

INTRODUCTION

ENGLAND is a small island country situated off the northern coast of France. Throughout its history, the country has been referred to as England, Great Britain, and the United Kingdom. The official name changes occurred as a result of England's political union with its territorial neighbors. For example, in 1707, England and Wales united with Scotland. This geographic alliance became known as Great Britain. When the southern counties of Ireland formed the Irish Free State in 1922, the official name of Britain changed again—this time to the United Kingdom of Great Britain and Northern Ireland.

In this chapter, we are concerned only with the geographical area known as England and Wales. The reasons for this are quite simple. Scotland is not a common law country; its criminal justice system consists of a mixture of common and civil law. This was a result of its political association with France in the sixteenth and seventeenth centuries. Scotland retained some of the legal characteristics that are indigenous to civil law countries such as France. Northern Ireland is not included in this study as a result of the problems that exist between the Protestant and Catholic factions of that country. The serious nature of these problems, although they are beginning to be resolved, has caused the criminal justice system to be altered somewhat from the common law system that exists in England and Wales.

England and Wales encompass an area of 58,350 square miles, which is a little larger than the state of Michigan (see Figure 1.1). Many of the roughly 57 million inhabitants live in the highly industrialized cities of the country. Although England no longer retains the industrial supremacy it once possessed, the country continues to be a world leader in the manufacture of heavy machinery. Agriculture, fishing, and oil are some of England's other important industries. The legacy that the people of England have given the rest of the world is significant and indeed remarkable. The English have made major contributions in science, philosophy, literature, and the arts, but their most important and striking contribution to the historical evolution of civilization has been the creation of the common law and the development of parliamentary democracy.

GOVERNMENT

1650 The foundation for England's political and legal institutions was established between the eleventh and fourteenth centuries. It was at this time that the monarchy negotiated several compromises with the nobility and, in the process, asserted its central authority. Following the English Civil War, which occurred during the first half of the seventeenth century, the modern basis for the country's political institutions was established. The power of the monarchy was curtailed, the authority of the House of Commons was secured, and the emergence of political parties was established. Efforts at further reform and modernization were completed during the nineteenth century.

As the country prepared to enter the twenty-first century, it embarked upon an intense period of government reform. What is particularly striking about these reform efforts is the fact that much of it is devoted to significant constitutional issues. The adoption of these initiatives is designed to improve the effectiveness and efficiency of democratic government.

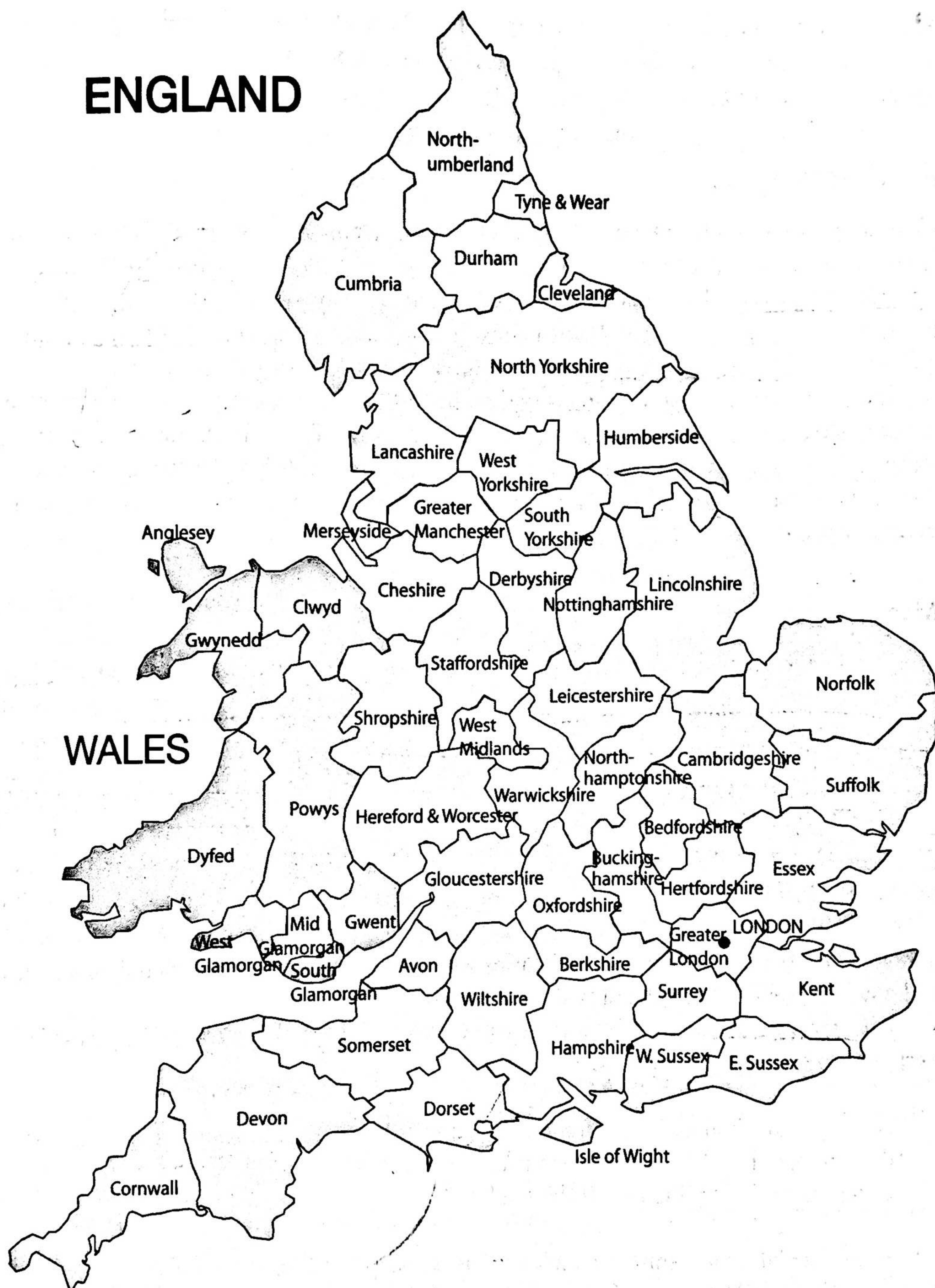


FIGURE 1.1 | England
Map courtesy of Bruce Jones Design Inc.

While it is far too early to assess the impact that these reforms will have on governance, one consequence is clear: The role and power of some units of the central government have shifted.

The Constitution

Many countries throughout the world have a written document called a constitution in which the political and legal beliefs of the country are expressed. England does not have this type of constitution; it has been characterized as having an unwritten or, more appropriately, an uncoded constitution. The British constitution is a blend of statutory law, precedent, and tradition that dates back to the time of King Henry I (1100). A large part of English constitutional law is based on statutes passed in Parliament. Statutory law is an important factor in the creation of this kind of "organic" constitution. This is best illustrated by citing some of the significant statutes that were instrumental in developing British constitutional principles. These, in turn, have had a profound impact on the creation of written constitutions in other countries.

Magna Carta

The first document that carried with it this kind of significance was Magna Carta. In 1215, King John was forced by English nobles to sign this charter, which was an expression of rights and privileges of the upper class in medieval England. The charter consisted of 62 chapters or issues identified by the nobles. Several of these address what we would consider basic concerns for the administration of justice and illustrate early principles that today are central legal values associated with the rule of law. For example, chapter 38 noted: "In the future no bailiff shall upon his own unsupported accusation put any man to trial without producing credible witnesses to the truth of the accusation." Chapter 40 proclaimed: "To no one will we sell, to none will we deny or delay, right to justice." And chapter 45 announced: "We will appoint as justiciaries, constables, sheriffs or bailiffs only such men as know the law of the land and will keep it well."

Chapter 39 was the most important and famous of these chapters, and is particularly pertinent to criminal justice. It stated:

No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.

For a number of years, some of the chapters in Magna Carta were misinterpreted. For example, chapter 39 was described as originating trial by jury and the writ of habeas corpus, but both assumptions are false. To the twenty-first-century reader, the real value of Magna Carta is that it is the first attempt to explain in legal terms the germ of the idea of government by a constitutional process.

The Bill of Rights

Another important historical document is the statute known as the Bill of Rights. Before Parliament offered the English crown to William III and Mary II in 1688, it required their acquiescence to principles that became known as the Bill of Rights. Among the principles that appeared in the statute were:

- Parliament should meet frequently to redress grievances and pass legislation.
- Members of Parliament should be elected freely.
- Freedom of speech should be assured during the proceedings of Parliament.
- The Crown cannot suspend or create law without the consent of Parliament.
- Excessive bail or fines should not be imposed nor cruel and unusual punishments permitted.

The principal significance of this statute was that it established a clear foundation on which to build a modern constitution.

The Act of Settlement

The Act of Settlement of 1700 was another statute that proved beneficial in establishing the modern constitution. One of the most important provisions of this act was the recognition that judges should hold office only during good behavior and could be removed only with the consent of Parliament. These statutes, along with others, clearly stated that the monarch must govern by and through Parliament. Since the seventeenth century, there have been other significant statutes passed in Parliament that have in some way altered the British constitution. Unfortunately, they are too numerous to list within the confines of this text. These examples provide the reader with a sense of how some basic constitutional principles were incrementally introduced, which usually coincided with Parliament enhancing its authority.

The Human Rights Act

As mentioned earlier, the government has embarked upon an intense period of reform that has some important constitutional implications. One of the most significant of these initiatives was the passage of the Human Rights Act (1998). Although this legislation received the royal assent in 1998, all of the sections to the act were not in force until October 2000. The significance of this legislation is that it enables violations of the provisions of the European Convention to be adjudicated in English courts.

The European Convention on Human Rights was ratified by the United Kingdom in 1951, but it was not incorporated into domestic law. Nevertheless, the country has been bound by its terms and court judgments under international law. The Convention is similar to a written constitution, like the Constitution of the United States, in that it is a listing of fundamental principles associated with a democratic form of government. The Convention consists of a series of articles that address such rights and freedoms as the right to life;

prohibition of torture; prohibition of slavery and forced labor; right to liberty and security; right to a fair trial; no punishment without law; right to respect for private and family life; freedom of thought, conscience, and religion; freedom of expression; freedom of assembly and association; right to marry; prohibition of discrimination; restrictions on political activity of aliens; prohibition of abuse of rights; limitation on use of restrictions on rights; protection of property; right to education; right to free elections; abolition of the death penalty; and death penalty in time of war.

In 1966, citizens of the United Kingdom were empowered to petition the European Court on Human Rights, which is based in Strasbourg (France), if they believed one of their aforementioned rights had been violated by the government or an agent of the government. Unfortunately, such an appeal was costly to the petitioner, because legal aid was not available and the process took a good deal of time in light of various court delays. Five years has often been cited as not being an uncommon length of time for a case to work its way through the court. Since the enactment of the Human Rights Act (1998), as a significant feature in domestic law, citizens of the United Kingdom can now initially petition an English court to adjudicate allegations of various abuses associated with human rights.

Many scholars view the Human Rights Act (1998) as a new chapter in the evolution of English constitutional law, because all public authorities now have a duty to comply with the Convention on Human Rights (Wadham and Mountfield, 2000). It is important, however, to note the distinction between a statutory and a constitutional duty. Most European countries adopted the Convention as part of their fundamental or basic law. This kind of incorporation enables the courts of a country to rule that a national law is incompatible with the Convention. This type of adoption did not occur in the United Kingdom because the English judiciary does not have the authority to overturn parliamentary decisions, that is, to declare a law unconstitutional. Granting the judiciary that kind of power would be a rejection of the idea of parliamentary sovereignty.

The Human Rights Act (1998) does address the issue of English law being incompatible with rights spelled out in the Convention. According to Sections 3 and 4 of the act, English courts can issue a declaration of incompatibility. This enables courts to indicate to the government that remedial action should be taken to correct that portion of a domestic law that is not in compliance with the fundamental democratic principles represented in the Convention. Thus, although English courts do not have the power to override the authority of Parliament, the role of the judiciary has been enhanced considerably by this legislation. The judiciary has been given the authority to encourage both the executive and legislature to take corrective action when domestic legislation is not in compliance with human rights provisions.

It should be noted that there are derogation statements in both the Human Rights Act, Section 1(2), "[t]hose Articles are to have effect for the purpose of this Act subject to any designated derogation or reservation," and The European Convention on Human Rights, Article 15, "[i]n time of war or other public emergency threatening the life of the nation." The issuance of a derogation order is of particular relevance in recent years as a result of the international concern over terrorism. For example, the British government derogated

from Article 5 of the Convention, which deals with a person's right to liberty and security, specifically as it relates to being arrested or detained by the police. This was necessary because parliament passed the Anti-Terrorism, Crime and Security Act (2001), which permits the detention of suspected terrorists for extended periods of time that would not be permitted under a typical criminal investigation.

The reader should also be cognizant of some other characteristics of the British constitution. First, Britain is a unitary country and not a federated state. Therefore, Parliament is supreme over the entire United Kingdom. Although this principle remains in place, it should be pointed out that as part of the constitutional reform effort, devolution has been granted to Scotland and Wales. In 1999, representatives were elected to the newly established Scottish Parliament and Welsh Assembly. Second, Parliament exercises supreme legal power in Britain. As a result, no English court can declare an act of Parliament unconstitutional. The limitations imposed on the authority of the courts in the Human Rights Act (1998) illustrate the importance of this principle to English jurisprudence. Finally, there is a fusion of powers in Britain, rather than a separation of powers as is the case in the United States. Both the executive and legislative branches of government are found in Parliament. Until relatively recently, the highest court in the land, the Appellate Committee of the House of Lords, was also situated in Parliament. With the passage of the Constitutional Reform Act (2005), however, the Supreme Court of the United Kingdom was created to replace the Appellate Committee and became operational in October 2009.

The passage of the Human Rights Act (1998), House of Lords Act (1999), and the Constitutional Reform Act (2005) are illustrations of the "organic" nature of the British constitution. Moreover, the British have been viewed for a long time as a rule-of-law-based country. These statutes, each in their own distinct way, enhance that position even further.

Parliament

The British government has operated under the constitutional principle that the country should be governed by a fused power rather than a separated one. Parliament provides that leadership. It consists of three parts: the monarch, the House of Lords, and the House of Commons.

The Monarch

The role of the monarch in Parliament has been declining for almost 300 years. The reason for this reduction in power is constitutionally and politically related to Britain's establishment of a government based on democratic principles. Today, the monarch's importance is symbolic; it represents the unity of the country. For example, all statutes passed in Parliament are carried out in the monarch's name. Despite a loss of power, the monarch legally retains some authority. The monarch convenes Parliament after an election and dissolves Parliament when an election is required. The monarch calls for the leader of the political party who was victorious in the election campaign to form a government—or, more accurately, an administration for the government.

The House of Lords

Like the monarchy, the power of the House of Lords has diminished considerably. The historical roots of this body are almost as ancient as the monarchy itself. Early English kings traditionally had a great council that consisted of a group of nobles who advised the king on domestic and foreign affairs. The House of Lords is the political descendant of the great council and is considered to be the upper house of Parliament. Its authority has declined, especially during the past 100 years, because the idea of popular democracy is theoretically at cross-purposes with such an unrepresentative element in government.

The House of Lords performs several duties. Until 2009, it was the highest court of appeal in the country, but when it sat as a court, only the lords of appeal in ordinary, also referred to as law lords, took part in the proceedings. The House does a considerable amount of committee work; that is, it examines and revises legislation proposed in the House of Commons. It has been suggested that the House of Commons benefits from this because it has restrictions placed on its time for scrutinizing legislation. The Lords' most controversial power is the constitutional power to delay the enactment of legislation passed in the House of Commons. With the exception of budget bills, which are the sole prerogative of the House of Commons, the House of Lords may delay the enactment into law of any public bill passed in the House of Commons. This delay cannot exceed one year; if it does, the bill becomes law without the House of Lords' assent.

While the upper House of Parliament continues to provide a valuable service to the country, the composition of its membership changed with the passage of the House of Lords Act (1999). This was another piece of reform legislation that was designed to reduce the number of hereditary peers sitting in the House. The objective was to eliminate a political anachronism from a governmental process that is based on democratic principles.

To understand the significance of the House of Lords Act (1999), it is useful to consider the composition of the House before the passage of this legislation. The House of Lords was composed of approximately 1,200 members who fell into one of three categories. First, there was a special group that consisted of the archbishops of York and Canterbury; the bishops of London, Durham, and Winchester; and 21 senior bishops of the Church of England. Also included in this special category were the law lords, who were responsible for performing judicial duties for the House, which was the court of highest appeal. Second, the group of hereditary peers made up the majority in the House of Lords, consisting of about 800 members. Although some of these people were very capable, they did not hold their seat in the House because of their ability to deal with legislative matters. Rather, they were members because they held the noble rank of duke, marquess, earl, viscount, or baron—a distinction conferred upon one of their ancestors by an English monarch at some point in the family's history. Thus, they had the hereditary right to sit in the House of Lords. The third category consists of life peers. The Life Peerage Act (1958) enables the government, through the monarch, to recognize people who have been outstanding public servants or who have made some significant achievement in industry or the professions by appointing them to the House of Lords. Unlike the hereditary peers, a life peer cannot pass the title onto his or her children.

The House of Lords Act (1999) is considered the first of a two-part phase in the reform of the House of Lords. This act eliminated the automatic right of a hereditary peer to sit in the House. It called for the election of 90 hereditary peers to continue to serve, along with the two peers who held the ancient titles of Lord Great Chamberlain and Earl Marshall, making the total 92. This is a considerable reduction from the roughly 800 people who were eligible to sit. The bishops of the Church of England were allowed to retain their seats, but members of the monarch's immediate family were excluded. The hereditary peers who were excluded from the House of Lords retain their title and are now eligible to stand for election to the House of Commons. While there is a good deal of uncertainty as to when the second phase of the reform of the Lords will occur, what is fairly certain is that the focus of reform will center on the actual powers accorded the Lords and on the nature of the composition of this legislative body—that is, a totally elected or partially elected and partially appointed House.

The House of Commons

Today, the most important component of Parliament is the House of Commons. When people speak of Parliament, they are usually referring to the House of Commons. The origins of this House can be traced to the thirteenth century, but it was not until the seventeenth-century English Civil War that the Commons gained the political ascendancy in Parliament.

Presently, the House consists of 650 elected members. The typical member of the Commons (M.P. for Member of Parliament) is affiliated with either the Conservative or Labour parties. This House, more than the other two components of Parliament, represents the various social and political elements of the British population. The major responsibility of the House is to vote on legislative bills proposed by either the government or a member of the Commons. Another duty is to discuss issues and pending legislation. Members of the party in power are obviously attempting to support the government, while members of the opposition parties (the parties that are out of power) seek to criticize it.

The function of discussing issues and pending legislation also serves a political end for all parties, because England can be considered to be in a continuous election campaign. Until recently, statutory law required that a general election be held every five years, but an election could be called before that time. For example, it was not uncommon for the party in power to call for an early election at a time when opinion polls indicated that it was riding a wave of popularity. In addition, if the government lost the support of a majority on an important vote in the Commons, it could request that the monarch dissolve Parliament and call for an election. Because election campaigns usually lasted about three to four weeks, political parties had to be continually capable of presenting their case to the people for either retaining power or gaining power in the Commons. Thus, the House of Commons continuously provided all parties with a forum for presenting their views to the British electorate.

The Fixed-term Parliaments Act became law in 2011. As the name suggests, this legislation introduced a new procedural rule that parliamentary general elections be held every five years on the first Thursday in May. Obviously, this eliminates the dissolution of

Parliament by the party in power often for its own political advantage. The new legislation does permit the calling of an early general election under two circumstances. First, at least two-thirds of the members of the House of Commons vote on a motion to dissolve Parliament and call for an election. Second, Parliament can be dissolved and new elections called if there is a no-confidence vote in the government. This second rationale of calling for an early election had existed under the electoral rules prior to the passage of the Fixed-term Parliaments Act (2011).

Prime Minister

In the modern British constitution, the prime minister has become the fulcrum for the English form of parliamentary democracy. The way the political system works is largely dependent on the prime minister. The leader of the political party that has won a majority of seats in the House of Commons is selected to be the prime minister.

The qualities necessary for an effective prime minister are many; the person who occupies this position must be versatile. The reason for this is quite simple. The prime minister must combine into one job a set of responsibilities that in many countries are distributed among a number of people.

The prime minister is leader of the nation. National opinion polls are largely based on the personality and policies of the prime minister. Because the monarch has a right to be consulted on national issues, the prime minister is the personal advisor to the monarch. The prime minister is also leader of his or her political party. Although assisted in this leadership role by party whips, the prime minister nevertheless must function as a party manager and conciliator in keeping party members in line on important legislative issues before Parliament. Finally, the prime minister is chair of the cabinet, which is created by his or her appointments to it and which sets the goals and establishes the policies of the government.

The Cabinet

After the British electorate votes for their candidates, it is the responsibility of the monarch to request that the leader of the victorious party—the one that has won a majority of seats in the House of Commons—form a government. The British executive branch is composed of members in Parliament whose political party commands a majority in the House of Commons. This group is referred to as the cabinet. Membership in the cabinet is dominated by the House of Commons, with a few members from the House of Lords.

Generally, the prime minister includes in the cabinet all the outstanding leaders in the party. He or she is usually careful to include some younger members in order to groom them for future key leadership positions. The wise leader will also assure that the various points of view within the party are represented so that the cabinet serves as a microcosm of the entire party.

Each member of the cabinet is responsible to Parliament for the administration of his or her department. For example, the Chancellor of the Exchequer is responsible for the Treasury Department, while the foreign secretary is the chief executive of the Foreign Office.

Collectively, the cabinet is accountable to Parliament for the administration of the entire government. Thus, the cabinet is responsible for three things: controlling the executive branch of government, coordinating the work of various departments, and determining government policy and submitting it to Parliament.

Political Parties

Although England has had three parties vying for power for more than 100 years, the Conservative and Labour parties are considered the major political parties. The benefits of a two-party system are similar to those found in the United States. The party that wins the election usually has a clear majority in Parliament. The formation of a government by the majority party assures a stable and disciplined government. The British electorate has a clear choice at election time to retain the party in power based on its record or to select the opposition party based on its promises for the future.

Conservative Party

The Conservative Party has a long heritage traceable to the seventeenth century. One of its remarkable achievements has been an ability to adapt to the changing political and social climate of opinion for more than 300 years. As is true of any conservative party, British conservatives support traditional institutions and political and social principles. Often they are devout defenders of the monarchy, the Church of England, and social class. Although they may accept change and innovation, they reject change for change's sake. They prefer to retain established institutions and principles that have stood the test of time. This attitude helps to explain why some members of the party are skeptical of the European Union, in particular, the issue of monetary union.

The Conservative Party supports the principles of free enterprise, private property, freedom of choice, self-interest, and reward for ability; yet, they have accepted in principle the concept of the welfare state. They differ, however, with the opposition regarding the degree and the means with which social services should be provided. As long as change occurs within the framework of the constitutional tradition of parliamentary government, the Conservative Party is willing to accept and endorse state activity in the private sector, as well as social reform in the public sector.

Labour Party

The Labour Party was officially founded in 1900. The party's ideology can be traced back to the middle of the nineteenth century, when England was the most industrialized country in the world. Throughout the twentieth century, the party supported a socialist ideology. Their political platform emphasized a movement toward extending democratic principles of the political realm to the economic marketplace. Their goals included the nationalization of industries by the government, a more equal distribution of wealth through a progressive income tax and other forms of taxation, the institution of social welfare services for all citizens, and the elimination of a class-based society. Like their conservative

counterparts, the Labour Party has been willing to achieve these ends gradually through the parliamentary process.

In the past few years, the Labour Party has attempted to become more mainstream or centrist. To illustrate, they have changed their long-standing commitment to the nationalization of industries. They support a dynamic capitalistic economy that is capable of balancing the objectives of the private sector with the public interest and can display social compassion for the less fortunate. They have espoused a policy that is tough on crime and its causes. Finally, they initiated the current efforts at constitutional reform.

Liberal Democratic Party

In the late 1980s, the Liberal Democratic Party was created out of a merger of two small parties: the Liberal and the Social Democratic Parties. The Liberal Party traced its ideological position back to the seventeenth century. For much of the twentieth century, however, they had a difficult time retaining a viable party membership because they had been out of political office since 1915. Early in 1981, some discontented moderates of the Labour Party resigned their positions and formed a new political party called the Social Democratic Party as an alternative to the extreme leftist positions that were being espoused by the Labour Party at that time.

Presently, the Liberal Democratic Party has tended to attract the interests of the suburban middle class. They are the party of the individual versus the collective. They are public-sector-minded, with a strong power base in local government. They support the European Union, the reform of Parliament, and the reduction of tax breaks for the wealthy. While the Liberal Democrats claim to be the party of the center, they remain a fairly small party because the leadership of the Labour and Conservative Parties has tempered their more extreme positions.

In the 2010 parliamentary elections, the Conservative Party was unable to achieve a clear majority in the House of Commons. As a result, they formed a coalition government with the Liberal Democrats in order to secure a majority. The last time it was necessary to form a coalition government in the United Kingdom was in 1945.

As a result of the parliamentary elections held in May 2015, the Conservative Party won a clear majority of seats thus ending the need for a coalition. Of the 650 seats in the House of Commons, the Conservatives hold 330, Labour 232, and the Scottish National Party 56. Parties that secured at least three or more seats are: Liberal Democrats, Democratic Unionist Party, Sinn Fein, Plaid Cymru, and the Social Democratic and Labour Party.

The Crown

The Crown is the constitutional office that symbolically unites the people of England. This institution, because of its ancient heritage and the associated pageantry, is revered by a large segment of the British population. The monarch is the person who occupies this office. The degree of affection drawn by a monarch is based on both personality and approach to the office. Throughout the long history of the monarchy, the English have had a number of popular and unpopular monarchs. Despite the unpopularity of a particular monarch,

the people usually were capable of making a distinction between the person and the office. Thus, they have continued to show deference to the Crown. Like the House of Lords, the monarchy is the antithesis of democracy. The monarchy, however, remains a powerful and useful symbol for the country, and a majority of the public appears to acknowledge this fact.

Most of the powers and duties of the monarch have already been suggested. There is one final personal prerogative that a monarch can exercise: the right to be consulted. This means that all important government business must be available for the monarch's perusal. The significance of this right generally increases with the length of the monarch's reign. Political leaders come and go, but the monarch often reigns for a number of years. The monarch can gain considerable insight into the affairs of state and view current policies with a historical and associational perspective that a political leader may lack. This position can enable a diligent monarch to influence the leaders who ultimately must decide policy. Although there is no way of measuring the effects of this situation, it is a fact that must be reckoned with when considering the utility of the Crown in twenty-first-century politics.

Administration

Although England is a unitary state, there are areas of government that are not the sole responsibility of Parliament. England has had a long history of county and municipal government—working either in association with Parliament or separated from it—that dates back to medieval times. Occasionally, it was deemed appropriate to allow local governments to administer certain matters at the local level. Sewage, water, and parks and recreation are examples of local responsibilities.

After World War II, the national government stepped up its efforts to nationalize industries, substituting private ownership with public ownership. Obviously, this increased the scope of its power. One of the hallmarks of Prime Minister Margaret Thatcher's government was to reverse this trend of nationalizing industries by returning them to the private sector.

The areas of responsibility in which the national government has complete or almost complete control include matters pertaining to defense, foreign affairs, law, economics, social matters, and internal order. The national government has a significant role in judicial matters. Until 2006, the Lord Chancellor, who was appointed by the prime minister and was a member of the cabinet from the House of Lords, was ultimately responsible for appointing all judges. With the passage of the Constitutional Reform Act (2005), that responsibility passed to the Judicial Appointments Commission, whose members are selected by the Lord Chancellor. Internal order is a matter of shared responsibility between the national and local governments. For example, the police are accountable to the home secretary, who is also a member of the cabinet. This office establishes standards for all police forces and provides grants-in-aid equaling at least 51 percent of the costs for maintaining each of the forces. Local governments also have some control, for they are responsible for hiring officers and providing about 49 percent of the expenses needed to maintain their force.

Since the 1960s, the national government has made a concerted effort to control the planning and administration of the criminal justice system. The Lord Chancellor was concerned with the efficiency and effectiveness of the courts, while the home secretary had increased authority for law enforcement and the prison service. This development was a direct result of the government having to deal with crises within various components of criminal justice. This arrangement, however, was becoming increasingly untenable. Critics raised several concerns, of which some cited constitutional issues. For example, questions were raised about the independence of the judiciary, while others focused on the incompatible responsibilities of the home secretary: policing and maintaining public order with prisons and protecting civil rights and reforming the criminal law. The ongoing furtherance of constitutional reform has attempted to rectify some of these problems. In 2007, a new Ministry of Justice was created and given responsibility for the courts, criminal law, prison and probation, and criminal justice reform. The Home Office had its focus narrowed to crime and policing, counter-terrorism, and immigration.

Over the course of the past three decades, almost every aspect of the criminal justice system has been the subject of interest to a government commission, an independent inquiry, or academic research. This has led to the passage of a significant amount of legislation directly impacting how the justice system is organized and administered. What happened in England during the 1980s and early 1990s is strikingly similar to what occurred in the United States during the 1960s and 1970s. The study of criminal justice has become a significant issue for the government and has emerged as an important field of study within England's system of higher education.

POLICE

The English have prided themselves on initiating a system of policing based at the local level but also mandated and in some fashion controlled by the central government. This shared responsibility for policing has existed throughout much of the country's history. Prior to the creation of the Metropolitan Police of London in 1829, this tradition of shared responsibility took four distinct forms.

The tithing was the earliest type of community-organized policing; references are made to it in Anglo-Saxon dooms. Historians refer to the period before the Norman invasion of 1066 as the Anglo-Saxon era. Doms were the statutes or ordinances enacted during that period. The tithing was based on principles of self-help and collective responsibility. Each tithing consisted of 10 men who were accountable for policing each other. If one of their number was accused of a crime, they were responsible for producing the defendant before a local court, and if they failed to surrender the individual, the court could impose a fine on the other members of the tithing. Supervision of the tithing was a responsibility of the sheriff, the local representative of the king. Therefore, during this early medieval period, the sheriff was the link between the local and the central government for criminal justice administration.

The creation of the office of constable was the next significant development in law enforcement. It occurred as a direct result of England emerging as a feudal society, following the Norman Conquest of 1066. With the advent of feudalism, the manor became

the principal unit of local government. People worked on large tracts of land owned by the lord of a manor in return for economic and social security. The lord of a manor appointed officers to provide a number of services for the manor community. The ale-taster and bread-weighter were two of these officers, as was the position of constable. ~~The constable replaced the tithing as the primary source for policing a manor.~~ Long after feudalism ceased to exist, the constable continued in this role—recognized by the king as the principal officer responsible for maintaining the peace of the kingdom at the local level.

Throughout the twelfth and thirteenth centuries, English kings significantly increased the extent of their political authority. Whereas the tithing system and the office of constable evolved from custom and feudalism, respectively, future innovations were initiated because a monarch demanded it. These royal commands were given expression in statute law. The Statute of Winchester (1285) initiated a precedent that became the basis for the organization of English police to this day. It established the notion that policing was a responsibility shared between the central government of the king and the local communities.

The Statute of Winchester was the first public measure designed to systematize police efforts in towns. It retained some of the features of previous eras, especially the notion of local responsibility for policing. Specifically, it called for the introduction of town watchmen who would stand guard between sunset and sunrise. It revived the Anglo-Saxon “hue and cry” in which the whole community was expected to pursue a fleeing felon when a loud outcry was sounded. It also emphasized the maintenance of the “assize of arms,” in which every male between the ages of 15 and 60 was required to own a weapon for defensive purposes. Constables were responsible for seeing that each town adhered to the statute.

In 1361, the Justices of the Peace Act further clarified the approach to policing English society. Keepers of the peace for each shire or county had been established by the Justices of the Peace Act of 1327. The 1361 statute gave these keepers formal recognition as justices. The justices were usually owners of large tracts of land in their county. The king appointed and enabled them to maintain the peace and to administer justice at the local level. The Act reiterated the three points presented in the Statute of Winchester and supplemented them with two additional principles. One emphasized the duty of every citizen to keep the peace by permitting everyone to arrest offenders, while the other mandated that the constable present those accused of crimes before the local court. The Winchester and the Justices of the Peace statutes explained the official approach to policing that existed in England until the early nineteenth century.

By the late seventeenth and early eighteenth centuries, this system of policing had become ineffective. During the eighteenth century, a number of notable police practitioners—among them Henry Fielding, John Fielding, and Patrick Colquhoun—attempted to persuade Parliament to reform the police. Politicians, however, feared that improvements in police efficiency would enhance the authority of the monarchy. This was considered unacceptable at that time because a majority in Parliament were attempting to reduce monarchical power. Politicians often cited the efficient police system of France’s *ancien regime* to illustrate their concern. Therefore, the suggestions of police reformers were not implemented, and the assessment of English politicians to curtail monarchical power was given further credence with the outbreak of the French Revolution.

During the 1820s, a few politicians realized that something had to be done about police inefficiency—especially in the greater metropolitan area of London. Robert Peel, a leading politician of the day, committed himself to a resolution of the problem. While serving as home secretary, Peel introduced a bill in Parliament calling for the creation of a metropolitan police force. The bill mandated that: (1) two justices of the peace would create and administer a force that would police the metropolitan areas of London; (2) police personnel would be sworn as constables, thereby having all the powers, duties, and privileges accorded a constable under common law; and (3) the two justices would exercise their authority and be responsible to the home secretary.

With scarcely any debate in Parliament, the bill became law on June 19, 1829. Peel appointed Colonel Charles Rowan, a retired army officer, and Richard Mayne, an Irish lawyer, to the posts of justices of the peace. They were soon referred to as commissioners of police. Upon Rowan's death, Mayne continued as the single commissioner of police for metropolitan London. The tradition of a single commissioner continues to this day. Rowan and Mayne planned, organized, and recruited the force, and on September 29, 1829, the "new police" began to patrol the streets of metropolitan London.

After a few difficult years, the force became recognized throughout many parts of the world as the first modern police force. During the 1830s, this model was accepted by the rest of the English citizenry. The Municipal Corporations Act of 1835 enabled towns to create police forces. In 1838, the City of London established a force modeled along these lines. Finally, the County Police Act of 1839 reformed the police in rural areas. At the turn of the twentieth century, there were 197 police forces scattered across the country.

One of the most important developments in twentieth-century British policing had been the extent to which these forces were amalgamated. Today, there are 43 local forces serving the people of England and Wales. Consolidation has had a significant impact on the long-standing notion that policing is a responsibility shared by central and local governments.

