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The Criminal Justice System: In Theory Versus in Actuality

"We are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer."^[1]

John Adams

Second President of the United States

We can understand just from the wording of the question posed, that the United States criminal justice system is tasked with an almost impossible mission: balance our need for security with the rights of liberty. I will be upfront from the beginning about my belief that the system fails to do this. But before I explain why I believe this, we must understand how the criminal justice system is supposed to function, and how it functions in actuality. We will examine some of the various functions of the system allocating particular interest to substantive and procedural law as the two 'opposing' sides of the system. We will also take a look at how the system falls short of an ideal state. By putting all of this into conjunction with the rest, I will make the argument that the criminal justice system fails to adequately balance the rights afforded to all people (specifically defendants) with the desire to protect the security of the community. But to understand how it fails, as I mentioned above, we must understand how it is *supposed* to work.

[1] "Founders Online: Adams' Argument for the Defense: 3–4 December 1770." 2024. Archives.gov. 2024.
<https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016>.

Recognizing the importance of punishing crime, in order to preserve the civility of society, the criminal justice system was formed. Lippman writes about how the law is utilized as a form of maintaining social control, to prevent deviant behavior. He lists three main functions of the law that allow it do so, fairly:

1. “the law defines... the deviant behavior that is subject to legal punishment;^[1]”
2. “the law defines the institutions and procedures that will punish individuals who engage in deviant behavior;^[1]” and
3. “the law defines the procedures that are used to investigate and detect crime.^[1]”

These three quotes, provide the basis for the theoretical function of the criminal justice system; identifying, investigating, and punishing behavior. However, the system must account for human error- not everyone who is accused of a crime is in fact guilty of that crime. The above quote, by John Adams, highlights how the system was founded with this error in mind, and posed an answer for it. That answer is the presumption of innocence, or as is commonly called being ‘innocent until proven guilty.’ Because American jurisprudence has created the notion that all necessary precautions should be taken before depriving a person of his or her rights (which I agree with), the system has over time developed protections for those accused of a crime. These protections, of which the presumption of innocence is one, are commonly found in the procedural realm of the law.

Procedural law, as it relates to the criminal justice system, is how the system is bound when arguing its case against the defendant. This is found mainly in the rights afforded to defendants, from

[1] Lippman, Matthew Ross. Law and Society. 3rd ed. Thousand Oaks, CA: SAGE Publications, Inc., 2021.

when they are being investigated, all the way to exhausting their last option on appeal (with whatever court declines to hear the appeal, or at a Supreme Court.) We can better understand procedural law in the context of substantive law, as procedural law generally limits substantive law.

I'd be remiss if I didn't take a moment to explain the steps of the criminal justice system; or, in other words, how you get from walking down North Michigan Avenue as a free man to being locked behind bars in ADX Florence, America's only remaining supermax prison. (Okay this is a bit of an exaggeration, most people who serve time are sent to a local low-security prison, but you get the idea. How does one get from being free to being in jail.) I posit the example of walking down the street because legal precedence establishes a basis for an officer to walk up to a 'suspect' and search them if they have a reason to believe that the suspect has committed, is committing, or will commit a crime.

These steps are what are generally called substantive law. Substantive law provides the requirements of the system, and what it is supposed to accomplish. Usually, the first step in the criminal justice system is when a person is suspected of violating a law; though exceptions for the belief that they will imminently commit a crime do exist. Once you are a suspect, a law enforcement agency will begin to investigate whether or not you have committed the crime.

We can see that substantive law is already at work here, from the beginning, by informing law enforcement as to what to look for; what defines a crime, and what evidence could they collect to prove that a crime has been committed. In contrast, as we mentioned above, procedural law generally limits substantive law. Procedural law is also already at work here. Numerous limits have been placed on how law enforcement conducts their investigations. With the stop and search on the street example above, *Terry v. Ohio* created limitations to when and how an officer could perform a search. Two notable

limitations are that an officer cannot just act on a hunch, instead, (1) a “reasonably prudent man^[1]” would believe that the defendant presented a danger, and (2) that the search was limited in scope to protect the officer. This ‘Terry frisk’ put a limitation on how officers could conduct their investigations, in order to balance the need for security with the rights of privacy. Other examples of procedural law exist in this step; for example, how law enforcement must ask a judge for a specific and founded warrant to initiate a search or seizure; or how *Weeks*^[2] and *Ohio*^[3] created and solidified the exclusionary rule to protect against evidence found during an unconstitutional search. This is an example of how substantive and procedural law works with and against the other, and also gets at the impossible task that we mentioned earlier - how do we properly balance security with freedom?

Continuing onward with the criminal justice system, if enough evidence is found, for crimes punishable by jail time, a prosecutor will present the case to a grand jury, who will decide if the suspect can be indicted. After the indictment, the suspect will end up in custody of the law enforcement. The law enforcement will then inform the suspect of their rights. This recitation of rights, colloquially called the Miranda Rights, comes from *Miranda v. Arizona*^[4], which held that a suspect must be informed of their rights before being interrogated. If they are not informed of their rights, any evidence obtained is inadmissible in court.

[1] TERRY v. OHIO, 392 U.S. 1 (1968)

[2] WEEKS v. US, 232 U.S. 383 (1914)

[3] MAPP v. OHIO, 367 U.S. 643 (1961).

