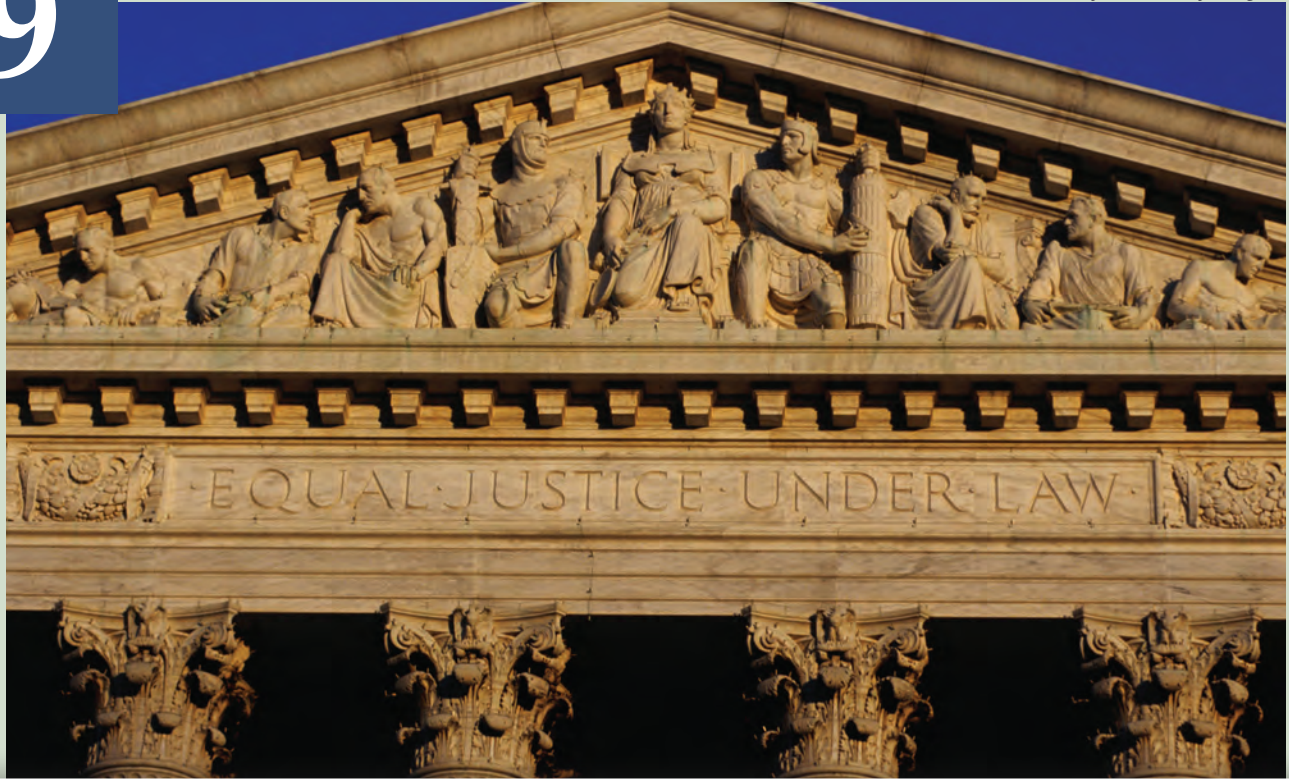




Using the Criminal Justice System to Create a More Just Society

Learning Objectives

After reading this chapter, you should be able to:

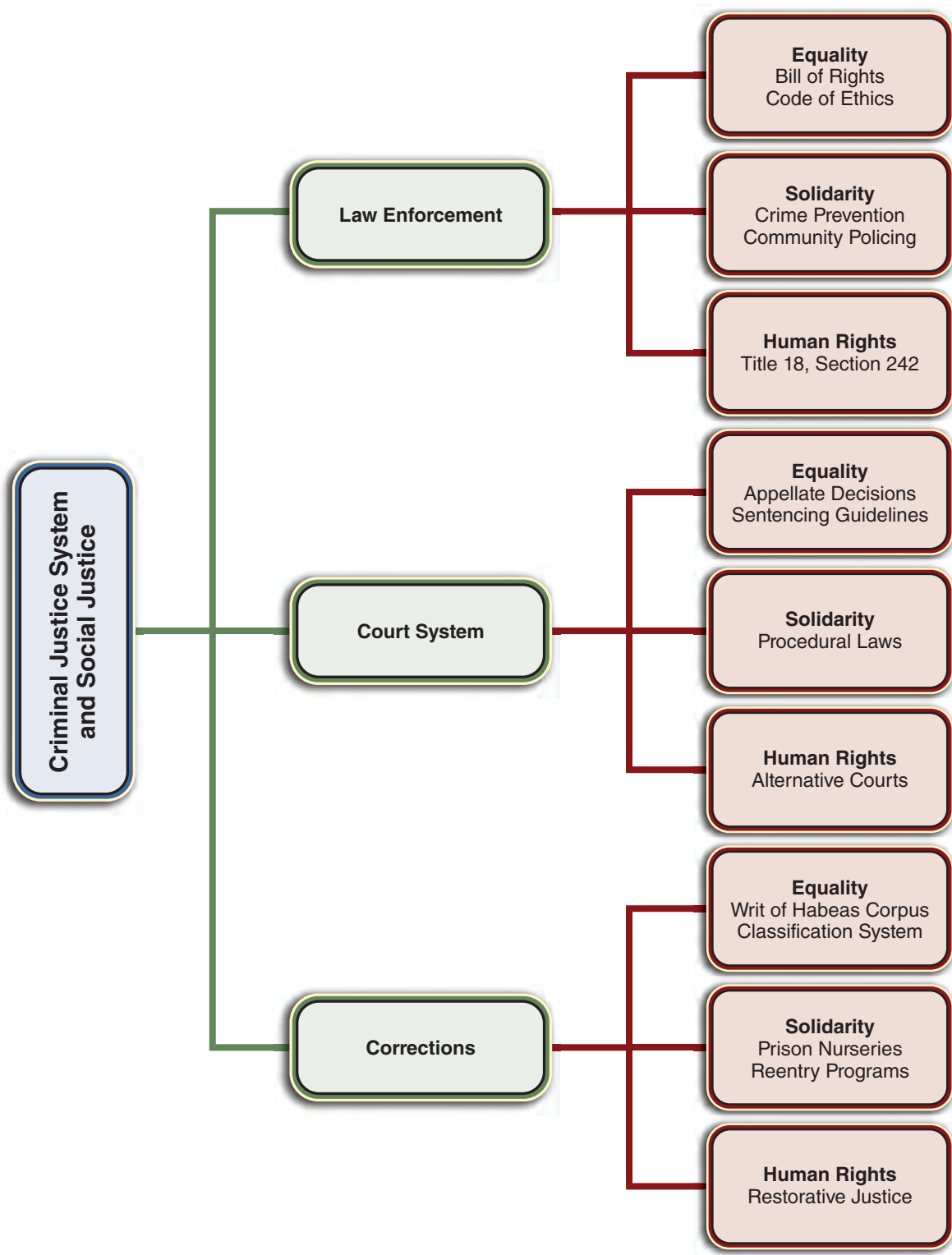
- Analyze the concept of equality, including examples of how the criminal justice system both provides for and hinders equality for all citizens.
- Evaluate the concept of solidarity, including examples of how the criminal justice system both provides for and hinders solidarity among citizens.
- Assess the concept of human rights, including examples of how the criminal justice system both provides for and hinders individual human rights of citizens.

In thinking about the correlation between criminal justice and social justice, students should focus their thoughts on how they, as criminal justice practitioners, can impact the citizens and communities they serve. Criminal justice personnel are in a unique position to have both positive and negative impacts on individual lives, whether intentional or unintentional. Therefore, all criminal justice practitioners need to understand the dimensions of social justice and how they, as practitioners and as community citizens, can work toward applying positive aspects of social justice to their profession and everyday lives.

