

# Crime control versus due process essay sample

[Law](#), [Criminology](#)



**ASSIGN  
BUSTER**

The American judicial system's need for an effective strategy to combat crime has been a continuously debated issue. While employing the adversarial models of crime control and due process, America struggles to find balance on a pendulum between individual rights and social order. In this window of opportunity, crime control and due process are examined and reflected into the eyes of society.

The primary goals of the American Criminal Justice system are simply to enforce the law and maintain social order, while protecting the people from injustice. Created by Herbert Packer in the 1960s, the crime control model places emphasis and priority upon the aggressive arrest, prosecution, and conviction of criminals. The due process model focuses on the rights of the accused (Roberson, 2003, p13).

Twentieth century America experienced an explosion of individual rights beginning with the sixties' civil rights era and continuing even today. Due process advocates argue that the purpose of any civilized society is to secure rights and freedoms for each of its citizens-including the criminally accused (Schmallenger, 2003, p. 18). The nature of individual rights is to ensure each individual receives protection as stated by the Bill of Rights. As the highest law of the land, the Bill of Rights must be enforced. Without these rights, Americans might be reduced to governmental automatons, and forced back into the dark ages of segregation. Persons, not yet convicted of crimes, should retain their rights. After all, we are an "innocent until proven guilty" society.

The criminal rights perspective holds that it is probably necessary to allow some guilty people to go free in order not to convict the innocent (Schmallenger, 2003, p. 18). This writer disagrees with this statement. The justice system, while not perfect, holds the difficult, if not somewhat impossible, task of separating the guilty from the innocent. Unfortunately, real criminals sometime escape prosecution, while innocent victims are imprisoned. Society is infatuated with crime, its victims, and criminals.

Due process advocates believe that it is most important to value individual rights within the criminal justice system. They believe that under no circumstances should the criminal justice system violate an individual's civil rights (Schmallenger, 2003, p. 18). Supporting the rights of convicted felons to the full measure of the free, is inconceivable. Criminals should loose many of their frivolous freedoms allowed behind cell walls. Conjugal visits, television, and computers should be rewarded for good behavior, not for being human.

Individual rights advocates also contend that the basis of American values and culture are found in our individual rights (Pursuit of Happiness, 2002). In other words, if we begin to erode our rights in favor of collective rights, we will undermine the structure of America. In fact, this group contends that the cultural values of a country are reflected by the manner in which we treat those accused of crimes. Therefore, taking rights away from them damages and minimizes the rights of the average citizen.

Advocates for these models are political in nature. The conservative position has generally endorsed the crime control model with the liberal position

defending and supporting the due process model (Pursuit of Happiness, 2002). These two positions will always be in conflict with each other forcing the American justice system to either make a choice or remain ineffective. In a court of law, the prosecution represents crime control, the defense promises due process, and the judge plays referee to keep things fair.

While the Bill of Rights guarantees the rights of all, enforcers of the law must also contend with public order as well as each individual, and their rights. The Rodney King incident is a good example of law enforcement gone wrong. The videotaped beating of Rodney King by officers of the Los Angeles Police Department on March 3, 1991 led to one of the most significant and well-known official misconduct/police beating cases in the history of the Criminal Section, receiving international attention. After the videotape of the beating was aired on nationwide television, the Criminal Section immediately opened its investigation, pending the outcome of the local trial of the four defendant police officers on state charges in California. When that trial ended a year later with the acquittal of all the officers, rioting broke out throughout Los Angeles, resulting in deaths and property damage. (LA Riots, Ten Years Later, 2002). Not only did King suffer bodily injury, but his individual rights were also bludgeoned with every blow from the officers' batons.

While this incident received tremendous public attention, it was not unique but rather representative of the numerous incidents of official misconduct regularly reviewed and prosecuted by the Criminal Section. The attendant publicity may also have led to a misconception that, because the victim was black, the officers charged with his beating were white and then indicted on

civil rights violations, racial motivation was an essential element of the federal crime (LA Riots, Ten Years Later, 2002).