Organization and Administration of the English Police

The English have long rejected the idea that they have a national police service. To prove the historical validity of their argument, they frequently cite a long list of statutes that date back to the Statute of Winchester (1285). In both theory and fact, however, the central government has had enormous control and influence over the police, and it had been increasing. Despite this apparent contradiction, the management of police has remained a shared responsibility between the central government and the local authorities. With the adoption of the Police Reform and Social Responsibility Act (2011), there has been a slight shift from the extensive control of the police throughout the country by the central government, specifically the Home Office, to a greater emphasis on local police agencies assuming more responsibility and accountability in the planning and execution of crime control strategies for their respective police forces. The following is a description of the organization of the English police (see Figure 1.2).

The Home Office At the top of the organizational hierarchy is the secretary of state for the Home Office, a civilian politician who is more commonly referred to as the home secretary. As previously mentioned, the home secretary is one of the senior officials in the

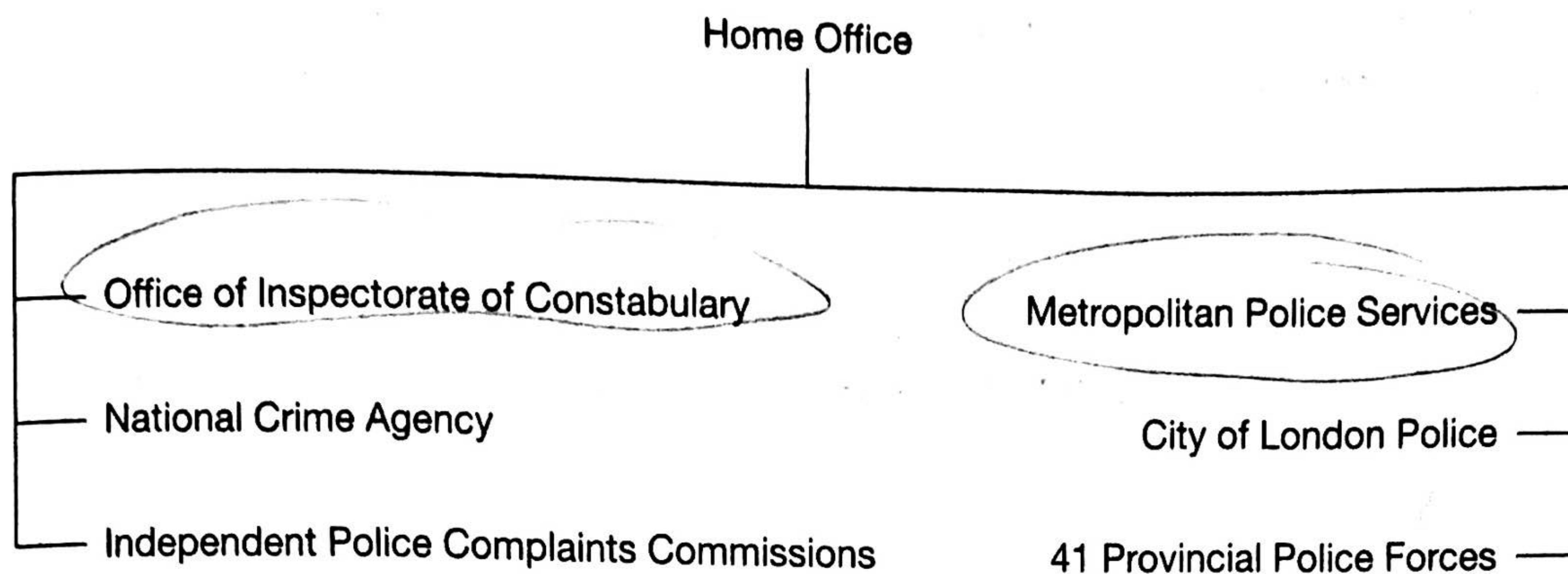


FIGURE 1.2 | Organization of the English Police

prime minister's cabinet and is, therefore, a member of Parliament. The powers and duties of the home secretary, as they relate to police, are clearly explained in statutory law. The significance of this approach assures members of Parliament that one of their own, as well as a member of the government, is ultimately responsible for police throughout the country. This enables members to question the home secretary regarding the police service while Parliament is in session.

In spite of the changes regarding the control of the police, the home secretary's responsibilities are significant and comprehensive, and illustrate the centrality of this position's administrative authority. For example, the home secretary oversees the national strategic direction of the police, in particular as it relates to national threats and regional issues associated with organized crime, terrorism, and national borders. He or she also offers guidance on local police and crime plans. Whether the issue involves national, regional, or local policing, the home secretary's involvement is designed to enhance the efficiency and effectiveness of the police.

The home secretary is consulted on the appointment of chief constables to the various forces and can ultimately require a chief constable to resign or retire. He or she can require a chief constable to submit a report on any aspect of policing for which the executive is responsible. The home secretary can make regulations regarding the organization and administration of police. This includes: rank structure, qualifications of service, promotions and suspensions, authorized strength of a force, hours of duty, pay, and records. Also within the jurisdiction of the home secretary are regulations pertaining to training and the kinds of equipment used.

Two of the home secretary's most important powers are the issuance of administrative circulars that impact the management of all forces throughout the country and the provision of more than 50 percent of the monetary funds needed for the budget of each force. Finally, the home secretary has the ultimate administrative authority for Her Majesty's Inspectorate of Constabulary, the Independent Police Complaints Commission, and the National Crime Agency. The specific duties of these agencies are explained later.

Although the home secretary possesses administrative power and control over the police service in England, the use of such authority is limited. Thus, the police and crime commissioners and the chief constables of each force are afforded a good deal of discretion

to operate their police service in a manner suitable to their needs. It should be emphasized at this point that the ~~home secretary~~ and the police and crime commissioners do not have the power to direct or to order police in their specific law enforcement duties. Rather, they are responsible as executive overseers for the management of the forces.

Whereas the home secretary represented the central government's control of police, until recently, police authorities represented the civilian control of police at the local level. ~~Police authorities had been utilized throughout the police service for almost 100 years.~~ There were 43 police authorities, which corresponded to the 43 local police forces. The police authority serving the 41 provincial forces was a committee usually consisting of 17 members. Nine of the committee members were politicians from the local county council (or councils, in the event the police force served more than one county). They were elected by their council colleagues to serve on the authority. The other members were appointed by members of the police authority from a list of names prepared by the home secretary.

The police force for London had a separate and distinct police authority: the city council of London. ~~Until 2001, the police authority for the Metropolitan Police Service had been the home secretary,~~ who served alone in that capacity. In that year, however, the Metropolitan Police Authority was established. The new Authority consisted of 23 members. The mayor selected 12 from those serving on the Greater London Assembly. Four magistrates and seven independent members were also selected to serve with one of the independents appointed by the home secretary.

Each police authority served as an advisory body to the police force. In this capacity it was concerned with maintaining an efficient and effective force for its police area. In theory, the existence of a police authority enabled each force to maintain a degree of local autonomy and assure public input into the organization and management of the force. In fact, the authority's actual role had declined over the years. Scholars alleged that the authorities abdicated their responsibilities and were viewed as rubber stamps for chief constables (Brogden, 1982; Lustgarten, 1986; Oliver, 1987; Reiner, 1985). Several factors were cited as possible reasons for this development. One was a result of the consolidation of the forces. The increased size of the police bureaucracies may have reduced the police authorities' willingness to assert their power over the forces. Another was the home secretary's authority to issue administrative circulars, in addition to the new responsibility of establishing levels of performance throughout the police service. Both of these duties impacted considerably on the management of the forces. The Research and Planning Unit and the Central Planning and Training Unit within the Home Office also may have hindered the police authorities' utility. No one was suggesting that these units were not needed, but bureaucratic technocrats had been known to intimidate local politicians on police authorities. These units also increased the power of the home secretary, if one accepts the notion that a key source of organizational power is the control and dissemination of information. Finally, the enhanced position and deference paid to chief constables had diminished the position of police authorities. In fact, there had been a steady decline in the public's awareness of the role of police authorities. Each of these factors gave further credence to the claim that England was moving toward a national police service.

member
council

Police and Crime Commissioners

With the passage of the Police Reform and Social Responsibility Act (2011), the police authorities were eliminated in the 41 provincial forces by the spring of 2012. The objective was to ~~replace the police authorities with~~ police and crime commissioners. These commissioners are elected directly by the people where the provincial force operates. The election is designed to give the public a greater voice in concerns about crime and antisocial behavior at the local level, which many believe had been neglected in recent years as the focus tended to be directed at national concerns, in particular terrorist threats, organized crime, and immigration issues.

~~The police and crime commissioners are elected to a four-year term and are limited to serving two terms.~~ Since the commissioners represent the community, they are expected to understand the crime and antisocial problems of their community. They are expected to set priorities for the police in a local strategic plan, establish the budget for the force, hold the chief constable accountable to the strategic plan, and they have the authority to hire and fire the chief constable. *day*

The statute also calls for each provincial force to establish a police and crime panel. The panel is designed to both serve as a check on the power of the police and crime commissioner and assist the commissioner in an advisory capacity. The composition of the panel includes locally elected council members along with independent citizens. The police and crime panel is authorized to advise the police and crime commissioner on policy plans and the budget, summon the commissioner to hearings, and hold confirmation hearings for a chief constable, although they do not have the power to veto an appointment.

The aforementioned organizational changes impact the 41 provincial forces. With regard to the city of London, the city council will retain the responsibility of oversight for the police of the city. ~~In reference to the Metropolitan Police Service, the Metropolitan Police Authority, mentioned earlier, is abolished, and the Greater London Authority oversees the Metropolitan Police.~~ *Gone* Moreover, the mayor of London appoints a deputy mayor to administer the Mayor's Office for Policing and Crime. This office is authorized to develop a police and crime plan in consultation with the commissioner of police for the metropolis and to hold the commissioner accountable for the force's strategic plan. The office's plan, however, must take into consideration the strategic policing requirements established by the home secretary. Moreover, the home secretary will continue to recommend to the monarch the appointment of the commissioner of police of the metropolis. The Mayor's Office for Policing and Crime, with the approval of the home secretary, can suspend the commissioner or request that the commissioner resign or retire.

Chief Constables

The chief administrative officer for each of the 41 provincial forces is called a chief constable. ~~Appointed by the local police and crime commissioner,~~ the chief constable administers and ~~manages the daily operations of the force.~~ The chief constable is assisted in administrative duties by assistant chief constables and superintendents. The Police Reform and Social Responsibility Act (2011) is designed to enhance the operational

independence of chief constables. It also enables them to appoint all members of their top management team. The chief administrative officers for the Metropolitan Police Service and the City of London are called commissioners. The commissioner of police for the metropolis is appointed by the monarch through the home secretary.

Metropolitan Police Service

The Metropolitan Police Service is responsible for providing police services to the greater metropolitan area of London. This area encompasses 620 square miles and contains a population of more than 7 million. The Metropolitan Police consists of more than 31,000 officers, 14,000 staff, 4,000 police community support officers, and 2,500 volunteer police officers. The role of police community support officers and volunteer police officers is explained below.

The head of the Metropolitan Police is the Commissioner, who has spent a professional career in law enforcement. The Metropolitan Police (often referred to as **The Met**) are organized in the following manner. **Territorial Policing** is concerned with regular daily policing issues found in the 33 operational command units that make up the metropolitan area. **The Specialist Crime Directorate** is composed of various specialized units, such as intelligence; protection of politicians, embassies, and royalty; and certain categories of serious crime, which include violent crime, racial hatred, and terrorism. **Central Operations** also consists of specialized units. These include Traffic, Air Support Unit, Marine Support Unit, Public Order, Mounted Branch, and the Dog Support Unit. The Met has a large administrative and support staff devoted to such functions as recruitment and training, information technology, and publicity and communications.

City of London Police

It should be noted that the one-square-mile City of London has its own police agency. The City of London Police consists of approximately 755 officers, and 412 civilians, 12 police community support officers, and 82 volunteer special constables who are responsible for the policing needs of the roughly 10,000 residents of the city, the 300,000 commuters who work in the city, as well as a significant influx of tourists throughout the year, which is estimated at 4 million.

National Crime Agency

Since 1965, England has had regional crime squads that were cooperative and collaborative ventures among regional constabularies. In 1997, these squads were merged into a National Crime Squad (NCS) with a mandate to prevent and detect serious crime. In 1992, the National Criminal Intelligence Service (NCIS) was created in an effort to establish proactive models of policing throughout the English police service. There were several operational units within NCIS that illustrated the range of its domestic responsibilities. They included the organized crime unit, the drugs unit, the economic crimes unit, and the football unit, which focuses on disruptive soccer fans. A specialist crime unit also dealt with kidnap and

Body
of
CONSTABLES

extortion, counterfeit currency, stolen vehicles, and pedophiles. The NCIS coordinated the collection, storage, and analysis of information about serious crime and criminals at the regional, national, and international levels. It provided criminal intelligence to police forces and other law enforcement agencies. Thus, it served as a national support unit for various law enforcement agencies.

In 2006, the Serious Organized Crime Agency (SOCA) assumed the functions of the NCS and NCIS. This agency was also responsible for drug trafficking, financial crimes, and organized immigration crime. The home secretary established the strategic priorities for the agency and appointed the chair and director general of SOCA. The chair was responsible for the overall performance of the agency, while the director general was charged with the administration and operations of the agency.

The Police Reform and Social Responsibility Act (2011) called for the establishment of a National Crime Agency, which includes the various components of the Serious Organized Crime Agency. It became operational in late 2013. The primary objective of this agency is to enhance the response to crime that threatens the national security of the United Kingdom. Of particular concern at the operational level are issues associated with organized crime, economic crime, cybercrime, and protecting young people from sexual abuse and exploitation.

The establishment of the Border Force was also a component of the 2011 legislation. It became operational in 2012. As the name suggests, the Border Force is responsible for securing the coastline of the United Kingdom. They have a presence at all seaports and airports, where they enforce immigration and customs regulations. In the process they are able to gather intelligence and share information with other police and security agencies.

Other Police Organizations

The British government has found it prudent over the years to establish several centralized law enforcement and investigative agencies that specialize in police matters. To illustrate, there is the Ministry of Defence Police, which is a civilian force with full police powers; it is responsible for the land, property, and personnel of the Ministry of Defence. The British Transport Police is responsible for the national railway network and the London Underground. Another national police force is the Atomic Energy Authority Constabulary, which protects nuclear materials and the sites of the Atomic Energy Authority.

Police Powers by Civilians

Civilians have long been employed in police organizations and have usually been associated with the administrative and technical support staff. With the passage of the Police Reform Act (2002), civilians were given the opportunity to perform specific duties that had often been solely associated with the police. The objective of this change is to free up the regular police officers and thus enable them to use their law enforcement and order maintenance skills in a more effective and efficient manner. Within the first year of its existence, approximately 65 percent of the police forces were participating in this venture (Jason-Lloyd, 2003).

According to Section 38 of the Police Reform Act (2002), a civilian can exercise police powers if he or she is employed by the police authority of a force and is under the direction of the chief officer of that force. The chief officer of the force determines the extent to which these civilians will be permitted to exercise a wide range of special powers mentioned in the statute. Moreover, the ~~civilians~~ can perform one or more of the following ~~duties~~. community support officer, investigating officer, detention officer, and escort officer. The police community support officers were alluded to earlier in the sections on the Metropolitan Police Service and the City of London Police. These officers wear a distinct uniform and are utilized in particular as an additional visible patrol presence in specific areas to address quality-of-life and safety issues in a community. They are authorized to take crime reports and to issue fixed penalty notices dealing with dogs, litter, and graffiti. They can confiscate alcohol and tobacco products from young people. Finally, they can detain an offender until police arrive.

Civilians
Duties

Another use of civilians is as investigating officers. First of all, this title enhances the status and authority of the civilian crime scene officers that have been utilized for many years. In light of the sophisticated financial and information technology crimes, this statute also enables the use of other civilian specialist detectives. Detention officers can be either employed by the police force or contracted out to a private firm. ~~Their responsibility is to~~ ~~care for suspects summoned~~ and detained at a police station. Escort officers can also be either employed by the force or contracted out; their principal job is to transport people who are under arrest when the need arises.

Finally, there is the position of ~~volunteer special constable~~. This position enables people to give back to their community by assisting the police in various tasks that are determined by each police force. Among the duties frequently assigned are: foot patrol; conducting house interviews; assisting at scenes of accidents; addressing antisocial behavior problems, crime reduction, and community safety presentations; and providing security at various events. The government has established the guidelines for eligibility to this position. A minimum of 200 hours a year of service is required. While these volunteers are not paid, their uniform and expenses incurred on the job are reimbursed.

A Nonpolice Organization

Although it is not a police organization, brief mention should be made of the Security Service for the United Kingdom, which is more commonly referred to as MI5. ~~MI5 is responsible for protecting the country against threats to its national security.~~ While it is accountable to the home secretary, it is not a part of the Home Office.

FBI

~~The origins~~ of the Security Service are generally traced back to the sixteenth century, when Sir Francis Walsingham established a spy network to protect Queen Elizabeth I. In the early twentieth century, a number of British military intelligence units were designated by a section number. MI5 was responsible for counterintelligence and security. Its mandate was to protect the British political system and economic interests. Today, the Security Service collects and analyzes secret intelligence in order to protect the country from espionage, sabotage, and terrorism. It provides advice on security matters to both public and private organizations. It is a civilian investigative agency that does not have the

power to detain or arrest but does share information with law enforcement agencies. MI6, a separate agency, is the Secret Intelligence Service that is responsible for the external security of the country. In that context, MI6 is similar to the Central Intelligence Agency of the United States.

Office of Inspectorate of Constabulary

This agency is mandated to assure efficiency and effectiveness in the British police service. The County and Borough Police Act created the office in 1856. The inspectorate has offices in London, along with three regional offices. The London office focuses on such issues as crime and operational policing, community relations, personnel and training, and race and diversity. Until recently, inspectors of constabulary were all former chief constables who had been seconded to the inspectorate. Now, some inspectors do not have a background in policing; rather, they often have experience in the management of private or public-sector organizations.

The inspectorate provides two services to the home secretary and the various police forces. As originally mandated in 1856, it continues to assess the efficiency of forces and serves as a link between the research units of the various forces. The inspectorate encourages and facilitates the sharing of new ideas among forces. The most visible duty performed by the inspectorate is providing an annual report to the home secretary on a variety of aspects of the police service. The report discusses the recruitment and strength of forces, training and promotions, crime and traffic statistics, scientific and technical developments, community relations, complaints and discipline, and welfare.

In addition to the annual report, the inspectorate from time to time will issue more topical reports that may impact some or all the police forces. In November 2014, for example, they reported in *Crime-recording: making the victim count* that one in every five crimes reported to the police were not recorded as such. This amounts to more than 800,000 incidents. While politicians were outraged at this finding, the various representatives of the police indicated that the issue had been addressed since the data had been collected from November 2012 to October 2013. The distinction between crime reporting and crime recording is explained shortly in discussing the role of the British Crime Survey.

With the passage of the Police Reform and Social Responsibility Act (2011), the inspectorate has been charged with focusing greater attention on the provincial forces by assessing the performance of the police and crime commissioners and the individual police forces. The inspectorate will also assist the forces in identifying best practices to achieve the goals spelled out in their local strategic plans.

Independent Police Complaints Commission

For four decades, the British government has attempted to improve police-community relations by permitting civilian participation in the determination of alleged police misconduct. Prior to this change, the police were solely responsible for policing themselves. Some citizens questioned the efficacy of this approach and were successful at convincing Parliament to amend the process. With the passage of the Police Act (1976), the Police

checked the police

Complaints Board was established. The board was essentially composed of part-time members, and its role was one of passive oversight in handling complaints. Critics of the board pointed out that it did not have adequate contact with the police or sufficient powers in the complaints process (Brown, 1987; Terrill, 1983).

Criticism of the Police Complaints Board's authority led to it being replaced with the Police Complaints Authority (PCA), through the passage of the Police and Criminal Evidence Act (1984). The PCA was composed of citizens who were appointed to full-time duty by the home secretary. Excluded from service were all current and former English police officers. Under this system, the authority was more actively involved in the complaints process. For example, it supervised investigations of all serious complaints. "Serious" was defined as allegedly causing death or serious bodily injury to a person. In such instances, the authority must be notified of the complaint. Less serious complaints that might be criminal as well as disciplinary in nature were also immediately called to the attention of the authority. In these cases, the authority simply supervised the investigation. All other complaints were either formally investigated or informally resolved.

In the 1990s, there was again a growing level of criticism directed at the PCA. Questions were raised over the extent to which the PCA was independent of the police. Some critics cited the European Convention on Human Rights and suggested that the PCA was an inadequate mechanism for enforcing Article 13 of the Convention, which states: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." It should be noted that while much of the European Convention on Human Rights was incorporated into the country's Human Rights Act (1998), Article 13 was excluded from the statute. Nevertheless, British courts have an obligation to note the developments in European Convention case law.

The Police Reform Act (2002) created the third and most recent iteration of civilian involvement with the process of investigating police misconduct by establishing the Independent Police Complaints Commission (IPCC). The IPCC became operational in April 2004. Section 9 of the statute addresses the matter of the Commission's independence. It points out that the Commission is a corporate body rather than a "servant or agent of the Crown." Thus, it is a public organization that is independent from the government.

The IPCC consists of a chairperson and at least 10 other members who are appointed by the home secretary. No former or active police officer or member of the National Crime Agency is eligible to serve on the Commission. While previous oversight mechanisms focused on complaints against regular police officers, the authority of the IPCC is broader. It includes all regular police, civilians with police authority (for example, the police community support officers), and civilian employees.

Section 12 of the statute clarifies the scope or nature of complaints that can be filed with the IPCC. The complainant must be a victim, a witness, or a person adversely affected by the conduct in question. Complaints can be filed with the IPCC, a police and crime commissioner, or a chief officer of a force. It should be noted that a complaint can be informally resolved, but the complainant must agree to this method of handling the matter.

Depending on the nature of the alleged misconduct, an investigation into a complaint might take one of four forms. First, an investigation might be conducted in-house without

the input of the IPCC. Second, an investigation might be supervised by the IPCC because the matter raises probable public concerns. Third, an investigation might be managed by the IPCC; that is, it would merit direct control by the IPCC because of the probable public concerns over the incident. Finally, an investigation might be conducted by the IPCC because of the nature of the incident and the heightened level of public concern.

Following the investigation, if the matter is noncriminal in nature, the chief officer has two avenues available. If the officer admits guilt, a sanction can be imposed. The IPCC and the complainant must be informed of the recommended sanction. If the officer does not admit guilt, a disciplinary hearing would be conducted. In the event the officer is found guilty, a sanction would be imposed. If there is a finding that a crime was committed, the case would be sent to the Director of Public Prosecutions. (This office will be explained in the section on the judiciary.)

Throughout the complaint process, the IPCC is either actively or passively monitoring how the case is being handled. What is particularly new to this complaints procedure is the degree to which the complainant can be actively involved in the process. For example, the complainant must consent to an informal resolution of a complaint. The IPCC must consider the complainant's preference for the type of investigation undertaken. The complainant is kept apprised of the case through progress reports and may appeal to the IPCC during the various stages of the process. Finally, the complainant may attend the disciplinary hearing. Obviously, all of these steps are designed to make the handling of alleged complaints against the police more transparent so that the public has a greater faith in the integrity of the system.

Representative Organizations

Brief mention should be made of the various police representative institutions. Police unions in the United States have been a long-standing and controversial issue in police literature. A powerful union can frequently influence policy development and management directives. English police officers are not permitted to join a union or any other group whose purpose is to represent police on issues involving salary, pensions, or working conditions.

There are three police associations representing the various ranks in the English police service. The Police Federation, which was established in 1919, was formed because of a number of police strikes that occurred during and after World War I. The Federation represents all police below the rank of superintendent. The Association of Chief of Police Officers (ACPO) traces its origins to the 1890s and represents those of the rank of assistant chief constable and above. The Superintendents Association was founded in 1920 and was established primarily because officers with the rank of superintendent were not represented in the other two associations.

Representatives from these three organizations serve on both the Police Council and the Police Advisory Board. Thus, although the English police are not allowed to join unions, they do have representatives on the committees that decide salaries, pensions, and working conditions.

The Police Council for Great Britain has been in existence since 1919. It is composed of members from the local police crime commissioners as well as representatives of the

various police associations. The council handles such issues as salaries, hours of duty, pensions, and equipment. The ~~Police Advisory Board for England and Wales was established in 1964~~ its membership consists of ~~representatives from local police crime commissioners and police associations~~. It advises the home secretary on general issues affecting police, particularly ~~prosecutions and disciplinary matters~~.

Police Functions

The primary duties of police were explained in the 1962 Report of the Royal Commission on the Police. The Commission stated:

First, the police have a duty to maintain law and order and to protect persons and property.

Secondly, they have a duty to prevent crime.

Thirdly, they are responsible for the detection of criminals and, in the course of interrogating suspected persons, they have a part to play in the early stages of the judicial process, acting under judicial restraint.

Fourthly, the police in England and Wales have the responsibility of deciding whether or not to prosecute persons suspected of criminal offences.

Fifthly, in England and Wales the police themselves conduct many prosecutions for the less serious offences.

Sixthly, the police have the duty of controlling road traffic and advising local authorities on traffic questions.

Seventhly, the police carry out certain duties on behalf of Government Departments—for example, they conduct enquiries into applications made by persons who wish to be granted British nationality.

Eighthly, they have by long tradition a duty to befriend anyone who needs their help, and they may at any time be called upon to cope with minor or major emergencies.

The fourth and fifth responsibilities were altered somewhat with the introduction of the Crown Prosecutor Service through the Prosecution of Offences Act (1985). This service will be discussed in the section on the judiciary.

Legal Status

The English police trace the origin of their office back to the constable, the local representative of the king who emerged as a prominent figure in the twelfth century. The police also claim that the powers of their office are ~~derived from common law~~. In 1929, the Report of the Royal Commission of Police Powers and Procedures explained what is meant by the common law origins of the constable's powers.

The police of this country have never been recognized, either in law or by tradition, as a force distinct from the general body of citizens. Despite the imposition of many extraneous duties on the police by legislation or administrative action, the principle

remains that a policeman, in the view of the common law, is only "a person paid to perform, as a matter of duty, acts which if he were so minded he might have done voluntarily."

~~Thus, in theory, the English view their police as citizens who happen to be in uniform.~~ In the execution of their duties, the police are limited to the powers that have been prescribed by law.

Over the years, there has emerged a body of statutes, case law, and administrative directives designed to grant special powers and controls to the English constable when questioning people, arresting suspects, searching people, and seizing evidence. The use of such authority has been the subject of much discussion in England, as it has in the United States. In January 1981, the Royal Commission on Criminal Procedure issued a report that was to become the basis for the Police and Criminal Evidence Act (1984). In light of some highly publicized miscarriages of justice, the Royal Commission on Criminal Justice was created in 1991. It issued a report that subsequently led to the passage of the Criminal Justice and Public Order Act (1994). The implications of these pieces of legislation on police powers will be examined in the law section of this chapter.

Like their American counterparts, the British police utilize a good deal of discretion in carrying out their responsibilities. Probably the most interesting characteristic of the English police, from an American point of view, is that they are not legally accountable ~~to the municipality they serve for the performance of their duties.~~ The English constable is acting as a servant of the Crown and not as an employee of the provincial police authority that hired him or her.

This independent status of the constable has been supported for some time by the courts. In the case of *Enever v. The King* (1906), the court ruled that: "The powers of a constable . . . , whether conferred by common or statute law, are exercised by him by virtue of his office, and cannot be exercised on the responsibility of any person but himself. . . . A constable, therefore, when acting as a peace officer, is not exercising a delegated authority, but an original authority." This judgment was affirmed in the often-cited case of *Fisher v. Oldham Corporation* (1930): "[A] police constable is not the servant of the borough [town]. He is a servant of the State, a ministerial officer of the central power, though subject, in some respects, to local supervision and local regulation."

These decisions obviously do not allow a police officer to act as a "free spirit" but as a member of a highly disciplined organization who is subject to the orders and directives of superiors. This fact was clearly enunciated in the case of *R. v. Commissioner of the Metropolis, ex parte Blackburn* (1968). The court ruled:

Although chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For example, it is for the Commissioner of Police or chief constable, as the case may be, to decide in any particular case whether enquiries should be pursued or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his Force and the concentration of his resources in any particular area.

Thus, a constable is responsible and accountable to the chief constable of the force in which he or she serves. Today, British police officials view these court decisions as an assurance that police have a degree of impartiality in carrying out their duties. This independence is assured by freeing them from the controls of the local government. Therefore, local politics are significantly removed from the police force.

The Police and the Public

When the Metropolitan Police of London was created in 1829, there was a recognized need to win public support and cooperation for the scheme because many people feared this kind of centralized police force. From its inception, the founders instilled in the rank and file the importance of public acceptance. For more than 175 years, police throughout England gained the trust and the support of a large segment of the British populace. For more than two decades, however, the English police have been the subject of a good deal of criticism. Much of it was initiated as a reaction to their handling of urban riots and public order demonstrations (Brogden, 1982; Lustgarten, 1986; Oliver, 1987; Reiner, 1985; Scarman, 1981). This was followed by allegations of racism and most recently concerns over the mistreatment of ethnic minorities. Whereas respect for police was largely assumed in the past, there is now a recognition that it must be earned.

In addition to the aforementioned concerns, there is also the issue of crime and the public's perception of it in their community. For some time now, the British have been collecting two types of data on crime. One is the recorded crime figures reported to the police. The other is data collected from the British Crime Survey (BCS). The BCS seeks to get a more accurate reading on the degree and nature of crime by asking people about their personal experiences. This is done in recognition of the fact that not all people who are victims of crime report it to the police. As a note of caution, it is important to cite an acknowledgment by the BCS that it does not collect information on crimes against businesses or commercial property.

Crime peaked in England and Wales in 1995 when 5,252,980 offenses were reported to the police. The BCS estimated at the time that the actual number of crimes was possibly four times the number recorded by the police. Based on interviews taken in 2005 and 2006, it is estimated that roughly 10.9 million crimes have occurred against adults living in private households. This represents a 44 percent decrease or 8.4 million fewer crimes compared to 1995. Domestic burglary and vehicle crimes have declined by 59 percent and 60 percent, respectively, while violent crime has dropped by 43 percent. The risk of being a victim of a crime was reduced from 40 percent in 1995 to 23 percent in 2006. This is the lowest figure since the BCS was initiated in 1981.

Although the crime rate has fallen, a high proportion of people still believe that crime is increasing. According to the BCS, people are concerned about burglary, car crime, and violent crime. While the fear of crime persists, the 2010–2011 BCS found a decline among its respondents from the previous year regarding fear that they were likely to become a victim. For example, the fear of burglary was down from 15 percent to 13 percent, car crime down from 21 percent to 17 percent, and violent crime down from 15 percent to 13 percent.

In 2012, responsibility for the British Crime Survey was taken over by the British Market Research Bureau for the Home Office. Referred to as the Crime Survey for England and Wales (CSEW), the goal is to provide a better understanding of the level of crime in the country, rather than depend on crime statistics from the police that reflect incidents reported to them. Thus, an attempt is made to include crimes that people did not report either because the events were minor or the victim assumed the police could not resolve the matter.

For the year ending March 2014, CSEW estimated that 7.3 million crime incidents occurred to households and residents 16 years and older, which represented a 14 percent decrease from the previous year. There were specific reductions in a number of major crime categories: violence, 20 percent; criminal damage, 17 percent; domestic burglary, 12 percent; theft, 10 percent; and vehicle theft, 8 percent. In addition, the CSEW estimated that 810,000 crimes were committed against children between the ages of 10 and 15. Violent crimes represented 55 percent of this number and 40 percent were thefts of personal property.

During the same period, the police recorded 3.7 million crimes, which was similar to the previous year. Among the categories that experienced a decrease were: robbery, 11 percent; theft from a person, 10 percent; and criminal damage and arson, 4 percent. Those that experienced an increase were: violence against a person, 6 percent; shoplifting, 7 percent; and sexual offenses, 20 percent. The significant increases in sexual offenses are attributed in part to a heightened effort to encourage victims to report not only recent offenses but also those that occurred in the past. The police also noted that at the end of the 2013 calendar year, approximately 1 million non-notifiable offenses, such as drunk and disorderly conduct and speeding, led to convictions in magistrates' courts. Non-notifiable offenses are not part of the CSEW estimates or police recorded crime data.

Police reported about 2.1 million incidents of antisocial behavior for the year ending March 2014. This was a decrease of 7 percent from the previous year. It was further noted by Her Majesty's Inspectorate of Constabulary that there is a wide variation when associating a particular behavior as antisocial. This has been a problem since the inception of its use. Antisocial behavior was identified as an issue indirectly in the Public Order Act (1986) and the Housing Act (1996) and directly with the Crime and Disorder Act (1998) and the Anti-Social Behaviour Act (2003). Thus, it has been part of the tough approach to law and order agenda of both the Conservative and Labour parties for several years (Smith, 2014).

Initially, people were concerned about the level of antisocial behavior in their neighborhoods, that is, types of people who, if not deviant or disorderly, were perceived as a risk to the law-abiding citizenry. Her Majesty's Inspectorate of Constabulary commissioned research on public attitudes about antisocial behavior (Ipsos MORI, 2010). ~~Although the Crime and Disorder Act (1998) defined antisocial behavior as nuisance, unrest, incivility, and persistent offending, one important finding from the research indicated that people often do not make a clear distinction between antisocial behavior and crime.~~ The most common types of antisocial behavior are street drinking and underage drinking, young people loitering in the streets, and vandalism and graffiti.

It has been suggested that a definition of antisocial behavior was purposely left vague to enable local communities to identify specific problems in their area. For some, it is a

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matter of common sense that antisocial behavior is simply unacceptable behavior. Adults, in particular, associate certain behavior among young people as antisocial (Brown and Evans, 2014; Hulley, 2014). One scholar has divided antisocial behavior into three groups: (1) interpersonal or malicious, that is, threats to neighbors; (2) environmental, such as graffiti and noise nuisance; and (3) restricting access to public space, for example intimidation by young people on streets, aggressive begging, street drinking, and open drug use (see Millie in Dockley and Loader, 2013).

In some instances, such behavior is obviously a crime, while in others it is less clearly defined. A number of actors, such as parents, educators, youth services, social housing, and urban planners have a role to play in addressing this issue. It is the police, however, that are viewed as principally responsible. Respondents to the aforementioned survey indicated that the police (at 90 percent) are seen as primarily or jointly responsible to address antisocial behavior, while local councils were a distant second at 36 percent. Interestingly, but somewhat not surprisingly, the responsibility of parents and families was cited only at 16 percent and the individual at 8 percent (Ipsos MORI, 2010). In light of the cuts in social services, the responsibility of the police in this matter will no doubt increase.

