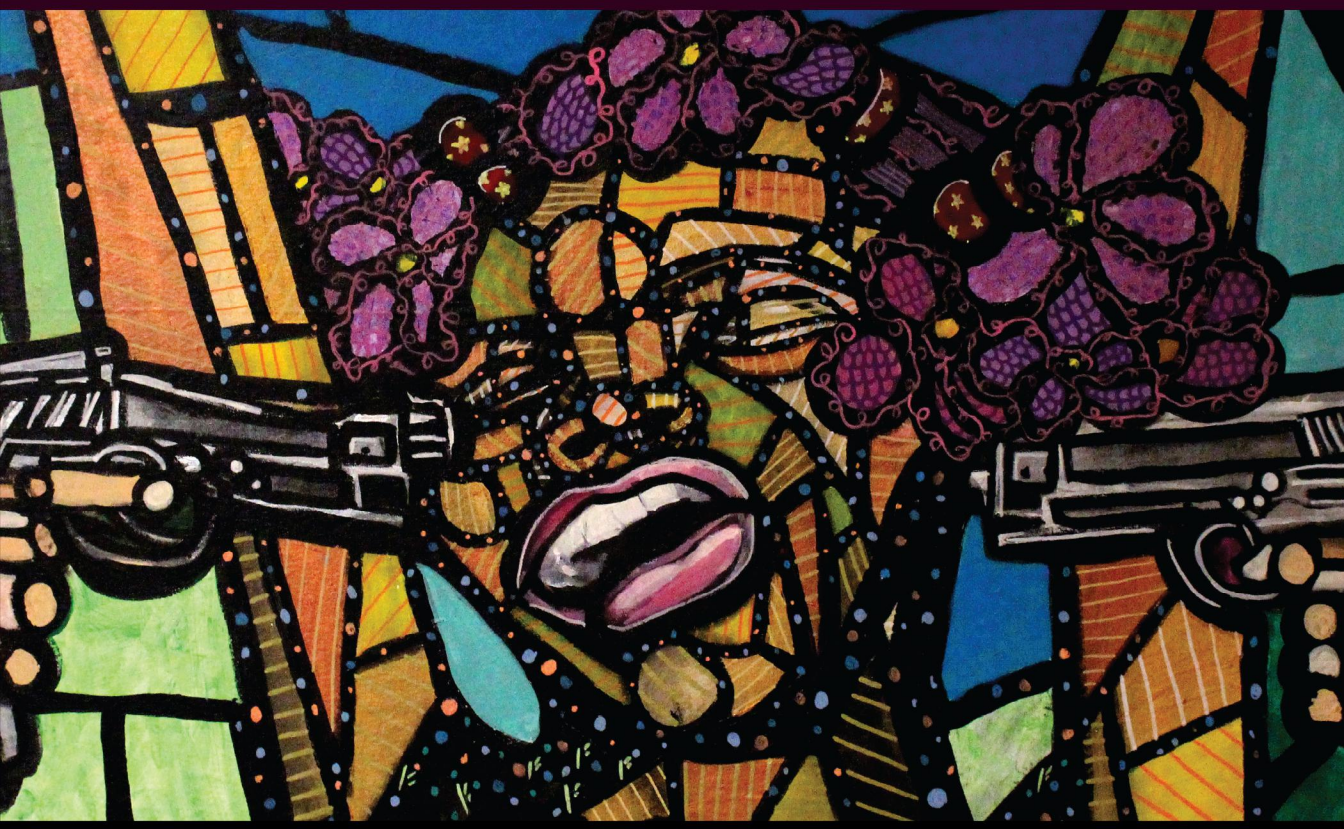
# CLASS, RACE, GENDER, & CRIME

*fifth edition*

## THE SOCIAL REALITIES OF JUSTICE IN AMERICA



*Gregg Barak* | *Paul Leighton* | *Allison Cotton*

## Praise for
## *Class, Race, Gender, and Crime, Fifth Edition*

"The authors have revised and updated their excellent critical exploration of the impact of class, race, and gender on criminal justice practice in the United States. As with the earlier editions, written in clear, lively, jargon-free language, the book is an excellent text for students of criminal justice or criminology at all levels. No one can read this text without realizing the depth and complexity of the problems that face those who would make our criminal justice system truly a system of justice."

**—Jeffrey Reiman, American University; coauthor of *The Rich Get Richer and the Poor Get Prison***

"The fifth edition of *Class, Race, Gender, and Crime* is, as in previous editions, a well-articulated discussion of the structural inequalities found throughout American society and reinforced through criminal justice system practices. However, this edition in particular is a timely addition to discussions of inequities within our society. The authors shine a harsh light on the nature, origin, and malignancy of long-standing and entrenched disparities that continue to marginalize, disadvantage, and disenfranchise the most vulnerable of American citizens. In doing so, the authors call immediate attention to the inherent and often untapped potential of the criminal justice system to embody and perpetuate the ideals of justice and equality."

**—Jay P. Kennedy, School of Criminal Justice, Michigan State University**

"The authors once again demonstrate how class, race, gender, and crime—four explosive topics we're reluctant to talk about publicly—are interrelated and, more important, how these issues affect each and every one of us. For the authors, 'class' is not shorthand for the poor but includes the middle and upper class; 'gender' is not shorthand for women but includes men; 'race' is not shorthand for minorities but includes whites; and 'crime' is not shorthand for street crime but includes the crimes of the rich and powerful. Enlightening, sobering, and ultimately essential reading. This is admirable work."

**—Katheryn Russell-Brown, University of Florida**

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*To those people who read this book as well as those who do not.*

*G. B.*

*To my daughters, Sala and Aiko*

*P. L.*

*To my father, James A. Cotton, Esq., mentioned herein. Thank you for your service to our profession. I am grateful for the lawyer, the professor, and the father that you chose to be for us throughout our lives. I love you and my successful sister, Lallis A. C. Jackson, MBA, very much.*

*A. C.*

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# Preface

"Those who won our independence by revolution were not cowards," wrote Supreme Court associate justice Louis Brandeis. "They did not exalt order at the cost of liberty" (*Whitney v. California*, 274 U.S. 357 [1927]). The radicals who founded this country were not afraid to state their belief in the importance of freedom and argue it through to its logical conclusion: a government dependent on the people, who were free to change it. They wrote in the Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

It is ironic that many of those talking about liberty and equality were slave owners, leading some to wonder exactly how "self-evident" these truths really were. Indeed, the declaration contains a list of grievances against England to justify violent rebellion, and the original declaration attacked the king for waging "cruel war against human nature itself, violating its most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither" (Christianson 1998: 66). The capture and transportation of African people into slavery was similar to the British policy of transportation, whereby convicts—as well as poor people kidnapped for cheap labor—were put on boats bound for indentured servitude in Australia or the American colonies. At the request of southern men, this passage was deleted and replaced with the more general "long train of abuses and usurpations."

The Founding Fathers not only had slaves but also prohibited all women and many poor men from voting for a government supposedly "of . . . by . . . and for the people." Supreme Court associate justice William O. Douglas reminds us that "the enduring appeal lay in two of its conceptions: First, that revolution can be a righteous cause, that the throwing off of chains by an oppressed people is a noble project; and second, that all men have a common humanity, that there is a oneness in the world which binds all men together" (1954: 3). A modern expression of that sentiment would more explicitly include women, but the basic sentiment is correct and shapes the contours of this book. Specifically, we believe in social justice, a concept that will be developed throughout the book, and we strongly value the ideals of freedom and equality. Yet, at the same time, we are all too aware of the numerous current inequalities and ways in which the United States is not living up to its ideals as well as the intense struggles it took to get the country from the limited notions of equality at its founding to the more expansive—but still incomplete—understanding of it today.

Because freedom and inequality are such broad topics, this book focuses on the areas of crime and criminal justice. The criminal justice system has a monopoly on the coercive use of force through the powers of the police to detain, arrest, and use deadly force against people suspected of committing crimes; the court system's power to find guilt and pass sentence against people convicted of crimes; and the prison system's ability to deprive people of their freedom and to execute condemned citizens. The law defines what actions are harmful and thus gives direction to the formidable powers of the criminal justice system. Thus, "law and order" can be an oppressive mechanism employed to protect privilege in an unequal society, or it can be the call of conscience reminding the country about its promises of equality and liberty for all.

While this book focuses on law and criminal justice, our method is to connect those topics to social structures of inequality that systematically deny liberty to many people. A key to linking these is through the integration of class, race, and gender, categories that represent some of the most fundamental divisions in the United States. Indeed, Marx argued that all of human history was a class war that involved the struggle between the haves and have-nots—and that law was a tool in this struggle. Feminists point out that Marx's analysis of the workers and owners of the means of production left out women, some of whom were at home doing unpaid housework and reproductive labor and others of whom have always worked alongside men in the fields, factories, and businesses of American civilization; the battle of the sexes is thus also crucial, including issues of sexual access and reproductive control. Finally, race has also been a key issue throughout history in terms of conquest and empire, and any honest telling of U.S. history should start with whites taking land from Native Americans and then building the wealth of the country through the use of African slaves, who provided hundreds of years of unpaid labor. Laws in the United States along with the criminal justice system allowed other immigrant groups to be exploited for cheap labor that also built America's capitalist economy.

Of course, it is important to understand not only how class, race, and gender work separately but also how they work in combination. For example, historians frequently report that the Fifteenth Amendment gave the former slaves the right to vote. A more accurate statement is that it gave the former male slaves the right to vote if they could somehow overcome the many physical and mental barriers to political participation that white society erected for them, such as physical barricades, paying poll taxes, and proving extraordinary competence on literacy tests; black women had to wait for the passage of the Nineteenth Amendment in 1920 before they, and white women, could vote. This book emphasizes the integration of class, race, and gender to create a more sophisticated or nuanced analysis that comes from looking at multiple aspects of identity. It can also reveal some stark discrepancies, as in chapter 9's analysis of incarceration rates: while 3.4 percent of whites born in 2001 will spend time in prison, 18.6 percent of blacks will; while 1.5 percent of women will spend time in prison, 11.3 percent of men will; and while 0.9 percent of white women will spend time in prison, 32.2 percent of black men will.

Some may believe that black men are overinvolved in crime and drugs and thus should be overrepresented in prison. But the statistics indicate that disparities in street crime do not explain that much of the excess prison population, and whites and blacks use illegal drugs in rough proportion to their size in the population. Further, using street crime as an assessment for how "criminal" a group is leaves out the problem that much harm done by corporations is not criminalized, even though such actions hurt workers, consumers, communities, and the environment. As but one example, a manager's willful violation of safety regulations that results in a worker's death is punishable by a maximum of six months in prison, while a few grams of crack cocaine result in mandatory sentences of much longer for many poor minorities.

One of the underlying assumptions that drive this study of criminal justice has to do with the fundamental distinction anthropologists, sociologists, and others

make between insider and outsider groups. Whether we are talking about matters within nations or between nations, the ages-old interactions and conflicts among social groups have always possessed an element of we/they or us/them. Accordingly, "insiders," or members of one social group, tend to see themselves as possessing virtues not possessed by "outsiders," or members of the other social groups. For example, members of one's own group of origin are typically seen as less violent, aggressive, or criminal and more trustworthy, peace loving, and law abiding than members of the "other" group.

But the fact of the matter is that no one race, class, or gender group holds a monopoly on common decency. Within each and every race, class, or gender group there are "decent" people and there are "deviant" people. Within each and every family there are some members who conform to society's expectations and there are those who reject the same. Some race, class, and gender groups, however, receive extra scrutiny and reprimand for deviance than others. This book seeks to raise issue with some of the beliefs, policies, and procedures that undermine social justice in this way.

Still, for many millennia and throughout the world, these ethnocentric beliefs have shaped social relations across lines of what we now think of as class, race/ethnicity, gender, nationality, sexuality, religion, and more. In our own contemporary period, when it is politically incorrect to hold bigoted views about some "others" (i.e., racial and ethnic minorities, women, gays, Jews), it is still politically acceptable to hold such views about "criminals." So, when public discourse has dwelled on "welfare cheats" or "violent offenders," what typically comes to mind are racially/ethnically charged subtexts with derogatory images of the "other." In the 1980s, this phenomenon of stereotyping was classically demonstrated when the media and ethnographers alike talked about drug-addicted mothers while simultaneously and relentlessly using racial images of African American women trading sex for crack rather than middle-class white women snorting the more expensive powder cocaine. While pregnant poor and black women became targets of the criminal justice system, middle- and upper-class women escaped the scrutiny of criminal justice agents into the confines of private detoxification facilities (Flavin 2009; Humphries 1999). While it is not politically correct to hold overtly sexist views, many still focus on why women stay in an abusive relationship or what a woman was wearing when she was raped rather than asking about why some men abuse their intimate partners or why some men rape.

In other words, this book treats crime as more than the violation of a legalized social norm and justice as more than the equal application of laws. Similarly, we see the study of crime and crime control as more than analyzing the behavior of criminals and the institutional agents of the criminal justice system. As Livy Visano has emphasized,

> The study of crime is an analysis of being, becoming and experiencing "otherness." Crime is a challenge to a particular socially constructed and historically rooted social order. The study of crime, therefore, is an inquiry into expressions of power, cultural controls and contexts of contests. Accordingly, the designated criminal is set apart and relegated to the margins according to a disciplining discourse about differences. (1998: 1)

This book is an attempt to locate the study of crime and crime control in the context of being and becoming persons of "class, race, and gender." And while those terms are typically reserved for the poor, minorities, and women, everyone fits into a class, whites have race, and men have gender. In communicating and experiencing "otherness" in the social realities of crime and justice, we are interested not only in how class, race, and gender biases become reflected in the administration of everyday criminal justice but also in the roles played by criminology, law, and the mass media in helping to (re-)create the "other." In short, our effort here is to show that "crime" and "criminals" as well as the "criminal justice apparatus" as a whole are socially constructed phenomena, reproduced daily through various discussions in the streets, the media, the home, the governing bodies, the courts, and other cultural bodies; they are a product of moral agents, social movements, political interests, media dissemination, and policymakers (Best 1990; Jenkins 1994; Potter and Kappeler 1998). In the process, crime control becomes the regulation of a relatively small number of acts that have been designated as threatening the social order, and the administration of criminal justice becomes the institutionalized or patterned responses for processing those threats. This way of criminal justice functioning becomes accepted and normalized; ideologies, legal and otherwise, convince people that the patterns are inevitable and just, when in fact they are mutable and discrepant.

