CJT 2900-CAPSTONE SEMINAR IN CRIMINAL JUSTICE

Henry White
Prince George's Community College

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CJT 2900-Capstone Seminar in Criminal Justice

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CHAPTER OVERVIEW

1: Defining and Measuring Crime and Criminal Justice

Learning Objectives

- In the previous section, we spent much time trying to understand how to define crime, whereas this section will focus on the task of measuring crime. Measuring crime is quite complex and requires an understanding of different data sets and how we use them. Defining crime seems complex, but measuring crime is just as complicated of a task. Without crime, there is no need for the criminal justice system. We must have a clear and accurate understanding of crime in order to create effective policies to combat it or help minimize it. This section will teach students how to obtain accurate measures of crime so that they can be an informed citizen. Further, if we have an accurate picture of crime and trends, we can better predict the needs of our society, such as increased patrol, rehabilitation services, and more. We will also spend some time talking about evidence-based practices, discussed in greater detail later. After reading this section, students will be able to:
- Develop an understanding of the different data sources used to gather precise and accurate measures of crime
- Recognize the difference between official or reported statistics, self-report statistics, and victimization statistics
- Evaluate the reliability of statistics and data heard about the criminal justice system

Critical Thinking Questions

1. What are the three different types of data sources we often rely on in CJ?
2. What are the strengths and limitations of each data source?
3. Identify when each type of data source would be appropriate for different crimes and why.

1.1: Dark or Hidden Figure of Crime

SHANELL SANCHEZ

It is difficult to determine that amount of crime that occurs in our communities every year because many crimes never come to the attention of the criminal justice system. There are various reasons that will be discussed, such as victims not reporting, victims not realizing they are victims, and offenders not getting caught. Research reveals, that on average, more than half of the nation's violent crimes, or nearly 3.4 million violent victimizations per year, went unreported to the police between 2006 and 2010, according to a new report published by the Bureau of Justice Statistics (BJS). [1] Because of this underreporting of crime, criminologists often refer to a concept known as the dark figure of crime.

There are three general sources of crime statistics that will be covered in this chapter: official statistics, which we often describe as reported statistics, self-report statistics, and victimization statistics. Each of these sources of crime statistics has pros and cons, and we will spend time discussing those as well. Additionally, we will discuss the importance of looking at crime trends over time, relying upon statistics and research when developing policy, and how data should be a tool that enhances the criminal justice system.

If we have accurate and reliable crime statistics, we can evaluate criminal justice policies and programs. For example, we could use crime statistics to see if incarcerating drug offenders is effective. Such effectiveness is studied in the correctional system via the 'risk principal,' or classifying people based on the level of risk. https://heinonline.org/HOL/LandingPage?handle=hein.journals/fedsen27&div=37&id=&page=

Relying on official statistics can be problematic to grasp a correct understanding of crime in society because many crimes never even come to the attention of the criminal justice system. Official statistics are often the crimes that are known or reported to police or others. It may seem shocking that people do not report crimes, but it is more common than we think. Let us take the example of looking at the gap between reported and unreported crimes.

Dark Figure Of Crime Example

My father-in-law grew up in a small town in South Dakota. When his family moved to Colorado, they still had a rural mindset to their property. They often think people should not touch other peoples things, so there is no need to lock up their house, car, or other property. He leaves his vehicle, house, and garage unlocked in Colorado because of that mindset. However, they live in a large, populous part of Colorado in a suburb outside Denver. Most people do not know the neighbor three doors down. One morning he woke up to his truck gone! The first thing he did was realize he left the keys in the truck and the truck was unlocked (normal to him). Next, he decided to take a walk to look for it before phoning the police. He located the truck, and it was damaged. It appeared that kids took it for a joy ride, as evidence from the beer cans and odor. He chose not to call the police. Why? He was happy the property had was located, yet he believed 'it was his fault,' and he had to get to work. Is this type of reaction more common than we may think?

A friend of mine was a victim of domestic violence for over nine months and never told anyone, especially police. Her boyfriend was only presented as perfect, loving, and romantic on social media and around people. When she did come forward, it was after she landed in the emergency room due to him assaulting her. People may initially think domestic violence victims would always call the police, but there are so many reasons people do not come forward.

When victims of crime do not report, or police are not made aware of a crime these crimes go uncounted in the official statistics. They become part of the **'dark figure of crime**' that we will learn about throughout this section. [2]

Some Reasons People May Not Report [3]

1. The victim may not know a crime occurred
2. The offender is a member of the family, a friend, or an acquaintance
3. The victim thinks it is not worth reporting
4. The victim may fear retaliation
5. The victim may also have committed a crime
6. The victim does not trust the police

1. Bureau of Justice Statistics. (2012). Nearly 3.4 million violent crimes per year. https://www.bjs.gov/content/pub/press/vnrp0610pr.cfm ↵
2. Biderman, A., & Reiss, A. (1967). On exploring the "dark figure of crime." *The Annals of the American Academy of Political and Social Science. 374*(1), 1–15. https://doi.org/10.1177/000271626737400102 ↵
3. Brantingham, P., & Brantingham, P. (1984). *Patterns in Crime*, New York: Macmillan. ↵

1.2: Official Statistics

Despite being aware that crime does go unreported, it is still important to estimate and attempt to measure crime in the country. However, it is essential always to be aware of the data sources strengths and weaknesses when reading crime statistics. Also, be cautious of how changing data collection techniques may alter statistics. For example, if a survey never collected data on prescription drug abuse but then all of a sudden does it could seem like prescription drugs are being abused at high rates. However, it is most likely just because it is the first time the questions got asked and there are no comparison groups.

Official statistics are gathered from various criminal justice agencies, such as the police and courts, and represent the total number of crimes reported to the police or the number of arrests made by that agency. Remember, if an officer uses discretion and does not arrest a person, even if a crime was committed, this does not get reported.

The Federal Bureau of Investigation's (FBI's) Uniform Crime Reports (UCR) is the largest, most common data on crime currently available. The UCR lists the number of crimes that were reported to the police and the number of arrests made. The link below can take you to the UCR homepage https://www.fbi.gov/services/cjis/ucr.

The UCR Program's primary objective is to generate reliable information for use in law enforcement administration, operation, and management. Various groups and agencies rely upon the UCR crime data, such as law enforcement executives, students, researchers, the media, and the public at large seeking information on crime in the nation. [1] The UCR began in 1929 by the International Association of Chiefs of Police to meet the need for reliable uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics. Every year there are four annual publications produced from data received from more than 18,000 city, university and college, county, state, tribal, and federal law enforcement agencies voluntarily participating in the program. [2]

The UCR Program consists of four data collections: The National Incident-Based Reporting System (NIBRS), the Summary Reporting System (SRS), the Law Enforcement Officers Killed and Assaulted (LEOKA) Program, and the Hate Crime Statistics Program. The UCR also publishes special reports on Cargo Theft, Human Trafficking, and NIBRS topical studies. The UCR Program will manage the new National Use-of-Force Data Collection.

National Incident-Based Reporting System, or NIBRS

The National Incident-Based Reporting System, or NIBRS, was created to improve the overall quality of crime data collected by law enforcement. NIBRS is unique because it collects data on crimes reported to the police, but also incidents where multiple crimes are committed, for example when a robbery escalates into a rape. [3] NIBRS also collects information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in the crimes. See the link to go directly to NIBRS https://www.fbi.gov/services/cjis/ucr/nibrs

Hate Crime Statistics

Congress passed the Hate Crime Statistics Act, 28 U.S.C. § 534, on April 23, 1990. This required the attorney general to collect data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." Hate crime statistics may assist law enforcement agencies, provide lawmakers with justification for certain legislation, provide the media with credible information, or simply show hate crime victims that they are not alone (FBI, 2018). See the link to go to the FBI's hate crime statistics link https://www.fbi.gov/services/cjis/ucr/hate-crime.

The FBI UCR Program's Hate Crime Data Collection gathers data on the following biases:

Race/Ethnicity/Ancestry

- Anti-American Indian or Alaska Native
- Anti-Arab
- Anti-Asian
- Anti-Black or African American
- Anti-Hispanic or Latino
- Anti-Multiple Races, Group
- Anti-Native Hawaiian or Other Pacific Islander
- Anti-Other Race/Ethnicity/Ancestry
- Anti-White

Religion

- Anti-Buddhist
- Anti-Catholic
- Anti-Eastern Orthodox (Russian, Greek, Other)
- Anti-Hindu
- Anti-Islamic
- Anti-Jehovah's Witness
- Anti-Jewish
- Anti-Mormon
- Anti-Multiple Religions, Group
- Anti-Other Christian
- Anti-Other Religion
- Anti-Protestant
- Anti-Atheism/Agnosticism/etc.

Sexual Orientation

- Anti-Bisexual
- Anti-Gay (Male)
- Anti-Heterosexual
- Anti-Lesbian
- Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)

Disability

- Anti-Mental Disability
- Anti-Physical Disability

Gender

- Anti-Male
- Anti-Female

Gender Identity

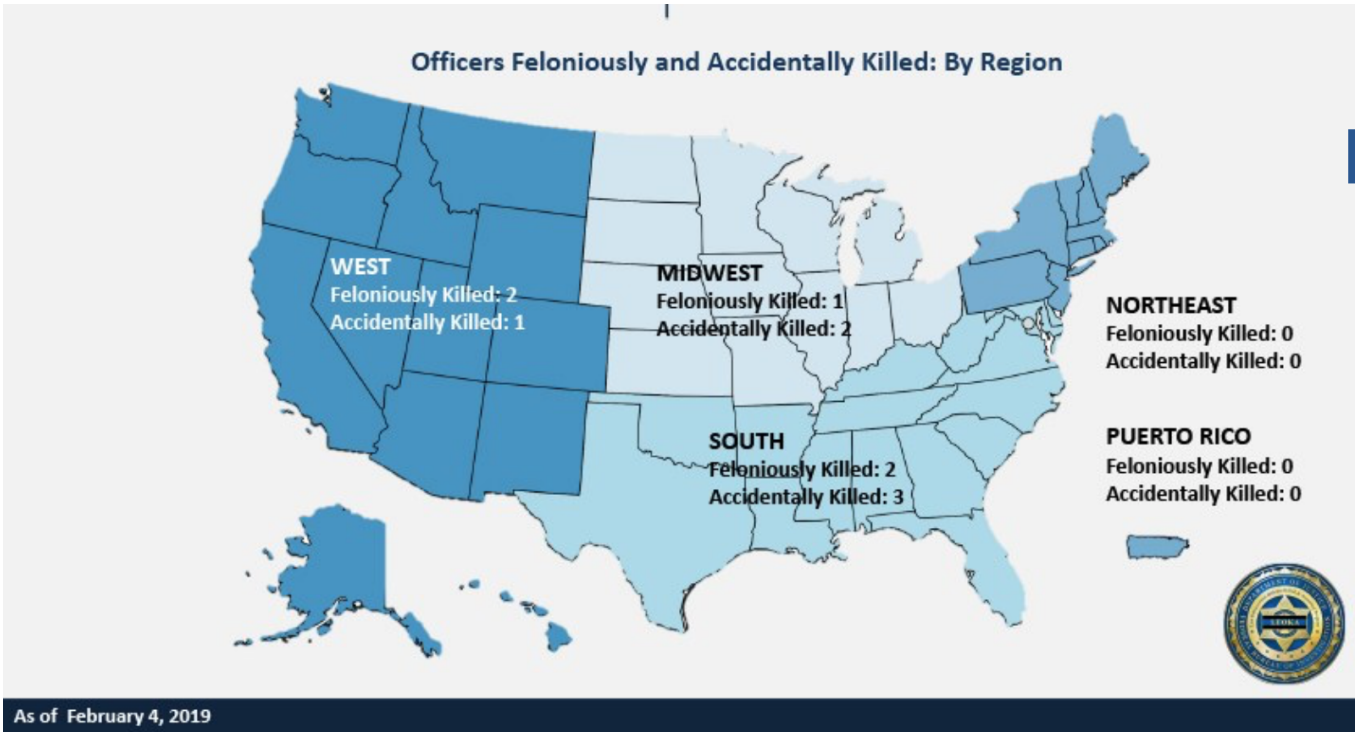
- Anti-Transgender
- Anti-Gender Non-Conforming

The types of hate crimes reported to the FBI are broken down by specific categories. The aggregate hate crime data collected for each incident include the following:

- **Incidents and offenses by bias motivation:** Includes crimes committed by and against juveniles. Incidents may include one or more offense types.
- **Victims:** The types of victims collected for hate crime incidents include individuals (adults and juveniles), businesses, institutions, and society as a whole.
- **Offenders:** The number of offenders (adults and juveniles), and when possible, the race and ethnicity of the offender or offenders as a group.
- **Location type:** One of 46 location types can be designated.
- **Hate crime by jurisdiction:** Includes data about hate crimes by state and agency.

Law Enforcement Officers Killed and Assaulted Program LEOKA

LEOKA provides data and training that helps keep law enforcement officers by providing relevant, high quality, potentially lifesaving information to law enforcement agencies focusing on why an incident occurred as opposed to what occurred during the incident, with the hope of preventing future incidents. [4]



LEOKA Data

Exclusions from the LEOKA Program's Data Collection

Deaths resulting from the following are not included in the LEOKA Program's statistics:

- Natural causes such as heart attack, stroke, aneurysm, etc.
- On duty, but death is attributed to their own personal situation such as domestic violence, neighbor conflict, etc.
- Suicide

Examples of job positions not typically included in the LEOKA Program's statistics (unless they meet the above exception) follow:

- Corrections/correctional officers
- Bailiffs
- Parole/probation officers
- Federal judges
- The U.S. and assistant U.S. attorneys
- Bureau of Prison officers
- Private security officers

All of these official statistics are a great starting point, although, recognize they are imperfect in nature. Police agencies can change their attention to certain events, which can change the overall number of arrests. For example, if police begin cracking down on domestic violence the statistics may go up. This crackdown can make it appear that the problem has increased, although it can be related to the crackdown. Just remember, if the crime is not reported, or no arrest is made it will not get captured in the data.

Bureau of Justice Statistics Exercise

The BJS is relatively user-friendly. Look at crime statistics by state, region, or city, and explore different years and crime types.
https://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm
Examine current state AND city crime trends in the past five years.
Second, pick a state AND city interested in living in and examine the crime trends for the past five years.

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1. U.S. Department of Justice. (2017). UCR Reports ↵
2. U.S. Department of Justice. (2017). UCR Reports ↵

3. Rantala, R. R. (2000). Effects of NIBRS on crime statistics. *Bureau of Justice Statistics Special Report.* U.S. Department of Justice, Office of Justice Programs. Washington, DC. ↵
4. FBI (2017). https://www.fbi.gov/services/cjis/ucr/leoka ↵

1.3: Victimization Studies

Victimization studies attempt to fill in where police reports are missing by asking people if they have been a victim of a crime in a given year, reported or not. The National Crime Victimization Survey (NCVS) is the primary source of information on criminal victimization in the United States. The NCVS helps fill in gaps that the UCR and NIBRS cannot fill in because that data is only crimes known to police. Every year the U.S. Census Bureau administers the survey and gathers data on frequency, characteristics, and consequences of criminal victimization from approximately 135,000 households, composed of nearly 225,000 persons. The NCVS collects information on nonfatal personal crimes (i.e., rape or sexual assault, robbery, aggravated and simple assault, and personal larceny) and household property crimes (i.e., burglary, motor vehicle theft, and other theft) both reported and not reported to police. [1] It is important to help fill in the gap of the dark figure of crime previously discussed.

The NCVS collects information on age, sex, race and Hispanic origin, marital status, education level, and income, and whether they experienced victimization. Additionally, the NCVS collects information about the offender about age, race and Hispanic origin, sex, and victim-offender relationship, characteristics of the crime (e.g., time and place of occurrence, use of weapons, nature of injury, and economic consequences), whether the crime get reported to police, reason(s) the crime was or do not get reported, and victim experiences with the criminal justice system. [2] See the link below to explore the NCVS https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245

See the report below on findings of repeat victimization from the NCVS: https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6046

? NCVS Exercise

Go to the NCVS page and use the analysis tool that allows you to examine the National Crime Victimization Survey (NCVS) data on both violent and property victimization. You can select the victim, household, and incident characteristics.

You can instantly generate tables with national estimates of the numbers, rates, and percentages of victimization from 1993 to the most recent year that NCVS data are available. The pre-set Quick Tables show you trends in crime and reporting to the police. If you would like more detail, use the Custom Tables analyze victimization by excellent characteristics.

https://www.bjs.gov/index.cfm?ty=nvat

As with any data source, there are challenges and limitations to victimization surveys. Respondents may have issues recalling victimization, which can lead to underreporting or overreporting. If an individual was traumatized the event may blur together, and it may have occurred in 2017 rather than 2018, but gets reported as 2018. Other times respondents may lie or omit information for various reasons such as shame, fear, confusion, and a lack of trust. If the respondent is uncomfortable with the interviewers, they may not want to tell them that their partner abused them, out of fear it will get reported to police. However, methodological techniques can attempt to minimize these challenges buy bounding to mitigate the chances of this happening. [3]

1. Bureau of Justice Statistics, Data Collection: National Crime Victimization Survey (NCVS) ↵
2. Bureau of Justice Statistics, Data Collection: National Crime Victimization Survey (NCVS) ↵
3. Lab, S., Holcomb, J., & King, W. (2013). *Criminal justice: The Essentials.* Oxford University Press: Oxford. ↵

1.4: Self-Report Statistics

Self-report statistics are stats that are reported by individuals. Self-report statistics get gathered when people are asked to report the number of times they may have committed a particular crime during a set period in the past, regardless of getting caught or not. For example, in-class students take a criminal activity checklist and report behaviors they have engaged in at some point in their lives. People should be honest since the data has no identifying information collected, and report even if no one ever found out what we find during class time it that all the students, for over eight years of teaching, have committed a crime. However, the amount of students that have to get caught is minimal, especially those that received formal sanctioning from the CJ system (funneling of crime).

Monitoring the Future is an ongoing study of the behaviors, attitudes, and values of American secondary school students, college students, and young adults. Each year, a total of approximately 50,000 8th, 10th, and 12th-grade students get surveyed (12th graders since 1975, and eighth and 10th graders since 1991). Besides, annual follow-up questionnaires are mailed to a sample of each graduating class for some years after their initial participation. The Monitoring the Future Study has been funded under a series of investigator-initiated competing research grants from the**National Institute on Drug Abuse**, a part of the **National Institutes of Health**. MTF is conducted at the
Survey Research Center in the **Institute for Social Research** at the**University of Michigan**.

Monitoring the Future Drug Use Amongst Teens

How do we get estimates on drug use amongst teens if most of them do not get caught? We rely on reports like the one above from the MTF. Monitoring the Future (MTF) is a long-term study of substance use among U.S. adolescents, college students, and adult high school graduates through age 60. The survey is conducted annually, which allows us to examine long term trends. MTF findings identify emerging substance use problems, track substance use trends, and inform national policy and intervention strategies. Respondents are confidential, which means we cannot link their answers to them. Therefore, people may be more likely, to tell the truth. [1]

In the Report: One Form of Drug Use Showed a Sharp Increase in Use in 2018

The most important findings to emerge from the 2018 survey is the dramatic increase in vaping by adolescents. Vaping is a relatively new phenomenon, so we are still developing measures related to this behavior, which included asking separately for the first time in 2017 about the vaping of three specific substances—nicotine, marijuana, and just flavoring. As the section on vaping in this monograph shows, there was a significant and substantial increase in 2018 in the vaping of all three of these substances, including some of the most substantial absolute increases MTF has ever tracked for any substance. Given that nicotine is involved in most vaping, and given that nicotine is a highly addictive substance, this presents a severe threat.[2]

Self-report statistics are great because they can help discover problems we were unaware of, such as vaping. Further, it helps us identify victimless crimes, or crimes to where there is no victim such as drug use, gambling, and underage drinking. Lastly, we uncover offenses that are not as serious such as shoplifting, which are less likely to be known to police. [3]

However, self-report data also has its limitations. Respondents may exaggerate or underreport their criminal behavior, for various reasons. For example, in the class activity we do, many students did not know what they did was illegal behavior until the statute was read, so they would never have thought they committed a crime. Lastly, if we do not capture a large sample, we may limit who gets the survey. If we are surveying kids in school about substance abuse, but not reaching out to all kids even if they get suspended, we may miss important data. [4]

Which Data Should We Use?

In each type of data (official, self-report, and victimization) there are pros and cons. Additionally, each source is more likely to produce a better picture of what is occurring depending on the area of study. If a person wanted to get the best statistics on reported homicides in the US, which source would be best? How about domestic violence? What if we were interested in finding out drug abuse rates amongst teens in high school?

1. Johnston, L.D., Miech, R.A., O'Malley, P.M., Bachman, J.D., Schulenberg, J.E., & Patrick, M.E. (2018). *MTF. 2018 Overview Key Findings on Adolescent Drug Use* ↵
2. ohnston, L.D., Miech, R.A., O'Malley, P.M., Bachman, J.D., Schulenberg, J.E., & Patrick, M.E. (2018). *MTF. 2018 Overview Key Findings on Adolescent Drug Use* ↵
3. Hindelang, Hirschi, & Weis, (1981). *Measuring delinquency.* Thousand Oaks, CA: Sage Pubs. ↵

4. Lab, S., Holcomb, J., & King, W. (2013). *Criminal justice: The Essentials*. Oxford University Press: Oxford. ↵

1.5: Misusing Statistics

Genocide: Misuse of Statistics Exercise

The misuse of statistics promotes crime myths and generates fear of crime. There are various ways that we can misuse statistics, such as limiting public access to critical information, intending to mislead the public by presenting false information, or using deceptive formats to present information. [1]

Exercise: Find a news article that demonstrates an apparent misuse of statistics for a crime OR an article that demonstrates that people are trying to get release accurate and reliable information about a crime. Specifically, discuss how it is a misuse of statistics or not and why that particular article was picked in 500 words.

