The criminal justice system in the United States is built upon the concept of justice. The notion of justice will be looked at from several different perspectives. This chapter will discuss justice in terms of the traditional way that it is applied to our overall justice system. We will also look at the concept of social justice and how it affects the different societies that we all live in. The principle of the social contract will also be discussed in this chapter.

There are two models that help explain the differences in ideologies within the criminal justice process in the United States. These models, which were developed in 1964 by Herbert L. Packer, are the due process model and the crime control model. We will see that there are strong advocates and opponents for both of these models and we will look at the positions of both. The chapter will also give a brief overview of the three components of the criminal justice system: the police, corrections, and the courts.
CHAPTER TWO

CHAPTER LEARNING OBJECTIVES

After reading this chapter you will be able to:

1. Understand the concept of justice as it applies to the criminal justice system in America.
2. Explain the notion of social justice and how it varies within the different societies in which we live.
3. Explain what the social contract is.
4. Compare and contrast the due process model and the crime control model.
5. List the basic components of the criminal justice system.

KEYWORDS

Justice
Social Justice
Society
Social Contract
Herbert L. Packer
Crime Control Model
Due Process Model
Police
Law Enforcement
Corrections
Jails
Prisons

THE CONCEPT OF JUSTICE

While the term justice can have a variety of meanings, for criminal justice it is best described as fundamental fairness. A discussion about the criminal justice system must start with a basic understanding of the term justice. Justice has come to have different meanings depending on how it is used and what it is associated with. The New Oxford American Dictionary defines justice as “the quality of being fair and reasonable.” Justice can also be described as fundamental fairness. Aristotle said that justice is equality for equals and wrote that: “Injustice arises when equals are treated unequally and also when
unequals are treated equally.” President Theodore Roosevelt gave a very good summary of the term justice when he said:

“No man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it.”

President Theodore Roosevelt—1903

What President Roosevelt was saying was that all persons, regardless of their status in society, are expected to obey all of the laws within our society. In order to have true justice, it must be administered fairly and equally to everyone.

Social justice is more of a concept than an actual occurrence. Social justice varies from society to society depending on the perception of what constitutes right from wrong within that society. Social justice can also change over time within the same society as the mores and moral values change. Since social justice deals with the fundamental notion of right and wrong as defined by a society, it can also vary within a society.

We all live in several different societies simultaneously, each with their own set of values. We all live in the global society of the world where the most basic values of right and wrong are universal. This would include such things as murder and the stealing of property that belongs to others. We also live in the society of the United States, which is one of the most multi-cultural societies in the world. Since our country is represented by so many different cultural and ethnic backgrounds, it can arguably be said that we cannot come to a consensus on very many important issues. The federal government, through our legislative branch (the House of Representatives and the Senate), makes the criminal laws that affect everyone in the country. These laws, at least theoretically, reflect a consensus of the moral values of all of our citizens because they are written by elected officials who represent the populace. The moral values of the country change over time and are reflected by changes in our laws. It should be noted that the values of individual political parties have a direct influence on the types of laws that are passed, but again, the party in power changes as the values of the country change and new representatives are elected.

We also live within the society of the individual State that we reside in. Although the overall

Social Justice
The concept of social justice varies from society to society and deals with the perception of what constitutes right from wrong within that society.

Society
A society is a structured group of people with similar traits (traditions, culture, nationality, moral values). We all live in several different societies at the same time.
moral values of each state generally reflect the values of the United States as a whole, there are distinctive differences that can be found. What may be legal in one state may be illegal in another. Marijuana laws are one example of this concept because they vary tremendously in different parts of the country. Possession of small amounts of marijuana is legal in some states, a citation offense in some, a misdemeanor in others, and is still a felony in several. The consensus of the citizens within each state is what motivates differences in the laws. Another example of how moral values can vary from state to state would be the State of Nevada. Nevada is the only state that allows for legalized prostitution in the form of brothels in some parts of the state. All of the other forty-nine states have laws making all forms of prostitution illegal.