At the basic core of the criminal justice system is the U.S. Constitution and, more specifically, the Bill of Rights. The Bill of Rights “was set up to protect civil liberties and to provide for equality, at least ideally. Further, criminal justice agencies are ideally dedicated to outcomes consistent with social justice (e.g., due process and equal protection)” (Robinson, 2010, p. 86). In addition, criminal laws are written and developed to identify appropriate and inappropriate behaviors in order to maintain order and to protect the liberties of all individuals. “Defining crimes to protect citizens and society” is consistent with social justice ideals as “the right of people to live freely and safely” is essential to those ideals (Robinson, 2010, p. 88).

As such, all parts of the criminal justice system play important roles in providing social justice in order to create a more just society. The three major facets of the system—law enforcement, courts, and corrections—are correlated and intricately aligned with equality, solidarity, and human rights. In addition, each facet has its own specific ways of providing these important aspects of social justice to those involved with the criminal justice system.

Figure 9.1: Criminal and social justice



Examples of the criminal justice system providing social justice.

9.1 Social Justice and Equality

A major focus within social justice is the concept of equality, defined in Chapter 7. As Miller (2003) notes, equality is based on the social ideal that all members of society are treated as equals, that certain rights should be distributed equally, and that all citizens deserve equal rights. Individuals “are related not just through their communities and their instrumental associations but also as fellow citizens. Anyone who is a full member of such a society is understood to be the bearer of a set of rights and obligations that together define the status of citizen” (Miller, 2003, p. 30). Equality under the law is found in the Bill of Rights, as the rights established focus on due process and equal protections for all citizens (Orth, 2007).

Law Enforcement and Equality

The U.S. Constitution, through the Bill of Rights, provides individual citizens with due process and equal protection of law. The Fourth Amendment requires that “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” (U.S. Constitution, 1791). This means that law enforcement officers are required to obtain a warrant by first establishing that probable cause exists to believe that the individual to be arrested committed a crime, or that the place to be searched holds evidence of a crime. Because of this provision of the Fourth Amendment, all warrants are processed equally, with the same standard required to obtain the warrant and authorization from a judge.

Another provision in the Bill of Rights that provides equality from law enforcement concerns the Fifth Amendment, which states that no person “shall be compelled in any criminal case to be a witness against himself” (U.S. Constitution, 1791). This is commonly referred to as protection against self-incrimination. Although historically applicable to testimony in criminal trials, the U.S. Supreme Court broadened this protection to the duty of law enforcement officers with its decision in *Miranda v. Arizona* in 1966. In *Miranda*, the Supreme Court ruled that the police are required to inform accused individuals that they have the right to not testify against themselves (Reid, 2011).

In the decision, the Court specifically delineated what law enforcement officers are to state to each suspect—what has become known as the Miranda Warnings—which includes the right to remain silent. In addition, the Court explained that Miranda Warnings are required whenever individuals are subjected to a custodial interrogation, whereby there is a possibility that they could incriminate themselves. This requirement is provided equally, to all suspects, without regard to a specific crime or action.

Law enforcement officers are also bound by codes of conduct and agency policies and procedures that reflect the understanding that all citizens, regardless of their status within the community, are to be provided with equal protection of the law, and given equal opportunities within the criminal justice system. For example, the foremost purpose of the Lowndes County, Georgia, Sheriff’s Office is to maintain social order. As part of this agency’s policies and procedures, “Our fundamental duties are to serve humanity . . . and to respect the constitutional right of all persons to liberty, equality, and justice” (Lowndes County Sheriff’s Office, 2012, para. 1). For many agencies and their officers, these policies and procedures are just as binding as legal statutes. In other words, violating an agency policy can give rise to legal and/or civil liability for the law enforcement officer and the agency.

In addition, many agencies have sought outside organizations to provide professional standards and accreditation to ensure that all officers and other law enforcement personnel understand the necessity of equality and how to provide equal protection to all citizens. For example, the Commission on Accreditation for Law Enforcement Agencies (CALEA) is a national credentialing authority, whose purpose “is to improve the delivery of public safety services” by “maintaining a body of standards, developed by public safety practitioners” (CALEA, 2012, para. 2). In addition, CALEA goals include establishing “fair and nondiscriminatory personnel practices” (CALEA, 2012, para. 3). The purpose of accreditation, as well as the reaffirmation of that accreditation, is to ensure that all law enforcement personnel provide equitable services to all citizens in a professional and ethical manner, free from discrimination and bias.

The Court System and Equality

As with law enforcement, the court system is also concerned with equality. The nature of the court system is adversarial, which provides that all defendants are innocent until proven guilty. This means that the state (government) has the burden of proof in proving guilt, using a standard of beyond a reasonable doubt. In other words, within the court system, when an individual is charged with a crime and subjected to a criminal trial, that individual is presumed innocent, regardless of the nature of the crime, and must be proven guilty of the crime, using fair and just procedures.

Equality in the court system is also provided to all citizens through the Bill of Rights (see Table 9.1). When originally adopted in 1791, the Bill of Rights applied only to the federal criminal justice system, leaving state defendants without adequate and fair protections of the law. This changed with the adoption of the Fourteenth Amendment in 1868, which provides that “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” (U.S. Constitution, 1868). The **Due Process Clause** makes most of the criminal procedural rights contained in the Bill of Rights applicable to the states, in an effort to ensure fairness under the law. The **Equal Protection Clause** requires the states to guarantee equality by providing equal protection under the law for all citizens.



Jeff Cadge/The Image Bank/Getty Images

It is the prosecution’s responsibility to prove beyond a reasonable doubt that the defendant committed the crime he or she is accused of.

Table 9.1: Protections and Supreme Court cases for the Fifth, Sixth, and Fourteenth Amendments

Amendment	Protections	Supreme Court cases
Fifth	Double Jeopardy Self-Incrimination	<i>U.S. v. Felix</i> , 1992 <i>Miranda v. Arizona</i> , 1966
Sixth	Speedy and Public Trial Impartial Jury Notice of Charges Obtain and Confront Witnesses and Counsel	<i>Baker v. Wingo</i> , 1972 <i>Turn v. Louisiana</i> , 1965 <i>Moore v. U.S.</i> , 1964 <i>Kentucky v. Stincer</i> , 1987 <i>Gideon v. Wainwright</i> , 1963
Fourteenth	Due Process Clause Equal Protection Clause	<i>Wisconsin v. Constantineau</i> , 1971 <i>Brown v. Board of Education</i> , 1954

The Fifth Amendment provides the protections that “nor shall any person be subject for the same offense 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” (U.S. Constitution, 1791). The first protection is commonly known as *double jeopardy*, and essentially means that the state (government) gets one chance to convict a defendant for a particular crime and, if the defendant is acquitted, cannot keep retrying the defendant until the state gets a conviction. For example, a defendant on trial for murder is acquitted of all charges due to a lack of evidence showing the defendant was at the murder scene. A few months after the trial, new evidence surfaces, including DNA evidence, to show the defendant was indeed at the murder scene. The state cannot, taking the new evidence into account, charge and try the defendant a second time for the murder.

The second protection, commonly known as *self-incrimination*, means that a defendant is not required to take the stand and testify in a criminal trial. For example, a defendant is accused of burglary and rape. The defense can present a case without the defendant testifying, and this in no way indicates the defendant’s guilt or innocence. In other words, the jury should not draw any conclusions about the guilt or innocence of the defendant simply because he or she decides to remain silent.

The third protection is that of *due process*, which means that reasonable and lawful procedures must be made available to all defendants in any criminal actions. All of these Fifth Amendment protections are granted equally to all individuals who are processed in the criminal justice system, regardless of the nature of the crime.



ASSOCIATED PRESS/AP Images

Clarence Gideon's case helped champion the Supreme Court ruling that mandated the right to legal counsel for all defendants, regardless of an individual's ability to pay for it.

The Sixth Amendment provides that “[i]n 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” (U.S. Constitution, 1791). All of these provisions apply to all defendants in any criminal trial, on any level (local, state, or federal), and are intended to assist the defendant in a criminal trial, in order to ensure that a fair and just prosecution is obtained. The provisions are provided without regard to the individual defendant or the nature of the crime.