For example, the article I found is about the genocide in Myanmar. The article is titled, “What is happening in Myanmar is genocide. Call it by its name” in the Washington Post. For a long time, no one referred to this crime as a genocide, and there were deliberate attempts by the government in Myanmar and the world to not refer to it as genocide. Despite visual evidence that a genocide was occurring, the government tried to deny it. The news said, “NO MORE. Call it what it is.”

https://www.washingtonpost.com/opinions/global-opinions/what-is-happening-in-myanmar-is-genocide-call-it-by-its-name/2018/08/29/611a1090-aafe-11e8-a8d7-0f63ab8b1370_story.html?utm_term=.9e76f629a8b3

Genocide of Rohingya families

Watch the video link embedded at the top of the CNN news clip where the Monks say the international community is wrong and it is not genocide. However, the United Nations took a stance by calling it genocide and calling for the end of it. https://www.cnn.com/2017/11/25/asia/myanmar-buddhist-nationalism-mabatha/index.html

Misusing statistics can happen all the time, and sometimes it is intentional, others accidental. When we think back to the example of my grandfather, he would just cite stats out of nowhere. However, he had never really studied any of the issues and his sources were unreliable. As a child, I often wondered how he knew this? He did not intend to spew inaccurate facts but accidentally did to

us because he listened to someone who thought they had knowledge. This happens often when people give ‘opinions’ without facts, which they are merely opinions. It is important to be able to distinguish this.

1. Kappler, V., & Potter, G. 2018. *The Mythology of Crime and Criminal Justice* (5th ed.). Waveland Press, Inc: Long Grove. ↵

CHAPTER OVERVIEW

2: Criminological Theory

Learning Objectives

- This section introduces the importance of theory and theory creation. It also briefly describes some of the major paradigms of criminal explanations. After reading this section, students will be able to:
- Distinguish between classical, biological, psychological, and sociological explanations of criminal behavior.
- Understand the links between crime control policy and theories of criminal behavior.
- Demonstrate effective application of criminological theories to behavior.

Critical Thinking Questions

1. How do we know what theories explain crime better than other theories?
2. How did the classical theory of crime influence the American criminal justice system?
3. Why is it difficult to study biological theories of crime without thinking about the social environment?
4. Which theory do you think explains criminal behavior the best? Why?
5. Why do you think there have been so many different explanations to describe the origins of criminal behavior?

2.1: What is Theory?

A **theory** is an explanation to make sense of our observations about the world. We test hypotheses and create theories that help us understand and explain the phenomena. According to Paternoster and Bachman (2001), theories should attempt to portray the world accurately and must "fit the facts."[1] Criminological theories focus on explaining the causes of crime. They explain why some people commit a crime, identify risk factors for committing a crime, and can focus on how and why certain laws are created and enforced. Sutherland (1934) has referred to criminology as the scientific study of breaking the law, making the law, and society's reaction to those who break the law. [2] Besides making sense of our observations, theories also strive to make predictions. If we understand why crime is happening, we can formulate policies or programs to minimize it.

The building blocks of any theory are concepts. Crime, delinquency, and deviance are all concepts that need to be defined. We seek to explain these concepts with other concepts. For example, some theories may link crime with self-control. Self-control is another concept that needs to be defined. Once we define "crime" and "self-control", we need to measure them. Operationalization is the process of determining how we will measure concepts, which are called variables. We could measure self-control in a number of different ways. For example, we could test a person's ability to resist temptation (The Marshmallow Test). Once we test the relationship between two variables, we also need to make sure another variable is not affecting the results. Spuriousness is when a third variable is causing the other two. We know that ice cream sales and murder rates are positively correlated; when one goes up the other goes up. At first glance, someone may claim that ice cream is causing people to kill. However, what do you think might be a better explanation? Can you think of a third variable that might cause ice cream sales and murder rates to increase?

When we try to explain why crime occurs, we can look at it from many different perspectives. We can create macro-level explanations and micro-level explanations. Macro-level explanations focus on group rate differences. For example, why do some countries have more (or less) violent crime than others? Why do young people commit more crime than older people? Why do males commit more crime than females? Micro-level explanations center on differences among individuals. Macro-level explanations focus on societal structures while micro-level explanations focus on processual differences.

It's "Just" a Theory Exercise

Many laypeople will give their opinions on the relationship between phenomenon based on their hunches or observations; these are not theories. A theory explains and interprets the facts. A proper scientific theory must be falsifiable. Criminologists who create theories test their hypotheses. Many times the theorist will modify his or her theory based on the research. Upon more investigation, those theories that have yet to be falsified become accepted as a valid description between the phenomenon.

Darwin's theory of evolution has yet to be falsified. There are numerous unanswered questions, but as time goes by, scientists are discovering more and more evidence to support the theory.

When I was an undergraduate student, I majored in Psychology; I thought I was in control of everything about me. However, when I took my first criminology class, I realized the social environment also had an impact on who I was becoming. For example, I did not choose my parents, their income, how many siblings I had, or where I lived. Each of those had an impact on who I was and who I became friends with in my childhood. Most of my childhood friends, who are still my friends, may have been based solely on how far away they lived from my parents instead of their character, interests, or personality. What do you think?

1. Paternoster, R., & Bachman, R. (Eds.) (2001). *Explaining criminals and crime: Essays in contemporary criminological theory*. Oxford: Oxford University Press. ↵
2. Sutherland, E.H. (1934). *Principles of criminology* (2nd ed.). Philadelphia, PA: Lippincott. ↵

2.2: What Makes a Good Theory?

Numerous criminological theories attempt to explain why people commit a crime. What makes one better than another? How do we judge theories against each other? The natural and physical sciences mostly agree on the knowledge of their disciplines. However, criminology is interdisciplinary, and many criminologists may not agree on what causes criminal behavior. For instance, Cooper, Walsh, and Ellis (2010) have looked at the political ideology of criminologists and their preferred or favored theories. Even one's political leanings can influence a person's set of beliefs about the causes of crime.[1]

We must apply the scientific criteria to test our theories. Akers and Sellers (2013) have established a set of criteria to judge criminological theories: logical consistency, scope, parsimony, testability, empirical validity, and usefulness. [2] Logical consistency is the basic building block of any theory. It refers to a theory's ability to "make sense". Is it logical? Is it internally consistent? A theory's scope refers to its range, or ranges, of explanations. Does it explain crimes committed by males AND females? Does it explain ALL crimes or just property crime? Does it explain the crime committed by ALL ages or just juveniles? Better theories will have a wider scope or a larger range of explanation.

A parsimonious theory is concise, elegant, and simple. There are not too many constructs or hypotheses. Simply put, parsimony refers to a theory's "simplicity". A good scientific theory needs to be testable too. It must be open to possible falsification. "Every genuine *test* of a theory is an attempt to falsify it or to refute it. Testability is falsifiability; but there are degrees of testability: some theories are more testable, more exposed to refutation than others; they take, as it were, greater risks…One can sum up all this by saying that *the criterion of the scientific status of a theory is its falsifiability, or refutability, or testability"* (Popper, 1965, pp. 36-37). [3]

After many tests and different approaches to research, those theories supported by evidence have empirical validity. Thus, according to Gibbs (1990), the verification or repudiation of a given theory through empirical research is the most important principle to judge a theory.[4]

Finally, all theories will suggest how to control, prevent, or reduce crime through policy or program. The premise of a particular theory will guide policy-makers. For example, if a theory suggested that juveniles learn how to commit crime through a network of delinquent peers, policymakers will try to identify juveniles at-risk for joining delinquent subcultures.

1. Cooper, J., Walsh, A., & Ellis, L. (2010). Is criminology ripe for a paradigm shift? Evidence from a survey of American criminologists. *Journal of Criminal Justice Education*, *2*, 332-347. ↵
2. Akers, R.L., & Sellers, C.S. (2013). *Criminological theories: Introduction, evaluation, and application*. New York: Oxford. ↵
3. Popper, K.R. (1965). *Conjectures and refutations: The growth of scientific knowledge*. New York: Harper Torchbooks. ↵
4. Gibbs, J.P. (1990). The notion of theory in sociology. *National Journal of Sociology*, *4*, 129-159. ↵

2.3: Pre-Classical Theory

Comte (1851) was interested in epistemology, or in other words, how humans obtain valid knowledge. He claimed human being's progression of knowledge went through three separate stages – theological, metaphysical, and scientific.[1] The theological stage used supernatural or otherworldly powers to explain behaviors, the metaphysical used rational and logical arguments, and the scientific used positivism and scientific inquiry. During the middle ages, spiritual explanations assumed human beings broke laws or did not conform to conventional norms of society because he or she possessed by demons, the devil, or he or she was a wizard or witch. These explanations assumed God-given "natural law"; thus, crime was equivalent to sin. Governments had the moral authority to punish criminals/sinners and the state was acting on behalf of God. As a result, the accused person could "prove" their innocence by a trial by battle (only the victor is innocent) or trial by ordeal (innocent party would be unharmed while the guilty party would feel pain). As you can imagine, punishments and justice were arbitrary and severe, especially when feudal lords, with God's permission, determined guilt. A person's rank, status, and or wealth determined their punishment, rather than the merits of the case at hand.

1. Comte, A. (1877). System of positive polity (4th vol.). New York: Burt Franklin. ↵

2.4: Classical School

During the Enlightenment, citizens and social thinkers began to question how they were ruled. In the *Leviathan* (1651), Hobbes made a few assumptions about human beings.[1] He assumed humans were at conflict with one another, pursued their self-interests, and were rational. Moreover, people would create authority figures out of fear of others, and people should democratically create rules that all citizens must follow. Hobbes wanted a new type of government, one that was ruled by the people and not by monarchs. He believed people had natural rights such as life, liberty, and the pursuit of happiness. If we grant the assumption that people are rational, we would assume people have the ability to consider the possible consequences of their actions. Hobbes was one of the first social contract thinkers. Social contract thinkers believed people would invest in the laws of their society if, and only if, they know government protected them from those who break the law. People will give up a little of their self-interests as long as everyone reciprocates.

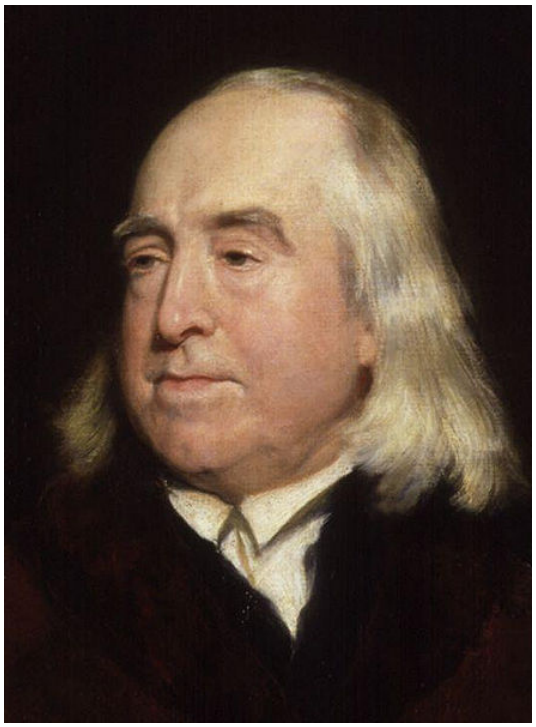
Building on Hobbes and other social contract thinkers at the time, humans were assumed to have free will and were rational beings. We can choose one action over another based on perceived benefits and possible consequences. Moreover, human beings are hedonistic. **Hedonism** is the assumption that people will see maximum pleasure and avoid pain (punishment). Consequently, if we grant the assumptions of classical theory, we can hold people 100% responsible for their actions because it was a choice. These assumptions have been the basis for the American criminal justice system since its inception. Although theories may have changed the landscape of understanding criminal behavior and may have changed the philosophies of punishments over time, the criminal justice system has maintained the assumption that crime is a choice. Hence, we can hold offenders 100% responsible for their actions.

Cesare Beccaria (1738-1794) was an Italian mathematician and economist. He was shocked by the unfair treatment of the accused. In protest, he anonymously wrote *An Essay on Crimes and Punishment* (1764), which attacked Europe's use of harsh treatment.[2] Ideally, he wanted to change the excessive and cruel punishment by applying rationalistic, social contract ideas. At the time, judges had tremendous power to determine guilt and create laws based on their decisions. Intellectuals well received his essay at the time, but the Catholic Church banned it. His ideas were exceptionally radical at the time, mainly because his writing questioned the power structures at the time.

Cesare Bonesana di Beccaria (1738-1794)

Beccaria laid out his ideas about legal reform including how and why to create effective punishments. His *Essay* was highly influential during the Enlightenment, and it may have served as a model during the creation of the American Criminal Justice system. For example, Beccaria advocated that punishments should fit the crime and be proportional to the harm done, laws should only be determined by the legislature, judges should only determine guilt, and every person should be treated equally under the law. He claimed the sole purpose of the law was to deter people from committing the crime. Deterrence can be accomplished if the punishment is certain, swift, and severe. These may seem like common sense today, but they were considered radical ideas at the time.

Jeremy Bentham (1748-1832) was an English philosopher and regarded as a founder of utilitarianism, which is the belief that decisions are considered right or wrong depending on their effect. He believed a person's expectation of the future was most predictive for deterrence. Therefore, the utility of punishment should be severe enough to deter people from crime. Punishment would promote happiness throughout society by maximizing social benefits. He helped popularize classical theory throughout Europe.[3]



Jeremy Bentham (1748-1832)

1. Hobbes, T. (1651/1968). *Leviathan*. Baltimore, MD: Penguin Books. ↵
2. Beccaria, C. (1963). *On crimes and punishments* (H. Paolucci, Trans.). Indianapolis, IN: Bobbs-Merril. (Original work published in 1764) ↵
3. Bentham, J. (1823). *Introduction to the principles of morals and legislation*. Oxford, UK: Oxford University Press. ↵

2.5: Neoclassical

Modern deterrence theory is perhaps the most dominant philosophy of the American criminal justice system. Deterrence theory tries to change a person's behavior through laws and punishments. As a form of social control, there is a belief that perceived punishments will serve as a warning of possible consequences, which would hopefully deter the person from committing the crime. There are two types of deterrence: general deterrence and specific deterrence. General deterrence uses punishment to deter crime among people in the general population. It uses punishment as an example for those people not punished. For example, capital punishment can serve as an example to other would-be offenders if they were thinking about murder. Specific deterrence uses punishment to reduce the crime of particular persons. The effect of the punishment depends on the nature of the punishment and who is punished.

News Box. In 1994, Oregon voters passed Measure 11, whcih established mandatory minimum sentencing for several serious crimes. Besides removing the judge's ability to give a lesser sentence, Measure 11 prohibited prisoners from reducing their sentence through good behavior. Additionally, any defendant 15 years old or older who was accused of a Measure 11 offense was automatically tried as an adult. Recently, the Oregon Justice Resource Center reported the effects of Measure 11 on juveniles, esepcially minorities. Below are links to the news article and the report itself.

The Oregonian – "New Report Calls Measure 11 Sentences for Juveniles 'Harsh and Costly'"

Oregon Justice Resource Center's Report

? Measure 11 Exercise

After reading the above box and hyperlinks, please explain why many juveniles are not deterred from committing serious crimes in Oregon.

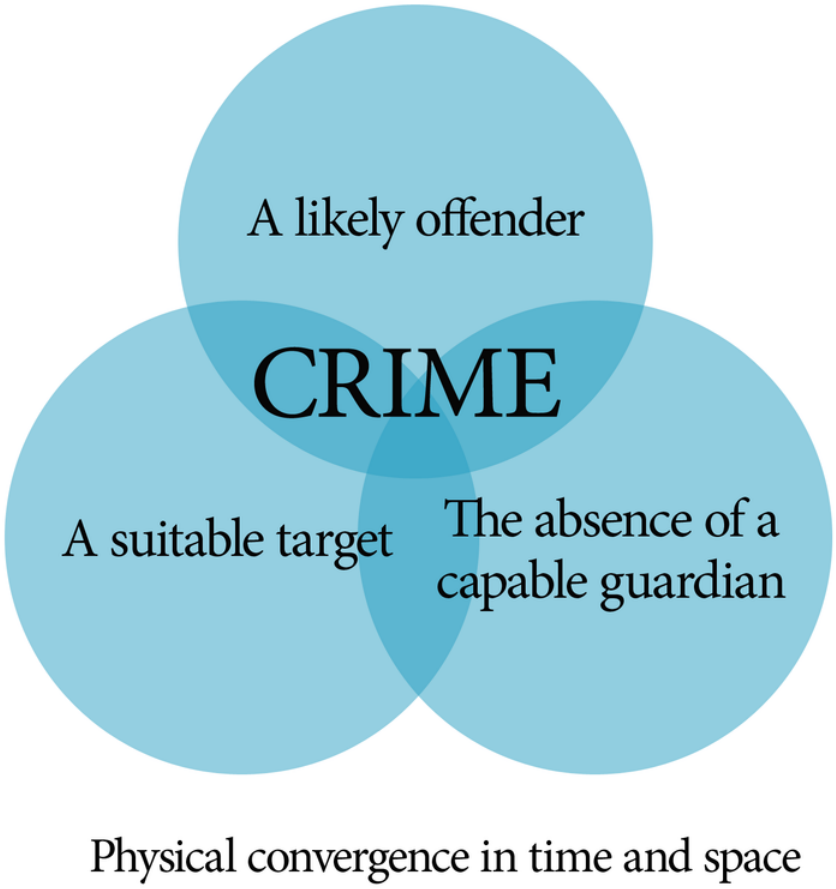
Classical ideology was the dominant paradigm for over a century, but it was eventually replaced by positivist approaches that seek to identify causes of criminal behavior. However, classical ideology had a resurgence during the 1970s in the United States. Neoclassical theory recognizes people experience punishments differently, and a person's environment, psychology, and other conditions can contribute to crime as well. Therefore, crime is a choice based on context. Many crime-prevention efforts used classical and neoclassical premises to focus on "what works" in preventing crime instead of focusing on why people commit criminal acts.

Cornish and Clarke (1986) proposed a Rational Choice Theory to explain criminals' behavior.[1] They claimed offenders rationally calculate costs and benefits before committing crime and assumed people want to maximize pleasure and minimize pain. The theory does not explain motivation, but instead, it expects some people will always commit a crime when given the opportunity. They do not assume offenders are entirely rational, but they do have bounded rationality. Bounded rationality is the constraint of both time and relevant information; offenders must make a decision in a timely fashion with the information at hand. Offenders cannot wait forever nor can they wait for more information before committing a crime. For example, if you were walking down a street and noticed an open window in a parked car, you may contemplate looking in. If you saw something inside, you may then consider stealing it. An entirely rational person may look around to see if there are any witnesses, try to determine if the owner is coming back soon, and so on. Ideally, you may wait until nightfall. However, you may miss your opportunity. Thus, you need to make a quick decision with the relevant facts at that time.

That was an example of a "crime-specific" model. All crimes have different techniques and opportunities. Additionally, they assume all crime is purposeful with the intention to benefit the offender. To dissuade offenders, Rational Choice Theory emphasized the significance of informal sanctions and moral costs. The theory advocates for a situational crime prevention approach by reducing opportunities. Reducing opportunities is much easier to manipulate and change compared to changing society, culture, or individuals. Ultimately, situational crime prevention strategies try to crime a less attractive choice.

Another neoclassical theory is Routine Activity Theory. Cohen and Felson (1979) claimed changes in the modern world have provided more opportunities for offenders.[2] Since the conclusion of World War II, more people have entered the workforce, and more people spend time away from home. Cohen and Felson stated that three things must converge in time in space for a crime to be committed – a motivated offender, a suitable target, and the absence of a capable guardian.

Routine activity theory



The motivated offender is considered to be a given as there will always be people who will seize opportunities to commit criminal offenses. Besides, there a variety of theories to explain why people commit a crime. Suitable targets can be vacant houses, parked cars, a person, or any item. In reality, almost anything can be a suitable target. Finally, the absence of a capable guardian facilitates the criminal event. What can serve as a "capable" guardian? A plethora of people and things can serve as a guardian. For example, police officers, security guards, a dog, being at home, increased lighting to allow other people to see, CCTV, alarm systems, and deadbolt locks can each reduce opportunities by serving as a capable guardian. Routine activity theory concentrates on the criminal event instead of the criminal offender.

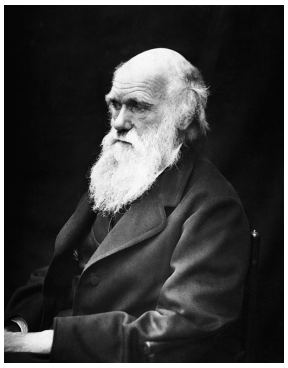
1. Cornish, D.B., & Clarke, R.V. (1986). Crime as a rational choice. In R.V. Clarke and D.B. Cornish, *The reasoning criminal*. New York, NY: Springer-Verlag. ↵
2. Cohen, L.E., & Felson, M. (1979). Social change and crime rate trends: A routine activiity approach. *American Sociological Review*, *44*, 588-608. ↵

2.6: Positivist Criminology

If criminal behavior were merely a choice, the crime rates would more likely be evenly spread. However, when European researchers started to calculate crime rates in the 19th century, some places consistently had more crime from year to year. These results would indicate criminal behavior must be influenced by something other than choice and crime, and must be correlated with other factors.

Positivism is the use of empirical evidence through scientific inquiry to improve society. Ultimately, positivist criminology sought to identify other causes of criminal behavior beyond choice. The basic premises of positivism are measurement, objectivity, and causality.[1] Early positivist theories speculated that there were criminals and non-criminals. Thus, we have to identify what causes criminals.

Charles Darwin wrote *On the Origin of Species* (1859), which outlined his observations of natural selection.[2] A few years later, he applied his observations to humans in *Descent of Man* (1871), whereby he claimed that some people might be evolutionary reversions to an early stage of man.[3] Although he never wrote about criminal behavior, others borrowed Darwin's ideas and applied them to crime.