Moreover, tension between police and those youths already identified at risk exacerbate further when a singular public disorder occurs. The riots of August 2011 make a case in point. Mark Duggan, a black man, was a passenger in a taxi in the black community of Tottenham, which had had a difficult relationship with the police for years. He was shot and killed by the police; an officer was also wounded in the confrontation. Initially, the police alleged that Duggan fired at the officers, but it was determined that he did not have a gun and that the officer had been shot inadvertently by another officer (Briggs, 2012).

At first the protests were peaceful, but soon they escalated to rioting and looting in London, Birmingham, Liverpool, Manchester, and Nottingham. For some young people, especially blacks and other minorities, this unrest was viewed as payback against the police. The young who had been frequently stopped and searched by the police and who felt that they were often treated in a disrespectful manner perceived the criminal justice system as unjust toward them (see Goldson in Dockley and Loader, 2013).

Duggan was killed on August 4th. The riots occurred between the 6th and 11th of the month. Riot insurance claims amounted to 300 million pounds, and 2,278 commercial businesses were damaged. Five people died—none at the hands of the police (Rusbridger and Rees, 2011). Almost 4,000 people were initially arrested, and the police recorded 5,175 offenses related to the rioting. The average person arrested was a young male under 25 years of age and already known to the police. Of the adult males—that is, 18 years of age or older—71 percent had at least one previous conviction. Of the males ages 10 to 17, 45 percent had at least one previous conviction.

In July 2012, the *Guardian* newspaper reported on the status of the people who had been arrested by the police for riot-related offenses. The data was acquired from the Ministry of Justice. A total of 3,051 people had a court appearance at that time, and 1,968 were found guilty and sentenced. Of those sentenced, 1,292 were placed in immediate custody for an average of 16.8 months. Of those appearing in court, 89 percent were male and 11 percent female. The ethnicity of the defendants indicated that: 36 percent were white; 34 percent, black; 10 percent, from a mixed background (this usually means white/black

Caribbean, white/Asian, or white and black African); 6 percent, Asian; 2 percent, another; and 13 percent, not stated.

Of particular note, 503 young people (ages 10 to 17) appeared in youth courts. Of those, 161 were sent to jail for an average period of eight months. Both the riot and the previously mentioned antisocial behavior campaign have had an impact not only on the police but also on the entire justice system. Antisocial behavior orders have been a particular concern for corrections and the youth justice system, of which more will be said subsequently.

Such events as a riot have an obvious impact on the police organization throughout the country. Recruitment, training, and crime-prevention tactics receive heightened scrutiny. Moreover, the public perception of the police is altered in some cases. Nevertheless, it should be noted that Optimum Research conducted a public opinion survey following the riots of 2011. Approximately 2,000 adults above the age of 18 participated. Of these, 85 percent were of the opinion that the sentences handed down were not tough enough. Moreover, 75 percent indicated a good deal of sympathy for the police (Briggs, 2012).

Recruitment and Training

The British have always prided themselves on maintaining a professional police service. This idea has taken on a new meaning and emphasis in recent years because of criticisms directed at the service. Central to professionalism are the recruitment, training, and educational opportunities extended to members of the police service. A good deal of effort has been directed at evaluating and amending training programs for police, and it appears that this kind of focus will continue.

The Criminal Justice and Police Act (2001) gave the home secretary a good deal of authority over police training. Centrex, the Central Police Training and Development Authority, was established as a result of this legislation. The headquarters of Centrex was Bramshill House, which was the home of the Police Staff College. Centrex provided a number of training services for the police, of which many are priorities for improving police activities that are highlighted in the home secretary's National Policing Plan. The Centrex staff included civilians with various expertise in training and education and police officers who had been seconded to assist with improving professional practices. In 2007, the National Policing Improvement Agency (NPIA) became operational and assumed the responsibilities of Centrex. Its mandate was to improve the way police organizations work across a variety of areas of policing. In addition to training, NPIA's responsibilities included modernizing the workforce, improving professional practice, developing leadership and learning programs, assisting in the achievement of national standards, developing and maintaining a national police computer and database infrastructure, and delivering major change programs designed to improve the performance of the police service.

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In terms of recruitment, there has been a national advertising campaign funded by the central government for some time now. Through a series of exercises designed by Centrex, a recruit is evaluated as to his or her competencies for police work. In the past, the initial training was often teacher-centered and presented with a rigid, one-dimensional view of policing. Now the training philosophy emphasizes student-centered learning, with an eye to the development of the individual and a recognition of individual differences to some

extent. There is also an emphasis on team activities. These new dimensions in training were introduced as a result of the Scarman Report following urban disorders. This report, along with published findings of several academic researchers, pointed out the problem of racial intolerance within the police service and the lack of understanding of the multiethnic society that England was quickly becoming. While the police had long been told that they had to secure the support and consent of the public, what had been lacking was a recognition that ethnic minorities constituted an important element of that public. As a result, training today not only consists of the acquisition of knowledge and skills but also includes an examination of attitudes (Southgate, 1988). The present recruit training program that embraces those values was designed by Centrex.

Police
Training

~~They start their career at the rank of constable.~~ Thus, the British do not subscribe to the multiple-level entry scheme common in some countries in continental Europe. Each recruit is placed on probation during the initial two years of service. Their first indoctrination to police work is presented at one of the regional training centers. Basic training is a mixture of theory and practice, including courses in patrol procedures, law, report writing, traffic safety, first aid, and physical education. Following the initial training phase, recruits return to their force, where the force's training department offers a three-week course indoctrinating the officers in local procedural issues. This is followed by 10 weeks in the field under the guidance of a tutor constable. The rest of the probationary period is spent on a beat under regular supervision. During this period, there is some additional classroom training.

English police officers are offered a wide range of courses to assure technical competence and to aid people seeking promotion to middle-management positions. Centrex had been actively involved in the design of new courses and methods of testing the participants. There are refresher courses offered to people who are already in a technical field or position of management. Technical courses for the specialist include investigation, driving, photography, dog handling, communications, crowd control, crime prevention, first aid, and the use of firearms. It should be pointed out that since the inception of the police in 1829, the typical English police officer does not carry a gun. This is one of the unique and often-discussed features of English policing.

Officers are encouraged to continue their studies in institutions of higher education. Through the Bramshill scholarship, officers have attended Oxford University, Cambridge University, the London School of Economics, and many other British institutions of higher education. They have studied such diverse subjects as anthropology, economics, history, law, management, political science, psychology, and sociology. In addition to providing officers an opportunity to attend college, the police service also has attempted to recruit college graduates. Although all recruits must start at the rank of constable, the college graduate is placed in a graduate-entry scheme designed to promote him or her through the ranks faster than the nongraduate.

The British police service has attempted to improve its professional stature with the public by continuing to improve its recruitment campaign and basic training course and by emphasizing the need for people in the service to pursue studies in institutions of higher education. ~~One problem area remains, however, minority recruitment.~~ Although efforts have been made to recruit members from minority groups to various forces, the rate of success

has been disappointing. Thus, the white majority continues to police racial minorities. Although minority recruitment will not totally eradicate racial tensions (this has already been proved in the United States), it should begin to help alleviate some of the discord and tension.

Crime Prevention

The English police service has long been committed to crime prevention and for a number of years had offered specialist training in crime prevention at Staffordshire. The police have been experimenting with several strategies to enhance their crime-prevention role. For example, crime prevention officers are found on every force. In addition to emphasizing the involvement of the community in crime prevention, the specialists also must convince their colleagues that crime prevention is the responsibility of all officers. One method of indoctrinating all officers to crime prevention is to orient the tutor constables to the work of crime prevention. Another strategy is to have a crime prevention component included in training (see Harvey, Grimshaw, and Pease, in Morgan and Smith, 1989).

Focused policing was another strategy that had been tried in some forces. In this design, beat officers focused their attention on particular crime problems in their patrol areas during periods when their time was uncommitted. Neighborhood watch programs also had been introduced. These programs included the four basic strategies of (1) having people watch their own neighborhoods and report concerns to police, (2) marking personal property through the use of identification kits provided by police, (3) providing home security surveys, and (4) establishing community crime prevention and environmental awareness programs (Morgan and Smith, 1989). Presently, there are thousands of neighborhood watch programs established throughout the country (Home Office, 2001). A final strategy, tried in some forces, was the permanent or home beat community constable. This involved the long-term assignment of an officer to a specific beat area, with an emphasis placed on crime fighting (particularly regarding property offenses) in the hope of establishing better contact with the community (see Fielding, Kemp, and Norris, in Morgan and Smith, 1989).

While the aforementioned strategies were each designed to contribute to the crime-prevention effort, there has been an interest in encouraging cost-effective initiatives in the management of police organizations. At a time when efficiency and effectiveness are the buzz words in policing, there arose suggestions that police must prioritize their work. This would undoubtedly have an impact on crime-prevention strategies. In one study, police and public attitudes toward crime were considered along with the issue of prioritization. Prioritization implies that police can either respond to a call, ignore it, or pass it on to another service agency. It was discovered that the English police respond to almost all calls received. Thus, they continued to perceive themselves as the one all-purpose emergency agency. Moreover, surveys of the public suggest that they want more officers on foot patrol, that a priority be given to serious crimes, and that problems of youths, noise, and vandalism be left to the permanent beat officer and the community (see Shapland and Hobbs, in Morgan and Smith, 1989).

With the passage of the Police and Magistrates' Courts Act (1994), the police were required to prioritize their work. After consulting with the chief constable and the

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community, the police authorities were expected to establish local policing plans. The plan was to include specific objectives identified by either the home secretary or the local police authority, along with a budget for the resources necessary to implement the plan. In light of the organizational changes introduced in the Police Reform and Social Responsibility Act (2011), these responsibilities will now be taken over by the local police and crime commissioners and the police and crime panels.

The Home Office has established a campaign of citizen-focused policing. The goal is to improve the public's confidence in the police through increasing the public's involvement with identifying the needs of the community and hence its expectations regarding law enforcement, order maintenance, and general service. Obviously, the local priorities will involve such issues as reducing crime, investigating crime, promoting public safety, and providing assistance.

The police community support officer scheme, which was mentioned earlier, has an important role to play in this effort. As mentioned above, **community support officers** are **civilians who have been given limited police powers.** Their principal job is to patrol areas either to assure the maintenance of quality-of-life issues or to identify safety issues in the community and seek methods to rectify specific problems. The use of police community support officers is expanding throughout the country.

For some time now, the **Metropolitan Police Service had established a Victim Support Scheme** that was designed to encourage victims to seek support and assistance. They have specially trained officers to aid sexual assault victims. More recently, the Met has created **community safety units.** These units have received special training in community relations, specifically in local cultural issues. One of the tasks assigned to the community safety units is to assist with **addressing the problem of hate crimes.** The units are designed to provide advice or offer referrals to other organizations. The unit will investigate allegations of hate crimes. If it is determined a crime was committed, the unit will offer support through the prosecutorial process.

Public Perceptions of Police

Like their American counterparts, English police officers—especially those assigned to urban areas—consider themselves part of a minority that is grossly misunderstood. By and large, they have developed this attitude because of their contact with only a small segment of the population. That segment, rightly or wrongly, has been deemed criminal or deviant by society. Because of their infrequent contact with the nonoffender, police do not realize that a large segment of the population generally views their service in a favorable light.

Police and independent researchers have recognized that this feeling of support for the police and sense of cooperation with the white adult population does not exist to the same degree with young people and minority groups. Of particular note are personal criticisms about rudeness, bad tempers, and dishonesty. General criticisms of police are also cited, such as the abuse of powers of search and arrest, methods of obtaining information, and the concealment of complaints filed against police.

The Policy Studies Institute published a study of citizen attitudes toward police from data collected between 1980 and 1982 (Smith and Gray, 1985). The study found that public

~~confidence in police with regard to their handling of crime matters remained fairly high~~ but that the public felt streets were not safe at night and that police were failing in this regard. Nevertheless, the public did not express alarm with the level of crime in general or with police performance in particular. In addition, police service to victims of crime was generally viewed as satisfactory.

The study also raised the question of police exceeding their powers; 46 percent expressed the view that police never exceed their powers, 29 percent were of the opinion that certain groups did not receive fair treatment (three-quarters of this group singled out minorities as recipients of unfair practices), and 25 percent had no opinion. Moreover, ~~one in 10 lacked a general confidence in police standards of conduct~~, but even these people did not think that there was a pattern of frequent or usual misconduct.

The study clearly pointed out that it was the relations with specific minority groups that created divisive attitudes. One-third of young white people between 15 and 24 years of age thought police used threats and unreasonable pressure in questioning, and one-fifth felt that police employed excessive force in making an arrest. People of West Indian origin in this same age group were the most critical of police: 62 percent thought police used threats and unreasonable pressure in questioning, 53 percent felt police used excessive force in making an arrest, and 43 percent were of the opinion that police fabricated evidence. Despite these findings, a majority of these minority groups were willing to cooperate with police to a considerable extent.

When asked if an increased recruitment of minorities to the police would make a difference, a little more than one-half felt that it would make no difference. One-third thought that it would lead to improvements. All groups—whites, Asians, and West Indians—appeared supportive of hiring more minorities to the police.

Until the 1980s, the government and senior police officers had not publicly acknowledged the existence of these problems. Many were unwilling to admit that the police service and the public of the 1970s had changed considerably from those of previous generations. Moreover, to help bolster that sense of false security, confrontations between the police and the public had not been as violent, or as prevalent, as was the case in the United States. This situation changed in the 1980s, however. England experienced the rise of a vocal minority that was willing to be both verbally and physically hostile toward the police. For the most part, these minority groups were demanding the same kinds of changes that fostered the American civil rights movement of the 1960s—and for the same reasons.

To rectify these concerns, police have made an effort to improve relations with the general public, particularly with youth and minority groups. Training in police-community relations is an important part of the basic training and continuing education programs for officers. Government and independent researchers continue to recommend further improvements in police-community relations. These are similar to those mentioned in the literature on American policing. ~~They include the continuation and intensification of police instruction in community relations; the retraining of officers who are abusing police powers; the dissemination of information to the public about police with regard to their role, duties, and powers; the expansion of personal contact between the police and the public; and, in particular, an improvement in race relations.~~

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For several years, specialists in police-community relations have been working to create ~~liaison offices between the police and the public~~. This was given greater weight with the passage of the ~~Police and Criminal Evidence Act (1984)~~, which specifically called for the creation of methods by which people can express their views regarding police in their area. In light of this, the Home Office recommended the creation of police consultative committees (PCCs). The PCCs have four specific objectives: (1) to permit citizens to express their views about policing in their area, (2) to improve the citizens' understanding of the police role, (3) to resolve conflicts between police and a particular group, and (4) to encourage community participation in crime-prevention efforts (Morgan and Smith, 1989).

In more recent years, the British Crime Survey has attempted to collect evidence regarding the public's perception of the police. Several points have been raised from this data, some of which are not surprising. Knowledge of and experience with the police vary greatly among the public. People who make contact with the police because of a crime problem are less satisfied with the outcome than those who contact the police for other reasons. The police are more apt to be viewed negatively by ethnic minority groups, specifically Asians and Afro-Caribbeans, than by whites (Morgan and Newburn, 1997). The 2004–2005 British Crime Survey again examined attitudes of citizens who had reported a crime to the police. Fifty-eight percent of white respondents were satisfied with the police response, whereas 48 percent of Asians, 53 percent of blacks, and 61 percent of Chinese and other minorities were satisfied.

In 1999, ~~Sir William Macpherson~~ published his report, ~~The Stephen Lawrence Inquiry~~, looking into the racist murder of a young black man. The inquiry was originally designed to examine the police response to the Lawrence murder investigation. The report concluded that the investigation was handled incompetently. It further considered the issue of police-community relations and questions of discriminatory behavior on the part of the police. While claims of racism and sexism within the police establishment had been made in the past, the Macpherson report concluded that there was "institutional racism" in the police service and singled out the London Metropolitan Police in particular.

A good deal of debate has been generated by Macpherson, and the police have promised to enhance their efforts at addressing both racism and relations with minority communities. In more recent years, however, the tensions between the police and some minority communities have been heightened further because of terrorist attacks in England and the police response to terrorist threats. At issue are the threats directed at Muslims because of prejudice directed at Islam and those threats initiated by a small minority of Muslims involved in terrorist activity (Rowe, 2007).

When considering the general adult population's perception of police, there appears to be a good deal of confidence in the police. To illustrate, the British Crime Survey for 2010–2011 sought respondents' perceptions of the police. Adults, at 59 percent, thought their local police were doing a "good" to "excellent" job, and 52 percent were of the opinion that the police were addressing the problem of antisocial behavior. In comparison with confidence measures from 2009 to 2010, perceptions on the reliability of the police rose from 50 percent to 54 percent; the belief that police treat people with respect was up slightly from 84 percent to 85 percent; and the belief that the police treat you fairly increased from 65 percent to 67 percent. The reliability of the police to deal with minor crime rose

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from 48 percent to 50 percent; the ability of the police to address local concerns increased from 56 percent to 58 percent; and the overall confidence in the local police was up from 69 percent to 72 percent. Finally, 38 percent of the victims of crime in the previous year, who had contact with the police, were very satisfied with how the police handled the incident, 32 percent were fairly satisfied, and 30 percent were unsatisfied.

JUDICIARY

Scholars of English legal and constitutional history are generally in agreement that King Henry II (1133–1189) was the principal facilitator in the development of English common law and the judicial machinery used to administer it. When Henry became king in 1154, he wanted to strengthen both his political and economic positions. To assist in achieving these ends, he synthesized both old and new ideas with regard to centralizing the administration of justice.

Prior to Henry's reign, the administration of justice was essentially carried out at the grassroots level. While there were a number of local courts with varying degrees of jurisdiction, the shire or county courts were the most significant before the Norman invasion of 1066. The principal officers of the shire courts were wealthy landowners, the bishop, and the reeve of the shire (who later would be referred to as the sheriff). Social rank, rather than knowledge of law, was the criterion used to determine who judged cases.

Feudalism was firmly established after the Norman invasion. As noted earlier, feudalism provided social and economic security for people who worked the land for a lord of the manor. One of the responsibilities of a lord was to administer justice; this was carried out in the manor court. Lords of the manor were a powerful political force for the king to consider. It was from this group that Henry II enhanced his political power by wresting from them the authority to administer justice. He accomplished this by utilizing several different strategies.

First, some people had become dissatisfied with the administration of justice at the manorial level. They wanted the king, who in theory was the source of justice, to decide their cases. Kings of England had for years relied upon their Curia Regis, or Great Council, for advice. The Curia Regis counseled the king on domestic, foreign, and military affairs, and served as a court to settle disputes among powerful lords of the kingdom. It was from the Curia Regis that Henry created and permanently established three courts at the city of Westminster. The Court of Exchequer decided questions between the Crown and the taxpayer. The Court of Common Pleas had original jurisdiction in both civil and criminal cases between subjects of the king. The Court of King's Bench had original jurisdiction in cases between the lords of the realm, as well as appellate jurisdiction for certain cases from Common Pleas and other local courts. ^{1st court}

Second, if subjects could not come to the courts that permanently sat at Westminster, royal justice would come to them in the form of a circuit judge. Henry II borrowed this idea from his grandfather, King Henry I (1068–1135), but expanded its use to a considerable degree. By the fourteenth century, royal justice was expanded further at the grassroots level with the introduction of the office of justice of the peace. The principal responsibilities of

the justices of the peace included making arrests, receiving indictments, and hearing and determining minor cases.

From the fifteenth century through the nineteenth century, other specialized courts were added, and the court hierarchy was occasionally reorganized. While some of these specialized courts have been abolished, others remain as modern administrative courts. Thus, a highly centralized court hierarchy with specialized jurisdiction was established quite early in England, as compared to other European countries.

Third, while Henry II strengthened his political position among the lords through the centralization of his royal courts, he also enhanced his financial status. Royal justice was indeed becoming available to more people—but for a price. In order to gain entry into a royal court, a person had to purchase a writ. Although many of the early writs dealt with property rights, a series of important writs designed to address civil and criminal procedure was developed during the medieval period. Quo warrant considered how much legal and political power a lord could exercise. Certiorari enabled proceedings in an inferior court to be brought to King's Bench or some other superior court. Habeas corpus was designed to assure the presence of a person before the proper court. Prohibition forbade proceedings in inferior courts, and mandamus ordered inferior courts to perform their legal functions in a manner that would correct a previous error. Like the centralization of the courts, the writ system has remained an integral part of the legal system in countries tracing their origins to English common law.

Fourth, the jury is a legal institution that has been synonymous with the evolution of the common law. Although the jury was utilized before his reign, Henry II is credited with extending and formalizing its use. Originally, the jury was conceived as an administrative mechanism calling together a group of men who presumably knew certain facts and were sworn to reveal information requested by the king. Although Henry II continued this administrative practice, he expanded the jury's use in other ways. Through the Assize of Clarendon (1166), a grand jury in each county was established for criminal cases. Grand juries were originally composed of 12 people; later, the number increased to 24. Its responsibility was to identify people suspected of committing serious crimes. Until the fifteenth century, grand jury members were presumed to have personal knowledge of the case. By the end of the century, however, grand juries were no longer composed of people conversant with a case; rather, they were a group mandated to examine evidence presented to them. With the abolition of trials by ordeal in 1215, resulting from the pronouncement of the Fourth Lateran Council, the petty or trial jury was created. (Trials by ordeal will be explained in the next section on the law.) A trial jury was composed of 12 people who were to determine the guilt or innocence of a person.

The centralization of the royal courts, the establishment of circuit courts, the utilization of legal writs, and the creation of the grand and petty juries were largely the work of Henry II. Each became a significant feature in the administration of justice by the end of the thirteenth century.

It was also during the medieval period that a distinct legal profession emerged. For some time, English kings had appointed to the Curia Regis men who were learned in law, and this tradition increased after the Norman invasion. These men were essentially clergy who had studied either Roman law or the canon law of the Roman Catholic Church.

Court
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As legal servants of the Crown, they were the precursors of the English legal profession. They served as judges who adjudicated cases brought to the king's courts. These judges were assisted in their work by clerks. Clerks were younger clerics who often possessed a formal education as well as the practical experience of aiding judges. As a result, they were frequently appointed to fill judicial vacancies. Thus, the notion that a practical apprenticeship in a courtroom was a criterion for judicial appointment was adopted quite early in England and remains an important factor to this day.

By the late thirteenth century, legal work had been taken over by laypersons, and two distinct professional classes were emerging. As early as Henry I's reign, litigants who were accused of a crime other than a felony were permitted the assistance of a friend in court to help plead their case. By the thirteenth century, a professional class of pleaders who performed this task had been developed. The demise of the use of clerics as legal advisors and judges led to the tradition of appointing pleaders (because of their extensive courtroom experience) to judicial vacancies.

Attorneys were the other emerging class of legal specialists. They were individuals appointed (or "attorned") to represent a person. English kings had frequently given power of attorney to men who represented them in their absence. The performance of this service was gradually popularized to the extent that people began to represent clients in court. Thus, a new occupation was created: A professional class of attorneys was firmly established by the late thirteenth century.

By the fourteenth century, then, two professional classes learned in the common law were established: pleaders and attorneys. It was also in that century that significant steps were taken to establish a specific form of legal education. Originally, legal training had been largely an informal matter. Members of the legal profession, however, were in the habit of frequenting certain inns or taverns when they were in the city of Westminster practicing before the royal courts. Young men who aspired to a career in the law would go to these inns and listen to lawyers discussing cases. They also would attend court and observe the proceedings.

It was during the fourteenth century that Gray's Inn, Lincoln's Inn, the Inner Temple, and the Middle Temple were taken over by the legal profession and transformed into a collegiate type of training center for young men who wanted to become pleaders. These legal societies established rules and regulations by which each student was required to abide. After a period of approximately seven years of study, a student was called to the Bar. Thus, pleaders became known as barristers.

By the sixteenth century, those men who were not interested in a career at the Bar but who wanted to represent and advise clients as attorneys became known as solicitors. England's legal profession consisted of two separate branches quite early in its development, and the divisions have been retained to this day. Just as pleaders were selected to become judges during the Middle Ages, barristers—the direct descendants of pleaders—are the branch of the legal profession generally selected to serve as judges today.

Finally, the kind of legal education offered in England differed significantly from that of countries on the continent of Europe, where the course of study for law students was presented at a university and was essentially theoretical in content. England's common law students received what one might call a vocational-style training, for they were required

to attend and to observe proceedings in royal courts. This was supplemented by a loosely structured academic component of lectures and readings at the inn with which they were associated. During the seventeenth and eighteenth centuries, the inns were closed, and law students were totally dependent on studying the law independently with a barrister. Although William Blackstone did lecture on English law at Oxford University during the late eighteenth century, it was not until the nineteenth century that English universities began to offer courses on English common law, which eventually led to a university degree.

Organization and Administration of the Courts

Before the English court hierarchy can be understood, it is important to explain the responsibilities of several officer holders.

Lord Chancellor

The role of Lord Chancellor has changed significantly over the years. Until 2006, the Lord Chancellor was the head of the judiciary of England and Wales and also charged with making all judicial appointments to the courts. This changed with the passage of the Constitutional Reform Act (2005). For a considerable period of time, criticism had been raised about the independence of the judiciary. In reference to the Lord Chancellor, how can a member of the prime minister's cabinet (executive branch) and a member of the House of Lords (legislative branch) be the head of the judiciary and make all judicial appointments? By making two significant changes, the statute is designed to correct the perception that the process is flawed and lacks transparency (Woolf and Campbell-Holt, 2008).

First, the Lord Chancellor is no longer the head of the judiciary of England and Wales. That title passed to the Lord Chief Justice, who is the presiding judge of the criminal division of the Court of Appeal. According to Section 7 of the statute, the Lord Chief Justice will hold the office of President of the Courts of England and Wales and is thus head of the judiciary. The president is responsible:

- (a) for representing the views of the judiciary of England and Wales to Parliament, to the Lord Chancellor and to Ministers of the Crown generally; (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of England and Wales within the resources made available by the Lord Chancellor; (c) for the maintenance of appropriate arrangements for the deployment of the judiciary of England and Wales.

Second, the Lord Chancellor is no longer responsible for judicial appointments. The Constitutional Reform Act (2005) also created the Judicial Appointments Commission. This Commission is composed of 15 commissioners who are appointed by the monarch on the recommendation of the Lord Chancellor. The chair of the Commission must be a layperson. Among the other commissioners, five are members of the judiciary, two lawyers (one barrister and one solicitor), five laypersons, one lay magistrate, and one tribunal member (such as a member of the Immigration Appeal Tribunal).

The selection of people to the judiciary will continue to be based on merit. The goal, however, is to encourage a wider pool of well-qualified candidates to apply. To illustrate, in 2000, 12.7 percent of the judges were women, and 2.1 percent were ethnic minorities. By 2011, those figures had improved, with 22.3 percent of the judges being women and 5.1 percent from minority backgrounds. The goal remains to continue the diversification of the judiciary. Of particular note, there is only one woman on the Supreme Court, along with 11 men. The justices of appeal include 33 men and four women (House of Lords, 2012). It was further reported that at the lower level of the court hierarchy, the magistrates' courts, there are slightly more women than men, and ethnic minorities represent 8 percent of these justices of the peace. There are approximately 28,000 people who serve as part-time justices. They, along with 500 full-time district judges, handle 96 percent of the criminal cases.

stats
and
3 judges

In 2007, the Lord Chancellor was named to head a new cabinet-level department, the Ministry of Justice. The head of this ministry has two titles, Lord Chancellor and Secretary of State for Justice (or minister of justice). Moreover, in the past, the Lord Chancellor was a member of the House of Lords and presided over that House as its speaker. The new arrangement calls for the Lord Chancellor to no longer be the speaker of the House of Lords, and he or she can be a member of either house of Parliament. Finally, the Lord Chancellor is no longer required to be a lawyer.

TWO TITLES

The Ministry of Justice has an enormously broad and complex range of responsibilities. These are divided into four major categories. The first are issues pertaining to democracy and law. This encompasses constitutional reform, democracy and human rights, and law reform. Second are matters concerned with access to justice. They include courts service, legal aid, legal services, civil justice, regulating the legal profession, and the Parole Board. Third is the National Offender Management Service, which involves both public and private prison services and probation boards. A fourth and final category involves criminal justice. This includes criminal law, sentencing policy, criminal justice reform, and the Youth Justice Board.

Attorney General

Although each cabinet minister has a legal branch within the department, the Attorney General, as legal advisor to the Crown and the Houses of Parliament, usually handles the government's controversial issues. The Attorney General and subordinate, the Solicitor General, are referred to as the law officers of the Crown. They are appointed by the prime minister. They possess distinguished legal careers and are notable politicians.

The Attorney General has four major responsibilities: (1) The Attorney General is the guardian of the public interest and accountable to the House of Commons for the criminal process in the courts. This area is somewhat limited, however, because administering the national prosecutorial system is the responsibility of the Director of Public Prosecutions, and initiating criminal law reform is the responsibility of the minister of justice. (2) As the guardian of the public interest, the Attorney General may bring civil actions and intervene in civil issues as amicus curiae when the government is not a party. (3) The Attorney General is also responsible for answering law reform questions in the House of Commons and is

charged with rejecting or accepting bills dealing with such reform. (4) As titular head of the Bar of England and Wales, the Attorney General takes an active interest in the maintenance and enhancement of its professional status.

Director of Public Prosecutions

*What they
vx to do* → The Director of Public Prosecutions is a professional barrister or solicitor, appointed by the home secretary but supervised by the Attorney General. The director administers a large staff of lawyers specializing in criminal law and procedure. Prior to 1986, the principal task of this office was the prosecution of a few specific cases required by statute law, such as murders and cases against police officers. They also were mandated to advise police on their prosecutorial proceedings upon request. In this context, the office was to secure uniformity and consistency in prosecutions. Because police initiated most prosecutions, however, this goal was not achieved. Moreover, police often only consulted the office on borderline cases, so the office did not have a significant role in deciding to prosecute most cases.

Various interest groups and government commissions had expressed concern that police were both investigating and determining whether to prosecute in most cases. One of the specific criticisms directed at this arrangement was that too many cases presented by the police for prosecution were being dismissed by the courts. Critics felt that an independent assessment of the evidence in a case might then lead to greater consistency in the prosecution of cases. Although police hired local solicitors' offices to work for them at the actual prosecution stage, those solicitors were not accountable to any government office.

*Only one
LST* It was suggested that an independent prosecutor service be established, and this occurred with the passage of the Prosecution of Offences Act (1985), creating the Crown Prosecution Service. Thus, the power to prosecute was removed from the police. Throughout its brief history, the Service had been confronted with various administrative problems. For example, criticism was directed at the management of the organization, suggesting that it was too centralized and that this fact had contributed to inefficiencies in the Service. At the time, the administration of the Service was divided into 13 areas that covered England and Wales. In a 1998 study of the Crown Prosecution Service, it was recommended, among other things, to decentralize the Service. This reorganization has been accomplished with the establishment of 42 local areas. These areas correspond with the boundaries of the 43 police forces of the country, with one exception: the Metropolitan Police of London and the City of London Police represent a single area of the Crown Prosecution Service. Each area is headed by a Chief Crown Prosecutor who is appointed by the Director of Public Prosecutions.

The goals of the Crown Prosecutor Service are to assure independence and uniformity in the prosecution of cases, to enhance the quality of prosecutions with the public interest in mind, and to improve efficiency and effectiveness in prosecuting cases. It is the responsibility of the area Crown prosecutors to review police evidence and to determine if a case should be prosecuted. If the decision is in the affirmative, the Crown prosecutors must also decide whether a case should be presented in a Crown court or a magistrates' court.

CPS Has
Two
tests

The decision to prosecute is guided by two tests found in the Code for Crown Prosecutors. The evidential test is concerned with the prospect of convicting the accused based upon the quality and quantity of evidence collected. Within this context, the Crown prosecutor is obviously concerned with the reliability of the evidence and the likelihood of it being admitted or excluded at trial. Assuming a case meets the requirements of the first test, the second test is then considered. The second test is referred to as the public interest test. At issue here, as the name of the test suggests, is whether it is in the public interest to prosecute or possibly decline prosecution. Factors that favor a prosecution include the seriousness of the offense, the use of a weapon or violence, evidence of premeditation, the vulnerability of the victim, and the defendant's previous convictions. Factors that might determine that a prosecution is not necessary include the nature of the offense (a genuine misunderstanding or misjudgment), the likelihood of a small penalty, a long delay in reaching a trial date, the age or health of the defendant at the time of the offense, and the victim's physical and mental health. Although the decision in this test involves weighing the public interest, the victim's interests have a significant role to play in ultimately determining what the public interest is. According to the Code for Crown Prosecutors, the "Crown Prosecution Service will only start or continue a prosecution when the case has passed both tests."

The creation of the Crown Prosecution Service has reduced considerably the types of cases that are directly handled by the Office of the Director of Public Prosecutions, which now includes terrorist cases, Official Secrets Act violations, and local cases that are considered too sensitive for handling by the local Crown prosecutor because of a possible conflict of interest.

It should also be noted that the Crown Prosecution Service has long employed caseworkers who assist prosecutors in preparing cases for trial. In 1998, some caseworkers, who were not trained as lawyers, were selected to review and present a select group of cases in magistrates' courts that involved guilty pleas. These specially trained caseworkers are under the supervision of a Crown prosecutor. The caseworkers essentially review cases at police stations that involve such offenses as shoplifting, cannabis possession, and noncontentious traffic offenses; they then represent the Crown in the magistrates' court. This is another example of the justice system attempting to utilize its resources in a more cost-effective manner.

Following this brief explanation of the role of the government's principal court personnel is a description of the English court hierarchy, with emphasis placed on those courts that are involved in the criminal process (see Figure 1.3). Therefore, all the English courts and legal tribunals are not examined here.