Several U.S. Supreme Court cases have clarified the meaning and interpretation of these provisions. For example, the provision of confronting witnesses was addressed in *Kentucky v. Stincer* (1987) in which the Court, explaining what is known as the *confrontation clause*, stated that “the opportunity for cross-examination is critical for ensuring the integrity of the fact-finding process.

Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.”

The U.S. Supreme Court has also addressed the assistance of counsel provision, most importantly with the landmark case of *Gideon v. Wainwright* (1963). In *Gideon*, the Court mandated equality for all defendants, regardless of ability to pay for counsel, which means that all defendants in felony (later expanded to include misdemeanor) cases are to be assisted in their cases with legal counsel, even if the state has to pay for that legal counsel. However, merely being assisted by legal counsel is not enough; competency is also important. In *Strickland v. Washington* (1984), the Court further interpreted this provision as guaranteeing the effective assistance of counsel. “Accordingly, when a lawyer’s performance falls so far below the standard of reasonable competence that the outcome of the case is likely to be unfair or unreliable, the Sixth Amendment provides a remedy for a new trial to occur” (Owen, Fradella, Burke, & Joplin, 2012, p. 224).

The appellate courts, which consist of a panel of judges, have been established to consider errors of procedural law in trial court cases. “The work of appellate courts concerns questions about the interpretation or application of laws, not questions of fact” (Owen, et al., 2012, p. 321). For example, a convicted defendant may appeal, whereby “the appellate court would review issues such as whether he had a fair trial, whether the evidence was obtained legally, and whether the law has been applied correctly” (Owen, et al., 2012, p. 321).

Although the appellate courts are not seeking to determine whether the defendant actually committed the crime, the process of appeal is equitable to all defendants, as these courts will determine whether any error of law occurred that had a negative or detrimental effect on the outcome of the trial. In other words, as noted in Chapter 8, the appellate courts do not retry the case but rather look for errors whereby the defendant was not provided with a fair and just trial. If the appellate court deems that no errors of law occurred, the trial court decision is upheld; conversely, the finding of an error of law will require the conviction to be set aside and the defendant retried in a trial court. Therefore, appellate courts provide equality, as decisions are made without regard to individual defendants or the nature of the crime.

An additional aspect of the legal system that provides fairness and justice occurs with the use of sentencing guidelines “to produce fair sentences based on legal variables such as offense seriousness and prior record” (Robinson, 2010, p. 92). Sentencing guidelines provide judges with a basis from which to determine appropriate sentences for similar cases and circumstances. This provides for a more standard and just legal system, while also providing future offenders with an idea of consequences to expect from engaging in criminal behavior.

Corrections and Equality

Correctional systems, on all levels, provide equality through various provisions of the Bill of Rights. Probably the most important provision of the Bill of Rights encountered in corrections is the protection against cruel and unusual punishment, delineated in the Eighth Amendment (U.S. Constitution, 1791). Correctional systems, which include probation and parole, are required to assess and impose punishment in such a manner as to be fair and just. With this, all inmates have the right to challenge the constitutionality of their confinement through a *writ of habeas corpus*. This writ allows for the court to determine the appropriateness and legal grounds for confinement, thus safeguarding the rights of all inmates.

Another provision of equality within corrections is the classification system, which is a “specific set of objective criteria, such as offense history, previous experience in the justice system, and substance abuse patterns, applied to all inmates to determine an appropriate classification” (Clear, Cole, & Reisig, 2013, p. 150). The importance of the classification system is for the correctional facility to identify for each incoming inmate the appropriate and needed services, as well as identify under what conditions, if any, the inmate will be housed.

There are numerous types of criminal offenders, all with individual and unique reasons for offending. For example, the mentally ill offender would need a different type of treatment program than a drug abuser or a sex offender, with the latter two needing still other types of treatment. In addition, the elderly inmate brings additional medical care issues that may not be found in younger inmates. By using a standard set of criteria, classification allows the correctional facility to equitably provide each inmate the unique services he or she requires.

In addition, classification is also used to identify the appropriate correctional facility for the inmate, based on security level. Although classification has traditionally been an important aspect of identifying program and treatment needs, “prison management still relies on continuing classification, which now focuses on the offender’s potential for escape, violence, or victimization by other inmates” (Clear, Cole, & Reisig, 2013, p. 376). In addition, to maintain a fair and just classification, inmates may be reclassified at any time during their incarceration, which can occur, for example, at the completion of a treatment program or for any other unique circumstance that may arise.



David R. Frazier/Stone/Getty Images

Elderly offenders may require different care than is required for other types of inmates.

According to the decision in *Ramos v. Lamm* (1979), classification systems must be “clearly understandable, consistently applied and conceptually complete.” As a result, objective classification systems have been developed to ensure that the classification and level of custody are appropriate. Equity-based models have been created that “use only a few explicitly defined legal variables reflecting current and previous criminal characteristics. Such variables as race, employment, and education are not used because they are seen as unfair” (Clear, Cole, & Reisig, 2013, p. 353). In other words, today’s classification systems strive for equity and fairness in order to ensure that all inmates are housed with an appropriate custody level and are able to access appropriate services and programs.

Inequality in the Criminal Justice System

The preceding sections provide examples of how the various facets of the criminal justice system provide equality for all citizens. Although equality has been a focus since the founding of our country, the system has not always been effective at providing equality for all citizens.

Inequality in Law Enforcement

Several issues arise in law enforcement in regard to inequality. One of the most notable, with a history as old as law enforcement itself, is corruption. Law enforcement officers are required, by law and agency policy, to uphold the law, while being upstanding members of society. We look to law enforcement officers to help in times of crime and crises and expect them to be above reproach. We respect them when they catch criminals but hate them when they write us tickets. For many officers, this is a difficult paradox that pervades every aspect of their daily lives.

Oftentimes, we forget officers are humans, with the same wants and needs as ordinary citizens. It is no wonder many officers find themselves tempted by corruption. While some officers successfully handle the temptations, many fall victim to temptation without a clear intention to do so. For example, the “slippery slope” mentioned in Chapter 8 symbolizes the notion that an officer can accept a seemingly innocent token of appreciation without fully recognizing or understanding the intention behind the token. The officer may believe that the convenience store owner who provides free coffee to all officers simply likes the extra attention and surveillance that officers provide to his store and area. However, when that same storeowner is pulled over for speeding by one of the officers who frequents his store for free coffee, does the store owner expect a “favor” or special privilege in return? In other words, what is the intention, hidden or not, behind the promoting and providing of free coffee? Is it truly a show of appreciation and respect, or does it anticipate something bigger, such as the store owner’s expectation that the officer will return the favor down the road?

And where does the slippery slope end? If an officer is willing to take free coffee, food, or any other free gift, when is the line drawn? If an officer succumbs to the temptation of corruption, then those who provide the thing of value to the officer will begin to receive special treatment, placing all others at a disadvantage when law enforcement services are needed. For example, if an officer is “on the take,” and getting paid on the side for extra security for a certain area of a neighborhood, the officer is likely to respond more quickly to the individuals in that area than to others, creating inequality of services.

In order to reduce the temptation to corruption, all law enforcement officers need training, education, and monitoring to ensure compliance with all laws and ethical behaviors. Steps to this end could include more ethical training in police academies and requiring officers to complete ethical training as part of their yearly in-service hours. In addition, more training for supervisors could be provided on warning signs of corruption and what to do to intervene before it becomes an issue. Officers are also bound by a Code of Ethics, which should be constantly and consistently reinforced throughout the officers’ careers. Law enforcement officers are human, with worries about family, bills, and other life stressors. Due diligence is required, not only to keep officers in line but also to help avoid any and all corrupt behaviors.

Inequality in the Court System

As with law enforcement, several issues concerning inequality exist within the court system, with the biggest being inadequate counsel. Through the Sixth Amendment, all individuals being processed through a criminal trial are guaranteed the right to counsel. However, this does not mean the right to the most experienced, most expensive, or most successful counsel; it simply permits that the defendant may have an attorney working on his or her behalf.