Charles Darwin

1. Hagan, F.E. (2018). *Introduction to criminology: Theories, methods, and criminal behavior* (9th ed.). Los Angeles, CA: Sage. ↵
2. Darwin, C. (1859). *On the origin of species by means of natural selection, or preservation of favoured races in the struggle for life.* London: John Murray. ↵
3. Darwin, C. (1871). *The descent of man, and selection in relation to sex*. London: John Murray. ↵

2.7: Biological and Psychological Positivism

Trait theories assume there are fundamental differences that differentiate criminals from non-criminals. These differences can be discovered through scientific investigations. Additionally, many early biological and psychological theories used hard determinism, which implies people with certain traits will be criminals.

Cesare Lombroso was a trained medical doctor in Italy when he had an epiphany. As he was performing autopsies on Italian prisoners, he started to believe many of these men had different physical attributes compared to law-abiding people and that these differences were biologically inherited. In 1876, five years after Darwin's claim about some humans might be evolutionary reversions, Lombroso wrote *The Criminal Man*.[1] Lombroso claimed 1/3 of all offenders were born criminals who were atavistic (evolutionary throwbacks).

Atavistic features

He identified a list of physical features he believed to deviate from the "normal" population. These included an asymmetrical face, monkey-like ears, large lips, receding chin, twisted nose, long arms, skin wrinkles, and many more. Lombroso believed he could identify criminals simply by the way they physically looked. Even though his theory was widely rejected years later, it served as an example of the first attempt to explain criminal behavior scientifically.

A few decades after Lombroso's theory, Charles Goring took Lombroso's ideas about physical differences and added mental deficiencies too. In *The English Convict*, Goring claimed there were statistical differences in physical attributes and mental defects. The focus on mental qualities led to a new kind of biological positivism – the Intelligence Era. Alfred Binet, who created the Intelligence Quotient Test, believed intelligence was dynamic and could change. He wanted to identify youths who were not performing well in school. Unfortunately, H.H. Goddard, like many Americans at the time, believed intelligence was innate and static. That is, intelligence was fixed and could not change. Goddard gave IQ tests to sort people and those who scored too low were institutionalized, deported, or sterilized. He was an early advocate to sterilize those who were mentally deficient, especially "morons," who were just smart enough to blend in with the normal population. In 1927, the United States Supreme Court in *Buck v. Bell* allowed the use of sterilization.

Even after Lombroso, Goring, and Goddard, contemporary research reveals intelligence is at least as critical as race and social class for predicting delinquency (Hirschi & Hindelang, 1977).[2] However, how we measure intelligence and how we define intelligence are based on our preconceived assumptions of intelligence. For example, is intelligence inherited? Is it related to the dominant culture? Or is it based more on the person's environment? Each has a least some element of truth.

Modern biological theorists have revealed that biology plays a role in our behavior, but we cannot say how much or even how so. Twin studies and adoption studies examined the nature versus nurture debate. Both play a role in our behavior. It is more nature and nurture. Perhaps the question ought to be "how do our biological differences interact with our sociological differences?" There is not a crime gene per se, but some genetic variations are correlated with anti-social behaviors. However, those with genetic variations are not necessarily criminal because of genetics. Though it puts the individual at risk for such behaviors, a caring and supportive environment often mitigates the impact of the genetic code.

Proximate causes, such as neurotransmitters, hormones, the central nervous system, and the autonomic nervous system, have links to aggressive behavior too. However, many of these explanations have several possible causal paths. For example, we know people with higher testosterone levels engage in more aggressive behavior, but when people engage in aggressive behavior, their testosterone levels increase. We do not know which causes which.

What about criminal personalities? What about sociopaths and psychopaths? The Gluecks (1950) determined there was no real criminal personality; instead, there are some interrelated personality characteristics that were clustered together.[3] Even after giving personality tests to criminals and non-criminals, there does not seem to be any logical relevance to understanding the causes

of crime. However, there have been correlations between certain personality traits and criminal behavior. For example, impulsivity, lack of self-control, inability to learn from punishment, and low empathy have all been linked to criminal behaviors.

Consequently, none of these personality characteristics are criminal in and of themselves. The real danger is when a person has many of these personality characteristics. Capsi et al. (1994) found that constraint and negative emotionality, two super traits that contain a number of different characteristics, were "robust correlates of delinquency" (p. 185).[4]

In summary, researchers have been able to say that our biology and personality play a role in criminal behaviors, but we cannot say how much or to what degree. The characteristics of our social environment interact with our biology and personality. Human behavior is quite complex and it is difficult to determine the true causality of human actions.

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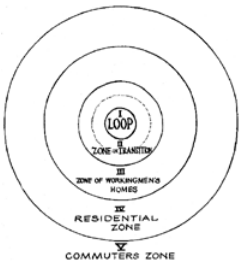
1. Lombroso, C. (1876). The criminal man. ↵
2. Hirschi, T., & Hindelang, M.J. (1977). Intellegence and delinquency: A revisionist review. *American Sociological Review, 42*, 572-587. ↵
3. Glueck, S., & Glueck, E. (1950). *Unraveling juvenile delinquency*. Cambridge, MA: Harvard University Press. ↵
4. Capsi, A., Moffitt, T.E., Silva, P.A., Stouthamer-Loeber, M., Krueger, R.F., & Schmutte, P.S. (1994). Personality and crime: Are some people crime prone? Replications of the personality-crime relationship acrass countries, genders, races, and methods. *Criminology, 32*(2). ↵

2.8: The Chicago School

Biological and psychological positivism looked at differences between criminals and non-criminals. Instead of finding differences between kinds of people, the Chicago School tried to detect differences between kinds of places. During the 1920-1930s, the University of Chicago was the vanguard for human ecology, which is the study of the relationship between humans and their environment. Robert Park (1925) viewed cities as "super-organisms," comparing the city-human relationship to the natural ecosystems of plants and animals that share habitats. Furthermore, Burgess (1925) proposed concentric zone theory, which explained how cities grow – from the central business district outwards.[1]



Concentric Zones

Shaw and McKay (1942), who were both former students of Burgess, began to plot the addresses of juvenile court-referred male youths. They noticed many of the addresses were located in the zone in transition.[2] Upon further investigation, Shaw and McKay noticed three qualitative differences in the transitional zone compared to other zones. First, the physical status included the invasion of industry and the largest number of condemned buildings. When many buildings are in disrepair, population levels decrease. Second, the population composition was also different. The zone in transition had higher concentrations of foreign-born and African-American heads of families. It also had a transient population. Third, the transitional zone had socioeconomic differences with the highest rates of welfare, lowest median rent, the lowest percentage of family-owned houses. Interrelated, the zone also had the highest rates of infant deaths, tuberculosis, and mental illness.

Shaw and McKay believed the zone in transition led to social disorganization. **Social disorganization** is the inability of social institutions to control an individual's behavior. Since the zone in transition had people moving in and moving out at such high rates, social institutions (like family, school, religion, government, economy) and members could no longer agree on essential norms and values. As earlier stated, many residents were foreign. Thus, speaking different languages and having different religious beliefs may have prevented neighbors from talking to one another and solidifying community bonds. Overall, Shaw and McKay were two of the first theorists to put forth the premise that community characteristics matter when discussing criminal behavior.

1. Burgess, E.W. (1925). The growth of the city. In R.E.Park, E.W. Burgess, and R.D.McKenzie, Jr., *The city*. Chicago, IL: University of Chicago Press. ↵
2. Shaw, C.R., & McKay, H.D. (1942). *Juvenile delinquency and urban areas*. Chicago, IL: University of Chicago Press. ↵

2.9: Strain Theories

Strain theories assume people will commit crime because of strain, stress, or pressure. Depending on the version of strain theory, strain can come from a variety of origins. Strain theories also assume that human beings are naturally good; bad things happen, which "push" people into criminal activity.

Emile Durkheim viewed economic or social inequality as natural and inevitable. Furthermore, inequality and crime were not correlated unless there was also a breakdown of social norms. According to Durkheim, when there is rapid social change (like moving from an agrarian society to an industrial society) social norms breakdown. There is too much too fast, and society needs to reevaluate normative behaviors. He referred to the decline of social norms, or "normlessness," as "anomie." Moreover, social forces have a role in dictating human thought and behaviors. He thought anomie was an inability of societies to control or regulate individuals' appetites. Although Durkheim was interested in looking at how societies change, other researchers adapted his idea of anomie. In the previous section, Shaw and McKay retained the spirit of Durkheim's anomie but focused on neighborhoods instead of societies at large. Robert K. Merton also utilized Durkheimian anomie.

Merton (1938) thought many human appetites originated in the culture of American society rather than naturally.[1] Moreover, the "social structure" of American society restricts some citizens from attaining it. Most, if not all, Americans know of the "American Dream." No matter how you conceptualize the dream, most people would define the American dream as achieving economic success in some form. The culturally approved method of obtaining the American dream is through hard work, innovation, and education. However, some people and groups are not given the same opportunities to achieve the cultural goal. When there is a disjunction between the goals of a society and the appropriate means to achieve that goal, a person may feel pressure or strain. Everyone is aware of the definition and promotion of the American dream. When someone does not achieve this goal, he or she may feel strain or pressure. A person could be rejected or blocked from achieving a cultural goal. Merton claimed there were five personality adaptations between the goals of a society and the means to achieve them.

Personality Adaptation	Cultural Goals	Institutionalized Means
I. Conformity	+	+
II. Innovation	+	–
III. Ritualism	–	+
IV. Retreatism	–	–
V. Rebellion	+ / –	+ / –

Conformists are the most common adaptation. Without it, societal norms and values would undermine the cultural goals. Conformists accept the goals and legitimate means to achieve the goal. Innovators accept the goal, but they reject the means or have their means blocked. Thus, they innovate ways to meet society's goal. Ritualists conform to the predominant means of achieving wealth and success through hard work, but they may be blocked from achieving success, or they drop the social goal. For example, some people work hard for the sake of working hard. They want their children to see the significance of work ethic above all else, including monetary achievement. Retreatists do not share the shared values of society. Thus, they adjust by dropping out of conventional society. Drug addicts, alcoholics, and vagrants are just some examples who select this adjustment. Finally, rebels reject the current goals and means of society, but they want to replace them with new goals and standards. They seek to establish a new social order.

Even though Merton's theory could explain any strain, he emphasized economic strains. Cohen (1955) claimed stress could come from a lack of status.[2] Cohen wanted to know why most juvenile crimes occurred in groups. He explained that many youths, especially those in lower class families, rejected education and other middle-class values. Instead, many teenagers would seek status and self-worth as a new value system. When teens have no status, reputation, or self-worth, it led to severe strain. To achieve status, youths commit a crime to gain status among their peer group. Cloward and Ohlin (1960) claimed more serious delinquents sought "fast cars, fancy clothes, and well dames" (p. 97).[3] Assuming youths had no legitimate opportunities to improve their economic position, youths would join gangs to pursue illegitimate opportunities to achieve financial success. Criminal gangs provided youths illicit opportunities to gain money, conflict gangs permitted youths to vent their frustrations, and retreatist gangs were double failures; they had no legitimate or illegitimate means to increase income.

The general strain theory, by Robert Agnew, claimed strains come from myriad sources. Agnew defined strain as any event that a person would rather avoid. Three types of strains include the failure to achieve a positively valued stimulus, the removal of a positively valued stimulus, and the confrontation of negative stimuli. Examples include parental rejection, child abuse, bullying, loss of job, loss of a loved one, discrimination, and criminal victimization. However, the characteristics of some strains are more likely to lead to crime. When a person views a strain as high in magnitude and unjust, and the pressure promotes criminal coping mechanism, people with minimal social control are more likely to commit a crime. Strains lead to negative emotions such as anger, depression, and fear. Some people without prosocial coping mechanisms may commit a crime to vent, which can create social control issues (trouble in school, parents, employers) as well as facilitate social learning (joining peers who also need to vent their frustration). Overall, criminal behavior serves a purpose – to escape strain, stress, or pressure.[4]

Coping Mechanism Example

Every one feels stress and each of us copes with stress, pressure, or shame differently. Shame can motivate us to change for the better. For example, if you did poorly on an exam, you may start to study better. When you feel stress, what do you do? When I ask students how they deal with stress, many go for a run or a walk, lift weights, cry, talk, or eat ice cream. These are healthy (maybe not ice cream eating) and pro-social coping mechanism. When I feel stress I write. Often, I write nasty emails and then delete them. Fortunately, I have never accidently sent one.

1. Merton, R.K. (1938). Social structure and anomie. *American Sociological Review, 3*. ↵
2. Cohen, A.K. (1955). *Delinquent boys: The culture of the gang*. New York, NY: Free Press. ↵
3. Cloward, R.A., & Ohlin, L. (1960). *Delinquency and opportunity: A theory of delinquent gangs*. Glencoe, IL: Free Press. ↵
4. Agnew, R. (2006). Pressured into crime: An overview of general strain. New York, NY: Oxford University Press. ↵

2.10: Learning Theories

In the previous sections, strain theories focused on social structural conditions that contribute to people experiencing strain, stress, or pressure. Strain theories explain how people can respond to these structures. Learning theories compliment strain theories because learning theories focus on the content and process of learning.

Early philosophers, like Aristotle, believed human beings learned through association. The thought implies humans have a blank slate and our experiences build upon each other. It is through these experiences we recognize patterns and linked phenomena. For example, ancient humans did not have the technological advancements of global positioning satellites, which many people have on their phones. However, they used other celestial bodies like the stars and moon to travel. When early humans looked to the heavens, people began to recognize patterns in the stars. These patterns were consistent and enabled long-distance travel over land and sea.

A few centuries later, Ivan Pavlov was studying the digestive system of dogs, when he noticed the dogs started the digestive process *before* food was in sight. The dogs began to salivate when they heard the assistants' footsteps. The dogs were associating the oncoming footsteps with the upcoming food. This type of learning was called classical conditioning.

Classical Conditioning

The acquisition of this learned response occurred over time. The dogs' salivary reflex was an unconditioned response to the unconditioned stimuli (food). Pavlov wondered if he could get the dogs to salivate with a neutral stimulus (i.e., a ringing bell). He would ring a bell then feed the dog. After a series of these paired occasions, the dogs began to salivate at the sound of the bell alone. The salivation became a conditioned response to a conditioned stimulus. The acquisition of this learned behavior (i.e., conditioned response) will become extinct if the incentive is no longer associated. Human beings most certainly learn via classical conditioning, but it is a passive and straightforward approach to learning. We may shudder when we see flashing blue lights in our rearview mirror, salivate when food is cooking in the kitchen, or dance when we hear our favorite song. We passively learned these paired events through our experiences.

B.F. Skinner was also interested in learning and transformed modern psychology with operant conditioning. Operant condition is active learning where organisms learn to behave based on reinforcements and punishments. Using rats and pigeons, Skinner wanted animals to learn a simple task (i.e., pushing a bar or key) through reinforcements. A reinforcement is any event that strengthens, or maximizes, a behavior. We reinforce behaviors that we want to continue or increase. We can use positive reinforcement or negative reinforcement. Positive is the addition of something desirable, and negative is the removal of something unpleasant; they do not mean "good" or "bad." For example, if we wanted to more people to wear seatbelts, we would want to reinforce the behavior. A

positive reinforcement may be praise or a reward for buckling up. Newer model cars come equipped with seatbelt alarms. The will ring until you buckle up. Once you buckle up, the sound stops. This is an example of negative reinforcement. Both examples reinforce the behavior (wearing a seatbelt) but in different ways.

Consequently, if we want a behavior to stop or decrease, we punish that behavior. Punishments can also be positive or negative. A positive punishment involves the presentation of something unpleasant whereas negative punishment is punishment by removal. For example, a teenager breaks curfew and the parents want their child to stop breaking curfew. The parents can punish the child in one of two ways. An example of positive punishment would be scolding. A negative punishment would be removing the child's driving privileges. Both punishments seek to decrease the adolescent's breaking curfew but in two different ways.

Punishment Exercise

How does the Criminal Justice System positively punish offenders? How does the Criminal Justice System negatively punish? Give examples of both.

Edwin Sutherland (1947) was the first and created the most prominent statement of a micro-level learning theory about criminal behavior. He first presented differential association theory in 1934, and his final revision occurred in 1947.[1] His attempt tried to explain how age, sex, income, and social locations related to the acquisition of criminal behaviors. Sutherland (1947) presented his theory as nine separate, but related propositions, which were:

1. Criminal behavior is learned.
2. Criminal behavior is learned in interaction with other persons in a process of communication.
3. The principal part of the learning of criminal behavior occurs within intimate personal groups.
4. When criminal behavior is learned, the learning includes: a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; b) the specific direction of the motives, drives, rationalizations, and attitudes.
5. The specific directions of motives and drives are learned from definitions of the legal codes as favorable or unfavorable. In some societies, an individual is surrounded by persons who invariably define the legal codes as rules to be observed, while in others he is surrounded by a person whose definitions are favorable to the violation of the legal codes.
6. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of the law. This is the principle of differential association.
7. Differential associations may vary in frequency, duration, priority, and intensity. This means that associations with criminal behavior and also associations with anticriminal behavior vary in those respects.
8. The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
9. While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since noncriminal behavior is an expression of the same needs and values.[2]

Sutherland describes the content of what is learned, but also the process of how it is learned. Ultimately, he argued people give meaning to their situation; this meaning-making determined if they would obey the law or break the law. Hence, this meaning-making explains how siblings, who grow up in the same environment may differ in their behavior.

Ironically, Sutherland and B.F. Skinner were teaching at Indiana University during the late 1940s. For some reason or another, Sutherland never used Skinner's ideas of operant conditioning in his differential association theory. However, Ronald Akers utilized both approaches in his "social learning" or "differential reinforcement" theory. Akers' theory comprised the four main concepts of differential association, definitions, differential reinforcement, and imitation/modeling. He was interested in the process of how criminal behavior is acquired, maintained, and modified through reinforcement in social situations and nonsocial situations. Differential associations refer to the people one comes into contact with frequently. These peers are the source of definitions that favor obeying the law or breaking it. It is the most important source of social learning. According to Akers, definitions are the meaning a person attaches to his or her behavior. Those meanings can be general (i.e., religious, moral, or ethical beliefs that remain consistent) or specific (i.e., apply to a specific behavior like smoking or theft). Differential reinforcements refer to the balance between anticipated rewards or punishment and the actual reward or punishment. For example, if a juvenile vandalized a storefront, his or her friends praise may reinforce that behavior. If the juvenile sought more praise, he or she might continue vandalizing more property (the peers' reactionary praise positively reinforced the behavior). The final concept was imitation/modeling. Akers argued that human beings could learn by observing how other people are rewarded and punished. Thus, some people may imitate other people's behavior, especially if that behavior was rewarded or not punished.[3]

Finally, there have been some theories that focus more on the content of what is learned. Residents who may live in disadvantaged neighborhoods, like in the transitional zone, my "learn" different things. Subcultural theories focus on the ideas of what is learned rather than the social conditions that foster these ideas. Some groups may internalize values that are conducive to violence or justify criminal behavior.[4] In other words, where we grow up may influence what we learn about crime, police, government, religion, etc.

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3. Akers, R.L. (1994). *Criminological theories.* Los Angeles, CA: Roxbury. ↵
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2.11: Control Theories

Previously discussed theories asked why people commit crime. The methods used tried to identify the driving forces behind a criminal's behavior. For example, biological and psychological theories sought to identify traits that determined criminality. Strain theories assumed people were good, but bad things happen, which causes many to be pushed into criminal behaviors. Learning theories demonstrated the importance of learning criminal attitudes to commit crimes. These attitudes, especially when reinforced, will prevail in social situations. Control theories differ in their approach. Instead of assuming criminals have "something" or experienced "something" that drives their criminal behavior, control theories ask why *more* people do not engage in illegal behavior. Control theories assume people are naturally selfish, and if left to their own devices, will commit illegal and immoral acts. Control theories try to identify what types of "controls" a person may have that stops them from becoming "uncontrollable."

Early control theorists argued that there are multiple controls on individuals. Personal controls are exercised through reflection and following pro-social normative behavior. Social controls originate in social institutions like family, school, and religious conventions. Toby (1957) introduced the phrase "stakes in conformity," which is how much a person has to lose if he or she engages in criminal behavior.[1] The more stakes in conformity a person has, the less likely they would be willing to commit crime. For example, a married teacher with kids has quite a bit to lose if he or she decided to start selling drugs. If caught, he could lose his job, get divorced, and possibly lose custody of his children. However, juveniles tend not to have kids nor are they married. They may have a job, but indeed not a career. Since they have fewer stakes in conformity, they would be much more likely to commit crime compared to the teacher.

Travis Hirschi is most associated with control theories. In 1969, he argued that all humans have the propensity to commit crime, but those who have strong bonds and attachment to social groups like family and school are less likely to commit crime. [2]Often known as social bond theory or social control theory, Hirschi presented four elements of a social bond – attachment, commitment, involvement, and belief. Attachment refers to affection we have towards others. If we have strong bonds, we are more likely to care about their opinions, expectations, and support. Attachment involves an emotional connectedness to others, especially parents, who provide indirect control.

✔ Parenting Exercise

Parenting can be a challenging responsibility. Fare supposed suppose to teach children how to behave. Ideally, parents have control over their children in many ways.

- What are ways parents have "direct" control over their children?
- What are ways parents have "indirect" control over their children?

Commitment refers to the rational component of the social bond. If we are committed to conformity, our actions and decisions will mirror our commitment. People invest time, energy, and money into expected behavior like school, sports, career development, or playing a musical instrument. These are examples of Toby's "stakes in conformity." If people started committing a crime, they would risk losing these investments. Involvement and commitment are related. Since our time and energy are limited, Hirschi thought people who were involved in socially accepted activities would have little time to commit a crime. The observational phrase "idle hands are the devil's worship" fits this component. Belief was the final component of the social bond. Hirschi claimed some juveniles are less likely to obey the law. Although some control theorists believed juveniles are tied to the conventional moral order and "drift" in and out of delinquency by neutralizing controls (Matza, 1964), Hirschi disagreed.[3] He believed people vary in their beliefs about the rules of society. The essential element of the bond is an attachment. Eventually, Hirschi moved away from his social bond theory into the general theory of crime.