Supreme Court of the United Kingdom

Until 2009, the oldest common law court was Parliament. The judicial functions of Parliament were exercised by the House of Lords. In theory, the judicial proceedings were the responsibility of the entire House. In fact, however, they were handled by a small group in the House who were specifically selected for this purpose and known as the Appellate

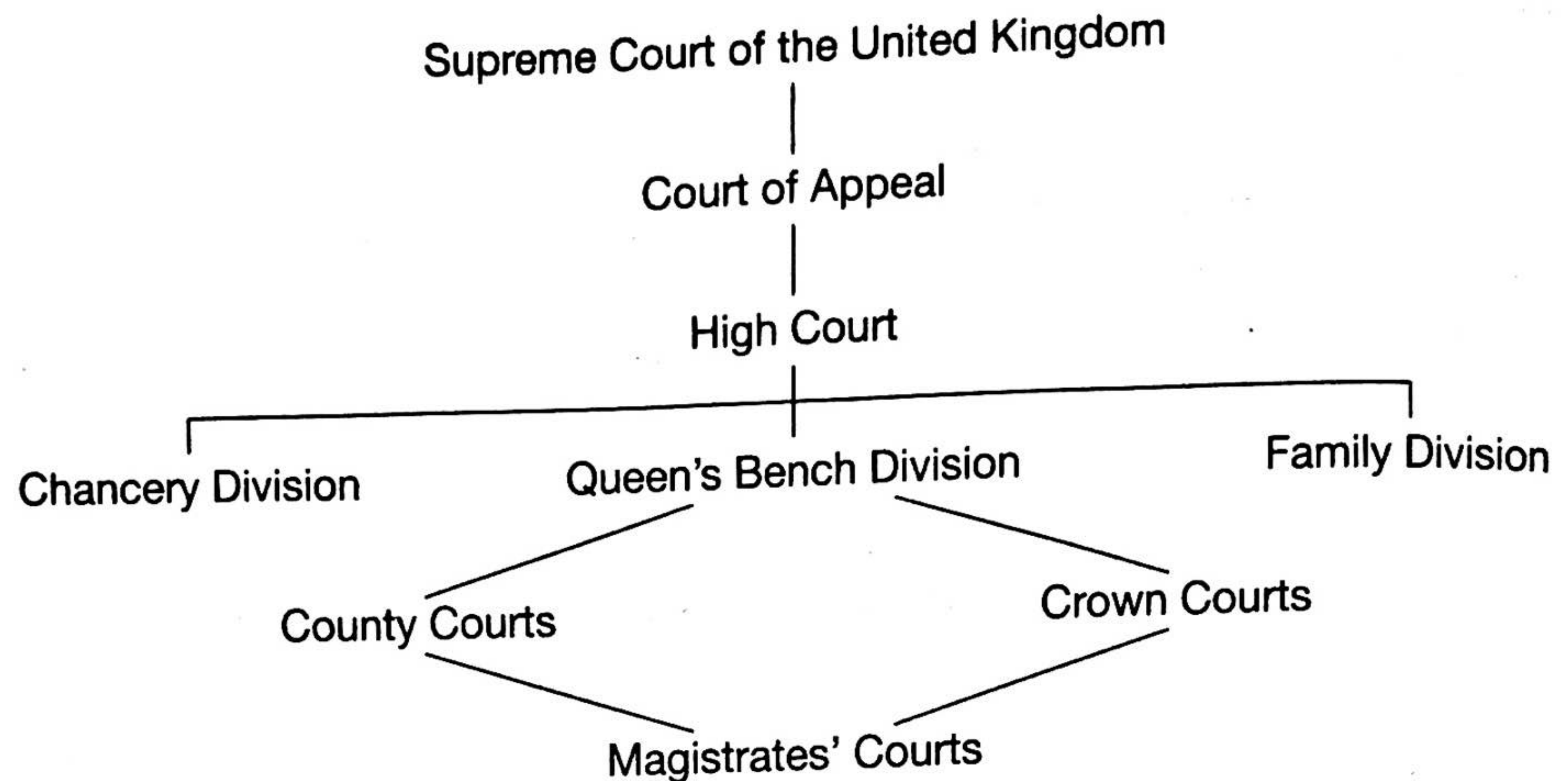


FIGURE 1.3 | Organization of the English Courts

Committee of the House of Lords. This group consisted of the Lord Chancellor, the lords of appeal in ordinary (usually referred to as law lords), and any member of the House who had held high judicial office in the past (such as former Lord Chancellors from previous governments).

In practice, the law lords heard most of the judicial business of the House. There were usually nine, but the number could not exceed 11. Most law lords were selected from members of the Court of Appeal. Thus, they easily met the criteria for appointment—either holding high judicial office for two years or being a practicing barrister for 15 years. Although law lords retired at age 75, they remained members of the House of Lords and could continue to participate in the nonjudicial work of the House.

The House of Lords' jurisdiction was almost entirely limited to civil and criminal appeals from the Court of Appeal and, in exceptional cases, from the High Court. The House heard only a limited number of appeals—approximately 50 a year. The amount was largely controlled by the House and the Court of Appeal. Generally, a dissatisfied litigant in the Court of Appeal sought permission from that court to appeal to the House of Lords. If the court granted approval, the litigant could proceed. If the court denied the request, the litigant could still petition the House through a procedure that is similar to the certiorari proceedings utilized with the Supreme Court of the United States. Because the House entertained only those cases that were of significant public interest, the latter approach was rare.

These aforementioned duties were assumed by a new court, the Supreme Court of the United Kingdom, which was created by the Constitutional Reform Act (2005). The first justices to serve on this 12-member court were law lords, and they remained members of the House of Lords. Thereafter, all new appointments to the court are called justices of the Supreme Court and are no longer members of the House of Lords. When needed, a commission is formed to fill vacancies on the court, and membership on the commission includes the President and Deputy President of the Supreme Court.

How Suprem
gov created

The Court of Appeal

The Court of Appeal is the intermediate appellate court for the entire English system. It consists of a civil and a criminal division. The presiding judge of the civil division is the **Master of the Rolls**. (This unusual title is a remnant from England's medieval past.) The presiding judge of the criminal division is the **Lord Chief Justice**. There are approximately 20 lord justices of appeal who constitute the rest of the court. In order to qualify for a position on the court, the candidate must be a judge from the High Court or have had the right of audience in the High Court for 10 years. They are required to retire from the court at age 75. The Lord Chancellor can supplement this group by assigning judges from the High Court to sit and hear specific cases; this frequently is done when an appeal involves a criminal case.

The High Court

The High Court is a single court with both original and appellate jurisdiction. It is divided into three divisions: (1) **Chancery**, (2) **Queen's Bench**, and (3) **Family**. The Chancery Division has original jurisdiction in matters dealing with property, trusts, wills, and estates. Although their jurisdiction is primarily original, they also hear appeals involving income tax and bankruptcy.

Queen
"B"

The **Queen's Bench Division** is the largest division of the three because its jurisdictional scope is broader. It is concerned with civil and criminal matters and has both original and appellate jurisdiction. Its original jurisdiction consists of actions in torts, contracts, commercial, and admiralty cases. Its appellate jurisdiction is solely concerned with criminal appeals from Crown courts and magistrates' courts.

The **Family Division** is the third component of the High Court, and it has both original and appellate jurisdiction. Its original jurisdiction includes matters involving matrimony, guardianship and wardship, and adoption. Guardianship and adoption are also the principal sources of its appellate jurisdiction.

High Court judges may sit in any division of the court, but the tendency is to assign judges to the division in which they have the greatest legal expertise. While all cases involving original jurisdiction are handled by a single judge, appeals are usually heard by two—but not more than three—judges. About half of the court's business is conducted at the Royal Courts of Justice in London. The other half is handled by judges, particularly from the Queen's Bench and Family divisions, while on circuit. For this purpose, the country is divided into six judicial circuits outside the metropolitan area of London.

The High Court consists of about 80 judges. In order to qualify for appointment to this court, a person must be a circuit judge for two years or have the right of audience in the High Court for 10 years. Members of the court are subject to mandatory retirement at age 75.

Crown Courts

The **Crown courts** have exclusive jurisdiction over all major criminal cases; they also handle appeals from people convicted summarily in a magistrates' court. Crown courts exist in

approximately 78 cities, but the Lord Chancellor has the power to order a court to sit anywhere.

Three kinds of judges preside over Crown court trials. Justices from the Queen's Bench Division of the High Court are assigned to handle the most serious cases. Approximately 400 circuit judges preside over the less serious cases, while about 500 recorders (part-time judges) assist the circuit judges with their caseloads. Circuit court judges are selected from barristers of 10 years standing; they may serve until they reach the age of 72. Circuit judges generally sit in a single Crown court. Recorders are part-time judges who are either barristers or solicitors of at least 10 years' standing. Appointment is contingent upon an applicant's willingness to serve four weeks out of the year as a recorder over a three-year term. Serving as a recorder frequently results in financial loss to their private practice. The benefit to this scheme, however, is that a recorder can consider a career on the bench without making a total commitment to a career change. Trials in the Crown courts are heard by a judge and a jury.

County Courts

Although they are not involved with the criminal justice system, brief mention should be made of the county courts. The jurisdiction of these courts is limited to civil matters. They are primarily concerned with small claims arising from cases in contract or tort. Their jurisdiction has been expanded to include estates and trusts when the value is small. The judges assigned to county courts are the circuit judges who also sit in Crown courts.

Magistrates' Courts

The workhorse of the English court system is the magistrates' courts. There are more than 500 of these distributed among local government areas, and they handle about 96 percent of the criminal cases. Commonly referred to as the inferior criminal courts of the system, magistrates' courts also have some civil jurisdiction, including revocation and renewal of licenses, enforcement of marital separation decrees, orders involving child custody, and some adoption proceedings.

The criminal jurisdiction consists of two types. Minor crimes are tried summarily in these courts; that is, magistrates determine the outcome of these cases without a jury. Traffic offenses constitute a significant portion of the summary offenses. Moreover, all persons charged with a criminal offense are initially brought before a magistrate to determine if the case should be handled by the magistrates' court or transferred to a Crown court. The magistrates' court also serves as the juvenile court in the English system, handling both criminal prosecutions involving juveniles and child protection cases of a noncriminal nature.

There are two types of magistrates who sit in these courts. District judges, who were known as stipendiary magistrates until 2000, are people trained in the law and have been either a barrister or solicitor for at least seven years. There are approximately 130 district judges serving throughout England; more than half of these work in the greater London area. District judges sit alone when hearing cases. The age of retirement from the court is 70.

*Summary
Court*

The other approximately 23,000 magistrates are laypersons who are referred to as justices of the peace. Local advisory commissions recommend to the Lord Chancellor people who are willing to serve on these courts without financial remuneration. Justices of the peace are expected to serve at least one day biweekly, and the position is considered a status symbol in the community. Their term of service is six years, which can be renewed for an additional term that is supposed to be the maximum. Lay magistrates sit in panels of three to hear cases. Although lay magistrates go through a short period of training following their appointment, their knowledge of the law remains inadequate. As a result, each court has a clerk who answers questions of substantive or procedural law for justices of the peace (Astor, 1986). The clerks do not rule on cases brought before the court, for that is the responsibility of the justices of the peace.

The Legal Profession

The most striking feature of the English legal profession is its bifurcated form. The division of the legal profession into two branches (barristers and solicitors) is a long-standing tradition dating back to medieval times. In examining differences between these two professions, the medical analogy of the general practitioner and the specialist surgeon is frequently utilized. The role of a solicitor is that of the legal generalist, while a barrister is the specialist.

Solicitors - Lawyer

There are approximately 116,000 solicitors in England and Wales. They are the office lawyers—the legal advisors to the public. They draft wills and contracts, handle commercial and land transactions, and deal with probate and divorce issues. They are not completely isolated from the courtroom, however. They have the right of audience in magistrates' and county courts and a limited audience in Crown courts. With the passage of the Courts and Legal Services Act (1990), the right of audience for some solicitors has been expanded even further.

Although some solicitors practice alone, most form partnerships. This enables the legal generalist in larger firms to specialize in a particular branch of law, such as probate, real estate, or criminal law. When a member of the public needs legal advice, he or she turns to a solicitor for guidance; in most cases, that is the extent to which the public has contact with the legal profession.

The Law Society is the solicitor's professional organization, mandated by statutory law, to assure professional conduct among solicitors and to safeguard the public interest. The Society administers a compensation fund used to indemnify a client against a solicitor's default in the handling of a client's money. The Society, however, does not discipline its members. An independent disciplinary committee has been empowered by statute to handle such matters. Statute law also regulates the fees that solicitors may charge clients.

For those seeking a career as a solicitor, the most common approach is to complete a university undergraduate law degree. If the person has a degree in another field of study, they must pass the Common Professional Examination. All candidates then participate in

How they
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Certified

a one-year Legal Practice Course, which is designed to train the candidate in various skills, such as interviewing clients and advocacy techniques. Upon completion of this course, the candidate secures a two-year training contract. The training contract can be with a firm of solicitors in private practice or with a government department, such as the Crown Prosecution Service. Obviously, the contract provides the candidate with a good deal of practical experience. During this period, the candidate also completes a short Professional Skills Course. Once the person has completed all of these aforementioned requirements, they are admitted to the Law Society as a solicitor.

Barristers (Speaks at Trial)

In most countries, judges decide issues at trial based on the written evidence submitted. Although this kind of evidence is important in English trials, the tradition of presenting oral arguments is central to British legal procedure. This practice calls for the specialized talents of a barrister. Although solicitors are consulted for legal advice, barristers present the cases in court. When a litigant is faced with a trial in the High Court (and in many Crown court cases) or is appealing a case to the Court of Appeal or the Supreme Court, the litigant's solicitor must seek the services of a barrister.

A purported expertise at oral advocacy is one reason for the selection of a barrister, but equally important is the fact that solicitors have not had the right of audience in the aforementioned courts. As was indicated earlier, however, the Courts and Legal Services Act (1990) has changed this rule to a limited degree. In all likelihood, some solicitors will have a right of audience extended to Crown courts as it relates to specific cases. The solicitor generally prepares the case by interviewing the client and the witnesses, but has the barrister argue the case before the court. Thus, the solicitor becomes a client of the barrister.

There are approximately 14,600 barristers in England and Wales, some of whom specialize in a particular branch of law. Barristers are subject to a strict code of professional conduct. For example, they cannot advertise their services, and they are dependent on solicitors coming to them with legal briefs. In addition, barristers cannot form a contract with a solicitor and be paid a salary. Their fees are negotiated with the solicitor based upon each case. Although barristers are forbidden by their code to form partnerships, the bar is organized into chambers or offices from which they practice. More than half of these are found in the greater London area.

In each chamber, barristers are divided into two groups: Queen's Counsel (QC) and juniors. Junior barristers are those who have been practicing law for less than 10 years. Once a junior barrister has accrued 10 years' experience, he or she may apply to the Lord Chancellor for appointment as Queen's Counsel. This process is known as "taking silk" because, if accepted, the barrister wears a silk gown in court rather than a cotton one. Acceptance also means that the barrister is permitted to add the letters "QC" after his or her name and may sit in the front-row seats in the courtroom. (Junior barristers must sit behind Queen's Counsel.) More importantly, the practice of a QC is limited because most of his or her time is spent handling cases on appeal. About 10 percent of barristers are QCs, and it is from the ranks of the QCs that most judges are selected.

QC → 3509

Anyone seeking a career as a barrister must obtain an undergraduate law degree from a university. If the person has a degree in another field of study, he or she must pass the Common Professional Examination. The candidate then takes the Bar Vocational Course, which is designed to prepare the person for a career as an advocate. All persons seeking a career as a barrister must join one of the four ancient Inns of Court: Gray's Inn, Lincoln's Inn, the Inner Temple, or the Middle Temple. The candidate is required to dine at the selected inn on certain occasions, and the inn provides additional courses of instruction focusing on some of the more practical aspects of the law not covered in university courses. These courses supplement a candidate's preparation for the bar examination required for entrance to the profession.

How to
become
a
Barrister

Once a candidate has successfully completed these requirements, he or she is called to the Bar, officially becoming a barrister. The training does not end, however, with a candidate being called to the Bar. A young barrister must arrange a pupillage; that is, the new barrister must find a junior barrister who is willing to take him or her on as a pupil for a period of one year. This period of apprenticeship introduces the young barrister to the practical work of the barrister in chambers and in the courtroom. When a junior barrister (referred to as the master) is satisfied with a candidate's pupillage, the candidate seeks admittance to a chamber. Ideally, the young barrister will attempt to join the chamber of the master, if a seat is available. In more recent years, young barristers have found it increasingly difficult to secure a pupillage. This is largely the result of an overabundance of people entering the profession and a shortage of junior barristers having the time to serve as masters. The inns are attempting to resolve this problem by taking a more active role in the placement process.

Judges

English judges do not constitute a separate tier in the legal profession as is the case in many countries. Judges are selected from either practicing barristers or (to a lesser extent) trained solicitors. Until 2006, judicial appointments were made by the Lord Chancellor, but the Judicial Appointments Commission has assumed that responsibility. It should be further noted that the bar of England and Wales does not evaluate a candidate's suitability, which is a method frequently employed in the United States. Nor is a candidate subject to a confirmation hearing before Parliament, a device used in the United States when appointing people to the federal judiciary. Once the candidate is nominated, the monarch signs the person's commission. Thereafter, the person is a judge with permanent tenure in office (based on good behavior) until attainment of the age of retirement.

Over the course of the last few decades, criticism has been leveled at English judges for their lack of judicial activism. This criticism frequently cites the American judiciary and its activist role in civil rights and criminal procedure as a model that should be emulated. If one examines the backgrounds of English judges and their perception of their role, it becomes clear why they have not taken an activist stance. Various studies have confirmed that English judges, excluding to some extent the magistrates, are selected from a fairly narrow segment of the population. Most judges have come from the upper or upper-middle

classes. Generally, they attended exclusive boarding schools and continued their education at either Oxford or Cambridge, the country's two ancient and prestigious universities.

Because Britain is a unitary country rather than a federated state, the future judge studies a unitary application of the law rather than a multijurisdictional approach. This political fact lends itself to a system of legal education that is based on learning a specific approach for resolving each legal problem confronted. This method has a tendency to foster among students a more certain and assured view of their legal system. Moreover, membership in the ancient inns perpetuates this rather narrow educational experience in the law.

Another factor that contributes to the lack of judicial activism is that most judges are selected when they are in their late forties or early fifties. Thus, their years of training and extensive experience as a practicing advocate have further enhanced their assurance in the virtues of the legal system, as well as their desire to maintain the status quo. The system of judicial promotion also assures that justices at the appellate level will be older than their counterparts in the United States. Moreover, there is a notable degree of judicial restraint among appellate justices with regard to developing new rules. It has been suggested that, as former trial judges, appellate justices appreciate the problems of the trial judge. Thus, they are unwilling to devise new rules to overturn lower-court judgments based on sound precedent, regardless of how dated the precedent might be.

English judges have had a narrower view of their role in the judicial system than their American counterparts. English judges have perceived their role to be that of applying existing law rather than creating new law. Historically, English judges helped formalize the common law, but this changed in time as most law is created in the form of a statute passed in Parliament, the supreme legal authority in England. The supremacy of Parliament assures the system that no English court will declare an act unconstitutional. English judges have interpreted and applied the law; they have not made it. That latter role has been the responsibility of legislators (Griffith, 1991).

With the passage of the Human Rights Act (1998), the criticism directed at the lack of judicial activism will inevitably change. The principal question is the degree to which the judiciary will assert itself. Admittedly, the Human Rights Act (1998) does not authorize courts to declare legislation unconstitutional. It does authorize courts to declare that an English law is not compatible with the fundamental principles represented in the European Convention on Human Rights. Issuing such a declaration of noncompliance enables judges to indicate to the government and Parliament that remedial action should be taken to correct the inconsistency. This kind of judicial activism enhances the role of the judiciary considerably.

Juries

Juries have long been synonymous with the evolution of the common law. They are often considered one of the cornerstones of the administration of justice. Today, only the petty or trial jury is used in England—and even this jury is employed rather sparingly. The grand jury became obsolete as the jury of presentment when justices of the peace gradually took over that responsibility. In 1948, the grand jury was officially abolished. At this point, the modern system of preliminary investigations became the sole responsibility of magistrates.

Although the right to trial by jury has not been eliminated, it has been severely restricted. The use of a jury in civil cases has declined considerably since 1933. Statutory law has limited its use to only a few actions, such as libel and slander. In all other civil suits, a jury is granted only through the court's direction. The reasons usually cited for the decline are the proliferation of civil suits and the loss of faith in the jurors' ability to grapple with highly complex and technical civil trials. The belief that the interests of justice would be better served by a professional judge individually deciding civil cases has gained considerable support over several decades.

The use of a jury in a criminal trial is determined by statute. People accused of an indictable offense have the right to a jury trial in Crown courts, while summary offenses are heard in magistrates' courts without a jury. Because the number of indictable offenses is rather small compared to the summary offenses, the use of the jury is reduced. Moreover, only one in every 20 eligible defendants elects a jury trial.

get a
JURY

Eligibility to serve as a juror is based on three criteria: One must be between the ages of 18 and 70, be a registered voter, and have resided in the United Kingdom for five years since his or her thirteenth birthday. There are various ways to elude jury duty. People can be disqualified if they have been convicted of a crime and served a sentence of more than a specific period of time. Anyone sentenced to more than five years' imprisonment is disqualified for life. People are declared ineligible if they are employed in the administration of justice. People can be excused from service if they are a member of Parliament, a healthcare professional, or military personnel. In addition, anyone between the ages of 65 and 70 has an automatic right to be excused from jury duty.

How to
Be a
Jury

During the process of selecting people to serve on a jury, both the defense and prosecution can challenge for cause the seating of a specific juror. The English eliminated the use of peremptory challenges, which had been reserved exclusively for the defense and limited to three challenges. English juries are composed of 12 people, but a verdict does not have to be unanimous. Verdicts with a majority of at least 10 are permitted.

Critical Issues

Legal Profession

Two concerns are paramount regarding the state of the legal profession: (1) its bifurcated organization, and (2) gender and racial issues. Concerning its bifurcated form, some criticism has questioned the need for two distinct classes of lawyers: barristers and solicitors. Although the issue has been debated intermittently for almost 100 years, there has been a renewed and intense discussion in recent decades. Until recently, the Law Society was reluctant to support the idea of merging these classes, and the Bar has been downright hostile toward it.

The belief that the bifurcated legal system fosters monopolistic and inefficient practices precipitated the notion of merging the two professions. Despite the fact that solicitors' fees are regulated by statute, it is alleged that the schedule and rules permit solicitors to charge exorbitant fees when handling certain types of legal transactions. The criticism of barristers centers on issues of effectiveness and efficiency. It is not unusual for a barrister to receive

the brief that he or she will plead only a week before the hearing. As a result, not enough time and care may be given to a case because of a lack of preparation.

In addition, efficiency of cost in cases bound over to a Crown court is a considerable concern. A QC handling a case has a junior barrister assisting. When the role of the solicitor is added to this system, a client may end up with as many as three attorneys handling the case. Critics note that yet another concern is that more than half of all cases sent to Crown courts could be tried in a magistrates' court. They are heard in a Crown court because the defendant had a choice as to where the case would be heard. Even though many of the defendants plead guilty when the case reaches the Crown court, the attorneys must still be paid (at a considerable expense to the government).

The Courts and Legal Services Act (1990) may resolve some of these concerns, but it will probably be years before the total impact of this legislation takes effect. Because the legislation did not resolve all the concerns of the critics, arguments for merging the two professions will probably continue. Proponents of the merger scheme have maintained that it would not lead to the demise of the general practitioner and the specialist, which is what the Bar fears. Proponents cite the fact that in countries with a single legal profession, there have emerged both specialists and generalists within the ranks. There is no reason to doubt that this would happen in England, especially considering that the practice is already in place (Hazell, 1978; Marre, 1988).

The other concern confronting the legal profession is the issue of gender and racial bias. From its inception, the study of law has been dominated by white males. In 1991, there was only one black judge in England. Part of this is explained by the limited number of blacks in the legal profession. On the other hand, in recent years, women have been making considerable strides within the profession. However, men continue to dominate positions on the judiciary. Part of the reason for this is that women have been underrepresented as QCs, which is the source for judicial selection. It has been suggested that charges of gender discrimination will really be tested in the coming years. By then, a significant number of women who entered the legal profession will be in a position to apply for the status of QC and will thus be eligible for appointment to the judiciary (Pearson and Sachs, 1980; Zander, 1989).

Unfortunately, there has been a limited number of women and minorities who have been appointed QCs, in light of the significant increase of both entering the legal profession in the 1990s. To address this problem, an Independent Selection Panel that includes both lay members and people from the legal profession was created in 2005. The Panel submits its recommendations to the Lord Chancellor, who has neither the power to reject nor to add candidates to the list. The entire application process is designed to establish a selection procedure that is merit-based. When this process was implemented for the first time in 2006, 49 percent of the women and 42 percent of the minority applicants were approved (Malleon, 2007).

The Queen's Counsel Selection Panel released its report for 2013–2014. There were 225 applicants and 100 new appointments. Males dominated the number of applicants at 183, of which 82 were appointed. Of the 42 female applicants, 18 were appointed. During the 2012–2013 period, 26 women had applied and 14 were appointed. Of those indicating

membership in an ethnic minority for 2013–2014, there were 32 applicants and 13 appointments. During the 2012–2013 period, 21 had applied and three were appointed. Of those who claimed a disability for the 2013–2014 period, there were eight applicants and five appointments. During the 2012–2013 period, there was just one applicant and no appointments.

LAW

One of the basic distinctions made in law is the difference between civil justice and criminal justice. Civil litigation involves a resolution of private wrongs between two individuals. Criminal litigation is concerned with a public wrong, a crime in which someone has transgressed the public order of the state by inflicting some kind of harm, usually on a private individual. In criminal litigation, it is the state rather than the individual harmed that seeks a just treatment for the offender. This is to assure that public order is maintained and that the wronged individual's desire for revenge or retribution is satisfied.

The distinction between these two forms of justice has been present for so long that there is a tendency to assume that they have always existed. That assumption is false, however. In order for criminal law to exist in the aforementioned format, the state must be a strong and viable instrument of authority. The Norman Conquest in 1066 has often been identified as an important date in the history of England, and reference has already been made to it. The period after the conquest is often attributed with initiating the gradual merger of local legal customs into a law that was common throughout England. It was from this development that the term "common law" emerged.

Before the arrival of the Normans, the Anglo-Saxons had developed an extensive body of written law called dooms. Early dooms identified many of the more obvious forms of criminal conduct, such as murder, rape, robbery, and theft. Doms also explained the procedures utilized to determine guilt or innocence and methods for sanctioning offenders.

Outlawry was one of the early methods for punishing those who repeatedly refused to observe the community's laws. Limited to the more serious offenders, under this system a person simply was placed outside the law. The individual was ordered to leave the community and was threatened with death upon return. Once the authority of the king increased, outlawry ceased as a method of punishment and instead became a form of assuring that a person would submit to a hearing in a judicial tribunal.

The blood feud was another primitive procedural approach that was explicitly based on a desire for revenge. A victim was often dependent on their kindred to seek retribution, and kindreds were based on blood relationships. Regulated by a system of rules, a blood feud sought an exact compensation that often followed literally the principle of "an eye for an eye and a tooth for a tooth."

Gradually, a monetary compensation plan was introduced to replace the blood feud. By the ninth century, a schedule of tariffs was established and recorded. With the creation of this scheme, the king was not only beginning to assert his authority in judicial matters but was also recognized in theory as a victim of crime. When a crime was committed, the victim was compensated by a monetary payment called a wer. The wer was the value placed

mon + y

on an individual, determined by the individual's rank in society. The king was considered a victim of the criminal act because the crime disrupted the general or public peace of the kingdom. He, therefore, was compensated by a monetary payment called a *wite*.

The monetary compensation scheme illustrates a method for sanctioning. The procedure devised by local Anglo-Saxon courts to determine liability was referred to as compurgation. Usually, a victim went to the local court and made an oath that the accusation was being made in good faith. The accusation was supported by offering material evidence and securing oaths of affirmation from oath-helpers. It was not uncommon to secure oath-helpers from one's tithing, that early form of Anglo-Saxon law enforcement. Both the quality of evidence and the number of oath-helpers necessary was dependent on the gravity of the accusation and the social rank of the plaintiff.

The defendant was then permitted to make an oath of denial. The defendant also had to secure oath-helpers. The number of oath-helpers was determined by the nature of the charge and the accused's social rank. Severe fines were levied against all parties concerned who falsely swore an oath.

Some defendants were not permitted to use compurgation. Instead, they had to submit to an ordeal, which was another form of proof. Defendants who were required to submit to an ordeal included those who were unable to secure a sufficient number of oath-helpers to comply with the compurgation scheme, those who had an extensive record of accusations brought against them and were no longer considered oath-worthy, and those caught in the act of committing a crime or in possession of stolen property. Proof by ordeal was based on a belief that the gods or a god would intervene with a sign that would determine guilt or innocence. While ordeals had their origins in primitive societies, the practice was transformed into a Christian ritual by the Roman Catholic Church.

There were three types of ordeals that were frequently utilized. The plaintiff in a case usually determined which ordeal would be employed. The ordeal of cold water involved placing the defendant into a pool of blessed water. If the person sank, they were innocent; if they splashed about, they were considered guilty. The ordeal of hot iron and hot water were similar to one another. The ordeal of hot iron required the defendant to carry a hot iron bar nine feet, while the ordeal of hot water involved removing a stone from a cauldron of boiling water. All the instruments in these ordeals had been blessed by a priest. In these instances, the defendant's hand was bandaged and three days later the bandages were removed. If the skin was healing, the person was considered innocent; if the skin was infected, the person was obviously guilty. Thus, the Christian application of the ordeals was based on a belief that God would provide a sign as to the truth of the matter for the court. Although ordeals may appear to be a form of punishment, they were simply a method of determining guilt or innocence. People found guilty by an ordeal would then have to submit to a prescribed sanction, frequently involving monetary compensation.

By the time of the Norman Conquest, the Anglo-Saxons had developed an extensive body of written law. Their system was superior to that of their Norman invaders, who relied upon oral tradition rather than written custom. This may be the reason why the Normans did not tamper with Anglo-Saxon law following their conquest. If change was not in the offing as a result of the Conquest, why is the event considered such an important date in the development of English law? Norman kings were interested in centralizing their

political control over their English kingdom. It was through the enhancement of their political position that the law was gradually transformed into a unified system, a common law for the whole kingdom.

The emergence during the medieval period of centralized royal courts, circuit courts, royal writs, and the jury has already been discussed in a previous section of this chapter. This period also experienced changes in the principles of criminal liability and in criminal procedure. For example, Anglo-Saxon law had not developed the notion that a crime requires a finding of *mens rea* or criminal intent. People were liable for all their actions. By the thirteenth century, however, a distinction was made between a crime and a tort. Although the term *mens rea* was not in use, there was a recognition of criminal intent. For example, people were granted pardons for death by misadventure. This would not have occurred during the Anglo-Saxon period. In addition to differentiating between a crime and a tort, a distinction was made between felonies and misdemeanors. The term *felony* was used in statutes on a limited basis as early as the twelfth century; by the thirteenth century, serious crimes such as murder, robbery, rape, theft, and arson were classified as felonies.

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→ Common Law

Another significant procedural change occurred in 1215 as a result of the meeting of the Fourth Lateran Council. At this meeting, Pope Innocent III (1160/1161–1216) declared that clergy were to cease participating in trials involving bloodshed. With the clergy removed from the administration of ordeals, the procedure lost its significance. Before the Pope's declaration, the grand jury of indictment was utilized in England, and even the petty jury was employed in some cases to determine guilt or innocence. As a result of the Lateran Council's pronouncement, the use of juries gained in popularity and became a standard component of the English criminal trial.

The emergence of a unified legal system common throughout the kingdom was another significant factor in the development of English law following the Conquest. Despite the fact the Anglo-Saxon dooms had standardized some law and procedure, a good deal of regional custom remained prevalent in the local courts. The advent of royal courts—especially the use of circuit judges—changed that. Royal courts were superior to local courts, and thus, their decisions were binding on local courts. As royal court decisions became systematized, there gradually emerged a unified or common interpretation of the law. The roots of the common law are found in the decisions of the justices of the royal courts, in some of the Anglo-Saxon dooms, and in statutes passed after the Norman Conquest.

Criminal Law

The primary sources of English law are (1) common law, (2) legislation, and (3) equity, but only the first two are considered the basis of criminal law. The earliest common law offenses were felonies, and they were punishable by death or mutilation and by forfeiture of property. Murder, robbery, rape, arson, and larceny are examples of these early common law felonies. As other less serious offenses were identified by the judiciary, they were called misdemeanors. By the nineteenth century, the legislature became the principal source for identifying new forms of criminal behavior. Today, most common law crimes have been codified and are contained in statutes.

Until 1967, the English classified crimes by the traditional categories of ~~treason~~, ~~felonies~~, and ~~misdemeanors~~. With the passage of the Criminal Law Act (1967), this old distinction was abolished, largely because it had become obsolete. As a result of this act, a dual system of categorization was created based upon substantive and procedural classification schemes.

Offenses are now referred to as arrestable or nonarrestable. Arrestable offenses are defined in the Act as "offences for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence." Thus, the most serious crimes are arrestable offenses; all others are deemed nonarrestable offenses.

The major significance of this legislation involved ~~the power of arrest without a warrant~~. Under common law, this power was limited to ~~treason, felonies, and breaches of the peace~~. Under the new substantive scheme, the power to arrest without a warrant was extended to all arrestable offenses.

It is the act's procedural classification scheme that determines how a case is handled. All offenses are tried either summarily in a magistrates' court or on indictment in a Crown court. Offenses are procedurally classified into one of the following categories. (1) Most serious offenses are triable on indictment before a judge and a jury in a Crown court. These include murder, manslaughter, rape, burglary, and assault with intent to rob. (2) Some indictable offenses may be tried summarily in a magistrates' court. Among the offenses that fall under this category are malicious wounding, assault, many thefts, some burglaries, and arson. The accused must give consent to the summary proceedings, however. (3) Statute law has created a small number of offenses that may be tried either summarily or on indictment. These offenses are commonly referred to as "hybrid" offenses. These cases are tried on indictment, unless the prosecutor applies to a magistrates' court for the case to be heard summarily. Examples of these offenses include driving under the influence, carrying a weapon, and cruelty to children. (4) Some summary offenses may be tried on indictment. These include those summary offenses in which the accused can claim a right to a jury trial, such as selling liquor without a license and illegal entry by immigrants. (5) Some summary offenses are tried in a magistrates' court without a jury. The vast majority of offenses in English law are summary in nature; they include drunk and disorderly conduct, loitering and soliciting, and most traffic offenses.

As previously mentioned, by the thirteenth century, the English recognized the principle of criminal intent. Today, there are two general principles establishing criminal liability. One is the *actus reus*, that is, the act of commission or omission forbidden by the criminal law. Each crime contains specific elements that define a particular crime and thus establish the *actus reus*. For example, the Theft Act (1968) defines robbery as "[a] person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force." The elements of stealing and using force or fear indicate the *actus reus*.

The other general principle is the *mens rea*, that is, the accused possessed the necessary intent to commit the crime. Like the *actus reus*, the *mens rea* of each crime is different.

list of
offenses

For example, theft requires the intent to permanently deprive the owner, while a forgery case requires the intent to defraud or deceive. Obviously, the *mens rea* is complex and at times difficult to prove because the accused's state of mind is being scrutinized. In order to prove that a crime was committed, it is the responsibility of the prosecutor to prove that both *actus reus* and *mens rea* existed in each particular case.

