Fear Cannot Curtail Civil Rights
The free speech rights of beggars must be balanced against public safety.

Criminal Justice versus Social Justice
The criminal justice system must protect the civil rights of those who protest social injustice.

Safeguarding Civil Rights
At times, the criminal justice system finds itself in unusual situations in protecting the civil rights of citizens.

Checks and Balances
Despite its many checks and balances, errors and injustices occur in the criminal justice system.

Fear Cannot Curtail Civil Rights
The free speech rights of beggars must be balanced against public safety.

Responding to Cultural Diversity
Today’s criminal justice system must accommodate many diverse cultural, ethical, and moral beliefs.
Criminal justice is a social institution and a system. As a social institution, the system attempts to meet society’s needs for law and order. In the United States, law and order must be won without unwarranted violations of civil liberties and civil rights. As a system, criminal justice depends on due process involving the police, the courts, and corrections at the federal, state, and local levels. Due process is provided through procedural laws with the goal of obtaining justice that is accurate, timely, fair, and humane. Criminal justice also is an academic discipline with a history, a future, and career paths for people who wish to provide public service. This service is built on definitions of crime, the gathering of crime data, and the development of criminal justice agencies and programs.
CHAPTER OUTLINE

Introduction: The Need to Maintain Law and Order, 4
Rioting and Crime in the 1960s and 1970s, 5
   Civil Rights and War Protests, 6
   The War on Crime, 7
   Omnibus Crime Control and Safe Streets Act of 1968, 7
The New Challenge: WTC 9/11, 8
Law and Order versus Individual Rights, 9
   The Balance between Individual Rights and the Power of Government, 10

Ethics in the System: Sweat Lodges for Murderers and Rapists, 13
Criminal Justice as an Academic Discipline, 14
Diversity in the System: Criminal Justice versus Social Justice, 15
   Criminal Justice and Higher Education, 16
Criminal Justice in the World: Cross-Cultural Perspectives on Criminal Justice, 17
   Careers in Criminal Justice, 18
Conclusion: A New Future for Criminal Justice, 19
LEARNING OBJECTIVES

After reading this chapter, you will know

- The three phenomena of the 1960s and 1970s that stirred interest and led to changes in the criminal justice system.
- The key issues surrounding the need to balance the maintenance of order and individual rights.
- How the study of criminal justice became a major academic pursuit.

Protest against Ohio Neo-Nazi March Turns Violent

TOLEDO, OHIO (AP)—A crowd that gathered to protest a white supremacists’ march Saturday turned violent, throwing baseball-sized rocks at police, vandalizing vehicles and stores, and setting fire to a neighborhood bar, authorities said.

At least two dozen members of the National Socialist Movement, which calls itself “America’s Nazi Party,” had gathered at a city park to march under police protection. Organizers said they were demonstrating against black gangs they said were harassing white residents. Violence broke out about one-quarter of a mile away along the planned march route shortly before it was to begin.

For several hours, about 150 police officers chased bands of young men through the area. Officers wearing gas masks fired tear gas canisters and flash-bang devices designed to stun suspects, only to see the groups reform and resume throwing rocks and bottles. Finally, police marched shoulder-to-shoulder down the street shouting to people to stay inside, and the crowd of several hundred dispersed. At least two dozen people were arrested on charges including assault, vandalism, failure to obey police and failure to disperse. “We frankly could have made a couple hundred arrests easily,” he said.

The mayor had appealed to residents the night before to ignore the march. He said the city wouldn’t give the Nazi group a permit to march in the streets but couldn’t stop them from walking on the sidewalks like other citizens. When the rioting broke out, Ford tried to negotiate with those involved, but “they weren’t interested in that.” He said they were mostly “gang members who had real or imagined grievances and took it as an opportunity to speak in their own way.”

introduction:

The Need to Maintain Law and Order

Citizens of the United States have the right to free assembly and free speech but rights guaranteed by the U.S. Constitution may be restricted when those actions harm others. The members of the National Socialist Movement have the right to public assembly and the citizens of Toledo, Ohio, have the right to express their disapproval of what the National Socialist Movement stands for. However, when citizen actions become violent, authorities have a duty to stop the violence and to protect the community. When the mayor of Toledo was unable to negotiate with those opposed to the white supremacists’ march to achieve a peaceable rebuke, it was necessary to use force and to arrest those who committed the violence. Regardless of their motivation for violence, those arrested will be processed by the criminal justice system and if found guilty will be punished for their actions.

The criminal justice system plays an important role in a democratic society. In a large, diverse, and complex society the maintenance of law and order requires authorities who are empowered to restrict the liberties of citizens to use force to compel obedience of the law and to sanction those who disobey society’s laws. Yet, at the same time, citizens must be free to exercise the liberties guaranteed by the Constitution. Thus, the law must allow the reasonable exercise of freedoms when those actions do not cause harm to others. Balancing the exercise of civil liberties against the need for law and order is a difficult and complex mission. For example, the march in Toledo by approximately two dozen neo-Nazis resulted in rioting and violence; on the same weekend, however, a gathering on the Washington Mall of approximately 100,000, known as the Millions More Movement, concluded with no arrests and no violence. There were no arrests and no violence despite the fact that several groups had called for the boycotting of the event and speakers at the Millions More Movement accused President Bush of “drowning the...
people of New Orleans and sabotaging the levees,” accused government of selling out its citizens, and charged that “gangsters operate out of CIA headquarters.”¹ Despite these controversial charges, the large size of the crowd, and the potential for violence, police authorities said they experienced no problems.²

How does one balance the need for law and order with the need for the exercise of civil liberties? How does one decide what group gets to march, where and when? How are limits set as to what is permissible and what is illegal? The criminal justice system is important in answering these questions. The system is more complex and more important than most people understand. Often an individual’s understanding of the criminal justice system focuses on some personal aspect he or she has encountered, such as traffic enforcement. Some people get most or all of their information about the criminal justice system from the media. However, information obtained from the news media is often incomplete and the entertainment media usually provide an inaccurate and unrealistic portrayal of the criminal justice system.