The majority of defendants processed through the court system do so with a court-appointed attorney. Due to the sheer volume of cases that each court-appointed attorney must process, oftentimes this means that each individual case receives less focused attention than could be provided by a privately hired attorney, who is working on one specific case. This is not to say court-appointed attorneys are not well trained or competent, but the reality of processing excessive amounts of criminal cases can lead to inequity when preparing for and presenting a defense in a criminal trial.

Inequality may also occur because cases are different (i.e., different crimes, different types and amounts of evidence, different witnesses, etc.). As a result, all cases are not processed in the same way. For example, a high-profile serial murder case would most likely require additional time and resources to defend. The more difficult the case, the longer it may take to prepare an adequate defense. This must be weighed against the defendant's Sixth Amendment right to a "speedy and public trial." In other words, while the defendant has a right to counsel, that counsel may request additional time to prepare the defense—while at the same time, the defendant has a right to not spend an excessive amount of time waiting for his or her day in court.

The most logical way to resolve this issue is both practical and impractical—hire more court-appointed attorneys. It is practical in the sense that more attorneys would allow for a smaller caseload per attorney, allowing for a more focused approach to each case. It is impractical in the sense that most jurisdictions do not have the additional funds needed to hire an extensive number of new attorneys. Another way to resolve this issue would be to hire more paralegals. Although not able to try the case, they can certainly provide much-needed research and writing skills to assist the case attorneys. Barring the ability to hire new attorneys, jurisdictions can perhaps provide additional training on time management, and structure court time to allow the most expeditious processing of criminal cases.

Inequality in Corrections

The field of corrections also has its share of equality issues, with a major issue concerning access to treatment programs while in a correctional facility. As noted previously, inmates in correctional facilities have myriad mental, psychological, and physical health issues that need to be addressed if rehabilitation is to be achieved. One of the overarching goals of corrections is rehabilitation, gained through various treatment options. However, not all inmates have equal access to treatment programs. Depending on the level of security and classification of any particular correctional institution, some inmates may need a specialized treatment option that is simply not available at their facility.

For example, for the sex offender, research shows that treatment is most effective when provided in a one-on-one, individual counseling setting. However, group counseling is most often found in correctional institutions (Holmes & Holmes, 2008). The issue is one of funding—individual counseling costs more than group counseling. Correctional institutions, which get their funding from state appropriations, are seeing less and less funding available. In addition, this decrease in funding is found at a time when the general public is calling for more severe punishment for sex offenders, which results in more offenders being sent to prison. As a result, more sex offenders are in correctional institutions at a time when less money is being used for counseling. Sex offenders are therefore being placed in counseling and treatment programs that do not have a high success rate because they are not tailored, nor can they be tailored, to meet the specific needs of these offenders.

As with the inequality in the court system, the solution to this issue is both practical and impractical—provide funds for more treatment programs when funds are simply not available. Another option would be for the states and/or individual correctional facility personnel to solicit volunteer service from local psychologists and social workers. Perhaps even setting up some form of clinical internship would be beneficial to those inmates needing the most counseling treatment. Although a correctional setting may not be the ideal choice of career for an intern, it would provide a unique opportunity for students to gain valuable experience not available in the classroom or other settings.

9.2 Social Justice and Solidarity



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Social justice can be maintained if community members feel a sense of solidarity with one another.

As discussed in Chapter 7, the concept of solidarity for social justice means the degree to which individuals see themselves as members of an extended family, where citizens in communities are “in this together” (Robinson, 2010). Solidarity with the community, and thus the human family, is in the context of freedom and justice. “Solidarity with all of the human family implies a special commitment to the most vulnerable and marginalized in our midst”; therefore, “solidarity encourages striving for relationships that tend toward equality on the local, national, and international levels. All members of the human community must be

brought as fully as possible into the circle of productive and creative relationships” (Sirico, 2012, para. 3).

Law Enforcement and Solidarity

With a common goal of eliminating and preventing crime, law enforcement agencies and officers, particularly on the local level, are in a unique position to unite their respective communities. While crime and local criminal behavior can tear apart and alienate segments of a community, the workings and programs of local law enforcement agencies can bring together individual citizens to work toward revitalizing those neighborhoods and communities touched by crime. There are numerous examples of law enforcement agencies and individual officers working with community citizens and leaders to integrate all segments of the community, with the goal of providing social justice through solidarity.

One such example is the Community Oriented Policing (COP) model, which has been adopted by numerous local law enforcement agencies across the country. The COP model “is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime” (U.S. Department of Justice, Community Oriented Policing Services, 2012, para. 1). Community policing is a proactive approach to solving crime, putting local law enforcement officers on the streets and in neighborhoods, specifically with the goal of improving police–community relations. Officers walk the beat, are encouraged to get to know business owners and residents, and are actively engaged in the happenings of the neighborhoods in which they patrol.

When law enforcement officers are routinely seen by neighborhood residents, are actively participating in neighborhood activities, such as crime watch programs, and actively pursue open lines of communication with residents, a valuable and trusting bond develops that fosters improved cooperation between residents and officers. This allows residents to become active participants in protecting their own neighborhoods. In other words, police–community partnerships allow residents to become an active part of the solution to crime, which increases the solidarity of the neighborhood.

Similar to the COP model is the Problem Oriented Policing (POP) model used by numerous local law enforcement agencies across the country. The main focus of the POP model is to identify specific crime problems within local neighborhoods and communities, so that law enforcement can work with local citizens to solve those problems. Community leaders identify recurring events or areas of concern, then a four-step process known as SARA is implemented (Scanning—a problem is identified,



Sean Murphy/Stone/Getty Images

Officers practicing Community Oriented Policing are aware of the events in their patrol areas, and frequently walk the streets, getting to know business owners and community residents.

Analysis—questions are asked to learn about the problem, Response—a custom-made response is tried, Assessment—the response is evaluated to determine effectiveness). For example, in San Diego, California, “The police, community and City Council worked to attack drug and gang problems in the Skyline and Meadowbrook community. Those efforts led to an organized community association, and a reduction in criminal activity” (San Diego [CA] Police Department, 2012, para. 3). As with the COP model, Problem Oriented Policing increases integration of citizens, providing for solidarity within the neighborhood.

Another program on the local level that brings together all segments of the community to build solidarity is the National Night Out program, “America’s Night Out Against Crime” (National Night Out, 2012). According to National Night Out (2012), more than 37 million people partook in the event in 2012, including “law enforcement agencies, civic groups, businesses, neighborhood organizations and local officials from over 15,000 communities from all 50 states, U.S. territories, Canadian cities and military bases worldwide.”

The purpose of National Night Out is to “heighten crime and drug prevention awareness; generate support for, and participation in, local anticrime programs; strengthen neighborhood spirit and police–community partnerships; and send a message to criminals letting them know that neighborhoods are organized and fighting back” (National Night Out, 2012). Law enforcement agencies and individual officers work with neighborhood leaders, through National Night Out, to promote neighborhood spirit and police–community partnerships, under the common goal of crime prevention.

A prominent feature of National Night Out is that there are no financial obligations required of communities and neighborhoods to participate, due to partnerships between the sponsoring organization, National Association of Town Watch (NATW), and Target Corporation and law enforcement agencies (National Night Out, 2012). As a result, neighborhood and community leaders have the opportunity to work with their local law enforcement agencies to bring about neighborhood solidarity.

The Court System and Solidarity

The court system provides for solidarity through legal and criminal procedures that are provided to all defendants throughout the various stages of the trial process, to ensure that legal structures serve all citizens, regardless of the nature of the crime or individual circumstances. As noted previously, the Fifth and Sixth Amendments of the Bill of Rights provide all citizens with certain procedural rights when being processed in the legal system, including the protection against self-incrimination, with a right to have a notification of charges, to have a speedy and public trial by an impartial jury, to obtain and cross-examine witnesses, and to have access to legal counsel. Of most importance is the requirement that states have a constitutional obligation to ensure all citizens processed through the legal system have access to counsel at all critical stages of a criminal prosecution, including arraignments, preliminary hearings, postindictment lineups, trials, and sentencing hearings (Owen, et al., 2012).



moodboard/the Agency Collection/Getty Images

Among a defendant's most important rights is the right to legal counsel throughout all phases of a criminal prosecution.