Criminal Procedure

The examination of English criminal procedure is divided into two categories: ~~the pretrial process~~, which includes police powers and procedures, bail, and the preliminary hearing; and ~~the trial process~~, which explains the procedures for trials on indictment, summary proceedings, and appellate reviews.

The English criminal justice system in general, and criminal procedural issues in particular, have often received significant attention. The issue of police powers was the subject of a massive and extensive examination by the Royal Commission on Criminal Procedure (1981). The commission's report focused on (among other things) police powers of arrest, search, and questioning.

Because police powers were scattered throughout common law, case law, and statute law, critics were of the opinion that police authority should be reviewed and systematized in a coherent fashion. The Royal Commission on Criminal Procedure agreed with this position and offered a general recommendation that police powers be codified. The rationale was based on two objectives. ~~First~~, the police argued that they preferred to have a clear understanding of the limits of their authority and that framing these powers in a statute would assist in eliminating existing ambiguities. ~~Second~~, the citizenry had a right to be apprised of these powers, for this is a basic tenet of any country that claims to be founded on democratic principles. An even more pragmatic reason centered on the need for the citizen's willingness to cooperate with police when such powers were exercised. The assumption was that if the citizenry had a clear understanding of the extent of police powers, they would be more apt to cooperate.

The commission specifically suggested that the power to arrest without a warrant be more consistent. Arrests without a warrant were acceptable if the alleged violation was an arrestable offense or if another statute granted such a power. The commission recommended that there be one single power to arrest all accused of an imprisonable offense and that the power to stop and search a person should be based on a statute. The Commission would permit searches of stolen property or prohibited items in the event that an officer has a reasonable suspicion that a person possessed such property or items. Additionally, warrants to enter and search a premise should specifically detail the place to be searched and the items to be seized. General searches would be unacceptable.

In addition, the police power to question a suspect and take testimony was controlled by the Judges' Rules and the Administrative Directions on Interrogation and the Taking of Statements. Collectively, these rules called for voluntary confessions, enumerated a person's right to remain silent, enabled private consultations with a solicitor, and required that the person in custody be informed of these rights orally and that the rights be posted and displayed in a prominent place in police stations.

- search

- 905 f 12

Although these rules served a similar purpose to that of the *Miranda* warning in the United States, they were not legally binding. Breaches, therefore, did not lead automatically to the exclusion of evidence at trial. It was the responsibility of the judge to make a determination on the admissibility of evidence. Moreover, it was suggested that people in custody had not been routinely informed of their qualified right to speak to a solicitor or to friends; and when they had been informed, many were denied this right. Compounding the problem was the fact that solicitors were not always willing to come to a police station at all hours of the night.

There emerged a concern among some critics of police procedures that citizens—especially the poor, illiterate, and uninformed—were victims of these and other unnecessary breaches of the rules. Critics contended that all citizens would become potential victims of these breaches if they were allowed to continue. Though in the past police had relied on public trust in their judgments and an almost unquestioned deference to agents of authority, the composition and attitudes of English society had changed considerably since World War II. Distinctions in the various segments of the population were more pronounced, and people were often unwilling to exhibit complete deference to the wishes and practices of police.

The Royal Commission recognized these concerns and offered two recommendations: The treatment of a suspect in custody should be regulated by statute, and the right of access to a solicitor should be improved by the establishment of a duty solicitor scheme. Although a few areas of the country had already developed such a scheme, the commission recommended that defendants throughout the country be given access to a solicitor on a 24-hour basis. The likelihood that such a scheme could work would be enhanced by guaranteeing solicitors a remuneration for their services.

As a result of the commission's work, Parliament passed the Police and Criminal Evidence Act (1984), often referred to as PACE. This act essentially encompasses in a single statutory instrument all the aforementioned procedural issues relating to police. In addition to the act, the home secretary issued Codes of Practice designed to assist police with interpreting the statute. Like the act, the Codes of Practice were subject to the approval of Parliament.

In 1991, the Royal Commission on Criminal Justice was established after several high-profile convictions were overturned. Although the original convictions in some of these cases predated the passage of PACE, that was not the case with all of them, thus raising questions about PACE. The new Royal Commission was given a broad mandate to consider the effectiveness of the criminal justice system—specifically, how to assure the conviction of the guilty and the acquittal of the innocent. The work of this Commission, along with various other committees, led to the passage of the Criminal Justice and Public Order Act (1994) and the Police and Magistrates' Courts Act (1994). Unlike the Police and Criminal Evidence Act (1984), which essentially placed all procedural issues related to police under one statutory instrument, the new pieces of legislation deal with a host of issues that involve criminal law, criminal procedure, and the administration of the justice system (Bridges, 1994; Bridges and McConville, 1994; Zander, 1994). Since that time, more recent legislation impacts how the police perform their duties as it relates to criminal procedure. This legislation includes the Terrorism Act (2000); Anti-Terrorism, Crime and Security Act (2001); the Anti-Social Behaviour Act (2003); and the Criminal Justice Act (2003).

Need to Read

Power to Stop and Search

Under PACE, police have the power to stop anyone who is in a place to which the public has access and to speak with them briefly in order to decide if there are grounds to conduct a search. Before a stop occurs, police must have established reasonable suspicion for doing so, based on the probability that stolen goods or prohibited items will be found either on the person or in a vehicle. Prohibited articles consist of offensive weapons and items made or adapted for use in the commission of various offenses (which, for the most part, involve burglary or theft).

In order to carry out a search, an officer is expected to inform the person to be searched about the officer's name and police station, to identify the object of the proposed search, to explain the grounds for the search, and to inform the person of his or her right to receive a copy of the record of the search. The police also must keep a record of a search as long as it is practical to do so.

what must
be
served

PACE also addressed the stopping and searching of vehicles and the issue of road checks. In the case of stopping and searching a vehicle, an officer must have reasonable suspicion that the vehicle contains stolen goods or prohibited articles. A search of an unattended vehicle is permitted as long as reasonable suspicion has been established. Road checks normally should be approved in advance by an officer of the rank of superintendent or above and an explanation given for the purpose of the check. The grounds for establishing a road block are the following: to apprehend a person who committed a serious offense, to secure a witness to a serious offense, to stop a person intending to commit a serious offense, or to apprehend an escaped prisoner.

Power to Enter, Search, and Seize

A key issue in searching premises is whether an officer has secured a search warrant. Usually, a warrant is needed to search a residence, but the statute offers some exceptions to the general rule. For example, a person who occupies a residence may consent to a warrantless search. The Code of Practice, however, states that a person is not obligated to consent to a search. In the event a person does agree, the consent must be in writing and the person must be informed that anything seized may be used as evidence. Warrantless searches also can be used to prevent or stop a breach of the peace that is imminent or taking place, to rescue a person in danger, or to prevent serious property damage. Arresting a person in cases in which an arrest warrant has been issued or arresting a person for an arrestable offense are also acceptable reasons. Upon entering a premise to arrest a person, police must have reasonable grounds to believe that evidence of an offense or similar offenses will be found. Two final reasons for a warrantless search include situations in which the defendant was at a premises immediately before an arrest or in which the intent is to recapture an escaped prisoner.

The application for a search warrant is covered under PACE. Under the act, a magistrate must be satisfied that there are reasonable grounds to suspect that an arrestable offense was committed and that relevant admissible evidence will be found. There are two exceptions to this rule: legal privilege and excluded material. Legal privilege involves the

communications between a professional legal advisor and his or her client. Excluded material includes personal records, a journalist's materials, and human tissue or tissue fluids. Although the last two are fairly self-explanatory, it should be noted that the Criminal Justice and Public Order Act (1994) amended this provision. As such, police powers have been extended to take intimate and nonintimate samples in select circumstances. Personal records include the records of healthcare professionals, clergy, counselors, and agencies dealing with personal welfare issues. Certain materials held on a confidential basis, such as bank records, may be seized following an application for a warrant to a circuit judge. Under normal conditions, this application is sought in the presence of the person on whom the order is being made.

PACE also established a uniform procedure for carrying out a search warrant. The request for a warrant must be made in writing, and an officer must be put under oath to answer questions of a magistrate concerning the request. The warrant can be used only once and must be executed within a period of one month. When executing a warrant, an officer must identify himself or herself and present a copy of the warrant to the occupant of the premises. The search should also occur at a reasonable hour. Police can seize any item covered by the warrant or reasonably believed to be evidence of an offense.

Finally, it is important to note that not all searches are governed only by PACE. Some specific police powers are found in other statutes. A sample of these include the Theft Act (1968), the Misuse of Drugs Act (1971), the Aviation Security Act (1982), the Road Traffic Act (1988), the Offensive Weapons Act (1996), and the Terrorism Act (2000).

How
searches
are authorized

Power to Arrest

The power to arrest involves two general sets of circumstances: cases of arrest with a warrant and cases of arrest without a warrant. Various statutes authorize arrest with a warrant. It is the issue of arresting without a warrant that is often complicated and controversial. PACE attempts to clarify the circumstances in which it is permissible. Police can arrest without a warrant if they have reasonable grounds to believe that a suspect has or is about to commit an arrestable offense. They also can arrest people without a warrant for common law offenses carrying a sentence of five or more years' imprisonment or for specific offenses listed in Section 24 of the statute.

A person must be informed when he or she is under arrest and be provided reasons for the arrest. Once a person is arrested, he or she can be searched. The search must be based on reasonable grounds that the person poses a present danger to himself or herself or others, possesses evidence of a crime, or possesses items that could be used for escape.

Power to Detain

The act and the accompanying code designate certain police stations to receive people for detention. Each of these stations has a custody officer at or above the rank of sergeant. Once a suspect arrives at a police station, the custody officer decides whether there is sufficient evidence to charge the person with a crime. Suspects who have not been charged can be detained if the custody officer believes that it is necessary in order to secure or

Custody
officer
must
rule

preserve evidence. The custody officer also oversees the treatment of suspects who are being detained. Moreover, PACE requires a periodic review of the detention of suspects who have been charged. A review officer is responsible for this task, and the officer must be at least the rank of inspector and cannot be involved in the case under review. PACE mandates that the first review occur within the first six hours of detention, followed by further reviews at nine-hour intervals.

If police wish to continue to hold a suspect who has not been charged for longer than 24 hours, they must have the detention authorized by a person at the rank of superintendent or higher. If police wish to hold a suspect beyond 36 hours, they must seek the approval of a magistrate. Magistrates cannot authorize the holding of a suspect beyond 96 hours. The suspect or the suspect's representative must be informed of these continuances so that oral or written statements can be made with regard to the detention.

Reason
why
to
be
held

At least two magistrates and the court clerk must be present at a detention hearing. The suspect must be given a copy of the police application for further detention and be notified of the right to legal representation. Acceptable reasons for a continuance of detention are the necessity to secure or preserve evidence, the fact that the allegation is a serious arrestable offense, and the assurance that the investigation is being conducted in an expeditious manner. These are the same criteria used by a superintendent in determining a continuance of the 24-hour period.

Once a person is charged with an offense, the reasons for detention change. The statute lists several reasons, including these: to establish the suspect's name and address, to detain (upon reasonable grounds) a person for his or her own protection, to prevent a suspect from causing physical injury to another person or damage to property, to assure appearance in court, or to prevent any interference with the administration of justice. In the case of a juvenile, detention might be continued on the basis that it is in the best interests of the young person.

Charged
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Under the old law, a person charged and held in custody would be brought to court as soon as it was practical. PACE retained this rule and strengthened it somewhat. If a magistrates' court is not sitting on the day of the charge or the next day (with the exception of Sundays and a few holidays), the custody office must request that the clerk of the court hold a special hearing for the suspect.

Power to Question

While a police officer has a right to ask a person anything, a person has an absolute right to remain silent. A person taken into custody also has a right to inform a friend, relative, or other person who will take an interest in their welfare. It is assumed that this will be done without delay, but there are circumstances in which delays are permissible—for example, if the suspect is being detained as a result of a serious arrestable offense. In addition, an officer of the rank of superintendent or above may delay the process if he or she believes it is possible that there will be interference with the investigation, that harm might come to other people, that other suspects might be alerted, or that the recovery of evidence might be hindered. The act further states that the maximum period of delay should not exceed 36 hours.

was to
delay

The Codes of Practice state that a detained person may receive visits at the custody officer's discretion. The detained person also has access to a telephone, unless any of the aforementioned reasons for holding a suspect incommunicado are in force. A police officer may listen to the contents of a telephone call unless the call is being made to a solicitor.

PACE also addresses the controversial issue of access to a lawyer. A suspect not involved in a serious arrestable offense has an absolute right to see a lawyer. Police are permitted to initiate questioning before the solicitor arrives, however. The code explains the circumstances in which this is permissible—including when a superintendent believes that a delay in questioning may cause harm to a person or risk the loss of (or damage to) property or believes that an unreasonable delay in the investigation would occur as a result of waiting for the solicitor. The suspect may agree in writing or on tape that the questioning may continue without a solicitor.

Delay
Suspects detained because of alleged involvement in a serious arrestable offense also have an absolute right to see a lawyer, but access can be delayed up to 36 hours in most cases. In cases of terrorism, the delay can extend up to 48 hours. The reasons for delay are the same as those stated in the previous paragraph. The code clearly states that delays in access to a solicitor cannot be based on a concern that a solicitor might advise the suspect not to speak.

Pro *Baro.*
The suspect can name a particular solicitor, or the police will provide a list of solicitors available for such work. Many jurisdictions have developed a duty solicitor scheme, which consists of solicitors who are available on a 24-hour basis for suspects. Access to a solicitor is available free of charge.

A person who has asked for legal advice should not be interviewed until the solicitor arrives, unless the aforementioned exceptions are in effect. The solicitor may be present during the police interview. However, an officer of the rank of superintendent or above can ask that the solicitor withdraw because of misconduct and may report such behavior to the Law Society.

Probably the most controversial issue is the point at which a person must be informed of his or her rights. The answer is dependent on whether the person is under arrest. If a person is not under arrest, he or she must be told of his or her rights when cautioned. Circumstances in which a caution must be given are explained in the code under Section 10:

Section 10
10.1 A person whom there are grounds to suspect of an offence must be cautioned before any questions about it (or further questions if it is his answers to previous questions that provide grounds for suspicion) are put to him for the purpose of obtaining evidence which may be given to a court in a prosecution. He therefore need not be cautioned if questions are put for other purposes, for example, to establish his identity, his ownership of, or responsibility for, any vehicle or the need to search him in the exercise of powers of stop and search.

10.2 When a person who is not under arrest is initially cautioned before or during an interview at a police station or other premises, he must at the same time be told that he is not under arrest, is not obliged to remain with the officer and may obtain legal advice if he wishes.

10.3 A person must be cautioned upon arrest for an offence unless (a) it is impracticable to do so by reason of his condition or behaviour at the time; or (b) he has already been cautioned immediately prior to arrest in accordance with paragraph 10.1 above.

10.4 The caution shall be in the following terms: "You do not have to say anything unless you wish to do so, but what you say may be given in evidence." Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved.

10.5 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution should be given again in full when the interview resumes.

10.6 A record shall be made when a caution is given under this section, either in the officer's pocket book or in the interview record as appropriate.

A person under arrest must be told of his or her rights upon arrival at a police station.

A person must be informed of the reasons for the detention, the right to inform someone of the detention, the right to see a copy of the codes, and the right to legal advice. The person must be told of these rights orally, and he or she has a right to a copy of the custody record. If a person has come to a police station voluntarily and has been cautioned, he or she must be advised of these rights as well as the right to leave the station, if desired.

Finally, the code offers several rules that relate to how police may question a person. Over any 24-hour period, eight continuous hours (which should occur at night) must be permitted for rest. Breaks should occur at two-hour intervals, but these can be delayed if there is a reasonable belief that harm could come to a person, that there is a risk of loss or damage to property, that there might be prejudice to the investigation, or that a delay would prevent a person's release from custody. Three meals must be provided over a 24-hour period. A person cannot be required to stand for questioning. If it is necessary to take a person's clothing for investigative purposes, replacements must be provided. The use of oppression in questioning a person also is forbidden.

Exhaust
of
T.M To
Question

Although a person has a right to remain silent, the Criminal Justice and Public Order Act (1994) has altered the manner in which that principle has been interpreted. In the past, the right to silence assisted the accused in two ways: (1) a person could not be required to incriminate himself or herself while in police custody, and (2) as a result of exercising that right, one could not infer guilt at trial. The new legislation does away with this second benefit. Thus, the inference of guilt may be present. This, in turn, puts pressure on the accused to waive the right to silence when questioned by the police (Dennis, 1995; Pattenden, 1995).

It should also be noted that the issue of questioning a person has raised several problems. The code calls for police to keep an accurate record of each interview with a suspect. In light of this, officers had been required to write down each question and the suspect's answer before proceeding to a next question. The police had been critical of this requirement because it often breaks up the flow of an interrogation. This problem has been resolved as police use tape recorders for interrogations.

Bail

People that
don't get
Bail ✓

Another significant procedural issue frequently addressed during the pretrial stage is the approval or denial of bail. The Bail Act (1976) explains the general rights and conditions under which bail may be granted. In general, the act presumes that any person accused of a crime is entitled to release on bail. Those who do not enjoy this presumed right are fugitives, people who have been previously convicted of the offense with which they are now charged, people who have been released on bail and have been arrested for absconding or breach of bail, and those who are accused of crimes for which the punishment is imprisonment. The court may refuse bail under this last category for various reasons, including a belief that the person would not surrender to custody, that he or she may commit another offense while on bail, or that he or she may obstruct justice or interfere with witnesses. Before refusing bail, the court is obliged to consider the seriousness of the offense, the defendant's character, community ties, previous record, and the strength of the evidence.

Bail, when granted, can be either unconditional or conditional. Unconditional bail requires that the person surrender to the court on a specific date; failure to do so can lead to imprisonment, a fine, or both. Conditional bail is granted to assure that the defendant will surrender to custody, will not commit another offense while on bail, and will not obstruct justice or interfere with witnesses. The court may attach to the bail any condition that it deems appropriate. Among the most common stipulations are to reside at a particular address, to inform police of any change of address, to report regularly to a police station, to avoid contact with the victim and potential witnesses, and to refrain from frequenting specific places.

Another condition for release on bail might be to provide sureties. Sureties are people who agree to assure the court that the defendant will appear when required. Should the defendant not appear, the surety must pay the Crown a sum of money. Sureties do not deposit money with the court until the defendant has actually failed to appear at the appointed time.

If a court refuses to grant bail or limits the conditions of bail, reasons must be given. Bail may be granted either before the trial or at any stage during the proceedings. If the defendant is not released on bail, he or she must be brought before a magistrates' court as soon as possible.

Bail is generally granted by the magistrates' court or the Crown court, but there is one exception to this rule. A police officer at or above the rank of inspector may grant bail to a defendant who is in custody after being arrested without a warrant. This bail is granted without conditions, with or without sureties, if the officer concludes that the offense is not serious.

The Criminal Justice and Public Order Act (1994) has added a new feature to bail decisions. Like the courts, the police have now been granted the authority to impose conditions (the common stipulations referred to earlier) when granting bail. The intent of this change was to improve the efficiency of the process, but questions have been raised about the potential for abuse. While the previous method of granting conditional bail was authorized by a magistrate or judge and occurred in a judicial setting with the prosecution and defense present, concerns have been expressed that this new responsibility will be added to the duties of the custody officer of the police cells (Raine and Willson, 1995).

Bail Bonds
man

Legal Aid

Free Help

The issue of legal aid frequently is addressed during the preliminary hearing. ~~England has not developed a public defender system~~, but has established a legal aid scheme that is regulated by the Legal Aid Act (1974). Under the act, a magistrates' court may grant aid to a defendant appearing before it or to a person who has been convicted and wants to appeal to a Crown court. A Crown court may grant aid to an accused person appearing before it or to a person who has been convicted and plans to appeal to the Court of Appeal. The Court of Appeal or the Supreme Court of the United Kingdom may grant aid to a person appealing a case to the Supreme Court. If legal aid is granted, the accused is free to select any private solicitor willing to handle legal aid work. In cases in which the services of a barrister are needed, the solicitor seeks appropriate counsel for the client.

Legal aid is provided by state funds. In order to qualify for aid, the applicant faces means and merits tests. The means test determines whether the person is actually in financial need of either total or partial assistance. Therefore, the court can require that an applicant furnish proof of financial status. In Crown court cases, the merits test is usually satisfied by the fact that the case will be heard in a Crown court, which hears only the more serious cases. Guidelines have been established for determining the merits of granting legal aid for cases heard in a magistrates' court: the charge is a serious one in which the accused may lose his or her liberty, the charge raises a significant legal issue, or the nature of the case requires interviewing witnesses and the ability to cross-examine witnesses effectively.

The Legal Aid, Sentencing and Punishment of Offenders Act (2013) has made some changes to the legal aid scheme. The most prominent were reversals of access for aid in civil cases. Of particular note was the removal of funding for cases involving: family law, personal injury; some employment law; some immigration issues; and matters associated with debt, housing, and benefits. The impact of the statute on criminal legal aid centered on three issues. First, legal aid was removed from prison law, with the exception of matters of release and issues associated with clarifications of criminal charges. Second, fees paid to solicitors and barristers were reduced. Finally, a means test in Crown court cases was added to the merits test already in place.

How to
get
help

Reasons why
go to court

Lost money

Trial on Indictment

Procedures for a trial on indictment in a Crown court are similar to those for a jury trial in the United States. One judge and a jury would sit to hear the case. As was mentioned earlier, only one in 20 people accused of an indictable offense elects a jury trial. Trials on indictment involving adults must be conducted in public, and the press may fully report the proceedings.

The first stage of the trial is the arraignment. Although the accused does not have to be represented by counsel, the overwhelming majority employ counsel—especially in light of the availability of legal aid. If a person chooses to conduct his or her own case, the judge assists the accused on legal points that arise during the course of the trial. The accused, however, cannot appeal the case on the grounds that it was not properly conducted. When representing oneself, the accused is required to be present at the arraignment to hear the

Judge Help

reading of the indictment and to answer the charge. Although there are several formal pleas, this text will limit the description to pleas of guilty and not guilty. If a person pleads guilty, the judge examines the accused to assure the court that the person understands the consequences of the plea. Once satisfied, the judge proceeds to impose a sentence. If the accused pleads not guilty, the trial continues.

The second stage of the trial involves the selection of a jury. A jury consists of 12 people between the ages of 18 and 70, who are registered voters, who have been a resident of the United Kingdom for five years since their thirteenth birthday, and who are eligible to serve. Various groups of people may be disqualified, deemed ineligible, or excused from jury duty. Specific rules for this were enumerated in the section on the judiciary. The defense and prosecution have an unlimited number of challenges for cause, but the use of peremptory challenges has been eliminated in England. Once a jury has been selected, the third stage of the trial begins. This stage is the oral presentation of the case by both sides in court. The standard procedure includes the following steps:

1. The prosecuting counsel gives an opening speech in which he or she outlines for the court the evidence that will be presented.
2. The prosecuting counsel then calls and examines witnesses. To assure that a witness will not hear the evidence of others, witnesses are normally not allowed to remain in the courtroom until after they have given their testimony.
3. Defense counsel is permitted to cross-examine witnesses as they appear.
4. The prosecutor then may reexamine the witness.
5. If the defense counsel plans to call witnesses other than the accused, counsel is permitted to make an opening statement that outlines defense evidence for the court.
6. An accused may choose to give evidence and is called first (although one cannot be compelled to do so). Once the accused chooses to give evidence, he or she is then required to answer all questions, including those that are incriminating.
7. Other defense witnesses then are called.
8. The prosecution is permitted to cross-examine each witness.
9. This may be followed by a reexamination by the defense.
10. The prosecutor then offers a closing speech.
11. The defense counsel follows with a closing statement.
12. The judge then summarizes the case for the jury. Two duties are encompassed in the summarization: First, the judge discusses the specific law, its applicability to the case, and the burden of proof required to establish the accused's guilt; second, the judge sums up the evidence presented by both parties.
13. The jury then retires to consider a verdict. It can return a general, partial, or special verdict. A general verdict covers all the charges in the indictment. A partial verdict indicates that the jury finds the accused guilty or not guilty on a limited basis. For instance, they may acquit the accused for the offense charged but find him or her guilty of another offense for which he or she was not charged. A special verdict frequently involves the jury's decision that the accused is not guilty by reason of insanity. The jury may reach a unanimous verdict or a majority verdict. The Juries Act (1974) provides for majority verdicts of 10 when the jury is composed of 11 or 12 people. Majority

Trial Steps

verdicts are accepted only if the jury deliberates for at least two hours or longer, if the court believes it is reasonable. If the jury is unable to reach a verdict, it is discharged and the accused may be tried again.

The division of labor between a judge and a jury in an English trial is similar to that found in the United States. The jury is limited to determining the facts in the case and returning a verdict. The judge determines the conduct of the trial, rules on all questions of law, guides the jury, and passes sentence.

The first two items may need further clarification. For example, the judge must rule on all motions raised by both sides during the trial. Following the prosecutor's presentation of the case, the judge must decide if the prosecution has presented sufficient evidence against the accused to warrant a continuance of the trial. The judge has the power to exclude evidence from the case if it was obtained illegally or is deemed inadmissible. In addition, if inadmissible evidence is presented, and the judge believes the defendant would not get a fair trial, the jury may be discharged.

A defendant who is found not guilty is released immediately. When the jury returns a verdict of guilty, the trial moves to the fourth and final stage: sentencing. Although all indictable offenses are punishable by imprisonment (the length of time controlled by statute), the judge usually receives two reports to assist in determining the appropriate sentence. ~~One report is prepared by the prosecutor and contains such items as the age, education, employment, and past convictions record.~~ The other report is prepared by a probation officer in conjunction with other nonlegal specialists. It pertains to the medical, psychological, and social condition of the defendant.

REPORT
FOR JUDGE
B-4
sentencing

Section 142 of the Criminal Justice Act (2003) explains the purpose of sentencing.

- (1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing:
 - a the punishment of offenders,
 - b the reduction of crime (including its reduction by deterrence),
 - c the reform and rehabilitation of offenders,
 - d the protection of the public, and
 - e the making of reparation by offenders to persons affected by their offences.
- (2) Subsection (1) does not apply-
 - a in relation to an offender who is aged under 18 at the time of conviction,
 - b to an offence the sentence for which is fixed by law,
 - c to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (minimum sentence for certain firearms offences), under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences) or under any of sections 225 to 228 of this Act (dangerous offenders), or
 - d in relation to the making under Part 3 of the Mental Health Act 1983 (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

Clearly, this legislation continues to make a distinction between an adult offender and a youthful offender.

Sentences are essentially divided into two general categories: ~~custodial and noncustodial~~. The custodial sentences consist of imprisonment and youth custody for people under 18 years of age at the time of conviction. Noncustodial sentences include probation orders, various community service orders, and fines.

In addition to the custodial and noncustodial sentences, there are a few miscellaneous orders that the court may issue. For example, for certain traffic offense convictions, the court may suspend the offender's driving privileges. The Crown court also may order costs to be paid out of the central fund or by one of the parties. Costs paid out of the central fund may be ordered for the prosecution and witnesses. Defense counsel also may have costs paid if the defendant is acquitted. The Crown court, however, may order a convicted offender to pay all or part of the prosecution's costs or require that the prosecution pay all or part of the costs of an acquitted defendant.

People who are injured or have their property damaged or lost as a result of a crime may be awarded compensation by the court. The court may order the offender to pay compensation, but it must take into consideration the person's ability to pay. Injuries, losses, or damages that occur during a traffic accident are excluded from this scheme unless the injury or damage was the result of an offense under the Theft Act (1968). ~~If the injury result from a violent crime, the victim can apply to the Criminal Injuries Compensation Board, which may award compensation from public funds.~~ A person convicted of a theft also may be ordered to make restitution to the victim. Finally, the court may order the forfeiture of an offender's property if the offender is sentenced to prison for more than two years and the property was used to commit or assist in the commission of any offense. If no other party has claimed a right to the property in question, the property is disposed of by police.

Following conviction and imposition of a sentence the defendant may appeal the case to the Criminal Division of the Court of Appeal, which handles such proceedings from trials on indictment. ~~The defendant must file the appeal within 28 days of the conviction.~~ The prosecution in a criminal case cannot appeal. Thus, the Criminal Division exists solely for the benefit of the convicted offender.

If the appeal involves a question of law, the person has a right to appeal. Only a small number of cases are appealed on such grounds. Most appeals involve questions of fact (or a mixture of fact and law), rejections of evidence at trial, or sentences imposed. In these cases, the court must grant leave to hear the case. Only one judge from the court examines the issue and determines the granting of leave for the whole court. Generally, if the judge rejects the case, the proceedings stop. ~~If the judge grants leave, the matter comes before a panel of three judges of the court.~~ Only oral arguments are heard; any written material is usually reviewed after the hearing. *Per curiam* decisions are handed down in criminal cases.

In comparison to appeals in the United States, ~~English appeals are handled quickly because they do not require lengthy written opinions.~~ The Court of Appeal can dismiss an appeal, uphold the lower court's decision, quash the conviction, or reverse and remand the case back to the trial court with its instructions. In appeals involving the sentence, the court may reduce the sentence but cannot increase its severity.

noncustodial
by accused
payments

Appeal

Both the defense and the prosecution may appeal to the Supreme Court. The court hears only a limited number of appeals, and these are controlled by the court and the Court of Appeal. Generally, a dissatisfied defendant in the Court of Appeal must seek permission from that court to appeal to the Supreme Court. If the court grants approval, the defendant can proceed. If the court denies the request, the defendant ~~can still petition the court through an application for leave~~. This is similar to the certiorari proceedings of the U.S. Supreme Court. This latter approach is rare, because the court entertains only those cases that are of significant public interest.

If turn
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Once a case reaches the court, the President of the Supreme Court normally assigns the issue to five justices. Only oral arguments are presented by counsel; written briefs are not filed. A simple majority determines the outcome. Justices may deliver any of the judgments that are available to the Court of Appeal or may remit the case to the Court of Appeal.

Summary Proceeding

Trial by jury remains one of the most significant contributions that the English have made to the evolution of legal procedure. Today, however, more than 90 percent of the criminal cases heard in England are handled at a summary proceeding, which is a trial ~~in a magistrates' court without a jury~~. Either one district judge or three lay magistrates would sit to hear a case in a magistrates' court. The criminal jurisdiction of a magistrates' court consists of indictable offenses that also may be tried summarily, "hybrid" offenses that are triable either on indictment or summons, and offenses that can only be tried summarily.

A summary trial must be held in open court. The trial is based upon information that has been presented to the court by the prosecution, consisting of the offense, the facts of the case, and the offender's statement. Most summary offenses are initiated by a summons directing the accused to appear before a specific magistrates' court at a given date and time. Some summary offenses, like loitering or vagrancy, are initiated by an arrest without a warrant. Throughout proceedings that are based on a summons, the accused is not held in custody. The accused is deprived of liberty only after being convicted and sentenced to a period of incarceration.

It is significant to point out that the Magistrates' Courts Act (1957) permits the accused who has been sent a summons to plead guilty without attending court. ~~In such cases, the offender would mail in a plea of guilty; the clerk of the court would inform the prosecutor, and the court would proceed to dispose of the case.~~ The court does not have to accept the plea. If the court does accept it, the accused has to appear in court for sentence.

The first stage of a summary proceeding involves reading the information and hearing the accused's plea. The accused, as a general rule, does not have to be present at any stage in a summary trial. If the accused is absent, the court proceeds as though there were a plea of not guilty. If the accused is present, he or she is permitted to plead in open court. Pleas of guilty are followed by an examination by the magistrate to assure the court that the offender understands the consequences of the plea. Once satisfied, the magistrate imposes the sentence. If the accused pleads not guilty, the trial proceeds to the next stage.

The second stage of a summary proceeding is the oral presentation of the case by both sides in court. The procedure is similar to that of a trial on indictment but is not as formal. The procedure is as follows:

1. Although it is not necessary to state a case, the prosecution may make an opening statement.
2. The prosecution presents the evidence and then witnesses are examined, cross-examined, and (if necessary) reexamined.
3. The accused or the accused's counsel may make an opening statement.
4. The accused may make an unsworn statement.
5. Evidence for the accused is presented; if the accused is to give sworn testimony, he or she must do so before other witnesses are called. Witnesses are examined, cross-examined, and (if necessary) reexamined.
6. The prosecution addresses the court.
7. Finally, the defense counsel addresses the court.

Throughout the trial, the magistrate may refuse to accept inadmissible evidence, may ask questions of the witnesses, and may call witnesses to the stand. Usually, the clerk of the court will examine the witnesses for the magistrate. Guidelines have been established to determine when this is proper: to clarify ambiguous testimony, to question an incompetent person, or to assure that the interests of justice are served. It is not proper to question a witness if the accused is legally represented or is competent to conduct his or her own examination.

The third stage of the proceedings is the court's decision on the guilt or innocence of the accused. If the magistrates are not in agreement, they may retire to discuss the matter. Difficulties that arise because of questions of law (or law and fact) are referred to the clerk of the court, who is supposed to be a trained solicitor or barrister. The authority of the clerk in such matters is particularly acute in light of the fact that most magistrates are laypersons. Decisions in these cases are reached by a simple majority. If there is a tie vote that cannot be broken by a compromise, the magistrates must call for a rehearing before a court composed of different magistrates.

The fourth and final stage of a summary hearing is the determination of a sentence. Sentences imposed in a magistrates' court are essentially the same as those imposed in a Crown court, but the degree of punishment is considerably less severe. For example, the length of a prison sentence is dependent on the nature of the offense, but the maximum sentence for a summary offense usually does not exceed six months. The noncustodial sanctions and miscellaneous orders that are available to Crown court judges and mentioned earlier are also applicable in the magistrates' courts.

Appellate review is also available for the parties of a case heard in a magistrates' court. The right to appeal a case to a Crown court is limited to the defendant. A defendant who pleaded guilty may appeal to the court against the sentence; a defendant who pleaded not guilty may appeal against the conviction or the sentence. If the appeal is against the sentence, the court hears only the evidence relevant to the sentence. If the appeal is against the conviction, the appeal takes the form of a rehearing of the case.

The appellate proceedings follow the pattern of a summary trial, though less formal. Witnesses may be recalled and new evidence introduced. When hearing an appeal, the Crown court sits without a jury. The appeal is heard by a circuit judge or a recorder and two magistrates. Judgments are reached by a simple majority. The court has the power to confirm, reverse, or vary the decision of the magistrates' court.

Both parties may appeal a case from a magistrates' court to the Queen's Bench Division of the High Court if the dispute involves a question of law. At least two Queen's Bench judges (usually three) hear the appeal. The Lord Chief Justice presides over the case, which consists of legal arguments presented by counsel on both sides. The court has the power to confirm, reverse, or vary the decision of the magistrates' court. Remissions are granted when the magistrates' court has made an error that requires a hearing or rehearing of authority.

