



CRITICAL THINKING

There is truth to be found in the old saying: "It is better for a hundred guilty men to go free than for one innocent man to be hanged." Do you agree? How can your opinion apply to the whole system of corrections in general?

The Bill of Rights

The first ten amendments to the Constitution tell the rights of people in the criminal justice system. They are called the Bill of Rights. The first eight amendments are of the most interest to those learning about the criminal justice system.

The most important right is that of **due process**. This right means that every legal case must follow certain steps that protect every suspect's rights. The right of due process protects against society punishing an innocent person. In the example from 800 years ago, the accused person would not have had a right to due process. Common law of the times would have said that an accused person was guilty unless he could prove he was innocent.

In modern times, an accused person is innocent until proven guilty. This is because, very early on, people decided that this early system of criminal justice was most unfair. They wanted to change the laws. As a result, they made the king of England sign a paper called the *Magna Carta*. This means "Great Charter." Like a constitution, it listed the new rights of the English people. This was the birth of due process.

What does due process mean in the 1990s? It means that everyone has a clear set of rights. These rights include:

1. the right to be told when you are going to court
2. the right to a **hearing**
3. the right to **defend** yourself, or to answer your accuser
4. the right to a jury of people who will be fair
5. the right to a fair trial

Do all other countries have due process? The answer is no. In many societies, everybody must work together to find out who is and who is not guilty. Their legal systems say that the accused person is guilty unless the evidence proves that the person is innocent. In the United States, things are very different.

Two sides present their information on a case in court. These are the prosecution and the defense. They do *not* work together; they work against each other, or compete. This means that each side must argue one side of the thinking as best it can. This is to make sure that nothing important gets left out. As a result, the truth usually gets discovered, and the verdict is fair and just.

The prosecution must prove that a person is guilty beyond any reasonable doubt. On the other hand, the defense in the face of the prosecution's evidence has to prove that there is a reasonable doubt. By having the two sides do this, the criminal justice system feels there is the best chance of finding out who is guilty and who is not.

Another important right that is in the Constitution is the right to **habeas corpus**. *Habeas corpus* is a term that means "you have the body." Today, this right means that a person cannot be put into jail without being charged with a specific crime. The person must be brought in front of a judge in court soon after being arrested. This right

DID YOU KNOW? Charles Lynch set up a court during the American Revolution. People who supported the English side were tried in this court. Although Lynch, himself, never killed anyone, *Lynch law* came to mean the punishment of someone outside of the legal system without the benefit of due process. In the old West, vigilantes began to hang horse thieves and robbers.

EYE OPENER Gun deaths for juveniles rose 40 percent from 1988 to 1991. What does this suggest to you about the need for new gun-control laws?

makes sure people will not be put into jail for no reason or for not enough of a reason. What is needed in order to keep someone under arrest is called *just cause*.

Who Makes Laws?

Our laws are made by the U.S. Congress, which is part of the federal government. They are also created by city and state governments. State legislatures are the units of government that write and pass laws. Laws that are written down are called **statutes**. All of the written laws, together, are called *statutory law*.

How do the Congress and legislatures know what laws to make? The job of the Congress and legislatures is to listen to the people in order to discover and understand the changing needs of society. For example, there are many people whose children or relatives lost their lives because of drunk drivers. These people have made state legislatures change many laws so that drunk drivers must now be given a prison sentence.

Besides statutory law, there is common law and **case law**. Case laws are not written down. Instead, each time a case has been decided, that case becomes part of case law or law that reflects the history of similar cases.

All of our laws must be constitutional. Yet, courts have had some different ideas about just what the Constitution says or means. It is often difficult to decide what parts of the Constitution, if any, need to be reread for new meaning as the decades come and go. Also, society's opinions about many issues and subjects are constantly changing.

The Death Penalty

Is the death penalty constitutional? In the 1970s, the U.S. Supreme Court said that death-penalty laws of most states were not constitutional. It did not say that the death penalty itself was unconstitutional. For ten years, no one was executed in the United States. States changed their laws.

People who were against the death penalty appealed the convictions. This time, the Supreme Court said the laws were constitutional. Now thirty-six states have the death penalty.

Even though the Supreme Court does not yet agree, the judges think that the majority of people still believe that the death penalty is not constitutional. They think this because the Constitution says that any punishment cannot be cruel and unusual and that death is a cruel and unusual punishment to be used in extreme cases only.

This question is one of the most debated legal questions of the decade. It is one that everyone should think about seriously. The right thing to do is not always clear. One thing, though, is clear: society goes back and forth in its thoughts about the death penalty. As other factors change, the economy, family life, the quality of life-opinions change as to whether or not capital punishment is effective in reducing the murder



CRITICAL THINKING

People who support the death penalty argue that it is the best way to punish murderers. They say it frightens other would-be murderers from committing this crime. What is your opinion?

DID YOU KNOW? Archaeology, or the exploration of cultural remains, has added much to our knowledge of ancient laws and legal systems. By comparing the criminal justice systems of other times and places in history, modern societies can select the best features of many systems to build the wisest system possible.

EYE OPENER Since 1976, the number of prisoners executed for their crimes has been less than thirty-one in a single year. This is according to Todd Clear and George F. Cole in their book, *American Corrections*. Brenner, CA: Wadsworth, 1994.

9-19-13

Pages: 32,33 and 34

1. What do the first 10 amendments to the Constitution tell? _____

2. What are they called? _____
3. What is the most important right? _____
4. What does it mean? _____

5. What did common law say? _____
6. What was the birth of due process? _____
7. What are the two sides called that present their information on a case in court? _____

8. How does the criminal justice system have the best chance of finding out who is guilty and who is not? _____

9. What does habeas corpus mean? _____
10. What does that mean today? _____
11. What is needed to keep someone under arrest? _____
12. What are all the written laws together called? _____
13. How do the Congress and Legislatures know what laws to make? _____
14. What must drunk drivers now be given? _____
15. Case law reflects what? _____
16. What must all of our laws be? _____
17. What did the States do after the U.S. Supreme Court said that the death-penalty was unconstitutional? _____
18. Now how many states have the death penalty? _____
19. The death penalty is to be used in extreme _____ only.
20. What is the most debated legal question of the decade? _____

9-19-13

Critical Thinking

(pages: 32,33 &34)

1. Do you think it is better for 100 guilty men to go free than for one innocent man to hang? Why?
2. Gun deaths for youths has risen dramatically, how do you feel about new gun control laws?
3. Many people believe the death penalty frightens would-be murderers from committing this crime. What do you believe?
4. Why does it take so long for a prisoner given the death penalty to actually be executed?

5. How is the legal systems of other countries different than that in the United States when it comes to due process?

6. How does the Congress know what laws to make?

7. Is the Death Penalty constitutional? What has the Supreme Court said?