Crime control advocates contend that there are times at which individual rights must succumb to communal rights, especially in terms of public safety and criminal justice issues. This argument is gaining popularity among politicians and citizens alike, but has long been advocated by a group of individuals known as communitarians. Essentially, communitarians contend that we are social beings; first and foremost, therefore, our collective rights come before the rights of the individual (Pursuit of Happiness, 2002). This means that as individuals, we give up our rights to those that may benefit the community more.

“ The good of the many out-weigh the good of the one,” (Star Trek, “ The Wrath of Khan,” 1982). Spock gave his own life to save his shipmates because he believed that many lives were more important than just one. The crime control advocates agree with this proverb. They say if society is to survive in an organized fashion, it can no longer afford to accord too many rights to the individual or to place the interest of any one person over that of the group (Schmallenger, 2003, p. 18). Efforts by this group are put forth to reduce the rights of the accused in order to make the criminal justice system more efficient in making arrests and punishments swifter and harsher (Pursuit of Happiness, 2002). For example, relax the rights concerning search and seizure and the appeal process. In essence, this group argues that the rights and safety of the whole supercede that of any individual. Therefore,

sending an innocent person to prison is much better than letting a guilty one go free.

In the futuristic movie, *Minority Report*, human drones are used to “predict” future murders of innocent victims. The police force steps in just as the crime is about to be committed, and take the would-be criminal to jail. This thought concept works well until policeman Tom Cruise makes the suspect list. The best and worst issues are highlighted for such a crime control dominated movie. Murder was controlled before it happened, and the suspects were convicted and imprisoned without trial. Tom Cruise was proven innocent when a minor technicality was found in one of the drones. From the crime-control view, the writer can understand the need for swift justice and perseverance of human life. But how can you accuse, prosecute, and convict someone of murder “before” it happens? There was no due process issues period, because there was no due process. After the flawed drone was discovered, the government went back to the good ole adversarial system.

It appears that many crime control policies in recent years have followed the philosophy of social order advocates (*Pursuit of Happiness*, 2002). For example, sex offender registration is in fact a reduction of individual rights for the safety of the community. The major welfare reform based a couple of years ago provides another example. It is no longer an individual's right to receive social services from the government, instead, individuals are told they must work and their communities must take care of them.

This writer believes in justice for the victim as well as the criminal. If we are to remain a truly free society, we must find a way to combine a new concept of crime control and due process. Freedom in this country is achieved from birth, and thus our individual rights are included in this package. Connor Petersen, the unborn child of Lacy and Scott, and victim of a heinous crime, is looked upon as an individual with as much rights as anyone else. And whoever murdered him, will receive as much punishment as if this baby had been born. This writer believes that individuals must maintain their individual rights, be it free, imprisoned or even deceased.

It is impossible to know what the future holds in respect to the American justice system. The future is often determined not by our intentions but by the uncontrollable events we encounter while pursuing our goals. The American justice system may not be able to achieve every goal they set for their agency, but they can maintain a common focus and balance of the crime control and due process models.

If we look back over the years, we can see that America has gone through substantial changes, which have left Americans more frustrated and a little more apprehensive. For example, there has been substantial inner city deterioration, decreasing proportions of the working poor, increasing levels of fear of crime, and until recently, increasing crime rates. In all, this has led us to become frustrated with one another, and more importantly, government agencies. We no longer feel safe walking in our own neighborhoods, rarely know our neighbors, and are apprehensive about strangers and people different than us. Americans, it seems, are attempting

to gain some control over our own lives and are turning our attention to criminals. The predominate feeling is that criminals are responsible for our unhappiness; therefore, get them out of our communities at any cost.

#### References:

Author Unknown (2002, October 10), Pursuit of Happiness

[Online]. Available: <http://www.tzaddik.us/lilpoh/>

Author Unknown (2002, April 29), LA Riots, Ten Years Later

[Online]. Available: <http://www.latimes.com/news/local/la-lariots-gallery>

Schmallegger, F. (2003). Criminal Law Today. New Jersey: Pearson Education, Inc.