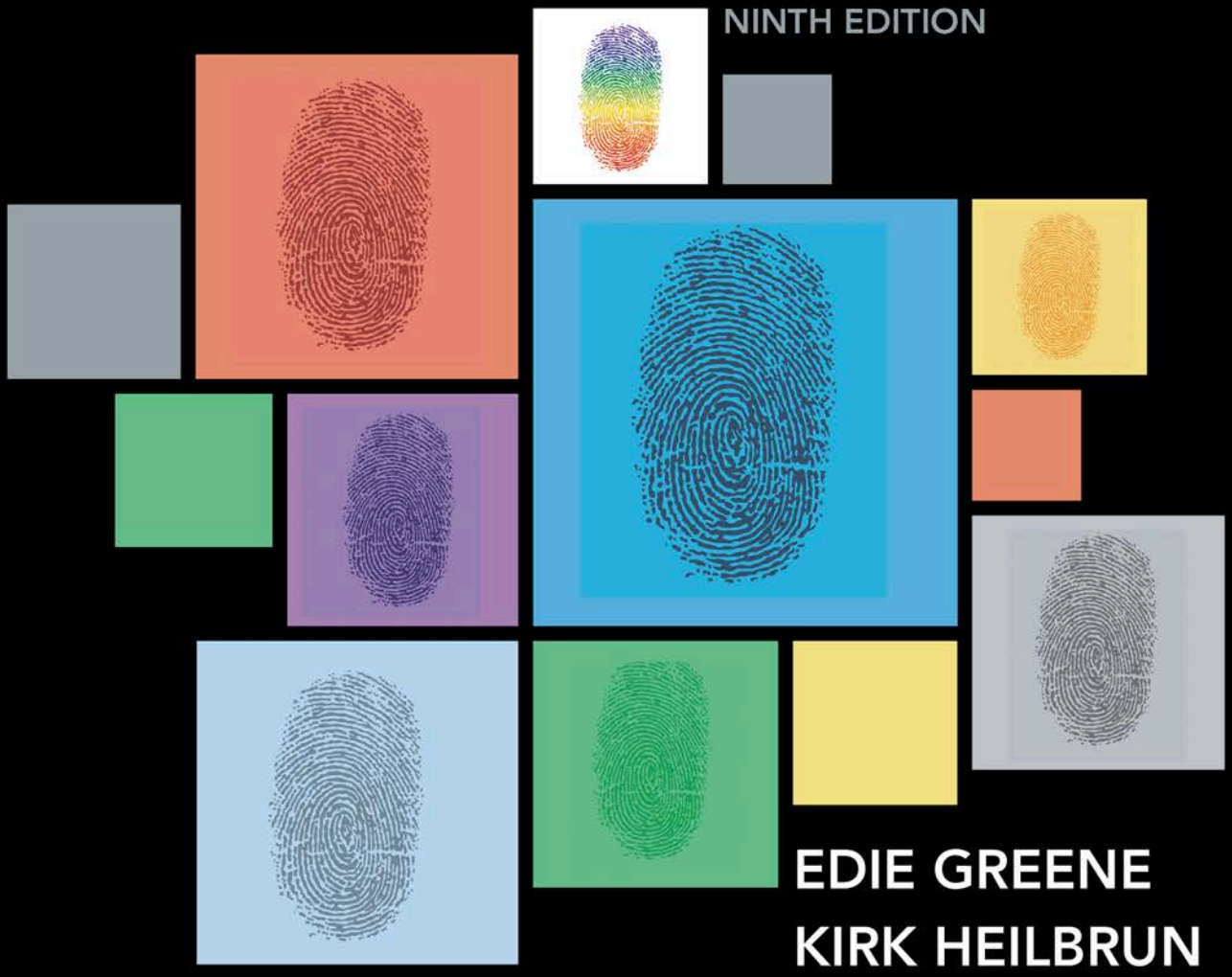
Wrightsman's

PSYCHOLOGY AND THE LEGAL SYSTEM

NINTH EDITION



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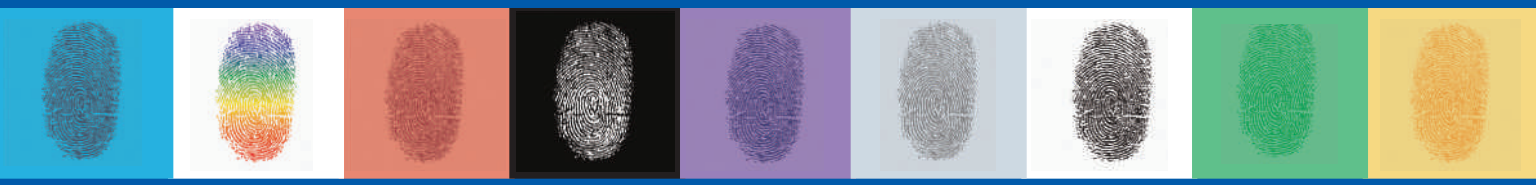

NINTH EDITION

WRIGHTSMAN'S PSYCHOLOGY AND THE LEGAL SYSTEM

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***Wrightsman's Psychology and The Legal System,* Ninth Edition**