The entire court system is guided by a set of procedural laws that protect all citizens, regardless of the nature of the crime. Once an individual is arrested and the prosecutor deems the charges worthy of further prosecution, the defendant must be taken before a judge within a specified time (for example, within 72 hours for an arrest with a warrant and 48 hours for an arrest without a warrant) for an initial appearance (Robinson, 2012). At this point, the state will provide counsel, if required, and the opportunity for bail. The defendant is then brought back to court for a preliminary hearing, whereby probable cause to hold the defendant for trial will be

determined. The preliminary hearing is the first of several stages in the criminal process, and it is at this time that probable cause to believe the defendant committed the crime will be determined by a magistrate or judge. If probable cause exists, all defendants must be provided with either an indictment or an accusation, both formal charging documents used to bring the accused to trial (Robinson, 2012). In other words, citizens are protected from arbitrarily being arrested and taken to trial without the prior establishment of probable cause.

The defendant is then brought to court for arraignment, whereby he or she will enter a formal plea to the charges. A guilty plea has the same effect as being convicted at trial; however, the judge will take precautions to ensure that the guilty plea is entered voluntarily and without coercion or promises. A not-guilty plea will move the defendant to the formal trial. Once the trial is imminent, the defendant has the right and opportunity to file pretrial motions, with the most important of those being discovery, whereby the defendant is allowed to obtain and review the evidence to be presented by the prosecution. This is another layer of protection for the defendant, regardless of the nature of the crime or possible punishment.

Again, the criminal justice system, and particularly the trial, is based on the adversarial process; the burden of proof to prove guilt is on the prosecution, with guilt based on a finding beyond a reasonable doubt. This inherent nature of the adversarial process protects the defendant from shouldering the burden of proof. The concept of double jeopardy mentioned earlier in the chapter provides another layer of defense.

Corrections and Solidarity

Many convicted offenders serve their prison time in their local communities, or at least within their state of residence. This provides an opportunity for the inmate and his or her family to maintain an active relationship, if they so choose, thus maintaining the solidarity of the family.

Another aspect of family solidarity provided by correctional systems is the creation of nurseries within certain prison facilities for women who are pregnant at the time of incarceration and will deliver the baby while incarcerated. Prison nurseries are a “reemerging trend within correctional facilities” (Women’s Prison Association, 2009, p. 9). Many programs started in the last 15 to 20 years, as the female prison population increased sharply (Women’s Prison Association, 2009). There are currently nine states that allow women in prison to keep their newborn infants with them while incarcerated (with Rikers Island in New York being the only jail in the country with a nursery). However, the women must be incarcerated for a nonviolent offense and have no history of child abuse or neglect (Women’s Prison Association, 2009).



MICHAEL ROUGIER/Time & Life Pictures/Getty Images

Local jails and state prisons allow offenders to serve their time closer to home in order to maintain relationships with their friends and family.

The purpose of these nurseries is to allow for a bonding period between mother and child, thus encouraging the solidarity of the family. The duration of time an infant may stay within the confines of a correctional facility varies among states, from 30 days to 3 years, with the average between 12 to 18 months. The capacity of the nurseries also varies from 5 to 29 mother/child rooms, which are most often located in a separate wing or unit, apart from the general population. In addition to required parenting skills and child development classes, several facilities also require mothers without a high school diploma to complete educational classes to obtain a GED. “Through these programs, incarcerated mothers are able to participate in support groups, gain support and information about breastfeeding and learn about infant growth and development” (Women’s Prison Association, 2009, p. 10).

To restore the solidarity of the inmate with his or her community, many state departments of corrections are actively engaged in providing various forms of reentry services for inmates with impending parole. This includes equipping inmates with the skills necessary to be productive members of their families and communities, and connecting inmates with services and resources that will both meet their needs and support their transition back to their respective communities (Robinson, 2012). The overriding premise is enhancing safety within the community by reducing the opportunity and desire to commit future offenses.

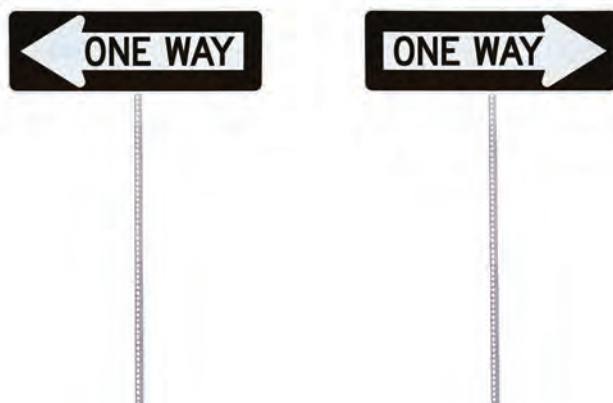
Most reentry programs provide specific vocational and education training programs, in an effort to help inmates get jobs and thus decrease recidivism (Robinson, 2012). For

example, reentry programs in Georgia include training in auto body repair, carpentry, computer technology, construction, cosmetology, culinary arts, graphic arts, masonry, the service industry, and welding (Georgia Department of Corrections, 2012). By providing job skills that allow for gainful employment once released from prison, the inmate is better equipped to become a productive member of the community, thus reconnecting with the community and bringing closure to the hole formed when the inmate was incarcerated.

In many states, reentry programs are conducted at transitional centers, whereby the inmates are gradually reintegrated into the community. However, many transitional centers are small, and thus the limited bed space does not allow for a large influx of parolees. To counter this problem, many state prisons have created “in-house” transitional dormitories on the prison grounds that allow inmates within 12 months of their release to be isolated from general population so they can participate in intensive training, education, and substance abuse treatment (Robinson, 2012).

In addition to state reentry programs, inmates in federal prison who are nearing their release on parole (approximately 17–19 months) may be eligible for placement in a residential reentry center, or halfway house. The residential reentry centers “provide a safe, structured, supervised environment, as well as employment counseling, job placement, financial management assistance, and other programs and services” and help inmates “gradually rebuild their ties to the community and facilitate supervising ex-offender’s activities during this readjustment phase” (Federal Bureau of Prisons, 2012b, para. 3). Inmates are monitored 24 hours per day, and are required to gain employment within 15 days and to complete substance abuse and mental health treatment if needed. The reentry programs provide “an opportunity for inmates to assume increasing levels of responsibility, while at the same time providing sufficient restrictions to promote community safety and convey the sanctioning value of the sentence” (Federal Bureau of Prisons, 2012b, para. 9).

Nonsolidarity and the Criminal Justice System



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Nonsolidarity means inconsistency in making decisions and handling situations, which may result in not going in the right direction.

The criminal justice system functions mostly at the local level, in communities across the United States. There are many programs within the various components of the criminal justice system that focus on creating solidarity with local and community citizens. Although these programs are effective, and many communities have a positive relationship with their local criminal justice agencies and personnel, there are many issues that result in a lack of solidarity between the criminal justice system and community citizens.

Nonsolidarity and Law Enforcement

Law enforcement officers are charged with maintaining order, protecting citizens, and apprehending criminals. A major aspect of the duties of law enforcement officers is the use of discretion, discussed in Chapter 8. For example, when an officer stops a motorist to conduct a traffic stop for speeding, the officer has the discretion to issue a traffic citation or to issue a warning.

Discretion also means that many factors go into decisions made by law enforcement officers. In the previous example, the officer will make the decision to issue a speeding citation or warning based on numerous factors—i.e., the actual speed, the road and weather conditions, traffic conditions such as construction zones, the motorist's reason for the excessive speed, the motorist's demeanor toward the officer, etc. In addition, local and state statutes also guide officer discretion. Although discretion is a major part of law enforcement, it may result in inconsistent treatment of offenders (Reid, 2001). This can hinder community solidarity and can actually create a negative atmosphere and relationship between law enforcement agencies/officers and those whom they serve.