✔ Hirschi Exercise

Hirschi believed strong social bonds made people less likely to commit a crime. The components of a social bond include attachment, commitment, involvement, and belief. Please describe each of the components of the social bond and explain how each applies to your educational journey. How can you be attached, committed, involved, and believe in higher education?

Gottfredson and Hirschi (1990) claimed their theory could explain all crime by all people. They argued the lack of self-control was the primary cause of criminal behaviors. They claim most ordinary crimes require few skills to commit and have an immediate payoff.[4] There is not any long-term planning or goal; crimes are committed for immediate pleasure. Moreover, they claim, people

who commit these ordinary crimes tend to be impulsive, insensitive to the suffering of others, short-sighted, and adventuresome. If true, these traits (low self-control) were established before the person started committing crimes and will continue to manifest throughout a person's life. The root cause of low self-control is ineffective parenting. If parents are not attached to their child, supervise their child, recognize the child's deviant behaviors, or discipline their child, the child will develop low self-control. Gottfredson and Hirschi claim self-control, or the lack thereof, is established by eight years old.

Control theories are vastly different from other criminological theories. They assume people are selfish and would commit crimes if left to their own devices. However, socialization and effective child-rearing can establish direct, indirect, personal, and social controls on people. These are all types of informal controls.

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2. Hirschi, T. (1969). *Causes of delinquency.* Berkeley, CA: University of California Press. ↵
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2.12: Other Criminological Theories

Social Reaction Theories

Initially a response to popular theories at the time, social reaction theories change the focus. Instead of focusing on the offender, social reaction theories concentrate on those people or institutions who label offenders, react to offenders, and want to control offenders. Grounded in symbolic interaction, social reaction theories emphasize how meanings are constructed. Words carry power and meaning. Thus, if someone is labeled as a criminal, it carries a connotation by other people. How will others view him or her with that label? How will society? People will act towards thing by the meanings attached. These meanings can be culturally created through interactions with peers. Perhaps it is why some of us like to wear certain name brand clothes or drive certain name brand vehicles. Those names have "meaning"; they can be cool, reliable, etc. They have status and meaning.

Not everyone who commits a crime is caught. Additionally, not all those who are caught are labeled as a criminal. Why? Labeling theories sought to explain this phenomenon. In general, labeling theorists point to the social construction of crime, which varies over time and place. For instance, marijuana use is federally prohibited, but more and more states are legalizing recreational use. The same behavior can be legal in Oregon but illegal in New York.

Furthermore, labeling theorists emphasize the process of being labeled and treated as a criminal; it can have deleterious effects. If a person is bombarded with a particular label, he or she may adopt that label. If a person was told over and over again that he or she was funny, that person might try to be funnier. What if a person were told over and over again he or she would amount to nothing? Perhaps, he or she would internalize that label and become nothing since others expect that.

Braithwaite (1989) applied some of these ideas in his reintegrative shaming. Not all social reactions are ruthless; in fact, some of them are beneficial. [1] Hence, it is the quality of social responses that is significant. We shame individuals to show disapproval. According to Braithwaite, shaming can be reintegrative or stigmatizing. Reintegrative shaming centers on forgiveness, love, and respect. Ideally, we want to reintegrate the person back into the community by removing the label. However, in some societies, like the United States, stigmatizing shaming reigns supreme. Stigmatizing shaming uses formal punishment, which degrades a person's bond to his or her community. It is counter-productive and tends to shun the offender. For example, in some states, convicted offenders are required to self-identify as a felon on job applications. Do you think this helps their cause to reintegrate successfully into society? Perhaps not. Even though they may have "served their time," they are still labeled as a criminal and punished further. Stigmatizing shaming propels people towards crime whereas reintegrative shaming seeks to correct the behavior through respect and empathy. Critical Theories

Critical Theories

Critical theories originated during the 1960-1970s in the United States. Immediately following World War II, Americans expected the United States to thrive economically, culturally, and politically. Massive political turmoil inside and outside of the country created a generation of scholars who became "critical" of society and more "traditional" theories of crime. According to Cullen, Agnew, and Wilcox (2018), critical theories share some five central themes. First, to understand crime, one must appreciate the fusion between power and inequality. People with power, political and economic, have an enormous advantage in society.[2] Second, crime is a political concept. Not all those who commit crime are caught, nor are those who are caught punished. The poor are injured the most by the enforcement of laws, while the affluent (i.e., powerful) are treated leniently. Third, the criminal justice system and its agents serve the ruling class, the capitalists. As Jeffrey Reiman's (2004) book titled it, *The Rich Get Richer and the Poor Get Prison.* [3] Fourth, the root cause of crime is capitalism because capitalism ignores the poor and their atrocious living conditions. Capitalism demands profits and growth over values and ethically considerations. Perhaps this is why crimes of the streets are punished more severely than crimes of the suites. Finally, critical theories believe the solution to crime is a more equitable society, both politically and economically.

It is beyond the scope of this book to delve into all of the possible explanations of crime. Some theories try to explain the differences between male offending and female offending through feminist theories of crime. Other theories have integrated or combined concepts from other theories to create a newer model of explanation. Why do you think people commit crime?

Gender and Crime Execise

Write about how you were raised and how sex/gender roles were reinforced through school, family, culture, etc. Do you think men/boys/males are more criminal because of their biology or because of cultural expectations of men/boys/males versus women/girls/females? You should support your claims with personal, vicarious, or well-known examples.

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CHAPTER OVERVIEW

3: Criminal Justice Policy

Learning Objectives

- In this section, you will be introduced to policy in the criminal justice system. Policies that can be examined include issues related to juvenile justice, drug legislation, intimate partner violence, prison overcrowding, school safety, new federal immigration laws, terrorism, and national security. After reading this section, students will be able to:
- Examine the relationship between theory, research, and policy.
- Understand the factors involved in creating moral panics.
- Identify the stages involved in creating policy.
- Understand the role of evidence-based practice in policy.
- Reflect on how current events and politics shape policy.

Critical Thinking Questions

1. What is a current example of a moral panic?

2. How does the media help influence policy?

3. If the media has so much influence over policy, how can we ensure fair and just laws and practices?

4. Think of a crime problem in your area. What policy would you enact to combat it and how would you evaluate this policy to see if it was working?

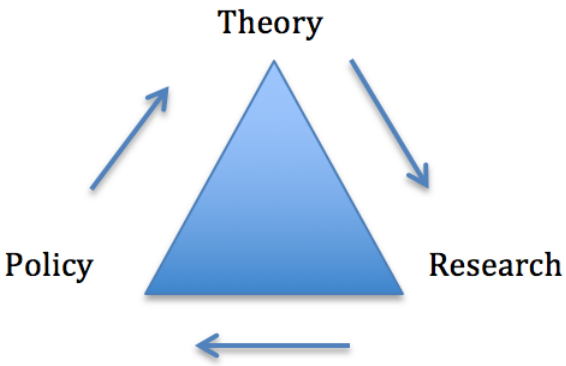
5. What are some policies you can think of that have changed over time? (eg. Marijuana legalization)?

3.1: Importance of Policy in Criminal Justice

Why is Policy so Important in Criminal Justice?

Everyone is affected by the criminal justice system through public policy. Policy represents social control and ensures members of society are compliant and conform to the laws. Policies include issues related: to juvenile justice, drug legislation, intimate partner violence, prison overcrowding, school safety, new federal immigration laws, terrorism, and national security.

Modern-day crime policies can be traced to changes in crime and delinquency in the 1960s. That decade saw major increases in the crime rate along with widespread social unrest as a result of the Vietnam War and the Civil Rights movement. The work of the 1967 President's Commission on Law Enforcement and the Administration of Justice highlighted the crime problem, and the criminal justice system's failure to address the problem. The commission called for new approaches, programs, policies, funding models, and research on the cause of crime. In addressing the causes of crime (theory), and using appropriate data collection (research), effective policies and programs could be proposed.



Theory-Policy-Research

When discussing crime policies, it is important to understand the difference between "crime prevention" and "crime control." Policies and programs designed to reduce crime are crime prevention techniques. Specifically, **crime prevention** "entails any action designed to reduce the actual level of crime and/or the perceived fear of crime." [1] On the other hand, crime control alludes to the maintenance of the crime level. Policies, such as the three strikes law or Measure 11, seek to prevent future crime by incapacitating offenders through incarceration. Other policies like sex offender registration acknowledge that sex offenders exist and registering them will control the level of deviation, sometimes preventing-or perceiving to prevent future offenses.

Public policies and laws are created at different levels of government, with micro-level policies enacted on the local level and macro level applied at the federal or state level. For example, at the local level, some towns and cities might create specific ordinances tailored to their unique needs, such as banning cigarette smoking in the downtown area. At the federal level, policies are created that apply to the federal criminal justice system and can apply to states as well. However, federal laws can differ from state laws, such as marijuana legalization. Individual organizations can also make policies that address their individual agency needs, such as requirements for local police officers. Therefore, depending on who creates the policies, they can be far-reaching or extremely localized. [2]

? Fake News Exercise

Fake News has received a lot of press lately. In fact "fake news" was the top word in 2017. For people under 30, online news is more popular than TV news and people under 50 get half of their news from online sources.

Here are 4 steps for evaluating News:

1. Vet the Publisher's Credibility.

- What is the domain name? A domain name that ends with ".com.co" is not to be trusted. Something like abcnews.com looks legit, but if it is listed as abcnews.com.co, be wary.
- What is the publication's point of view? Check out the "About Us" section to learn more about the publishers. It will also tell you if the publication is meant to be satirical, like the Onion.

2. Pay Attention to Writing Quality.

- Does the publication have all caps or way too many emphatic punctuation marks?!?!?!? Proper reporting does not adhere to such informal grammar. The article you are reading is probably not vetted.

3. Check out the Sources and Citations.

- Does the publisher meet academic citation standards? Your teachers and professors constantly tell you to cite and reference appropriately. This is how we can check your sources. The same is true for online news. Check the sources.

Ask the Pros

- Check out fact-checking websites like factcheck.org

Read more at https://www.summer.harvard.edu/inside-summer/4-tips-spotting-fake-news-story

Take the Fake News Quiz! https://www.channelone.com/feature/quiz-can-you-spot-the-fake-news-story/

1. Lab, S. (2016). *Crime Prevention: Approaches, Practices, and Evaluations.* (9th ed.). New York, NY: Routledge. ↵
2. Lab, S P., Williams, M.R. Holcomb, J.E., Burek, M.W., King, W.R., & Buerger, M.E. (2013). *Criminal Justice: The Essentials* (3rd ed.). New York, NY. Oxford University Press. ↵

3.2: The Myth of Moral Panics

Moral panic has been defined as a situation in which public fears and state interventions greatly exceed the objective threat posed to society by a particular individual or group who is/are claimed to be responsible for creating the threat in the first place. [1]

Moral panics arise when distorted mass media campaigns create fear and reinforce previously held or stereotyped beliefs, frequently centered around ethnicity, religion, or social class. Often, moral panics occur swiftly, focusing attention on the behavior and then fluctuating concern over time. The most problematic aspect of the moral panic is that the hysteria often results in a need to "do something" about the issue and most commonly "results in the passing of legislation that is highly punitive, unnecessary, and serves to justify the agendas of those in positions of power and authority." Moral panics focus attention on what we should fear and who we should blame for that fear. Instigators of moral panics frequently misinterpret data for their own agenda. Cohen (1972) said at least five sets of social actors are involved in a moral panic. These include 1) folk devils, 2) rule or law enforcers, 3) the media, 4) politicians, and 5) the public. [2]

Moral Panics, Sex Offender Registration, and Youth

In her article, "There Are Too Many Kids on the Sex Offender Registry," Lenore Skensazy discusses the unpopular view that perhaps sex offender registration is more harmful than helpful.

The purpose of sex offender registries is to prevent one of the worst of the worst crimes: sexual assault. However, Roger Lancaster, author of "Sex Panic and the Punitive State" suggests that "Only a tiny fraction of sex crimes against children are committed by people who are on the registry." About 5 percent of people on the list go on to commit another crime, a far lower recidivism rate than almost any other class of criminals, including drug dealers, arsonists, and muggers (Skenazy, 2018, para 4).

"Available research indicates that sex offenders, and particularly people who commit sex offenses as children, are among the least likely to re-offend," Human Rights Watch has found. Furthermore, the U.S. Bureau of Justice Statistics reports that the "single age with the greatest number of offenders from the perspective of law enforcement was age 14." This means that 14-year-olds, more than any other age, are being placed on a lifetime registry.

Sometimes this results from minors engaging in consensual sexual encounters simply because they are underage and cannot legally consent. And in some states, sexual contact is not required to end up on the registry. In some instances, sexting under the age of 18 is a felony and can earn someone a place on the registry. Until recently, Missouri offenders were grouped together in one category regardless of the offense so individuals who urinated in public endured lifelong registration and were categorized with the worst of the rapists and molesters. There was no distinction or tier structure.

Is lifelong registration appropriate punishment or is it being strictly punitive? Most offenders serve their time in prison and therefore serve their debt to society. This is not the case with life long sex offender registrants who can't live near a school, park, or playground and must report to authorities anytime they get a new job, a new place to live, or even a new hairstyle. They can never fully re-enter society and are seen as never being able to be rehabilitated.

All these requirements are based on the "flawed but pervasive idea that those convicted of sex offenses became incurable and predatory monsters requiring—and deserving—lifetime punishment," writes Emily Horowitz, a professor of sociology at St. Francis College and author of two books on this subject.

What would happen if the registry were to disappear? All other criminal laws would remain in place, including increased penalties for repeat offenses. Only the list, and the dehumanization it wreaks would be gone.

"If my child was victimized, I'd want to kill a person," Horowitz says. "But what if my child was a victimizer? I'd also want them to have a chance" (Skenazy, 2018, para 15).

Read more at: https://reason.com/archives/2018/04/09/there-are-too-many-kids-on-the

Ted Talk: How Fake News Does Real Harm

https://www.ted.com/talks/stephanie_busari_how_fake_news_does_real_harm?language=en

First, **folk devils** are the people who are blamed for being allegedly responsible for the threat to society. Folk devils are completely negative and have no redeeming qualities. This is how juvenile offenders, or "super-predators" as they were referred to in the 1990s. The narrative went like this:

We're talking about kids who have absolutely no respect for human life and no sense of the future….And make no mistake. While the trouble will be greatest in black inner-city neighborhoods, other places are also certain to have burgeoning youth-crime problems that will spill over into upscale central-city districts, inner-ring suburbs, and even the rural heartland…They kill or maim on impulse, without any intelligible motive…The buzz of impulsive violence, the vacant stares and smiles, and the remorseless eyes…they quite literally have no concept of the future….they place zero value on the lives of their victims, whom they reflexively dehumanize…capable of committing the most heinous acts of physical violence for the most trivial reasons…for as long as their youthful energies hold out, they will do what comes "naturally": murder, rape, rob, assault, burglarize, deal deadly drugs, and get high. [3] Folk devils are the embodiment of evil and center stage of the moral panic drama. They have no redeeming qualities so it is easy for the population to fear and hate them.

Second, the police or other law enforcement officials (prosecutors or even the military) are essential for propagating the moral panic since they are responsible for upholding and enforcing codes of conduct and expectations of the citizens. They are expected to protect society from the folk devils by detecting, apprehending, and punishing their evil ways. Furthermore, the moral panic can offer law enforcement legitimacy as moral crusaders and protectors. Law enforcement has a purpose to defend society and rid it of the folk devils which threaten their safety and well being.

Third, the media are particularly powerful in creating and advancing the moral panic. Generally, news media coverage of folk devils is often skewed and exaggerated. The media coverage often displays the folk devils as much more threatening to society than they really are. Journalists feed public anxiety and fear, which heightens the moral panic. Media influences policy in two ways:

(1) they select the "important" issues (agenda setting),

(2) they problematize policy by attaching meaning to it. In this way, the frame and construct the narratives.

Agenda setting is the way the media draw the public's eye to a specific topic. **Framing** refers to a type of agenda setting in a prepackaged way and **narratives** are about the story that is told. Said another way, framing focuses on the broad categories, segments, or angles through which a story can be told. Frames include factual and interpretive claims that allow people to organize events and experiences into groups. Narrative construction involves decisions by storytellers that determine the specific characters, plot, causal implications, and policy solutions presented. Narratives are pictures that the public already accepts and embraces (See Table 1 for examples of criminal justice frames and narratives). Journalists and reporters are taught to tell stories through first-hand accounts and experiences people have because audiences care about these human experiences and their stories more than they care about abstract societal issues. In theory, then, journalists and reporters are the gatekeepers to the information and they choose how they organize and present ideas to the public. This helps us create social meaning from events or actions (See Table 2 for framing techniques). [4]

Table 1: Criminal Justice Frames and Examples of Narratives

Frame	**Cause**	**Policy**
Faulty system	Crime stems from criminal justice leniency and inefficiency.	The criminal justice system needs to get tough on crime
Blocked opportunities	Crime stems from poverty and inequality	The government must address the "root causes" of crime by creating jobs and reducing poverty.
Social breakdown	Crime stems from family and community breakdown	Citizens should band together to recreate traditional communities.
Racist system	The criminal justice system operates in a racist fashion	African Americans should band together to demand justice
Violent media	Crime stems from violence in the mass media	The government should regulate violent imagery in the media
Narrative	**Costume**	**Characteristic**
The PI	Cheap suit and car	Loner, cynical, shrewd, shady but dogged
The rogue cop	Plainclothes, disguise, often has special high tech equipment	Maverick, smart, irreverent, violent but effective

The sadistic guard	Unkempt uniform	Low intelligence, violent, racist, sexist, perverted, and enjoys cruelty, inflicting pain, and humiliation
The corrupt lawyer	Expensive suite and office	Smart, greedy, manipulative, dishonest, smooth talker and liar, able to twist words, logic, and morality
The greedy businessman	Very expensive office and home, trophy wife	Very smart, decisive, and a polished, unquenchable sometimes psychotic need for power and wealth

[Footnote]Surette, R. (2011). *Media, crime, and criminal justice: Images, realities, and policies* (4th ed.). Belmont, CA: Wadsworth Publishing. [/footnote]

Table 2: Framing Techniques

Framing techniques per Fairhurst and Sarr (1996):
• Metaphor: To frame a conceptual idea through comparison to something else.
• Stories (myths, legends): To frame a topic via narrative in a vivid and memorable way.
• Tradition (rituals, ceremonies): Cultural mores that imbue significance in the mundane, closely tied to artifacts.
• Slogan, jargon, catchphrase: To frame an object with a catchy phrase to make it more memorable and relate-able.
• Artifact: Objects with intrinsic symbolic value – a visual/cultural phenomenon that holds more meaning than the object itself.
• Contrast: To describe an object in terms of what it is not.
• Spin: to present a concept in such a way as to convey a value judgment (positive or negative) that might not be immediately apparent; to create an inherent bias by definition. (Fairhurst, G. & Sarr, R. 1996. *The art of Framing*. San Francisco: Jossey-Bass.)

Fourth, politicians are also protagonists in a moral panic. They spin the public opinion and present themselves as the safeguards of the moral high ground. They are similar to law enforcement in this drama and they have an obligation to protect society from folk devils.

The fifth and final category of moral panic is the public. The public is the most important actor on the stage. Public anxiety and fear over the folk devils is the central theme of moral panics. A moral panic only exists because the public cries out for policymakers and law enforcement to “do something” and save them from the alleged threat that has been created.

Carlson, M. (2018). Fake news as an informal moral panic: The symbolic deviance of social media during the 2016 US presidential election. Information, *Communication, and Society*. https://doi.org/10.1080/1369118X.2018.1505934

https://www.tandfonline.com/doi/abs/10.1080/1369118X.2018.1505934?journalCode=rics20

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3. Dilulio. (1995). https://www.weeklystandard.com/john-...uper-predators ↵
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3.3: The Stages of Policy Development

The stages of policy development can generally be categorized into 5 general stages. U.S. policy development encompasses several stages. Most policy models generally include the following stages: (1) identifying the issue to be addressed by the proposed policy, (2) placement on the agenda, (3) formulation of the policy, (4) implementation of the policy, and (5) evaluation of the policy. This is similar to the community police response acronym SARA (scanning, analysis, response, and assessment) and uses some of the same techniques, but on a much bigger, national level.

Dangerous Myths about Juvenile Sex Offenders

https://www.youtube.com/watch?reload=9&v=81hy3AZjkr4

Identifying the Problem and Agenda Setting

Identifying the problem involves addressing what is happening and why it is an issue. In criminal justice, this might look at the increase of opioid use and overdoses or acts of youth violence. Once the issue is identified, there can be a serious debate about the plans of the policy. Once it is decided what the policy will look like, it is placed on the agenda. This is perhaps the most politicized part of the process as it involves many different stakeholders. It involves identifying the legislative, regulatory, judicial, or other institutions responsible for policy adoption and formulation.

Formulation and Adoption

The next stage involved adopting the policy. Depending on the nature of the policy, this could involve a new law or an executive order.

Implementation of the Policy

Implementation is about moving forward, taking action, and spending money. It involves hiring new staff or additional police officers. This is where policies often stall because of the lack of funding. For example, a popular program in 1990, Weed and Seed, involved “weeding” out criminals (targeting arrest efforts) and “seeding” new programs (instituting after-school programs, drug treatment facilities, etc.). The weeding portion of the program was a great success, but the program ultimately failed because of a lack of funding to adequately seed new community programming. Funding is a major roadblock for proper implementation.