For reasons like this, concepts of "equal protection" and "due process" are important but limited. Although the police might not coerce a suspect into confessing and the defendant might have a lawyer for representation in court, the late judge David L. Bazelon once noted, "It is simply unjust to place people in dehumanizing social conditions, do nothing about those conditions, and then command those who suffer, 'Behave—or else!' " (quoted in Leighton and Reiman 2001: 39). Justice Brandeis, in the case noted at the opening of this preface, would have agreed, because he noted that the Founding Fathers "knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; [and] that hate menaces stable government" (*Whitney v. California*, 274 U.S. 357 [1927]: 375).

The narrow rational-legalistic conceptions of crime and justice are valid and pragmatic, but they are not sufficient by themselves for a full understanding of justice. Instead, the analysis of criminal justice is strengthened when the broader social, cultural, and historical conceptions of crime and justice are added to the mix and then investigated and evaluated together. This kind of comparative inquiry sheds more light on important (but frequently neglected) questions of "equal justice for all." In the spirit of critical pedagogy, we believe that this type of integrative analysis and its implications can help move the administration of justice closer to the ideals of peace, equality, and human liberation. Finally, we concur with Jock Young (2011: 225), who writes in *The Criminological Imagination*, "We are privileged to work in an area which has its focus on the fundamental dislocations of justice that occur throughout our social order, a place of irony and contest, of vituperation and transgression."

## About the Fifth Edition

After substantially changing the organization in each of the earlier editions, this edition keeps the structure of the previous edition. We have, of course, updated statistics, events related to the themes of this book, and theoretical and empirical developments in the areas of policy inquiry and justice practice, and we have furthered our evolving analysis of the intersections of class, race, gender, and crime.

Through the changes and updates, we have kept what we believe to be the strengths of the book: it is the only authored rather than edited book in the field to thoroughly and systematically address class, race, and gender in relationship to crime and justice. We have kept the chapters that provide substantive introductions to class (chapter 3), race (chapter 4), gender (chapter 5), and their intersections (chapter 6) in part II, "Inequality and Privilege." The chapters in part III, "Law and Criminal Justice," on victimization (chapter 7), criminal law (chapter 8), policing and prosecution (chapter 9), and punishment (chapter 10) all share a common structure, with headings for class, race, gender, and intersections. As with the previous edition, each chapter starts with an opening narrative of interest that sets the tone for the chapter.

The authors would like to thank Emily Flores of Eastern Michigan University, who worked as a research assistant for this edition. That meant she had to be a jack of all trades, helping to update statistics, do literature reviews, organize the references, create the index, and more. Emily was prompt, thorough, and quite thoughtful in carrying out a wide range of tasks. This book is better and more timely for her efforts. Cortney Riggs provided a significant assist with the references.

Finally, the authors would like to thank some of the previous students whose work lives on in this edition, especially Natalie Morin, Jennie Brooks, Maya Pagni Barak, and Dana Horton. We would also like to thank Heather Mooney for her thoughtful and diligent work on the ancillary instructor materials (chapter summaries, outlines, test questions and student exercises), which are available from the publisher.

*G. B., P. L., A. C.*

# Introduction

## Crime, Inequality, and Justice

The standard view of criminal justice is that criminal law is built on a consensus about harmful acts that reflect social norms, that police investigate crime and arrest wrongdoers, that prosecutors weigh the strength of the evidence and then decide when to press charges, that juries decide on guilt or innocence, that judges sentence according to guidelines that eliminate disparities, and that people objectively study crime and criminals to ultimately reduce the amount of victimization. That view is not wholly incorrect, but the standard view is problematic because in the bigger picture, changing social, political, and economic conditions shape the formation and application of the criminal laws of the United States. Crime and criminal justice are shaped by the political economy, which refers to how politics, law, and economics influence one another. As such, official crime rates do not explain the dynamics of the criminal justice system as much as they explain social stratification, the surplus population—those who are unemployed or unemployable and are thus considered the "dangerous class"—technology, and prevailing ideologies. In this way, the realities of crime and justice reflect, and usually re-create, class, race/ethnic, and gender relations.

For example, slavery rather than prison had been the dominant form of social control for African Americans before the Civil War. When the Thirteenth Amendment (ratified in 1865) freed the slaves, it removed that system of control and created serious anxiety among the white population. Slaves went from property to economic competition; black men were freed at a time when many Southern white women were widowed or single because of the large number of young white men killed during the war. Southern whites wanted another system for social control, but building prisons at that time was impossible. The war had been fought primarily in the South, and that was where most of the destruction had occurred. The repairs required labor, which was in short supply, again because of the large number of young men killed in the war. Additionally, labor-intensive crops grown on plantations still required attention. Thus, Southern states passed black codes that penalized a number of behaviors by blacks that whites found rude, disrespectful, or threatening. After the blacks were convicted, they would be leased for labor to serve their sentence. Plantation owners could now lease inmates rather than own slaves. Prisons also changed form during the Industrial Revolution, and more recently, boot camps came about because the government was closing military bases but had an increasing criminal—and juvenile—justice population.

Because crime and justice are shaped by the political economy, crime and crime control are also inseparable from the changing relations of inequality, hierarchy, and power. Crime and crime control are thus important locations where inequality is re-created or challenged. Domestic violence, rape, and fraud by financial institutions

enrich executives while devastating millions—each crime, while committed by different types of offenders for very different reasons, reflects and re-creates an aspect of inequality. Likewise, inequality and hierarchy are re-created or challenged both by the explanations given for these different crimes and the decision of whether the perpetrators are pursued or not by the criminal justice system.

This book sees crime and criminal justice as socially created and as having both subjective and objective realities. That is, harms done to people are real, but the law chooses to criminalize only certain ones. Manslaughter is a death because of negligence, but it applies only to individuals; there is no corporate manslaughter law in the United States. Great Britain, Canada, and Australia all have various corporate manslaughter provisions that apply to workplace deaths caused by negligent conduct of supervisors and/or executives. The social reality of crime and crime control is further shaped by the decisions of police about who is arrested, by prosecutors' decision about whether to pursue a case and which charges are most appropriate, by judicial processes that find certain offenders guilty, and by judicial decisions about who goes to prison (Reiman and Leighton 2017). Statistics appear to be objective measurements about crime but are the result of decisions and processes that are influenced by class, race, and gender. Media decisions about what to report and which "frame"—or "spin"—to put on a story add to the ways that the reality of crime and justice is socially created.

These structural-legal relations are dynamic, subject to the changing needs of the dominant relations in the prevailing political economy. Over the past millennium, for example, different types of laws have evolved in response to the complexity of political, economic, and social relations. For example, the division between "public" law (acts or omissions that offend or injure the state) and "private" law (acts that offend or injure only persons) has evolved over time in response to changing conditions and political powers. (Public laws include administrative and regulatory law, constitutional law, and criminal law. Private laws, also referred to as civil laws, include the laws of property, contracts, and torts.)

Historically, during the ancient regime or before the rise of mercantilism in the fourteenth and fifteenth centuries, there were no criminal laws as we know them. There were only civil offenses or torts. A tort was (and still is) a private or civil wrong and/or injury that breaches a legal duty or obligation allegedly independent of the interests of the nation-state. For example, one person sues another for personal injury rather than having the state file assault charges. When a tort occurs, the offense or harm (injury) is subject to a fine, restitution, or some other form of compensation to make the victim whole again. Civil offenses, in other words, are not punishable by loss of liberty or life subject to the intervention of the "nation-state." By contrast, criminal prosecutions and punishments first appear with the simultaneous decline of feudalism and the rise of capitalism, which ushered in the early developments of the modern state, capital, labor, private property, and mercantilism. Many of these laws, some six hundred years old, are still operating today. Many other criminal laws have come and gone during this same period.

For example, the "crime of bankruptcy" was punishable by death in the English courts in the late 1700s because it was defined as an "act of debtor fraud, de facto theft by absconding with property and avoiding judicial process and the paying of just debts" (Pomykala 2000). While it was never treated as a capital offense in

the United States, the framers of the Constitution did add bankruptcy to the list of federal powers used to prevent fraud. Until the mid-nineteenth century, plaintiff creditors could accuse defendants of bankruptcy or "debtor-perpetrated crime" in a court of law. Eventually, "bankruptcy was transformed from a branch of law for the relief of creditors against debtor fraud intended to foster the payment of debts into a pseudo-social welfare program for debtor relief. Modern bankruptcy law legalized what antecedent jurisprudence first sought to prevent, the nonpayment of debt" (Pomykala 2000). Now corporations routinely engage in strategic bankruptcy, which is legal and encourages "firms to use bankruptcy to avoid lawsuits; to decrease or eliminate damage awards for marketing injurious products, polluting or other corporate misconduct; [and] to abandon toxic waste sites" (Delaney 1999: 190). Even in bankruptcy that involves reorganization rather than liquidation, "financial risk can be shifted away from more powerful institutional creditors and the corporation itself and onto the backs of more vulnerable" and less organized groups, meaning workers and consumers (Delaney 1999: 190).

By contrast, many criminal laws that first emerged to control poverty, street crime, and the disorder of the dangerous classes in mercantile England are still with us today in one form or another. Some laws can be traced back to the British vagrancy statutes of 1349 or the Elizabethan Poor Law of 1601. In 2018, these and other related crimes of the marginal and powerless classes overwhelmingly consume and preoccupy the activities of the U.S. criminal justice system as a whole. In fact, most histories of crime control acknowledge that the criminal justice policies of the postindustrial United States are the preferred methods for managing rising inequality and the surplus populations of the United States (Michalowski and Carlson 1999; Parenti 1999; Shelden 2000). *Surplus populations* refer primarily to economically marginal persons and those who are unemployed or unemployable; they are people with little attachment to the conventional labor market and little "stake in conformity" (Anderson 1974). Because of this status, surplus populations are also called "marginal classes" or "dangerous classes." Of course, the war on crime is not publicly discussed as an explicit war on the "down-and-out" or conceptualized as involving the enforcement of inequality and privilege. But the result of the current war on crime has been to fill an ever-expanding prison system with the poor and a disproportionate number of young minorities.

These dynamics are not new, and a historical overview of social control reveals that on the frontier as well as in the industrial United States, the administration of justice was about regulating and controlling the "dangerous classes." Freed black slaves were subject to harsh Jim Crow laws, and the Chinese were highly criminalized after they finished work on the transcontinental railroad. Still, over time, the criminalizing of behavior has been subject to periods of legal and constitutional reform that have gradually expanded the meanings of "due process" and "equal protection" for a wider and more diverse group of people.

Despite the vaunted democratization of criminal justice during the late nineteenth and twentieth centuries, the effects of crime control have always been to the disadvantage of the nation's most disentitled and marginalized members (Auerbach 1976; Barak 1980; Harring 1983; Walker 1980). When it was a young nation, the political and legal apparatuses of the United States were dominated by the organized power of wealthy, white, and male interests to the detriment of slaves, freedmen, workers,

nonworkers, women, people of color, and (ex-)convicts. Since our nation's beginnings, then, the various struggles for justice, inside and outside the administration of criminal law, have included the goal of empowering people and granting all access to the same political and legal bodies of rulemaking and rule enforcing. As the notion of struggle suggests, history is not a linear progression of ever-greater equality. Achievements can result in backlashes, and those who are "more equal" always resist gains of the "less equal." Moreover, new forms of inequality often arise to take the place of old forms, and being granted a right in law does not make it a reality.

The next section emphasizes the importance of understanding "intersections" of class, race, and gender, and it also highlights some assumptions that guide our analysis. Because criminal justice is so often referred to as a "system," the final section discusses some additional frames of reference for understanding crime control so that readers can have a fuller sense of the complexities of criminal justice.

## The Social Relations of Class, Race, Gender, and Crime

Examining class, race, and gender in relationship to law, order, and crime control provides an appreciation for the unique histories of the individual social groupings and interrelated axes of privilege and inequality. At any given moment, class, race, or gender may "feel more salient or meaningful in a given person's life, but they are overlapping and cumulative in their effect on people's experience" (Andersen and Collins 1998: 3). Class, race, and gender are all required in order to begin to describe an individual's experience in the world, and they are likewise all required in order to understand crime and criminal justice. For example, rape generally leads to few arrests and convictions, but that statement also needs to acknowledge the hyperenforcement of rape laws against black men when white women were thought to be involved.

Dorothy Roberts's (1993) work also draws attention to these intersections by examining black women, who are often rendered invisible because "black" tends to mean "men" and "women" tends to mean "white." Roberts links crime, race, and reproduction to show how racism and patriarchy function as mutually reinforcing systems of domination that help determine "who the criminals are, what constitutes a crime, and which crimes society treats most seriously" (Roberts 1993: 1945). More specifically, in terms of abortion, birth control, and social control, Roberts discusses how this domination is meted out through the control of black women's bodies that discourages procreation, subordinates groups, and regulates fertility. As part of our integrative analysis of class, race, and gender, we also attempt to explore how each of these hierarchies helps sustain the others and how they reinforce the types of crime and justice in our society.

