certified to do so. The Commission on Accreditation for Law Enforcement Agencies (CALEA) and American Correctional Association (ACA) have established standards for policing and correctional agencies to meet in order to receive accreditation.

**sworn employee**

Employees of criminal justice agencies who are authorized to enforce criminal law, such as having the authority to arrest and detain persons suspected of criminal activity.

On the other hand, while many federal agencies require a college degree for employment, not all criminal justice positions impose that requirement. State and local agencies vary in terms of whether college degrees are required for employment. With the exception of some judges, criminal justice does not offer lifetime membership in the career field. Employees who are **sworn**, meaning they have been given governmental authority to enforce the laws, such as police officers and correctional officers, only maintain their authority during the time in which they are employed in a criminal justice agency. If they leave their current position, they lose their authority until they are hired into another sworn position. The prestige of criminal justice appears has increased over time, but only moderately and still is at relatively low levels, as the proportion of the public expressing high confidence in the criminal justice system increased from 17% in 1993 (Saad, 2011, para. 4) to 22% in 2018 (Saad, 2018). The proportion of the public expressing high levels of respect for police officers has increased more notably over time, from 37% in 1977 (Gallup, 2012) to 54% in 2018 (Saad, 2018).

The significance of considering criminal justice as a profession is this: The six criteria for professions given here can influence discretionary decision-making and the adoption of agency strategies and goals. As the field of criminal justice continues to develop, it is likely that it will continue to illustrate and promote numerous elements of professionalism.

## Is Criminal Justice a Bureaucracy?

**POINT: CRIMINAL JUSTICE IS A BUREAUCRACY.** As noted earlier, the criminal justice system (or nonsystem, if you prefer) is comprised of a variety of police, court, and correctional agencies. Those agencies spend approximately \$284 billion per year, with a workforce of more than 2.4 million employees (Bronson, 2018). Criminal justice agencies are usually organized along a bureaucratic model. As defined by sociologist Max Weber ([1946] 1997), a **bureaucratic agency** is governed by many rules, policies, and procedures; is organized in a hierarchy with clear lines of supervision of employees; requires substantial amounts of paperwork to document activities; and requires training of employees. This is true of criminal justice agencies. All have fairly detailed statements of policy and procedure as well as rules to govern the agency's business. There is generally a rank structure with a leader (e.g., chief in a police department, warden in a prison), with midlevel managers (e.g., sergeants), and with line employees who are responsible for conducting most of the day-to-day business and interactions with the public or agency clients (e.g., officers). Paperwork is unavoidable within criminal justice, as there is seemingly a form or report for every action, all of which must be completed before the end of a shift. Furthermore, all employees must undergo training when they are hired and continue attending annual training sessions throughout their careers.

At one time, bureaucracies were considered separate from, or even above and immune to, politics. As President Woodrow Wilson ([1887] 1997) wrote when he was a political science professor, "The field of [public] administration is a field of business. It is removed from the hurry and strife of politics" (p. 20). This was understood as an advantage because it would allow bureaucracies to focus on their business without the worry of changing political contexts or the desires of politicians. The result was believed to be an effective bureaucracy driven by the agency's vision rather than political desires. However, Goodnow ([1900] 1997) observed that "practical political necessity makes impossible the consideration of the function of politics apart from that of [public] administration" (p. 29). A yearly justice system expenditure of \$284 billion from taxpayer funds can hardly avoid being political; determining how to spend that amount of money can generate significant debates.

**bureaucratic agency**

An organization that is governed by rules and procedures, is organized in a hierarchy with clear lines of supervision, requires substantial amounts of paperwork, and requires training of employees.





Correctional officers routinely conduct pat-downs of inmates to search for weapons or contraband. Some pat-downs may be required by policy, for instance, if inmates move between certain parts of a facility. Other pat-downs are discretionary. How do you think staff should use their discretion to determine when to conduct a pat-down? What policy guidance do you think agencies should provide about when pat-downs are permitted? Do you think opposite-gender pat-downs (i.e., male officer/female inmate or female officer/male inmate) should be allowed?

**COUNTERPOINT: THE BUREAUCRACY MODEL IS NOT PERFECT.** Out of practical necessity, bureaucracies must be involved in politics. For instance, agencies must advocate for the legislature to allocate sufficient resources to them. Agencies may also lobby the legislature to enact policies and laws that benefit them. In some cases agency directors answer to politicians, such as a police chief reporting to a mayor or a correctional administrator reporting to a governor. It is important to acknowledge that criminal justice agencies sometimes feel a tension between research and experience, on the one side, and political decision-making on the other, in terms of identifying the best policies and practices.

The nature of bureaucracy also contributes to understanding why there are different goals among criminal justice agencies. Each agency has its own culture, reflecting the accumulation of an agency's decisions and communications. As defined by James Q. Wilson (1989), an agency's culture is "a persistent, patterned way of thinking about the central tasks of and human relationships within an organization" (p. 91). Agency culture is sometimes political, responding to contemporary political pressures. Other times, agency culture is entirely internal and can shape how an organization goes about its business. For example, Wilson (1989) explains why, until the 1980s, the Federal Bureau of Investigation resisted adding drug enforcement to its caseload.

There were several reasons . . . but one was that these cases seemed to require FBI agents to behave in ways that judged by the standards of the bureau's



culture were deemed too risky . . . [The agency's work was] in accordance with the strictest rules governing arrests, searches, and interrogations and in ways that permitted the agent to conform precisely to the image (that is, the mission) of the FBI that J. Edgar Hoover had been at such pains to develop—clean-cut, above board, nonpartisan . . . Undercover work [required for narcotics investigations] is not only risky for the agent, it is risky for the bureau—it exposes it to the possibility that in going undercover an agent will break the law, become corrupted, or otherwise create embarrassment or controversy for the FBI. For decades the culture of the bureau led many of its key officials to oppose using undercover measures and for that reason (among others) to oppose investigating narcotics cases. (p. 108)

Things did change for the FBI, however, when “in 1982 the Reagan administration reorganized drug enforcement . . . by placing [the Drug Enforcement Administration] under the control of the FBI” (Wilson, 1989, p. 267). After a brief clash between the two agencies' organizational cultures, collaboration began, for which both were stronger. Although the DEA no longer reports to the FBI, this historical example illustrates the role that organizational culture can play in influencing agency operations.