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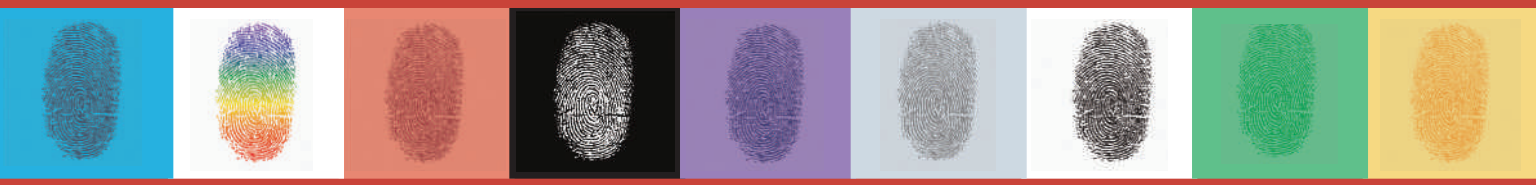
Dedications
To my siblings
Richard, Nancy, and Jim
How fortunate we are
-EG

To Olivia Marian Catizone
Long may you run
-KH

Brief Contents



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Preface

This is the 9th edition of *Psychology and the Legal System.* Its longevity is a testament to the incisive, rigorous, and accessible presentation of various aspects of psychology and law originally provided by Lawrence Wrightsman in the 1st edition, published more than 30 years ago. Professor Wrightsman's name is included in the title to honor his many contributions to this book and to the field of psychology and law. As with two previous editions, we—Edie Greene and Kirk Heilbrun—are the sole authors.

We continue to believe that the law is inherently psychological. It is made by people with varying desires and ambitions, interpreted by individuals with different (sometimes contradictory) perspectives, and experienced—either directly or indirectly—by all of us. Both psychology and the law are about motivation and behavior. Indeed, for centuries the legal system has been a powerful influence on people's everyday activities. From the Supreme Court's 1954 school desegregation decision to its 2014 case concerning application of the death penalty to people with intellectual disabilities, both of which are described in this book, the courts have had considerable impact on individual lives.

As we move toward the third decade of the 21st century, we find it ever more useful to describe the law from the perspective of psychology, a behavioral science that also has a significant applied component. We are not alone. In fact, matters of law and psychology are often cited in the media. Whether they involve concerns about excessive use of force by police, partisanship in judicial elections, the impact of trauma on human behavior, or the role of extremist ideology and beliefs in fostering violence, headlines and lead stories are often about some aspect of psychology and law. Although this attention appears to cater to an almost insatiable curiosity about crime and other types of legal disputes, it also promotes some ambivalence about the law. Many citizens are suspicious of the police, but police are still the first responders in a crisis. Juries are sometimes criticized for their decisions, but most litigants would prefer to have their cases decided by juries rather than judges. Citizens value their constitutionally protected rights, but also demand security in a post-9/11 era. This 9th edition explores these tensions as well as many other captivating and controversial issues that arise at the crossroads of psychology and the law.

The primary audiences for *Psychology and the Legal System* are students taking a course in psychology and the law, forensic psychology, or the criminal justice system, and others who seek to learn more about the legally relevant science and practice of psychology. This book (and its individual chapters) may also be used as a supplement in psychology courses that emphasize applied psychology, social issues, or policy analysis. In addition, it covers a number of topics relevant to law school courses that introduce law students to social science research findings and applications.

We have attempted to find the right mix of psychology and legal analysis in the text. The book's emphasis remains on psychological science and practice, but we also summarize the legal history of many key topics and present the current status of relevant legal theories and court decisions. Specific recent topics that are covered in some detail in this edition include assessing the risk of terrorist acts based on ideologies and affiliations, the uptick in mass shootings, sexual harassment in the workplace, the toll of legal education on students' well-being, and how psychology has contributed to criminal profiling.

We continue to focus on the psychological dimensions of several topics that remain important in contemporary society, just as they were important when previous editions of this text were written. These include how attributions about the causes of behavior affect judgments of offenders and victims, lawyers' and judges' use of intuitive cognitive mechanisms to evaluate cases and make decisions, the association between beliefs about procedural fairness and people's willingness to obey the law, clinicians' assessments of competence in various domains, and racial influences on police, jury, and judicial decision-making. As in previous editions, we have updated each of these topics using the best available scientific evidence published since our most recent edition went to press.

NEW FEATURES AND REVISIONS

We have made the following major changes from the last edition:

- We strived to make *Psychology and the Legal System* more user friendly by providing current examples to illustrate the material in a straightforward and accessible way.
- We added new material on important alternatives to traditional prosecutions, namely, problem-solving courts that enable drug abusers, people suffering from mental illnesses, and veterans involved in the criminal justice system to receive structured treatments to address the underlying source of dysfunction.
- We provided several new real-world examples in boxes ("The Case of…"). These summaries describe scenarios and cases that illustrate or explain an important legal concept or psychological principle covered in the chapter. Readers will be familiar with many recent examples including clashes between white supremacists and others at the Unite the Right rally in Charlottesville, the shooting deaths of nine parishioners in Charleston, the false guilty plea that upended the career of football star Brian Banks, and the sexual assault trial of Bill Cosby. We also feature the historic cases of Ernest Miranda, Clarence Gideon, John Hinckley, Ted Bundy, and others. A few cases are either fictional (such as Dexter Morgan from the popular television series *Dexter*) or composites, but still highly applicable to the chapter material.
- We updated examples of the themes, introduced in Chapter 1, that pervade a psychological analysis of the law. These include the rights of individuals versus the common good; equality versus discretion as ideals that can guide the legal system; discovering the truth or resolving conflicts as the goals that the legal system strives to accomplish; and science versus the law as a source of legal decisions. Elsewhere (Greene & Heilbrun, 2016), we have noted that these themes continue to unify many of the research findings, policy choices, and judicial decisions detailed in the book and we return to them at several points in the text.
- This edition includes a thorough, authoritative revision of every chapter in light of research and professional literature published since the last edition. Highlights include the following:
- Chapter 1 provides an overview of the field and details the many roles that psychologists can play in the legal system.
- Chapter 2 includes new data on the well-being of law students and the professional satisfaction of practicing lawyers.
- Chapter 4, on the psychology of police, includes new material on the excessive use of force in police encounters with minority citizens, attempts to improve police-community relations, and recommendations from President Obama's Task Force on the Future of Policing in the 21st Century. They include practices that reduce crime, build public trust, and ensure officer wellness and safety.
- Chapter 5 updates the reforms to lineup procedures in cases involving eyewitness identification based on recent scientific data on eyewitness memory.
- Chapter 6 covers the psychology of victims of crime and violence. It updates research on the relationship between trauma, adverse experiences, and crime, as well as rape-supportive attitudes that include acceptance of rape myths, adversarial sexual beliefs, and hostile attitudes toward women. It notes that rape is a severe trauma that can lead to PTSD symptoms.
- Chapter 7, on the evaluation of criminal suspects, includes discussion of new techniques for detecting deception based on principles of cognitive psychology. It also describes how interrogation procedures are being reformed in light of psychological research on social influence factors.
- Chapter 8 provides new data on the effectiveness of various high-tech tools used during trials, including videoconferencing, animations, and virtual reality.
- Chapter 10 describes updates on forensic assessment in criminal cases, and Chapter 11 does the same for civil cases.
- Chapter 12 describes the complexity of jury selection in a location saturated with publicity about the crime. The case of Boston Marathon bomber, Dzhokhar Tsarnaev, serves as an example.
- Chapter 13 expands the discussion of juries in the previous chapter to cover their decision-making. We reorganized it to focus on jurors' reliance on relevant evidence, evaluated through the lens of their emotions. It includes updated information on their ability to understand and apply judicial instructions and on jury deliberations.
- Chapter 14 describes recent data on death-qualification in capital trials, a process whereby those with scruples against the death penalty are eliminated from the jury. The new research raises concerns about representativeness of the juries that decide capital cases.

MindTap for Greene and Heilbrun's *Wrightsman's Psychology and the Legal System*

MindTap is a personalized teaching experience with relevant assignments that guide students to analyze, apply, and improve thinking, allowing you to measure skills and outcomes with ease.

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In addition to the benefits of the platform, MindTap for *Wrightsman's Psychology and the Legal System* provides helpful assignments and activities, including section quizzes and chapter tests, as well as appendices—the Ethical Principles of Psychologists and Code of Conduct and the Specialty Guidelines for Forensic Psychology, both of which provide ethical guidance for practice and research in forensic psychology, as well as the Bill of Rights, which describes the amendments to the U.S. Constitution.

Acknowledgments

For assistance in preparing this edition, we thank the Cengage staff: Erin Schnair, Product Manager; Leah Jenson, Product Assistant; Star Burruto, Product Team Manager; Tangelique Williams-Grayer, Content Developer; and James Zayicek, Project Manager. Each was extremely helpful in writing the 9th edition of *Psychology and the Legal System*.

Supplements

Instructor Resource Center. Everything you need for your course in one place! This collection of book-specific lecture and class tools is available online via www.cengage.com/login. Access and download PowerPoint presentations, images, instructor's manual, and more.

Cognero. Cengage Learning Testing Powered by Cognero is a flexible, online system that allows you to author, edit, and manage test bank content from multiple Cengage Learning solutions, create multiple test versions in an instant, and deliver tests from your LMS, your classroom, or wherever you want.

Instructor's Manual. The Online Instructor's Manual contains chapter outlines and summaries, discussion questions, suggested videos, readings, websites, and YouTube videos, and class activities.

PowerPoint. The Online PowerPoints feature lecture outlines and important images from *Wrightsman's Psychology and the Legal System,* 9th edition.

About the Authors

Rebecca Siegel

Edie Greene is currently professor at Department of Psychology, University of Colorado Colorado Springs, where she also serves as director of the graduate concentration in psychology and law and director of the undergraduate honors program. She earned her Ph.D. in cognitive psychology and law at the University of Washington in 1983 and served there as postdoctoral research associate between 1983 and 1986. From 1994 to 1995, Greene was a fellow in Law and Psychology at Harvard Law School. She has received several federally funded grants to support her research on legal decision-making, eyewitness memory, and psycholegal aspects of aging. Greene received a college-wide award for Outstanding Research and Creative Works in 1999, a university-wide award for Excellence in Research in 2001, and the Chancellor's Award for Distinguished Faculty in 2009. She has been invited to lecture at the National Judicial College and at continuing legal education programs nationwide. She consults with lawyers on various trial-related issues including jury selection, trial strategies, and jury decisions, and has, on numerous occasions, testified as an expert witness on jury behavior and eyewitness memory. In addition to serving as coauthor of the 5th to 8th editions of *Psychology and the Legal System*, Greene is the author of a number of articles, columns, and book chapters, and cosigner on several *amicus* briefs presented to the U.S. Supreme Court. She also coauthored *The Adversary System* (with Frank Strier, 1990), *Determining Damages: The Psychology of Jury Awards* (with Brian Bornstein, 2003), and *The Jury under Fire: Myth, Controversy, and Reform* (with Brian Bornstein, 2017). She has served as President of the American Psychology-Law Society/APA Division 41 and, in 2008, received the Award for Outstanding Teaching and Mentoring from that Society.

