

## 1.8: The Crime Control and Due Process Models

The criminal justice system can be quite complicated, especially in the attempt to punish offenders for wrongs committed. Society expects the system to be efficient and quick, but the protection of individual rights and justice fairly delivered. Ultimately, the balance of these goals is ideal, but it can be challenging to control crime and quickly punish offenders, while also ensuring our constitutional rights are not infringed upon while delivering justice.

In the 1960s, legal scholar Herbert L. Packer created models to describe exceeding expectations of the criminal justice system. These two models can be competing ideologies in criminal justice, but we will discuss how these models can be merged or balanced to work together. The first tension between these models is often the values they place as most important in the criminal justice system, the crime control model and the due process model. <sup>[1]</sup>

The **crime control model** focuses on having an efficient system, with the most important function being to suppress and control crime to ensure that society is safe and there is public order. Under this model, controlling crime is more important to individual freedom. This model is a more conservative perspective. In order to protect society and make sure individuals feel free from the threat of crime, the crime control model would advocate for swift and severe punishment for offenders. Under this model, the justice process may resemble prosecutors charge an ‘assembly-line’: law enforcement suspects apprehend suspects; the courts determine guilt; and guilty people receive appropriate, and severe, punishments through the correctional system. <sup>[2]</sup> The crime control model may be more likely to take a plea bargain because trials may take too much time and slow down the process.

### Murder in the Gym: Crime Control Model Example by Dr. Sanchez

Imagine working out at the local gym, and a man starts shooting people. This man has no mask on so he is easy to identify. People call 911 and police promptly respond and can arrest the shooter within minutes. Under the crime control model, the police should not have to worry too much about how evidence gets collected and expanded. Investigative, arrest, and search powers would be considered necessary. A crime control model would see this as a slam dunk and no need to waste time or money by ensuring due process rights. If there were any legal technicalities, such as warrantless searches of the suspects home, it would obstruct the police from effectively controlling crime. Effective use of time would be to immediately punish, especially since the gym had cameras and the man did not attempt to hide his identity. Any risk of violating individual liberties would be considered secondary over the need to protect and ensure the safety of the community in this model. Additionally, the criminal justice system is responsible for ensuring victim’s rights, especially helping provide justice for those murdered at the gym.

The due process model focuses on having a just and fair criminal justice system for all and a system that does not infringe upon constitutional rights. Further, this model would argue that the system should be more like an ‘obstacle course,’ rather than an ‘assembly line.’ The protection of individual rights and freedoms is of utmost importance and has often be aligned more with a liberal perspective. <sup>[3]</sup>

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Back to the gym murder, the due process model would want to see all the formalized legal practices afforded to this case in order to hold him accountable for the shooting. If this man did not receive fair and equitable treatment, then the fear is this can happen to other cases and offenders. Therefore, due process wants the system to move through all the stages to avoid mistakes and ensure the rights of all suspects and defendants. If the man in the gym pled not guilty due to the reason of insanity, then he can ask for a jury trial to determine whether he is legally insane. The courts would then try the case and may present evidence to a jury, ultimately deciding his fate. The goal is not to be quick, but to be thorough. Because the Bill of Rights protects the defendant’s rights, the criminal justice system should concentrate on those rights over the victim’s rights, which are not listed. Additionally, limiting police power would be seen as positive to prevent oppressing individuals and stepping on rights. The rules, procedures, and guidelines embedded in the Constitution should be the framework of the criminal justice system and controlling crime would be secondary. Guilt would get established on the facts and if the government legally followed the

correct procedures. If the police searched the gym shooter's home without a warrant and took evidence then that evidence should be inadmissible, even if that means they cannot win the case. <sup>[5]</sup>

There are several pros and cons to both models; however, there are certain groups and individuals that side with one more often than the other. The notion that these models may fall along political lines is often based on previous court decisions, as well as campaign approaches in the U.S. The crime control model is used when promoting policies that allow the system to get tough, expand police powers, change sentencing practices such as create "Three Strikes," and more. The due process model may promote policies that require the system to focus on individual rights. These rights may include requiring police to inform people under arrest that they do not have to answer questions with an attorney (*Miranda v. Arizona*), providing all defendants with an attorney (*Gideon v. Wainwright*), or shutting down private prisons who often abuse the rights of inmates.

To state that crime control is purely conservative and due process if purely liberal would be too simplistic, but to recognize that the policies are a reflection of our current political climate is relevant. If Americans are fearful of crime, and Gallup polls suggest they are, politicians may propose policies that focus on controlling crime. However, if polls suggest police may have too many powers and that can lead to abuse, then politicians may propose policies that limit their powers such as requiring warrants to obtain drugs. <sup>[6]</sup> Again, this may reflect society, a reflection of a part of society, or the interests of a political party or specific politician.

### Exercise

Discuss what the primary goal of the criminal justice system should be: to control crime, ensure due process, or both? Explain how this opinion may get influenced by individual factors, such as age, gender/sex, race/ethnicity, economic situation, a country born in, and more. Could goals change with the more education given about criminal justice? If so, make an argument in favor of education. If not, make an argument against educating the public on criminal justice.

1. Packer, H. (1964). Two models of the criminal process. *University of Pennsylvania Law Review*, 113(1) ↩
2. Roach, K. (1999). Four models of the criminal process. *Journal of Criminal Law and Criminology*, 89(2), 671-716. ↩
3. Packer, H. (1964). Two models of the criminal process, 113 U. PA. L. Rev. 1; Yerkes, M. (1969). The limits of the criminal sanction, by Herbert L. Packer (1968). *Loyola of Los Angeles Law Review* 176, 2(1). ↩
4. Yerkes, M. (1969). The limits of the criminal sanction, by Herbert L. Packer (1968). *Loyola of Los Angeles Law Review* 176, 2(1). ↩
5. Yerkes, M. (1969). The limits of the criminal sanction, by Herbert L. Packer (1968). *Loyola of Los Angeles Law Review* 176, 2(1). ↩
6. Davis, A. (2016). In the U.S., concern about crime climbs to 15-year high. *Gallup Poll*. ↩

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