There is sometimes conflict between bureaucracies, especially if they have different organizational cultures; likewise, conflict can develop between notions of profession and bureaucracy. Professionals would rather work in the system without the constraints of extensive rules limiting their professional choices and paperwork documenting (or requesting permission for) their every move, much less dealing with politics. Yet the bureaucratic model is the reality and requires each of these elements; as such, it poses some constraints within which the criminal justice system and its employees must work.

This is related to what has been called a **public service motivation**, suggesting that persons who deliberately seek work in public organizations such as criminal justice agencies do so because they want to serve society, to make a difference, and to advocate for what they believe are important social issues that benefit society as a whole (see Perry & Wise, 1990). The public service motivation is an important force, as criminal justice agencies often seek employees who demonstrate its attributes. At the same time, the constraints of bureaucracy can reduce public service motivation, as research has found that “well-meaning employees may become unmotivated in intensely bureaucratic organizations” (Moynihan & Pandey, 2007, p. 47), when employees experience frustration in achieving the professional goals that they believe are most significant. Accordingly, it is important for a balance to be struck between strict and regimented bureaucracies and a flexibility that allows professionals to exercise judgment.

### public service motivation

A desire to work in public sector agencies, such as criminal justice, out of a desire to serve society, make a difference, and advocate for important social issues that may benefit society as a whole

## Is Criminal Justice a Moral Agent?

**POINT: CRIMINAL JUSTICE IS A MORAL AGENT.** It is impossible to separate the study of criminal justice from the study of moral philosophy. Quite simply, criminal justice practitioners—whether working in a system or a nonsystem, as bureaucrats or as professionals—make decisions that both influence and are influenced by notions of **morality**. At its most basic, morality is about what behaviors and actions a society views as right or wrong. Behaviors that run afoul of moral judgments are labeled as deviant (see the discussion of crime that follows) and, in some cases, may be made illegal.

As noted earlier, professions develop codes of ethics to provide guidance for ethical conduct in their fields. However, morality goes beyond the concerns that are codified into a profession's statement of ethics, as criminal justice must also address broad moral questions that are of great interest to society as a whole.

### morality

Judgments about what behaviors or actions societies or individuals view as right or wrong, good or bad. Morality may also be viewed as an ongoing process in which society or individuals continually reflect on norms, values, and standards when determining the best solution to a dilemma.

Consider a debate about needle exchange programs, in which intravenous drug users can exchange dirty syringes and needles for clean ones. These programs have been found to reduce transmission of blood borne illnesses such as HIV and Hepatitis C, and to reduce risk behaviors such as needle sharing (Fernandes, 2017); at the same time, needle exchange programs involve questions about morality on both sides of the issue. For instance, opponents may argue that such programs lend tacit approval to drug use, which they view as morally wrong. Conversely, supporters may argue that it is morally wrong to ignore the preventable public health risks (through transmission of blood-borne diseases, including HIV/AIDS) posed by dirty needles. Or, a compromise position might suggest that rehabilitation and drug treatment are morally right and that needle exchange programs could provide a platform for offering treatment to persons addicted to drugs (see Kirp & Bayer, 1999; Sharp, 2005). These debates could result in new laws and policies allowing needle exchange, or they could lead to an affirmation of existing laws and policies that do not allow needle exchange.

Therefore, decisions about which policies to enact or which laws to create often involve moral questions. This is because these decisions are fundamentally about attempting to define (or regulate) conduct that is viewed as right or wrong. Criminal justice agencies then become responsible for implementing those policies and enforcing those laws, meaning that the criminal justice system is, in part, responsible for enforcing socially accepted notions of what is or is not moral. Of course this begs a larger question, which is how moral decisions are made in the context of justice policy. Future chapters will explore this issue more fully.

**COUNTERPOINT: CONCEPTIONS OF MORALITY ARE HEAVILY INFLUENCED BY DISCRETION.** At the same time, as described earlier, there are many points at which criminal justice practitioners—police officers, judges, correctional officers, and so on—can exercise substantial amounts of discretionary decision-making. Discretion underlies the criminal justice system and its processes. Discretion likewise involves moral philosophy. Discretionary decisions are one way of prioritizing and resolving questions involving morality—focused on what’s right, what’s wrong, and the most appropriate way to resolve dilemmas. But how does a police officer or other justice practitioner balance this complexity?

In exercising this discretion, the police may be considered “streetcorner politicians” (Muir 1977:271), “street level bureaucrats” (Lipsky 1980:3) or problem solvers (Goldstein 1990). Therefore, the exercise of the law enforcement function necessarily requires officers to think and make decisions, rather than acting solely based on a set of formalized rules. And, in the course of that decision-making process, officers become philosophers.

In the 2000 New York Council for the Humanities Scholar of the Year Lecture, legal scholar Ronald Dworkin commented about judges: “In the ordinary course of their work, judges make decisions about many matters that are also, at least on the surface, the subjects of a great philosophical literature” (2000: para 1). Could we not extend his arguments to police officers? After all, police officers make judgments about issues of liberty (and its curtailment), about what acts and persons are more deserving of sanction than others, and more. (Owen, Fradella, Burke, & Joplin, 2006, pp. 6–7)

The role of the criminal justice system in addressing moral dilemmas is a substantial informal power that merits considerable thought. Indeed, the theory and practice of criminal justice involve careful thinking about philosophical topics. You will find that this theme appropriately runs throughout this book.

## Is Criminal Justice an Academic Discipline?

**POINT: CRIMINAL JUSTICE IS AN ACADEMIC DISCIPLINE.** In an article about criminology, Nicole Rafter (2010) laments the lack of historical study of the field, observing that “knowing our history teaches us about not only where our ideas came from but also where we are going and who we are” (pp. 342–343). The same is true of criminal justice. By reviewing a history of the field of criminal justice, we can refresh knowledge about past theories and ideas and place current situations in their historical context. Rather than viewing current issues in a vacuum, we can see how the past has informed the present and consider long-term trends in the production of knowledge. For this reason, many of the chapters in this book will provide historical background to current areas of study.