Evaluation

Finally, the evaluation examines the efficacy of the policy. There are three different types of evaluation: Impact, Process, and Cost-benefit analysis. **Impact (outcome) evaluations** focus on what changes after the introduction of the crime policy. [1] Changes in police patrol practices aimed at reducing the level of residential burglaries in an area are evaluated in terms of subsequent burglaries. The difficulty with impact evaluations is that changes in the crime rate are rarely, if ever, due to a single intervening variable. For example, after the implementation of curfew laws for juvenile offenders, juvenile crime decreased. Can we say that was because of curfew laws? The entire crime rate for America decreased at the same time. Attributing a single outcome based on a solitary intervention is problematic.

Process evaluations consider the implementation of a policy or program and involve determining the procedure used to implement the policy. These are detailed, descriptive accounts of the implementation of the policy including the goals of the program, who is involved, the level of training, the number of clients served, and changes to the program over time. [2] Unfortunately, process evaluations do not address the actual impact policy has on the crime problem, just what was done about a specific issue or who was involved. While this is indeed a limitation, it is essential to know the inner workings of a program or policy if it is to be replicated.

Cost-benefit evaluations, or analysis, seeks to determine if the costs of a policy are justified by the benefits accrued. A ubiquitous example of this would be an evaluation of the popular anti-drug D.A.R.E. program of the 1980s and 1990s. The D.A.R.E. program was a school-based prevention program aimed at preventing drug use among elementary school-aged children. Rigorous evaluations of the program show that it was ineffective and sometimes actually increased drug use in some youth. The cost of this program was roughly $1.3 billion dollars a year (about $173 to $268 per student per year) to implement nationwide (once all related expenses, such as police officer training and services, materials and supplies, school resources, etc., were factored in). [3] Using a cost-benefit analysis, is that a good use of money to support an ineffective program?

Policy formation is often a knee-jerk reaction to the current problem. Many policies are the result of grassroots efforts to change something in their communities. For example, let us pretend the issue is youth crime in our city. Kids are roaming the streets like packs of wild dogs, jeering at the elderly, and generally making us feel unsafe. A proposed policy might be to hold parents

accountable for their child's misbehavior. If parents are responsible, then they will take better care of their kids, right? Take, for example, Little Skippy. He's kind of a jerk. He smokes, curses, and recently stole his neighbor's car. Arrested after crashing into the drive-thru sign at the local Taco Bell, based on parental responsibility law, his mom and dad are to blame for his reckless driving fiasco. Let's look at the policy process.

1. How can this be instituted? Fine the parent? Sentence the parents to jail time? The policy needs to be a concrete solution to a problem. Many states use fines instead of jailing the parents. (Who's to watch over the children if the parents are locked up?) Fines sound great. This will make sure parents take an active interest in their children because they do not want to have to pay money if their kid gets into trouble.
2. Who needs to be involved in lobbying for this law? Legislators? Senators? Local police? Maybe even city officials, local school boards, and religious organizations. So it's put on the agenda and gets moved onto a ballot for an official vote. The citizens who think their city needs to be tough on crime vote to approve this policy.
3. Bam, it's law. It is implemented and now parents of juveniles delinquents are charged fines. This actually is a law in nearly every state. In the 1990s, Silverton, Oregon, was a model for communities interested in imposing ordinances that hold parents accountable for their children's behavior. In Silverton, parents can be fined up to $1,000 if their child is found carrying a gun, smoking cigarettes, or using illegal drugs. Parents who agree to attend parenting classes can avoid fines. Within the first two months after the law was passed in early 1995, seven parents were fined and many others registered for parenting classes.

Oregon has ORS 30.761 (2017), which states:

(1)In addition to any other remedy provided by law, the parent or parents of an unemancipated minor child shall be liable for actual damages to person or property caused by any tort intentionally or recklessly committed by such child. However, a parent who is not entitled to legal custody of the minor child at the time of the intentional or reckless tort shall not be liable for such damages.

(2) The legal obligation of the parent or parents of an unemancipated minor child to pay damages under this section shall be limited to not more than $7,500, payable to the same claimant, for one or more acts.

4. It is law, but is it effective? The evaluation stage of policy is critical. The goal is to curb youth crime and we might expect to see a decrease in the juvenile crime rate. However, charging parents fines for the misdeeds of their children actually *increases* recidivism! It's true! A study of 1,167 youth in Pennsylvania found that the total amount of fines, fees and/or restitution significantly increased the likelihood of recidivism [4]. Justice system–imposed financial penalties increase the likelihood of recidivism in a sample of adolescent offenders [5] In particular, males, non-whites, and youth with prior dispositions and adjudicated with a drug or property offense were at an increased likelihood of recidivism associated with owing fines and fees (Piquero and Jennings, 2016). This is problematic as fees not only increase recidivism but also increase the likelihood of a "revolving door" juvenile justice system for minority youth.

In the end, what is law is not always effective and what is effective is not always law. This is where evidence-based practices come in.

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1. Lab, S. (2016). *Crime Prevention: Approaches, Practices, and Evaluations* (9th ed.). New York, NY: Routledge. ↵
2. Lab, S. (2016). *Crime Prevention: Approaches, Practices, and Evaluations* (9th ed.). New York, NY: Routledge. ↵
3. Shepard, E. (Winter 2001-2002) A new study finds. We wasted billions on D.A.R.E. *Reconsider Quarterly,* ↵
4. Piquero and Jennings, 2016, Piquero, A. and Jennings, W.G. (2015) ↵
5. Youth Violence and Juvenile Justice, 15 (3) p. 325-340). ↵

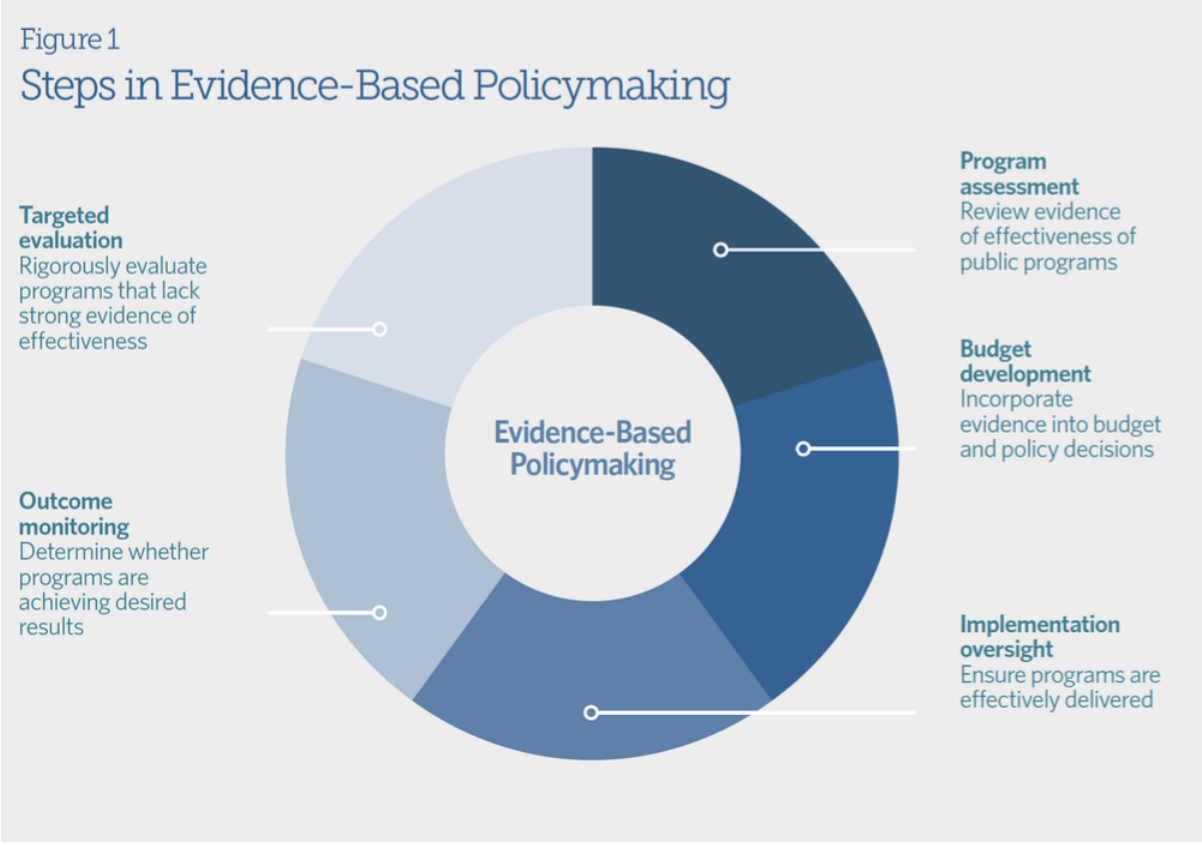
3.4: Importance of Evidence Based Practices

In the 1970s, Martin Robinson issued his infamous claim that “nothing works” in rehabilitating offenders. [1] In the 1980s, numerous research studies were published that contradicted this claim and proposed alternative approaches to combating crime and effective interventions. Since then, countless researchers, agencies, and even Congress have adopted the need to create comprehensive evaluations of effective programs.

Evidence-based practices mean utilizing research in pursuit of identifying programs, policy initiatives, or practices that work. The Office of Justice Programs (OJP) “considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through high-quality outcome evaluations,” and notes that “causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change.” [2] National research clearinghouses are great resources for systematic literature reviews of effective public programs across a plethora of areas, such as:

- the U.S. Department of Education’s What Works Clearinghouse,
- the U.S. Department of Justice’s CrimeSolutions.gov,
- Blueprints for Healthy Youth Development,
- the Substance Abuse and Mental Health Services Administration’s National Registry of Evidence-Based Programs and Practices,
- the California Evidence-Based Clearinghouse for Child Welfare,
- What Works in Reentry, and the Coalition for Evidence-Based Policy.

With evidence-based practices comes evidence-based policymaking. Evidence-based policy-making identifies what works, enables policymakers to use evidence in deciding budgets and policy, identifies where there are gaps or information is lacking, monitors and measures key outcomes, and continuously uses the information to improve performance and objectives. [3] The goal is to create a policy that can be enforced consistently and can withstand political change.



Steps in Evidence-Based Policy Making

1. Martinson, R. (1974). What works? - questions and answers about prison reform. *The Public Interest, 35*: 22-54. ↵

2. Crimesolutions.gov glossary (www.crimesolutions.gov/glossary). ↵
3. Pew-McArthur Report. (2014). ↵

3.5: Re-Evaluating Policy

Policies represent the current political climate and it is necessary to revisit and change them as necessary. For example, in 1787, only white men over 21 could vote, and the President could serve for as long as he was elected. Obviously, this changed. In the criminal justice world, many crimes are socially constructed and *mala prohibita* rather than *mala in se*, so creating laws and policies around them is as short-lived and fleeting as the new most popular meme. For example, the Eighteenth Amendment states (1917):

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

At the time, it was believed alcohol was the cause of crime, poverty, and social ills. Policy makers believed that the prohibition of alcohol (1920-33), or the "noble experiment" as it was called, would reduce crime and corruption, solve social problems, reduce the tax burden created by prisons and poorhouses, and improve health and hygiene in America. [1] As you know, the experiment was an absolute failure. Crime actually increased and became organized, alcohol became more dangerous to drink because of the lack of regulations on bootlegged and black market production, corruption of public officials was rampant, and courts and prisons were stretched to capacity.

Prohibition was eventually repealed by the 21st Amendment in 1933. There are many more laws and policies enacted every year in the United States that represent a current political climate or agenda. It is necessary, therefore, to reevaluate these policies, apply research the scientific method to assess their efficacy, and change modifies or repeal the laws as society changes. The United States Constitution is a living document, as are laws and policies.

Bizarre, Weird, and Funny Laws

As mentioned in this chapter, laws, and policies need to be revised and amended. Here are a few examples of outdated, bizarre, and just plain old funny laws from around the country.

Alabama: No stink bombs or confetti, spray string or bathing in public fountains.

Alaska: It is illegal to get drunk or be drunk in a bar.

Arizona: It is unlawful to spit "in or on" any public building, park, sidewalk, or road. Furthermore, if you are caught stealing soap, you must wash until the bar of soap has been completely used up.

Arkansas: Strictly prohibited to pronounce "Arkansas" incorrectly.

California: It is illegal to build, maintain, or use a nuclear weapon within Chico, California city limits.

Colorado: It is illegal to drive a black car on Sundays in Denver.

Connecticut: A pickle cannot be sold unless it bounces.

Delaware: No trick or treating on Sunday. If Halloween falls on a Sunday, door to door trick or treating must happen on Saturday, October 30th.

Florida: It is a felony to sell your children. And if an elephant is left tied to a parking meter the parking fee has to be paid.

Georgia: It is unlawful to eat fried chicken with utensils. "Finger lickin" good was made into law in 1961.

Hawaii: Billboards are strictly prohibited.

Idaho: It is illegal to engage in cannibalism or "non-consensual consumption" of another human. It is also illegal for a man to give his fiancé a box of candy that weighs more than 50 lbs (22.5 kg).

Illinois: Fancy bike riding is a big no-no.

Indiana: Black cats must wear bells on Friday the 13th. And baths may not be taken between the months of October and March.

Iowa: It is illegal to pass off margarine as butter and is punishable by up to 30 days in jail and a $625 fine.

Kansas: It is illegal to throw snowballs in Topeka.

Kentucky: Public officials must swear to not having been engaged in a duel with weapons.

Louisiana: It is illegal to steal another person's crawfish.

Maine: It is illegal to use tombstones for advertising.

Maryland: It is illegal to swear or curse upon any street or highway in Rockville.

Massachusetts: You cannot dance to the national anthem.

Michigan: Before 2006, it was encouraged to kill starlings and crows.

Minnesota: Pig greasing competitions and turkey scrambles are considered misdemeanors. Furthermore, citizens may not enter Wisconsin with a chicken on their head.

Mississippi: No limit on Big Gulp sizes.

Missouri: It is illegal to swing upon another person's motor vehicle and honk their horn for them.

Montana: It is illegal to play Frisbee golf in non-designated areas.

Nebraska: No person afflicted with a venereal disease may get married.

Nevada: In Eureka, it is illegal for you to kiss a woman if you have mustaches.

New Hampshire: It is unlawful to collect seaweed at night.

New Jersey: You may not murder someone while you are wearing a bulletproof vest.

New Mexico: It's forbidden for a female to appear unshaven in public (Carrizozo, New Mexico).

New York: Sliced or "altered" bagels carry an eight cents sales tax.

North Carolina: It's against the law to sing off-key.

North Dakota: It is illegal to set off fireworks after 11 pm.

Ohio: Coal mines must provide toilet paper. And it is illegal to get fish drunk.

Oklahoma: It is illegal to be involved in a horse tripping event or wrestle a bear.

Oregon: Engaging in a test of physical endurance while driving is strictly prohibited.

Pennsylvania: It is illegal to sing in the bath and to use dynamite to catch fish.

Rhode Island: It is unlawful to impersonate an auctioneer.

South Carolina: It is illegal to work or dance on Sundays.

South Dakota: Farmers can set off fireworks to protect their sunflower crops.

Tennessee: Panhandlers must apply for a permit.

Texas: A program has been created that attempts to modify and control the weather. Additionally, you can be considered legally married by publicly announcing a person as your wife/husband by saying it 3 times.

Utah: It is illegal to fish with a crossbow.

Vermont: A woman cannot wear false teeth without her husband's permission.

Virginia: It's against the law for a woman to drive a car in Main Street unless her husband is walking in front of the car waving a red flag.

Washington: You cannot buy meat of any kind on Sunday. Additionally, a motorist with criminal intentions must stop at the city limits and telephone the chief of police as he is entering the town. Most importantly, you can be arrested or fined for harassing Bigfoot.

West Virginia: While whistling underwater is prohibited, you may take roadkill home for supper.

Wisconsin: It is illegal to serve margarine and their cheese must be "highly pleasing."

Wyoming: You may not take a picture of a rabbit from January to April without an official permit.

[2]

Conclusion

We can look at criminal justice policy through three perspectives: theoretical, political, and practical. The theoretical perspective enables us to better understand the causes and consequences of crime and what can be done insofar as crime control or prevention. By researching the theory behind the crime, we can better implement effective policies. From a political perspective, studying policy confirms the need for evidence-based practices and decisions based on research rather than fear and haphazard agenda setting. And finally, the policy is practical. It utilizes theory, research, evidence-based practices to solve practical problems in the world around us.

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1. Thornton, M. (1991). Alcohol prohibition was a failure. *Policy Analysis, 157:*1-12. Retrieved https://object.cato.org/sites/cato.o...pdf/pa157.pdf] ↵
2. Isaac. J. (2009). The Wacky World of Laws. San Diego, CA: Lawyer In Blue Jeans Group Publishing. Reader's Digest Editors (n.d.). Here are 50 of the dumbest laws in every state. Reader's Digest. Retrieved: https://www.rd.com/funny-stuff/dumbest-laws-america/ Triangle Realty. (2018). Unusual Laws in Texas. Retrieved https://www.trianglerealtyllc.com/un...laws-in-texas/ ↵

CHAPTER OVERVIEW

4: Policing

Learning Objectives

- In this section, you will be introduced to the history of policing in the United States. Today, policing is under the microscope to ensure past mistakes are not repeated and forward momentum is reached. It is for this reason this section will explore the history, as well as the foundations, that the American policing system was built upon. At the end of this section, students will be able to:
- Discuss how the history of policing relates to current policing
- List the different parts of the history of policing
- Recognize the four eras of policing and identify the important parts of each era
- Explain why Sir Robert Peel is important to policing
- Describe how August Vollmer impacted policing
- List what three issues marked the Political Reform Era
- Illustrate several important occurrences during the Community Policing Era
- Discuss why the fourth era of policing is the Homeland Security Era

Critical Thinking Questions

Discussion Questions:

1. Why is the history of policing important to understand?
2. What about kin policing made it not a good form of policing?
3. What are the four eras of policing?
4. How was the Homeland Security Era established?
5. Why was Sir Robert Peel important to policing?
6. What did August Vollmer believe police should be doing?

4.1: Policing in Ancient Times

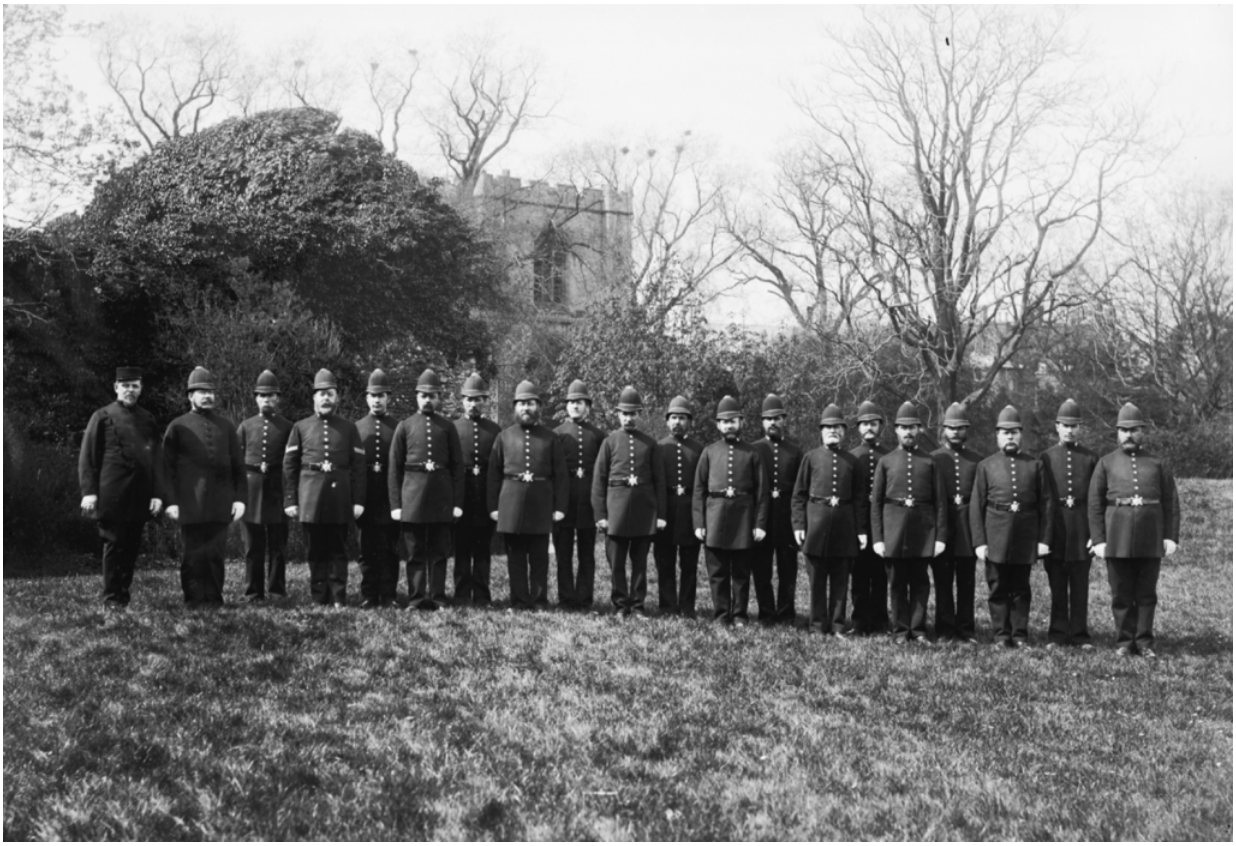
The development of policing in the United States coincided with the development of policing in England. In fact, the United States legal system traces its roots back to the common law of England. However, we can go all the way back before 1750 BC to see how forms of policing were common during ancient times, to what is now known as **kin policing**. Kin policing is when a tribe or clan policed their own tribe, and it often turned bloody quickly. The blood feuds would go on for a long period of time. [1]

However, it is estimated, also sometime around 1750 BC, that the Code Hammurabi was engraved in stone. This code detailed 282 sections of how one individual should treat another individual in society, and the penalties for such violations. The code is seen as the beginnings of law and justice. Around 1000 BC, Mosaic Law emerged. This law was a new form of rational law and hoped to predict what behaviors were prohibited. In Mosaic Law, the ruling class did not create the law. The Code of Hammurabi and Mosaic Law formed the ladder that would eventually lead to the creation of policing, as we now know it today. [2]

Peisistratus (605-527 BC), who was the ruler of Athens, has been called the father of formal policing. During this time of growth, new Greek city-states were being developed and blood feuds that lasted decades had to be quashed. Kin policing slowly washed away due to its barbaric nature and new doors opened for a modern city driven policing model. The first police service in Athens was developed by Sparta and it is often looked at as the first secret service. [3]

Augustus Caesar (27 BC), who was the first emperor of Rome, was instrumental in creating what is now called the **urban cohorts**. The urban cohorts were men from the Praetorian Guard (Augustus' army), charged with ensuring peace in the city. As crime rose and became more violent, Augustus formed the **vigils**, which were not affiliated with the Praetorian Guard, but were charged with fighting crime and fires. The vigils were given the power to protect and arrest. [4]

From 6 AD until the 12th century, Rome was patrolled day and night, by a public police force. With the fall of the Roman Empire, kings then assumed the role of protection. From the 12th-18th centuries, kings in England appointed sheriffs. At age fifteen, boys could volunteer with the *posse comitatus* to go after wanted felons. Constables, a police officer with limited authority, assisted the sheriffs with serving summons and warrants. Because young volunteers did the policing work, there were several problems, such as corruption and drunkenness. Victims who had the means to hire private police or bodyguards to so for protection, but unfortunately, that meant those who were poor, had neither help nor protection. [5]



1. Berg, B., (1999). *Policing in a modern society.* Oxford: Elsevier. ↵
2. Berg, B., (1999). *Policing in a modern society.* Oxford: Elsevier. ↵
3. Berg, B., (1999). *Policing in a modern society.* Oxford: Elsevier. ↵
4. Berg, B., (1999). *Policing in a modern society.* Oxford: Elsevier. ↵
5. Berg, B., (1999). *Policing in a modern society.* Oxford: Elsevier. ↵

4.2: Sir Robert Peel

The 19th century in England heavily influenced the history of policing in the United States. Not only did policing radically change for the first time in over six centuries, but the father of modern policing, **Sir Robert Peel,** set up the stage for what is known today as modern policing. Sir Robert Peel, the British Home Secretary, coined the term 'bobbies' as a nickname for cops and he believed policing needed to be restructured. In 1829 he passed the Metropolitan Police Act, which created the first British police force and what the 21st century knows for today's modern-day police. [1]

Sir Robert Peel

Sir Robert Peel is best known for the Peelian Principles. He did not create the twelve principles but used a combination of previous codes that he expected police to follow. The exact historical origins of the twelve listed principles below are unknown, but it has been theorized that the principles were slowly created over the years by academics studying Peel.