The purpose of this text is to provide an overview and understanding of a very complex system composed of thousands of agencies and millions of people. Such a task requires a certain degree of generalization. Thus, the criminal justice system described may not reflect exactly the local or state criminal justice system where you live. It is necessary to understand the larger purposes and goals of the criminal justice system and to know about its history to comprehend this explanation. This chapter (1) examines significant events in the last half-century that have been extremely influential in the development of today’s criminal justice system, (2) discusses the role of the criminal justice system in balancing individual rights versus the power of government, and (3) discusses the criminal justice system as an academic discipline. The criminal justice system is commonly divided into three subcomponents: police, courts, and corrections. After this introductory chapter each of these subcomponents is discussed in detail.

Rioting and Crime in the 1960s and 1970s

1.1 Public awareness of safety issues in the 1960s made crime a government priority and led to legislation to improve the criminal justice system.

The mid-1940s is a good starting point for the study of the modern criminal justice system. Prior to World War II, the criminal justice system was dominated by political influences, there was little national attention focused on the criminal justice system, the federal agencies and federal government were not significant players, the crime rate was generally low, and for the most part any problems with the criminal justice system were perceived as problems concerning local administration, concerns, and reforms.

Even immediately after World War II, the criminal justice system did not rise to national prominence. A decade of prosperity followed the end of World War II, and crime and the criminal justice system were of little concern to the average citizen. For the most part, there were no academic departments of criminal justice at colleges and universities, because there was little interest or reward in studying the subject. Three phenomena stirred interest in the criminal justice system and led to its prominence as one of the most examined and criticized aspects of the government: (1) the civil rights movement, (2) the Vietnam War, and (3) the rising crime rate and the public’s increased awareness of
the pervasiveness of crime. In many respects, these three influences were interrelated and cumulative in their effect on the criminal justice system.

**Civil Rights and War Protests**

Protests against institutional racism and U.S. involvement in the Vietnam War posed major challenges to the criminal justice system. Prior to the Civil Rights Act of 1964, businesses, hotels, restaurants, and public transportation could and did refuse service with impunity to citizens of color. For example, in 1956, the University of Alabama expelled its first black student, Autherine Lucy, on the grounds that her presence was a threat to public order. In the South, blacks were frequently the victims of lynching, violence, and denial of public and private services. In Cicero, Illinois, when Harvey Clark, a black war veteran, tried to take up residence in the all-white town, a riot ensued. The building in which Clark had intended to live was plundered while the police looked on.

When citizens, both black and white, protested racial discrimination, they were often opposed by violence—even death. In 1961, when civil rights workers attempted to desegregate the bus stations and waiting rooms, the bus in which they were traveling was fire-bombed and the demonstrators were beaten. NAACP leader Medgar Evers was murdered, and, due to the complicity of the police in the crime, it took decades to bring his killer to justice. Civil rights protesters often feared not only the violence of the mob but also that of local law enforcement.

Rosa Parks in an act of civil disobedience challenged local laws that denied blacks equal rights in the use of public transportation. Her arrest initiated a boycott of public transportation resulting in integration of public transportation. At times the criminal justice system does not distinguish between criminal justice and social justice resulting in both civil disobedience and violence. Does social injustice justify civil disobedience? Is violence an appropriate response to social injustice? Should the criminal justice system take into account the motives of offenders protesting social injustice in arrest and punishment related to civil disobedience or violence? Dr. Martin Luther King Jr. said that civil disobedience in response to social injustice shows the highest respect for the law. Do you agree? Explain your answer.
Civil rights leader Martin Luther King Jr. promoted the tactic of civil disobedience, which also challenged the criminal justice system. King said, “I submit that an individual who breaks a law that conscience tells him is unjust and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law.” One of the most well-known examples of civil disobedience occurred in 1955 when Rosa Parks refused to move to the rear of the bus, as required by the law, and was arrested. Although King advocated nonviolence, there were many who rioted. Rioting during the 1960s caused millions of dollars in property damage, the injury of thousands of people, and the deaths of dozens.

Political protests against U.S. involvement in the Vietnam War also generated acrimonious conflict in which the police often were captured on film engaged in brutality against the protesters. For example, on the Kent State University campus in 1970, National Guard troops opened fire on unarmed student demonstrators, killing four and injuring many more.

During this period, the crime rate continued to climb, to the point that, according to a 1965 Gallup poll, Americans viewed crime as the most serious problem in the country. In 1968, 31 percent of Gallup survey respondents said they were afraid to walk in their own neighborhoods at night, and by the end of 1972, the number had risen to 42 percent. Many citizens thought the police were part of the cause, not the solution, to the rising crime rate. In one survey, citizens described the average police officer as being likely to disregard constitutional rights, as using convenient methods without conscience, and as a man selected on the bases of political considerations or physical qualities. In response to a survey of Newark citizens, black respondents selected the word brutal as best fitting the average police officer. The President’s Commission on Law Enforcement and Administration of Justice concluded that most people had lost confidence in the ability of the police to maintain law and order.

The War on Crime

The criminal justice system appeared to be failing. To counter the attack of crime and social disorder, on July 25, 1965, President Lyndon Johnson declared a War on Crime. He authorized a series of federal presidential commissions to study crime and justice in the United States and to recommend suggested reforms to restore public confidence. A study of the criminal justice system, with an eye on reform, was a great challenge, and many people thought the task impossible. The American Bar Association declared that the criminal justice system in America was, in reality, a “nonsystem.”