Our study of class, race, gender, and crime reveals that while class, race, or gender may feel more important at a specific point, one is not obviously more important than the others over time or situations. Only by studying their combinations and integrating them can one come to fully appreciate how bias undergirds the construction of what will and will not become criminal, as well as the effects of implementation and administration of those biased rules. This bias also shapes the construction of individual experience and identity, including experience of crime

and the criminal justice system. More specifically, we bring several assumptions to the study of the social relations of class, race, gender, and crime control:

> First, these categories of social difference all share similarities in that they convey privilege on some groups and marginalize others, so they relate to power resources in society. Ideology works to naturalize privilege, so those who have privilege do not see themselves as having it and are much more likely to believe there is a "level playing field."
>
> Second, systems of privilege and inequality derived from the social statuses of class, race, and gender are overlapping and have interacting effects that can be more than the sum of their parts. Here, 1 + 1 is more than 2, or gendered racism is much more powerful than simply adding gender and race.
>
> Third, while class, race, and gender privilege all tend to be similarly invisible because of ideology, the experience of marginalization will vary considerably, depending on the specific nature of the prejudice and stereotypes. Understanding marginalization also requires appreciating the diversity within categories—American Indians represent hundreds of different tribes; Hispanics and Asians represent dozens of different countries and cultures.
>
> Fourth, there are connections between these systems of class, race, and gender. Few people are pure oppressors or victims, so it is a complex matrix in which all people are more aware of their victimization than of their privilege.

Subsequent chapters use an array of material to unravel the complexities of class, race, and gender as they interact with the cultural and social production of crime, justice, and inequality. Our analysis of crime and justice further assumes that the inequalities in crime control and the administration of criminal justice are an essential element of popular culture, market society, and the social constructions of class, race, and gender differences as these are experienced in relation to one's place, order, conflict, and perception.

Perceptions, public and private, of what constitutes unacceptable social injuries and acceptable social controls are shaped by the underlying elements of social organization, including the production and distribution of economic, political, and human services (Michalowski 1985). We are not talking about conspiracies of elites and decision makers here but rather about crime and crime control institutions that both reflect and re-create the changing nature of capitalist social relations. So "serious crime," defined from above or below, from the suite or the street, and from official reports of the Federal Bureau of Investigation (FBI) or by the unofficial cultural media, becomes a statistically mediated and socially constructed artifact.

In popularly organized numbers, narratives, and images alike, a distorted view and limited perception of harmful behavior emerges. Crime and criminals are restricted primarily to the tabulations and representations of the conventional criminal code violations: murder, rape, burglary, robbery, assault, and face-to-face larceny-theft. Almost all crimes in the suites, if not ignored, are typically downplayed rather than focusing on human decisions and harms done to society. There are no databases or publications for corporate crime like the FBI has for street crime; so many white-collar corporate frauds and offenses against the environment, workplace, and consumer are not captured in FBI press releases about "Crime in America." Reporters and authors, including academics, analyze data that are more readily available, and those findings get reported in textbooks on criminal justice that focus on street crime.

Culturally produced images of crime and criminals reinforce one-dimensional notions that criminality and harmful behavior are predominantly the responsibility of the poor and marginal members of society. As mass consumers, we all share mediated facsimiles of lawbreakers and crime fighters. Common stories of crime and criminal justice appear and reappear over and over in the news, in films, on television, and in literature, helping to reproduce or reconstruct in the imagination of the American psyche similar renderings of crime, criminals, law enforcement, adjudication, and punishment. It is no wonder that when most people try to picture the typical American crime, the common image that emerges is one of young male victimizers. There are also the numerous police-action reenactments that can be viewed regularly on such television programs as *Top Cops* or *America's Most Wanted* that similarly recycle images of these young men as dangerous drug dealers whose dwellings must be invaded during the early hours of dawn by "storm troopers" and other law enforcement personnel in order to pursue, secure, and repress the dangerous faces in the "war on crime." (USA Network does have a program, *White Collar*, which focuses on art theft, counterfeiting, and smuggling—not corporate crime or ways in which elites victimize employees, consumers, and the environment [Leighton 2010].) However, Showtime's *Billions* with two seasons becomes the first mass-consumed series taking place in the high-powered and overlapping worlds of corporate, political, and prosecutorial criminality.

Moreover, the images of crime control that are constructed of the criminal justice system as one moves from law enforcement to adjudication and from sentencing to incarceration again serve to reinforce fairly limited and often distorted realities of criminal justice in action. For example, images of a criminal courtroom come to mind from relatively long and involved trials exposed in feature-length films, or from Court TV's gavel-to-gavel coverage of celebrated trials, or from other cable network television outlets on the trials and acquittals of celebrities and unusual cases. The public is also led to believe, based on artist sketches or succinct and curt shots of highly charged courtroom scenes from various television series such as *The Practice* and *Law and Order: Special Victims Unit*, that attorneys for each side, engaged in vigorous battle, always do their legal best to secure justice for all. However, in these dramatizations, whether fictional or "reality-based television" (with editing), the images that do not come to mind are the overwhelming majority of criminal cases (90 percent) that are plea-bargained every day in courthouses throughout the United States. These negotiated deals in lieu of trials usually take less than a few minutes for judges and courts to process and uphold. The coercion to "go along" is hidden, and the deals virtually eliminate the possibility of appeal (Kipnis 2001).

With punishment, popular images of dangerously violent offenders who need to be locked up indefinitely are prevalent in the media. For more than thirty-five years, politicians have appeared before the media talking about a "get tough" platform that criticizes the "leniency" of previous election cycles. Wars on terror and the global economy rather than declining crime rates had dominated the presidential elections of 2004, 2008, and 2012. However, in 2016, Republican presidential candidate Donald Trump reintroduced concerns about "rising" crime rates and law and order. In any case, the United States still has a legacy of harsh penal policies that continue to make it unimaginable even to consider the possibility of reuniting

the offender, the victim, and the community in some of kind of restorative form of justice. As part of the inherited politics of a war on crime, the political economy of incarceration, and the privatization of penal services ("bodies destined for profitable punishment"), the languages and images of dangerousness and retribution continue to contribute to the United States' criminal justice–industrial complex (Dyer 2000; Leighton and Selman 2012).

Representations of dangerous offenders convey the images of feuding convicts divided into racial and religious cliques doing "scared time," not of inmates engaged in school or the learning of a vocation or of former offenders reintegrating or fitting back into society. The recently discontinued and award-winning HBO dramatic series of life in a maximum-security prison, *Oz*, portrayed a based-on-facts fictional account of the complexity of one of those "hell-on-earth" archipelagos. On the one hand, its representation ignored the social realities of some 1,500 other state and federal prisons of lesser pain. On the other hand, *Oz* did not actually do justice to the continuing apartheid-like conditions of crime and punishment that disproportionately affect marginal black and brown Americans.

## Criminal Justice Theorizing

Among other important assumptions that undergird this work is that the administration of criminal justice may be viewed as both a "system" and a "nonsystem" (Bohm and Haley 2004); it may also be viewed as an "apparatus" involving both public and private or state and nonstate sectors (Duffee 1980; Kraska 2004). Hence, when scholars of crime and justice speculate about "criminal justice" in this or any other country, they do so as a means of orienting themselves to various symbolic and cognitive frameworks for understanding the causation of crime and crime control as well as the underpinning of norms, values, and beliefs surrounding the administration of criminal law.

Compared with theories of crime/criminality, theories of crime control/criminal justice are underdeveloped. In *Theorizing Criminal Justice* (2004), Peter Kraska has identified eight essential orientations or theoretical metaphors that attempt to explain the workings and expansion of the areas of "criminal justice" dating back to the 1950s. He also notes that four of these orientations are primarily concerned with the formal criminal justice system and that four are concerned with criminal justice as a broader apparatus. The first group views criminal justice as *formal models of the administration of criminal justice as a system*. These include rational/legalism, system, crime control versus due process, and politics. The second group views criminal justice as *informal models of a criminal justice apparatus as a nonsystem*. These include socially constructed reality, growth complex, oppression, and late modernity.

The *rational/legal* theoretical orientation "does not constitute a well-defined area of scholarship. It exists, instead, as a way of thinking dispersed throughout various literatures in criminology/criminal justice" (Kraska 2004: 19). The intellectual roots of this model may be traced back to the legal formalism of the classical and neoclassical schools of economic thought with their emphases on the social contract, utilitarianism, and the rule of law. These models argue that criminal justice operations are the product of rational, impartial decision-making based on the

rule of law, at least in the ideal if not in practice. The systems *theoretical* orientation has been considered the dominant paradigm in criminal justice studies for more than fifty years. The intellectual roots of the *system* models come from three other traditions: the biological sciences, sociological functionalism, and the field of organizational studies. As a biological metaphor, criminal justice is viewed as larger than the sum of its parts or subsystems—police, courts, and corrections. As a way of thinking, it was also a social movement in organizational behavior, with various stakeholders within the criminal justice system stepping forward to research and study criminal justice primarily as a means to make it operate more efficiently and effectively (Barak 1980; Walker 1992).

Both the rational/legal and systems models view the recent expansion and growth in size and power of the criminal justice system as a "forced reaction" to a worsening, real or imaginary, crime problem rather than a policy choice. The next two orientations, crime control versus due process and politics, require different explanations. These move from a condition of the criminal justice system being forced to act to one where it chooses to act in a particular fashion, based on its own (or the government's) value preferences.

By contrast, the *crime control versus due process* and the *politics* models view these developments as a matter of human will subject to different ideological values, political preferences, and material conditions. These models contend that crime and crime control are not some kind of inevitability or natural phenomenon. In elaborating on the *crime control versus due process* orientations, Herbert Packer (1964) discusses how the criminal justice pendulum swings back and forth, conservatively and liberally, favoring crime control at certain times and favoring due process ("rule of law") at other times. He also makes it clear that crime was a sociopolitical artifact, not a natural phenomenon, dependent on what we choose to count as criminal and the ways in which we process (i.e., order vs. liberty, efficiency vs. equity) those whom we define as criminal. The *politics* orientation to criminal justice is inclusive of Packer's two political models, but it expands the political metaphor by assuming that politics "is at play at all levels of the criminal justice apparatus—from the everyday actions of the corrections or police practitioner, to the political influence of local communities, to agencies involved in criminal justice policy formation and implementation, and to lawmaking at the national and state levels" (Kraska 2004: 206). In short, these two orientations view all criminal justice activity and thinking as interest based, involving inherent conflicts, power struggles, influence building, and hardened ideological positions. They both argue that the strategies of criminal justice are products of a complex mix of political and social interests.

The next four models, with their focus on the criminal justice apparatus, broaden the object of criminal justice study to include the activities of numerous state and nonstate responses to the crime problem, including "1) crime control practices carried out by state and non-state entities; 2) the formal creation and administration of criminal law carried out by legislators, the police, courts, corrections, and juvenile subcomponents; and 3) others involved in the criminal justice enterprise, such as the media, academic researchers, and political interest groups" (Kraska 2004: 7–8). The apparatus-oriented models view crime control as involving more than the activities of state agencies and the political negotiation over the appropriate means of carrying out the administration of criminal

justice according to the rule of law. These four model types regard criminal justice administration not only as a nonsystem of state bureaucratization but also as part of the larger culture and other nonstate and privatized activities and networks that coalesce to sustain the hierarchy and legitimacy of the prevailing political, economic, and social arrangements.

In the context of the larger culture and society, these apparatus-oriented models view the police, courts, and corrections agencies as engaging in ritualistic ceremonies and in promoting various myths of crime and crime control for the purposes of establishing and maintaining their legitimacy in relationship to the prevailing hierarchical order. For example, the *socially constructed reality* orientations, such as "symbolic interactionism," "dramaturgical analysis," or "moral panic," adopt interpretative approaches to criminal justice that do not assume that reality is predetermined or given (much as the previous four orientations do). In other words, reality, criminal justice or otherwise, is not taken for granted, but rather, it's a human accomplishment. Social realities of criminal justice do not simply exist; they are the result of an intricate process of learning and constructing meanings and definitions of situations through language, symbols, and interactions with other people, crime fighters and non–crime fighters alike. The scholarly roots of the socially constructed models come from interpretive philosophy, symbolic interactionism, and cultural studies. They argue that the products of criminal justice administration are derived from the most believable stories about crime and justice.

Similarly, the *growth complex* orientations to criminal justice are about believable stories of "crime fighting" and the legitimacy of the criminal justice bureaucracy's survival and growth as a social industry. The arguments for the ideals of equal justice for all or of administering justice and controlling crime become subordinate to the divergent and competing interests of the various subsystems of criminal justice, on the one hand, and to the common and mutual interests of the criminal justice system as a whole, on the other hand. The intellectual roots of the growth complex models stem from a hybridization of systems theory, bureaucratic rationalism, critical theory, and the Frankfurt school of thought.

The *oppression* orientations to criminal justice have varied from those that take a more instrumental approach to those that take a more structural approach, the former arguing that the criminal justice apparatus is simply a tool of the economically powerful to control the behavior of the poor, the disadvantaged, and the threatening classes, and the latter arguing that in addition to the instability issues of "class," there are also the instability issues of "race" and "gender." The social roots of these latter oppressive models emerged with the struggles for social justice and the critical theories of class, race, and gender inequality. These models argue one-dimensionally or in some kind of combination that the selective enforcements and differential applications of the law experienced by some (and not other) groups of people are a reification of the dominant economic, ethnic, and patriarchal interests interacting.

Finally, the *late modernity* orientations to criminal justice explain changes in crime and punishment as adaptations to late modern social conditions or risks, such as the rise in economic globalization, telecommunications, privatization, and the decline of state sovereignty. The philosophical roots of these models may be traced back to the traditions of existentialism, postmodernism, and critical materialism.