1- The police must be stable efficient, and organized along military lines;

2- The police must be under government control;

3- The absence of crime will best prove the efficiency of police;

4- The distribution of crime news is essential;

5- The deployment of police strength both by time and area is essential;

6- No quality is more indispensable to a policeman than perfect command of temper; a quiet, determined manner has more effect than violent action;

7- Good appearance commands respect;

8- The securing and training of proper persons is at the root of efficiency;

9- Public security demands that every police officer be given a number;

10-Police headquarters should be centrally located and easily accessible to the people;

11-Policemen should be hired on a probationary basis; and

12-Police records are necessary to the correct distribution of police strength

[2]

1. Cordner, G., Novak, K., Roberg, R., & Smith, B., (2017). *Police & Society.* New York: Oxford University Press. ↵
2. Cordner, G., Novak, K., Roberg, R., & Smith, B., (2017). *Police & Society.* New York: Oxford University Press. ↵

4.3: Policing Eras

Researchers Kelling and Moore (1991) evaluated the first three eras of policing. These eras are discussed below, and are often referred to as the **Political Era**, the **Reform Era**, and the **Community Era.** Through the microscope of seven topical areas, listed below, an understanding of how policing evolved begins.

1. Authorization
2. Function
3. Organization
4. Demand
5. Environment
6. Tactics
7. Outcomes

These seven characteristics have been used to evaluate how policing operated throughout history, most notably through its organizational structure, tactics, and primary focus. [1]

Political Era: The political era is often referred to as the first era of policing in the United States and it began around the 1840s with the creation of the first bona fide police agencies in America [2]

This era of policing is marked by the industrial revolution, the abolishment of slavery, and the formation of large cities. One way to confirm the start of this era is to look at the creation of police departments in larger cities:

- New York Police Founded 1845
- Chicago Police Founded 1855
- Philadelphia Police Founded 1751
- Jacksonville Police Founded 1822
- Indianapolis Police Founded 1850's
- Detroit Police Founded 1865
- Portland Police Founded 1870
- Eugene Police Founded 1863
- Jackson County, Oregon Police Founded 1852

With the advent of the industrial revolution, came goods and services. Along with new job opportunities, came a myriad of conflict as well. The fast-growing cities had to answer these problems with solutions in the form of policing. The abolishment of slavery and the new free black population created many unforeseen issues too with The Klu Klux Klan. The Klan began to make terrifying appearances and their reign of terror left many in fear. Policing had not yet formally entered the scene; therefore, The Klan operated virtually unencumbered.

London Strike: Truck Under Protection

The United States saw tremendous growth in major cities, had the industrial revolution, and the abolished slavery, which is when the Political Era of policing was set into motion. As its name suggests, it was an era of politics, mainly because of how policing was limited as a result of new laws, made clear by the Constitution. America answered the call by following the English and Sir Robert Peel's principles. Not unlike today, policing during this era was under the control of politicians. Politicians, like the mayor, had no problem controlling everything a policeman did during his call of duty (**NOTE:** the word policeman/men is utilized in this era/context, because during this time period, women were not allowed in the profession, and if they were accepted it was under a microscopic view of certain stereotypical matronly duties to be performed). In fact, Black policemen were rarely hired. Black policemen made their way into policing in the late 1800s, but when the Civil Rights Act of 1875 was ruled unconstitutional, Black officers all but disappeared from policing until the 1950s.

News Box: A look at the salaries:
1957 annual wage for a police patrolman – Milwaukee Police Department: $5,405.40
1957 Annual Report Milwaukee Police Department
https://city.milwaukee.gov/ImageLibrary/Groups/…/Archive…/1957AnnualReport.pdf

News Box: 61 years later
2018 annual wage for police patrolman- Milwaukee Police Department:
$57,291.00
Milwaukee, Wisconsin- State website https://city.milwaukee.gov/fpc/Jobs/Police-Officer.html

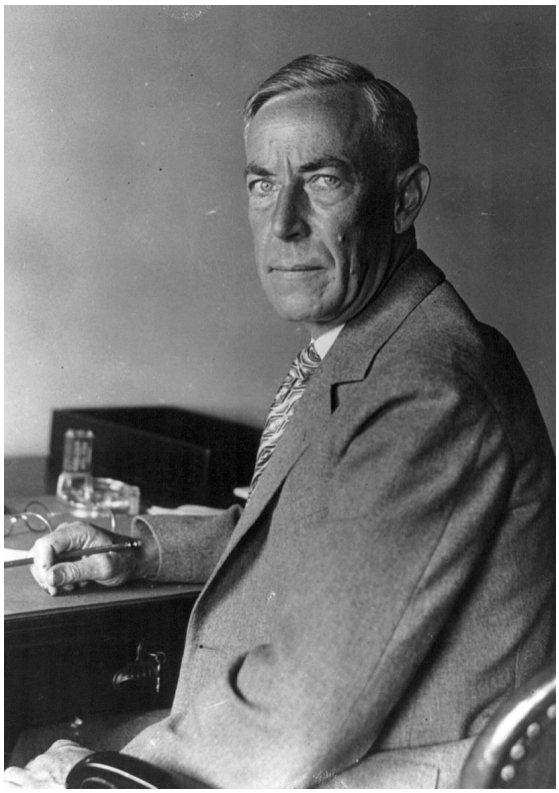
News Box: 2018 Annual wage for first step trooper- Oregon State Police: $56,184.00
Oregon State Police- Oregon.gov website https://www.oregon.gov/osp/RECRUIT/Pages/salary_benefits.aspx

Reform Era: Because the Political Era of policing ended up being laced with corruption and brutality, the panacea for the negativity became the Reform Era. One police chief was largely at the forefront of this new era, Chief **August Vollmer**. He is considered the pioneer for police professionalism. August Vollmer was the Chief of Police in Berkeley, California (1905-1932). He had many new beliefs about policing that would forever change the world of policing:

1. Candidates who were testing to be in policing had to undergo psychological and intelligence tests
2. Detectives would utilize scientific methods in their investigations, through forensic laboratories
3. Recruits, for the first time, would attend a training academy (police did not receive any formal training prior to August Vollmer's arrival)
4. Assisted with the development of the School of Criminology at the University of California at Berkeley

Chief August Vollmer saw policing and officers as social workers that needed to delve into the causes behind the acts in order to solve the issue, instead of just arrest it. [3] He knew in order to rehabilitate offenders, police officers needed to look behind the

handcuffs and start looking into the person and reason behind the behavior. [4]



"Father of modern law enforcement"

Diversity in policing started to make a mark during this era, but it would fall irrevocably far from meeting any type of quota. It was a better era for diversity than the Political Era, but the numbers don't lie in that it fell dismally short.

The Community Era- 1980s to 2000: In the 1960s and 1970s the crime rate double and it was a time of unrest and eye-opening policing issues. Civil rights movements spread across America and the police were on the front lines. Media coverage showed controversial contacts between white male officers and African American citizens, which further irritated race relations in policing. The U.S. Supreme Court handed down the landmark *Miranda v. Arizona* and *Mapp v. Ohio* decisions. The writing was on the wall that the policing environment had to change. The days of answering everything with bullying or police professionalism were no more. The Community Era of policing began and those in police administration hoped this new era held the answers to fixing decades-old issues. The police needed help and they would turn towards the community and its citizens for assistance.

This new era of community policing held that police couldn't act alone; the community must pitch in as well. Whether the problems were a dispute between neighbors or high crime area drugs and shootings, these issues did not develop overnight and could not be solved by a response of police alone. Instead, these community problems needed a pronged approach where the police worked together with the community and over time the issues could be systematically solved. Out of the box thinking was common in community policing and often community leaders were identified in order to make the impact. During this time police candidates started showing up to the application process with Associates and Bachelors degrees. The 'old school officers' mocked these degree-holding candidates. But the landscape was changing and officers needed more thorough training than ever to answer the call.

Problem-oriented policing was an after effect of community policing, in that it utilized community policing, but focused on the problems first. The biggest difference was problem-oriented policing used a defined process for working towards the solution. The problem was torn apart layer by layer and rebuilt according to set parameters that have a proven record of working.

The Community Era was also a time for research. Prior to this era, research on crime, police, or criminal justice topics were few and far between. With new federal government funding options available, this era missions could be accomplished through grants and the needed research began. Proof of what worked, what didn't, and suggestions on how to improve policing were abundant. Without research or studies, policing can become stagnant. But with funding available, the answers were a questionnaire or interview away and solutions came rolling in.

Community Era Example

"I remember the Community Era very well. I was a new police officer during this time and actually at the forefront of Community Policing and Problem-Oriented Policing. I was the first woman officer at my police department that was pregnant and the administration was open to suggestions when asked what to do with me when my belly expanded. I politely suggested that once I was five to six months pregnant and began to show (and not fit in my uniform or patrol belt anymore), I will be voluntarily transferred to the Crime Prevention Division. With my doctor approving this decision, my belly grew, and I transferred to this new division. I remember hitting the streets and knocking on doors, spewing how great of a panacea Community Policing was. It took some buy-in and with the citizens who 'bought-it,' the concept actually became a reality and worked! Months later we had a string of burglaries occurring in a high-crime neighborhood. The detectives, patrol, everyone hit the streets, knocking on doors, questioning everyone, in an attempt to find the criminals responsible. With no avail, I turned to Community Policing. I brought in a mounted police officer and horse. My colleagues chucked and shook their heads in response! What was I thinking?!?! "It was a waste of resources," they balked! How could a cop on a horse solve this crime? I was glad; I 'wasted my time,' because it worked! The officer on the horse brought citizens out of their houses that normally would never have spoken to a police officer normally. The horse was such a spectacle in the neighborhood, that it was the catalyst that caused citizens to not only come out of their houses but to start talking about what and who they had been seeing in and around their neighborhood that did not belong. One such sighting was a vehicle description, which led to criminals responsible for the burglaries. "

The Homeland Security Era- 2001 to Present: On September 11th, 2001, when terrorists hijacked airplanes and flew them into the World Trade Center buildings and Pentagon in the United States, a fourth era of policing, the era of Homeland Security, was said to emerge. [5] The long-lasting repercussions of this terrorist act would forever change life for Americans, but the daily activities of all policing departments. There is some debate in the field as to the order of policing eras and what they should be called. Some scholars list the policing eras as:

1. Pre-Policing Era
2. Political Era
3. Reform Era
4. Community Era

While others believe the policing eras are:

1. Political Era
2. Reform Era
3. Community Era
4. Homeland Security Era

The realities of the tragedy of 9/11 were that it did start a new era of policing. In fact, a case could be made for the large dark line that became metaphorically visible on 9/11/01, when the Community Era shifted to the Homeland Security Era as airplanes destroyed America's feelings of safety. Policing will probably always involve some sort of Community Era policing in order to make a difference.

Remembering 9/11: A Decade Later

Policing under Homeland Security is marked by a more focused concentration of its resources into crime control, enforcement of the criminal law, traffic law, etc., in order to expose potential threats and gather intelligence. [6]

Scholars have examined the pros and cons of a national police department in the United States. For example, Canada has a Royal Canadian Mounted Police. Whereas, depending on location, one could go through several different cities and counties while driving to the store, all of which have their own respective police departments. With the advent of the Homeland Security Era, a new model of centralized organizational control began due to the need for information dissemination. One of the biggest flaws of 9/11 was the lack of communication between law enforcement agencies. The Department of Homeland Security was developed and one of its first major missions became the dissemination of information and communication. So, while a national police department does not exist in the United States, communication and information are now a common thread that binds all of the different types of law enforcement agencies.

Homeland Security Era Example

I remember I awoke to live video showing one of the World Trade Center buildings with smoke billowing from the windows. I wondered hesitantly how the fire started? Then, as one video camera rolled, by happenstance, it caught an airplane flying directly into the second World Trade Center building and my worst fears came true. I think I stumbled to the edge of my couch and steadied myself, although I really don't remember, as I watched what happened next, slowly unfold. The effects of that day will never be forgotten.

During a trip to New York, last summer, I visited the World Trade Center museum. As I walked through the halls, a pin drop could have been heard. The respect, sadness, and overwhelming feelings that filled me made it difficult to breathe. Not only did the terrorists kill and destroy many things that day with their hate but they forever changed policing. I was a patrol officer at the time when the devastation ravaged America. Sadness filled our department for our brothers and sisters that lost their lives. We didn't realize at the time, but our departments and thousands of others in policing across America were in for major changes, because of the heinous acts of a few. The first changes I remember taking place were: Active shooter updates and training; Incident Command System (ICS) updates and training; NEMA emergency management training; Gas masks were distributed for each individual officer, to be carried full-time, along with 3 month re-check and applicable training; Policy and procedure updates and additional response training depending on the call type; Reconfiguration of call type and responses to each; COMMUNICATION became the center of everything.

It became essential to hire a person to go through all the communication and alerts we received daily and alert those the information effected Unless those in the policing field had blinders on, the era of Homeland Security, was probably at the time, and will probably always be, one of the most substantial in policing history.

1. Greene, J. R., & Mastrofsky, S. D. (Eds.) (1991). Kelling, G.L., & Moore, M. H. (1991). From political to reform to community: The evolving strategy of the police. In *Community Policing: Rhetoric or Reality.* New York: Paeger. ↵
2. Oliver, W. M. (2006). The fourth era of policing: Homeland security. *International Review of Law, Computers & Technology* ↵
3. Reppetto, T.A. (1978). The Blue Parade. New York: Free Press. ↵
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5. Oliver, W. M. (2006). The fourth era of policing: Homeland security. *International Review of Law, Computers & Technology.* ↵
6. Oliver, W. M. (2006). The fourth era of policing: Homeland security. *International Review of Law, Computers & Technology*. ↵

4.4: Levels of Policing and Role of Police

Learning Objectives

- After reading this section, students will be able to:
- Understand the various options for careers in the policing and law enforcement arena
- Discuss educational requirements are required for law enforcement positions with the federal government, state, county, municipal or city officer candidates
- Explain what a state police officer's main objectives are
- Describe the difference between commissioned and civilian
- List several divisions that a commissioned officer can promote to
- List several departments that a civilian can work within a law enforcement type agency
- Discuss why different police departments work with each other

Critical Thinking Questions

1. What education does a candidate need for jobs in federal law enforcement?
2. What education does a candidate generally need for city or county jobs as a police officer?
3. Is there a difference between a person who is considered commissioned and a person who is considered a civilian?
4. Does every law enforcement agency have the same opportunities for advancement?
5. Why do different police departments work together?
6. Can a person be a homicide detective without being a police officer?

Southern Oregon University Criminology and Criminal Justice student Christina Richardson volunteered to try on the Oregon State Police explosive unit bomb suit at the annual Lock-In Event.

Policing Types

It is an exciting time for those entering the policing or law enforcement field. The choices are endless, and one need not look far to find areas that draw the mind and excitement of the prospects in such a career field. All too often, candidates only think of local police departments; i.e., city or county agencies. The options available are genuinely multi-faceted. Whether one is looking for the stereotypical police officer role, or if it is the study of the criminal mind, possibly criminal forensics, or even crime analysis, or if one loves the forest or the water, the options are endless. While the below list is not all-inclusive, it does give a good detailed look at the array of careers one could have in the policing or law enforcement field.

ODOT partnered with the Ashland Police Department to raise awareness about unlicensed movers.

Federal Level: The federal arena of law enforcement careers is broad and vast. The options are almost endless, and the rewards outweigh most of the other local agencies. However, there is a catch, which centers on education and experience. Most law enforcement-related careers in the federal arena require a bachelor's degree, at a minimum plus three years of related full-time work experience before applying.

Candidates interested in the Federal Bureau of Investigation (FBI) as a special agent, for example, are looking at the following educational requirements:

- A bachelor's degree in either accounting, computer science/information technology, foreign language (only a criminal justice major if the candidate is planning on working full-time for a law enforcement agency for at least three years before applying),
- OR a JD degree from an accredited law school,
- OR a diversified bachelor's degree AND three years of professional experience, OR a master's degree, or Ph.D. along with two years of professional experience.

Federal job possibilities (the list is not comprehensive)

- Federal Bureau of Investigation (FBI)
- Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
- Drug Enforcement Administration (DEA)
- Secret Service
- Central Intelligence Agency (CIA)
- National Security Agency (NSA)
- United States Marshals Service (USMS)
- U.S. Park Police
- U.S. Fish and Wildlife Service (USFWS)
- Department of Justice
- Federal Bureau of Prisons
- U.S. Army Criminal Investigation Command (CID)
- U.S. Army Counter Intelligence
- Dept. of Ariculture-Office of Inspector General (USDA-OIG)
- U.S. Forest Service Law Enforcement & Investigations (USFS LEI)
- Department of Commerce-Office of Inspector General (DOC-OIG)
- Office of Security (DOC-OS)

- US Commerce Department Police
- Office of Export Enforcement (OEE)
- National Institute of Standards and Technology Police
- United States Pentagon Police
- Department of Defense-Defense Criminal Investigative Service (DCIS)
- United States Pentagon Police (USPPD)
- Department of Defense Police
- Defense Security Police
- Defense Logistic Agency Police
- United States Coast Guard (USCG)
- Plus Many More ++

State Level: State police work for a state. For example, in Oregon, the state police work for the state of Oregon and the department is Oregon State Police (OSP). In Nevada, the state police are Nevada Highway Patrol (NHP) and work for the Nevada Department of Public Safety. The commissioned (certified by the state with powers of arrest) employees are generally called **troopers** (a.k.a. police officers), their uniform is blue (except for California Highway Patrol who wear tan and dark brown uniforms), they wear round tipped hats, and their primary duty is to patrol the highways and interstates; however, many state police also investigate many different criminal crimes, run criminal forensic labs, along with divisions of fish and wildlife. The duties of each state agency are different and unique to each state. For example, OSP has an explosives unit (see photo below).

Oregon State Police (OSP) Trooper Greg Costanzo showing Southern Oregon University Criminology and Criminal Justice students the OSP explosive unit robot during the annual Lock-In Event.

County Level: There are 3,142 counties in the United States. [1] Each county has an elected Sheriff and **deputies** (a.k.a. police officers) work directly under the Sheriff. Deputies are no different from any other city police officer other than the Sheriff can be responsible for the courts and jails (a.k.a. correctional facility) in their respective county. But there are also many city police departments that are responsible for jails, so it just depends on the department.

Each state is divided into counties, and each county, depending on size, could have a sheriff's office. Examples of sheriff offices (county police) in Oregon:

- Jackson County Sheriff's Office
- Josephine County Sheriff's Office
- Douglas County Sheriff's Office
- Deschutes County Sheriff's Office

Jackson County Sheriff's Office, Sgt. DiCostanzo assisting during the Southern Oregon University Criminology and Criminal Justice annual Lock-In Event (for the K-9 patrol dog demonstration). Every year the CCJ Department along with the CCJ Crim Club puts on the Lock-In Event (February or March). During this event law enforcement agencies across the state participate and assist with spreading the word about law enforcement. For one afternoon students learn about such programs as: K-9 patrol dogs, eplosives unit, defensive tactics, MILO (police officer simulator training), CSI, SWAT, DUI, and parole/probation. Students at SOU can enroll for 1 credit for this one day class and other students in the community can attend as well. Don't miss the Lock-In event if you are interested in law enforcement or in understanding the various facets of law enforcement.