In this introductory chapter, we consider the development of criminal justice as an academic discipline and its importance. The earliest roots of criminal justice education were in the 1920s, when a very small number of universities began offering criminal justice courses and programs. These early programs were primarily motivated by a desire to promote police professionalism and were established through the leadership of two progressive police chiefs who became college professors: August Vollmer (former chief of Berkeley, California) and Orlando W. Wilson (former chief of Wichita, Kansas). Over time, the number of programs and faculty increased somewhat (for good histories, see Hochstein, 2016, and Morn, 1995), but it was not until the 1970s that dramatic growth occurred. As part of a major 1968 crime bill, Congress created the **Law Enforcement Assistance Administration (LEAA)**, an agency designed to distribute federal funds to improve criminal justice administration and practice in the United States. The LEAA created the **Law Enforcement Education Program (LEEP)** to fund college-level criminal justice education. In the decade of the 1970s, LEEP paid for over 300,000 persons to enroll in college coursework and complete degrees in criminal justice. Through this influx of money, “LEEP helped create a fast-growing segment of academia by backing the establishment of criminal justice training departments in universities nationwide” (Gest, 2001, p. 159). In 1979, LEEP was restructured for political reasons and disappeared soon thereafter (Gest, 2001). However, its legacy remains a long-lasting one, as criminal justice is now a program commonly offered at many colleges and universities.

Note the use of the word *training* in the quotation about LEEP. In the 1970s many criminal justice classes focused more on vocational training than on an academic study of criminal justice theories and policy debates. At the time, criminal justice was still a new and growing academic discipline with only a limited body of theory and scholarship. However, since that time, criminal justice has matured into a robust academic discipline. It draws upon a variety of theoretical ideas to offer sophisticated coursework and to produce innovative scholarship that helps us better understand the foundations of criminal justice policy and practice. This transition is one that helps criminal justice move from craft to profession, as described earlier.

This change—from vocational education to theory-driven academic discipline—is also important because the scientific study of theoretical perspectives on crime and justice can help shape the development of effective criminal justice policy. These theoretical perspectives are advanced by the work of criminal justice scholars. Being able to understand the theoretical basis for why certain policies work but others don’t, or being able to understand the theoretical basis for how (and why) the criminal justice system functions, can also help justice practitioners better understand their roles, responsibilities, and tasks. For instance, is it not useful for those enforcing the law to appreciate the reasons for having law in the first place, to better understand their role in pursuing justice? In addition, having a sound theoretical understanding of criminal justice issues can also help practitioners and policymakers design the most effective policies to respond to or prevent crime. For instance, a consideration of the respective roles of law,

### Law Enforcement Assistance Administration

An agency created by Congress to distribute funds to improve criminal justice administration and practice. Known as LEAA, the agency was created in 1968 and abolished in 1982.

### Law Enforcement Education Program

A program created by the Law Enforcement Assistance Administration to fund college-level criminal justice education. Known as LEEP, the program was restructured in 1979 and discontinued soon thereafter.

rehabilitation, public health, morality, and more could better help practitioners understand how to approach the needle exchange debate described in the previous section.

The development of criminal justice as an academic area of study has increased the number of persons—including public and private researchers, faculty at colleges and universities, and justice practitioners working in agencies—who can conduct studies and develop and apply theoretical understandings about crime and justice.

**COUNTERPOINT: THE ACADEMIC IMPACT ON CRIMINAL JUSTICE HAS ROOM TO GROW.** There are two models by which the work of academic criminal justice can impact policy and practice. The first is **evidence-based practice**, which emphasizes the importance of enacting “policy that is fully informed by the best scientific theory, evidence, and data currently available” (Robinson & Abt, 2016, p. 12). The second is **translational criminology**, which proposes collaborative work between academic experts and practitioners in the field, as follows:

The goal of translational criminology is to break down barriers . . . by creating a dynamic interface between research and practice. This is a two-way street: In one direction, practitioners in the field describe challenges they face in their jobs every day; in the other direction, scientists discover new tools and ideas to overcome these challenges and evaluate their impact. (Laub, 2011, para. 2)

The common theme is that policies should be informed by the work of researchers who have studied the theories and data related to issues of concern. Promising trends include that there is a greater demand from the professional community for academic research, more research is in fact being generated, and bipartisan policy collaborations have helped to de-politicize some criminal justice issues, allowing a focus on substance over politics. The federal government has also taken steps to encourage the use of research in policymaking, and many criminal justice agencies have developed meaningful partnerships with researchers (Robinson & Abt, 2016). All of these are positive signs pointing to the importance of academic criminal justice.

At the same time, challenges remain. “Too many practitioners continue to rely on tradition, instinct, convenience, and even guesswork as the basis for their decision making” (Robinson & Abt, 2016, p. 19), and researchers and practitioners still need to talk to one another more frequently, breaking out of silos in which researchers primarily converse with other researchers and practitioners primarily converse with other practitioners. Policymakers also note that they find it difficult to translate academic data analysis, often heavy with advanced statistics and dense theory, into meaningful policy guidance; in some cases, agency leaders simply do not value the role that research may play (Pesta, Blomberg, Ramos, & Ranson, in press).

Accordingly, for academic criminal justice to have a meaningful impact on what criminal justice agencies and staff actually do, additional growth is necessary. Two strategies to accomplish this are building strong working relationships between academic researchers and agency practitioners, to promote trust and confidence in the work researchers do and the value practitioners give to it (Pesta et al., in press), and actually having agencies hire persons whose job is to conduct research for that agency (e.g., Smith, Santos, & Santos, 2018).

Whether viewed through the lens of system, profession, bureaucracy, moral agent, or academic discipline, criminal justice is fundamentally about how we address the problem of crime in society. Taken together, and as illustrated in Table 1.1, the five perspectives described here illustrate the ways in which criminal justice approaches its sometimes daunting task. We will now turn to a discussion of how the five perspectives would apply to one of the most controversial issues in criminal justice—the use of deadly force by police officers.