Applied to recent criminal justice trends, these models locate crime and crime control within the macroshifts of a rapidly changing world, and they attempt to explain how the various responses to crime and injustice over time occurred. According to Kraska, these are potentially the most theoretical of the eight essential orientations because they offer a perspective capable of fusing or integrating the other orientations. However, from an integrated approach, none of the eight theoretical metaphors are capable of standing alone or of being more than partial explanations for the developing changes in criminal justice behavior. When holistically brought together, the explanatory powers of these models are enhanced.

# PART I

## Crime Control and Criminology

# CHAPTER 1

# The Crime Control Enterprise and Its Workers

*In his farewell address as president, Eisenhower warned of a military-industrial complex. The World War II general was concerned that defense policy was being driven by businesses, politicians, and military officials, insulated from public view and thus from accountability. He noted (1961) that until World War II, "the United States had no armaments industry"—other businesses converted to manufacture them as necessary—but having a permanent armaments industry of "vast proportions" (millions of employees and substantial military spending) was new and troubling:*

> *In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.*

*Similar to the military-industrial complex is a criminal justice–industrial complex born from the drastic buildup of the criminal justice system starting in the 1970s, most notably with prisons. While prisons and the criminal justice system have had contracts with businesses for supplies and consultants for much of their history, the nature of these relationships and the amount of money involved reached a critical mass because of the war on crime and drugs. It expanded to include private prison companies traded on the stock exchange and regular Las Vegas–style conventions for businesses selling goods and services to criminal justice officials (Selman and Leighton 2010). The increases in spending from the wars on crime and drugs have created a new type of permanent crime control industry with "grave implications" for criminal justice policy:*

> *[T]he United States has developed a prison-industrial complex—a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need. The prison-industrial complex is not*

> *a conspiracy, guiding the nation's criminal-justice policy behind closed doors. It is a confluence of special interests that has given prison construction in the United States a seemingly unstoppable momentum. It is composed of politicians, both liberal and conservative, who have used the fear of crime to gain votes; impoverished rural areas where prisons have become a cornerstone of economic development; private companies that regard the roughly $35 billion [$81 billion in 2012] spent each year on corrections not as a burden on American taxpayers but as a lucrative market; and government officials whose fiefdoms have expanded along with the inmate population. (Schlosser 1998)*

*The criminal justice and military-industrial complexes share more than a common idea. By the mid-1980s, the Cold War against Russia—called the "evil empire" by then-president Reagan—was winding down, and defense firms were looking for new markets to bolster revenue. The Department of Defense had already signed a memorandum of understanding with the Department of Justice for technology development and commercialization, and companies in the defense industry increasingly became suppliers to local law enforcement and criminal justice agencies. The drug war served to fuel the growth of military-style Special Weapons and Tactics (SWAT) teams across small and large urban areas.*

*After the tragic terrorist attacks of 9/11, the criminal justice complex developed stronger ties with intelligence agencies, the Department of Homeland Security, and Immigration and Customs Enforcement (ICE). Sweeping changes came to law enforcement, court processes, and government surveillance because of both the 2001 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) and the Homeland Security Act of 2002.*

*What has emerged is a security-industrial complex (SIC) linking criminal justice with military and intelligence operations, and expanding criminal justice operations to include greater emphasis on immigration and the war on terror. At the same time, products and technologies for military and intelligence are increasingly used by criminal justice agencies, even when they are not dealing with immigration or terrorism issues. Today, the monies flowing into the military and homeland security infrastructure are at the cutting edge of the digital revolution: computer hacking, mass surveillance, data mining, and risk assessment algorithms.*

*As the American crime control enterprise has attempted to integrate many new criminal justice, intelligence, and security roles, social control has become more systemic compared to the more decentralized patterns of law enforcement and the administration of justice during the previous two centuries. But threats to "our liberties or democratic processes" persist. Consider:*

> *Guantanamo Bay, Cuba, houses a number of foreign enemy combatants. Although on a military base and thus on American soil, they are in a "legal black hole": subject to indefinite detention without a trial, discovery of evidence, the ability to cross-examine accusers, or any other provisions of the Sixth Amendment.*
>
> *Presidents Bush and Obama have asserted their rights to kill those labeled as enemy combatants, a process that happens without notice to the person being*

*labeled. Even when that person is an American citizen, there is no due process right to notice or to challenge the information that culminates in what may be a death sentence. This power has been used abroad, and neither the current nor previous administrations have claimed or denied the right to kill an American citizen labeled as an enemy combatant who is in the United States.*

*US police departments are increasingly using unarmed drones for surveillance, which can be useful in armed standoffs but becomes a concern when "all the pieces appear to be lining up for the eventual introduction of routine aerial surveillance in American life, a development that would profoundly change the character of public life in the United States" (Rosenwald 2013).*

*Documents leaked by former National Security Administration (NSA) technologist Edward Snowden have revealed widespread and routine surveillance of all Americans through their cell phones and Internet usage. The chief judge of the court supposedly overseeing the NSA, the Foreign Intelligence Surveillance Court (or FISA Court), "has admitted that the court can't verify what the agency says and thus can't provide full oversight over it" (BloombergView 2013).*

*A secret branch of the Drug Enforcement Administration (DEA) has been using information from the NSA and other intelligence agencies for fighting ordinary drug crimes. Local law enforcement agencies have either been misled about the origins of the information or "coached to conceal the existence of the program and the source of the information by creating what's called a 'parallel construction', a fake or misleading trail of evidence" (O'Hehir 2013). This limits defendants' rights to challenge information against them and results in false testimony in court, but it is not clear whether there will be a judicial response or what it will be. "Should we be confident that NSA intercepts and foreign-intelligence wiretaps and 'parallel construction' will never be used to build criminal cases against hackers, leakers, Occupy activists, investigative journalists, unfriendly pundits and any other dissidents on the left or the right whom the government decides to persecute?" (O'Hehir 2013).*

*Police are increasingly using a Stingray, which transmits fraudulent credentials to trick cell phones into connecting to it. When operational, police can, without probable cause or a warrant, identify the phone numbers of all devices in a given area; the device has the capability to record phone and text messages, although such usage should theoretically be approved by a court. Little is known about police usage of stingrays because of non-disclosure agreements with the manufacturer, but available data indicates they are used more heavily in poor and minority communities (Joseph 2016). Does data from one investigation get deleted, or does it furnish a list of "pre-suspects" for all future investigations? "Who's to say police aren't running Stingrays constantly in 'hot spot' areas?" (Joseph 2016). What type of oversight should be required for police to fly Stringrays over peaceful Black Lives Matter protests, as has been done in several cities (Norton 2016)? Is this "first into the black community—and then everywhere else"? (Joseph 2016).*

The conventional view is that the criminal justice system is composed of police, courts, and corrections. While that is not inaccurate, it is still only a partial understanding of the work, mission, problems, issues, and career opportunities related to criminal justice. In addition to providing opportunities for expanded thinking about employment, study, and reading, this chapter serves as a reminder of the challenges to democracy posed by the criminal justice–security complex. These problems are likely to continue into the foreseeable future because the war on terrorism appears

to be open-ended and because a renewal of the 2001 Congressional Authorization for Use of Military Force that was passed within days of the September 11 attacks could provide a license to wage a "war on terror" indefinitely.

Budgets, legal uncertainties, and unexpected events make it unclear as to what exactly the mission will become for the twenty-first-century criminal justice worker. However, the first sections below highlight four areas that will have an enduring impact on criminal justice work and workers: globalization and immigration, militarization, privatization and revenue enhancement, and cybercrime and security. Another section provides an overview of criminal justice workers that is focused on law enforcement, courts, and corrections.

## Globalization and Immigration

Globalization refers to the growing interdependency among events, people, and governments around the world that are increasingly connected through trade, expanding communications, transportation, and computer networks. With a globalizing political economy, goods, labor, and money move more freely around the world, a situation that leads to some benefits but also leads to intensified inequality of wealth and income. The chief economist of Wall Street investment bank Morgan Stanley noted, "Billed as the great equalizer between the rich and the poor, globalization has been anything but." Indeed, "the rich are, indeed, getting richer but the rest of the workforce is not" (Roach 2006). Today, globalization emphasizes "free trade" and deregulation as corporations look for locations with the cheapest labor, the least number of laborers, and the fewest environmental and other regulations. Even after the 2009 economic crisis and pressure at the Global Economic Summit from the European Union, China, and India to establish international regulatory agencies, President Obama and many Wall Street banking institutions rejected the idea.

Globalization policies can lead not just to inequality between countries but also to inequality within a country because of job losses, stagnating wages, and greater benefits to those at the top (through greater profits because of low wages and fewer regulations) (Faux 2006; Klein 2007; Perkins 2007). In 2015, the richest 1 percent of the global population owned more wealth than the rest of the world combined (Hardoon 2017). At the same time, tens of millions of people succumb annually to famine and preventable diseases. For hundreds of millions of others, life has become a daily preoccupation with obtaining safe water, rudimentary health care, basic education, and sufficient nutrition (Barak 2007). Nations around the world are shrinking their welfare states while governments have been busy deregulating, downsizing, privatizing, contracting out, reducing taxes, and cutting social spending—a constellation of activities often described as neoliberalism.

Ultimately, globalization and inequality create expanding opportunities for "legitimate" capitalists as well as criminals because the need for both licit and illicit goods or services grows in tandem (Nordstrom 2007). "Free trade" does not explicitly include the sexual trafficking of women and children, but encouragement of the "free flow" of goods and money also makes it easier to traffic persons, drugs, intellectual property, weapons, and exotic wildlife. It also encourages fraudulent and unfair trade practices in commerce, the laundering of money from illegal

activities, the smuggling of illegal immigrants into and out of nations, the dumping of toxic waste and other forms of ecological destruction, the acts of terrorism committed by and against various states, and the behavior of multinationals to move capital and technology to exploit cheap labor (Barak 2001: 66). As crime becomes transnational, crime control must do the same, requiring workers who are fluent in different languages and who have an understanding of other regions of the world where the United States must collaborate with other nations' crime control agencies.

When outsourcing and privatization lead to economic restructuring and low-wage work in other countries, some people will legally or illegally immigrate to the United States (Golash-Boza 2016). Research reviews written by the Sentencing Project (Ghandnoosh and Rovner 2017), the American Society of Criminology (n.d.), and conservative Cato institute (Nowrasteh 2015) all agree that the crime rates for immigrant populations are lower than those for people born in the United States. They cite a century worth of research that is quite clear on lower rates of criminality for immigrants. However, processes to criminalize immigrants—"crimmigration"—have been increasing over the last decade: "In the first five and a half years of his presidency, President Obama deported more than two million people—more than the sum total of all people deported before 1997" (Golash-Boza 2016). Immigration accounts for 30 percent of the cases filed by federal prosecutors. Immigrants often are detailed in private prisons that are contracted through ICE rather than the Department of Justice (DOJ).

Section 287(g) of the Immigration and Nationality Act (INA) allows ICE to enter into agreements with state and local police, permitting them to perform immigration law enforcement in addition to the enforcement of state and local laws. Many departments want to resist this process, because they feel it undermines community trust and cooperation, which are essential for policing. In fact, some cities have asserted themselves as "sanctuary cities" that will refuse to turn over illegal immigrants for deportation. Many such immigrants are longtime residents of the United States who have built business and families here. Deportation, often for traffic violations—or even no crime at all—tears families apart and disrupts communities.

Criminalizing immigration does little to promote public safety because immigrants overall have a lower crime rate, while it makes immigrants more vulnerable to being victims of a range of crimes and exploitation. If immigrants—both legal and undocumented—are afraid to report crimes against them, others are more likely to commit sexual assaults, thefts, wage theft and labor violations, and other crimes against them. What anti-immigrant policies do not fix are the long backlogs in legal immigration—the single biggest issue related to immigration today. The delays in processing paperwork and cases often extend years or decades, "forcing people who want to follow the rules to make an agonizing choice between intolerable separation from their families or lawbreaking" (*New York Times* 2009).

Nor do these policies protect captured illegal immigrants from the arbitrary cruelties of the detention and deportation system in which due process is limited at best and unacceptable risks of sickness, injury, and death at worst prevail as a condition of imprisonment (Golash-Boza 2016). Far better, critics argue, would be for government to redouble its efforts to enforce the minimum wage, to grant the right

of immigrants to organize, and to provide health and safety protections. Such policies would have the effect of reducing the incentive to hire the undocumented while raising conditions for all workers.

## Militarization

Although law enforcement has always been a quasi-military organization, when Sir Robert Peel created what is considered as the first modern police force in 1829 in London, his "principles of policing emphasized crime prevention, public approval, willing cooperation of the public, and a minimal use of physical force" (Bickel 2013). In the United States, the civil unrest of the 1960s led to the modern escalation in the militarization of the American police (Strauss 2007). Militarism is "a set of beliefs, values, and assumptions that stress the use of force and threat of violence as the most appropriate means to solve problems. It glorifies the use of military power, hardware, operations, and technology as its primary problem-solving tools" (Kraska 2007: 164–65). Accordingly, the militarization of law enforcement includes the processes of arming, organizing, planning, training for, and sometimes pursuing violent conflict.

Peter Kraska argues that assessing the degree to which crime control in general and police behavior in particular have become militarized hinges on the clarity of its concepts. He has also argued that the "similarities between a police paramilitary drug raid [at home in the United States] and the latest Iraq war" represent "the cultural, organizational, operational, and material blurring of the line between war and law enforcement, on the one hand, and between U.S. military and civilian criminal justice, on the other hand" (Kraska 2007: 166). Certainly, police departments across the United States have experienced dramatic growth and use of specialized units such as SWAT teams and Special Response Teams (SRTs) that are based on similar units within the military. In 1983, only 13 percent of towns with populations between twenty-five thousand and fifty thousand had a SWAT team, but now almost 90 percent do (Balko 2013; *Economist* 2014).