A Deputy monitors Pleasant Creek Road in the early morning adjacent to the Garner Complex. Credit: Facebook – Jackson County Sheriff's Office – Oregon

Municipal/City Level: Municipal/City police work under a municipality or city. If a city has a government, i.e., mayor and city council members and a municipal code (misdemeanor laws for the city), then the city can have city police. If a person works for a

city, the designator is a police officer. Some cities have a connected jail (a.k.a. correction or detention facility), while others are operated through the Sheriff and the county.

Most state, county, municipal/city police departments do not require future candidates to have a bachelors' degree. Currently, many of the candidates testing for such positions do have an associates or bachelor's degree, therefore although it is not required, the candidates are more desirable because they have a college degree. Generally, college degrees become a required educational background, when an officer wants to enter management, i.e., sergeant, lieutenant, captain. However, many Chiefs and Sheriffs have either a Masters or Ph.D. The following are municipal/city police departments in Oregon:

- Ashland Police Department
- Talent Police Department
- Phoenix Police Department
- Medford Police Department
- Central Point Police Department
- Eagle Point Police Department

CCJ students in the CCJ 387 Law Enforcement Test Prep Class take a field trip to Medford Police Department, where Sgt. Budreau gives instructions to Officer Josephson on how to properly pull the dummy during the ORPAT test.

Learn More About Every Law Enforcement agency in the U.S.

For a complete list of law enforcement agencies (state, county, municipal/city) visit: http://Discoverpolicing.org

Miscellaneous Policing Jobs: There are many police jobs that may fall under the jurisdiction of the federal government, state, county, or city or they are civilian positions (see below):

- Bailiff for a Court
- Animal Control or Animal Cruelty Investigator
- Computer Forensics
- Correctional Counselor
- Court Clerk or Court Reporter
- Criminologist
- Private Investigator
- Criminal Justice Administration
- Crime Prevention Specialist
- Protection Officer
- Forensic Accountant, Anthropoligist, Artist, Hypnotists, Nurse, Pathologist, Psychologist, Scientist, Serologist, Toxicologist
- Judge

- Juvenile Probation Officer
- Latent Print Examiner
- Legal Secretary/Paralegal
- Loss Prevention Officer
- Mediator/Negotiator
- Pre-trial Officer
- Security Analyst
- Security Officer
- Social Worker
- Victims Advocate
- Plus Many More ++

Becoming an Officer Example

"I regularly get asked the following question: "Do I have to be a 'real cop'- you know, a cop that drives in a patrol car and answers calls for service, to be a homicide detective?" I understand this question because of a lot of the cop, and detective television shows out there today do not accurately represent this situation. I am so glad the television shows are available because they work as a recruitment tool for many departments. But, I have to disappoint many people, when I give the honest answer…"Yes, you have to be a 'real cop' before you can be a detective." And, I go a step further, in explaining that it can take years, or even decades, to test and promote to a homicide detective." I explain that many smaller departments that do not have many homicides in a given year, have positions open in the detective bureau every two-five years. But, the larger departments that have hundreds to thousands of homicides a year, will only promote every ten-to-twenty years, because even though an officer could promote to the detective bureau within several years, the homicide detective is a glamorous position, therefore one must 'do their time' as a property detective, investigating vehicle burglaries, etc., before there is a retirement and they have proven themselves enough to take that position.

Divisions within Each Agency: Law enforcement agencies, whether they are federal, county, state, or municipal/city, generally have jobs available within two major areas: 1- Commissioned 2- Civilian. **Commissioned** is a term that describes an employee that has been through police training is certified as a police officer and has arresting powers in the state. **Civilian** is a term that describes an employee who has not been through police training and does not have arresting powers.

One of the fantastic parts of policing is the vast array of jobs available. Whether a person is looking in the commissioned or civilian arena, there are a plethora of choices. Once a candidate has gone through the testing process for a particular law enforcement agency and is hired after a certain number of years 'on the road' (length of time required on the road, is determined by each department) the seasoned officer can then test for many tantalizing individual divisions. Every department is different as to those specialized divisions. For example, the Ashland Police Department (APD) in Oregon is a smaller police department and offers its officers a chance to engage in community policing and problem-oriented policing at a one-on-one level, due to its smaller size (thirty-fourty officers).

On the other hand, because of its smaller size, the opportunities for advancement are minimal. Officers with the department can also promote to management. However, APD does have a few detectives but they do not offer its officers the more more glamorous divisions such as those offered by the Portland Police Bureau (PPB). An officer at PPB can promote to the following divisions: Drugs and Vice, Narcotics, Asset Forfeiture, Youth Services Division, Traffic, Family Services Division, Detective, K-9, Explosive Disposal, Gang Enforcement, Air Support Unit, Rapid Response, and more.

Policing can be multifaceted thereby keeping its officers engaged. Unlike many other professions, the daily job of a police officer, depending on the respective department, can change with divisions. One year a police officer may be writing a traffic citation from a patrol car, and the next year the same police officer may be driving an off-road motorcycle patrolling the local park or riding a mounted horse in the downtown area.

The choice to have a career in policing is enormous, but the candidate must go one step further and start researching to decide what type of policing, and then dig even further to pick which agency and what possible divisions the candidate would like to have the opportunity to join one day.

Jackson County Sheriff's Office demonstrates K-9 patrol procedures during the annual Lock-In Event at Southern Oregon University. During this K-9 class students get to learn how patrol dogs operate and they actually get to see a bite demonstration and learn how the K-9's are trained.

COMMISSIONED- Divisions within a Law Enforcement Agency:

- Detective/Investigations (Persons Crimes- Property Crimes- Homicides, Rape, Robbery, Burglary, Auto Theft, DUII, Domestic Violence)
- Motors
- Narcotics
- Human/Sex Trafficking
- VICE
- Crime Scene Investigation (CSI)
- SWAT
- K-9 (patrol, drug, and search & rescue dogs)
- Crisis Negotiator
- Mounted Unit (horses)
- Air Unit
- Training/Range Master
- Academy/Tac Officer
- Bike Patrol
- Recruiting
- Internal Affairs
- Public Information Officer
- Gangs
- Search & Rescue
- Forest and Fish & Wildlife
- Marine
- Various Area Task Force (usually made up of various law enforcement agencies in the area- to sometimes include federal agencies too)
- Plus Many More ++

CIVILIAN- Divisions within a Law Enforcement Agency:

The civilian areas of each police department are also fascinating. Not every person is meant to go into law enforcement as a police officer. It is a strenuous and stressful job that attracts many but only made for a few elite. However, don't fret; there are many options in the law enforcement realm. Putting on a bullet-proof vest, filling a holster with a semi-automatic handgun, and

continually training to be in tip-top condition does not appeal to everyone, so there are still many jobs available in the law enforcement arena. Civilians are the other half of the equation and are a much-needed commodity for every law enforcement agency. When a citizen dials 9-1-1, a dispatcher answers the phone, and that dispatcher is a civilian. When a police officer finds heroin on a suspect and takes custody of it and later books it into evidence at the police station, the evidence technician is the civilian that logs and follows through with the chain of custody for the heroin evidence. Civilians are just as important as the commissioned positions at a law enforcement agency.

Example civilian positions at law enforcement agencies:

- Dispatch/911 Operator
- Records
- Crime Analysis
- Forensic Unit/CSI
- Training
- Fleet Management
- Support/Facilities
- Human Resources
- Operations Support Unit
- Recruitment Coordinator
- Volunteer Coordinator
- Administrative Support
- Plus Many More ++

Students at Southern Oregon University with a major in Criminology and Criminal Justice take the CCJ 321 CSI and CCJ 462 Forensic Criminal Investigation classes and practice crime scene investigation skills for a future career as a Crime Scene Investigator

Contact with Outside Agencies: It takes a team to accomplish policing. One federal, state, county, or city police agency cannot do it all alone. In order to succeed the agencies must work together. Whether a narcotics division works with the ATF or an entire SWAT team comprised of officers from various city and county departments, the team concept in policing is unwavering.

Oregon has a lot of examples of coordination between different agencies to make things happen. For example, in Jackson County (Oregon) there is The Medford Area Drug and Gang Enforcement (MADGE) Unit; there was a need in Jackson County, to work towards controlling the gangs and drugs in the valley, and one department could not complete the mission alone. Therefore, MADGE was created to engage the following agencies:
Medford Police, Ashland Police, Central Point Police, Jackson County Sheriff's Office, Oregon State Police, Jackson County Community Corrections, Federal Bureau of Investigation, Homeland Security Investigations Division, and the Oregon Army National Guard. Not only does the job get done more efficiently and more effectively but also the communication that occurs when nine different agencies converge is awe-inspiring.

In the News: MADGE is proactive in gang intelligence and gang prevention. In 2015, MADGE and Medford Police Department investigated 247 gang-related crimes; a strong majority of these crimes were graffiti cases. With the continued help of CSO Todd Sales, this graffiti is removed or painted over with the assistance of youth offenders completing their community service hours, for their part in graffiti. In 2015 there was a 140% increase in gang-related aggravated assault cases, from 5 in 2014 to 12 in 2015. Current numbers of documented gang members have leveled off from past years. In 2015, MADGE and Medford Police have identified 315 documented gang members and associates that participate in organized crime activities. This information is compiled for the furtherance of an investigation involving organized criminal gang activities http://Madge Task Force Retrieved from http://www.ci.medford.or.us/Page.asp?NavID=2400 i City of Medford (2018, September 23). Madge Task Force Retrieved from http://www.ci.medford.or.us/Page.asp?NavID=2400

Finally, once one enters the policing field, the contacts made daily are numerous.

An officer who works for a city police department can have contact with:

- Jails/Correction/Detention Facilities and Employees
- Prisons
- Prosecutors Office
- Defense Attorneys
- Judges and Lawyers
- Various Social Services
- Educational Entities

These contacts are precious to every police officer and without them; the officer could not complete their job effectively.

1. U.S. Department of the Interior (2018, September 23). How many countries are there in the United States. Retrieved from https://www.usgs.gov/faqs/how-many-c...-united-states. ↵

4.5: Recruitment and Hiring in Policing

Learning Objectives

- After reading this section, students will be able to:
- Describe the parts of the written test
- Discuss why a candidate must study, study, study, for the oral board interview
- Explain the type of questions on an oral board interview
- List the different types of a physical agility test
- Explain why departments are starting to utilize the assessment center test
- Recognize why a candidate's background is the most important part of the testing process
- Describe why candidates fear the psychological evaluation
- Understand the B-Pad Video Test

Critical Thinking Questions

1. What is on the written test?
2. How should a candidate study for the oral board interview?
3. What is the best way to prepare for the physical agility test?
4. How can a candidate prepare for an assessment center?
5. What is the best way to start preparing for the background investigation and interview?
6. Does the psychological evaluation only check if a candidate is psycho or crazy?

History of Recruitment and Hiring

What History? 'Nil' For lack of a better word, would describe the history of recruitment and hiring of new officers. Before the 1960s, as long as the candidate was a white male, had a heartbeat, and there was an opening for a cop, the job was most likely his. Women and officers of color were all but non-existent on the force. Women were only allowed into the 'boys only club' if they wore a pencil skirt and fit a prescribed role consistent with being a woman. In some departments, women were allowed to work in the detective bureau and interview children victims, because women supposedly talked to children better than men, because of their 'maternal' instincts. These stereotypes continued in policing towards women and minorities until new laws forbidding such behavior, made their way into the scene. With new employment laws passed between the 1960s to the late 1990s, many doors opened for women and minorities.

Recruitment and Hiring Example

When I was in the recruitment division of my police department and also as a professor at a university, I continually saw future police candidates unprepared for the Law Enforcement Testing Proces, a.k.a. The LET Prep For some reason, candidates assumed that if they had their associates, or bachelor's degree, they did not need to study and prepare for the LET Prep. Unfortunately, that could not be farther from the truth. Just like a high school student getting ready to enter college, needs to take the ACT or SAT, that student must still study and prepare for those tests if there is to be a successful outcome. Due to the importance and multifaceted LET Prep, it is even that much more critical that the candidate take the time to train and prepare. When asked how much time should be spent studying and preparing? My response was always "as much as you can!" But, in reality, the candidate should start preparing a minimum of six months before the written test (which is the beginning step of the LET Prep). A good guide is one hour a night. Also, I recommend studying appropriately for each part of the LET Prep. For example: The Oral Board Interview should be prepared for with the candidate actually speaking aloud the answers to pre-determined questions (such as: "Tell us about yourself"), the candidate should video themselves to playback, watch and learn from, and if at all possible the candidate should ask friends and family to sit on a 'mock oral board panel' and the candidate should answer questions aloud and in front of the panel. The more realistic the training, the better prepared the candidate will be.

The Law Enforcement Testing Preparation (LET Prep)

One of the most challenging entry-level testing processes in the United States is for the position of police officer. A typical 'regular' job, such as a cashier at a store, requires the candidate to fill out a job application, then go onto a job interview, and poof, they are hired! There is a good reason why the LET Prep is so difficult and thorough. Unlike a cashier, a police officer, once hired and trained, becomes the beholder of great power with authority to take away a person's freedom all under the protection of the government to shoot and possibly take a life, when a life is threatened. Officers have the authority to take away a person's rights and freedoms and this type of power should not be given to anyone with just the flick of a coin, the testing process should be rigorous and thorough. Therefore, with those facts, the law enforcement testing process should be thorough and rigorous, to ensure the right candidate is hired.

When thinking of the LET Prep, it can help to compare it to the ACT, SAT, National Football League Training Camp, and military boot camp, all combined. The best way a new candidate can ensure failure is to forego studying and go into the process unprepared.

Written Test -LET Prep

The written test is tough! It can be compared with the ACT and SAT and some parts are even a bit more difficult! Eighty percent of the candidates that take the written test fail! The written test has the following types of questions:

- Reading Comprehension
- Vocabulary
- Spelling and Grammar
- Observation/Memory
- Deductive Reasoning/Inductive Reasoning
- Spatial Orientation
- Math
- Essay/Incident Report Writing/Written Communication
- Analytical Ability

Every law enforcement department is different, although generally there are two basic ways departments administer the written test. The first is through an online testing service. The candidate registers online to take the test and then will go to a pre-determined location (such as a library) with a proctor, to take the written exam on a computer. The candidate can then send their exam score to a participating law enforcement agency, to which the candidate is applying. The second is through the law enforcement agency itself. The agency the candidate is testing for will post the written test date, and the candidate will respond to the agency and take the written test. Most agencies score the written test on site, and the candidate learns right there and then if they have a passing score to move forward in the testing process. Every agency also differs concerning the passing score. Most agencies require at least a seventy percent to pass the written test and move on in the hiring process. Although there are no set rules as to the passing score, some agencies require seventy-five or eighty percent to pass the written test, it just depends on the individual agency.

The written test is tough! There are no shortcuts for studying for it, except to sit down and put the time in. The best way to study is take one subject at a time, study one hour a night, and follow up with practice tests of the respective subject. List the areas of concern after grading the practice tests and move onto the next subject. After all subjects have been studied, go back and spend more time focusing on the areas of concern. A reasonable period needed to study for the written test is generally six to twelve months.

Hiring Our Heroes
Senior Airman Alfonzsa Jackson of the 127th Maintenance Squadron speaks with Trooper Walter Crider of the Michigan State Police during the Hiring Our Heroes job fair at Selfridge Air National Guard Base, Mich., May. 18, 2013. Jackson, a six-year member of the Air National Guard and recently a member of the 127th MXS Aerospace Ground Equipment crew, attended the job fair to explore possible career opportunities in law enforcement. More than 300 were in attendance visiting with representatives of more than 50 employers. (U.S. Air National Guard photo by TSgt. David Kujawa.)

Physical Agility Test- LET Prep

The physical agility test is given three different ways, depending on the department;

#1-State Physical Agility Test: In Oregon, for example, most of the departments utilize the ORPAT or Oregon Physical Agility Test. The ORPAT is a job sample physical ability assessment process. The goal is to assess an entry-level police officer candidate in the physical demands a police officer is likely to replicate during routine duties.

- Part One- Mobility Run: 1235 Foot Obstacle Run Where the Candidate Demonstrates Mobility, Agility, Flexibility, Power, and General Physical Endurance
- Part Two- Push Activity, Controlled Falls, Pull Activity
- Part Three- 'Dummy' Drag, 165-pound 'Dummy' is Dragged 25 Feet

During the CCJ 387 Law Enforcement Test Prep Class, students took a field trip to Medford Police Department, where Sgt. Budreau assisted the students with the various portions of the ORPAT.

#2-Physical Agility Test: A department will hire various testing agencies that have developed physical agility courses, to set up and test entry-level police candidates.

- A description of a 'dummy' suspect is given (this 'dummy' just committed a crime)

- The candidate runs through various obstacles; four-foot cyclone fence jump, window crawl through, one-hundred to three-hundred yard dash, and six-foot fence jump
- The candidate picks the suspect ‘dummy’ out of a lineup and drags the one-hundred+ pound suspect ‘dummy’ twenty+ feet

#3-Military Physical Fitness Test

- Push-ups: a certain number, in a specified amount of time
- Sit-ups: a certain number, in a specified amount of time
- Pull-ups: a certain number, in a specified amount of time
- Two-mile run: in a specified amount of time (times are dependent on sex and age of candidate)

Just as with the written test, the physical agility/physical fitness test must be prepared for. All of the above three tests require the candidate to work out and perform various physical fitness activities for a specified period of time before the testing process in order to ensure the candidate is in proper physical condition for the test. It is also the time for the candidate to realize that physical fitness must be a career-long decision in law enforcement, and this is the perfect time to start with the mindset of keeping physically fit as a lifestyle.

Officers with the Ashland Police Department teach a defensive tactics class during the annual Lock-In Event. This is a great time for SOU CCJ students to learn the tactics officers train in during the police academy and every year during defensive tactics recertification.

Oral Board Interview- LET Prep

The oral board interview is one of the least prepared for testing portion of the LET Prep since the questions for an entry-level police officer candidate are very basic:

- Tell us about yourself?
- Why do you want to be a police officer?
- What have you done to prepare for the job?

There often is the feeling by candidates, that the answers to the above questions are a given and known, therefore why would one need to study or prepare for such easy questions? However, that way of thinking could not be further from the truth. The oral board interview consists of a table with two-to-four police department represenatives, usually a police officer, possibly a volunteer police department representative, and one or two supervisors on one side of the table, and one chair placed in the center of the room (or the opposite side of the table) for the candidate to sit. This set up is meant to place the candidate on the spot and cause some stress to occur. This will help the panel members see how the candidate responds to stress. The reason behind this is because the job of a police officer will entail at times, stressful situations and being the center of attention when citizens will look towards the police officer for guidance. Therefore, this is one way to gauge how the candidate or future police officer will respond in a stressful situation.

Successful candidates learn positive ways to prepare for the oral board interview by taking college/university classes, obtaining study guides, writing out answers to the obvious questions, memorizing answers, and conducting practice sessions with family and friends where the questions and answers are read aloud.

Paul Donaldson, right, Tallahassee Police Department policeman, speaks to Pamela Cherry and Toccora Ferguson, contract custodians, during the Veterans career fair Oct. 19, 2017, at Moody Air Force Base, Ga. Over 55 potential employers were present to network with attendees, compete for hiring opportunities and schedule interviews

Oral Board Story

I have been a panel member on dozens of entry-level police officer oral board interviews. I was always amazed at how unprepared the candidates were. Once during one oral board interview one candidate, was asked: “Tell us about yourself,” to which the candidate began by rolling his eyes towards the ceiling while he chomped on his gum and proceeded to say: “hmm…..well……hmm” and then he put his right hand into his right pant’s pocket and began jingling his keys. The room was quiet other than the panel members’ thoughts of how this question could have stumped the candidate. The candidate proceeded by swallowing loudly and without making eye contact with any of the panel members said: “I am in college and I just broke up with my girlfriend and … hold on…let me think…I know there was something else…could you repeat the question?”

At this time I put him out of his misery and moved onto the next question. He, of course, continued to flail with each question and at the end, he failed the oral board interview. I do not know if he would have made a good police officer or not, but I do know this…he did not prepare for his oral board interview. I can almost guarantee (because I have seen this from many other candidates as well) that he knew we would ask that particular question, but he figured, why did he need to study that question? He knew all about himself, heck he grew up with himself, and he often spoke to his friends and family about himself regularly so of course, he would not have any troubles rambling off all the amazing things he had done in his life. Unfortunately, he did not figure on one big thing; STRESS! Stress and nerves cause the most confident of us to freeze and stumble on our words.

Therefore, the most poised of us must prepare a handwritten (or typed) pre-determined answer to many such questions, then create study cards (or notes in a smartphone) of the appropriate answer and finally study, study, and study more, and memorize! That way when the actual stress hits and the nerves take over, the immediate response will be to go back to what was studied. Don't take my word for it. Look it up! It is actually a favorite tool and used by police officers regularly in their weapons and defensive tactics training as well. Can you think of a more stressful, nerve-racking situation, than having a person threaten or point a weapon at you? The way most officers begin to respond to such stressful situations is they revert unknowingly to their training.

A second example of a female candidate on an oral board interview; a common question on the oral board panel has to do with knowledge of the department the candidate is testing for. As I read off the following question to the female candidate, her eyes opened as big as a flying saucer. "Who is the Police Chief of this department?" As the clock ticked away the seconds, her mouth continued to slowly open and eventually it completed the fish open mouth look. She, of course, did not know the answer. As the questions continued, it became apparent that she was going to fail as well, due to her lack of studying. My recommendation… if you want to work somewhere, you really should know a little bit about the department, especially who the top cop is!

Assessment Center/B-Pad- LET Prep

Assessment centers are not new to police department testing. However, they have generally been utilized for management promotional testing, when a police officer tests to be a sergeant or sergeant tests to be a lieutenant. With successful results in the previous arena and with the importance of hiring the best candidate, human resources and recruitment divisions have turned towards assessment centers and B-Pad Video Assessment, as an additional layer of testing in the LET Prep, to ensure hiring of the correct candidate.