### **evidence-based practice**

Developing policies informed by scientific theory, evidence, and data.

### **translational criminology**

Collaborative efforts between researchers and practitioners in which practitioners identify challenges and researchers study and recommend potential solutions to those challenges.

TABLE 1.1 Perspectives of Criminal Justice

PERSPECTIVES OF CRIMINAL JUSTICE	POINT	COUNTERPOINT
<b>System</b>	<ul style="list-style-type: none"> <li>–Orderly and predictable process through which cases proceed</li> <li>–Agencies collaborate in the pursuit of justice</li> <li>–Common vocabulary</li> </ul>	<ul style="list-style-type: none"> <li>–Many different agencies that sometimes experience tensions</li> <li>–Discretion underlies many decisions</li> <li>–Differences in philosophies and goals between individuals and agencies</li> </ul>
<b>Profession</b>	<ul style="list-style-type: none"> <li>–Educational programming</li> <li>–Criminal justice has an ethical code</li> <li>–Agencies may be accredited</li> <li>–Agencies complete specialized tasks</li> </ul>	<ul style="list-style-type: none"> <li>–May be a craft, with apprenticeships supplementing education</li> <li>–No standard educational requirement</li> <li>–Public perceptions could be higher</li> </ul>
<b>Bureaucracy</b>	<ul style="list-style-type: none"> <li>–Agencies are driven by rules, procedures, hierarchies, paperwork, and training</li> <li>–Goal is to make decisions on merits, free from politics</li> </ul>	<ul style="list-style-type: none"> <li>–Criminal justice is not separate from politics and political pressure</li> <li>–Agency cultures differ</li> <li>–Public service motivation may be hampered by too much bureaucracy</li> </ul>
<b>Moral Agent</b>	<ul style="list-style-type: none"> <li>–Criminal justice cannot avoid discussions of what’s “right” and “wrong,” thereby enforcing selected views of morality</li> </ul>	<ul style="list-style-type: none"> <li>–Individual or agency discretionary decisions shape perceptions of morality</li> <li>–Moral dilemmas require careful consideration of philosophical topics</li> </ul>
<b>Academic Discipline</b>	<ul style="list-style-type: none"> <li>–History and theory are important</li> <li>–College-level criminal justice education is commonplace</li> <li>–Scholars conduct research on criminal justice issues</li> </ul>	<ul style="list-style-type: none"> <li>–Challenges remain in fully implementing evidence-based practice and translational criminology</li> <li>–Need to build researcher–agency relationships to study important issues</li> </ul>

## Applying the Five Perspectives: Police Use of Deadly Force

Sworn law enforcement officers have the authority to use deadly force in some circumstances. Prior to 1985, many jurisdictions allowed officers to use deadly force to prevent the escape of any person suspected of committing a felony, known as the “fleeing felon rule.” That changed in 1985, when the US Supreme Court imposed limits on the use of deadly force in the case *Tennessee v. Garner*. In that case, the Court overturned the fleeing felon rule and held that use of deadly force was only permissible when “the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others” (p. 11). Four years later, the Supreme Court ruled in *Graham v. Connor* (1989) to clarify how to determine if a particular use of force, deadly or nondeadly, was reasonable. The Court held that it “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,” because “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation” (pp. 396–397). Taken together, these definitions provide guidance, but there remains the potential for interpretation as to how they may be applied in an actual incident.

From 2013 through 2017, the Federal Bureau of Investigation (2018e) reported that there were a total of 2,256 incidents in which police officers used deadly force, for an average of approximately 451 per year. In almost all cases, firearms were the weapons used by police officers in incidents involving deadly force. Given the gravity of deadly force, it is imperative to consider how it reflects the discipline of criminal justice as articulated through the five perspectives.



**SYSTEM.** From the perspective of criminal justice as a system, there is some degree of consistency in use of force policies across different police agencies, as they must be consistent with the criteria set by the US Supreme Court. At the same time, use of force is a discretionary decision, so it is important to understand how officers perceive situations (e.g., Klinger & Brunson, 2009) and how situational dynamics affect firing behavior (e.g., White & Klinger, 2012). In addition, while policies vary between agencies, there are typically two reviews that occur when an officer uses deadly force, which follow a very clearly outlined structure—an administrative review conducted by the police department to determine if the officer violated agency policy and a criminal investigation conducted by the prosecuting attorney's office to determine if the officer violated the law in the use of deadly force (for an example, see Fairfax County Police Department, n.d.).

**PROFESSION.** Consistent with characteristics of a profession, police ethical guidance (e.g., International Association of Chiefs of Police, n.d.) and training (e.g., Morrison & Garner, 2011) address use of force issues. The International Association of Chiefs of Police Code of Ethics (1957) states, in part, that “I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence” (para. 3). While each state differs somewhat, in Virginia, police agencies must provide training to all officers on “factors affecting the use of deadly force,” including reviewing training scenarios to determine “whether or not use of deadly force is necessary,” as well as identifying “other alternatives that the officer may consider using before using deadly force” (Virginia Department of Criminal Justice Services, 2017, Performance Outcomes 6.6 and 6.9). Likewise, in order to receive accreditation through the Virginia Law Enforcement Professional Standards Commission (2016), agencies must have as part of their written procedures “guidance in the use of force in threatening or life-and-death situations, and to prevent the loss of life” (p. 9). Consistent with the norms of a profession, these documents are intended to shape the actions of law enforcement officers to be compliant with law, identifying standards that sworn officers are expected to uphold as they perform their duties.