The smaller the society that we are a part of, the more agreement there is in relation to our moral values. The society of our local community is more harmonized as to our moral values than the larger societies, and local laws reflect this consistency. The smallest society that we are a part of is the most influential and generally the most cohesive when it comes to our moral values. This is the society of our family. The family is where we shape our individual values and they are influenced by the way we are raised. Our overall perception of what constitutes right and wrong is fashioned and reinforced by our parents or guardians as we grow up. While these values can change over time, they influence the decisions we make throughout our lives and ultimately become an integral part of the larger societies that we become a component of.
Introduction to the Justice System

To summarize, we can see that the notion of justice in the United States is greatly influenced by the diverse ideals that make up the social justice concepts within the various societies that we live. It is therefore critical that our criminal justice system remain fluid and adaptable to keep up with the changes that take place within the different levels of the societies in which we all live.

Social Contract

The term social contract refers to an implied agreement between citizens and their government as a way of maintaining social order. The people make a trade-off by giving up some of their rights to a government in return for being able to benefit from a greater social order. The concept of the social contract provides the rationale behind the historically important notion that legitimate state authority must be derived from the consent of the governed. To put this in simple terms, the concept of social justice means that all of the citizens of a society agree to allow...
the government to represent them and to make the laws of that society. In return, each citizen is expected to obey those laws in order to obtain the benefits provided by the formation of social structures.

The government establishes laws that represent the norms of the society, and any person who violates any of these laws violates the social contract and must be punished in order to restore order.

Due Process vs. Crime Control

In 1964, Herbert L. Packer published a paper entitled “Two Models of the Criminal Process.” This paper has become a standard among criminal justice scholars and students in the debate over the best way to control crime and criminals within our society. The two models are called the “crime control model” and the “due process model.” The crime control model is based on the proposition that crime must be controlled at all costs in order to have a safe society. Packer says of this model that: “The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human freedom.” The due process model is based on the proposition that crime must be controlled at all costs in order to have a safe society. Packer says of this model that: “The failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human freedom.” The due process model is designed to protect the rights of the individual who is accused of a crime and make sure that all legal resources and protections are available and utilized. These rights and protections are designed to present a formidable obstacle to the government and the criminal justice system when trying to prosecute those charged with a criminal act.

The basic premise of the crime control model is speed and efficiency. This model says that it is more important to protect society as a whole against the injury caused by criminals than to protect the single person who committed that injury. Society must be able to live in safety and in order to do this we must effectively
and efficiently rid the country of those who commit crimes. Packer said that in the crime control model, “all of the components of the criminal justice system must work together to increase the capacity to apprehend, try, convict, and dispose of a high proportion of criminal offenders whose offenses become known.”

The crime control model suggests that our system of justice can be sped up, and therefore become more efficient, by determining early in the process who is probably guilty and who is not. If an accused person is determined to be innocent, they can be weeded out of the system early. Those that appear to be guilty can then be pushed through the system with a limited amount of procedural delays. The ultimate goal is to obtain the adjudication of guilt as quickly as possible so that the proper form of punishment can be implemented and society can be made safer.

The crime control model is likened to an assembly line because speed and efficiency are the key components of this model. The due process model is compared more to an obstacle course because the system is designed to present formidable impediments at every stage of the process. This model says that the individual is more important than the many. It is more important to protect the rights of the accused than to protect the interests of society as a whole. The criminal justice system is a system of man and man is not perfect, mistakes can and are made in the process of justice and the accused must be protected against these mistakes. This model is based on the premise that the constitution guarantees all citizens the right to due process and this and all of the rights enumerated in the Bill of Rights will be fully complied with in every instance.