For example, prior to 2010 in the state of Georgia, in order to be charged with driving with a suspended license, the law required that the driver must have been notified that his or her license had been placed in suspension. After that notification, if the individual was stopped while driving, with the knowledge that his or her license was suspended, the officer would arrest the driver on the spot. In 2010, Georgia Code § 40-5-121 was changed to allow an increase in officer discretion to make or not make an arrest, with or without the prior notification of the suspension of the driver license. In other words, the statute removed the requirement that the driver must first be notified of a suspension of the driver license before an arrest can be made.

Although the new provision provides an increase in officer discretion, it also provides an increase in the inconsistency of handling offenders, thereby decreasing solidarity within the community. If an officer works within a particular zone or beat, particularly under the Community Oriented Policing (COP) model, then he or she gets to know the citizens of the community. This new increase in discretion can become a hindrance to the solidarity of the community if the officer is then seen as using discretion in some cases and not others, and more specifically, if the law enforcement agency supports such practices.

To counter the negative impact of this type of discretion, officers can be educated on how their decisions impact those they serve. Officers need to be aware that although discretion is part of their everyday duties, these decisions do have an impact on how they are viewed by the community. Although it is not feasible to provide a citation or make an arrest of every individual with whom they come into contact, being consistent and fair in their discretion will result in a more positive relationship with the community—thus creating solidarity.

Nonsolidarity and the Court System

The trial process in the court system is of major interest for both the offender and the victim. It is the time when the offender has the opportunity to see and hear evidence presented against him or her and to present a defense to the charges. It is also the time when the victim, through the prosecution, has the opportunity to make the case that the offender

committed a crime and inflicted harm, and thus is in need of punishment. However, many victims do not get the opportunity to have their day in court. If a victim is deemed to be an ineffective witness, the prosecutor may be reluctant to put the victim on the stand to testify. On the other hand, if the victim is deemed to be an effective and powerful witness, the defense will likely opt for a plea bargain agreement.

Plea bargaining is “the process of negotiation between the defense and the prosecution . . . [that] may involve reducing or dropping some charges or a recommendation for leniency in exchange for a plea of guilty on another charge or charges” (Reid, 2001, p. 181). In addition, all plea agreements must be agreed to by the prosecutor, defense counsel, and defendant (Owen, et al., 2012). “Plea bargaining dominates the modern American criminal process. Upwards of 95% of all state and federal felony convictions are obtained by guilty plea” (Covey, 2008, p. 1238). Consequently, very few criminal cases actually go to trial.

For the victim, this can create feelings of abandonment and seclusion, as the victim is typically not involved in plea bargain negotiations. The criminal trial is an important part of the criminal justice system for the victim, yet only a select few are granted the opportunity. Although several jurisdictions allow a victim limited participation in the actual plea negotiations, victims do not have a right to veto the agreement. In addition, unlike the offender who has a Sixth Amendment right to a speedy and public trial, the victim has no constitutional rights to any participation in the trial. And because the plea bargain generally yields a lesser sentence than could possibly be obtained from a conviction at trial, victims may believe justice is not served. As a result, victims may experience a lack of solidarity with the court system, as well as with other criminal justice personnel and perhaps with the community as a whole. This is especially true when family and the community do not completely support the victim.

To create a sense of solidarity within the court system for the victim, changes would need to occur. For example, allowing the victim to have a voice in plea bargain negotiations may be a start. Victims have interests in the case that go beyond revenge, and participation in plea bargain negotiations can protect those interests (Starkweather, 1992). In other words, the victim could be brought into plea negotiations without negatively impacting the process, providing a positive experience for the victim, and thus creating solidarity. Another change that would more significantly impact the process is to allow victims the opportunity to veto a plea, requiring the prosecutor to take the case to trial. Although this could affect the overall court system, it could be used in limited cases; for example, those involving serious felonies or DUI cases, in which the victim would greatly benefit from being able to be heard in court.

Nonsolidarity and Corrections

Overcrowding is a major issue in all levels of corrections, from local jails to federal correction institutions. Because more correctional institutions and facilities are experiencing overcrowding every day, the result is that many offenders are now being confined to facilities not in the regional jurisdiction in which they live. This negatively impacts the solidarity of the family and community.

For example, an offender commits and is convicted of a felony in his hometown. Due to overcrowding in area state prisons, the inmate is sent to a correctional institution located on the other side of the state. In certain states, this could involve a day's drive from the inmate's hometown. As a result, the inmate's family may not have the resources to maintain a consistent relationship with the inmate while he is incarcerated, meaning fewer visits and personal contacts. This can further diminish the already strained solidarity of the family.

In addition, this can negatively impact the inmate's return to the community. Because the overcrowding issue requires the inmate to serve time in another community, the ability to participate in a reentry program, if available, could be diminished because those opportunities will be given to those inmates returning to that particular community. Reentry programs are typically geared toward assistance in reconnecting with family and providing an opportunity to secure gainful employment upon release. This is difficult and perhaps not feasible for those inmates who seek to reconnect with family and community in far away jurisdictions.

It is important to take family and community solidarity into consideration when determining the placement of inmates within correctional facilities. Although it may not always be feasible to keep an inmate within a reasonable distance of his or her family and community, all efforts should be made to ensure that at least a reentry program is available for that inmate. Any and all efforts should be made to provide a smooth transition back into the family and community in order to facilitate solidarity.

9.3 Social Justice and Human Rights

According to Rawls (2003, p. 13), "a just world order is perhaps best seen as a society of peoples, each people maintaining a well-ordered and decent political (domestic) regime, not necessarily democratic but fully respecting basic human rights." There are many human rights that are relevant to the criminal justice system, including equality before the law; the presumption of innocence until proven guilty by independent and impartial tribunals; freedom from torture or cruel, inhumane, or degrading punishment; freedom from arbitrary arrest, detention or exile; freedom from arbitrary interference with privacy; and freedom from discrimination (Robinson, 2010).

Miller (2003) argues that human rights play a significant role in social justice theory. "A central element in any theory of justice will be an account of the basic rights of citizens, which will include rights to various concrete liberties, such as freedom of movement and freedom of speech," meaning "an extensive sphere of basic liberty is built into the requirements of social justice" (Miller, 2003, p. 13).

Law Enforcement and Human Rights

According to the Office of the United Nations High Commission for Human Rights's *Code of Conduct for Law Enforcement Officials* (2012, para. 6), "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons." In essence, this means that law enforcement officers,

whether local, state, or federal, have the duty to protect the human rights of all individuals, including those who have committed a crime. As such, law enforcement agencies have placed similar statements in their codes of conduct and codes of ethics to ensure that officers protect the human rights of all individuals with whom they come into contact.

As with equality and solidarity, the U.S. Constitution includes provisions for law enforcement officers to ensure the protection of human rights, through due process and equal protection clauses. In addition, the federal government created several federal statutes that protect individuals from violations of human rights by law enforcement officers, and provides remedies for violations.

Title 18, Section 242 addresses deprivation of rights while acting under the **color of law**, meaning a person who has a legal authority granted by a government body is acting within the scope of that legal authority (i.e., a law enforcement officer acts under the color of law when making a valid arrest). Under Section 242:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both.

While Section 242 provides for criminal sanctions against the offending law enforcement officer, Title 42, Section 1983 provides civil actions for deprivation of rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Through these federal statutes, law enforcement officers are bound by law to protect the human rights of all individuals, without discrimination. As noted above, law enforcement agencies, on all levels, have implemented these provisions into their codes of conduct that provide an additional layer of protection.

Law enforcement officers and agencies also promote human rights through assistance to victims of crime, with the idea of promoting the victims as humans, and of ensuring that their dignity is respected. For example, states have created versions of a Victim's Bill of

Rights. One provision of the Georgia Crime Victims' Bill of Rights is "the right to be treated fairly and with dignity by all criminal justice agencies involved in the case" (Official Code of Georgia Annotated [OCGA], 1995). In Georgia, law enforcement officers on the local and state level are required by law to provide all victims of crime, regardless of situation, with a copy of the Georgia Crime Victims' Bill of Rights. Providing the victim with a bill of rights gives her or him a meaningful opportunity to exercise these rights (Robinson, 2012). As law enforcement officers are the initial criminal justice system contact for victims, it is essential that these officers provide all victims of crime with assistance and compassion and ensure that all victims are shown respect.