**BUREAUCRACY.** Research has found that when bureaucratic structure breaks down in a police agency, it “may contribute to excessive police deadly force” (Lee & Vaughn, 2010, p. 203). At the same time, bureaucratic controls may also reduce the use of force. Recall that one characteristic of bureaucracy is paperwork; when police officers use force, it must be documented. One study found that requiring an officer's supervisor, or others, to complete paperwork when force was used is associated with lower levels of force being used in a police agency. “This finding may indicate that agencies with higher levels of accountability discourage officers from using force” (Alpert & Macdonald, 2001, p. 407), although more research is necessary to fully interpret how paperwork impacts behavior. In a thoughtful article, Marenin (2016) notes that there is often a disconnect between the organizational culture of police officers on the street and that of police managers, particularly related to the use of force. This places a challenging burden on supervisors to consider how to “communicate [use of force] reform goals in a language which respects the knowledge and values of street cops but without losing sight of the basic goals of reforms and the need to hold street cops accountable for their actions” (p. 477). To do so successfully requires a consideration of how organizational culture affects supervision.

**MORAL AGENT.** In what ways is morality related to deadly force? Research suggests that feelings of legitimacy, or trust, in the police allow the public to maintain support for law enforcement when a use of force was reasonable. However, feelings of legitimacy and trust in the police are not sufficient to “‘morally discount’ or even authorize” excessive force (Gerber & Jackson, 2017, p. 9). There are moral limits to the use of force that the

public is not willing to surpass. Hirschfield (2015) goes so far as to argue that a high level of lethal force used by law enforcement is a signal of a failure to provide policies to address racial inequality, mental health, and social services, which would provide a culture less steeped in violence. This proposition raises moral overtones about the relationship between criminal justice and other social issues.

**ACADEMIC DISCIPLINE.** Note that numerous studies are cited in the preceding paragraphs. This is an example of criminal justice as an academic discipline, as deadly force has been the subject of much research, only a small fraction of which is referenced here. One of the most significant concerns about deadly force is whether it is used disproportionately against racial minorities; some studies conclude so (e.g., Sadler, Correll, Park, & Judd, 2012) and other studies conclude not (e.g., Cesario, Johnson, & Terrill, in press). It is not unusual in academic research to find inconsistent results, which are sometimes a reflection of the various approaches to research design and analysis. Studies called meta-analyses are particularly important, as they summarize the results of numerous prior research studies. A meta-analysis has suggested that some racial disparities in police use of deadly force do exist (Mekawi & Bresin, 2015). Dunham and Petersen (2017) identified evidence-based practices that agencies can adopt to reduce bias, including: “Developing a national database [to track and research] police shootings” (p. 342); “professionalizing the police” (p. 343); “strengthening early intervention systems” to identify officers who may be likely to misuse force (p. 344); “diversifying the police force” (p. 344); “empowering civilian review boards” to investigate complaints against officers (p. 344); and “expanding the use of body-worn cameras” (p. 345), which will be addressed further in Chapter 11. Academic research has the potential to shape policymaking that can improve policing practice.

Considering topics from the perspectives of system, profession, bureaucracy, moral agent, and academic discipline can help in understanding the dynamics of criminal justice. Doing so also illustrates the complexity that criminal justice issues often present.

- Q** Consider the policy option that you identified as most preferred from the scenario at the beginning of the chapter. How could each of the five perspectives described here impact or influence the policy?
- Q** What are the most important goals that you think the criminal justice system should meet? How can each of the five perspectives promote (or challenge) the accomplishment of those goals?
- Q** Considering the material presented about police use of deadly force, which perspective(s) do you think provide the most useful insights or options for policy development? After reviewing the information provided here, do you think any reforms need to be made regarding the use of deadly force? Explain your answer.

## Defining Crime

In what ways can we understand the concept of crime?

Recall the definition of criminal justice as society’s response to crime. This naturally raises the question, “What is crime?” In this chapter, we introduce the concept of crime. In subsequent chapters, you will learn more about how specific criminal offenses are defined.



## What Crime Is

It is important to distinguish crime from deviance. **Deviance** refers to any behavior that runs counter to society's expectations, beliefs, standards, or values (see Chapter 4). This may include acts ranging in seriousness from chewing gum in class, to talking too loudly in the library, to motor vehicle theft, to murder. However, not all deviant behaviors are crimes. There is an important principle that underlies an understanding of crime. As with many legal principles, it is expressed in Latin, the traditional language of the law: *nullum crimen sine lege, nulla poena sine lege*. Translated, the statement is that there can be no crime without a law, and there can be no punishment without a law. A deviant act is a crime (and can be punished by the criminal justice system) *only* if there is a specific law against it. Therefore, a **crime** is any behavior that the government chooses to define as such by passing a law against it. For instance, if there is no law that prohibits chewing gum in class, then it is not a crime, and a person may not be arrested, prosecuted, or sent to prison for it (although a teacher could impose routine classroom discipline, such as withdrawing recess privileges, if gum chewing violated a school rule). On the other hand, there is a law against murder, so a person who commits murder may be arrested, prosecuted, and sent to prison for that act.

One key government task, generally the responsibility of the legislature, is to determine which acts cause sufficient concern or are serious enough to define as criminal. Determining which deviant acts to criminalize requires substantial thought. Criminologist Nils Christie observed, "Crime does not exist. Only acts exist, acts often given different meanings within various social frameworks . . . Our challenge is to follow the destiny of acts through the universe of meanings . . . their meanings are created as [the acts] occur" (2004, pp. 3, 8).

Christie's argument is complex, but the basic idea is that there are many potentially deviant acts to consider. Some are simply viewed as unpleasant, while others are labeled as "crimes" under the law. Which acts are so labeled is based on the meaning society attaches to them. Therefore, societies decide which acts should or should not be defined as a crime, based on factors such as societal values, history, philosophies (such as those you will encounter in later chapters), seriousness of the act, and more. Another way of expressing this idea is to say that crime is socially constructed, meaning that societies construct their own understandings of which behaviors should be prohibited by law and defined as criminal. This is a significant point because it helps explain why we see variations over time and places in terms of what behaviors are or are not defined as a crime.