Due Process Model

This model is designed to protect the rights of the individual who is accused of a crime and make sure that all legal resources and protections are available and utilized. In this model the rights of the accused outweigh the rights of the many (society).
Chapter Two

The due process model says that even if a person appears to be guilty, the system is designed to safeguard the integrity of the justice process. To give explanation to this premise let us look at the following hypothetical scenario. The police are dispatched to a location where shots have been fired. The first officer on the scene sees a body on the ground lying in a pool of blood. There is a man standing over the body with a gun in his hand and several witnesses shouting that the man with the gun had just shot the victim. The man puts down the gun and tells the officer that he just shot the victim. The officer places the man in handcuffs and arrests him for murder. Witness statements are taken and the man is taken to jail and booked.

The above hypothetical situation could make a reasonable person come to the conclusion that there would be a strong presumption that the man arrested is guilty of the crime of murder. Proponents of the crime control model would say that this is a perfect case for bypassing many of the procedural requirements of the criminal justice system and swiftly adjudicate the accused and apply the appropriate criminal sanctions without any unnecessary delay. Proponents of the due process model, however, would say wait a minute, we need to slow down. The appearance of guilt is not sufficient to speed up the process; there are too many legal variables that have to be considered. Only an impartial tribunal can be trusted to make determinations of legal as opposed to factual guilt. Herbert Packer stated it best when he explained that: “the tribunal that convicts him must have the power to deal with his kind of case (“jurisdiction”) and must be geographically appropriate (“venue”); too long a time must not have elapsed since the offense was committed (“statute
of limitations”); he must not have been previously convicted or acquitted of the same or a substantially similar offense (“double jeopardy”); he must not fall within a category of persons, such as children or the insane, who are legally immune to conviction (“criminal responsibility”); and so on. None of these requirements has anything to do with the factual question of whether the person did or did not engage in the conduct that is charged as the offense against him; yet favorable answers to any of them will mean that he is legally innocent.”

The due process model protects the criminally accused against the overwhelming power of the government that is charged with prosecuting the cases. Due process insures all citizens that this immense power is neutralized so that they can compete fairly within the justice system. The crime control model wants to streamline the system so that those who deviate from society’s norms and values are dealt with swiftly in order to protect those that are law abiding.

It would appear that these two models of justice, each with their seemingly competing ideologies, could never come together to form a consensus system of justice. The reality of this is that they actually do. Our criminal justice system is in a constant state of change, and components of each system manage to influence the philosophy that guides justice within our society.

The Components of the Criminal Justice System

The criminal justice system of the United States consists of three major components or functions: the police, corrections, and the courts (judicial). There are numerous subcomponents of the system, each of which falls under one of the three main categories. These subcomponents include such things as parole, probation, juvenile justice, and others that will be addressed separately later.

The system also works on three different governmental levels. We have one federal system, fifty different state systems, and thousands of individual local systems. Local governments spent more on criminal justice direct expenditures than the states or the federal government. Direct expenditures for each of the three major criminal justice functions have increased steadily since 1982. In fiscal year 2006, federal, state, and local governments spent an estimated $214 billion for police protection, corrections, and judicial and legal activities. State and local justice accounts for a majority of the cost of the criminal justice system with expenditures of $178 billion of the $214 billion spent. To put these costs into perspective, the total monies spent on federal, state, and local justice cost everyone in the United States about $729 per person in 2006. This was about a 9 percent increase from the $669 per person cost a decade earlier in 1997.
Nationally, there were approximately 2.4 million people employed in the justice system working at the federal, state, and local levels in 2006. The overall growth in the criminal justice system remained relatively stable during the decade between 1997 and 2006. The economy since 2008 has had a slightly negative impact on employment in the justice system, but history has shown that this will correct itself over a short period of time. Overall, employment in the criminal justice system has remained stable during tough economic times.