Anna Heilbrun

Kirk Heilbrun is currently professor at Department of Psychology, Drexel University. He received his doctorate in clinical psychology in 1980 from the University of Texas at Austin, and completed postdoctoral fellowship training from 1981 to 1982 in psychology and criminal justice at Florida State University. His current research focuses on juvenile and adult offenders, legal decision-making, and forensic evaluation associated with such decision-making, as well as reentry and the diversion of individuals with behavioral health problems from standard prosecution. He is the author of a number of articles on forensic assessment, violence risk assessment and risk communication, and the diversion and treatment of mentally disordered offenders. In addition to serving as coauthor for the 6th to 8th editions of *Psychology and the Legal System*, he has published 10 other books on topics including forensic mental health assessment, juvenile delinquency, violence risk assessment, the Sequential Intercept Model, evaluating juvenile transfer, and forensic ethics. His practice interests also center around forensic assessment, and he directs a clinic within the department in this area, as well as a reentry project for the assessment and treatment of individuals returning to the community from federal prison. He is board certified in clinical psychology and in forensic psychology by the American Board of Professional Psychology, and has previously served as president of both the American Psychology-Law Psychology/APA Division 41, and the American Board of Forensic Psychology. He received the 2004 Distinguished Contributions to Forensic Psychology award and the 2008 Beth Clark Distinguished Service award from the American Academy of Forensic Psychology, and the 2016 Distinguished Contributions to Psychology and Law award from the American Psychology-Law Society.

1 Psychology and the Law: Choices and Roles

ORIENTING QUESTIONS

1. Why do we have laws, and what is the psychological approach to studying law?
2. What choices are reflected in the psychological approach to the law?
3. How do laws reflect the contrast between due process and crime control in the criminal justice system?
4. What are five roles that psychologists may play in the legal system and what does each entail?

Consider the following stories, all of which were prominently featured in the news:

- In a case that elevated debate about police shootings of African American citizens, a Minnesota jury had to decide whether Officer Jeronimo Yanez reasonably believed that Philando Castile was reaching for a gun when he was pulled over while driving. Among the rash of police shootings and indictments of police officers in recent years, this case was remarkable because Castile's girlfriend live-streamed and narrated the bloody scene as it unfolded. Yet the outcome was familiar: Like many other officers charged with shooting Black citizens, Yanez was acquitted.
- A Denver radio host sued Taylor Swift for $3 million after she accused him of groping her during a routine meet-and-greet. But the pop star turned the tables by countersuing for $1, which removed any suspicion of personal gain and provided an opportunity, as she said, to be an example to other women who have endured similar humiliating acts. The jury's verdict? $1 to Taylor Swift.
- A drunken driver who killed a 10-year-old boy in suburban Dallas was sentenced to spend 180 days in jail over the next 10 years, including every Christmas Day, New Year's Day, and June 8, the child's birthday. The judge said he wanted to remind the defendant of the family's loss on these important family holidays.

These stories illustrate a few of the psycho-legal topics that we consider in this book: police–community relations and discrimination, the motivations of offenders and victims, discretion in judges' sentencing decisions, and public perceptions of security and law enforcement officials. They show the real flesh and blood of some of the psychological issues that arise in the law.

The Importance of Laws

These examples also illustrate the pervasiveness of the law in our society. But how does the law work? This book will help you understand how the legal system operates by applying psychological concepts, theories, findings, and methods to its study.

Laws as Human Creations

Laws are everywhere. They affect everything from birth to death. Laws regulate our private lives and our public actions. Laws dictate how long we must stay in school, how fast we can drive, when (and, to some extent, whom) we can marry, and whether we are allowed to play our car stereos at full blast or let our boisterous dog romp through the neighbors' yards and gardens. Given that the body of laws has such a widespread impact, we might expect that the law is a part of nature, that it was originally discovered by a set of archaeologists or explorers. Perhaps we think of Moses carrying the Ten Commandments down from the mountain.

But our laws are not chiseled in stone. Rather, laws are human creations that evolve out of the needs for order and consistency. To be responsive to a constantly changing society, our laws must also change. As some become outdated, others take their place. For example, before there were shootings on school grounds, no laws forbade the presence of weapons in schools. But after a series of deadly incidents, laws that banned weapons from school property were widely established. On occasion, the reach of these zero-tolerance policies has been excessive, as Zachary Christie, a Delaware first grader learned. Zachary was suspended and ordered to enroll in an alternative program for troubled youths because he took to school a Cub Scout utensil that included a small, folding knife. When this sort of overreaching occurs, the public reacts, and the policies are revised again.

Laws Help Resolve Conflict and Protect the Public

Many standards of acceptable behavior—not purposely touching strangers on elevators, for example—seem universally supported. But in some situations, people have differences of opinion about what is considered appropriate, and disagreements result. When this occurs, society must have mechanisms to resolve the disagreements. Thus, societies develop laws and regulations to function as conflict resolution mechanisms. Customs and rules of conduct evolve partly to deal with the conflict between one person's impulses and desires and other people's rights. Similarly, laws are developed to manage and resolve those conflicts that cannot be prevented.

Public safety is always an important consideration in a civilized society. In earlier times, before laws were established to deter and punish unacceptable behavior, people "took the law" into their own hands, acting as vigilantes to secure the peace and impose punishment on offenders. Now, at least in the United States and most other nations, all governmental entities—federal, state, county, borough, municipality, and even some neighborhoods— have enacted laws to protect the public.

The Changing of Laws

The basic raw material for the construction and the revision of laws is human experience. As our experiences and opportunities change, laws must be developed, interpreted, reinterpreted, and modified to keep up with these rapid changes in our lives. As George Will put it, "Fitting the law to a technologically dynamic society often is like fitting trousers to a 10-year-old: Adjustments are constantly needed" (1984, p. 6).