Further, these units were once thought of primarily as *reactive* units for handling hostage standoffs and other unique situations, but in an age of zero-tolerance policing, these units have become *proactive* forces, specifically trained to execute police raids in poor, urban communities as a result of the war on drugs. But SWAT teams are also used to break up poker games and wagering on college football games ("illegal gambling"), underage drinking in bars, suspected cockfighting, and "Tibetan monks who had overstayed their visas while visiting America on a peace mission" (Balko 2013; *Economist* 2014). In the early 1980s, these police paramilitary raids and "forced investigatory searches using the military special operations model, employed during hostage rescues, was almost unheard of and would have been considered an extreme and unacceptable police tactic. Today, it defines the bulk of activity most police paramilitary teams are engaged in, and this is true of both very small and large police departments" (Kraska 2007: 163).

Military personnel train and assist these specialized units, and veterans of conflicts in Iraq and Afghanistan find they can become consultants to train local SWAT teams. These practices have been an economic boon to suppliers of these paramilitary law enforcement teams (in weaponry, body armor, training, jails, and vehicles, for

example), who have been fortified by the increased arrest rates and subsequent incarceration rates of poor minorities who are convicted of nonviolent drug crimes.

The militarization of policing has been accompanied by an escalation in violence, lethal, and otherwise. No-knock or quick-knock paramilitary raids—used to collect evidence, such as drugs, guns, or money—naturally surprise citizens and put both citizens and police in potentially volatile situations. Dealing with these potentially dangerous situations justifies further extraordinary measures:

> These include conducting searches during the predawn hours, usually in black military battle-dress uniforms, full body armor, ninja-style hoods, and an array of enhanced listening and seeing devices—sort of a twenty-first century cyborg style. It also includes a rapid entry into the residence using specialized battering rams or sometimes entry explosives, the use of flash-bang grenades designed to temporarily disorient the occupants, a frantic room-by-room search of the entire residence where all occupants are expected to immediately comply with officers' screamed demands to get into the prone position. If a citizen does not comply immediately because he or she is confused, dazed, obstinate, or doesn't know that the people raiding the house are police, more extreme measures are taken. Finally, the police ransack the entire residence for contraband. (Kraska 2007: 167)

The adverse effects from these military-style raids on American citizens include situations such as the deaths of Branch Davidians in Waco, Texas, in 1993; the killing of children; unintentional (but still lethal) gun discharges; raids on the wrong house; and college students shot for violations of marijuana laws because of quick entry. The commonality of these types of tragedies is not known because data on SWAT teams gone wrong are not officially recorded.

When the militarization of the police is dramatized and glamorized in popular culture, community policing that shares the values of Sir Robert Peel is marginalized:

> if after hiring officers in the spirit of adventure, who have been exposed to action oriented police dramas since their youth, and sending them to an academy patterned after a military boot camp, then dressing them in black battle dress uniforms and turning them loose in a subculture steeped in an "us versus them" outlook toward those they serve and protect, while prosecuting the war on crime, war on drugs, and now a war on terrorism—is there any realistic hope of institutionalizing community policing as an operational philosophy? (Bickel 2013)

## Privatization and Revenue Collection

Privatization refers to the process of government outsourcing certain tasks to for-profit businesses. While prisons have frequently contracted out food service and health care ("nominal privatization"), privatization escalated in the 1980s with the creation of businesses that built, owned, and managed prisons ("operational privatization"). A number of private prison companies later had initial public offerings in which they raised money by selling shares to the public and became traded on the stock exchange (Selman and Leighton 2010). Indeed, in the opening of his book *The Perpetual Prisoner Machine*, Joel Dyer comments on the sign hanging outside the Northeast Ohio Correctional Center that reads, "Yesterday's closing stock price." The stock price is for the prison's owner, then named the Corrections Corporation

of America (CCA). To Dyer, what the sign means "is that anyone—anyone with money, that is—can now profit from crime" (2000: 10). As the industry has grown, so too have concerns about the number of (poor, black) "bodies destined for profitable punishment" (Leighton and Selman 2012).

The movement to private prisons started as a way to offset the high correctional expenses resulting from the incarceration binge in the United States. With the expansion of prisons, jails, parole, and probation, the number of companies involved in delivering services has expanded, and they have diversified into providing more services (see chapter 10). For example, the privatization of punishment is not solely the construction and management of prisons but also includes housing illegal immigrants (including families), juvenile offenders, and the mentally ill; contracting to provide health care and food services for incarcerated persons; contracting to provide community-based forms of surveillance, including electronic monitoring; and, most recently, contracting for reentry services for the formerly incarcerated (Selman and Leighton 2010).

The reality of contemporary corrections is that it includes several multinational prison businesses with billions of dollars' worth of stock and billions more in debt to Wall Street banks. The money from investors and banks allowed private businesses to build many facilities and thus continue the unprecedented expansion of the prison population—an example of understanding the political economy of punishment, or how politics and economics exert influence on punishment more significantly than on arguments about retribution, deterrence, and sentencing guidelines (Rusche and Kirchheimer [1939] 1968). Killingbeck summarizes how at each stage of history, the reliance on imprisonment in its different forms was tied up in a political economy of punishment:

> When society was manual-labor based and dependent on the production of goods and cheap labor, imprisonment included prison labor. It was not until the use of prison labor was no longer economically viable and politically advantageous that reforms were instituted. . . . With the advent of new technologies that reduced the demand for manual labor, imprisonment served to warehouse the surplus labor supply. As capitalism became more service oriented, imprisonment became a *service* to be provided. As capitalism becomes a combination of technology, service and information, so too does punishment, in the forms of electronic monitoring and GPS tracking. (2005: 169, emphasis in the original)

With outsourcing and globalization, wages of most workers go down while those at the top do much better, leading to an overall situation of greater inequality. In private prisons, guards tend to be paid less and have fewer benefits than government workers, and the antiunion stance of private prisons makes it difficult for workers to substantially improve work conditions. Median earnings in 2010 for all correctional officers and jailers were $42,820, but private prisons paid $37,570 (Bureau of Labor Statistics 2016a). Meanwhile, the chief executive officer (CEO) of a private prison company makes more than the average head of a department of corrections who manages a substantially higher number of inmates. For example, the CEO of CoreCivic (formerly CCA) has a total compensation of several million dollars a year, as does the CEO of GEO Group. The managers of state departments of corrections of a similar size make less than $200,000 (Selman and Leighton 2010). The end result is staff turnover, apathy, and poor judgment—which can combine to precipitate riots, unconstitutional conditions of confinement, or inmate abuse (Bauer 2016; Carceral 2005).

As more companies generate revenue from corrections, there is more potential for misplaced power in the multibillion-dollar prison-industrial complex to distort sentencing and criminal justice (and mental health and immigration) policy: the interests of corporate shareholders become increasingly important, causing increased corporate lobbying and campaign donations, while public safety and public accountability become less relevant. Basic free-market principles dictate that companies with shares traded on a stock exchange have a duty to make money for their shareholders. Thus, businesses involved in incarceration have no duty to balance their desire for ever-increasing profits with the larger public good that would come from, say, crime-prevention funding or money for schools. Indeed, sentencing reform and declining crime rates are "risk factors."

The expansion of criminal justice fines and fees should lead to a reconsideration of the traditional view of the criminal justice-industrial complex, in which the private sector extracted money from government. But by 2011, the Conference of State Court Administrators issued a policy paper *Courts Are Not Revenue Centers*, where they state that the use and structure of fees "has recast the role of the court as a collection agency for executive branch services" (2011: 9). The process frequently involves aggressive policing of submisdemeanor infractions and issuing citations that carry a fine plus a court fee. People who cannot afford to pay often do not show up, whereupon the court issues an arrest warrant, which carries another fee (Reiman and Leighton 2017: 123 and 205).

In response to the police shooting of an unarmed black teenager in Ferguson, Missouri, a DOJ investigation found that the city finance director and city manager asked the police chief to aggressively issue citations so that revenue from court fees could be increased because of other budget shortfalls. Management carefully monitored police "productivity" (number of citations issued), so DOJ found that "many officers appear to see some residents, especially those who live in Ferguson's predominantly African-American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue" (2015: 2). It found further that the "emphasis on revenue . . . has also shaped its municipal court." The court works to "advance the City's financial interests" and "does not act as a neutral arbiter of the law or a check on unlawful police conduct" (2015: 3). These practices especially harm the poorer residents, because "minor offenses can generate crippling debts, [and] result in jail time because of an inability to pay" (2015: 4).

Unfortunately, the problem is not confined to Ferguson, and the government also collects revenue in hidden ways from businesses that engage in unfair practices. In one Southern jurisdiction, for example, being released on bail required wearing an electronic monitoring device that cost $300 a month, and while the fee was payable directly to the monitoring company, the company shared part of its revenue with the government. Trial can take a year or more, so fees pile up and strain the budgets of already poor households. The failure to pay means a return to jail, so "people are pleading guilty because it's cheaper to be on probation than it is to be on electronic monitoring" (Markowitz 2015). Thus, government and the criminal justice system itself are part of the problem of distorting policy and public safety in the name of revenue. By engaging in predatory finance and abusive collection practices, the criminal justice system has become a key player in the revenue-generating aspect of the criminal justice-industrial complex.

## Cybercrime/Security

The current world, separated by a defined geographical border, with government agents at border crossings and national laws, does not fit with how cybercrime functions. People in one country use computers in many countries to attack targets all over the world, then launder money through still other countries. This situation makes it challenging for jurisdictions where people are victimized by cybercrime to investigate and prosecute, even if they had the tools to do so. But the scale of losses—money, information, and the ability to disrupt critical infrastructure—makes it too large to ignore. Cybercrime was once "an obscure technical issue" but "cybersecurity has slowly gained prominence in recent years as digital crooks and cyber spies breached major companies like Target and Sony, as well as federal agencies like the Office of Personnel Management, which houses sensitive background check forms" (Geller 2017).

The "Stuxnet" computer virus, widely attributed to United States and Israel, ushered in a new era of cybercrime (Arthur 2013). Until that point, cybercrime and terrorism were limited to attacking and potentially damaging other computers, but Stuxnet attacked industrial controls so that Iran's centrifuges to refine uranium would operate in a way that broke the machines. The objective of crippling Iran's nuclear power program was achieved, but it ushered in a model of cyber attacks on any computer-controlled critical (and not so critical) infrastructure, much of which is also connected to the Internet: nuclear and other power plants, the electric grid, traffic lights, emergency response systems, water processing, elevators, cell towers, hospitals, the stock exchange, gas pipelines, cars, billboards, subways, implantable medical devices, voter registration and sensitive political information, and an increasing number of devices upon which people have come to depend. Leveraging a series of hacks can easily result in chaos in a city or across a nation (K. Johnson 2016).

President Obama brought some of the functions and responsibilities for the nation's digital security to the White House when he announced in late May 2009 that he would appoint "the nation's first cyber security czar to help protect the nation's telecom infrastructure and information systems that have grown so crucial to industry, the military and individual citizens" (*Denver Business Journal* 2009). The Pentagon also has a "Cyber-Command" and the Secret Service, which developed high-tech laboratories to investigate counterfeit currency, took on the investigation of credit card breaches and other attacks on financial infrastructure.

As cybercrime has become more widespread, it has also become more professional. While hackers living in their parents' basement are still part of the scene, "80 percent of hackers are now working with or as part of an organized crime group" (Goodman 2016: 222). Those who develop malware (malicious software) are specialized in that business and sell or rent their product for others to distribute. The malware developers allow their customers "to file bug reports, propose and vote on new features for upcoming versions of the software, and even submit and track trouble tickets" (Goodman 2016: 233). In many other ways, organized cybercrime mimics the organization and business models of Silicon Valley technology companies.

Cybercrime also involves an expanding assortment of "virtual dark markets"—underground sites that auction or sell hard drugs, child pornography, fraudulent passports, counterfeit dollars, military weapons, and stolen identities. Technological

developments help both law enforcement and cybercriminals. The Dark Web, a place where the NSA has an especially difficult time surveilling, has made commerce in these illicit goods and services possible. The Deep Web is "the collection of all the websites and databases that search engines like Google don't or can't index, which in terms of the sheer volume of information is many times larger than the Web as we know it." The Dark Web is the place within the Deep Web "that's distinguished by that increasingly rare commodity: complete anonymity." Although most people do not browse the Dark Web, "the software you need to access it is free and takes less than three minutes to download and install" (Grossman and Newton-Small 2013: 28).

The Dark Web has thus become a tool for criminals, political dissidents, hackers, intelligence agents, law enforcement, and any who need or want to conduct their online affairs in private. Thus, some prosecutors and government agencies regard the Deep Web as a potential nightmare, an electronic haven for thieves, human traffickers, and peddlers of state secrets. Dark Web markets for criminal goods and services resemble eBay, as shown in the Frequently Asked Questions section of Alpha Bay—see figure 1.1—currently one of the larger online dark markets.