Finally, both parties may appeal to the Supreme Court if the issue involves a point of law of general public importance. An application must first be registered with the Queen's Bench Division to certify the point of law. If approved, the procedure for appeal is the same as an appeal from a case tried on indictment. If the court refuses to approve the request, the appellant may petition the Supreme Court directly. Again, the procedure would be the same as an appeal from a case tried on indictment.

Critical Issues

Plea Bargaining

The procedure known as plea bargaining has received some notable attention. The significance of this interest lies in the fact that the British had assumed that plea bargaining did not take place in England, at least not on the scale it is utilized in the United States. Although critics admit that this is true, inducements to plead guilty are as formidable in England as they are in the United States. For example, in the United States, about 90 percent of the defendants plead guilty before a trial. In England, 60 percent of the defendants in Crown Court cases plead guilty, while 94 percent of the defendants in magistrates' courts do the same.

Moreover, plea bargaining in the United States is considered an acceptable, even necessary, part of the system—centering on the prosecutor's willingness and promise to recommend a reduced sentence. Such prosecutorial conduct had been considered unethical in England. Thus, plea bargaining was viewed as being more within the discretionary province of the courts than of the prosecutor, and the Criminal Division of the Court of Appeal had placed restrictions on the practice.

The Court of Appeal established four principles to govern the plea bargaining process. These principles, expressed in the case *R. v. Turner* (1970), have been the focus of some criticism. They are:

1. Counsel must be completely free to do what is his duty, namely, to give the accused the best advice he can, and if needed, advise in strong terms. This will often include advice that a plea of guilty, showing an element of remorse, is a mitigating factor which

may well enable the court to give a lesser sentence than would otherwise be the case. Counsel of course will emphasize that the accused must not plead guilty unless he has committed the acts constituting the offense charged.

2. The accused, having considered counsel's advice, must have a complete freedom of choice whether to plead guilty or not guilty.
3. There must be freedom of access between counsel and judge. Any discussion, however, which takes place must be between the judge and both counsel for the defense and counsel for the prosecution. ~~If a solicitor representing the accused is in court he should be allowed to attend the discussion if he so desires.~~
4. The judge should . . . never indicate the sentence which he is minded to impose. A statement that, on a plea of guilty, he would impose one sentence but that, on a conviction following a plea of not guilty, he would impose a severer sentence is one which should never be made. This could be taken to be undue pressure on the accused, thus depriving him of that complete freedom of choice which is essential.

Criticism of the *Turner* decision centered on two procedural issues. First, will a plea of guilty serve as an independent element in determining the sentence? Rule 4 suggests that the judge should not imply to either counsel what he or she intends to do, but Rule 1 makes it explicit that counsel for the accused may advise in strong terms that a plea may lead to a lesser sentence. At issue is why counsel would encourage a client to plead guilty in the hope that a lesser sentence is forthcoming, unless the idea is transmitted in some fashion by the judge. Second, Rule 3 emphasizes the key role the judge must play in the bargaining process. It is alleged that, in the past, informal discussion went on between the police, counsel for both sides, and the accused. A bargain could be struck in these preliminary informal discussions before approaching the judge. Rule 3 implies that this should not occur because it might hamper the efficiency of the process and lead to unnecessary delays.

In studying the outcome of jury trials in the Birmingham Crown court, it was discovered that many of the cases that were earmarked for a jury trial were abruptly ending in pleas of guilty (Baldwin and McConville, 1978). The frequency of this occurrence piqued the authors' curiosity and led to interviews with 121 defendants who had pleaded guilty out of a total sample of 150. What Baldwin and McConville attempted to do with the data was to dismiss, once and for all, the myth that strong inducements to plea bargain are not a significant part of the pretrial process in England. They concluded that such inducements come from a number of sources. First, the British prosecutors' practice of charging the defendant with all possible counts in the indictment helps produce a climate that is very conducive to bargaining. Second, defense counsel's assumption that judges almost automatically reward pleas of guilty with reduced sentences is communicated to the defendant. Thus, the defendant perceives the judge in a different light even if the judge is not directly putting pressure on the accused to plead guilty. Third, because of the nature of the prosecution's case, defense counsel usually puts the greatest pressure on a defendant to plead guilty. Frequently, the most damaging evidence consists of the verbal statements attributed to the accused by police or the written statements signed by the defendant following a police interrogation. Although the defendant often claims that these statements are untrue or exaggerated by police, there is simply no way of determining the efficacy of

the defendant's charge. The defense counsel could challenge these statements in court, but in most cases the judge believes the police rather than the defendant. This last concern is likely to change with the introduction of tape recordings of police interviews.

Baldwin and McConville did not offer a solution to the problem of plea bargaining, but they noted that it does enhance the bureaucratic efficiency of the administration of criminal justice. They contended, however—as some civil libertarians have in the United States—that the defendant's freedom of choice is compromised, that some innocent people may be induced to plead guilty, and that it leads to inequitable treatment. Thus, there is a serious question as to whether plea bargaining in its present form serves the interests of justice as well as it does the system's efficiency.

In the early 1990s, the Royal Commission on Criminal Justice found that a majority of barristers and judges favored plea discussions between the judge and counsel. In his *Review of Criminal Courts of England and Wales* (2001), Justice Auld called for a more transparent approach to plea bargaining. Some improvement has resulted from the Criminal Justice Act (2003), as section 144 states that a court must take into account:

- a. *The stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and*
- b. *The circumstances in which this indication was given.*

Victim Assistance

Concern for assistance to victims of crime has become an important issue on the agendas of most criminal justice systems in the industrialized world. The first victim support scheme in England was established in Bristol in 1974. Today, there are more than 250 support groups established throughout the country. Much of this victim support work is provided by volunteers. The various schemes are concerned not only with aiding the victims of crime and their family members but also with advising witnesses of crime. The schemes also have been active advocates for improving the system of compensation for criminal injuries.

There is also a Victims Commissioner for England and Wales, who is neither a politician nor a civil servant, but reports to the minister of justice. The responsibilities of the Victims Commissioner were explained in the Domestic Violence, Crime and Victims Act (2004), and they include: promoting the interests of victims and witnesses, encouraging good practices among the various criminal justice agencies in the treatment of victims and witnesses, and monitoring the operation of the Victims Code.

The Victims Code explains the types of services victims should expect from various criminal justice agencies. This would include providing information to victims of crime about the progress of their case, criminal injuries compensation, victim support, and crime prevention. The Witness Charter is specifically designed for witnesses of crimes and includes advice about the court and its personnel, giving evidence, claiming expenses, and how to ask for assistance. The victim support schemes also have been influential in getting legislation passed with regard to criminal injuries compensation, enhancing the authority of the courts with regard to compensation, protecting children who give evidence by

Justice

allowing testimony through closed-circuit television, and allowing the acceptance of children's testimony without corroboration. Finally, they also have been instrumental in increasing the funding for victim support schemes.

While a good deal of work to assist victims has been carried out by volunteer groups, it is important to point out that various components of the criminal justice system are making significant efforts to aid victims. Some of the efforts by the police were outlined in the section of this chapter devoted to police. In addition, the government has established a ~~number of magistrates' courts that specialize in domestic violence cases~~. These courts are designed to bring the various components of the justice system—police, Crown prosecutors, magistrates, probation service, and victim support services—together to facilitate moving these cases through the system in a more efficient manner. While the rate of convictions of domestic violence cases has increased in recent years irrespective of the type of court, the conviction rate in domestic violence courts has reached 71 percent, according to the Home Office. Presently, there are 98 courts that specialize in domestic violence cases.

In the autumn of 2014, the police and crime commissioners were authorized to coordinate victim services in their constabularies. Finally, in her 2013–2014 report to the minister of justice, the Victims Commissioner indicated that there is now “a greater awareness of crimes, such as, human trafficking, hate crime, forced marriage, modern day slavery, and female genital mutilation.” As such, people in the victim assistance movement need to be aware of the expanding needs of society's victims.

CORRECTIONS

The importance of the juxtaposition of penal theory and the architectural design of correctional institutions is a notion that emerged in England during the late eighteenth century. At roughly the same time, police practitioners began in earnest to support improvements in law enforcement. People were questioning some of the basic assumptions behind the administration of justice, just as they were questioning many of the established political, religious, scientific, and social assumptions on which society was based.

Many of these basic tenets had been introduced originally during the Middle Ages, a period that some have referred to as the Age of Faith. The eighteenth century was a markedly different period, known by contemporaries as the Enlightenment, the Age of Reason—espousing a belief that the individual was a free, rational, and equal member of society. Such notions were obviously at cross-purposes with established custom and authority.

The eighteenth century serves as a useful benchmark for the emergence of the modern development of English corrections. It was during this time that people consciously and rationally attempted to study the purposes of and the conditions for incarcerating law violators. In order to appreciate the contributions of Enlightenment thinkers, it is useful to examine the state of corrections at earlier points in time. Anglo-Saxon dooms and medieval statutes enable us to piece together that history.

The stocks were probably the earliest form of imprisonment, though they were not suited for people who were sentenced to an extended period of custody. It is assumed that as early as the eighth century some type of prison existed, because owners of large tracts of land

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were frequently awarded the right of infangthief and outfangthief. *Infangthief* was the right to bring a thief caught on your land to the lord's court; *outfangthief* was the right to bring a thief caught beyond your land to the lord's court.

By the ninth and tenth centuries, it was common for courts to sentence thieves to 40 days in custody before releasing them on the condition that they pay the compensation that had already been awarded by the court. Such a sanction obviously required that a suitable place be available to hold suspects and individuals sentenced to a period of confinement. It is assumed that either a hut or cage on a manor, a room in a county town, or a designated area of a castle was used for this purpose.

Following the Norman Conquest in 1066, the use of imprisonment appears to have declined somewhat. Two possible explanations have been offered for this development. On the one hand, imprisoning people was a costly enterprise for the captor. On the other hand, alternatives to incarceration did exist. For example, death, mutilation, and outlawry had long been established methods for punishing serious offenders, while compensation was considered an appropriate sanction for less serious offenses.

The use of custody achieved a greater degree of certainty by the twelfth century as the king expanded royal authority in the administration of justice. Sheriffs were required to detain suspects of serious crimes until the trial was completed. People defaulting on the payment of their taxes to the king were imprisoned not only as a means of securing payment but also as a form of punishment for being delinquent. Originally, trespassing was considered a tort action but, by the thirteenth century, it was viewed as an indictable action. The reasoning was that the defendant had not only acted against the plaintiff but also had violated the peace of the kingdom. In addition, those convicted of larceny were imprisoned at a rate of one week for each penny stolen.

The Statute of Acton Burnell (1283) and the Statute of Merchants (1285) enabled private creditors to have debtors imprisoned until payment was made. Because the state did not provide funds for their upkeep, those who were incarcerated were almost totally dependent on their family and friends for their maintenance. Because not all prisoners had family or friends, it is assumed that some probably starved to death. Members of the general public, however, did assist prisoners; it was not uncommon for people to give alms to inmates as they did to the poor. By the fourteenth century, prisoners frequently were permitted to beg while chained to posts outside prisons. *taxes*

Throughout the medieval period, the spiritual well-being of prisoners appears to have been of greater concern than their physical health. Religious services were readily available, but impure drinking water and a general lack of sanitary conditions led to illnesses that occasionally reached epidemic proportions. Attempts also were made to separate felons from debtors and women from men, but not all facilities provided this type of segregation. Therefore, it is assumed that many prisoners associated freely with one another.

By the eighteenth century, prison conditions had reached an intolerable state. Criticism was directed at the use of institutions as a method of deterring and isolating offenders from society for a period of time. It is estimated that by the end of the century Parliament had also created about 200 statutes calling for the death penalty. A number of these statutes dealt with crimes that would be considered petty property offenses by today's standards. A small group of reformers began to question the propriety of incarcerating some

offenders—especially in light of the poor facilities in which they were housed, as well as the rationale for dramatically increasing the death sentence.

Although rehabilitation, deterrence, and isolation are often presented as rationales for prisons today, they are considered to be at cross-purposes with one another. During the second half of the eighteenth century, the emerging view was that each of these rationales served as a component to a larger theory that justified the development of prisons. Reformers saw the need to deter and isolate offenders but were also concerned about efforts at rehabilitation.

It must be remembered that one of the principal tenets of Enlightenment philosophy was that humankind is malleable. The theorists were not so idealistic as to believe that all individuals had reached the state of being free, rational, and equal in society, but they did believe that everyone was capable of being led to that state of freedom. John Howard held this Enlightenment view. His contribution to prison reform illustrates its application to penal theory.

Howard serves as a representative of a larger movement. Cesare Beccaria, William Eden, Samuel Romilly, and Jeremy Bentham also were instrumental in encouraging change, but Howard was one of the first reformers in England to see a relationship between penal theory and the architectural design of facilities for housing the offender. This merger of theory and design was presented in his treatise, *State of the Prisons in England and Wales* (1777).

Howard argued that prisoners' accommodations should be clean and that nutritious food should be provided. Although his views were partly based on humanitarian grounds, he also thought that prisoners had more potential for being reformed if they were treated correctly. The key component of his rehabilitative philosophy involved prison design. Howard was either the discoverer of the cellular prison or one of its early and most ardent proponents. He was of the opinion that the reform of prisoners would be enhanced if they were lodged in separate cells. This view obviously had significant implications for the architectural design of prisons. Although rehabilitation has not always been at the forefront for justifying this design, the cellular prison has been a central issue in prison design since the late eighteenth century.

Throughout the nineteenth century, other reformers continued the movement to transform the purpose of corrections. Sir Walter Crofton's Irish system and Alexander Maconochie's attempt to change the regime on Norfolk Island are notable examples. While holding the position of home secretary, Robert Peel was instrumental in significantly reducing the number of death penalty statutes.

The key issue that was raised throughout much of the nineteenth century was: Who should administer the prison system? The Prison Act (1877) resolved that question. Before the act's passage, the British had created two kinds of prisons. The first kind were convict prisons controlled by the central government. These prisons were designed to house offenders sentenced to penal servitude, wherein a prisoner spent the first nine months in solitary confinement and served the remainder working on public works projects. Local prisons, on the other hand, handled offenders sentenced to imprisonment, a sentence different from penal servitude in that it was considerably shorter—with a two-year maximum permitted by common law.

Because the central government was not involved in the administration of local prisons, there was a notable difference in the regimes established at each prison. Generally, local prisons adopted one of two popular systems: ~~associated~~ or ~~separate~~. Under the associated scheme, prisoners worked together in workshops during the day but were segregated in their cells the rest of the time. The separate system kept prisoners segregated in their cells all of the time. Though the ~~separate~~ scheme obviously limited the kind of work assigned to prisoners, it tended to be the more popular of the two systems.

The Prison Act (1877) accomplished two things: It brought local prisons under the control of the central government, and it created a Board of Prison Commissioners. The Board's first chair, Sir Edmund Du Cane, was instrumental in developing a uniform policy by which prisons would operate. That policy consisted of establishing a prison regime based on the separate system. Although modifications in the scheme were introduced from time to time, it became an intricate part of the prison regime well into the twentieth century.

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As the nineteenth century drew to a close, a series of articles was published that painted a bleak picture of the system of local prisons. Critics noted overcrowding, poor diet, inhumane treatment by guards, and the separate system. A committee formed to investigate the charges issued a report in 1895. Although the report addressed itself to the original criticisms and offered a series of reforms, it has been suggested that the report's most noteworthy achievement is found in the recommendations proposed for the future development of penal policy. The most significant examples that came to fruition in the twentieth century were the establishment of separate institutions for offenders between the ages of 16 and 23, the segregation of habitual criminals under special conditions, and the creation of a prerelease prison. Youth custody, preventive detention, and hostels have respectively transformed those suggestions into intricate parts of the British correctional system.

Sentencing Philosophy

Throughout the twentieth and on into the twenty-first century, the British have been confronted with two major problems in sentencing that have also created controversy in the United States. One of these is the existence of multiple sentencing aims instead of a single unifying purpose. Sentencing with multiple aims may not be a bad idea, but it does compound the problems facing prison authorities and other social service agencies. The second problem involves judicial discretion. Depending upon the sentencing philosophy of the individual judge, any of a number of sentencing aims may determine the rationale for imposing a particular sanction.

Sentencing Aims

There are essentially four categories of rationales in sentencing: retribution, isolation, deterrence, and rehabilitation. In the past, retribution was closely linked to vengeance, specifically the ancient Hebraic idea of "an eye for an eye." Because that rationale for sentencing has largely been discredited, a more modern perception has developed. Today, its justification rests on the belief that courts have an obligation to display society's

collective disapproval of crime. Sanctions should serve as a means of condemning the guilty by punishing offenders in proportion to their culpability for criminal activity. Hence, the old term of *retribution* has been replaced with the label—"just deserts"—to capture this sentencing rationale.

Isolation is another aim based on the premise that society should be protected from dangerous and violent offenders. However, society is assured that this rationale works only when a person is sentenced to life imprisonment and actually serves the entire term. Like most modern justice systems, the British are usually unwilling to enforce this aim completely. Although a life sentence or a long prison term attempts to fulfill the goal of isolation, most prisoners do not serve the total period imposed. Thus, the objective is achieved for only a limited time, and citizens are often surprised or angered to discover the actual amount of time served.

Critics of isolation have raised another concern with regard to its purpose. Although dangerous and violent offenders are removed from society for a time, they are simply transferred to another society—the closed world of the prison—where they often inflict their violent tendencies on other inmates. Critics contend that this imposes an added punishment on other inmates and is therefore unjust.

Deterrence is frequently cited as one of the principal aims of sentencing. Although its effectiveness is usually difficult to prove, deterrence has a dual purpose. One is to deter a specific offender from violating the law. Research and the opinions of those working in the field suggest that this kind of individual deterrence is largely dependent on the type of offense committed. Fear of punishment may deter some property crimes, for example, but this aim is unlikely to reduce violent crimes, which frequently occur on impulse. Moreover, the character and personality of the offender also influences the utility of this aim.

The other purpose is to deter others who may intend to violate the law in the future. This is referred to as general deterrence, because it is directed at the general public as a type of crime-prevention tactic. The success of this tactic is based on the premise that if the public is knowledgeable of the sanctions imposed for a particular offense, they will be discouraged from committing such an offense. For this to work, citizens must possess a respect for the law and display a degree of deference toward the agents administering the justice system. The case for general deterrence is probably stronger than that for individual deterrence, but in both instances the effectiveness is difficult to prove.

Finally, rehabilitation has become an important goal of sentencing for many professionals working in the justice system. Although the aim is highly desirable, it has not totally superseded the others in significance. The lack of consensus on rehabilitative objectives is usually attributed to limited knowledge with regard to which techniques work and the fact that some of the other sentencing aims are better suited to handling certain offenders. Nevertheless, significant attempts are made to divert offenders from traditional correctional settings to those that have a community-based correctional philosophy. These diversionary programs occur in the closed prison setting as well as in the community. Each program is designed to enhance efforts at rehabilitation.

Since the 1950s, the British have generally adopted a dual purpose for sentencing. Depending on the political climate of opinion, an offender is sentenced to a prison term under the guise of isolation that reflects his or her culpability. The rationale is designed to

protect the public from a dangerous offender. The other purpose for sentencing is rehabilitative. Again, depending on when and how crime is viewed as a political issue, the British make a conscious effort to move toward noncustodial programs based on a treatment philosophy, because they acknowledge that rehabilitation is not as likely to work in a confined setting.

Judicial Discretion

An issue of paramount importance to the sentencing process is the amount of discretion awarded judges. Judicial discretion is a modern phenomenon that was almost unknown in the nineteenth century. ~~Under common law, discretion was not permitted in felony cases,~~ with the exception that a capital sentence could be substituted with a transportation order to one of the British colonies. During the first half of the nineteenth century, some statutes were enacted that enabled judges to substitute transportation for a sentence to penal servitude.

At the beginning of the twentieth century, the general absence of judicial discretion was altered considerably. Appellate review of sentences was introduced in 1907 in an attempt ~~to assure that the sentence imposed would fit the individual rather than the crime committed.~~ The Probation of Offenders Act became law in the same year; it permitted the issuance of probation orders as a substitute for imprisonment. The following year saw the passage of the Prevention of Crime Act (1908), which introduced two new sentences: ~~borstal detention~~ ~~for young adults~~ and ~~preventive detention for habitual offenders~~. Thus, individualized sentencing had arrived—and with it, judicial discretion. The Criminal Justice Act (1948) extended sentencing options further, and other alternatives have been introduced since that time, most notably noncustodial sentences.

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In recent years, a central topic of discussion has been the use of mandatory and minimum custodial sentences. Those issues, along with others, have guided judges in their sentencing decisions. A number of pieces of legislation have introduced sentencing guidelines for judges, and these include the Criminal Justice Act (1991), the Criminal Justice Act (1993), the Crime (Sentences) Act (1997), the Criminal Justice Act (2003), Violent Crime and Reduction Act (2006), Criminal Justice and Immigration Act (2008), and the Legal Aid, Sentencing and Punishment of Offenders Act (2012).

Organization and Administration of the Prison Service

Throughout the 1970s, England's economic stability suffered considerably from a number of setbacks. Inflation, high unemployment, wildcat strikes (i.e., strikes not authorized by the union representing the workers) in key industries, and the burdens of an extensive social welfare program were well publicized. When a country finds itself faced with this dilemma, the government frequently attempts to cut spending in the public sector in the hope that it will stimulate economic growth in the private sector. Generally, social services are asked to bear an unusually large portion of the cuts. Even under favorable economic conditions, prisons are considered a low-priority item in most countries. This was also true in England. This was partly a reflection of the public's narrow understanding and knowledge of the

purpose of such institutions, and this sense of indifference was also displayed by elected representatives. During periods of extreme economic difficulty, prisons are subjected to an even lower status.

General State of Prisons

In his book, *Prison Crisis*, journalist Peter Evans pointed out that it would take a considerable amount of time to improve the prisons. He stated that “[the] system is now in such a state of decay and the backlog of replacing obsolete prisons so great that even if it were possible to replace one every two years, beginning in 1980, the last Victorian prison would not be phased out until 2060” (1980). Over the past 35 years, in part because of the periodically improved economic conditions of the country, the government committed itself to addressing the prison crisis by moving ahead with an aggressive building program. Twenty-one new prisons have been built since 1980, and another six were under construction. In addition, temporary facilities have been opened at army bases. Finally, attempts also have been made to modernize some of the existing facilities.

The general state of prisons in England has been a long-standing critical issue confronting the justice system. Part of this dilemma can be attributed to the financial crises that on occasion have plagued the country. Despite efforts to utilize noninstitutional methods, England’s prisons have been overcrowded. Following World War II, the inmate population was estimated at almost 16,000. By 1980, the figure had risen to approximately 45,000. The figure peaked at more than 50,000 in 1988, declined somewhat in the early 1990s, but rose again to more than 66,500 by 1998. In early January 2006, the inmate population was at 74,679 in a system that has a useable operational capacity of 78,619.

In a report issued by the Home Office, the prison population was projected to continue to increase over the next several years. It is important to point out that these figures included adults and young people sentenced to incarceration along with people held while awaiting trial. To illustrate, the report projected that by July 2010 the prison population could be as high as 94,020 and as low as 85,700. At the end of March 2010, the population was 85,184, of which 71,352 had been sentenced. Of the total population, 73,637 were adults (69,806 males and 3,831 females), and 11,547 (11,088 males and 459 females) were young people between the ages of 15 and 20.

The prison population reached 88,179 by December 2011. The increase was attributed in part to the riots that occurred in August of that year and that were alluded to earlier. By the end of June 2013, the population had declined to 83,842. Of the approximately 146 facilities in operation, 69 were overcrowded, and even more had a population of at least 150 percent of the certified normal accommodation. Of the aforementioned June figures, 80 percent were males age 18 or older who had been sentenced, and 7 percent were females sentenced, while 13 percent of the total population were awaiting trial or sentencing. More than one-third of the population were serving determinate sentences greater than four years, while one-fifth were serving indeterminate sentences including life sentences. Almost half of the population were between the ages of 25 and 39. One concern is the aging of the population, with 4 percent, or 3,741 prisoners, age 60 or older. Obviously, with the elderly come a variety of disabilities that must be addressed.

At the other end of the age scale, 866 juveniles between the ages of 15 and 17 were in prison, 245 youths between 12 and 15 years were housed in secure training centers, and 125 were in secure children homes provided by the local authorities. Around 13 percent of the population consisted of foreign nationals with nine countries accounting for half the total. Poland, Jamaica, and the Irish Republic led the list. Finally, slightly more than 50 percent identified themselves as Christian, 30 percent were of no faith, and 13 percent were Muslim (Ministry of Justice, 2013).

Efforts to close old prisons and build new ones have not kept pace with the increase in the prison population. Successive governments established plans to undertake extensive building and remodeling programs, but schedules to implement the work were often set aside because of financial crises. Thus, many of the prisons were antiquated structures built during the previous century. These conditions created serious problems. Cells that were designed to hold one person now held two or three. The cells were without toilets, so slop buckets were used. The redesign of plumbing at the older correctional facilities has eliminated the need for slop buckets. Poor ventilation created a hot and stuffy living environment, and there were inadequate bathing facilities. Each of these factors contributed to unsanitary conditions as well as to low morale among inmates, who already suffered from various states of depression (Stern, 1987).

On the matter of the mental health of prisoners, a report by the inspectorate of prisons addressed this concern in 2000. The goal was to borrow from the World Health Organization concepts applicable to correctional facilities. The central goals were: assure the safety of vulnerable inmates, respect human dignity, engage in beneficial activities, and prepare prisoners for release into the community (Podmore, 2012). While these goals are noteworthy, a recent report indicated the degree of the problems confronting the prison system. As many as 72 percent of the males and 70 percent of the females incarcerated have two or more mental health problems. This is significantly higher than the general population. Among the mental health issues cited were: behavioral disorders, learning disabilities, organic mental disorders, personality disorders, and stress disorders. Unfortunately, people with these problems are diverted to prisons rather than left in the community to be provided with therapeutic treatments (see Peay in Dockley and Loader, 2013).

Nevertheless, the state of the English prisons was the principal cause for several disturbances in the early 1980s at facilities housing long-term prisoners and at high-security institutions. By 1986, a series of riots occurred at a variety of prisons. The physical conditions of the facilities remained a central concern. Thus, the protest spread throughout the system (Cavadino and Dignan, 2004; Vagg, 1994).

Another perspective was offered on the financial state of prisons. One study concluded that the neglected condition of prisons was actually limited to the overworked and overcrowded local prisons (King and Morgan, 1979). Training prisons, especially those housing long-term dangerous offenders, were built after World War II. The study found that, though funding was available for prison construction and remodeling, the issue centered on how the money was actually spent. The greatest criticism centered on the Home Office's adoption of the dispersal policy. The dispersal policy was the Prison Service's method of handling dangerous offenders who had been processed through the system. More than four decades ago, the Prison Service was concerned with providing maximum-security

conditions only for prisoners sentenced to a life term. Because many of these inmates were guilty of domestic murders, and thus not considered dangerous to society, they were dispersed throughout the system.

During the 1960s, it became apparent that the system was incarcerating a new class of offender, either for a long term or for life. This class included members of the underworld and professional criminals who were considered violent and dangerous. These people, too, were being dispersed throughout the system. Following a number of successful escapes, the Home Office decided to inquire into prison security. It appointed Lord Mountbatten to conduct an investigation. Mountbatten suggested that all prisoners considered dangerous to the public be placed in a high-security-risk prison. Opponents contended that the Mountbatten scheme would make the prison too difficult to manage.

Opposition to the idea led to the creation of a second committee appointed to investigate prison security. This committee, headed by Sir Leon Radzinowicz, opposed the single high-security prison. It recommended that such inmates should continue to be dispersed to reduce the likelihood of concentrating potential unrest in a single prison; the dispersals were to be limited to a few secure facilities. Periodically, inmates could be transferred to another secure facility in order to reduce any tensions that might be developing among some of the high-risk prisoners. The Radzinowicz proposal was adopted, and funds were used to assure that a number of the institutions were indeed secure.

During the 1970s, the dispersal scheme apparently backfired—at least in the eyes of some critics. Violent confrontations and riots occurred in these high-security prisons. On economic and humanitarian grounds, it has been suggested that the Prison Service consider adopting the original Mountbatten proposal of concentrating the high-risk prisoners in one or two maximum-security prisons, but this has not been implemented.

Despite the government's attempt to improve the conditions within prisons, riots continued to occur in the early 1990s. This resulted in a review of the entire prison system by a senior judge, Justice Woolf. The Woolf Report was published in 1991. It offered several conclusions as to why the disturbances occurred and several recommendations for alleviating the problems. In addition to management concerns, such as inadequate staffing and communications problems, the inmates raised several objections that have been identified as standard complaints, following prison riots in most countries. They included overcrowding, type and quality of food, availability of work and educational opportunities, visitation rights and restrictions, ineffective grievance procedures, and the number of petty prison regulations.

A central feature of the Woolf Report was the strategy offered to assure that a more stable environment be established throughout the prison system. The report suggested that the goal of stability could be achieved only through security, control, and justice. Security focused on the need to prevent inmates from escaping. Control centered on the need to curb the disruptive behavior of inmates. Finally, justice suggested that inmates should be treated with a greater degree of humanity and fairness.

The Woolf Report maintained that the governance of prisons should be based on principles that address how inmates are to be treated. For example, it suggests that inmates take some responsibility for their lives while in prison, which in turn would make them accountable for their actions. Inmates should expect to be treated with justice, thus reducing

arbitrary decisions and capricious actions by staff. Finally, the notion that privileges be awarded at the discretion of the prison governor should be eliminated. Many of the privileges mentioned, such as the use of a radio and the purchase of books or newspapers, should be considered a norm by today's standards. These principles are obviously designed to improve the relations between inmates and staff.

Moreover, the number of exceptional risk inmates has increased considerably from 150 when Lord Mountbatten conducted his investigation into prison security in 1966 to the 750 exceptional risk inmates of 2012. At issue is that the prison system has become more violent, coupled with a good deal of drug-related crime (Podmore, 2012).

Only time will tell if the adoption of Woolf's recommendations coupled with building new prisons and the modernization of others will reduce the concerns raised about the state of English prisons. Early indications are that the problems raised by prisoners and confirmed by the Woolf Report persist (Woolf and Campbell-Holt, 2008). It has been suggested that part of the reason has to do with the fact that the government accepted only two of the three methods for achieving greater stability. Since Woolf, security and control have been emphasized throughout the Prison Service at the expense of even considering the third element—justice—in the stability equation (Cavadino and Dignan, 2004).

Ministry of Justice

Since the nineteenth century, the British have been enacting legislation to assure a centralized administration of England's correctional system. Initially, the home secretary was the civilian politician responsible for prisons. This responsibility was transferred to the new Ministry of Justice. As indicated earlier, the Lord Chancellor was named in 2007 to head a new cabinet-level department, the Ministry of Justice. As such, the Lord Chancellor is also referred to as the minister of justice. Placing the correctional system in the hands of a senior cabinet officer who is also a member of Parliament enables members of the legislative branch to question the executive branch on policies, procedures, and critical issues of the prison system (see Figure 1.4).

The Prison Act (1952) was the principal legislative instrument that explained the powers and duties of the home secretary (now minister of justice). According to the act, the key functions included having general powers and jurisdiction over all prisons and prisoners, appointing people to various boards or committees that deal with correctional issues, establishing rules for prison personnel, ordering the transfer of a prisoner from one institution to another, granting a temporary discharge of a prisoner because of ill health, having the power to enlarge or build new prisons with the approval of the Treasury, ordering the closing of a prison, issuing a yearly report to Parliament on the state of the prisons, and having similar powers of control and jurisdiction over juvenile justice facilities.

National Offender Management Service

The National Offender Management Service (NOMS) was created in 2004. A review of the correctional system identified gaps in the work of the prison and probation services. NOMS was established to bridge the gaps and to improve the efficiency and effectiveness

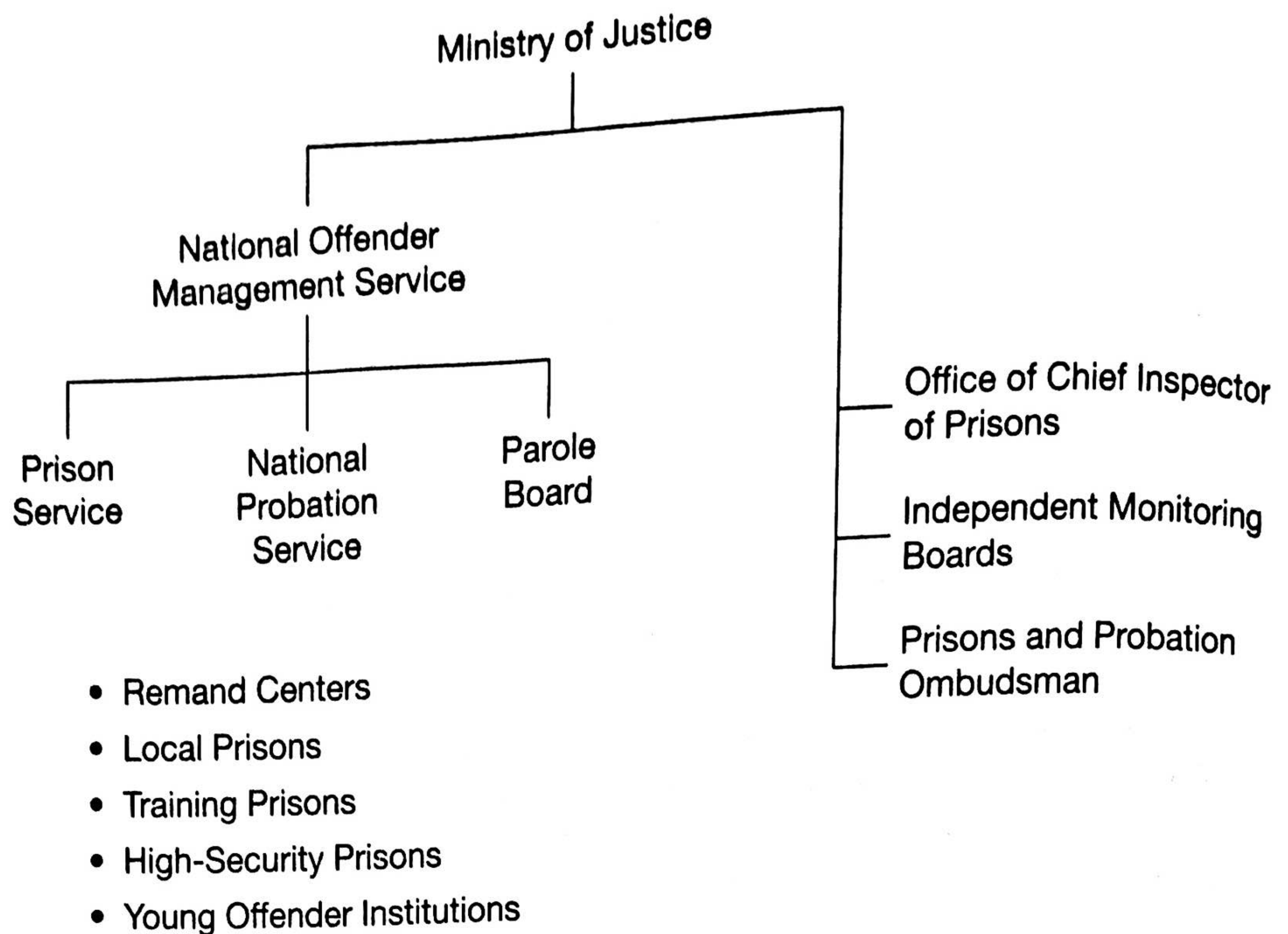


FIGURE 1.4 | Organization and Administration of the Correctional Service

of the total correctional service. The chief executive and board of NOMS report to the minister of justice. NOMS is responsible for strategic planning, policy development, and financial leadership of the correctional service. It is also linked to other national and local government organizations, like the National Health Service, to enhance the quality of service provided and also to improve the public's confidence in these components of the criminal justice system. NOMS is organized into 10 regions (nine in England and one in Wales). Each region is responsible for planning the offender's supervision while in custody and the logical transition of the offender when released back into the community.