The Court System and Human Rights

The court system is in the unique position of providing human rights during the most important phase of the criminal justice system—the determination of guilt or innocence. The recognition of fairness and justice is essential to ensuring that all individuals processed in the legal system are treated with dignity and respect.

A harsh reality of the criminal justice system is that numerous criminal defendants have larger social and psychological issues than can be addressed in the traditional criminal court. Judges, prosecutors, and defense attorneys have recognized that many individuals require a less strict and indifferent trial process, one that can address certain mitigating factors related to criminal behavior. As such, specialty courts have been created to handle specific cases and individuals where those mitigating factors have contributed to the criminal behavior. "Specialty courts handle cases where the defendant suffers from an underlying problem and will benefit from services directed toward solving that problem" (Pretrial Justice Institute, 2012, para. 1). Most of these specialized courts are part of a trend of community-based programs that target the root causes of criminal behavior, rather than simply determining the guilt or innocence of a defendant.

One such development is that of drug courts, discussed in Chapter 8, which provide a more caring and compassionate approach to a criminal defendant who has a drug dependency or addiction. "The concept of the drug court is unique in that it creates a courtroom partnership centered on providing rehabilitation that is individualized to meet each offender's needs," something that is not possible in the traditional criminal court (Owen, et al., 2012, p. 366).

Another specialty court that goes beyond what is available in a traditional criminal court is the



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Drug courts provide an option for rehabilitation, specially catering to each offender's specific needs.

mental health court, which is designed to address the needs of offenders identified as having some type of mental illness. “The mentally ill are overrepresented in the criminal justice system and often do not have access to the services they need, which can exacerbate offending” (Owen, et al., 2012, p. 287). Similar to drug courts, offenders in mental health courts are monitored through regular appearances before a judge, and the result is a more compassionate approach to those offenders with special needs.

Domestic violence is an issue that involves numerous factors, many unique to the individual circumstances of the domestic relationship. “Domestic violence cases involving spouses and other intimate partners often entail complex processes that require careful consideration by the criminal justice system” (National Institute of Justice, 2012, para. 1). As such, domestic violence courts have been developed

for judges to ensure follow-through on cases, aid domestic violence victims, and hold offenders accountable, with the assistance of justice and social service agencies. By specializing in domestic violence offenses, these courts aim to process cases more efficiently and deliver more consistent rulings about domestic violence statutes. (National Institute of Justice, 2012, para. 1–2)

All of these courts and special processes used in the legal system recognize that many criminal defendants need specialized attention to address the underlying causes of their criminal behavior. At the core of all of these specialized courts is the judge, who provides a strong focus on rehabilitation and deterrence.

Corrections and Human Rights

A major aspect of corrections is the enforcement of punishment to an individual who has been convicted of a crime. Although retribution is one of the basic premises on which punishment is inflicted, an individual does not become less of a human being because of the commission of a crime. It can be a basic human instinct to inflict comparable pain on those who have inflicted pain on us; however, human rights require that individual dignity and humane treatment be at the forefront of any punishment given by the state.

To provide fair and just punishment, especially for first-time offenders and those who have committed relatively minor offenses, numerous alternate sanctions, under the name of restorative justice, have been developed. Many of these alternative sanctions require the offender to take responsibility for his or her actions and to make amends and reparations to the victim and community. These sanctions are viewed as more restrictive than traditional probation, but less punitive than traditional incarceration. In keeping the offender out of prison, alternative sanctions are deemed to instill more humane and just punishment for these specific offenders. In other words, restorative justice is seen “as an alternative to destructive forms of imprisonment and a means in which offenders can be healed or rehabilitated,” as well as “an alternative to costly forms of imprisonment and as a means to ensure that offenders are made to account to victims and communities often through tangible forms of reparation” (Roach, 2000, p. 253).

Day reporting centers, which began operating in the early 1970s, are a form of alternative sanction “used primarily for those offenders with substance abuse problems and who need social skills training” (Jones & Connelly, 2001, pp. 4–5). Because not all jails and prisons provide adequate substance abuse and treatment programs, these centers are viewed as providing a more just punishment for offenders with substance abuse issues because the available programs can directly target the abuse. “Programs at these centers include adult basic education, cognitive restructuring, community service, employment enhancement, intensive supervision, and substance abuse counseling” (Robinson, 2012, p. 164). In addition, being sentenced to a day reporting center “empowers the individual offender” by providing literacy courses, GED preparation, and anger management classes (Jones & Connelly, 2001, p. 5).

Similar to the day reporting center is the halfway house, a community-based facility which “provides various educational and counseling programs in a setting that is more homelike and has greater freedoms than a prison or jail” (Owen, et al., 2012, p. 365). Although the programs offered are similar, inmates live at the halfway house, whereas the day reporting center requires only a daily visit.

Correctional systems also provide for basic human needs through medical and dental programs, as well as mental health and psychological counseling. Inmates, as humans, are entitled to have, at minimum, basic healthcare and provisions for advanced care of chronic or acute medical conditions, such as cardiovascular disease and diabetes. An additional provision to this level of care is to provide healthy diets—as well as nutrition education—for all inmates, regardless of medical condition. However, due to the close and constant interaction between inmates and correctional staff, provisions are also made for a healthy living environment, which include an emphasis on clean air and safety in living and work areas (Federal Bureau of Prisons, 2012a).



Bettmann/Bettmann/Getty Images

Some prisons allow nonviolent female offenders to care for their babies for a period of time postpartum so that the mother is able to bond with the child, thus increasing the likelihood of family solidarity in the future.

In addition, female inmates are provided with additional services related to pregnancy and childbirth. As discussed earlier in the chapter, several states allow chosen mothers convicted of nonviolent offenses to live with their infants within the confines of the correctional facility for an average time of 12–18 months. Mother–child bonding is deemed an essential element to establishing a healthy relationship, one that can hopefully continue upon the mother’s release from prison. Other medical and psychological issues related specifically to female inmates are also provided to ensure that dignity, respect, and human rights are upheld, even in the harshest of conditions.

Human Rights Violations by the Criminal Justice System

In America, all citizens “are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” (Declaration of Independence, 1776). The Founding Fathers asserted that human rights were a given, something embodied in all citizens. However, it must also be asserted that individual biases, prejudices, and emotions have an effect on one’s ability to uphold or violate those rights.

Human Rights Violations by Law Enforcement

Law enforcement officers are the first contact in the criminal justice system. This initial contact sets the tone for the rest of the system, providing either a positive or a negative perception and experience. Since law enforcement officers have great latitude in discretion, how they handle and process suspects, victims, and witnesses can have a huge impact on these individuals, and subsequently, on the community.

Police brutality has existed for as long as law enforcement itself, but over the years, more and more statutes have limited the amount and type of force that may be used by officers. Even though limitations are present, there are still examples of violations of human rights by law enforcement officers across the country, with several instances emerging as major cases, spotlighting the tremendous power and control officers can yield.

For example, several highly publicized cases of police brutality and misconduct occurred in the 1990s. In Los Angeles, California, in 1991, Rodney King became the personification of police brutality. King, an African American, was 25 at the time and was severely beaten by four white City of Los Angeles police officers. The beating included being tased, kicked, and hit in the head with nightsticks, causing multiple skull fractures, injuries to his neck, legs, and kidneys, and some brain damage. The four officers were charged and tried in state court for assault with a deadly weapon and excessive force. All were acquitted of the charges. The reactions by Los Angeles citizens to the verdicts included looting and rioting, during which time 45 people were killed as a direct result of the rioting. In a separate trial in federal court, all four officers were tried for violating King’s civil rights. Two officers were again acquitted, while the other two officers were found guilty and sentenced to 2.5 years in prison (Reid, 2001).

The State of New York also witnessed two high profile cases of police misconduct and excessive use of force. In 1999, four white New York City police officers were acquitted in the shooting death of Amadou Diallo, an immigrant from Guinea. The four officers, dressed in plain clothes, suspected Diallo could be a wanted serial rapist and approached him as he stood in the doorway of his apartment building. As they identified themselves, Diallo pulled a wallet from his coat pocket. Upon doing so, the officers believed it to be a gun and opened fire, shooting a total of 41 times, 19 of which hit Diallo. Although it was revealed that Diallo was in fact unarmed at the time of his death, all four officers were acquitted of second-degree murder and reckless endangerment charges (Reid, 2001).