The Deep Web also has its own digital payment system and a currency called Bitcoin that may be used for both legitimate and illegitimate dealings. Bitcoin has no physical form, and its worth is "determined by supply and demand and is valuable

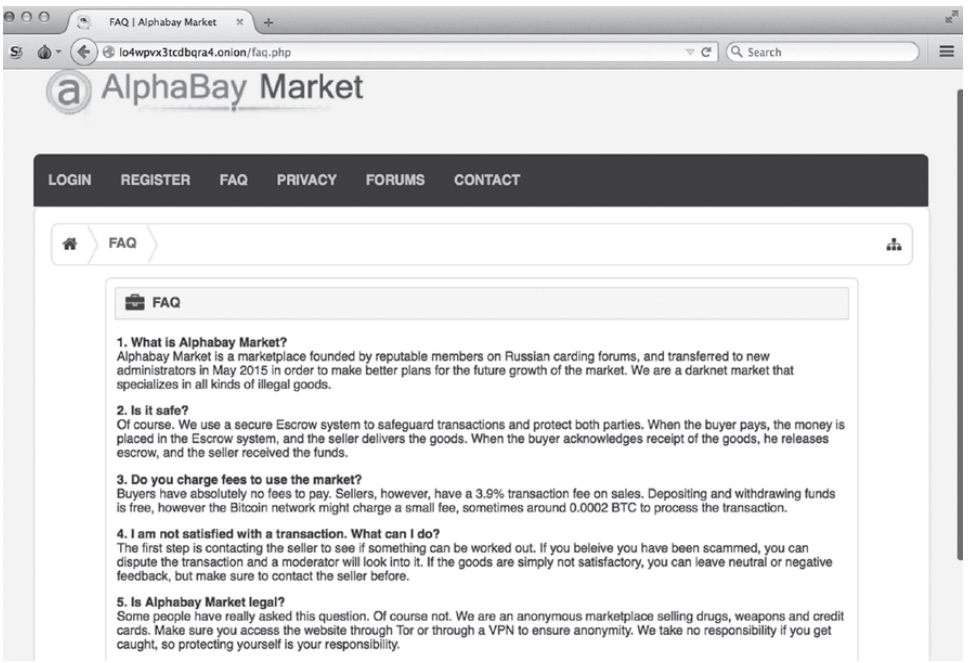


**FIG. 1.1** FAQ from Dark Web Marketplace AlphaBay

*Note:* In July 2017, AlphaBay went offline in what seems to be a law-enforcement action that closed the $600,000 to $800,000 a day business. But each time a big dark market gets taken down, something grows back bigger: "There's a demand it's just a question of who's going to fulfill the supply" (A. Greenberg 2017).

only insofar as individuals and companies have agreed to trade it" (Grossman and Newton-Small 2013: 29). A government does not back this currency; it is completely decentralized, and users can transfer bitcoins from one digital wallet to another without banks brokering the transactions or imposing fees. In short, bitcoins are basically cash (anonymous transactions) for the Internet. Because of the workings of encryption and cryptography, they are virtually anonymous and extremely difficult to counterfeit.

## Criminal Justice Workers

This chapter opened by introducing the larger criminal justice–security complex to help readers think about the larger contexts that shape criminal justice. However, there are too many occupations and work possibilities to meaningfully discuss in part of a chapter, so this section focuses on law enforcement, judicial workers, and corrections. For each of those areas, we provide an overview of the occupation and those who do the job. Table 1.1 provides a more expansive list of careers within the more traditional understandings of what the criminal justice system is. Table 1.2 provides a breakdown of criminal justice system expenditures, including the payroll for employees and the number of workers.

The totals in the previous paragraph do not include expenditures or workers in private security, private detection, or other related security occupations not funded by government. Jobs within the criminal justice enterprise are diverse, and different occupations have unique dynamics with respect to class, race, and gender. What follows are the roles and functions of the principal occupations in the three primary areas of criminal justice practice—law enforcement, courts, and corrections—as well as other characteristics, such as the number of workers, working conditions, educational requirements, and professional salaries as available.

### Law Enforcement Workers

According to the latest Bureau of Justice Statistics (BJS) data, the United States had about fifteen thousand public law enforcement agencies and about one million full-time personnel, including about 725,000 sworn personnel (with the power to arrest) at the local and state levels of government (BJS 2015a: 2). Another 84,500 employees were part-time, including almost forty thousand sworn personnel. An additional 1,700 agencies served a special geographic region—public schools, universities, parks, forests, airports, mass transit, and so on—and employed another ninety thousand people full-time, including fifty-seven thousand sworn officers.

While this section does try to paint a general picture, Bohm and Haley (2005: 160) point out that virtually no two police agencies in the United States are structured alike or function in the same way. Police officers themselves are young and old; well trained and ill prepared; rural, urban, and suburban; generalists and specialists; paid and volunteer; and public and private. These differences lead to at least three generalizations about law enforcement in the United States:

> The quality of police services varies greatly across the nation.
>
> There is no consensus on professional standards for police personnel, equipment, and practices.
>
> Expenditures for police services vary greatly among communities.

**TABLE 1.1 Careers in Criminal Justice**

| Law Enforcement/ Security | Courts/Legal | Corrections/Rehabilitation |
|---|---|---|
| Bureau of Alcohol Tobacco and Firearms agent | Arbitrator | Activity therapist |
| Border patrol agent | Attorney general | Business manager |
| Campus police officer | Bailiff | Case manager |
| Computer security advisor | Clerk of court | Chaplain |
| Computer crime investigator | Court reporter | Chemical dependency worker |
| Crime prevention specialist | Jury coordinator | Child care worker |
| Crime scene processor (evidence collection) | Juvenile magistrate | Classification officer |
| Criminal investigator | Law clerk | Clinical social worker |
| Criminal profiler | Law librarian | Community liaison officer |
| Customs officer | Legal researcher | Correctional officer |
| Deputy U.S. investigator | Mediator | Fugitive apprehension officer |
| Drug enforcement officer | Paralegal | Home detention supervisor |
| Environmental protection agent | Public defender | Job placement officer |
| FBI special agent | Public information officer | Juvenile detention officer |
| Fingerprint technician | Specialty court (drug, veteran, domestic violence, etc.) worker | Juvenile probation officer |
| Forensic scientist | Trial court administrator | Medical doctor |
| Highway patrol officer | Victim advocate | Mental health clinician |
| Immigration and customs officer | | Nurse |
| Inspector general's office investigator | | Parole/probation officer |
| Insurance fraud investigator | | Postal inspector |
| Laboratory technician | | Presentence inspector |
| Loss prevention officer | | Prison industries supervisor |
| Military police officer | | Programmer/analyst |
| Park ranger | | Psychologist |
| Police administrator | | Rehabilitation counselor |
| Police dispatcher | | Residence supervisor |
| Police officer | | Secret service agent |
| Polygraphy examiner | | Sex offender therapist |
| Private investigator | | Social worker teacher |
| Private security officer | | Vocational instructor |
| Researcher | | Warden/superintendent |
| State trooper | | Youth service worker |

**TABLE 1.2 Criminal Justice Expenditures, Payroll, and Employees, 2012**

| | Total Expenditures (in Billions of US$) | Employee Payroll (in Billions of US$) | Total Employees |
|---|---|---|---|
| Criminal Justice system total | 265.2 | 12.0 | 2,425,001 |
| Police | 126.4 | 6.3 | 1,183,614 |
| Judicial and legal | 57.9 | 2.5 | 491,979 |
| Corrections | 80.8 | 3.2 | 749,418 |

*Source:* BJS. 2015. "Justice Expenditure and Employment Extracts, 2012—Preliminary." NCJ 248628, tables 1 and 2.

*Note:* Detail may not add to total because of rounding. Payroll as of March 2012.

Starting salaries and median annual earnings for police and patrol officers in 2016 across local, state, and federal law enforcement agencies ranged from $55,000 to $69,200, although pay for police at colleges and schools was less (Bureau of Labor Statistics 2016a). Salaries for first-line supervisors averaged $119,540 for the federal government down to $85,830 for local agencies (Bureau of Labor Statistics 2016b).

Educationally, only 1 percent of municipal police departments required new recruits to have a four-year college degree, and only 9 percent required at least a two-year degree in 2003. A high school diploma or higher educational achievement was required by 81 percent of local police agencies across the nation (BJS 2006a: 9).

Local law enforcement activities constitute the bulk of police work and are carried out primarily by municipal (i.e., city, township) police departments that typically (94 percent) employ fewer than fifty sworn officers. The larger the police agency, the more likely it is to employ women and minority officers. While white males are still highly overrepresented, the overrepresentation has been slowly declining. From the early 1900s until 1972, when the Equal Employment Opportunity Commission (EEOC) began to assist women police officers in obtaining equal employment status with male officers, policewomen were responsible for protection and crime prevention work with women and juveniles, particularly girls. Today, women engage in virtually all of the duties that men do, but account for only 11.6 percent of all officers (UCR 2015: table 74). Women make up almost 10 percent of first-line supervisors and 3 percent of police chiefs (BJS 2015b). Of full-time sworn personnel, 12 percent were Hispanic, 12 percent were African American, 2 percent were Asian American, and 1 percent was Native American (BJS 2015b: 5b) The BJS does not release data broken down by race and sex, so the representation of minority women in policing is not known.

Like most municipal police departments, most sheriffs' departments are small. In addition to enforcing the criminal and traffic laws of the state, sworn and not sworn personnel of sheriffs' departments perform functions that range from investigating crimes to supervision of jailed inmates. Unlike municipal police departments, sheriffs are directly elected, so they operate in the context of partisan politics and have the authority to appoint special deputies and to award jobs based on political support. Generally, they have a freer hand in running their agencies than police

chiefs, who usually serve as mayoral appointees, but sheriffs are also subject more to local politics than they are to measures of effectiveness and professionalism.

In making sense of the statistics and the overall environment, a number of points are important. First, all women and racial minorities interested in working in most areas of criminal justice share the challenge of entering overwhelmingly white male work environments, with women of color being doubly disadvantaged. Second, sexual and racial discrimination acts to preserve some criminal justice professions, especially law enforcement, as disproportionately white male domains. These forms of harassment can be separate and unrelated or combined, for example, in the form of "racialized sexual harassment" that serves to keep some women of color from entering, advancing, or remaining in a predominantly white male occupation. In general, women of any color and minority males are forced to consider the world through the eyes of the white male cop.

Both of these groups, by definition, lack access to the "old boy" networks in law enforcement, a situation that can be conducive to a catch-22 state of affairs, especially for women. On the one hand, if men of color or women in general do not socialize (either by choice or exclusion), they risk not learning information related to their job or promotion opportunities and may be labeled as aloof or "cold." On the other hand, if women in particular socialize with male colleagues, they may be perceived to be sexually available, which reflects negatively on women's professionalism (Belknap 2007). Gay and lesbian officers, white or of color, working in this male-dominated field experience a sense of marginalization and harassment at least as severe as other minority groups on the job. And "since officers distrust the public and put an immense amount of trust in their fellow officers, being shunned by your colleagues can have potentially dangerous, even life-threatening results" (Buist and Lemming 2016: 57).

Third, women of color have additional barriers even though some people believe that they receive a double benefit because of their underrepresentation as both women and people of color. In reality, minority women are often forced to choose between a race and a sex discrimination claim. They are thus forced to choose—or the court decides for them—whether they will be compared against white women or minority men. But in either case, the double discrimination is not fully accounted for.

Fourth, racial and/or ethnic minorities, blacks and Hispanics in particular, not only have to deal with being forced to fit in with and having their work devalued by their white peers, but they also often, especially in impoverished ethnic communities, find that their community identities or loyalties are subject to questioning. On the one hand, they must prove to their communities that they are not "sellouts." On the other hand, they need to demonstrate to white officers that they are strictly enforcing the laws against their community and behaving toward minorities as the white officers are. This is especially pronounced with Hispanic officers, who are not just employed by police departments but also make up a high percentage of immigration agents (Álvarez and Urbina 2015).

In cases of police brutality or when excessive force is used by black police officers against those in the black community, some see it as evidence that the incident was about brutality and excessive force, not race. But people should not jump to that conclusion without considering that black officers are capable of holding

prejudices about black offenders. Ronald Hampton of the National Black Police Association observed, "Success [in a department] is defined in white male terms. So these guys internalize the racist, oppressive culture of the police department in order to succeed" (Ripley 2000). But instead of viewing black and Latino police officers who engage in police brutality against black and Latino criminal suspects as a symptom of a larger problem, which is overreliance on militarized policing in poor and minority communities, police brutality against the most powerless people in society is sometimes viewed as a normative behavior because both black and Latino officers also participate in it.

Finally, undercover work requires the involvement of detectives whose brown skin permits them to blend into certain neighborhoods, but they sometimes fear that a white officer will accidentally shoot them (Winerip 2000). Accidental shootings of minorities by white cops are not uncommon and are attended by numerous studies that suggest that brown faces are more threatening than white faces: "There is overwhelming evidence that young, black men are stereotyped as violent, criminal and dangerous. Indeed research suggests that black men are associated with threat both implicitly as well as explicitly" (Trawalter et al. 2008: 1322).

For all the problems, there are some who say that sexism and racism in the workplace is declining. However, affirmative action myths still abound, such as the myth that police or corrections departments must meet quotas in hiring women and minority men, regardless of whether or not they are qualified. For example, scrutiny of the text of the original Affirmative Action Executive Order 11246, signed by President Lyndon Johnson in 1965, specifically prohibits hiring of unqualified people to fill positions in occupations and requires in section 202(2) that "the contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin."

So, in reality, affirmative action programs were designed to determine the percentage of qualified women and minorities available to an organization (such as a police department) and to set flexible goals to be reached in good faith. The courts, in short, imposed quotas only in the case of blatant discrimination against clearly qualified minorities, and this system disappeared after the Supreme Court decided quotas were unconstitutional when used in college admission in *University of California v. Bakke* (438 U.S. 265 [1978]). (Subsequent Court decisions have allowed for race to be used in admissions decisions when narrowly tailored to help achieve a diverse student body, but not in a way that automatically grants minorities a certain number of points toward admission.)