The Prison Service

Until the 1990s, the British correctional system had been administered centrally. The Prison Board, composed of a director general and five additional board members, was responsible for the formulation and implementation of prison policy and the overall management of the service. In an effort to reduce the size of government, an attempt is under way to decentralize the administration of the correctional system. This process began in 1993 when the Prison Service was granted agency status. Agency status essentially means that while the government will fund the correctional system and the employees will remain civil servants, the administration of the system will be more in line with that of a corporation in the private sector. Under this new arrangement, a chief executive officer administers the Prison Service, along with a board of management. This officer has authority over how the budget for the Service will be allocated. In addition, the number of administrative restrictions has been reduced to enhance efficiency and effectiveness. This includes giving prison

governors more discretion in the daily management of their prisons (Ruggiero, Ryan, and Sim, 1995; Vagg, 1994).

With this agency status, the Prison Service is administered and managed in the following way. The director general of the Prison Service is the chief executive officer and is appointed by the minister of justice. The director general is responsible for the management of the Service, which includes the establishment of an organizational plan, performance targets, budget issues, and personnel matters. The director general is aided in long-term planning, policy, and fiscal development by NOMS.

As was mentioned earlier, one of the goals of the Ministry of Justice is to transform the administration of the correctional system so that it would operate along the lines of a corporate organization. One attempt at mirroring the private sector is illustrated by the adoption of a vision statement for the service titled The Prison Service's Statement of Purpose.

Statement of Purpose

Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law-abiding and useful lives in custody and after release.

Our Vision

To provide the very best prison services so that we are the provider of choice
To work towards this vision by securing the following key objectives.

Objectives

To protect the public and provide what commissioners want to purchase by:
Holding prisoners securely
Reducing the risk of prisoners re-offending
Providing safe and well-ordered establishments in which we treat prisoners humanely, decently and lawfully.

Our Principles

In carrying out our work we:
Work in close partnership with our commissioners and others in the Criminal Justice System to achieve common objectives
Obtain best value from the resources available using research to ensure effective correctional practice
Promote diversity, equality of opportunity and combat unlawful discrimination, and
Ensure our staff have the right leadership, organisation, support and preparation to carry out their work effectively.

The Prison Service is expected to continue to explore the notion of privatization of and within prisons, something that has received a good deal of attention in England. Privatization can include the design, construction, management, and funding of a facility or a combination

of this kind of involvement. Presently, 14 prisons are managed by private-sector organizations. These facilities are designed for both adults and young people. Moreover, 15 percent of the prison population is housed in these private facilities (see Genders in Dockley and Loader, 2013). Although the director of a private prison and the prison staff are employees of the contracting organization, they are subject to the same kind of oversight provided to public-sector prisons. Moreover, the director general of the Prison Service must approve the appointment of a director of a private-sector prison (Bryans and Jones, 2001).

Criticisms have been directed at the private-sector prisons by Her Majesty's Chief Inspector of Prisons and academic research. A central concern involves the quality of life of the inmates. While the issue of security versus rehabilitation is a matter for all prisons, critics claim that private facilities consider issues of risk control more important than rehabilitation. Obviously, this should come as no surprise in light of the fact that the private prison industry is a business that wishes to retain contracts and grow. It is unlikely that prison riots and escapes would lead to contract renewals; hence, the emphasis on security. It has been suggested that additional research is needed of a comparative nature between public and private institutions. Specific attention should be directed at: prisoner-staff relations, relative costs, identification of institutional innovations, and analysis of the Ministry of Justice's best outcomes (see Genders in Dockley and Loader, 2013).

Office of the Chief Inspector of Prisons

The responsibility of this office is general oversight of the English prison system. It is also mandated to inspect young offender institutions and immigration removal centers. The office was created in 1981 to assure a degree of independence in the inspection of prisons. The chief inspector reports directly to the minister of justice rather than to the director general of the Prison Service. Because the inspectorate does not have any administrative authority over prisons and cannot impose any sanctions, its principal role is to identify problems in the Service and, on occasion, to offer strategies for resolving them. An actual inspection is carried out by a team composed of a prison governor and a senior prison officer who have been seconded from the Prison Service, as well as a civil servant. Other people may be added to the team because of their expertise. Doctors, lawyers, and building inspectors have been utilized in the past. Ultimately, it is the responsibility of the minister of justice to accept, reject, or delay addressing the issues identified by this office.

Independent Monitoring Boards

For many years, the British have prided themselves on the use of lay volunteers to assist in the administration of justice. In the past the local police authorities, now replaced by the police and crime commissioners and the police and crime panels, and the Independent Police Complaints Commission are examples of citizen participation in law enforcement, while lay magistrates illustrate this in the courts. In reference to prisons, until 2003, independent monitoring boards were referred to as boards of visitors. Under either name they reflect the use of lay participation in various penal establishments, and one exists for each correctional institution and immigration removal center. Board members are appointed

by the minister of justice; they receive a training course designed to prepare them for their work; and they spend two to three days a month working as a board member. Presently, there are more than 1,800 members from a variety of walks of life who are serving in this capacity.

Board members have the responsibility of general oversight of prisons. Based on frequent visits by individual board members, each board produces a report on its institution for the minister of justice. The report examines the physical conditions of the establishment, the prison's administration and staff, and the various treatment programs that are available. Inmates also have access to board members, especially if they wish to raise a grievance about their treatment.

Irrespective of their good intentions, the boards have been the subject of various criticisms over the years. One is that the composition of the boards are too middle-class and disproportionately middle-aged. As many inmates are fairly young, it has been suggested that boards should have some representation from the prisoners' peer group. Unfortunately, board work generally requires that members have some control over their personal work schedule. Many young people have not gained that kind of freedom at their place of employment. Even the basic purpose of these boards has been a subject of criticism. Do boards contribute to an improvement of efficiency within the penal system, as their mandate implies, or are they merely window dressing for the Ministry of Justice? The same concern, you may recall, was raised regarding the role of local police authorities. Especially significant in this case, however, is the fact that some of these comments are being voiced by members of the boards.

Much of the criticism centers on their frustration with not being able to change the conditions that exist within correctional facilities. Board members have expressed concern about the types and conditions of work provided inmates and the low pay awarded. They also have pointed out that improvements should be made in educational and recreational programs. Little has been done to implement their suggestions, though, and the reasons most often cited for this inadequacy are financial. Some board members identify another more serious factor. They do not think the prison staff takes the work of the boards seriously. This is further compounded by the poor communication channels that exist between boards and the Ministry of Justice. Thus, board members feel thwarted by the prison establishment, both at the local level and at the top of the bureaucratic hierarchy. It will be interesting to see if the recent changes in the administration of the Prison Service resolve some of these concerns about the boards of visitors or possibly complicate the board's role further.

Prisons and Probation Ombudsman

One of the concerns identified in the Woolf Report, which had looked at the causes for the proliferation of prison riots in the second half of the 1980s, was the lack of an independent oversight mechanism for the complaint process within the prison system. The Prisons and Probation Ombudsman is an attempt to address that concern. Created in 1994, the office is ultimately accountable to the minister of justice. The ombudsman's principal responsibility is to investigate complaints about how those in custody are treated throughout the prison

and probation services. He or she also serves as the prisoners' final source of appeal from the internal disciplinary system of the prison authority. Finally, the ombudsman is responsible for investigating all deaths of prisoners, residents of probation hostels, and residents of immigration detention facilities.

In addition to the chief ombudsman, there are nine assistant ombudsmen and a staff of complaints investigators and fatal incidents investigators. Because the ombudsman is largely dependent on prison staff when conducting investigations, questions have already been raised about whether the ombudsman can reduce the inmates' concern that the disciplinary system is essentially unfair. It has been suggested that this system is too new to determine if it has brought a degree of fundamental fairness to the prison disciplinary system (Cavadino and Dignan, 2004).

Types of Prisons

As was mentioned earlier, the British have adopted two sentencing rationales. For people found guilty of serious crimes, the sentencing aim is to incarcerate the person for an extended period of time, thereby protecting the public from a dangerous offender. Every effort should be made to impose a noncustodial sentence on other offenders in an effort to encourage these people to seek a treatment program. While the British acknowledge that custodial settings are often not suitable environments for serious attempts at treatment, they have recognized the need to provide opportunities within prisons that are specifically designed to encourage inmates not to reoffend upon release. As a result, programs have been designed to enable inmates: to improve basic educational skills, to provide meaningful work training, to address substance abuse, and to plan for outside accommodation and employment upon release from prison (Bryans and Jones, 2001).

The British have established five types of prisons: (1) remand centers, (2) local prisons, (3) closed and open training prisons, (4) high-security prisons, and (5) closed and open young offender institutions. Each is designed to serve a specific purpose and is intended for a different kind of prisoner. Remand centers hold people who are awaiting trial or sentencing; they serve as distribution centers for the rest of the prison system and can be used to house inmates serving very short sentences of imprisonment. If an area does not have a remand center, the local prison will serve those functions. Thus, the purpose of local prisons in England is similar to that of jails in the United States.

One report, "Crisis in the Prisons: The Way Out," suggested that local prisons are also used to house people who will be incarcerated for an extended period of time (King and Morgan, 1979). It is not uncommon to find a person serving a four-year sentence in a local prison. The authors contend that this is a direct result of a policy of keeping the population low at some of the prisons that hold dangerous offenders. When Ministry of Justice officials talk about prison overcrowding, it is argued that the officials are really referring to the conditions in local prisons. For example, in 2006, the populations of remand centers represented 17 percent of the average population in custody (Cavadino and Dignan, 2007).

Since 1948, an attempt has been made to transform all prisons into corrective training centers. This has led to the establishment of the training prisons. The British pride

themselves on the fact that about one-third of these correctional facilities are open institutions; that is, there are no walls or fences to prevent escape. All the training facilities have as a primary goal the rehabilitation of inmates. Attempts are made to achieve this rehabilitative ideal by providing work and therapy for inmates.

Critics have taken issue with the supposed rehabilitative purpose of prisons and the lack of revenue to enhance rehabilitative programs. They contend that the rehabilitative goal of prisons is in a serious state of disillusionment in England and that it has been replaced by a new goal of the Prison Service: assuring secure and humane containment for inmates. While funds have been readily available to achieve the security objective, they have not been forthcoming in attaining a humane setting. Critics point out that this is illustrated by the fact that counseling, vocational, educational, and work programs are actually available to only a small number of inmates.

If the National Offender Management Service's strategy for protecting the public and reducing reoffending among inmates comes to practical fruition, some of the criticism may subside. One principal strategy is to manage offenders—both inmates and those in the community—more effectively. The plan calls for each offender to have an offender manager "who will be responsible for making sure that they are both punished and rehabilitated properly." The plan is designed to have the Prison Service and probation service interact more effectively. Related to this effort is an attempt to develop partnerships across government in areas like health, education, employment, housing, finance, and social and family ties. This is intended specifically to address issues related to recidivism.

Prison Staff

The personnel working in a prison facility generally fall into one of three categories: the governor grade, the uniformed staff, and the professional and technical staffs. The governor grade consists of governors and assistant governors. A governor is the chief administrative officer of an institution and thus has the same responsibilities as a warden in a correctional facility in the United States. Assistant governors are assigned to a wing of a prison; their principal responsibilities focus on the rehabilitative care of inmates entrusted to them. Unlike the British police, the Prison Service is not unified. Therefore, the personnel do not all begin their careers at the lowliest ranks in the system and gradually work their way up through competitive promotions. The governor grade illustrates this fact, because governors traditionally have been recruited from outside the Service. Presently, there are three fast-track methods available to candidates for governor grade. An accelerated promotion scheme was implemented for both college graduate and veteran prison officials who aspire to administrative positions. The direct entry scheme permits managers of people-oriented organizations or prison staff entry to governor grade training. Finally, a cross-hierarchical scheme enables people who have an established career in another branch of the civil service to move into the Prison Service. Many of these people are appointed to the governor grade of the service. Once recruited, governors attend the Prison Staff College before being assigned to an institution. They also are encouraged to attend university courses dealing with counseling techniques and management skills.

Recruitment of uniformed staff is conducted both nationally and locally. Although there are no educational requirements beyond a high school diploma, selection standards are considered fairly rigorous. Candidates participate in a series of job simulation exercises that include testing their skills of listening, calming, dealing with criticism, and offering constructive criticism. Candidates are also tested on their analytical skills and report-writing capabilities. The successful candidates would then participate in the prison officer initial training course. This is an 11-week course that begins with the candidate spending the first week essentially observing at the prison where they will eventually begin their career. This is followed by four weeks of training, one week at their prison, four more weeks of training, and one more week at their prison. Throughout this training period, candidates must pass a series of tests in order to gain certification. Approximately 9 percent of the candidates either fail the course or resign before its completion (Bryans and Jones, 2001). Although training traditionally has emphasized custody techniques and methods of supervising work and recreation, increased attention has focused on the officer's role as a treatment agent. In-service training is made available through refresher courses, and officers are encouraged to enroll in courses offered by other educational institutions.

The professional and technical staffs represent the third personnel category. They include the medical staff, chaplains, psychologists, social workers, educational organizers, and prison industries instructors. The medical and psychological staff, as well as the chaplains, consist of both full-time and part-time personnel. Under the Education Acts, it used to be the sole responsibility of the local authority in which a prison was located to provide inmates with educational programs. Now private suppliers of educational services can compete for these contracts. Full-time and part-time educational organizers develop courses for inmates, and the costs for this service are reimbursed by the Ministry of Justice. Finally, civilian instructors (who are a part of the civil service but are not members of the uniformed staff) are hired to supervise and instruct inmates in prison industries. Some uniformed staff also assist the civilians in this capacity.

In recent years, there has been a growing degree of unrest among the staff of prisons. Much of this is directed at the government for essentially three reasons. First, an increase in the number of offenders placed in prisons has led to overcrowding. This, in turn, raises concerns about security and control among uniformed staff, as they have had to cope with prison riots. Second, budget cuts have inhibited or frustrated long-term planning, and this raises concerns about possible reductions in prison jobs. Finally, the introduction of privatization in the field of corrections on a limited scale has contributed to the sense of uncertainty among prison staff.

One recent critic of the prisons, who was a former manager in three prisons, has argued that too many uniform staff had only attained minimal education standards, had received insufficient training for work in today's prison environment, and are poorly paid. This enhances the likelihood that some will and have been coopted into the corruption of the prison environment. At issue are the drug deals, theft, violence, sexual exploitation, and blackmail. It was further pointed out that the staff of the Corruption Prevention Unit was reduced because of financial cutbacks. As a result, no members of the remaining staff had administered a prison, and only a few had actually worked in one (Podmore, 2012).

Parole

The Criminal Justice Act (1967) introduced the parole system. Based upon the same premise as the United States' system, parole is designed to provide an inmate with an early release from a correctional institution. The Criminal Justice Act (1991) has revised the method of granting early release by establishing three strategies that are related to the inmate's length of sentence.

One strategy is the automatic unconditional release that is granted to all inmates serving less than 12 months. Eligibility occurs after one-half of a sentence is served, and there is no supervision unless the inmate is a young offender. If a person is convicted of a second offense while on early release, the court not only can impose a sentence for the new offense but also can reactivate all or part of the time remaining on the original sentence.

A second strategy is the automatic conditional release that is granted to all inmates sentenced from 12 months to less than four years. They are released after serving one-half of the sentence. Under this strategy, supervision is compulsory until at least three-quarters of the sentence is completed. If a person fails to adhere to the conditions of the early release, he or she can be fined or imprisoned for up to six months or have the time remaining on the original sentence reactivated if that is longer than six months.

The third strategy is the discretionary conditional release. This is available to inmates serving a term of more than four years. The inmate becomes eligible for consideration after serving one-half of a sentence, and it is the Parole Board that considers these cases. If an inmate is serving a sentence of less than seven years, the authority to release is given to the Parole Board. If the sentence is longer than seven years, the decision of the Parole Board is in the form of a recommendation to the minister of justice, who would make the final decision. Under this strategy, supervision is compulsory until at least three-quarters of the sentence is completed. In those cases in which the inmate is not considered for release under this strategy, the person would automatically be released after serving two-thirds of his or her sentence. Any breach of the conditions under this release strategy is handled by the Parole Board.

With the passage of the Crime and Disorder Act (1998), electronic tagging was introduced. This enabled the possibility of an earlier release by two months from the normal release date. This is known as the home detention curfew.

The Criminal Justice Act (2003) introduced some further changes to parole that went into effect in 2005. First, for sentences of less than 12 months that have an automatic release mechanism, there is a minimum period of incarceration of 13 weeks and a maximum period of 26 weeks. Second, once released, the remainder of the sentence is served in the community. Thus, supervision for all sentences, irrespective of the length of the initial sentence, is in force until the end of the sentence. Third, whereas home detention curfew was previously only available for short-term inmates, it is now available for all fixed-term prisoners.

Finally, the distinction between short- and long-term prisoners has been eliminated under the Criminal Justice Act (2003). Under normal circumstances, inmates will be released from prison after serving one-half of their sentence. For a typical fixed-term prisoner, the Parole Board will not be involved in the process, irrespective of the length of

the original sentence. The Parole Board is expected to focus its attention on those inmates who are incarcerated for either violent or sexual offenses. These inmates are not eligible for the automatic release at the half point of their sentence. They will be released only when the Parole Board grants this order. Moreover, at the end of the custodial sentence, these types of offenders are subject to additional supervision: in the case of violent offenders, for five years, and in the case of sexual offenders, for eight years.

The Parole Board consists of about 20 members. It includes judges, psychiatrists, a retired police officer, and others with expertise in social work and criminology. These individuals sit in panels to determine cases. When an inmate is released and supervision is called for, this responsibility would be handled by a probation officer.

The Parole Board is presently attempting to redesign the parole process as a result of the Supreme Court's decision in the cases of *Osborn*, *Booth*, and *Reilly*, which was handed down in October 2013. At issue in each case was the refusal of the Parole Board to grant these prisoners an oral parole hearing. The Supreme Court ruled unanimously that the Board "breached its common law duty of procedural fairness." They further cited article 5 (4) of the European Convention on Human Rights in failing to provide an oral hearing. In light of this ruling, the Parole Board estimates that the number of oral hearings could increase from 4,500 to more than 14,000 each year.

Noninstitutional Sanctions

While the Prison Service is the unit within the Ministry of Justice that handles institutional treatment, the administration of noninstitutional programs is the responsibility of the National Probation Service. At the close of the 12 months ending in June 2013, there were 144,804 people being supervised by the probation service. Of these probationers, 132,329 were issued community orders by a court, while 42,240 were people who received a suspended sentence. This illustrates an attempt to impose noncustodial sentences on those who are guilty of offenses that are not considered violent or serious. Obviously, it is designed to help lessen that expanding prison population.

In the recent past, there were 55 local probation authorities responsible for probation services, with approximately 80 percent of the funds provided by the Ministry of Justice. The local probation authorities had a good deal of local control over these services. In 2001, it was reorganized into the National Probation Service. The reorganization also extended to the local probation authorities, with the 55 areas being reduced to 42. These new areas correspond with the boundaries of the 43 police forces of the country, with one exception. The Metropolitan Police of London and the City of London Police represent a single area of the National Probation Service. Each local area has a committee that is composed of magistrates and citizens from the area who assist in coordinating the programs and services provided to probationers of the area.

In the past, probation officers were not required to meet specific educational and training standards; in fact, many were volunteers. Today, the Central Council of Education and Training in Social Work controls the selection and training process. There has been a considerable influx of new probation officers holding university degrees in recent years. These people view themselves not as mere officers of the court but rather as a professional

class of social workers allied more frequently with their clients than with the court. It appeared for a time that the probation service would be exclusively populated by these professionals, but increased caseloads and a recognition that lay volunteers would enhance the work of the service has led to a return to the utilization of volunteers.

Britain's justice system has become increasingly committed to the rehabilitative aims of sentencing. This conscious effort has led to an increased use of noninstitutional programs and the development of more nonpunitive methods within the community. What follows is a description of some of the more popular sentences that embody the community-based corrections philosophy.

Probation was the earliest form of noninstitutional sentencing. Its purpose is to allow the offender to remain in the community while under the supervision of a probation officer. A court will issue a probation order if the following criteria are met: the offense and the offender's record are such that incarceration is inappropriate, society is not being placed in danger by the release of the offender, the offender needs supervision, and the kind of supervision required is best provided while the offender is allowed to remain free in society.

Probation orders contain some standard conditions, such as maintaining good behavior, keeping in touch with the probation officer, and notifying the officer of any change in address. A court may impose additional requirements that include specifying the place of residence, requiring medical or psychiatric treatment, and prohibiting association with certain people or the frequenting of specific places. If a court deems it necessary to place a restriction on the probationer's place of residence, or if the person does not have a fixed residence, the court orders the person to reside at a probation hostel. These facilities, run by either volunteer groups or the National Probation Service, are designed to provide the probationer with a residence while he or she works in the community during the day. Group treatment is frequently available at the hostel. Probation centers also have been established to assist probationers in acquiring basic skills that will enable them to secure employment. Probation orders are issued for a period of at least one year but not more than three. Failure to comply with a probation order generally leads to a fine or an order to perform community service.

Criticism has focused on the kinds of people utilizing hostels and probation centers. Hostels were originally designed to help improve employment skills of probationers. As the prison system attempts to reduce the number of people incarcerated, parolees are being sent to hostels. During periods of high unemployment, it was difficult to assist these people in finding work. Besides, many parolees at this stage of their release are in need of general coping skills for life. Another concern is that the number of offenders who suffer from alcohol or other drug abuse creates disruptive problems for hostels and day centers because it makes the offenders' behavior unpredictable (Smith, 1985). For some time, there had been a recognition that the number of hostels should be increased. The government had planned to expand the number but then abandoned the idea. In fact, they closed some of the existing hostels because of cost.

In the early 1970s, the British began experimenting with the community service order. The order requires an offender to perform 40 to 240 hours of unpaid community service. Such an order is generally served within a year's time, but it may be extended beyond that. Community service orders are frequently viewed as an alternative to a custodial sentence.

Many offenders who have participated in this scheme are between the ages of 16 and 21; they have been sentenced in the past to custody or probation, so they are not first-time offenders. Noncompliance to a community service order may lead to a fine or to the revocation of the order and substitution of another sentence. The types of orders issued by a court under the program have included hospital work, care of the elderly, the running of employment bureaus for ex-offenders, land reclamation projects, and work with youth organizations.

Although the number of offenders sentenced to community service continues to rise, probation officers have identified two areas of concern. The first involves the probation officers' perception of their role in the community service plan. Probation officers are accustomed to active participation with offenders. Under community service orders, an officer is initially involved with an offender as attempts are made to place the person with an organization. Once placed, however, it is advisable that an officer maintain a low profile. The burden of proving that the sentence was the correct one is almost totally in the hands of the offender. Some probation officers are finding it difficult to adapt to this new posture.

The second concern centers on the fact that the imposition of community service orders appears to have a multifaceted purpose. These orders can be viewed as punitive, rehabilitative, or as a form of compensation to the community. A number of critics have suggested that this clouds the purpose of the order and that it should actually have only a single objective. It has been suggested that this would enable the establishment of a clearer method for evaluating the entire program.

Community service orders are in part designed to fulfill a basic need of human nature: to feel wanted. Many offenders have been rejected by their families or society. Community service makes an attempt to reverse that sense of alienation. Moreover, the long-established view that correctional rehabilitation should be based on the premise that the offender needs help is altered considerably. With community service, offenders are not considered the recipients of help but rather as dispensers of it. Given the philosophical assumption behind the order, some have suggested that offenders should be paired with volunteer probation workers rather than professional probation officers. This notion is based on the belief that an offender should come in contact with the value system of a volunteer who is also displaying the need to feel wanted.

The Criminal Justice Act (1991) introduced a new sentence called the combination order. This order combines aspects of probation and community service. The period of probation must be at least 12 months but no longer than three years, while the community service hours range from 40 up to 100 hours. This sanction is available to any offender over the age of 16.

Another sentence introduced through the Criminal Justice Act (1991) is the curfew order. This order requires the offender to remain at a specific place for up to 12 hours a day. The act permits monitoring the curfew through an electronic device. Curfew orders can be imposed for up to six months.

Like many European countries, England utilizes the fine as a penal sanction for offenses other than traffic violations. Although it can be used in place of a custodial sentence, fines are imposed in addition to custodial sentences if the person is convicted on indictment. Unless a maximum amount is cited in a statute, a Crown court has unlimited power to fix

a fine. Magistrates' courts, however, are limited in the amount that they can impose. Both courts consider the offender's income and general financial situation before imposing this sanction. Failure to pay can lead to a custodial sentence.

Other types of monetary sanctions include compensation and restitution orders. People who are injured or have property damaged (with the exception of traffic offenses) may be awarded compensation by a court. The order would be based on the offender's ability to pay. Offenders convicted of theft may be ordered to make restitution to the victim.

Another method of reducing the prison population was the development of the suspended sentence. The suspended sentence was first introduced under the Criminal Justice Act (1967). Courts that could impose a sentence of imprisonment for up to two years may suspend its enforcement if the time served is greater than six months. Offenders who are under a suspended sentence and who are subsequently convicted of another offense punishable by imprisonment would have the suspended sentence revoked. They would generally have to serve the remainder of the time in custody—in addition to serving the time for the new offense.

The Criminal Law Act (1977) introduced another method for employing the suspended sentence. Sentences ranging from six months to two years can be partially served and partially suspended. The suspended portion can range from one-fourth to three-fourths of a sentence. Offenders found guilty of a second offense while under this type of suspension are subject to the same rules spelled out in the Criminal Justice Act (1967). A court also can order the offender to seek treatment while on a suspended sentence.

A court may impose either an absolute or a conditional discharge in those cases in which a sentence is not fixed by law and the court believes that the character of the offender and the type of offense committed do not warrant imprisonment or a probation order. An absolute discharge is technically a conviction with exemption from any type of custody. A conditional discharge is the immediate release of an offender with the condition that the person not commit another offense over a specific period of time. This period cannot extend beyond three years. With a discharge order, a court can still require the person to pay compensation or restitution.

Finally, the Criminal Justice Act (1972) introduced deferred sentences. Under this type of sentence, a court defers the sanctioning of an offender for up to six months to determine if the person's conduct will change. If the person is convicted of another offense before the termination of the grace period, the court can impose a sanction for the original offense for which the offender received the deferment.

Nacro

The impetus for developing a community-based corrections philosophy has not been fostered solely by courts and corrections personnel. Voluntary organizations have played a considerable role in introducing innovative rehabilitation programs. One of the leaders in this endeavor has been the National Association for the Care and Resettlement of Offenders (NACRO). NACRO was founded in 1966 by volunteer prisoners and societies in order to assist in the training of hostel staffs and the advising of those planning to develop hostels. Although it receives grants from the Ministry of Justice, it remains the major

nongovernmental agency working to initiate new techniques and improve existing rehabilitation programs. NACRO has recently dropped its full name and is now simply referred to as Nacro.

Nacro has been a particularly influential advocate in three areas of community-based corrections. First, it has been a vocal proponent of the use of volunteers. Specifically, it has urged the probation service to take a more active role (and greater care) in the placement of volunteers so as to assure the system that volunteers' time and energies are effectively utilized.

Second, it has been an innovator in the testing of diversionary programs. These programs are designed to help both those who have already been involved in the criminal justice system and those who are prime candidates for possible entry into the system. Among the projects developed by Nacro were the Whitechapel Day Centre (which helps homeless offenders and ex-offenders by providing food, medical attention, counseling, job training, and placement), the Nacro Education Project (which offers placement in high schools, vocational schools, and colleges for offenders who started such a program while in prison), the Onward Workshop Project (which is designed to counsel drug users and their families), and the Lance Project (which assists the homeless who are perceived as potential delinquents by establishing hostels and offering referrals to other assistance agencies in the community).

Finally, Nacro has continued to play an important role in recommending to Parliament additional reforms regarding the handling of offenders. For example, it has called for a reduction in the maximum sentence for a number of offenses; it has urged abolishing sanctions of incarceration for drunkenness, marijuana use, vagrancy, begging, and soliciting; and it has proposed a broader use of alternatives to prisons. Thus, Nacro has played a major role in implementing and encouraging the use of noninstitutional treatment programs throughout England (Dodge, 1979).

In recent years, Nacro has been critical of the increase in the number of people sentenced to prison. Nacro's mission is explained in its Strategic Plan for 2011–2015, and has pointed out in their Corporate Plan for 2004–2007:

By reducing crime we change lives, and by changing lives we reduce crime. Time and time again we demonstrate that, where we succeed in helping those in trouble to change their behavior, everybody benefits: the person in trouble, their victims and potential victims, and the wider community around them.

Among the specific concerns of Nacro are the increase in the number of women, minorities, and mentally disturbed inmates; the length of the sentences; the difficulties of resettlement that confront the short-term prisoner; and the high level of unemployment among ex-offenders in general. Today, Nacro has established a comprehensive agenda for itself. It is involved in approximately 300 communities that include housing for ex-offenders and other homeless people; employment training centers; informational and training services for prison inmates; structured activities for disadvantaged children; mediation and advice services for families; training for young people who have left school; and joint efforts with schools and outreach work to contact youths about education, training, and employment opportunities.

In the most recent annual report ending in March 2014, Nacro indicated that they had a combined staff and volunteers of more than 900 people. The report also noted some of their key achievements, which involved providing 250,000 requests for resettlement advice, and 26,000 queries via telephone, e-mail, or letters. Nacro housed 2,200 in their properties, and another 2,000 were given housing support. They worked with approximately 3,000 young people.

Critical Issue

Most modern correctional systems face a crisis of purpose and direction, and England's is no exception. This is in part due to the fact that the system frequently has established multiple goals for itself. When faced with this dilemma, conflict over which goal should take precedence is often inevitable. To compound the problem further, more than one component of the justice system has an impact on determining which direction the correctional system will take. As a result, goals and objectives are frequently imposed from outside and may be at cross-purposes with the goals established internally. Thus, corrections is not simply the official business of the Ministry of Justice. Parliament (with its lawmaking powers) and courts (with their sanctioning authority) play an important role in the development and execution of correctional policy.

Over the course of the past 40 years, various governments have initiated reform efforts to address the general state of prisons that were considered by many to be in a serious state of decay. Concerted attempts have been made to focus on improving the recruitment and training of employees of the Prison Service and with upgrading the quality of new and existing correctional facilities. Irrespective of the government in power, these efforts have been guided by two concepts—efficiency and effectiveness. When discussions focus on enhancing the efficiency and effectiveness of the Prison Service, it inevitably leads to a consideration of the role that prison privatization might play in the equation.

The privatization of prisons is not a new idea. From medieval times into the nineteenth century, prisons tended to be administered by private individuals. The idea of privatizing what had become an exclusive government function has been discussed in the context of reducing costs for the prison system. This is occurring at a time when there is a need to build more correctional facilities. While privatization can be implemented in a variety of ways, four approaches have dominated the discussion. One involves contracting out to the private sector the design and construction of prisons. Another focuses on having private firms finance the building of new prisons rather than using tax dollars. A third approach turns the ancillary services within a prison over to the private sector. These services usually include catering, health care, education programs, and escorting prisoners. A final method involves transferring the management and administration of a prison facility over to a private firm. In this context, the government would continue to determine prison policy and monitor the administration of these facilities.

The British have elected to experiment with each of these approaches. Some of the future prisons are being financed, designed, and constructed by the private sector. Many of the ancillary services, such as catering, education, and prisoner escort, have been contracted out to a considerable degree. In early 1996, four prisons were being managed by a private

firm. This number has risen to 14. Obviously, the ultimate goal for the government is to reduce the cost of the Prison Service.

Although privatization in any of its many formats is a relatively new endeavor, comments offered thus far provide a mixed review of these early efforts. Privately constructed prisons have been found to be similar in quality to those constructed by the public sector. Criticisms have been leveled that the various ancillary services, such as catering and educational programming, have been unsatisfactory. The private escort service has probably been the most noteworthy embarrassment. Shortly after assuming their duties, an escort service lost several prisoners, and one died in their custody. An inquest found that the incidents could have been avoided. Finally, while costs are being reduced, staff levels in prisons run by the private sector are noticeably lower than those in the public sector. This has been made possible by the installation of high-technology security devices. It should also be pointed out that the staff hired by the private firms are paid less than those working in the public-sector prisons. Because privatization in the Prison Service is a new endeavor, only time will tell if its introduction was truly a cost-effective measure. More recently, it has been suggested that private prisons might not be a solution to the problems confronting the Prison Service, but rather a factor that may aid in perpetuating them (Cavadino and Dignan, 2007)

JUVENILE JUSTICE

For centuries, the British seldom attempted to make a clear distinction between its poor and criminal classes. It was widely held that extreme poverty would inevitably lead to crime. Thus, legislation—in the form of a series of “poor laws”—was passed to cope with these problems. The laws were designed to serve two purposes: to aid the destitute in a humane fashion and to protect society from beggars and vagrants. A natural outgrowth of the poor laws was the development of a philosophy toward juvenile justice.