The framers of the U.S. Constitution, and even legislators of 30 years ago, never anticipated how laws have changed and will continue to change. They probably never contemplated the possibility that advances in neuroscience, for example, would affect how police investigate cases, attorneys represent their clients, and juries and judges make decisions. But brain imaging technology is now used to detect brain injuries and assess pain in those involved in accidents, determine mental state and capacity for rational thought in justice-involved individuals, and detect lies and deception in those under interrogation. Although the correspondence between brain activity and behavior is far from clear at this point, neuroimaging will undoubtedly raise thorny questions for the legal system. New rules, policies, and laws will have to be created to address them.

Similarly, no one could have anticipated the ways that DNA testing would change laws involving criminal investigations. Legislatures have passed statutes that mandate the collection of DNA samples from millions of Americans, including those who have simply been arrested and are awaiting trial. Some of these individuals have objected to having their DNA collected and catalogued. But law enforcement officials claim that widespread testing will help them solve more crimes and exonerate people who were wrongly convicted. (We describe the role of DNA analysis in the exoneration of convicted criminals in Chapter 5.)

Legislators must now consider what, if any, restrictions should be placed on online activities. (Cyber-law, virtually unheard of 30 years ago, has become an important subfield in the law.) For example, individuals have been convicted of sexually abusing minors after they sexted nude and seminude pictures, and drivers have been ticketed for sneaking a peek at their phones when stopped at red lights, thereby violating their states' hands-free requirements. Should laws regulate these activities? Many people believe that these laws protect the dignity and safety of the public, yet others claim that they interfere with constitutionally protected speech and privacy rights. But most people would agree that vast changes in society have necessitated far-reaching adjustments in the law.

The invention of the automobile produced several new adversaries, including pedestrians versus drivers, and hence new laws. Car accidents—even minor ones—cause conflicts over basic rights. Consider a driver whose car strikes and injures a pedestrian. Does this driver have a legal responsibility to report the incident to the police? Yes. But doesn't this requirement violate the Fifth Amendment to the U.S. Constitution, which safeguards each of us against self-incrimination, against being a witness in conflict with our own best interests?

Shortly after automobiles became popular in the first two decades of the 20th century, a man named Edward Rosenheimer was charged with violating the newly implemented reporting laws. He did not contest the charge that he had caused an accident that injured another person, but he claimed that the law requiring him to report it to the police was unconstitutional because it forced him to incriminate himself. Therefore, he argued that this particular law should be removed from the books, and he should be freed of the charge

of leaving the scene of an accident. Surprisingly, a New York judge agreed and released him from custody.

But authorities in New York were unhappy with a decision that permitted a person who had caused an injury to avoid being apprehended, so they appealed the decision to a higher court, the New York Court of Appeals. This court, recognizing that the Constitution and the recent law clashed with each other, ruled in favor of the state and overturned the previous decision. This appeals court concluded that rights to "constitutional privilege"—that is, to avoid self-incrimination—must give way to the competing principle of the right of injured persons to seek redress for their sufferings (Post, 1963).

These examples illustrate that the law is an evolving human creation, designed to arbitrate between values in opposition to each other. Before the advent of automobiles, hit-and-run accidents seldom occurred. Before the invention of smartphones, texting at stoplights (or worse, while driving) never occurred. However, once cars and smartphones became a part of society, new laws were enacted to regulate their use, and courts have determined that most of these new laws are constitutional. The advent of Google Glasses and driverless vehicles will raise new questions about rights and responsibilities with which the law will have to grapple. Psychological research can be relevant to these questions by assessing, for example, whether navigating with Google Glasses while driving is more or less distracting than glancing at a GPS unit or phone.

The Psychological Study of Law

Laws and legal systems are studied by several traditional disciplines other than psychology. For example, anthropologists compare laws (and mechanisms for instituting and altering laws) in different societies and relate them to other characteristics of these societies. They may be interested in how frequently women are raped in different types of societies and in the relationship between rape and other factors, such as the extent of separation of the sexes during childhood or the degree to which males dominate females.

Sociologists, in contrast, usually study a specific society and examine its institutions (e.g., the family, the church, or the subculture) to determine their role in developing adherence to the law. The sociologist might study the role that social class plays in criminal behavior. This approach tries to predict and explain social behavior by focusing on groups of people rather than on individuals.

A psychological approach to the law emphasizes its human determinants. The focus in the psychological approach is on the individual as the unit of analysis. Individuals are seen as responsible for their own conduct and as contributing to its causation. Psychology examines the thoughts and actions of individuals—drug abuser, petty thief, police officer, victim, juror, expert witness, corporate lawyer, judge, defendant, prison guard, and parole officer, for example—involved in the legal system. Psychology assumes that characteristics of these participants affect how the system operates, and it also recognizes that the law, in turn, can affect individuals' characteristics and behavior (Ogloff & Finkelman, 1999). By *characteristics*, we mean these persons' abilities, perspectives, values, and experiences—all the factors that influence their behavior. These characteristics affect whether a defendant and his or her attorney will accept a plea bargain or go to trial. They influence whether a Hispanic juror will be more sympathetic toward a Hispanic defendant than toward a non-Hispanic defendant. They help determine whether a juvenile offender will fare better in a residential treatment facility or a correctional institution. And sometimes they can explain why people commit crimes. So after Stephen Paddock fired on a crowd of 22,000 people attending a country music festival in Las Vegas in 2017—the deadliest mass shooting in modern U.S. history—authorities tried very hard to understand his motivations.