The findings of the President’s Crime Commission concluded that fear of crime had eroded the basic quality of life for many Americans. It also recognized the importance of crime prevention, as opposed to crime fighting, and the necessity of eliminating injustices in the criminal justice system. To win the war on crime, the commission called for the development of a broad range of services in response to the crime problem, strategies to attract better-quality personnel at all levels of the criminal justice system, research into the problems of crime and criminal administration, greater resources at all levels of the system, and much greater community and civil involvement.

Omnibus Crime Control and Safe Streets Act of 1968

In response to recommendations of the President’s Crime Commission and demands from the public, substantial resources were added to the criminal justice system. For example, to attract better-qualified personnel, the police had to increase salaries; as a result, policing costs skyrocketed in major cities. To help defray these costs, local and state governments sought assistance from the federal government, whose response was to pass the Omnibus Crime Control and Safe Streets Act of 1968. This act is a watershed in criminal justice history in the United States, as it is the point of origin from which major changes in the criminal justice system were derived.
The Omnibus Crime Control and Safe Streets Act of 1968 attempted to counter restrictions imposed on law enforcement by the U.S. Supreme Court. It also created the Law Enforcement Assistance Administration (LEAA) and the Law Enforcement Educational Program (LEEP). The LEAA acted as a conduit for transfer of federal funds to state and local law enforcement agencies. However, these funds were not without “strings.”

The LEAA appointed the National Commission on Criminal Justice Standards and Goals, which had the purpose of formulating specific standards and goals for police, courts, corrections, juvenile justice, and crime prevention. To receive the generous funds available from the federal government that were dispersed by the LEAA, local and state agencies had to show that they had implemented the commission’s standards and goals. Many of the advances made within law enforcement agencies were a result of compliance with standards and goals necessary to qualify for federal funds.

The Law Enforcement Educational Program (LEEP) was a branch of the LEAA. The goal of LEEP was to promote education among criminal justice personnel. The program was directly responsible for the drastic increase in education for police officers. The LEEP grants and loans paid the tuitions of criminal justice personnel (other than attorneys) and students who promised to enter criminal justice after graduation (other than as an attorney). The impact of this funding was significant. In 1966, there were 184 programs offering criminology or criminal justice courses. By 1978, that figure rose to over 1,000 colleges and universities offering degrees ranging from associate to doctorate levels. At its peak in 1975, LEEP funded the education of 100,000 students and spent $40 million on criminal justice education.

After massive amounts of federal assistance, numerous reform efforts, and the adoption of innovative strategies by the police, courts, and corrections, public confidence in the criminal justice system was restored and the crime rate dropped. People felt safe to go out in public again. Residents of large cities reported that they felt safe using public transportation. Violent crime rates for nearly all categories dropped. Local and state governments found equilibrium in funding the criminal justice system and the other needs of government. Things were looking up for public confidence in the criminal justice system until September 11, 2001 (or WTC 9/11, as the event came to be known).

### The New Challenge: WTC 9/11

The September 11, 2001, terrorist attacks against the United States led the federal government to expand antiterrorism policies and programs and stimulated new debates on how to balance the ideals of public safety and civil liberty.

In his address to the nation on September 20, 2001, following the September 11 attacks on the World Trade Center and the Pentagon, President George Bush declared, “Freedom itself is under attack…. Freedom and fear are at war…. Terror unanswered
cannot only bring down buildings, it can threaten the stability of legitimate governments…. The only way to eliminate terrorism is to stop it, eliminate it, and destroy it where it grows.”

Domestic strife caused the crisis of confidence in the 1960s and 1970s, but the crisis in the twenty-first century was caused by a foreign attack on the United States. Just as President Johnson declared a war on crime, President Bush declared War on Terrorism.

In the first crisis of confidence, as you have read, President Johnson appointed a series of presidential commissions to study crime, and Congress created the LEAA and passed the Omnibus Crime Control and Safe Streets Acts of 1968. In the second crisis, President Bush appointed a new Cabinet position—Office of Homeland Security—to coordinate the antiterrorism activities among federal law enforcement and intelligence agencies. As in the first crisis, the attack on the WTC led to a call for greater police powers, including expanded authorization for wiretaps, expanded powers of search and seizure, and expanded powers to detain foreign nationals. Billions of dollars were added to the budgets of criminal justice agencies in the effort to restore public confidence, including confidence in the ability of the government to protect its citizens.

When people lose confidence, the news media demand answers: What went wrong and why? How can it be fixed? Will it happen again? Whose fault was it? The War on Terrorism raises new questions: (1) What shall be the balance between individual rights and the powers of the government? (2) What shall be the role of the criminal justice system, particularly the police? and (3) How will we know when we are winning that war, or the affects of the government’s actions on civil liberties?

Legitimate government depends on the effective operation of the criminal justice system. Citizens have granted the criminal justice system great powers, including the power of life and death. Thus, criminal justice is a much more complex endeavor than simply enforcing the law or waging a war on crime, drugs, or terrorism. When challenged with a choice between safety and liberty, people often choose safety over liberty. The War on Terrorism poses one of the most serious threats since the 1960s to the balance between safety and liberty.

check your understanding 1.2 In what ways did the government act similarly in the War on Crime and the War on Terrorism? How was the reaction to the War on Terrorism different? How does loss of public confidence in public safety affect the criminal justice system?

Law and Order versus Individual Rights

the main idea 1.3 The rights of individuals in the United States are limited by the need to maintain social order, while the powers of government are limited by the principles stated in the U.S. Constitution.