In conclusion, there are significant limitations on essentializing gender relations or police-race relations in an occupational setting. "Essentializing" is the idea that "all women are oppressed by all men in the same ways or that there is one unified experience of dominance experienced by women" (Buist and Lemming 2016). Statements such as "all white officers engage in racial profiling" or generalizations about the behavior of female officers are too simplistic. The social reality is that people are influenced not only by their personal attitudes and experiences but also by the context in which they live and work. Whites are capable of recognizing the problems of racial profiling and brutality, and racial and ethnic minority officers are

charged with the responsibility of not falling victim to them. But the contributions of women and minorities and women who are minorities should be both valued and incorporated into the ways that law enforcement agencies operate today so as to eliminate racism, minimize discrimination, and maximize fairness in the administration of justice.

Certainly, it is useless to continue to expect minorities and women to adapt to the white majority without reciprocal efforts being made on the part of the white majority to include them, especially since globalization has ramped up. To suggest otherwise is to diminish everyone by treating people as if their actions are solely dictated by their racial categorization rather than by a variety of individual, occupational, organizational, situational, and other contexts. However, this should not mask some underlying dynamics of privilege, because when it comes to harassment based on gender, sexual orientation, or race/ethnicity in law enforcement, women, gays and lesbians, and people of color each still experience the status of "outsider." They are all subjects of police subordination in an occupation that punishes them for entering male-only or white-male-only domains.

## Judicial Workers

Both the expenditures and the number of judicial workers involved in criminal tribunals, from the charging to the sentencing stages, are considerably smaller than the number of dollars spent on or workers involved in law enforcement. Comparatively, law enforcement workers are essentially made up of professional persons with and without college degrees. Similarly, judicial workers can be divided up into two distinctively educated workers whose professional class also varies from working to upper-middle class.

First, there are the members of the legal bar—attorneys and judges—who have overwhelmingly graduated from a four-year college or university as well as a three-year law school, passed a state bar examination, and been certified to practice law. The average annual salary for assistant prosecutors ranged "from $33,460 for entry-level assistant prosecutors in part-time offices to $108,434 for assistant prosecutors with 6 or more years of experience in offices serving jurisdictions of 1 million or more residents" (BJS 2011: 2). Chief prosecutors had an average annual salary of $98,000 and a range from $45,000 for part-time offices to $165,700 for the largest offices.

For states, the median salary for judges in 2012 ranged from about $132,500 for a general trial court up to a median of almost $147,000 for the highest court (*Sourcebook*: table 1.90.2012). However, salaries varied widely by state, so general-level judges in Mississippi made about $104,200 while their counterparts in Illinois made $180,800. The *Sourcebook* does not provide any data on public defender salaries.

It should also be pointed out that the share of the nation's lawyers who are minorities and women, which had been growing slowly but steadily for years, fell in 2010 for the first time since the National Association for Law Placement began keeping statistics in 1993. Not only did the deep economic recession lead businesses to make diversity programs less of a priority, but a growing number of states—including Arizona, Michigan, Nebraska, New Hampshire, and Oklahoma—also

moved to ban race-based affirmative action in recent years. These states joined California, Florida, and Washington, which had already banned affirmative action back in the 1990s (Schwartz and Cooper 2013). Table 1.3 reports on the diversity of judges appointed to U.S. district courts and to the U.S. courts of appeals by the past five presidents. An important criterion for appointment to a federal judgeship is having served as a clerk to a U.S. Supreme Court justice, and this issue is explored in box 1.1.

**TABLE 1.3 Demographic Information of Federal Judicial Confirmations by the Past Five Presidents**

| | Obama | Bush II | Clinton | Bush I | Reagan |
|---|---|---|---|---|---|
| Male | 58% | 78% | 71% | 81% | 92% |
| Female | 42% | 22% | 29% | 19% | 9% |
| White | 64% | 82% | 75% | 89% | 94% |
| African American | 19% | 7% | 16% | 7% | 2% |
| Hispanic | 11% | 9% | 7% | 4% | 4% |
| Asian Pacific American | 6% | 1% | 1% | 0% | 0.5% |
| Native American | 0.3% | 0% | 0.2% | 0% | 0% |
| Native Hawaiian or Other Pacific Islander | 0.3% | 0% | 0% | 0% | 0% |
| Openly GLBT | 11 | 0 | 1 | 0 | 0 |
| People with disabilities | 0 | 2 | 3 | 1 | 1 |
| TOTAL CONFIRMED JUDGES | 329 | 327 | 378 | 193 | 383 |

*Source:* Alliance for Justice, Judicial Selection Snapshot (June 5, 2017), http://www.afj.org/wp-content/uploads/2015/01/Judicial_Selection_Snapshot.pdf. For additional detail, see Stubbs (2016).

*Note:* President Trump has an increasing number of judicial nominations pending, and at the time of publication he had a nigh number confirmed, but these have not been included in this table.

## BOX 1.1

### The Lack of Diversity among Supreme Court Clerks

Federal laws barring workplace discrimination do not cover the U.S. Supreme Court. The lack of diversity among law clerks reflects this omission in the law as it raises the question of "supreme hypocrisy." For example, between his appointment to the Supreme Court in 1972 and the beginning of 1999, former chief justice William Rehnquist had eighty-two law clerks. During that time, he had only one Hispanic clerk and only eleven women clerks. Not once did he hire a black clerk. Overall, only 1.2 percent of his clerks had been members of minority groups.

The track record of his colleagues had not been much better. Of the 428 law clerks hired during the respective terms of the current justices, only seven were black, five were Hispanic, eighteen were Asian American, and not a single one was Native American. Despite the fact that over 40 percent of

law school graduates in the 1990s were women, they made up only one-quarter of all clerks hired by current justices.

These figures prompted Rep. Gregory Meeks (D-NY) to conclude: "If the court were a Fortune 500 company, the statistics alone would demonstrate illegal discrimination." In an article, "Does the Supreme Court Need Affirmative Action for Its Own Staff?," Meeks (1999: 24) criticized the Supreme Court's hiring practices. He reasoned that becoming a clerk is a stepping-stone to other legal positions, including that of a Supreme Court justice. Thus, the hiring practices of the highest court in the land create a structural barrier to obtaining those positions. Moreover, Supreme Court law clerks wield considerable power, playing an extremely influential role in the court's functioning.

As Meeks writes, "Clerks have the ear of the justices they serve. They have input on which cases the justices choose to consider. They write the initial drafts of most decisions. The Supreme Court's decisions are the law of the land and thus affect lives, determine how government resources are allocated, [and] force legislatures to reformulate public policy choices." In other words, the influence clerks have on both the cases heard and the opinions the court renders should not be underestimated.

For example, recent Supreme Court decisions have narrowed opportunities for people of color as a result of limiting or ruling unconstitutional critical affirmative action programs or by diluting the application of the Voting Rights Act. The fact that clerks preview and review these cases means that they have had an impact on rulings involving civil rights, access to education, workplace discrimination, religious freedom, voting, welfare reform, immigrant rights, school desegregation, sexual harassment, police brutality, and death penalty appeals. Many of these cases have a disproportionate impact on minorities or women, so it is conspicuous that minorities and women did not have any influence over the preview or review of these cases. Diversity in the background (as well as the foreground) would not only provide a more well-rounded approach to dispensing justice in an increasingly diverse nation, but it would also go a long way toward displaying the image of color-blind justice in an era that lays claim to such.

Court observers note that virtually all the Supreme Court clerks are chosen from clerks for the U.S. courts of appeals. Thus, the lack of diversity of judges in the courts of appeals influences the pool of clerks for the Supreme Court. While the data do not allow for the analysis of intersections, the clear implication is that judgeships are very much male and white. To the extent that judges seek clerks they are comfortable with because the clerks are "like themselves," judges re-create the pattern set by the white, male presidents who appointed them. In short, without a more balanced or diversified group of clerks, there is an obvious loss of valuable counterweight to the established court's largely majoritarian tendencies (Benson 2007).

With the election of Barack Obama, the first biracial president, some of these patterns started to change. His first appointment to the Supreme Court was Sonia Sotomayor, the court's third woman and first Hispanic woman. But as of 2014, whites made up 74 percent and men made up 67 percent of federal district court judges (National Women's Law Center 2016)

Having diverse clerks is thus important because clerks help to provide justices with a broader, more rounded, and varied perspective on critical issues. Only by setting a proactive example of inclusion can the Supreme Court fulfill the ideal of justice that it purports to protect. Indeed, the same argument, more or less, can be applied to all careers associated with the administration of justice in the United States.

Second, there are the nonlawyers, primarily bailiffs and stenographers but also including the much less frequently occurring occupations of victim-witness or domestic violence advocates. With the exception of bailiffs, the other nonlawyers (especially stenographers) are primarily women and white. The educational backgrounds of these nonlawyers vary greatly, from those with a high school

diploma or GED to those with undergraduate and postgraduate degrees. These judicial workers' annual incomes place them in the working and middle classes. For example, the average annual 2016 salary for paralegals and legal assistants was $49,500, court reporters earned $51,320, and law clerks earned $51,760 (Bureau of Labor Statistics 2016b).

The rest of this discussion on judicial workers focuses on the three key actors in the criminal court process: the prosecutor, the defense attorney, and the judge. These positions influence some of the direct actions taken by police and correctional personnel in the name of crime control, and they also indirectly influence some behavior of general citizens as they conform to the "rule of law." Despite the relative power of these legal actors, they are still captives of a legal order and rigid judicial processes that are, for the most part, well beyond their control.

### Prosecutors

Violations of federal law are prosecuted by the U.S. Justice Department, headed by the U.S. attorney general and staffed by ninety-three U.S. attorneys (one assigned to each of the federal district court jurisdictions), all nominated by the president and confirmed by the Senate. Within states, district attorneys are generally employed by a county to prosecute violations of state laws. Most chief prosecutors for each county are elected, and they select their assistant or deputy prosecutors who carry out the day-to-day work of the prosecutor's office in all but the small and rural offices. Since most crimes violate state law, these offices receive most of the attention in this section.

The criminal justice system contains about 2,300 prosecutors' offices, employing more than seventy-eight thousand attorneys, investigators, victim advocates, and support staff (BJS 2011: table 1). In 2007, the last year there was a survey of prosecutors, the budget for state prosecutors was about $6 billion (BJS 2011: 1), with the federal government spending more than an additional $3 billion. In contrast to television crime drama centering on serious criminal cases argued before a jury, the BJS notes that felony cases decided by juries "were rare across state prosecutors' offices, accounting for an average of 3% of all felony case dispositions" (2011: 2). This underscores the preference of judicial players for the plea-bargaining system (DeFrances 2002). The real role of prosecutors and defense attorneys, then, has become that of a private negotiator rather than an advocate in a trial. Disposing of more cases via plea bargains, however, may be unwise since the Bill of Rights authorizes jury trials as a necessary part of due process. In short, the right of citizens to be judged by a jury of their peers is one of the essential components of due process; but overreliance on plea-bargaining may have usurped that right as a matter of convenience and economy.

Depending on the state, the prosecutor may be called the district attorney, the county attorney, the state's attorney, or several other variations. Whatever the name, the prosecutor is the most powerful actor in the administration of justice. Not only do prosecutors conduct the final screening of each person arrested for a criminal offense, and therefore decide whether to pursue criminal charges, but in most jurisdictions they also have unreviewable discretion in deciding whether to charge a person with a crime and whether to prosecute the case. In other words, regardless of the amount (or lack) of incriminating evidence, and without having to provide

any reason to anyone, prosecutors have the authority to charge or not to charge a person with a crime and to prosecute or not prosecute the case (Bohm and Haley 2005: 278). Importantly, a study of "known wrongful convictions involving African American men that occurred since 1970," which had a sample of 343 individuals, reported that prosecutorial misconduct was a factor in 36.2 percent of the wrongful murder convictions in the study and 15 percent of the rape and sexual assault cases (Free and Ruesink 2012). Overall, they concluded, "the lack of diversity among actors in the criminal justice system makes it easier for nonwhites to be processed through the system without the necessary safeguards to minimize the probability of a wrongful conviction" (2012: 196).

Like all attorneys, prosecutors are officers of the court. In addition, although police typically recommend that a suspect be charged with a crime, the final decision rests with the prosecutor. To charge or not to charge and what to charge are all decisions within prosecutorial discretion, which is what gives prosecutors their formidable power. The only check on the power of the prosecutor's arsenal of legal weapons are the "rules of discovery" mandating that a prosecutor provide defense counsel with any exculpatory (favorable) evidence on behalf of his or her client.

Once the decision to prosecute has been made, prosecutors are then involved in virtually all stages of criminal adjudication, including whether to plea-bargain a case (and the negotiated punishment to be doled out) or take it to trial, the trial itself, and the sentencing phase as well. Other duties, depending on jurisdiction, that add to the power of prosecutors are recommending whether a person should receive bail and/or the amount, acting as legal advisers to other local governmental agencies, and managing a legal and political bureaucracy.

With few exceptions, partisan politics plays a controlling role in the recruitment of prosecutors, both county and federal. For attorneys with any political aspirations or ambitions, choosing to work as a district attorney is a wise decision. As a political office engaged in the "war on crime," the only office to rank higher for those with political desires is the mayor's. In short, it's not the money but the power, status, and political potential that attracts persons to prosecutors' offices, often cementing their allegiances to the political status quo and state-legal apparatuses in the process (Jacob [1973] 1980).