[4] MIRANDA v. ARIZONA, 384 U.S. 436 (1966)

Further, after being arrested and charged, a suspect, now a defendant, would progress through the criminal justice system, entering a plea, consulting with a council, accepting a bargain or going to trial, and end up being either convicted or acquitted of a crime. Throughout all of these stages, substantive law provides the method for which the person can either be convicted or acquitted, while procedural law continues to constrain the desire to ‘protect society’ that the prosecution claims in order to protect the rights of the defendant.

Arguably the most notable examples of procedural and substantive law are found during the trial. When the prosecution possesses the burden of proof (beyond a reasonable doubt) to prove that both elements of the crime (*actus reus* and *mens rea*) were fulfilled. Here, the presumption of innocence stands alongside the right to confront your witnesses, not to testify against yourself, and the right to counsel, among many other rights of defendants. If convicted or acquitted, both forms of law continue to balance security and liberty. Though for time, I can't continue listing examples.

The criminal justice system, as described above, seems to take a stance favorable to the defendant in its ideal state. For a primary idea is that it is better to let many guilty persons go free than convict one innocent person. However, I mentioned above, the hypothetical ideal state of the system differs greatly than how it performs in actuality; where it seems to be okay with convicting innocent people; an obvious shortcoming.

This shortcoming presents itself most during the plea bargaining stage of the process. Lippman describes plea bargaining as “a process in which a defendant pleads guilty in return for a promise to receive some benefit from the state.” He makes note of three types of bargaining: charge, count, and sentence. However, during this stage, a defendant also typically has just become away of the sentence

which he or she faces if convicted. With this possible sentence looming overhead, whether innocent or not, the defendant may be persuaded to confess to the crime to eliminate the possibility of being incarcerated for a longer than the bargain. The Innocence Project succinctly writes, “Oftentimes, prosecutors use the threat of the trial penalty... to coerce people into accepting a plea despite their innocence.^[1]” This frequently results in innocent people giving up their chance to defend themselves because of a fear that the prosecution has created.

Furthermore, in a system that is supposed to be neutral towards race, it has been proven that race “permutes the plea bargaining process.^[2]” The Lippman text makes note of Nicole Gonzalez Van Cleve’s long term study of Cook County courts, and found that white defendants were generally viewed as having taken a misstep, hispanics were viewed as lazy and clogging up the system, and Black defendants were viewed as ‘monsters’ who pose a serious threat to society. White people were frequently offered plea deals that minimized time served, and Black people were more likely to be prosecuted fully. These shortcomings, both found within the a small section of the criminal justice system, represent issues that plague the system as a whole, and are indicative of a system that fails to accomplish its goal.

Another shortcoming, that results in the conviction of innocent people, is the prosecutions desire to appear ‘tough on crime,’ and convict as many ‘criminals’ as possible. Because many prosecutors are elected, we often see them and their staff as possessing a desire to ‘solve’ as many crimes as possible. This results in political motives being exercised under the guise of security

[1] “Coerced Pleas - Innocence Project.” 2023. Innocence Project. May 4, 2023.

[2] Lippman, Matthew Ross. Law and Society. 3rd ed. Thousand Oaks, CA: SAGE Publications, Inc., 2021.

The system, as we have described, fails to strike a balance between liberty and security. Created the lean towards liberty, the system has found itself now leaning towards ‘security.’ It has transformed into a system that has a presumption of guilt. Prosecutors and law enforcement coerce defendants into pleading guilty to crimes they didn’t commit. Indigent defendants lack proper representation, as public defenders are overwhelmed with cases; creating an obvious wealth privilege in the system. A racial divide that has always existed has gotten worse, and Black males receive 13.4 longer sentences than a White male.^[1] All of this is seen in what types of crimes are prosecuted. For example, crimes that White men are more likely to commit prosecuted less often than crimes that Black crimes are more likely to commit. The US Department of Government found, “The current criminal justice system is shaped by economic bias--crimes unique to the wealthy are either ignored or treated lightly, while the so-called common crimes of the poor lead to arrest, charges, conviction, and imprisonment.^[2]” So in some circumstances, liberty is valued more than security. But in others, security is seemingly worth more. This is seen in immigration courts, how proceedings conducted in English, when the defendant speaks Spanish, but is not given an interpreter; so they cannot understand what is going on. How does this protect the liberty of a person? Isn’t it a fundamental right to understand linguistically what is happening? It just so happens that these cases have a strong correlation to race and class (which also correlates to race). Is this failure to strike a balance indicative of a larger issue that plagues the entire criminal justice system?

[1]“2023 Demographic Differences in Federal Sentencing.” 2023. United States Sentencing Commission.

[2]“RICH GET RICHER and the POOR GET PRISON | Office of Justice Programs.

We've understood how the criminal justice system is supposed to work, by examining substantive and procedural law across various stages of the system. And, in doing so, have understood the ideal state that the system hypothetically works in; delicately balancing the security of the community with the liberty of the individual. But, as I wrote earlier, this is an impossible balance to achieve today. This impossibility is created by various factors across the legal system which systematically disadvantaged people of lower socio-economic statuses (which correlates to race) to create a cycle of recidivism, and responds to political and capital whims. This constitutes an obvious and grave failure of the criminal justice system.

“[The criminal just system] accomplishes nothing we think of as its purpose. We think we’re keeping people safe. We’re just making worse criminals.”

Sonia Sotomayor

Associate Justice of the Supreme Court of the United States

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