The emergence of a separate justice system for juveniles was based on the assumption that young people should be segregated from both the adjudication process and the penal system that had been established for adults. In part, this belief was based on humanitarian pity—especially for children of the poor—but there was also an element of self-interest underlying this philosophy. There was a fear that these children would inevitably become society's future criminals. The separate system was based on the premise that, because children were malleable, they could benefit from individual treatment, but that the rehabilitation process could only work if children were divorced from the adult justice system.

Another idea that emerged at approximately the same time suggested that the young should be treated as individuals possessing both needs and rights that the state should protect. This notion was directed at youths who had not violated the law but were orphans or victims of broken homes or child abuse. By the middle of the nineteenth century, the state commenced to expand its authority not only over the criminal behavior of the young but also over their noncriminal behavior.

Before these assumptions were introduced, young people were treated like adults. Juvenile delinquents were processed through the adult criminal justice system. They were

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tried in the same manner as adults and were sentenced to the same sanctions, including death, transportation, and imprisonment. Actually, the implementation of the death sentence was rare, and although the law called for these harsh measures, they were modified in practice. For example, children were not always charged with the offenses they had been accused of committing, and when they were, juries often refused to convict them. Nevertheless, the system was harsh. Children were sentenced to transportation and imprisonment for what we would today consider minor offenses, and they served their term in adult prisons that were not conducive to the reformation of the child. Instead, these institutions tended to enhance the likelihood that the child would continue to violate the law.

Although attempts were made to introduce change during the first half of the nineteenth century, the reform movement failed to elicit the support of a majority in Parliament. With the passage of the Youthful Offenders Act (1854), efforts were realized to distinguish juveniles from adults in the justice system. This act created the reformatory school for juvenile offenders, which was later supplemented with the establishment of industrial schools for both offenders and nonoffenders. Although the reform and industrial schools were regulated by the Home Office and were eligible for government grants, they were usually run by volunteer organizations.

The development of these schools helped initiate a distinction between young and adult offenders, but children were still processed through the regular court system. Moreover, Parliament had not created alternative sanctions for juveniles. In 1887, however, the Probation of First Offenders Act introduced the suspended sentence. This was followed by the Probation of Offenders Act (1907), which established the probation scheme as we know it today.

Finally, the Children's Act (1908) created the juvenile court. This court is not a separate tribunal as was developed in the United States; rather, a juvenile court in England consists of a special sitting of a magistrates' court to handle juvenile matters. The Children's Act mandated that these courts adjudicate all offenses committed by children between the ages of seven and 16, with the exception of murder. It also authorized the court to decide issues involving the care of a child younger than 14. Among the circumstances identified as requiring attention were children found begging, children in the company of dangerous persons, and children living with a drunken or criminal parent. Children considered beyond parental control were also subject to the court's jurisdiction. The act also expanded the court's choice of noninstitutional sanctions by developing various discharge and fining schemes.

Thus, the British introduced a juvenile court that remained a part of the regular court hierarchy. Other changes in juvenile justice occurred during the first half of the twentieth century, but for our purposes, the Children and Young Persons Act (1933) and its companion statute of the same name (introduced in 1969) are most significant. These pieces of legislation essentially explained the organization and administration of the juvenile justice system throughout much of the twentieth century. Of particular importance was the Children and Young Persons Act (1969), for it attempted to address the central issue confronting juvenile justice at that time. What was the most important goal of the juvenile justice system?

The original intention of the 1969 act was to bring about a major shift in policy through the introduction of a more liberal humanitarian view toward juvenile delinquency. The act called for de-emphasis of the punishment rationale and expansion of care services offered by social workers. These services would be determined at the local level by offering offenders assistance in their own community rather than sending them to an isolated institution. If the act had been fully implemented (something successive governments had not been willing to do), courts would have lost their power to determine specific kinds of residential and nonresidential treatment. Moreover, borstal training, detention centers, and attendance centers would have been phased out. Although borstal training was eliminated, it was replaced with youth custody, which is not without its critics.

Though the decade of the 1960s gave birth to this liberal philosophy, it was implemented during the 1970s, when the climate of opinion toward juvenile delinquency was changing considerably. This was illustrated by the fact that funds needed to implement the shift to community control were simply not forthcoming. This was partly the result of the national economic crisis. To implement the policy, more social workers were needed. Unfortunately, neither the local authorities nor the national government were in a position to provide funds to hire the additional staff. More neighborhood care facilities would have to be established if the juvenile was to be treated in the community, but expenditures were not available for such projects. Thus, the system had to rely upon existing institutions whose design, location, and philosophy were in opposition to the intentions of the 1969 legislation.

During the 1970s, the number of juveniles involved in crime continued to rise, creating a public backlash favoring stricter measures in dealing with young offenders. Moreover, dropout rates among juveniles in treatment programs also rose significantly, something that did not enhance the cause of the treatment programs. These two factors helped to foster an ideological battle between magistrates and social workers. They also afforded the critics of community-based treatment an opportunity to attack one of its underlying assumptions: that of keeping the child in the community. At issue was the kind of community facility in which the delinquent would be housed. It was alleged that the material benefits found in community homes were creating an unrealistic environment for delinquents. Upon release, a considerable number of them would return to an environment that lacked these benefits. It was suggested that this could compound the delinquents' problems and lead to further violations of the law.

Finally, the act gave social workers more direct control over the juvenile when a care order or supervision order was issued. This created a jurisdictional and ideological battle between magistrates and social workers. Magistrates viewed the act as increasing the power of the executive and thus adversely affecting the impartiality of the judiciary. Because of the social workers' free rein in the implementation of care orders, magistrates believed their intentions for issuing such an order would be (and had been) altered by child care specialists. Because many magistrates had middle-class backgrounds and were sensitive to the public's demand for a more "law and order" philosophy, their conservative sentencing rationale was frequently at odds with that of caseworkers.

One study of the divergent views of magistrates and social workers toward psychiatric services lends credence to this point. It concluded that caseworkers displayed a greater degree of assurance in their expectations for psychiatric treatment than did magistrates. It

suggested that this reflected the differences existing between the two groups with respect to their perception of role and status (Prins, 1975).

The implementation of some of the key provisions of the Children and Young Persons Act (1969) were halted. Reasons frequently mentioned for the failure to enact the entire piece of legislation included the adverse change in the economy, the continued increase in juvenile crime, and the conflicting views among the decisionmakers and implementers of juvenile disposition orders. Some believed that this led to a serious crisis of purpose for those working in and treated by the juvenile justice system.

The Children and Young Persons Act (1969) was not able to resolve the question of what should be the ultimate goal of the juvenile justice system. Thus, the issue has remained a vexing problem, and the debate has continued over the kind of juvenile justice system that should be established and what that system's overriding goal should be. When considering the principal philosophical thrust of the juvenile justice system, a welfare model and a justice model are often pitted against each other. On the one hand, there is the liberal humanitarian notion that juvenile justice should have the welfare and protection of children as its goal. The most visible and vocal advocates of this approach are social workers. On the other hand, there remains a more conservative pragmatic philosophy that calls for a punitive approach—especially when dealing with those who are repeatedly at odds with the law. This has been reflected in the enhanced severity of institutional sanctions imposed by the courts (Pitts, 1988). In addition, the sentencing aim to isolate dangerous offenders or dangerous adult recidivists from the general population is finding support in the sanctioning of the serious juvenile offender.

Over the course of the past three decades, the British have focused a good deal of attention on crime and young people. Oftentimes, depending on the public's concern and the political climate of opinion, attention has focused either on the desire to divert more young people away from the formal adjudicating process or to develop strategies that deal with the most serious persistent offenders. Several pieces of legislation have been enacted that attempt to facilitate the administration and delivery of both objectives. They included: the Criminal Justice Act (1991), the Criminal Justice and Public Order Act (1994), the Crime (Sentences) Act (1997), the Crime and Disorder Act (1998), the Youth Justice and Criminal Evidence Act (1999), the Criminal Justice and Police Act (2001), the Anti-Social Behaviour Act (2003), and the Criminal Justice Act (2003). Both the Crime and Disorder Act (1998), which defined antisocial behavior as nuisance, unrest, incivility, and persistent offending, and the Anti-Social Behaviour Act (2003) contributed to a period in which more young people were being processed through the justice system rather than being diverted from it (see Goldson in Dockley and Loader, 2013 and Smith, 2014).

Prevention

Many countries have recognized the need to direct some juvenile justice resources to the creation of diversion programs. Diversion (or prevention, as it is commonly referred to in England) attempts to direct juveniles away from the formal adjudication process. Its primary purpose is to prevent more juveniles from being labeled delinquent. Many of the programs are available for those who have had some contact with the system.

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Ideally, all the major components of the justice system should be involved in prevention. In England, each component contributes to this objective in varying degrees. In the area of corrections, probation officers and local caseworkers work with juveniles who have received a noncustodial sentence in the hope that they can divert these people from future criminal involvement that could lead to a custodial sentence. Some custodial sentences are even designed to prevent the continuance of delinquent acts at an early stage. The secure training order, created by the **Criminal Justice and Public Order Act (1994)**, is an example of this policy. The underlying purpose of care orders and attendance centers also illustrates this position.

The youth courts' involvement in prevention is not as tangible, because they are not in the business of developing diversionary programs. Nevertheless, the courts contribute to the objectives when they issue noncustodial sentences such as absolute or conditional discharge, or a compensation, restitution, or hospital order. Issuing a care order to a nondelinquent is often a measure that the court will take in anticipation of future problems (possibly of a criminal nature) for the juvenile.

Police involvement in diversion generally takes two forms. One focuses on an officer's discretionary power to issue a reprimand or warning to a young person rather than formally charge them with an offense. The power to reprimand or warn was introduced by the **Crime and Disorder Act (1998)**. This replaces the discretionary authority that police formerly had to caution a young person. This new authority may be exercised when an officer has evidence that a young person has committed an offense, the officer is of the opinion that the person would be convicted based on the evidence, the offender admits guilt and has not been previously convicted of an offense, or the officer does not think that it is in the public interest to prosecute the case. A reprimand is given if the offender has not been previously reprimanded or warned; a warning is given if the offender has not been previously warned or the offense is serious. Moreover, when a warning is issued, the officer must refer the young person to a youth offending team, which is explained later.

The other avenue of police involvement with diversion is with the establishment of juvenile liaison schemes. These schemes are designed to show the public that police are not just involved with crime detection but that they are also committed to crime prevention. Within a constabulary, juvenile liaison officers are selected to work—with schools, neighborhood groups, and voluntary organizations—at diverting young people away from delinquent behavior. The officer, usually with the help of social workers, assists in organizing neighborhood groups. The goal is to establish a line of communication and foster a sense of cooperation between the group and the police. Juvenile liaison officers are also assigned to schools. Not sent to investigate crime or enforce school discipline, they are available to assist the school specifically in educating students about the administration of justice and more generally in the student's role as a socially aware and responsible citizen.

Through the **Crime and Disorder Act (1998)**, the government introduced some additional measures that are examples of early intervention for children and young people at risk. For example, the act permits local government authorities to establish child curfews for children under the age of 10. Thus, children at or below that age cannot congregate during a specific time period (late night, early morning) unless they are supervised by a parent. Another measure is the child safety order, which authorizes a court to impose specific

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requirements on a child under the age of 10 who is at risk of becoming involved in crime. For example, such an order can impose a curfew and prohibit the child from associating with specific people or frequenting certain places. ~~The order provides the child with supervision from a social worker for a period of roughly three months (and, in exceptional cases, 12 months).~~ The objective is to assure that the child is receiving proper care, protection, support, and appropriate control so that the behavior that led to the safety order is eliminated or reduced considerably. ~~Finally, while parents might not be blamed for specific actions of their children, they should be held responsible for their care and control. Unfortunately, it is believed that a significant number of juvenile offenders have not had an appropriate level of parental supervision. The act attempts to correct this deficiency through the establishment of the parenting order.~~ A court can issue such an order to a parent of either a child (a person under the age of 14) or a young person (a person between the ages of 14 and 17). An order can exist for a period of up to 12 months and is generally ~~designed to require that the parent receive counseling and guidance.~~

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The Persistent Young Offender

Toward the end of 1997, the government announced a new initiative regarding youth crime. While the government acknowledged that most young offenders infrequently commit offenses, they were concerned about a small group of persistent offenders. It was estimated that the persistent offenders consisted of approximately 100,000 active offenders and that they committed about one-half of all crimes. The profile of this group of 100,000 is as follows: one-half were under 21 years of age, almost two-thirds abused hard drugs, three-quarters were out of work, more than one-third were in care as children, almost one-half were excluded from school, and one-half were without qualifications for employment. It also has been reported that this group fluctuates, in that approximately one-fifth will stop offending but will be replaced by another cohort (Home Office, 2001). The government's initiative to address the problem of the persistent offender is not limited to this issue; it is also intended to provide a broad-based effort at reform of the juvenile justice system.

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The initiative is based on a systems approach to the problem. Several objectives have been identified, including reducing delays in the adjudication of young people accused of crime; confronting the young offender with the consequences of his or her actions for himself or herself, his or her family, the victim, and the community; imposing a punishment that reflects the seriousness of the offense and the offender's history of criminal behavior; encouraging the offender to make reparations to the victim; reinforcing the parental responsibility for the young person; and assisting the young person in addressing issues surrounding his or her deviant behavior and developing a sense of personal responsibility for his or her actions.

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A New National Strategy

With the passage of the Crime and Disorder Act (1998) and the Youth Justice and Criminal Evidence Act (1999), the government introduced a new process and some additional administrative mechanisms that are designed to facilitate the establishment of a new

national strategy to reform juvenile justice. Central to this effort is the desire to prevent young people from becoming involved in crime. If that effort initially fails, then the objective is to foster an approach for diverting young people away from the formal adjudication process when it is in the interests of the public and the young offender to do so. At the same time, the government acknowledges that greater effort must be devoted to focusing attention on the serious persistent young offender. As one might expect, the strategy is not without critics (Goldson, 2000).

The Youth Justice Board was created through the Crime and Disorder Act (1998). It is a group of approximately 12 people who have had extensive experience with juvenile justice issues. They are appointed by the minister of justice to a fixed term that cannot exceed five years. Their appointment can be renewed as long as the total years of service does not exceed 10 years. The Board has several responsibilities: to monitor the operation of the youth justice system, to advise the minister of justice on the effectiveness of the system and the establishment of national standards, to collect information from various groups working with young people in general and youth justice in particular, to publish information, to identify and acknowledge model programs, and to make grants available to local authorities and commissioned research. The results of much of this work will appear in an annual report. A key feature of the Board's responsibility will be the development of national standards that will be implemented at the local level.

The Crime and Disorder Act (1998) also calls for each local authority to develop and implement a youth justice plan. Part of this strategy involves bringing local politicians, social services, police, and educators together in an effort to address behavioral difficulties of young people in the community. A central feature of the plan is to prevent young people from reoffending. The act specifically calls upon each local authority to publish how they intend to provide and fund youth justice services. They must also explain how the youth offending teams will be utilized.

A key element in this new strategy is the establishment of youth offending teams. Each local authority is to establish at least one youth offending team. The team is composed of a probation officer, police officer, social worker, educator, healthcare professional, and other people if the local authority deems them appropriate for the task at hand. The principal objective of the team is to address the behavior of the young offender. The probation officer and social worker are expected to play a central role in this strategy, with the ultimate goal of bringing about a change in the behavior of the person. Members of the team might be actively involved in a case. For example, one team member might supervise a child safety order while another team member supervises a parenting order. If the local authority has already established community-based intervention services, the team can also avail themselves of that support. Thus, the strategy calls for a focused response on the part of the team, while allowing them to utilize the social service infrastructure that is already in place.

The Crime and Disorder Act (1998) initiated the government's national strategy to reform juvenile justice and to address youth crime. With the passage of the Youth Justice and Criminal Evidence Act (1999), another component in this national strategy was introduced. Youth offender panels are that part of the administrative mechanism that

focuses on requiring both young offenders and their parents to take responsibility for their behavior. More specifically, it is designed to allow the young offender active involvement in the justice process. This is an attempt to address an acknowledged fact that the traditional process of adjudication usually prevents the young offender from any meaningful participation.

The act creates a new sentence of referring the offender to a youth offender panel. The initial strategy is to limit this sentence to young people under the age of 18 who are being convicted for the first time. The terms of this referral order are expected to run from three to 12 months. **It is the responsibility of the youth offending team to create a youth offender panel for each person sentenced in this manner.** At least one member of a panel will be from the youth offending team. When such a referral order is issued to a young offender under the age of 16, at least one parent or guardian is expected to participate in the process, and the court can order that both parents be involved.

At the first meeting of the youth offending panel and the young offender, a contract will be agreed to that is designed to alter the young person's behavior and thus reduce the likelihood of reoffending. The conditions of the contract are likely to include such items as reparation to the victim (not required), mediation session between offender and victim (if the victim agrees), community service, a home curfew, attendance at school or work, participation in certain activities like alcohol or other drug rehabilitation, avoiding certain people and places, and reporting to a local authority. Subsequent progress meetings would be held either at regular intervals or when deemed appropriate. If the young offender refuses to sign a contract or fails to appear for a scheduled meeting, he or she would be returned to court for resentencing.

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Youth Court

Before the personnel and jurisdiction of the youth court are described, it is important to explain how the British classify juveniles according to their age and level of criminal responsibility.

Responsibility of Juveniles

Anyone under the age of 17 is referred to as a juvenile, but a more intricate classification scheme has been established to differentiate people in this group. Anyone under the age of 14 is a child. Children are further divided into two groups: those who are under 10 years of age and those who are between 10 and 13. Children under the age of 10 cannot be prosecuted for any offense, while those between 10 and 13 can be prosecuted if the prosecution can prove that the child knew that his or her actions were wrong. A child in this latter group who is charged with murder or manslaughter may be tried on indictment.

Prosecuting a child above the age of 10 was a new feature introduced by the Crime and Disorder Act (1998). This was a change from the old common law principle of *doli incapax* (not capable of crime), which traces its origins to the reign of King Edward III (1312-1377). *Doli incapax* operated under the assumption that children under 14 years of

age who had broken the law were too immature to know that what they were doing was wrong. Thus, they could not have criminal intent. With the 1998 statute, a case will go forward if the prosecution can prove to the court through evidence that the child knew his or her actions were seriously wrong. As a result, young people are being held responsible and culpable for their actions at an earlier age. Some have suggested that this is one of many examples of the government's strategy to emphasize the deeds of young offenders rather than their needs (see Pitts in Matthews and Young, 2003). It is significant to note that the age of 10 for criminal responsibility is the youngest in the European Union.

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A "young person" is defined as anyone between the ages of 14 and 17; these individuals are fully responsible for their actions under the criminal law. Young persons may be tried on indictment if they are charged with homicide or any offense that if committed by an adult would be punishable by imprisonment of more than 14 years, or if they are jointly charged with a person who is at least 18. This last category assures that the two would be tried together, which is necessary for the interests of justice. Finally, the term "juvenile adult" refers to anyone between the ages of 18 and 20. They are treated as adults for the purpose of trial, but special provisions have been devised for sentencing.

Court Personnel

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The Criminal Justice Act (1991) replaced the juvenile court with the youth court. The juvenile court was established at the beginning of the twentieth century. The youth court is a special sitting of a magistrates' court. Youth court magistrates are elected to a three-year term by and from the magistrates serving in a district. The selection is made from among the lay magistrates. Thus, district judges are rarely involved with youth court matters. Magistrates that are elected have displayed a specific interest in or experience with young people. In order to prepare them for this type of work, magistrates participate in a special training program. Although youth court magistrates cannot be over the age of 65, some criticism still remains regarding the apparent generation gap that exists between the justices and the young people brought before them. Magistrates sit in panels of three to hear cases; each panel must include at least one male and one female member.

The actual court proceedings are not open to the general public. The press, however, is allowed to attend and report on cases, as long as they do not disclose the identity of the child. Any details of a case that might lead to the child's identity are not disclosed. As the court is composed of lay magistrates, it is necessary to have a clerk present. The clerk of the court is a trained solicitor or barrister who is present to advise the justices on substantive and procedural points of law. Social workers are also in attendance. They include probation officers specializing in juvenile matters and members of the local authority's social service department.

Jurisdiction of the Court

While the old juvenile courts had both civil and criminal jurisdiction for people under the age of 17, youth courts will only deal with criminal cases involving people under the age

18. The court's original criminal jurisdiction over offenses excludes murder. There are some qualifiers on this. For example, a child under the age of 10 cannot be prosecuted for any offense, and a child between the ages of 10 and 13 can be prosecuted only if it is proved that he or she understood the consequences of their actions. The most controversial issues that have been raised about the court's jurisdiction have centered on its sanctioning authority. Some critics contend that the court should enhance its role as protector of the child's welfare, while others have called for a return to a more punitive sanctioning philosophy.

Procedures of the Youth Court

Pretrial Procedures

Generally, attempts are made to avoid referring a young person to a youth court for disposition. This position was adopted on the grounds that an appearance before a court has a tendency to stigmatize the juvenile. Thus, attempts are made to avoid labeling a young person delinquent, a position that also has been advocated throughout the United States. The police usually attempt to resolve the issue through consultations with the local authority, but if a decision is made to proceed through the court, the police either summon or arrest the juvenile (Maxim, 1986). When it is necessary to make such a referral, the law requires that the criminal charge be presented by a qualified person. In effect, this restricts the prosecution of juveniles to a Crown prosecutor.

Within 72 hours after being arrested, a juvenile must be brought before an examining magistrate. The court may permit the release of the juvenile into the parents' care, or it can remand the young offender. The term "remand" means the person will be placed either in the care of the local authority or committed to a remand center. Remand is generally reserved for juveniles characterized as being dangerous or unruly. If a remand center is not available, the person is detained in a local prison. Remand centers are also used to hold juvenile adults who are awaiting trial or sentence. The normal period of remand before trial is usually a week. Criticism has been directed at placing young people in local prisons, but the shortage of remand centers and the increase in the number of juveniles being detained has left the courts with few alternatives.

Whereas the issue of juvenile rights has received a good deal of attention in the United States, it has not been the center of controversy in England because the youth courts' criminal jurisdiction has not been challenged. Moreover, statute law has assured juveniles the right to be notified of hearings, the right to bail, the right to legal aid, the right against self-incrimination, and the right of appeal. As in the United States, youth courts in England can transfer a case to an adult court. The transfer is made to the Crown court and is usually undertaken when one of two circumstances warrants such a move: (1) If a young person is charged with a serious crime and the court is of the opinion that he or she should be found guilty, the court may take the position that the offender should be sentenced to a long term of detention, which only a Crown court has the power to impose; or (2) If a young person is charged in conjunction with an adult for an indictable offense, the youth court may transfer the case to a Crown court in the interest of justice.

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Trial Procedures

For both a trial on indictment and a summary proceeding, the youth court employs the same basic procedures that are used in an adult court. The juvenile's right to appeal is also the same as that permitted an adult offender. At trial, a juvenile is given the same right to be legally represented as an adult. Parents of a young offender are allowed to assist in their child's defense if their child is not represented. **Parents must attend all the court proceedings and can be issued a summons or warrant to assure their appearance.** Moreover, the court is required to cross-examine witnesses if the juvenile is considered incompetent to do so.

Special provisions have been established for individuals who have been found guilty. For example, a juvenile and his or her parents are given the opportunity to address the court before the justices make their final disposition order. The court must also review the offender's presentence report. This includes information of the young person's medical history, performance at school, home surroundings, and general conduct. The parents and the juvenile—if old enough to comprehend the information—must be informed of the contents of the report by the court. If there is disagreement over the contents, the court will permit the juvenile or the parents to produce other information. Lastly, before the disposition order is announced, the court usually explains to the juvenile and parents its rationale for issuing the order.

Disposition

There are a number of options available to a court when it issues its disposition order. These are generally classified as being either noncustodial or custodial methods of treatment. Only noncustodial measures are discussed here. The custodial methods will be explained under the subsection dealing with treatment facilities.

Many of the noncustodial measures available to adults are deemed appropriate for young people. They include absolute or conditional discharge, disqualification, fine, compensation, restitution, forfeiture of property, community service, and hospital orders. Each of these has been previously described in the sections on the law and corrections.

Since 1971, the court has had the power to issue supervision orders. These have largely replaced probation orders, which are no longer available to young people. With a supervision order, the person is placed under the supervision of either a caseworker from the local authority or a probation officer. Although the order is similar to that of probation, some of the conditions are different and the supervisor does not have to be a probation officer. The supervisor has the responsibility to advise and assist the person. Supervision orders are made for a period of up to three years or until the person reaches his or her eighteenth birthday. A supervisor can request that the court vary the conditions of the order during its term or replace it (usually with a care order). Once a person reaches 18 years of age, an adult magistrate's court can vary or cancel the order. If a person fails to abide by the conditions of the order, the court can impose a fine or order the person to an attendance center.

The court is permitted to impose specific conditions on the supervision order. For example, it can order a person to live with a specific individual or to reside at a particular place, such as a residential home. (Such an order cannot exceed 90 days, however.) It can

order an offender to participate in certain activities that are designed to enhance the person's rehabilitation. Supervision orders also can restrict a person's night activity or require school attendance as part of the condition. If a court believes a person is suffering from a mental condition that has been diagnosed by a medical practitioner, it can order the person to seek psychiatric supervision.

In 2001, the intensive supervision and surveillance program was introduced as a rigorous strategy designed to target repeat offenders who commit the most serious crimes. With these offenders, the level of community-based surveillance is enhanced considerably. The program is designed to last six months. During the first three months of the program, the supervision averages about 25 hours per week. During the last three months of the program, the supervision is reduced to about five hours per week.

Treatment Facilities

The British started to eliminate sentences of imprisonment for juveniles in 1908. In that year, prison sentences for children between the ages of 14 and 16 were abolished. The minimum age for sentencing has since been raised to 17. Prior to sentencing anyone under 21 to a prison term, a court must first consider the alternative custodial institutions available. There are currently five types of custodial disposition orders that the court can issue for people under 21: (1) youth custody orders, (2) secure training orders, (3) detention center orders, (4) care orders, and (5) attendance center dispositions.

Youth custody has replaced borstal training. Borstal training was designed for offenders between the ages of 15 and 21 who had been convicted on indictment of an offense that was punishable by imprisonment. It was considered a reformatory custodial sentence that varied in length from six months to two years. Magistrates' courts were prohibited from imposing this sentence because of its length, so a person was bound over to a Crown court to receive this disposition.

Borstals were introduced at the turn of the twentieth century and were designed to handle the juvenile adult. They attempted to combine vocational training, education, and counseling for those who had already established a pattern of criminality. Before its demise, however, trade school training and education had been abolished as features of this regimen. Although attempts were made to establish a relaxed atmosphere, the borstal regime came closest to that found in an adult prison, utilizing a collaborative treatment philosophy. Upon release from borstal training, the person was subject to a two-year period of supervision. Because of high recidivism rates, critics suggested that the system did not work.

Youth custody is designed for offenders between 15 and 20 years of age. For juveniles under 17, the maximum sentence is 24 months. Critics contend that its purpose is punishment, pure and simple. They point out that little in the way of counseling is achieved because generally only one probation officer is assigned to an institution. Moreover, many probation officers are of the opinion that they should concentrate their efforts on long-term offenders, which results in little help being directed at those who have received a short-term sentence. Some critics further contend that the overworked probation officers often find little time even to direct their efforts at the long-term offender (Pitts, 1988; Stewart and Smith, 1987).

Secure training orders were introduced with the Criminal Justice and Public Order Act (1994). They were designed to deal with young people who are considered persistent young offenders. A persistent young offender is defined as a person between 12 and 14 years of age who has committed three or more imprisonable offenses and fails to respond to noninstitutional sanctions. The maximum sentence for this order is two years—of which one-half is served at a secure training center and one-half is served under supervision within the community. The first secure training facility was operational in 1998.

With the passage of the Crime and Disorder Act (1998), the secure training order was replaced with the detention and training order. While this sentence is primarily designed for offenders between the ages of 12 and 17, it could be extended to offenders as young as 10. The detention and training order requires that the person is subject to a period of detention, which is then followed by a period of community supervision. This sanction is given only to young people who represent a high risk of reoffending, have a history of reoffending, and the nature of the offense is serious.

The following orders are designed for young people between the ages of 16 and 17. The community rehabilitation and punishment order can last between 12 months and three years. The young person is to perform unpaid community work for 40 to 100 hours. A community punishment order extends the time to perform unpaid community work to a period of between 40 and 240 hours. Finally, a community rehabilitation order is supervised by the youth offending team and may include activities in which the offender repairs the harm caused by his or her offense.

A supervision order is for a period of up to three years. It is generally used for more serious offenses. Specific activities can be attached to such orders—for example, participation in a drug treatment program or involvement in the intensive supervision and surveillance program mentioned earlier. Young people receiving such an order are also expected to participate in activities established by the youth offending team.

Care orders place a juvenile in the care of the local authority and remove all parental rights of control over the juvenile. The local authority may allow a person to live at home, in which case the supervision would be imposed through frequent visits by a caseworker. As an alternative, the local authority can require the person to reside in a community home, voluntary home, or foster home. Community homes are administered by the local authority and are regulated by the Ministry of Justice. Voluntary homes are run by volunteer organizations; they, along with foster homes, are subject to Ministry of Justice regulations.

Care orders cease to have the force of law when a juvenile reaches age 18, when the local authority informs the court that it would be more appropriate to impose a supervision order, or when the juvenile has reached the age of 15 and is considered a detriment to others in the home. In this last case, the person is sent to youth custody. A care order can be extended to a person's nineteenth birthday if the young person's mental condition warrants a continuance of the order. Interim care orders also can be issued to juveniles who have not been found guilty by a court; however, the term of the order is limited to 28 days.

Disposition to an attendance center is not strictly a custodial sentence. Instead, it is the imposition of a structured setting on an offender, which is administered by the local authority. Attendance centers are usually run by the local police or social service workers.

They are only open on the weekend so they do not interfere with a young person's work or schooling. By and large, the centers are designed to teach juveniles how to utilize their free time constructively. Physical education and craft programs are offered to illustrate alternative methods of using idle time.

A court can order a young offender above the age of 10 to attend a center. Excluded from this type of order are those people who have already been sentenced to imprisonment, youth custody, or a detention center. The total number of hours imposed on the offender cannot exceed 36 hours. Because the offender attends a center for two or three hours at a time, an order can take several months to fulfill. Attendance center orders are imposed on young people who do not warrant a custodial sentence but require some restrictions placed on their time that are not available through the other types of dispositions. If the order is breached, a court can impose another kind of disposition.

Critical Issues

The political climate of opinion has had a very significant role to play in the debate over how to address the behavior of some young people, especially in light of the social environment in which they have been raised. That climate has periodically shifted back and forth from a "law and order with punishment" theme to one of diversion and efforts to find alternative strategies. Most notable has been the effort to reduce the number of young people entering a correctional facility (Smith, 2014).

Two significant findings associated with the youths who have been incarcerated have come to light of late. In 2011, Her Majesty's Chief Inspector of Prisons indicated that 39 percent of boys surveyed did not plan to return to their family home upon release and that they were uncertain where they would live. While the fact that they might not return to their home environment might be a good thing in some cases, the issue was the need for the government to address the needs of post-custodial resettlement (see Goldson in Dockley and Loader, 2013).

It is also important to point out that studies of young offenders have found that 95 percent of young inmates between the ages of 16 to 21 years had a mental disorder and that 80 percent suffered from at least two issues. The disorders included: psychosis, neurosis, learning disabilities, personality disorders, and alcohol and other drug dependence (see Peay in Dockley and Loader, 2013). While such information is not a revelation for those who work in the mental health field, it would, no doubt, surprise many politicians and most of the public. Both of those findings illustrate why those young offenders with mental health issues should be diverted from a sentence of incarceration whenever reasonably possible and to seek therapeutic treatment in the community.

Finally, one of the more important needs of the juvenile justice system is to provide the public with accurate information about youth crime and the youth justice system. The first national survey that explored public opinion on youth crime and justice in Britain was completed in 2003. In spite of the popular commentary about youth crime, the survey found that while the public acknowledges that youth crime is an important issue, it is not considered the most important issue or even the most important crime issue of the day.

The survey found many misperceptions about youth crime. For example, people overestimated the amount of crime, particularly violent crime, in which young people were responsible. Most people were of the opinion that the sentences imposed on young offenders were too lenient, and they rated the youth courts as doing a poor job. This last finding is consistent with surveys conducted in other countries. The major conclusions from the study indicated that the public's pessimistic view is not justified by the official crime statistics. There is also a need to provide the public with quality information about youth crime and youth justice. Finally, the public favored alternatives to imprisonment for young offenders. When various restorative steps were explained to the participants, such as letters of apology and compensation to victims, the support for a custodial punishment declined even further (Hough and Roberts, 2004).

SUMMARY

This chapter has offered an introduction to the English criminal justice system. The major components of the system—the police, judiciary, law, corrections, and juvenile justice—were surveyed, along with an overview of the political system. The history of each component was presented, the organization and administration were described, the role of practitioners was examined, the legal procedures were explained, and some of the critical issues facing each component of the system were assessed.

The English have long been recognized for their remarkable contribution to civilization through the creation of the common law and the development of parliamentary democracy. Of particular interest to the American observer is the fact that England is a unitary country rather than a federated state, and that political powers are fused in Parliament rather than separated. This political fact has important implications for the criminal justice system. The home secretary is responsible for crime and policing, counter-terrorism, and immigration. The Lord Chancellor (minister of justice) has extensive powers over the justice system. He or she is responsible for the reform of the criminal law and is the ultimate authority for the courts, legal profession, prison and probation service, and criminal justice reform. Although the judiciary is independent of the influences of the political process, the national government has a degree of control over it as well. Moreover, in light of the fact that Parliament is supreme in matters of law, the judiciary does not rule on the constitutionality of legislation passed in Parliament. Through the Human Rights Act (1998), however, the judiciary has the authority to encourage both the executive and legislature to take corrective action when domestic legislation is not in compliance with human rights provisions.

There are also a number of substantive issues that are unique to the English justice system. Of particular interest is the legal status of the constable, the way judges are selected from a small group of lawyers, and the fact that the legal profession consists of two types of lawyers: solicitors and barristers.

Possibly the most interesting feature of English criminal justice is the extent to which laypersons are used in the day-to-day work of the system. Law enforcement had used the local police authorities and began introducing elected police and crime commissioners for

the provincial forces in 2012. They have also had for some time now civilians involved in overseeing the handling of complaints against police, and the Independent Police Complaints Commission is presently responsible for such issues. The courts rely upon magistrates (of which many are laypersons) to conduct summary trials. For a number of years, the prison department has been assisted by boards of lay visitors and has utilized lay volunteers in community-based corrections programs. Finally, lay volunteers have been active with juveniles found guilty of violating the law or in need of assistance in curbing their potential involvement in delinquent acts.