Breakdowns of prosecuting attorneys by gender and/or race/ethnicity were not available. Historically, women, blacks, Hispanics, and other minorities have been highly underrepresented. Although there are certainly more women prosecutors today compared to three decades ago (when there were virtually none), the presence of persons of color is still statistically marginal. In other words, the cultural gap between the majority of white, middle-class prosecutors and the overwhelmingly indigent majority of defendants, nonwhite or white, remains wide. Also, those who become assistant and chief prosecutors are not traditionally of the same class backgrounds as those members of the bar who take cases against American big businesses and corporations. As Herbert Jacob, the political legal scholar, pointed out in one of his classic works,

> There are substantial indications that in many cities, most of the assistant prosecutors come from local law schools. In Chicago, for instance, more assistants come from DePaul and Chicago Kent than from the University of Chicago or Northwestern University law schools. They are likely to come from more modest

> backgrounds than students in elite law schools; they are often graduates of local high schools and colleges and come from families that have lived a long time in the city. The backgrounds of prosecutors suggest that they are particularly sensitive to political implications of their work; they are usually part of the political clique that dominates their locale and, therefore, may be more protective of their fellow officeholders than others would be. (Jacob [1973] 1980)

Little has changed about these fundamental political, social, and economic realities of prosecuting criminal defendants in the contemporary United States.

### Defense Attorneys

Backgrounds of defense attorneys are similar to those of prosecutors, working class and middle class. Both groups of attorneys are usually homegrown and typically attended nonelite law schools within their native states. Unlike prosecutors, however, defense attorneys are generally not connected to the local political scene. It is also safe to assume that if prosecutors closed 2.4 million felony cases in 2005, then defense attorneys of some kind were present in each of these cases, although some of the seven million misdemeanors might have been closed without the benefit of a defense counsel.

Privately retained lawyers, court-appointed lawyers, public defenders, and contract lawyers do criminal defense work. Regardless of the type of lawyer that one has, the Sixth Amendment to the U.S. Constitution as well as several twentieth-century Supreme Court decisions guarantee the right to "effective assistance" of counsel to people charged with a crime (Barak 1980; Loftus and Ketcham 1991). Besides the right to representation at trial, the right extends to several other critical stages in the criminal justice process where the "substantial rights of the accused" or convicted may be affected. These stages may include police lineups, custodial interrogations, preliminary hearings, plea-bargaining sessions, first appeal of a negotiated or postconviction sentence, sentencing hearings, and probation and parole revocation hearings. The Supreme Court has also extended the right to counsel to minors in juvenile court proceedings.

Defense attorneys often receive a "bad rap" from the public for defending obviously guilty clients or for getting them off through legal loopholes or technicalities. However, the defense attorney is playing a part as an officer of the court by making sure the prosecutor can prove guilt beyond a reasonable doubt while playing by the accepted rules of procedure. The constitutional right to effective assistance of counsel and the adversarial nature of the adjudicative process would become meaningless if lawyers refused to defend their clients on the grounds that they knew (or believed, or the community generally believed) that a defendant was guilty. Freedom from arbitrary government power thus depends on defense counsel requiring prosecutors to prove a person guilty beyond a reasonable doubt. Hence, their jobs are to provide the best possible legal counsel and advocacy within the ethical standards of the profession and the limits of the law in order to compel the state to legally prove its case beyond a reasonable doubt.

On the whole, defense attorneys differ markedly from both prosecutors and judges. First, defense attorneys come on the stage after prosecutorial discretion has engaged in its gatekeeping functions, deciding which cases to drop, to pursue, to negotiate, or to take to trial. In effect, prosecutors initiate cases, and defenders

respond. Some may argue that such discretion, in and of itself, gives the prosecutor a head start in preparing a case. Similarly, although defenders may influence the decisions to plea-bargain or to try a case, they exert no systematic impact over the courtroom flow of criminal cases unless they are members of a large public defender's office (Barak 1980). Moreover, unlike prosecutors and judges, criminal defenders are not elected public officials (whose employment is based on approval ratings). They are all private citizens whether they are self-employed or salaried employees of local government.

Second, as a group, criminal defense attorneys are alienated and isolated from local politics; their chief alliances are with the vagaries of the legal marketplace and/or the civil service system to which they belong. In other words, not only are defense attorneys not part of a political patronage system, they are also generally not centrally located in one downtown office building, as prosecutors and judges are. Nor do they wield influence comparable to that of prosecutors with either bar associations or legislators.

Third, unlike prosecutors, not all lawyers who represent criminal defendants are adequately trained or prepared to specialize in the practice of criminal law. Most lawyers while in law school have typically taken one or two courses in criminal law and criminal procedure. Like most of the other law courses and like most practicing attorneys, the areas of law they specialize in relate to such lucrative fields as corporate, tax, or tort law or to the less remunerative, yet still financially secure, areas of the law such as probate, divorce, custody, or real estate. Comparatively speaking, the practice of criminal law provides its practitioners, with some notable exceptions, less income and status in the community—although the white-collar and corporate crime defense firms tend to be high income and prestige.

This discussion provides some of the reasons why wrongful convictions are a serious concern. Because most research has focused on those facing execution, the full extent of wrongful convictions in other felony and misdemeanor cases is unknown. The wrongful convictions generally involve defendants who had public defenders or assigned counsel, not the few who can afford nationally prominent, highly paid lawyers. Such high-end attorneys, however, are generally retained for one or more of three reasons: (1) the crime is sensational or highly publicized, (2) there are large legal fees involved, or (3) the chance to make new law, usually in the area of criminal procedure, is a distinct possibility.

If defendants are upper-middle-class, they may still have access to privately retained competent counsel. In most large cities, there is another small group of criminal lawyers who make a very comfortable living by defending professional criminals, such as gamblers, pornographers, drug dealers, and members of organized crime. Other defendants of the middle classes or working classes, who may or may not be able to afford private counsel, have access to the vast majority of criminal lawyers who practice predominantly in the large cities across this country. By and large, these solo criminal practitioners or small partnerships of two or three attorneys struggle to earn a decent living, often practicing other kinds of law to make ends meet.

The majority of criminal defendants who are too poor to retain their own counsel must rely on one of three types of criminal attorneys: a court-appointed lawyer, a public defender, or a contract lawyer. Nearly 70 percent of state prison

inmates had attorneys appointed by the courts; blacks (77 percent) and Hispanics (73 percent) had slightly higher rates (Bohm and Haley 2005: 287–88).

In sum, most practitioners of criminal defense work can be described as either "those who have failed to establish a successful practice and therefore accept criminal cases as a way of enlarging a legal practice, or those who relish the excitement in criminal work and feel that their practice secures some justice for the accused" (Quinney 1975: 213). However, in terms of the relatively few who fall into the latter category, most practice for many years as career civil servants in the public defender's offices, justifying their roles "as mediators between the poor and the courts, resigned to seeking occasional loopholes in the system, softening its more explicitly repressive features, and attempting to rescue the victims of blatant injustices" (Platt and Pollock 1974: 27). As for most young defense attorneys who are busy learning and developing their litigation skills, they sooner or later become bored, cynical, and burned out fighting for "justice for all," whereupon, if they have become competent in their trade, they leave the field of criminal law altogether for middle-class clients and the greener pastures of civil law.

### Judges

The vast majority of judges at the state level oversee trial courts of general jurisdiction, with substantially fewer sitting on intermediate appellate courts or courts of last resort (state supreme courts). Judges who oversee most felony cases sit on the benches of what are variously called "district," "superior," or "circuit" courts (depending on jurisdiction). These trial courts, of which there are more than three thousand across the nation, have the authority to try both civil and criminal matters and to hear appeals from the "lower courts" or trial courts of limited jurisdiction (i.e., city courts, municipal courts, county courts, justice-of-the-peace courts, magistrate courts) that primarily handle misdemeanors, traffic violations, and ordinance offenses.

In several states, judges of the lower courts are not required to be lawyers or have any formal legal training. In other jurisdictions, before being elected or appointed to office, the judges will have been practicing lawyers, but many of them will have no background in criminal law before joining the judiciary. In jurisdictions where judges are elected to office, these may be partisan or nonpartisan elections. Where city councils, mayors, legislatures, or governors appoint judges, they are subject to the politics of local and state bar associations. Like prosecutors, then, whether elected or appointed, judges are also sensitive to the political process that generally serves the interests of the people who elected or appointed them rather than the goals of social change.

Like prosecutors and criminal defenders, most judges in the United States are overwhelmingly white and male. Judges tend to come from upper-middle-class families, average more than fifty years of age, attend college and law school in their home states, and are typically born in the communities in which they preside. Better educated than the average citizen, a majority of these judges were previously in private legal practice, making more money than they usually do as judges. In 2016, the median lawyer made $118,160 annually—which includes both criminal and civil attorneys—while the median salary for judges and magistrates was $125,880 (Bureau of Labor Statistics 2016a). In 2014, there were 778,700 lawyers and 44,800 judges in the United States.

Compared to prosecutors and defenders, trial judges command more respect, status, and deference from citizens at large. According to imagery, judges are presumed to have enormous power over the adjudication or criminalization process. Actually, though, judicial discretion is far more limited than prosecutorial discretion because judges are subject to appeal and legal review by higher courts. Legislators establish sentencing guidelines, and even when they are technically "advisory," they exert a great deal of control over the outcome. In effect, while trial judges do in fact possess a great deal of power, discretionary and otherwise, they are still less powerful in the administration of criminal justice than prosecutors.

Since more than 95 percent of criminal cases are resolved by plea bargains, a judge's principal role becomes that of a "bureaucratic stamp" for negotiated deals worked out between prosecutors and defenders rather than one of an interpreter of complex legal matters. What Herbert Jacob wrote about judges and criminal adjudication more than thirty years ago is just as accurate today as it was back then:

> The massive flow of cases through their courts precludes anything but a cursory examination of the issues brought to their attention. Judges, like many factory workers, sit on an assembly line. They repeatedly perform routine tasks, with each task consuming only a fraction more than a minute. For such judges, the role is exactly the opposite of the intellectual challenge a judgeship is presumed to pose; it is a mind demeaning, stupefying post. (Jacob [1973] 1980: 67)

## Corrections Workers

When it comes to prisons and imprisonment, correctional officers represent the vast majority of workers. They are generally responsible for the security of the institution and have the most frequent and closest contact with inmates. As Richard Hawkins and Geoffrey Alpert (1989) have observed, correctional officers experience a number of conflicts in their work, often become bored (tower workers) or overstimulated (cell block workers), depending on the nature of their jobs, and are subject to role ambiguity or role strain resulting primarily from the contradictions between custody and treatment objectives. Overall, these "officers generally have considerable discretion in discharging their duties within the constraints of rules, regulations, and policies. Yet, because they lack clear and specific guidelines on how to exercise their discretion, they feel vulnerable to second-guessing by their superiors and the courts" (Bohm and Haley 2005: 405).

Gresham Sykes's classic study, *The Society of Captives* (1958), pointed to some ambiguities in correctional officers' power and discretion because they are outnumbered by prisoners and depend on their compliance to keep the daily routine of prison functional, a situation Sykes referred to as one of the "defects of total power." Hawkins and Alpert (1989) have identified three responses of officers to their working conditions. First, officers may become alienated and cynical and withdraw into some relatively safe niche within the prison. Second, some officers in their efforts to control inmates become overly authoritarian, confrontational, or intimidating. Finally, there are those officers who adopt a human-services orientation, seeking to make prisons a constructive place for themselves and for inmates. This latter orientation is not about waiting on the inmates and "serving" them in that sense but rather about a community-policing type of orientation within the cell block rather than out on the streets (Johnson 2002).

While correctional officers are most directly engaged with inmates, there is a larger prison bureaucracy that accounts for many jobs. By 2016, correctional agencies employed about 532,000 people. About half of these jobs were in state correctional facilities, about seventeen thousand in federal institutions, and about twenty-two thousand in privately owned and managed prisons (Bureau of Labor Statistics 2016). Median earnings in 2016 for correctional officers and jailers were $42,820, with the federal government paying more, local government paying less, and private prisons paying much less ($37,570) (Bureau of Labor Statistics 2016b). Salaries at both levels of government were subject to increases after completion of preservice training and/or a probationary period.

Although corrections workers for the Federal Bureau of Prisons are required to have a bachelor's degree and some related work experience, paid or volunteer, applicants for state correctional systems need only be eighteen or twenty-one years of age and possess a high school diploma or GED. Slightly more than one-third (35 percent) had at least some college, and about 10 percent of all correctional workers have a bachelor's degree or higher (Sumter 2008). At the same time, there are efforts to upgrade prison work from that of a mere job to that of a professional career. However, low pay, the nature of the work, and the lack of prestige associated with it, coupled with the remote or rural location of many prisons, make recruitment of better-educated officers difficult if the economy presents other opportunities. Conover (2000) sums up the situation from a discussion he had with a fellow guard:

> "Officer after officer will tell you: there's no way in hell you'd want your kid to be a [correctional officer]." He said that probably ninety percent of the officers he knew would tell a stranger they met on vacation that they worked at something else—carpentry, he liked to say for himself—because the job carried such a stigma. Sure it had its advantages, like the salary, the benefits, the job security, and with seniority, the schedule: starting work at dawn, he had afternoons free to work on his land . . . but mainly, he said, prison work was about waiting. The inmates waited for their sentences to run out and the officers waited for retirement. It was "a life sentence in eight-hour shifts."

In terms of gender and race, "77 percent of uniformed staff, including correctional officers, were male (though 35.5 percent of correctional officers hired in 2000 were female), and about 66 percent were white" (Bohm and Haley 2005: 404). When looking more broadly at all employees in state and federal prisons, about 33 percent are female (*Sourcebook* 2003: table 1.104, 96). And while it is commonplace for women correctional officers to work in federal and state high-security institutions today, the first woman to do so was hired in 1978. Interestingly, women make up a greater percentage of employees in state facilities than they do in federal facilities, and there are a higher percentage of female employees in the South than in other regions.

This discussion of corrections workers has focused mainly on workers in prison. However, there are also probation and parole officers working in the field of "community corrections." Indeed, as inmate populations have soared over the past several decades, so have the numbers of persons on probation and parole. For example, between 1980 and 2016, the number of offenders subject to probation rose from