**POLICE**

The largest component of the criminal justice system, both in terms of employment and overall expenditures, is that of the police. The Bureau of Labor Statistics estimated that there were 883,600 sworn law enforcement officers employed in the police departments (at all levels) are the largest and most visible component of the Criminal Justice System and operate under the Executive Branch of government. Police are tasked with the job of enforcing the criminal laws within their jurisdiction.
United States in 2008. Approximately 76 percent of these employees, which includes both civilian and sworn positions, work for police protection at the local level. The federal government accounts for about 14 percent of the employees and the remaining 9.2 percent work for state police protection agencies. About $98 billion was spent on police services at every level during 2006.

“Law enforcement” is the term that describes the individuals and agencies responsible for enforcing laws and maintaining public order and public safety. Law enforcement includes the prevention, detection, and investigation of crime; and the apprehension and detention of individuals suspected of law violation.

There are over 17,000 different law enforcement agencies in the United States. Most of these agencies operate at the local level, which includes cities and counties. There are a wide variety of specialized police agencies which include: school police, campus police, park police, transit police, bailiffs, marshals, and sheriffs, just to name a few. A detailed discussion about law enforcement and the specialties associated with them will be presented in Chapter 4 of this text.

CORRECTIONS

The correctional component of the criminal justice system is responsible for overseeing those individuals who have been arrested and are awaiting trial, as well as those who have been convicted of a crime and are sentenced to serve time. Corrections include both jails and prisons. Jails are usually local facilities that serve several different functions. When a person is arrested for a crime, they are taken to a jail facility to be processed (booked) and held until they can make bail or see a judge or magistrate. These people have not been convicted of a crime and...
Prisons are long term facilities that are operated by state and federal governments and hold prisoners who have been convicted of felony crimes.

COURTS

The court system in the United States (part of the judicial system), is comprised of many different types of courts: criminal, civil, administrative, and a variety of specialized courts, as well as our appellate courts.

Therefore are presumed innocent; however, they can be held in the jail facility until they are tried for the crime they are accused of. Jails are also used to house those persons who have been found guilty of lesser crimes (misdemeanors and ordinance charges) and have been sentenced to a term of incarceration.

**Prisons** differ from jails in several respects. Prisons are operated by the various states or by the federal government, not by local governments. Prisons are used to house persons who have been convicted of felonies and are serving a sentence of incarceration of over one year.

The jail population changes constantly as prisoners are released, make bail, or are convicted and transferred to prisons to serve their sentence. New offenders are also arrested and booked and enter the system. Jail facilities in the United States admit and process about thirteen million people a year with almost 800,000 offenders in our jail facilities at any given time. Our state and federal prisons house approximately 1.6 million offenders at any given time.

Expenditures for our correctional system total about $68 billion a year for all levels of government in 2006. In 2008, there were about 495,000 correctional officers and jailers employed in the United States. Of these employees, about 61 percent served at the state level, about 33 percent served at the local level and about 4 percent at the federal level. A detailed discussion of the correctional system will be presented in Chapter 10 of this text.

**COURTS**

The judicial component of the criminal justice system is comprised of the courts. Like the other parts of the system, the courts operate on the federal, state, and local levels. The court system in the United States is comprised of many different types of courts: criminal, civil, administrative, and a variety of specialized courts. The court system also includes all of the various appellate courts that function on both the federal and state levels.

The criminal courts in the United States handle the most cases within the judicial system, with over 80.9 million cases handled in 2008. This is compared to the 10.8 million civil cases that were handled in the same time period. The cases brought into our court system are broken down in the following charts.

**Criminal Cases:**

The expenditures for our court system total over $46 billion per year which is the lowest total amount spent for any of the three components of the criminal justice system. Over half (54 percent) of employees working in judicial and legal capacities served at the local level of government, 34 percent at the state level, and 11 percent at the federal level.
OVER 21 MILLION CRIMINAL CASES WERE REPORTED IN 2008

Though aggregate criminal caseloads have traditionally exceeded devil caseloads by a wide margin, the recent flat trend in criminal case filings has allowed increasing civil caseloads to catch up; there are now less than 2 million cases separating criminal and civil caseloads. The effect of the economy on criminal cases is not clearly known, but according to the FBI, the number of arrests has fallen slightly in each of the last four years.