In explaining why certain acts are criminalized, scholars sometimes draw a distinction between (more important Latin phrases) *mala prohibita* and *mala in se* crimes. Crimes labeled as *mala in se* are acts that have been criminalized because they are inherently bad; that is, the characteristics of the act itself lead to near universal agreement that it is wrong by its very nature. These are typically the more serious crimes, including murder, rape, robbery, assault, and so on. Crimes labeled as *mala prohibita* are not viewed as inherently bad but rather are crimes only because the legislature (or public) have decided that they should be. That is, the act is not so bad that it *must* be illegal, but a decision was made to criminalize it nonetheless. These often include what are called "victimless crimes," so named because persons generally consent to these activities, such as illegal gambling, prostitution, drug possession, and so on. The concept of "victimless crime" is itself controversial, as harms can result from the actions listed above.

The *mala in se* and *mala prohibita* distinction is far from precise, leading some to question its usefulness. Furthermore, interpretations can change over time, as "crimes which were originally solely *mala prohibita* may come to be universally recognized as *mala in se*" (Wolfe, 1981, p. 139). This could be the case when an act is initially defined as a *mala prohibita* offense, but over time, society comes to view the act as being *mala in se* and inherently wrong, even if it did not originally. As an example, recall from

### deviance

Behaviors that violate society's expectations, beliefs, standards, or values. As such, deviance refers to any departure from behaviors that are typical, acceptable, or accepted. Crime is one form of deviance.

### *nullum crimen sine lege*

A Latin phrase meaning that no behavior can be considered a crime unless there is a law enacted that prohibits it.

### *nulla poena sine lege*

A Latin phrase meaning that no punishment can be given by a court unless there is a law that authorizes it.

### crime

An intentional act or omission in violation of the criminal law, committed without defense or justification, and penalized by the government as a felony or misdemeanor.

the photo essay preceding this chapter that domestic violence was once, while illegal, viewed as a private matter into which the law did not need to intrude (*mala prohibita*); today, it is viewed as a form of assault (*mala in se*) to which the police have an obligation to respond (Friedman, 1993). Likewise, crimes that were once viewed as *mala in se* can, over time, come to be viewed as *mala prohibita*; laws against such acts are sometimes even abolished. For instance, at one time, many states had blue laws; the origin of the name is debated, but these laws required businesses to be closed and prohibited other activities on Sundays. Blue laws were viewed as very serious moral imperatives (*mala in se*) with strict penalties for violation. Over time, however, blue laws were repealed as perceptions of the issue changed (Laband & Heinbuch, 1987).

In short, crimes are acts that are prohibited by the laws of a country, state, city, and so forth. Legislators and the public must consider which acts they want to define as crimes and which acts they do not. In this way, each society defines its own concept of crime. In the United States, there are a series of constitutional limitations on what can and cannot be made criminal. You will learn about these limitations as well as how specific criminal offenses are actually defined in Chapter 9.

## What Crime Is Not

One important lesson to be drawn from the preceding discussion of crime is that *definitions of crime are not universal*. Even within the United States, there are variations. Consider physician-assisted suicide as an example, in which physicians prescribe a lethal dose of medications to terminally ill patients who wish to end their lives (for a case study exploring the issues involved, see Kade, 2000); this is illegal in most states.

However, as of this writing seven states allow physician-assisted suicide, as does the District of Columbia. In some states, the public voted to allow physician-assisted suicide; in others, state legislatures passed laws permitting it; and in others, courts ruled it legal (“Physician-assisted suicide,” 2018). By a variety of mechanisms, these states have determined that it is acceptable and should not be within the criminal realm, while it remains illegal in the rest of the country.

Cross-national research has further confirmed that definitions of crime are not universal. Acts commonly defined as being *mala in se* have been prohibited differently across cultures. For instance, a historical study (Brown, 1952) of 110 societies found variations in the definition of sexual crimes. The two offenses that were universally prohibited and punished by all societies studied were “incest” and “abduction of [a] married woman.” Other acts included “rape of [an] unmarried woman” (p. 138; 95% of societies punished those who committed this act), adultery (89% of societies punished those who committed this act), and seducing a female who is not yet sexually mature (77% of societies punished those who committed this act). Therefore, research indicates that crime is not universally defined across societies or even within a single society, as different governing bodies may reach different decisions about what behaviors to make criminal.

As illustrated by blue laws and physician-assisted suicide, *definitions of crime are not static*. Rather, they are constantly changing. Each new legislative session, whether in city council chambers, state legislatures, or the US Congress, brings new laws defining new crimes and new laws decriminalizing old crimes. For instance, some states have taken steps to decriminalize possession of small amounts of marijuana, particularly for medical reasons (Hoffmann & Weber, 2010); conversely, the federal government has enacted legislation against bath salts and other synthetic drugs (Haggin, 2012). And many states have recently enacted legislation to create new traffic offenses (technically speaking, traffic offenses are known as infractions) that prohibit certain cell phone and text messaging behaviors while driving (“Distracted Driving,” 2018).

After it is defined under the law, *crime is not automatically enforced*. Simply deciding that something is a crime does not automatically put a stop to the behavior in question,

nor does it guarantee that the law will be enforced as it was intended. For instance, research on Prohibition in the United States, during which alcohol was banned by a constitutional amendment from 1920 to 1933, found that at the state and local level,

enforcement was never very intense. The states mostly refused to devote any significant effort to the matter; only 18 appropriated money for a prohibition unit, and three appropriated less than \$1,000, a derisory amount even then. New York made 7,000 arrests in 1921, but this produced only 20 convictions. (MacCoun & Reuter, 2001, p. 159)

Criminal justice agencies, and primarily the police, are responsible for enforcing the law. But remember from earlier discussions that criminal justice agencies have a great deal of discretion in how they enforce the law. And the police must balance multiple tasks and prioritize them according to their importance and the availability of resources. Typically, the greatest attention is devoted to the most serious crimes and to those that generate the most concern among community members. Other crimes may be less vigorously enforced.