But the behavior of participants in the legal system is not just a result of their personal qualities. The setting in which they operate matters as well. Kurt Lewin, a founder of social psychology, proposed the equation $B = f(p, e)$: behavior is a function of the person and the environment. Qualities of the external environment and pressures from the situation affect an individual's behavior. A prosecuting attorney may recommend a harsher sentence for a convicted felon if the case has been highly publicized, the community is outraged over the crime, and the prosecutor happens to be waging a reelection campaign. A juror holding out for a guilty verdict may yield if all the other jurors passionately proclaim the defendant's innocence. A juvenile offender may desist from criminal behavior if his or her gang affiliations are severed. The social environment affects legally relevant choices and conduct.

This book concentrates on the behavior of participants in the legal system. As the examples at the beginning of this chapter indicate, citizens are all active

participants in the system, even if they do not work in occupations directly tied to the administration of justice. We all face daily choices that are affected by the law—whether to speed through a school zone because we are late to class, whether to report the person who removes someone else's laptop from a table at the library, or whether to vote in favor of or against a proposal to end capital punishment. Hence, this book will also devote some attention to the determinants of our conceptions of justice and the moral dilemmas we all face.

But this book will pay particular attention to the role of psychology in the criminal and civil justice systems and to the central participants in those settings: defendants and witnesses, civil and criminal lawyers, judges and juries, convicts and parole boards. It will also focus on the activities of **forensic psychologists** who generate and communicate information to answer specific legal questions or to help resolve legal disputes (Melton et al., 2017). Most forensic psychologists are trained as clinical psychologists, whose specialty involves the psychological evaluation and treatment of others. Forensic psychologists are often asked to evaluate a person and then prepare a report for a court, and sometimes provide expert testimony in a hearing or trial. For example, they may evaluate adult criminal defendants or children involved with the juvenile justice system and offer the court information relevant to determining whether the defendant has a mental disorder that prevents him from going to trial, what the defendant's mental state was at the time of the offense, or what treatment might be appropriate for a particular defendant. But psychologists can play many other roles in the legal system, as well. We describe these roles later in the chapter.

Basic Choices in the Psychological Study of the Law

Just as each of us has to make decisions about personal values, society must decide which values it wants its laws to reflect. Choices lead to conflict, and often the resulting dilemmas are difficult to resolve. Should the laws uphold the rights of specific individuals or protect society in general? Should each of us be able to impose our preferences on others, or must we be attentive to other people's needs? You may have pondered this question while stopped at a traffic light next to a car with a deafening subwoofer. One of Madonna's neighbors in a posh New York City apartment building certainly pondered this question. She filed a lawsuit against the pop icon, claiming that her music was so loud that the neighbor had to leave several times a day. Whose rights prevail? A commonly asked question that taps that dilemma is whether it is better for ten murderers to go free than for one innocent person to be sentenced to death. The law struggles with this fact: rights desirable for some individuals may be problematic for others.

Consider the simple question about whether to wear a seat belt. People who opt not to use seat belts in a car are making a seemingly personal choice. Perhaps they don't like the way the belt feels. Perhaps they like having freedom to move around the car. But that choice puts them at greater risk for death or serious injury in an accident, and accidents involve costs to society, including lost wages, higher insurance premiums, and disability payments to the injured person and that person's dependents. So the good of society can be adversely affected by the split-second decision of individuals as they step into their cars.

This tension between individual rights and the common good is one example of the basic choices that pervade the psychological study of the law. But there are others. In this chapter, we highlight four basic choices inherent in laws and that apply to each of us in the United States, Canada, and many other countries. Each choice creates a dilemma and has psychological implications. No decision about these choices will be completely satisfactory because no decision can simultaneously attain two incompatible goals—such as individual rights and societal rights—both of which we value. These four choices (and the tension inherent in their competing values) are so basic that they surface repeatedly throughout this book, as they did with different examples in earlier editions (see, e.g., Greene & Heilbrun, 2015). They unify many of the research findings, policy decisions, and judicial holdings that are discussed in subsequent chapters.

The First Choice: Rights of Individuals versus the Common Good

Consider the following:

- Smokers have long been restricted to smoky airport lounges and back sections of restaurants, and often huddle together outside of workplace doors. But now smokers are banned from lighting up in some public

parks and beaches, and along shorelines and trails. When New York City enacted a ban on smoking in its 1,700 public parks in 2011, Lauren Johnston was ecstatic. She blogged about smokers polluting the air along her running loop. But Bill Saar saw it differently: "It's the most idiotic law they ever made. I've been a smoker for over 20 years. I'm not going to stop," said Saar as he puffed on a cigar while selling figurines in Union Square (Durkin, 2011). Should cities be able to limit smoking in parks shared by all? Whose rights prevail?

- Gay and lesbian troops have served openly in the U.S. military since 2011, as have transgender troops since 2016. But in July 2017, President Trump tweeted that transgender people would be barred from enlisting and active-duty transgender personnel would be subject to expulsion. If this tweet becomes official White House policy, then opportunities for transgender individuals to serve in the military would be effectively eliminated. According to Trump, the military must be focused on winning and cannot be burdened with the "tremendous medical costs and disruption" of transgender service members. Transgender advocates quickly denounced this communication, claiming that it imposed one set of standards on transgender troops and another set on everyone else, and politicians from both parties stated that anyone who is willing to fight for their country should be welcomed into the military. Who is right?
- In a less serious sort of dispute, a growing number of cities have made it a crime to wear "sagging pants" and some cases have actually gone to trial. Three defendants were charged with violating the "decency ordinance" in Riviera Beach, Florida. Their public defenders argued that the law violated principles of freedom of expression. But the town's mayor, Thomas Masters, said that voters "just got tired of having to look at people's behinds or their undergarments … I think society has the right to draw the line" (Newton, 2009).