Democratic governments promote the value of freedom but must place limits on individual freedoms. Actions that would cause alarm or harm are prohibited for the common good. Thus, one has freedom of speech, but the Supreme Court has ruled that this does not give one the freedom to shout “Fire” in a crowded theater, where such a false alarm could result in the harm of others.

This concept of limiting freedom for the common good is very old. For example, the Greek philosopher Aristotle argued that it was necessary that people be governed by law due to their inability to govern themselves (1) because of a tendency to react to fear and emotion rather than reason and (2) because people are subject to corruption.
In the United States, it is argued that individual freedom is limited (1) to ensure order within society, (2) to protect citizens from one another, and (3) to promote the common welfare. Society uses several means to achieve these goals, including informal and formal sanctions. **Informal sanctions** include social norms that are enforced through the social forces of the family, school, government, and religion. These social institutions teach people what is expected for normative behavior. In addition to teaching normative behavior, these primary social institutions also provide punishment when people violate **social norms**. In the informal system, parents punish children for disobedience, bosses reprimand employees, teachers discipline students, and religious groups call on offenders to repent for their sins.

Social order and the common welfare also are promoted through use of **formal sanctions** (such as laws) found within the criminal justice system. Frequently, the informal and formal systems of order maintenance overlap. For example, it is immoral, according to some people, to be naked in public. Also, in most places, it is **illegal** to be naked in public. It is considered wrong to steal or to hurt other people, and it is also **illegal** to do these things.

For the most part, people conform to the rules of society, including both formal and informal rules. However, when someone breaks the rules of society, the system responds. Formal sanctions are carried out by the criminal justice system. In the United States, the **criminal justice system** is based on the enforcement of obedience to laws by the police, the courts, and correctional institutions. When group and society norms are codified into law, government has the power to compel obedience to the rule on pain of punishment, including death.

The more homogeneous and stable the people and their belief systems, the fewer the violations of social norms. In a homogeneous, stable society with a common belief system, there is less need for reliance on a formal **system of social control** to maintain order and regulate interactions. Social control systems operate most effectively and efficiently where there is constant and unified, overt and covert, cultural and social support from all control agencies. When this support is consistently reflected in all social control agencies and value systems of a society, people tend to conform, and they regulate their interactions rather than depend on external force and threats of punishment to abide by the social contract. However, contemporary U.S. society is not characterized by a homogeneous and stable group of people with a common belief system. Rather, the United States is characterized by great diversity in race, religion, ethnicity, and values.

The criminal justice system has assumed an important central role in **order maintenance**. For the most part, people would prefer to go about their everyday business without giving much thought to the criminal justice system. Citizens seem to prefer an invisible criminal justice system—a criminal justice system that does not intrude into day-to-day life but devotes its time to chasing “bad guys” and leaves “ordinary” citizens alone. Nevertheless, the criminal justice system is an important part of conflict resolution, crime prevention, order maintenance, and the preservation of individual liberties.

### The Balance between Individual Rights and the Power of Government

In *Two Treaties of Government* (1690), philosopher John Locke argued that all human beings are endowed with what he called “natural rights.” These rights are given to people by a power higher than government, and people cannot be deprived of them. Governments exist, according to Locke, to serve individuals. People surrender certain rights with the understanding that they will receive as much, or more, in other benefits, such as safety, order, and preservation of property rights. Locke said that the purpose of government is to regulate and preserve property and to employ the force of the community in the execution of laws and in the defense of the commonwealth from foreign...
Locke conceded that the government must have the power of physical force to protect people and their property from the physical violations of others. However, this power was to be balanced against the need to preserve individual liberty.

John Locke’s philosophies had a great influence on Thomas Jefferson when he drafted the Declaration of Independence. This document declares that people have unalienable rights given to them by their Creator. These rights include life, liberty, and the pursuit of happiness. It states that government derives its power from the consent of the governed and that “whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”

The Constitution of the United States of America reflected a distrust of a strong centralized government. The new government defined in the Constitution consisted of three independent branches: the executive, the legislative, and the judicial. The Constitution divided power among these three branches of government and provided checks and balances. It set up a federal court system and gave power to the states to set up court systems as they deemed appropriate. The original ten amendments, called the Bill of Rights, were added to the Constitution in 1791. The Bill of Rights delineated certain guaranteed freedoms of citizens, such as trial by jury, freedom of speech, and the right to be secure in one’s home from unreasonable search and seizure (see Figure 1.1). Originally, the Bill of Rights applied only to actions of the federal government. However, the U.S. Supreme Court has used the due process clause of the Fourteenth Amendment to extend many of the rights to protect individuals against action by the states.

One of the principles on which the United States was founded—as expressed by John Locke, Thomas Jefferson, and John Stuart Mill and the Bill of Rights—was that citizens have certain inalienable rights or rights that cannot be taken away even if citizens consent to losing these rights. One of the most basic of these rights is the right of freedom of speech guaranteed by the First Amendment. However, the Supreme Court has ruled that this right can be restricted when the exercise of this right causes harm to others. A wave of patriotism following the September 11, 2001, attacks has resulted in several bills to amend the Constitution to prohibit flag burning. Why do you favor or oppose this prohibition?
The Bill of Rights

<table>
<thead>
<tr>
<th>Amendment I</th>
<th>Amendment II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.</td>
<td>A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment III</th>
<th>Amendment IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.</td>
<td>The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment V</th>
<th>Amendment VI</th>
</tr>
</thead>
<tbody>
<tr>
<td>No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.</td>
<td>In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment VII</th>
<th>Amendment VIII</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.</td>
<td>Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment IX</th>
<th>Amendment X</th>
</tr>
</thead>
<tbody>
<tr>
<td>The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.</td>
<td>The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.</td>
</tr>
</tbody>
</table>