When thinking about crime, it is also important to consider the persons who commit criminal acts. There is sometimes a temptation to think that it is possible to label individuals as either “criminal” or “noncriminal” based on their behavior. This is erroneous, as *crime is not something that is committed by a few easily identifiable persons*. Criminologist Marcus Felson (2002) calls this “the not-me fallacy” (p. 6), arguing that “You don’t have to be bad to do bad. Indeed, empirical research has virtually destroyed the claim that victims and offenders are from separate populations . . . Most people violate at least some laws sometimes” (pp. 6–7). Consider this: “When 1,700 New York City adults without a criminal record were surveyed, 99 per cent admitted to committing at least one of forty-nine offences listed in a questionnaire (the men averaged eighteen, and the women eleven, different *types* of offences)” (Gabor, 1994, p. 5). The opposite is also true; for instance, perhaps with the exception of fleeing a crime scene, it is not unusual for offenders to stop at red lights, to obey traffic regulations, and so forth. Quite simply, an offender does not violate all laws all the time (e.g., Sykes & Matza, 1957).

Jeffrey Reiman (2001) argues that the criminal justice system focuses much more heavily on what he calls “typical crime,” meaning “*one-on-one harm*—where harm means either physical injury or loss of something valuable or both” (p. 69). Certainly it is important to respond to typical crime, but Reiman also argues that the criminal justice system neglects the enforcement of white-collar crime, such as fraud, embezzlement, and corporate crime. However, yearly losses in white-collar crime are “more than 10,000 times the total amount taken in all bank robberies . . . and more than 20 times the total amount stolen in all thefts” (p. 121) that are reported to the police on a yearly basis. This suggests that crime and criminal behavior extend beyond the scope that we may originally imagine and beyond the street crimes that are portrayed so frequently by the media.

Understanding crime as a concept, then, requires careful analysis that goes beyond the notion that it’s simply “against the law.” That is why it is important for criminal justice practitioners to study both the content of the criminal law and the philosophies that underlie it.

**Q** What factors do you think might influence a society’s decisions about what acts should or should not be defined as crimes?

**Q** Are there any acts currently defined as crimes that you do not think should be? Are there any acts that are currently legal that you think should be defined as crimes? Why? Does your answer illustrate any of the ideas presented here about what crime is or what crime is not?

### Uniform Crime Report

An annual report of the number of crimes reported to the police, prepared by the Federal Bureau of Investigation. Also known as the UCR, this stands as the official source of crime data in the United States.

### National Incident-Based Reporting System

Crime data collected by the Federal Bureau of Investigation with more detailed information than available in the Uniform Crime Reports. Also known as NIBRS, the data are often used by researchers to analyze crime patterns.

### rate

A standardized measure that allows comparison of data between areas with different populations, often used when reporting crime data. Crime rates typically indicate how many offenses occur per 100,000 persons in a particular location.

## The Extent of Crime

How much crime occurs in the United States?

Crime can be measured in a variety of ways. In this section, we consider official and unofficial crime data and what they tell us about the frequency of crime in the United States.

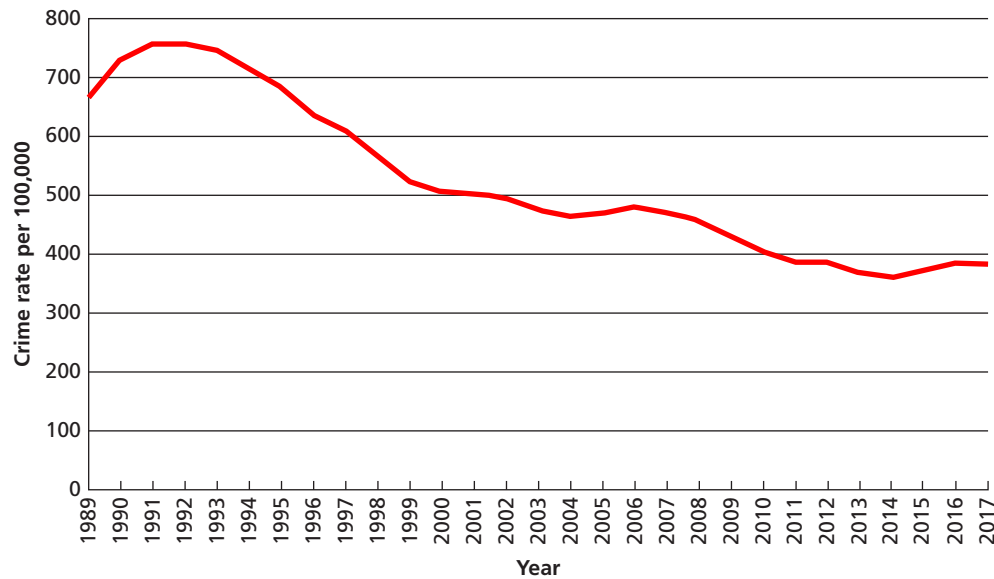
### Official Crime Data

The **Uniform Crime Report (UCR)** is the official source of crime data in the United States. The UCR is compiled by the Federal Bureau of Investigation (FBI). Law enforcement agencies report a variety of crime data to the FBI. The FBI then prepares a yearly report called *Crime in the United States*, which provides annual information about the amount of crime. The UCR counts the number of crimes but does not provide detailed information about each crime. However, another FBI process, the **National Incident-Based Reporting System (NIBRS)**, collects more detailed data about individual criminal events. The NIBRS data, which include information about the victim, offender, and incident, are available to researchers and government agencies so they can research issues related to crime and victimization. Here, the focus is on data from the UCR, as NIBRS is not yet fully implemented across all states.