Just two weeks after the verdict in the Diallo trial, New York City police officer Justin Volpe pled guilty to sodomizing Abner Louima, a Haitian immigrant, with a stick at a police stationhouse in 1997 and threatening to kill him if he reported the incident. Volpe received a 30-year sentence without parole, with other participating officers receiving various sentences for additional charges.

All three of these incidents show the most severe actions that can be taken by one person against another. And even though these types of cases receive national and international attention, and are not the norm in law enforcement, any human rights violations of this magnitude should never occur. “Although only a minority of police officers may be guilty of misconduct, any misconduct is serious and should be subject to discipline. Policies and programs should be developed to avoid as much misconduct as possible” (Reid, 2001, p. 109).

Ways in which the potential for human rights violations can be decreased include education and training in interpersonal communications, use of force alternatives, increased supervision of patrol officers, and sensitivity training. Training should occur on at least a yearly basis to ensure that all officers, as well as administrators, are aware of new statutes and policies, as well as new techniques in dealing with citizens, to guarantee that all those who come in contact with law enforcement are treated with dignity and respect.

Human Rights Violations by the Court System

The court system is charged with determining the guilt or innocence of a defendant, and with doing so in a fair and judicious manner. Research indicates that the court system is adept at processing defendants, as less than 8% of criminal convictions are reversed on appeal (Neubauer & Fradella, 2011). However, even with the effective processing of defendants through trial, one punishment in the court system stands in stark contrast to the protection of human rights—the death penalty.

Currently, 33 states allow executions for those convicted of murder. The proponents of the death penalty argue that it deters crime, achieves justice, prevents criminals from committing additional crimes while on parole, and is less expensive than maintaining offenders in prison for life. Opponents of the death penalty argue that there is no conclusive evidence that it deters crime and that it is wrong for the state to take the life of its citizens. They also argue that the death penalty is applied in a discriminatory manner, and that innocent people have been put to death through its use (Clear, Cole, & Reisig, 2013).

The basic issue with the death penalty centers on the Eighth Amendment’s protection against cruel and unusual punishment. Is it a violation of this basic fundamental right if the government takes a life? To go even further, should a distinctly fatalistic punishment be allowed if there is a possibility that an innocent person could be subjected to that punishment? Probably the most widely identified case involving the possible execution of an innocent person is that of Cameron Todd Willingham, executed in Texas in 2004 for the murder of his children by arson. After his execution, forensic experts concluded that the evidence did not support the conclusion that Willingham started the fire (Clear, Cole, & Reisig, 2013).

“In recent years, courts, governors, and legislatures in many of the death penalty states have acted to abolish or limit executions” (Clear, Cole, & Reisig, 2013, p. 515). The decline in support has come about mostly because of the 138 exonerations of death row inmates since 1973. The U.S. Supreme Court has also shifted its focus on the death penalty since it reinstated the punishment in *Gregg v. Georgia* in 1976. In the first decade of the 21st century, the Court made three landmark decisions. In *Atkins v. Virginia* (2002), the Court ruled that the execution of a mentally retarded defendant was unconstitutional. In *Ring v. Arizona* (2002), the Court ruled that juries, rather than judges, must make the decision to

impose the death penalty. In *Roper v. Simmons* (2005), the Court ruled that it is unconstitutional to impose the death penalty on a defendant who was under the age of 18 (a juvenile) when the crime was committed (Clear, Cole, & Reisig, 2013).

In order to remove any violations of human rights in the state execution of inmates, the death penalty must be abolished completely. The criminal justice system, and by virtue the court system, is not exact. Mistakes, however unintentional, are made, simply because the system is processed by humans. Until the death penalty is completely abolished, there will remain the possibility for human rights violations. Even if only one innocent person is executed, that one person was made to suffer the most egregious violation of all human rights—the undeserved loss of life.

Human Rights Violations by Corrections

Inmates in correctional institutions and facilities are held behind fences and closed doors, unseen by the public and community for most of their confinement. Consequently, most of the public does not know what goes on behind the facility's closed doors. "A fact of life in many institutions is unauthorized physical violence by officers against inmates" (Clear, Cole, & Reisig, 2013, p. 286). Many correctional officers believe that to maintain control in this confined setting and among some of the worst criminal offenders, they must show a willingness to exert physical force whenever necessary. As a result, "in some institutions, authorized 'goon squads' comprising physically powerful officers use their muscle to maintain order" (Clear, Cole, & Reisig, 2013, p. 286).



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Because the public is not able to see what goes on behind the closed doors of correctional institutions, violations of prisoners' human rights are likely.

In some instances, the show and use of brute force by correctional officers leads to human rights violations. Because inmates are confined and not free to leave, officers are in a unique position to use force without the fear of retaliation or punishment. California State Prison at Corcoran has become synonymous with prison-guard brutality. From 1989 to 1995, during what has been called the "gladiator days," seven inmates were killed and 43 inmates wounded by correctional officers using assault weapons to stop fighting between gang members. This constituted the most inmates killed in any American prison. What made the killings worse was the fact that guards actually initiated fights between rival gang members. In the end, however, the shootings were justified by state-appointed investigators (Clear, Cole, & Reisig, 2013).

Another example of allegations of human rights violations of inmates occurred in 2004 when U.S. military personnel at Abu Ghraib were accused of mistreating Iraqi prisoners. Pictures were released showing detainees being humiliated by being paraded naked and placed in sexually humiliating poses, while other allegations included beatings and threats of rape. Although these cases seem extreme, some have argued that conditions in U.S. prisons are not much different, with unknown numbers of inmates being “ill-treated, whether by officer brutality, neglect of medical needs, or administrative failure to prevent violent victimization” (Clear, Cole, & Reisig, 2013, p. 286).

Inmates do not lose their rights to humane treatment when they pass through jail or prison doors. Although correctional institutions may be cold and harsh environments, correctional officers need to understand that inmates are human beings, and should be treated with respect. Of course, officers are expected to enforce rules to maintain order, but that enforcement must be aligned with department and institution policies and procedures, and must include a respect for human dignity. Education and training must occur on a continual basis in order to ensure that all officers are current on the most appropriate ways to effectively manage inmates while maintaining order and control.

Chapter Summary

The criminal justice system as a whole, and criminal justice practitioners individually, are in a unique position to have both positive and negative influences on individual lives. It is imperative that criminal justice practitioners, throughout law enforcement, courts, and corrections, understand their impact on the citizens they serve, while striving to ensure that all citizens are treated with respect and dignity, and that all citizens are valued as human beings.

Questions for Critical Thinking

- Explain the concept of equality. What are some examples of how the criminal justice system provides equality for citizens? What are some examples of how the criminal justice system hinders equality for citizens?
- Explain the concept of solidarity. What are some examples of how the criminal justice system provides solidarity for citizens? What are some examples of how the criminal justice system hinders solidarity for citizens?
- Explain the concept of human rights. What are some examples of how the criminal justice system provides individual human rights for citizens? What are some examples of how the criminal justice system hinders individual human rights for citizens?

Web Links

Women's Prison Association:

<http://www.wpaonline.org/>

Commission on Accreditation for Law Enforcement Agencies:

<http://www.calea.org/content/commission>

National Night Out:

<http://www.nationaltownwatch.org/nno/about.html>

Center for Economic and Social Justice:

<http://www.cesj.org/thirdway/economicjustice-defined.htm>

Office of the United Nations High Commissioner for Human Rights:

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

Key Terms

color of law When a person who has a legal authority granted by a government body acts within the scope of that legal authority (i.e., a law enforcement officer affecting a legal arrest).

Equal Protection Clause A provision in the Fourteenth Amendment that requires states to provide equal protection under the law, without discrimination.

Due Process Clause A provision in the Fourteenth Amendment that makes most of the criminal procedural rights contained in the Bill of Rights applicable to the states, in an effort to ensure fairness under the law.