*The first ten amendments were passed by Congress on September 25, 1789, and were ratified on December 15, 1791.*

Compared with today’s government, the state and federal government of the late 1700s intruded only minimally into the day-to-day life of its citizens. There were no full-time municipal police, no federal or state income taxes, only two federal law enforcement agencies (U.S. Marshall’s Office and Office of Postal Inspector), and few federal and state crimes defined by law. By comparison, today’s government has grown in complexity and intrusiveness into the day-to-day affairs of its citizens.
chapter 1  
Criminal Justice

ethics

Sweat Lodges for Murderers and Rapists

Why would two dozen murderers, rapists, and other felons wearing only shorts be sitting in the dark in a tent made of sticks and wool blankets in a Connecticut prison yard? They are participating in an Indian sweat lodge ritual. The United States Supreme Court has ruled that prison officials are required to provide inmates the right to participate in the religious practices of their choice while incarcerated. As a result of this ruling, inmates have pressed prison officials to find to what extent the inmates’ religious rights must be honored.

At what point does the need for security and control of prisoners outweigh the inmates’ religious rights? The Supreme Court has sided with prisoner religious rights in a number of odd cases, including the right to participate in Satan worship. One of the more interesting cases is the right of inmates to participate in traditional Indian sweat lodge ceremonies.

Regardless of whether they have or do not have Indian blood, the Supreme Court has ruled that prison officials must provide inmates the appropriate environment to conduct religious ceremonies involving the use of traditional sweat lodges. This environment includes a sweat lodge located on dirt, open fire, hot rocks, and the right to disrobe and sit inside the sweat lodge where it is dark and prison security cannot see them. Prison officials claim this environment poses many security concerns. Inmates could hide weapons in the dirt, the fire and rocks could be used as weapons, and prison authorities are uncomfortable with not being able to observe inmates while inside the sweat lodge. Despite these concerns, the Supreme Court has ruled that the inmates’ religious rights outweigh the security concerns of prison authorities.

The federal prison system allows Indian sweat lodges in all of its facilities that are not high-rise buildings, but many state prisons prohibit them. However, when prison officials deny inmates the right to build a sweat lodge, often the inmates file a lawsuit. Even New Jersey death row inmates have sued for the right to participate in traditional Indian sweat lodge ceremonies.

During the discussion of balancing individual liberties against government control many of you may have thought only of situations involving “ordinary” citizens who may have been denied “reasonable” exercise of freedoms by questionable laws and police practices. However, individual rights also extend to what some may consider extreme situations and people such as the religious rights of murderers and rapists in prison, the right of Larry Flynt of Hustler magazine to publish what some consider pornography, the right of political protesters to burn the American flag, and other actions considered offensive or outrageous by some.

What criteria should be used when deciding what the proper balance is between personal liberties and law and order? How can proper limitations be set for controversial situations such as political protest actions, inmates’ religious rights, and freedom of speech?

check your understanding 1.3  Why and in what ways is individual freedom limited in the United States? How do formal and informal sanctions help maintain order? What is the role of the criminal justice system in order maintenance? What rights were provided in the Constitution and in the Bill of Rights?

See “Criminal Justice” at www.aclu.org, the American Civil Liberties Union website.
Criminal Justice as an Academic Discipline

The field of criminal justice has evolved into a major academic discipline, which has benefited law enforcement, corrections, and related fields by having better-trained people for careers in criminal justice.

The study of criminal behavior can be traced to the earliest origins of civilization, but it was not until the mid-nineteenth century that a word was coined to describe this endeavor. In 1855, Italian law professor Raffaele Garofalo coined the term *criminologia*—the study of crime. In 1887, French anthropologist Paul Topinard used *criminologie* to refer to any scientific concern with the phenomenon of crime.

American sociologist Edwin Sutherland provided a definition of criminology that is widely used when referring to the study of crime by the various academic disciplines. He described criminology as “the body of knowledge regarding crime as a social phenomenon. It includes within its scope the process of making laws, of breaking laws, and of reacting toward the breaking of laws. . . . The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment or prevention.”

Criminology is different from the study of the criminal justice system. Criminal justice usually refers to the study of the processes involved in a system of justice, the people who perform these tasks, the scope and nature of the system, and the public right of freedom of religious worship while in prison by the U.S. Supreme Court. Guarantees of constitutional rights often extend into areas that “push the limits.” The U.S. Supreme Court often protects speech and actions that are unpopular or controversial. What guidelines should be used in deciding what constitutional rights should be protected? How should the U.S. Supreme Court balance the protection of rights against public safety? Are there areas where you think the U.S. Supreme Court has “gone too far” in protecting the rights of a few at the expense of the safety and values of the majority?
Chapter 1: Criminal Justice

Diversity in the System

Criminal Justice versus Social Justice

The Declaration of Independence declares that “all men are created equal.” The Fourteenth Amendment to the Constitution guarantees that the law will be applied equally to all citizens. It says, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Despite these guarantees, equality and social justice are not always practiced by government and society.

One of the most serious offenses against equality and social justice in the United States was the practice of vigilante justice known as lynching. Although lynching was common as early as the colonial period, its early use was mostly a form of extra-legal execution generally used against accused criminals. The term lynching was named for Colonel Charles Lynch, who used the practice during the American Revolutionary War to deal with Tories and criminal elements. After the American Civil War the victims of lynchings were primarily, but not exclusively, black. Black victims were lynched for various reasons, including “registering to vote, arguing with a white man, disrespect to a white woman, shoplifting, drunkenness, elopement, insults and refusing to give evidence, ... being obnoxious, disorderly conduct, insolence, suing white man [sic], vagrancy and unpopularity.” It is difficult to estimate the number of lynchings but one estimate is that there were 10,000 lynchings between 1878 and 1898.