Total incoming cases in state courts, by jurisdiction, 2008 (in millions)

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>CASE CATEGORIES</th>
<th>UNIFIED</th>
<th>GENERAL</th>
<th>UNTITLED &amp; GENERAL</th>
<th>LIMITED</th>
<th>TOTAL</th>
<th>PERCENT OF TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic/violations</td>
<td>12.1</td>
<td>1.9</td>
<td>14.1</td>
<td>48.5</td>
<td>57.5</td>
<td>54.3%</td>
<td></td>
</tr>
<tr>
<td>Criminal</td>
<td>3.2</td>
<td>3.3</td>
<td>6.6</td>
<td>14.7</td>
<td>21.3</td>
<td>20.1%</td>
<td></td>
</tr>
<tr>
<td>Civil</td>
<td>3.5</td>
<td>5.2</td>
<td>8.7</td>
<td>10.8</td>
<td>19.4</td>
<td>18.3%</td>
<td></td>
</tr>
<tr>
<td>Domestic relations</td>
<td>1.0</td>
<td>3.1</td>
<td>4.1</td>
<td>1.6</td>
<td>5.7</td>
<td>5.4%</td>
<td></td>
</tr>
<tr>
<td>Juvenile</td>
<td>0.4</td>
<td>1.0</td>
<td>1.4</td>
<td>0.7</td>
<td>2.1</td>
<td>2.0%</td>
<td></td>
</tr>
<tr>
<td>All cases</td>
<td>20.2</td>
<td>14.5</td>
<td>34.7</td>
<td>71.3</td>
<td>106.0</td>
<td>100.0%</td>
<td></td>
</tr>
</tbody>
</table>

Note: Totals may not sum due to rounding.

OVER THE PAST DECADE, POPULATION-ADJUSTED CRIMINAL CASELOADS HAVE DECLINED SLIGHTLY

Incoming Criminal Caseloads in State Courts, 1999–2008

Incoming Misdemeanor Cases +13%
Incoming Felony Cases +10%

Incoming Criminal Cases per 100,000 Population, 1999–2008

Incoming Criminal Cases ~2%
NOTES

CHAPTER 2

7 Ibid.
8 Ibid.
9 As stated in the Fifth, Sixth, and Fourteenth Amendments.
13 Ibid.
16 Ibid.
17 It should be noted that there are prisons that are operated under contract with the various states and the federal government. Chapter 10 will discuss private prisons in more detail.
21 The court system will be discussed in detail in Chapter 8 of this text.
REVIEW QUESTIONS:

1. ___________ can be referred to as fundamental fairness.

2. The concept of ___________ ___________ changes over time as the moral values of a society change.

3. The implied agreement between citizens and their government as a way of maintaining social order is called the ___________ ___________.

4. “Two Models of the Criminal Justice Process” was written by ___________ ___________.

5. The basic premise of the ___________ ___________ model is speed and efficiency.

6. The ___________ ___________ model has been compared to an obstacle course.

7. There are ___________ main components of the criminal justice system.

8. The ___________ component of the criminal justice system has the largest yearly expenditure.

9. Persons housed in a ___________ have been convicted of a felony and are serving a sentence of incarceration of over one year.

10. When a person is arrested, they are taken to a ___________ to be processed and booked.

CRITICAL THINKING QUESTIONS:

1. How have the moral values in the United States changed over the past two hundred years and how have these changes affected our laws?

2. Discuss how the laws in your local community may be different from those in other communities around the state or the country.

3. Select either the Due Process Model or the Crime Control Model and give the reasons why you think that model should be adopted as the sole basis of the criminal justice system in the United States.

4. Discuss why there are over twenty-one million criminal cases processed in the United States every year. Why is this number so high? What can we do to reduce this massive caseload?