Figures 1.1 and 1.2 show how the violent crime rate and the property crime rate have changed over time. A **rate** is calculated by the following formula: (number of offenses ÷ population of area) × 100,000. The result allows us to determine how many offenses

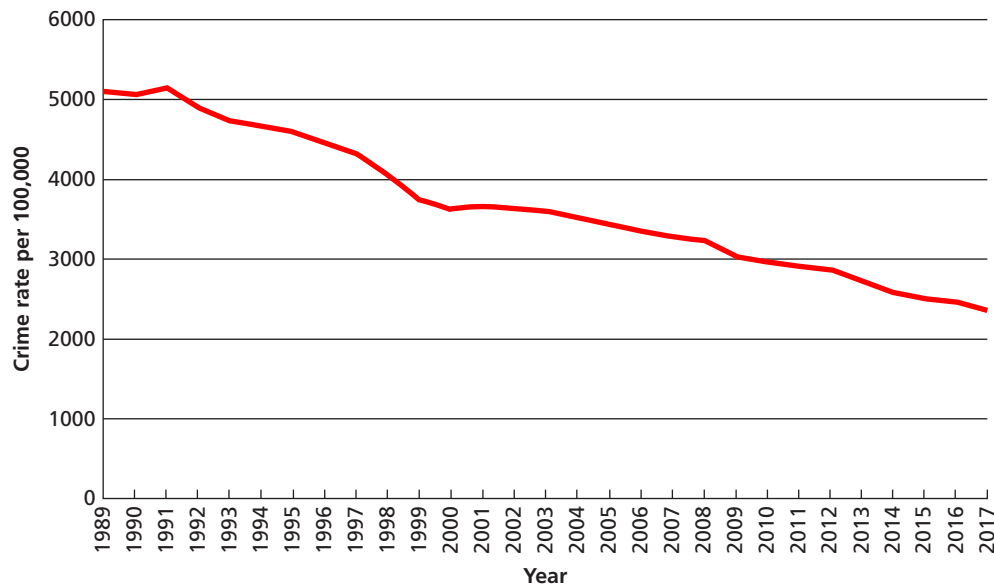


Many police agencies now employ crime analysts, who look for patterns in crime data and who prepare maps to show the distribution of crime within a jurisdiction. Information prepared by crime analysts is used to guide decision making about police strategy. Why do you think it would be useful to understand the spatial distribution of crime?



**FIGURE 1.1** Violent Crime Rate in the United States, 1989–2017.

Source: Federal Bureau of Investigation, 2018d; 2000.



**FIGURE 1.2** Property Crime Rate in the United States, 1989–2017.

Source: Federal Bureau of Investigation, 2018d; 2000.

occur per 100,000 residents of an area. This, in turn, allows us to compare data over time and between different places with different populations, by presenting them in a standardized format.

The offenses included in the violent crime rate are murder, forcible rape, robbery (i.e., taking another person's property through the use or threat of force, such as a holdup), and aggravated assault. The offenses included in the property crime rate are burglary (i.e., breaking and entering), larceny (i.e., stealing another person's property, such as



**clearance rate**

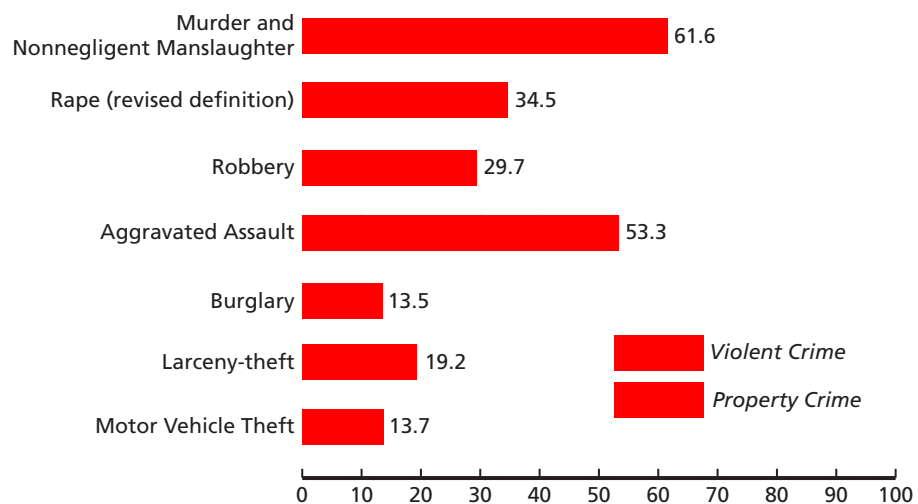
A statistic indicating the percentage of cases that are solved, or cleared, usually through the arrest of a suspect.

shoplifting), motor vehicle theft, and arson (Federal Bureau of Investigation, 2018d). The graphs in Figures 1.1 and 1.2 tell an important story. In the 1990s, the violent crime rate decreased dramatically, and that decrease has continued (though less dramatically) through the 2000s, although it may be leveling off in the 2010s. Over the same time period, property crime rates have also declined noticeably.

Criminologists and criminal justice scholars and practitioners are very interested in why crime has declined. As with many issues in criminal justice, no absolute answer fully explains it. However, research (Blumstein & Wallman, 2000; Conklin, 2003) has identified a variety of factors that may have contributed to the reduction in crime; for further discussion, see Box 1.3. Criminologists will continue to study the various forces that impact the crime rate as well as the effect of criminal justice policy decisions on the level of crime in society.

The UCR also provides data about **clearance rates**, referring to the percentage of cases that are solved, or cleared, usually by arresting a suspect. Figure 1.3 shows the clearance rate for the major crimes included in the UCR. Murder has the highest clearance rate because homicide cases are often given the highest priority in terms of investigative resources (Federal Bureau of Investigation, 2018c).

The data in Figures 1.1–1.3 are for the United States as a whole. However, it is important to recognize that there are regional variations in the amount of crime. Figure 1.4 shows the amount of crime by region (Federal Bureau of Investigation, 2018f). The southern United States consistently experiences the highest violent crime rates. There has long been a debate among criminologists as to why this is the case, particularly focused on whether there are attributes that lead the southern states to experience higher rates of violence. Although there is not a firm resolution on this question, the following explanations have been proposed: a southern subculture that favors violence (Cohen, 1996); higher temperatures in the South (Cohn, Rotton, Peterson, & Tarr, 2004), as more potential offenders and victims may venture out when the weather is nice or because hot weather makes tempers flare; differences in patterns of social relationships among people, known as social capital, in which lower levels of social capital in the South lead to increased crime (Rosenfeld, Messner, & Baumer, 2001); and higher poverty levels in the South being associated with crime (Huff-Corzine, Corzine, & Moore, 1986).



**FIGURE 1.3** Percent of Crimes Cleared for Arrest or Exceptional Means, 2017.

Source: Federal Bureau of Investigation, 2018c.