Lynching involved far more than simply hanging the victim. Victims were often humiliated, tortured, burned, dismembered, castrated, beaten, whipped, and shot. It was not uncommon for the victim to be shot hundreds of times prior to being lynched. Lynching was often a public event. Photographs were taken of the event and sold afterwards. Sometimes the victim’s fingers and toes were cut off, his teeth pulled out by pliers, and he was castrated before the audience. Often these “souvenirs” would be sold. Victims would be lynched in public places and left hanging for people to see. Postcards were often made from the photographs of the lynching.

During the late nineteenth century and early twentieth century lynchings were carried out without fear of prosecution. The first recorded prosecution of a white man for punishment for a lynching was not until 1909 (U.S. v. Shipp, 214 U.S. 386,1909). In June 2005, the United States Senate issued a formal apology to victims of lynchings for its repeated failure, despite the requests of seven presidents, to enact a federal law to make lynching a crime. Those who participated in lynching did not fear the law or prosecution. Lynchings were often performed in front of crowds of thousands of people, yet no one was ever prosecuted. Often, the mob was led by local police or local police aided and abetted.

Press coverage of lynchings were typically unsympathetic to the victim. The tone of most articles implied support or at least passive acceptance of the vigilante justice. Lynchings have been described as “the most powerful machine of racism, violence and murder our nation has ever seen before or since.”

There were voices protesting the abridgement of human and constitutional rights. The National Association for the Advancement of Colored People (NAACP) was launched as an antilynching campaign, the New York Times, the Atlanta Constitution, and other newspapers denounced the practice of lynching in 1922. However, the law did not come to the aid of those subject to this terrorism. In the 1930s, legislation was proposed to make it a federal crime for any law enforcement officer to fail to exercise his responsibilities during a lynching incident. The legislation failed to gain enough votes to pass. As a result, blacks suffered grievously as local, state, and federal law enforcement turned a blind eye toward lynchings. Jim Crow laws and the ability of whites to inflict brutality and death on blacks without fear of punishment seemed to condone this racial violence.

Ideally, criminal justice and social justice reflect the same just principles and laws. In the perfect world what is legal would also be just. However, the criminal justice system has numerous examples where during certain periods of time the criminal justice system has failed various groups of people.

Think of a contemporary example where there is a gap between criminal justice and social justice. When the criminal justice system systematically fails to provide social justice to a class of people, what is the affect on society?
policy, laws, and regulations that shape the administration and outcomes of a criminal justice system. Criminology often includes the study of the criminal justice system, but the criminologist may focus more on theoretical investigations, such as who breaks the law, why people break the law, why people do not break the law, what motivates law breaking, and what discourages law breaking.

Criminology can be included in the study of criminal justice and vice versa. Because the academic discipline of sociology preceded that of criminal justice, the sociology departments of many colleges and universities offer criminology classes, even when the institution has a criminal justice major. However, many different scientific, professional, and academic disciplines contribute to the study of criminal justice, including biology, chemistry, criminology, forensics, law, medical science, neurology, political science, psychiatry, psychology, public administration, and sociology.

Criminology tends to focus on the development of principles, concepts, and theories, whereas criminal justice tends to focus on the processes of the criminal justice system. Criminology tends to focus on theories and research, whereas criminal justice tends to focus on criminal justice agencies and personnel, problem-solving, public policy, decision making, and career development. Both fields are eclectic disciplines that borrow research and theories from many related disciplines. Some of the earliest criminologists were medical doctors and psychiatrists, and many influential criminologists of the twentieth century were sociologists.

Criminal Justice and Higher Education

Few colleges and universities had a criminal justice department until the demand created by LEEP funding in the 1970s. The first academic departments of criminal justice drew on the contributions of fields such as sociology, political science, psychology, public administration, the sciences (for forensic science classes), communications, and math (for research classes). During the first 10 to 15 years following the advent of LEEP funding, criminal justice programs reflected great diversity in both content and academic quality. Departments had diverse names: Administration of Justice, Justice Studies, Crime Studies, Law Enforcement, and Center for Study of Crime. Widespread use of criminal justice as the field of study did not emerge until the late 1980s.

The academic curriculum of early criminal justice programs was strongly oriented toward applied knowledge rather than research and theoretical inquiry. Some college curriculums included courses such as report writing, self-defense, firearms, and first aid. These types of courses were clearly aimed at professional development for students expecting to enter the criminal justice field. Early programs focused primarily on law enforcement, and were sometimes derogatorily referred to by other academic disciplines as “cop schools.” Criminal justice majors were considered less academically qualified than majors in related fields such as political science, criminology, sociology, and psychology. This perception was not helped by the fact that colleges and universities frequently used police or corrections personnel who lacked advanced degrees as part-time instructors.