Values in Conflict. The preceding vignettes share a common theme. On the one hand, individuals possess rights, and one function of the law is to ensure that these rights are protected. The United States is perhaps the most individualistic society in the world. People can deviate from the norm, or make their own choices, to a greater degree in the United States than virtually anywhere else. Freedom and personal autonomy are two of our most deeply desired values; "the right to liberty" is a key phrase in the U.S. Constitution.

On the other hand, our society also has expectations. People need to feel secure. They need to believe that potential lawbreakers are discouraged from breaking laws because they know they will be punished. All of us have rights to a peaceful, safe existence. Likewise, society claims a vested interest in restricting those who take risks that may injure themselves and others, or who demand excessive resources, because these actions can create burdens on individuals and on society. The tension between individual rights and the collective good is illustrated in the situation we describe in Box 1.1.

It is clear that two sets of rights and two goals for the law are often in conflict. The tension between the rights of the individual and the constraints that may be placed on the individual for the collective good is always present. It has factored prominently into various U.S. Supreme Court decisions since the 1960s with respect to the rights of criminal suspects and defendants versus the rights of crime victims and the power of the police.

AvailableLight/Getty Images

A gay couple celebrates their recent marriage.

BOX 1.1

The "Unite the Right" Rally in Charlottesville and the Speech Rights of White Supremacists

The First Amendment to the U.S. Constitution protects the freedom of speech so long as it does not include obscenities, fighting words, perjury, and a few other types of speech. Even racially offensive speech is protected, as the Supreme Court noted in *Matal v. Tam* (2017). According to Justice Samuel Alito, who wrote the opinion in the case, "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate'."

Those protections came into sharp relief in 2017 after White nationalists held a rally in Charlottesville, Virginia that turned deadly. Charlottesville officials initially denied organizers' request for a permit to protest the removal of a statue of Confederate General Robert E. Lee from a city park. But after a lawsuit was filed by the American Civil Liberties Union (ACLU)—an organization whose work has included defending the speech rights of neo-Nazis—and a federal judge ruled against the city, rally organizers received their permit. The protest escalated into a brawl as White nationalists, some carrying clubs and assault weapons, clashed with counter-protestors, and a car attack injured 19 and killed one of the counter-protestors.

The ACLU has long maintained that its advocacy of free speech for White supremacists serves to protect the First Amendment rights of all Americans by confronting vile and detestable ideas head-on, rather than by suppressing them (Goldstein, 2017). But the freedom of speech does not extend to speech that is "directed to inciting imminent lawless action and is likely to incite or produce such action" (*Brandenburg v. Ohio*, 1969) and some contend that support from the ACLU actually encourages such actions. (The ACLU has vowed to review closely requests from White supremacist groups to assess the potential for violence and has stated that it will refuse to represent groups who protest with guns.)

Evelyn Hockstein/The Washington Post/Getty Images

White nationalists clash with counter-protesters at the Unite the Right rally in Charlottesville, VA.

This incident raises difficult questions for the future: Will local officials be tempted to thwart extremist groups who wish to hold rallies and protests in their communities? Will doing so further embolden White nationalists who have risen in prominence in recent years? Is openly carrying a gun, allowed in 45 states, a form of free speech? (This discussion shows that it may be impossible, in open carry states, to disentangle First Amendment free speech rights and the Second Amendment right to keep and bear arms.) Even more fundamentally, how does one strike a balance between the right to free expression of speech—including hate-filled speech intended to intimidate and threaten—and the right of the community to be protected from speech that promotes "lawless action"?

CRITICAL THOUGHT QUESTION

What two values are in conflict in this incident?

In the 1960s, the Supreme Court established a number of principles that provided or expanded explicit rights for those suspected of breaking the law. The *Miranda* rule guaranteeing the right to remain silent (detailed in Chapter 7) was established in 1966. About the same time, the courts required that criminal defendants, in all cases in which incarceration was possible, have the right to an attorney, even if they cannot afford to pay for one. These and other rights were established in an effort to redress a

perceived imbalance between a lowly defendant and a powerful government.

But many of these rights were trimmed in subsequent years when courts frequently ruled in favor of the police. For example, in 1996, the Supreme Court ruled that the police can properly stop a motorist whom they believe has violated traffic laws even if their ulterior motive is to investigate the possibility of illegal drug dealing (*Whren v. United States*, 1996). In 2012, the Court ruled that jail officials can strip search petty offenders even if there is no suspicion they are concealing weapons or contraband (*Florence v. Board of Chosen Freeholders*, 2012).

Two Models of the Criminal Justice System. The conflict between the rights of individuals and the rights of society is related to a distinction between two models of the criminal justice system. This distinction is between the due process model and the crime control model (Packer, 1964). The values underlying each of these models are legitimate, and the goal of our society is to achieve a balance between them. But because different priorities are important to each model, there is constant tension between them.

The **due process model**, favored in the 1960s, places primary value on the protection of citizens, including criminal suspects, from possible abuses by the police and the law enforcement system generally. It assumes the innocence of suspects and requires that they be treated fairly (receive "due process") by the criminal justice system. It subscribes to the maxim that "it is better that ten guilty persons shall go free than that one innocent person should suffer." Thus the due process model emphasizes the rights of individuals, especially those suspected of crimes, over the temptation by society to assume suspects are guilty even before a trial.