Currently, however, the study of criminal justice has a legitimate place in the academic and professional environment. The focus of this discipline is an examination of criminal justice agencies, personnel, and mission for the purposes of training, education, and research. In this role, criminal justice contributes to society, government, social order, and public service. Important contributions include the study of topics such as youth violence, drug crimes, organized crime, terrorism, victimization, law enforcement, corrections, and social policy aimed at crime prevention. Criminal justice research employs sophisticated statistical modeling to predict crime, and advances in science are applied to criminal justice practices. The War on Terrorism has expanded the academic discipline of criminal justice as many universities have added homeland security programs to their fields of academic study. Major universities have developed

See www.acjs.org/(Academy of Criminal Justice Sciences) and www.asc41.com (American Society of Criminology) for information on the mission of these professional organizations. Both organizations offer conferences, scholarly journals, scholarships, and awards.
June 17, 2005, as he tried to leave Armenia for Turkey with about 90 secondhand books he had purchased legally at bookstalls in the open-air market in Yerevan, the Armenian capital. The books were related to his dissertation research that focused on Turkish and Armenian nationalism from 1908 to 1938. Unbeknownst to Turkyilmaz, Armenia law prohibits the export of books older than 50 years without government permission. At his trial all of the booksellers who testified said they were either unaware of the law themselves or had not told Yektan about it. Despite this testimony and Turkyilmaz’s disclaimer that he was also ignorant of the law and had no criminal intent, he was convicted and could have received eight years in prison. He was given a two-year suspended sentence and allowed to leave Armenia. Not all encounters with foreign criminal justice systems are so dramatic, but many more Americans are more likely to have to deal with the criminal justice system of another country.

International cooperation in law enforcement is needed for public safety as well as for crime control. For example, pirates are still a major threat in many parts of the world, with hundreds of attacks on ships and crew members each year. Today, ships that are worth millions, even billions, of dollars have small unarmed crews that are easy targets for pirates. International challenges in law and order are one reason that U.S. law enforcement officers are recruited for overseas peacekeeping duties. In the 1990s, $15 million was spent recruiting thousands of American civilian law enforcement officers to serve with the International Police Task Force in Bosnia. Some recruits were offered as much as $100,000 to do so.

What are at least five reasons that the comparative study of criminal justice systems is so important? How can the U.S. criminal justice system benefit from knowledge of the criminal justice systems of other countries? Why is a cross-cultural perspective on criminal justice systems especially important in today’s world?
academic areas of study for researchers, engineers, and scientists in areas such as chemistry, biology, physics, mathematics, and public policy in response to the need for information to be prepared for possible terrorist attacks using biological, chemical, or nuclear weapons. In addition to studies in science, some universities have developed majors or certificate programs in homeland security.

**Careers in Criminal Justice**

A purpose of criminal justice departments in colleges and universities is to prepare students for public service through employment in the criminal justice system. In the late 1960s, Jerry Wilson, Chief of Police of Washington, DC, and member of the President’s Crime Commission, recommended that police officers model themselves on carpenters, plumbers, and the other so-called master craftsmen. He cautioned that police work would probably bore many college graduates and recommended against college education for police officers. Today, however, many police departments require that new employees have a bachelor’s degree or have completed some college coursework. The FBI will not accept applications from anyone with less than a bachelor’s degree and prefers applicants to have advanced degrees in fields such as law, economics, and computer science. The ranks of probation officers are comprised primarily of college graduates, and the norm for federal probation and parole officers is the master’s degree.

Criminal justice has become a much more open, complex, and technically sophisticated occupation than it was just 40 years ago. Affirmative action legislation opened the field to all qualified applicants of both sexes and all racial and ethnic backgrounds. In today’s criminal justice environment, formal education plays a vital role in job performance, promotions, and rewards. There are many diverse, rewarding, and challenging careers in criminal justice, and opportunities for employment can be found within local, county, state, federal, private, military, civilian, and international agencies. Careers span a wide range—from enforcement to courts to corrections. Teaching careers in criminal justice also are available in colleges and universities, law enforcement academies, and correctional institutions.

The study of criminal justice is distinct from the study of law, including criminal law. A student desiring a career as an attorney or judge may use the undergraduate degree in criminal justice to satisfy the baccalaureate admission requirements for entry into law school. Table 1.1 lists some of the many employment opportunities in criminal justice. In

### Table 1.1

<table>
<thead>
<tr>
<th>Law Enforcement</th>
<th>Courts</th>
<th>Corrections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patrol officer</td>
<td>Prosecuting attorney</td>
<td>Probation officer</td>
</tr>
<tr>
<td>Sheriff</td>
<td>Defense attorney</td>
<td>Parole officer</td>
</tr>
<tr>
<td>Detective</td>
<td>Judge or magistrate</td>
<td>Correctional officer</td>
</tr>
<tr>
<td>FBI agent</td>
<td>Bailiff</td>
<td>Warden</td>
</tr>
<tr>
<td>Game warden</td>
<td>Court clerk</td>
<td>Counselor</td>
</tr>
<tr>
<td>Juvenile officer</td>
<td>Court stenographer</td>
<td>Caseworker</td>
</tr>
<tr>
<td>Airport security</td>
<td>Court reporter</td>
<td>Recreation specialist</td>
</tr>
<tr>
<td>Crime laboratory technician</td>
<td>Victim advocate</td>
<td>Mental health worker</td>
</tr>
<tr>
<td>Dispatcher</td>
<td></td>
<td>Educator</td>
</tr>
</tbody>
</table>
addition, all branches of the criminal justice system hire civilian employees in the areas of human resources, training, administration, departmental support, and technical support.

An exciting development in the field of criminal justice is the growing interest in criminal justice systems of other countries, accompanied by greater interest in transnational crime and international criminal justice. At one time, obstacles such as language barriers, transportation expenses, and conflicting political ideologies made the study of foreign criminal justice systems difficult or impossible. Now, however, the criminal justice systems of countries such as China, Japan, and Russia can be studied. The United States has student, professional, and academic exchanges with other countries, and most criminal justice departments offer travel-abroad programs to those who wish to study the criminal justice system of another country.

check your understanding 1.4

What is criminology? What is the academic focus of the study of criminal justice?
What are the educational requirements for a career in law enforcement?

A New Future for Criminal Justice

The criminal justice system touches the lives of every one of us. At times, it is relatively invisible to the average citizen going about his or her day-to-day business. However, the criminal justice system plays an important role in safeguarding the freedoms and rights guaranteed by the government. In homogeneous and stable societies, behavior is often effectively controlled by informal institutions such as family, religion, and group norms. However, in large societies with diverse populations and conflicting values, formal institutions such as the police, courts, and corrections take on more importance in order maintenance.

Loss of confidence in the criminal justice system by the public can cause a crisis that may even threaten the survival of the government. An effective, efficient, and just criminal justice system is essential to the well-being of government, especially in a democracy. Because it is closely tied to social justice and fairness, an effective criminal justice system is much more than securing the absence of crime. The criminal justice system of the United States has had some ignoble moments in its history; however, one of its strengths is the ability to correct past mistakes and build a better system for the future. Ignorance of the criminal justice system is dangerous in that such allows the repetition of past mistakes and the perpetuation of serious problems.

When citizens fear that the criminal justice system is ill-prepared to respond to challenges such as civil unrest, rioting, runaway crime rates, or terrorism, the public wants to know what can be done to improve the capacity of the system to provide law and order. At these moments the criminal justice system often redefines itself as it appraises the adequacy of its personnel, policies, agencies, and resources. New laws are passed, new powers are granted to criminal justice agencies, new relationships are defined among the various agencies, and there is a shift in the balance of concern for personal liberty versus law and order. The criminal justice system of the twenty-first century offers an exciting view of the criminal justice system in transition. The latest challenge—the September 11, 2001, attacks—has resulted in significant changes and evolution. New agencies have
emerged, new powers have been given to the criminal justice agencies, and new relationships have been forged among agencies and between agencies and the public. For example, the Federal Bureau of Investigation has redefined its mission to emphasize responding to terrorism and the Department of Homeland Security is the largest federal law enforcement agency in the system. Thus, this book begins with basic questions such as what is the criminal justice system, and how is that system changing?

**chapter summary**

- Social order is maintained by both formal and informal means. The criminal justice system—the police, the courts, and corrections—is society’s way of formally dealing with order maintenance.
- Challenges that have redefined the U.S. criminal justice system are (1) the social unrest, rioting, and out-of-control crime rate of the 1960s and 1970s and (2) the threat of international terrorism following the September 11 attacks on the World Trade Center and the Pentagon and the subsequent bioterrorism launched against American seats of government.
- The challenge of the criminal justice system is to provide the maximum individual liberty for people while ensuring law and order.
- Criminal justice is a new academic discipline in higher education that developed in the 1960s and borrows from many related fields, including sociology and criminology.
- The study of the criminal justice systems of other countries is more important now than ever before.
- The criminal justice system is an increasingly significant source of employment for individuals with college credits and college degrees.

**vocabulary review**

<table>
<thead>
<tr>
<th>Term</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>criminal justice</td>
<td>14</td>
</tr>
<tr>
<td>criminal justice system</td>
<td>8</td>
</tr>
<tr>
<td>criminology</td>
<td>14</td>
</tr>
<tr>
<td>formal sanctions</td>
<td>10</td>
</tr>
<tr>
<td>informal sanctions</td>
<td>10</td>
</tr>
<tr>
<td>order maintenance</td>
<td>10</td>
</tr>
<tr>
<td>social norms</td>
<td>10</td>
</tr>
<tr>
<td>system of social control</td>
<td>10</td>
</tr>
</tbody>
</table>

**do you remember?**

- Academy of Criminal Justice Sciences (ACJS), 14
- American Society of Criminology (ASC), 14
- Bill of Rights, 11
- Law Enforcement Assistance Administration (LEAA), 8
- Law Enforcement Educational Program (LEEP), 8
- National Commission on Criminal Justice Standards and Goals, 8
- Omnibus Crime Control and Safe Streets Act of 1968, 7
- President’s Commission on Law Enforcement and Administration of Justice, 7
- September 11, 2001 (WTC 9/11), 8
- War on Crime, 7
- War on Terrorism, 9
1. Why is it important to balance civil liberties and law and order? What happens when there is an imbalance in the criminal justice system between these two important concepts?

2. What do the forces that challenged the public’s faith in and perception of the criminal justice system (e.g., the civil rights movement, the Vietnam War, a runaway crime rate, and terrorism) have in common? How is each of these different? What do you predict will be the next crisis to cause the public to question the adequacy of the criminal justice system to maintain law and order?

3. Is there a need for a new Constitution that would redefine the government’s powers and the civil liberties, given the new challenges that face government and the criminal justice system? Defend your answer.

4. How does education, particularly colleges and universities, influence the criminal justice system?

5. Do you think that more awareness of the differences in criminal justice system among countries would have any effect on how Americans view their criminal justice system, their expectations, and their assessment of law and order?

Go to the Research Navigator website (www.researchnavigator.com) and go to the ContentSelect box. Select the Criminal Justice database from the pull-down menu and enter the key words Beyond Community. Read the article “Beyond Community: Reactions to Crime and Disorder among Inner-City Residents” from the August 2003 issue of Criminology. This study applies a grounded theory approach to in-depth interviews and field observations with a group of disadvantaged urban residents, randomly selected from a sample of Chicago welfare recipients. Sample the article to answer the following questions.

1. How does fear of crime affect citizens?

2. Fear was an important factor in getting the public to accept greater police powers in the War on Crime and the War on Terrorism. Do you think the subjects in the study presented by this article would agree that greater police powers would make their neighbors safer?

3. The subjects of this study did not seem to think that the police, or the lack thereof, and the criminal justice system were a major factor in their fear of crime. Why do you think they placed such little importance upon the role of the police?