In contrast, the **crime control model**, favored in the 1990s, seeks the apprehension and punishment of lawbreakers. It emphasizes the efficient detection of suspects and the effective prosecution of defendants, to help ensure that criminal activity is being contained or reduced. The crime control model is exemplified by a statement by former Attorney General of the United States, William P. Barr, with respect to career criminals. He noted that the goal is "incapacitation through incarceration" (Barr, 1992)—that is, removing them permanently from circulation.

When the crime control model is dominant in society, laws are passed that in other times would be seen as unacceptable violations of individual rights. A 2017 Texas law known as a "show me your papers law" prohibits local authorities from limiting the ability of law enforcement or court personnel to demand proof of a person's immigration status and report it to federal officials. Texas Governor Greg Abbot claimed that the law protects public safety. But opponents contend that it erodes public trust and actually makes communities and neighborhoods less safe. Laws like this raise complicated questions about the rights of individuals to be free from police scrutiny and the obligation of the government to provide safety and security to its citizens.

Despite the drop in crime rates in recent years, vestiges of the crime control model still linger in the United States, more than in Canada, Europe, or Australia. As we point out in Chapter 14, the United States incarcerates a higher percentage of its citizens than any other country. The United States has only 4% of the world's population but 22% of its prisoners.

But the Great Recession of 2007–2009 changed societal options for dealing with crime. As federal and state budgets tightened, legislators and law enforcement officials reevaluated many "tough-on-crime" policies. Those strategies boosted spending on prisons but did little to prevent repeat offending by released inmates (Dvoskin, Skeem, Novaco, & Douglas, 2011). Because of reduced resources, officials tried to find cheaper and more effective alternatives for controlling crime and ensuring public safety. Some new programs were effective in reducing repeat offending. Crime rates in Texas dropped after it began investing in treatment programs for parolees. The prison population in Mississippi was reduced by 22% after it allowed inmates to earn time off their sentences by participating in educational and re-entry programs. Other proven alternatives included providing employment counseling and substance abuse and mental health treatment for inmates, and diverting offenders from the criminal justice system and into community-based treatment programs. We describe many of these alternatives in Chapter 9.

The Second Choice: Equality versus Discretion

Kenneth Peacock was a long-distance trucker who was caught in an ice storm and came home at the wrong time. He walked in the door to find his wife Sandra in bed with another man. Peacock chased the man away and some four hours later, in the heat of an argument, shot his wife in the head with a hunting rifle. Peacock pled guilty to voluntary manslaughter and was sentenced to 18 months in prison. At the sentencing, Baltimore County Circuit Court Judge Robert E. Cahill said he

wished he did not have to send Peacock to prison at all but knew that he must to "keep the system honest" (Lewin, 1994). He continued, "I seriously wonder how many men … would have the strength to walk away without inflicting some corporal punishment."

Move the clock ahead one day. A female defendant pleads guilty to voluntary manslaughter in a different Baltimore courtroom. She killed her husband after 11 years of abuse and was given a 3-year sentence—three times longer than that sought by prosecutors (Lewin, 1994). Some people find no inconsistency in the severity of these punishments, believing that each case should be judged on its own merits. However, psychology analyzes these decisions as examples of a choice between the goals of equality and discretion.

What should be the underlying principle guiding the response to persons accused of violating the law? Again, we see that two equally desirable values—equality and discretion—are often incompatible and hence create conflict. The principle of **equality** means that all people who commit the same crime or misdeed should receive the same consequences. But blind adherence to equality can lead to unfairness in situations in which the particular characteristics of offender, victim, or offense matter. For example, most people would think differently about punishing someone who killed randomly, ruthlessly, and without remorse, and someone else who killed a loved one suffering from a painful and terminal illness. In this example, discretion is called for. **Discretion** in the legal system involves considering the circumstances of certain offenders and offenses to determine the appropriate consequences for wrongdoing. Psychology provides concepts through which this conflict can be studied and better understood.

The Principle of Equality.

Fundamental to our legal system is the assumption advanced by the founders of the American republic that "all men are created equal." In fact, the "equal protection clause" of the Fourteenth Amendment states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." This statement is frequently interpreted to mean that all people should be treated equally and that no one should receive special treatment by the courts simply because he or she is rich, influential, or otherwise advantaged. We cherish the belief that in the United States, politically powerful or affluent people are brought before the courts and, if guilty, convicted and punished just like anyone else who commits similar offenses. Consider the example of flamboyant hedge fund manager and pharmaceutical executive Martin Shkreli, who was convicted in 2017 of defrauding his investors to cover up massive stock losses and then jailed after a Facebook post offering $5,000 for a strand of Hillary Clinton's hair. Shkreli became infamous for raising the price of the drug Daraprim, used to treat newborn babies and HIV patients, from $13.50 to $750 per pill.

But the value of equality before the law is not always implemented. In the last three decades, Americans have witnessed a series of incidents that—at least on the surface—seemed to indicate unequal treatment of citizens by the legal system. A common practice among police and state patrols in the United States is *profiling*—viewing certain characteristics as indicators of criminal behavior. African American and Latino motorists have filed numerous lawsuits over the practice of profiling, alleging that the police, in an effort to seize illegal drugs and weapons or to find undocumented immigrants, apply a "race-based profile" to stop and search them more frequently than White drivers. Said Michigan Congressman John Conyers, Jr., "There are virtually no African-American males—including Congressmen, actors, athletes and office workers—who have not been

Eduardo Munoz Alvarez/Getty Images News/Getty Images

Martin Shkreli, a well-do-to CEO who was convicted of defrauding his investors.