Assessment centers are practical testing situations, where the candidate must 'act' out their response. It is a time for the testing agency to see how the candidate might respond in different situations. One of the most common assessment center utilized at the entry police candidate level is the group assessment center. This group assessment center can look very different depending on the agency hosting the assessment, but the general framework is the same for all. For the group assessment center, eight-twelve candidates will enter the testing facility and sit around a table. The proctor will then give the candidates an 'issue' to solve. Example issue: "There have been a large number of bicycles stolen from the university in the last three months. What can we do to stop this?" There will be two-four evaluators at a table adjacent to where the candidates are sitting, and the evaluators watch and listen while the candidates try and solve the issue. It is impressive how quickly candidates lose their temper, become rude to other candidates, talk over candidates, or more positively, how candidates work with other candidates, compliment real ideas, and work quickly towards a viable solution.

B-Pad Video Assessments are completed generally with one candidate at a time. A candidate enters a room alone, and a proctor shows the candidate a projector screen and a video camera. A video camera records the candidate. The proctor starts the video camera recording and leaves the room. Once the video starts playing, the candidate must respond towards the screen, and 'act' out whatever the candidate feels is the appropriate answer to the situation. One such example of the scenario played on the video was of a mentally challenged individual that was asking to return to Mars. The individual in the video had a knife. The candidate had to talk and act out what should be said to the mentally challenged individual in the video. The recording of the candidate is then watched at a later time by a panel of evaluators from the department and graded accordingly.

✔ Hiring Example

Candidates are often terrified when it comes to the psych eval and the medical physical. One common question I usually get is: "I am currently taking a prescription of an anti-depressant, prescribed by my family doctor because I am bi-polar. Will this keep me from being a police officer?" My answer is always, "I do not know." But I further explain that this is not a decision made by the police agency itself, instead the recommendation to hire or not, is made by the psychologist (who evaluated the psychological evaluation) and the medical doctor (who evaluated the medical/physical). Both doctors will look at the entire psychological and medical profile of the candidate and together make a recommendation to the hiring agency on whether or not the medication and reason for the use of the medication could be an issue.

Background Investigation-LET Prep

The background investigation is probably one of the most critical portions of the testing process. After the candiate passes the written, phyiscal fitness/agility, oral board interview, and assessment center portions of the test, the candidate is given a background packet to fill out. The packet is very thorough and asks the candidate everything from where the candidate went to school, worked, prior drug use, prior arrests, prior illegal actions/criminal activity (even if not arrested). The background investigator can spend days to weeks, investigating the candidate to ensure honesty and a good moral compass. The biggest issues in this portion of the testing, centers around prior drug use and criminal activity. Unfortunately, most agencies do not list their requirements on past drug use openly. A lot of agencies utilize the FBI's prior drug use police. However, most agencies hold the right to make their own decisions for each individual candidate.

Psychological Evaluation- LET Prep

The psychological evaluation (psych eval) is one of the least understood of the hiring process. When asked, a majority of the candidates openly state they have nothing to worry about since the psych eval only tests for psychos, but they will also admit that they quietly fear the psych eval since it is the unknown that causes the most fear. There is no way to study for the psych eval. The best advice given is to tell the truth and this holds true for every part of the L.E.T. Process. However, do understand that the psych eval is not just looking for those candidates with mental illnesses, it is also looking for those that will not make good police officers or have aggression issues or controlling issues to name a few.

Medical Examination- LET Prep

The state where the candidate is going to work as a police officer will determine the depth at which the medical/physical is completed. Possible testing that could occur during this phase of the testing process is:

- Blood/urine/hair drug tests
- Hearing test
- Eye examination
- Lung capacity
- EKG
- Treadmill stress test
- Chest X-Ray
- Cholesterol test
- Various other blood tests

Chief or Sheriff Interview- LET Prep

Once a candidate has passed the written test, physical agility test, oral board interview, group assessment center/B-Pad assessment, and background investigation, if the department is still interested in the candidate, the candidate is made a 'conditional offer of employment.' In laymen's terms, it means the department is interested in the candidate, but still wants the candidate to go through the psych eval and medical physical. Due to the intrusiveness of those two tests and results, the department must prove they are interested in the candidate enough to make a conditional offer of employment, all of which is dependent on the results of those two tests, of course.

If the candidate shows no issues with the psych eval or medical/physical, the candidate is then called in to the Chief or Sheriff's office (depending on the department) for an interview. After the interview and all of the above testing areas are finished, the Chief or Sheriff will most likely call a meeting with the background investigator and the psychologist who completed psych eval and go over the final candidates one by one. From this meeting a list is created of whom the department will hire. An 'informal' type of interview is informal in nature since the 'top cop' (a.k.a. Chief or Sheriff) is looking to meet a potential new police officer.

Photos above, from left to right: Medford Police Department patrol vehicle, Jackson County Sheriff's Office K-9 patrol vehicle, and Medford Police Department BearCat SWAT vehicle. Law Enforcement agencies across Oregon participate in the Annual Lock-In Event. The above vehicles parked these vehicles for viewing at Lock-In.

Mentoring and Retaining

All too often, departments place everything into the LET Prep, and then after the candidate is offered the job, accepts, and starts the dream job of a police officer, this new officer can be lost and forgotten in the shuffle. Departments must ensure that mentoring and retaining occurs. Mentoring can be completed through proper supervision from the top down and ensuring first-level supervisors are responsible for those they supervise. A good supervisor can make the difference between an officer disliking or loving their job.

4.6: Recruitment and Hiring Websites for Future Careers

FBI Past Use Drug Policy

It does matter what you do in school! If you want a career in law enforcement make sure you understand the past use drug policy of law enforcement agencies. Many departments follow the published FBI past drug use policy. For more information see the FBI's past drug use website link below:

https://www.fbijobs.gov/working-at-FBI/eligibility

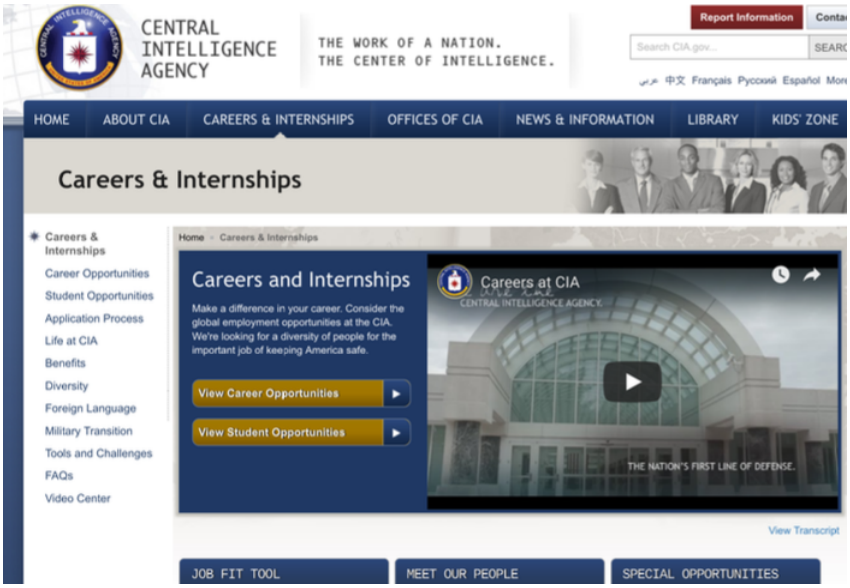
AND FOR MORE INFORMATION ABOUT THE REQUIREMENTS FOR AN FBI SPECIAL AGENT VISIT THE FOLLOWING WEBSITE:

https://www.fbijobs.gov/career-paths/special-agents

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A

CIA SPECIAL AGENT:

https://www.cia.gov/careers

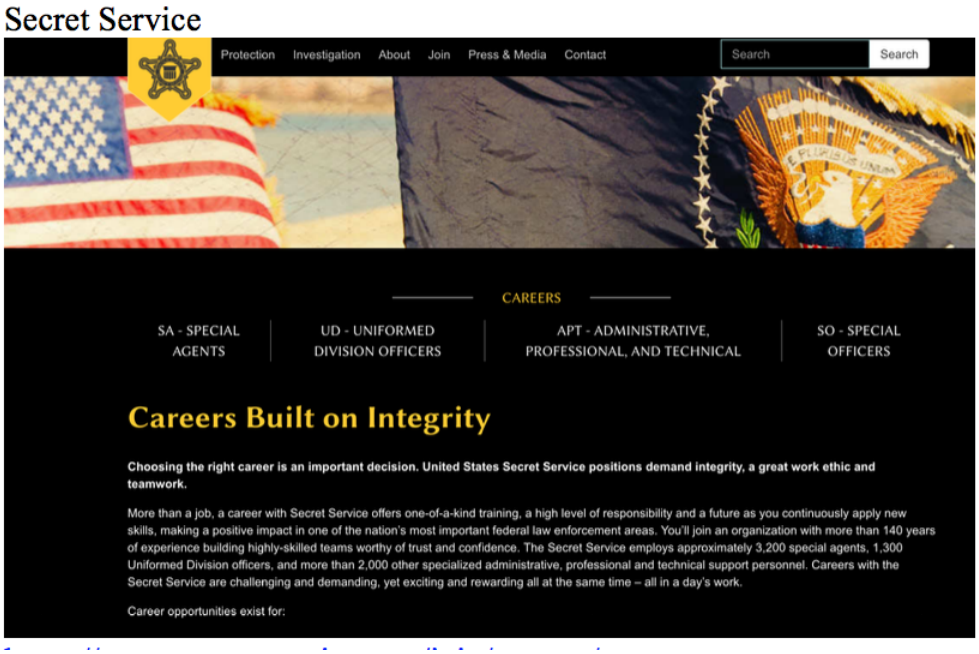


CIA

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A

SECRET SERVICE SPECIAL AGENT:

https://www.secretservice.gov/join/careers/



Secret Service

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A DEA SPECIAL AGENT:

https://www.dea.gov/careers

DEA

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A TROOPER WITH THE OREGON STATE POLICE:

https://www.oregon.gov/osp/RECRUIT/pages/index.aspx

State Departments Recruitment and Hiring Websites

Oregon State Police

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A DEPUTY WITH THE JACKSON COUNTY SHERRIF'S OFFICE:

http://jacksoncountyor.org/sheriff/General/Employment-Opportunities

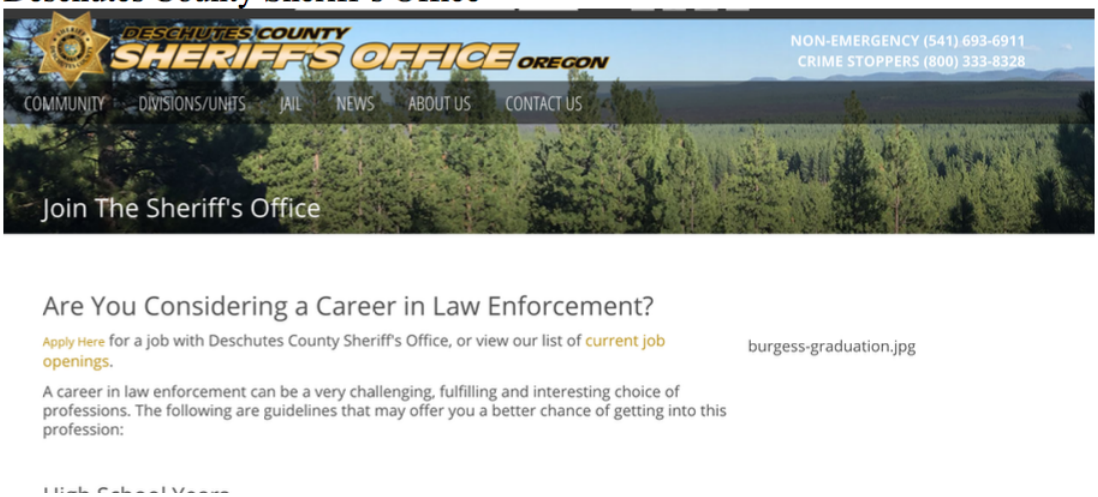
County Departments Recruitment and Hiring Websites

Jackson County Sheriff's Office

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A DEPUTY WITH THE DESCHUTES COUNTY SHERIFF'S OFFICE:

https://sheriff.deschutes.org/about-us/join-the-sheriff%27s-office/

Deschutes County Sheriff's Office



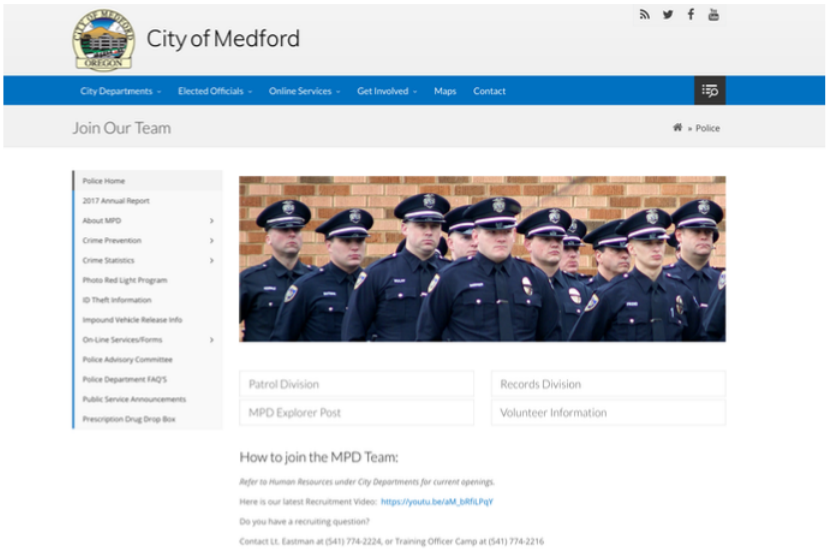
Deschutes County Sheriff's Office

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A POLICE OFFICER WITH THE MEDFORD POLICE DEPARTMENT:

http://www.ci.medford.or.us/Page.asp?NavID=1446

City Departments Recruitment and Hiring Websites

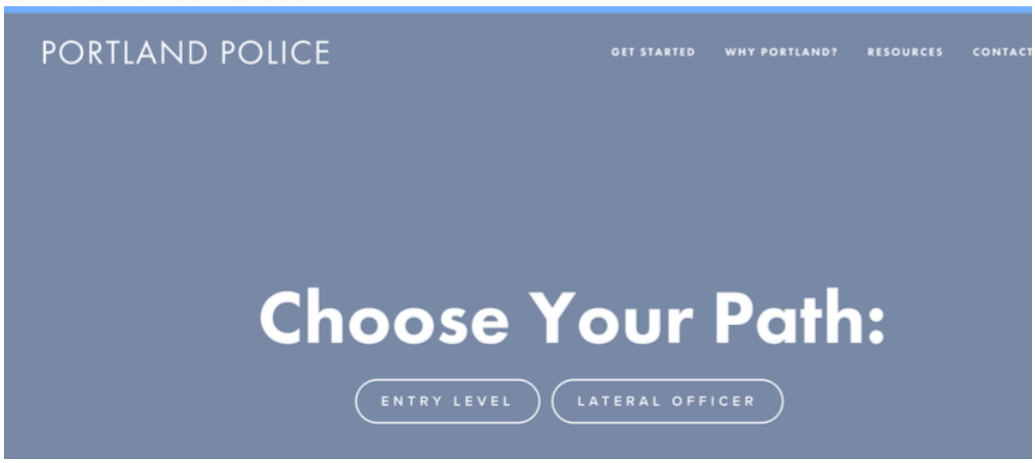
Medford Police Department



Medford Police Department

VISIT THE WEBSITE BELOW FOR INFORMATION ON BEING A POLICE OFFICER WITH THE PORTLAND POLICE BUREAU:

https://www.joinportlandpolice.com/start



Portland Police Bureau

4.7: Police Misconduct, Accountability, and Corruption

Learning Objectives

- This section will cover police misconduct and accountability. After reading this section, students will be able to:
- Discuss the different corruption types in policing
- Explain the difference between a meat eater and a grass eater
- List the different ways an officer engages in noble-cause corruption
- Describe how a police officer uses stereotyping on the job
- Discuss the importance of having a reliable internal affairs division/bureau
- Explain why excessive use of force is difficult to quantify

Critical Thining Question

1. How are grass eaters and meat eaters different?
2. What is noble cause corruption?
3. Why are there misunderstandings of police accountability?
4. What are the functions of an internal affairs division/bureau?
5. What happens if a police department shows a pattern of excessive use of force?

Corruption Types

Police officers have a considerable amount of power. With one fail swoop, an officer can take a person's freedom away. That is a tremendous amount of power. An officer is also given the authority to carry a gun and for protection of either the officer or a person, take the life of a citizen as well. These decisions are dangerous, and unfortunately, at times there are officers who not only overstep their boundaries but jump directly in the pit of corruption.

While the media paints a picture that most police officers are corrupt, this could not be further from the truth. The Bureau of Justice confirmed that only 0.02% of the police officers in the U.S. engage in some type of corruption. While the media makes money selling stories, the police story that starts the five-o'clock news is not always true. When the media covers a police shooting for instance, the investigation has not been completed, therefore the only answer the police department will have for the media is 'no comment.' A cover-up then comes to mind; however, when the invesitgation is completed weeks to months later, the media is not always as interested in the story, especially if there was no police corruption. Even more importantly it takes two-years to basically train a new police officer. The same police officer then continually trains every month to ensure the knoweldge of current laws and many other tactics are up-to-date. Unless one is a trained commissioned law enforcement officer, there is no way the public, nor media can truly understand why an officer acted and responded the way he or she did, unless they experienced the exact same circumstance.

No matter the profession, whether it is an actor, a cashier, a president of a non-profit organization, or a police officer, corruption can occur. The focus on law enforcement is more dramatic due to the glarmour of the type of work performed. Either way, corruption should not be condoned and if it does occur, the reaction must be swift and stern. Those in law enforcement hold a badge which grants the carrier the authority to take away a person's rights therefore, the authority that comes with the badge should NEVER be taken for granted.

Grass Eaters

In 1970, The Knapp Commission coined the terms '**meat eaters'**and '**grass eaters'** after an exhaustive investigation into New York Police Department corruption. Police officers that were grass eaters accepted benefits. Whether it was a free coffee at the local coffee shop, fifty percent off lunch, or free bottled water from the local convenience store, these cops would take the freebie and not attempt to do the right thing by explaining why they cannot accept the benefit and then pay for the benefit. By accepting benefits, the officer was, in turn, agreeing that whoever gave the benefit, i.e., coffee, or lunch, etc., was to receive something in return. What if the coffee shop wanted the officer to patrol their shop every morning between the busy hours of six and seven a.m.? Would that be fair to other coffee shop owners that did not give free coffee to the officer? [1]

Meat Eaters

These officers expected some tangible item personally from those served, in order to do their job. Whether it was money 'shakedown' to ensure a convenience store was not robbed, or the officer felt there was nothing wrong with stealing from a drug dealer during a drug raid; 'no one would notice a pound of cocaine missing, right?' These officers felt entitled and were aggressive in making sure they got what they thought was theirs. If a person has the lifelong goal of being a police officer, then that same person will want to protect the innocent from those criminals that aim to do them harm.

Noble Cause Corruption

Noble-cause corruption is a lot more commonplace then many think. Many officers work twenty-five years and may never see another cop steal something, but they will see noble-cause corruption. Most officers join the force to make the world a better place in one way or another. While officers understand they cannot solve everything alone, they do think they can make a difference. The **noble-cause** is the goal that most officers have to make the world a better and safer place to live. "I know it sounds corny as hell, but I really thought I could help people. I wanted to do some good in the world, you know? That's what every cop answered when asked why he became a police officer. [2]

Officers sign on and get hired wanting and striving to do the right thing. However, it is a slippery slope that the officer continually slides on from the academy, through field training, and on into the deeper parts of a police career.

Slippery-Slope Model of Noble-Cause Corruption

1. **"Forget everything you learned in training (school), I'll show you how we really do it out here."**This what an officer often first hears from a TO (training officer). The statement is only superficially about the lack of utility of higher education. What it is actually about is loyalty and the importance of protecting the local group of officers with whom the officer works.
2. **Mama Rosa.** It looks like a free meal. This is not to test willingness to graft, but whether an officer is going to be loyal to other officers in the squad. It also serves to put officers together out of the station house.
3. **Loyalty Back-up**. Here, an officer is tested to see if he or she will back up other officers. This is more involved because officers may have to 'testify' (give false testimony), dropsy (remove drugs from a suspect during a pat-down and then discover them in plain sight on the ground), the shake (similar to dropsy, only conducted during vehicle stops), or stiffing-in a call. These are like NC (noble-cause) actions, and may indeed by NC actions, but their purpose is to establish loyalty.
4. **Routine NC (Noble-Cause) Actions Against Citizens**. Magic pencil skills increase penalties by shifting the crime upwards. Protect fellow officers with fictitious chargers. Construct probable cause. Illegal searches of vulnerable citizens.

I am the Law. This is the belief that emerges over time, in which officers view what they do as the right thing to do. This is the practical outcome of the old adage 'power corrupts, and absolute power corrupts absolutely.' A police officer does not have absolute power, but he or she has the backing of the legal system in almost all circumstances. Behavior can become violent, as with the Rampart CRASH unit." [3]

Therefore, every officer can start out wanting to save the world somehow, but when the real-world job of an officer starts to take hold, it is a problematic grasp to release.

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1. Caldero, M. A., Dailey, J. D., & Withrow, B. L. (2018). *Police Ethics: The Corruption of Noble Cause* (4th ed.). New York, NY, USA: Routledge/Taylor and Francis. ↵
2. Baker, M. (1985). *Cops: Their lives in their own words*. New York: Pocket Books. ↵
3. Withrow, B.L., Dailey, J.D., & Caldero, M.A. (2018). *Police ethics: The corruption of noble cause.* New York: Routledge. ↵

4.8: Current Issues- Police Shootings

One of the most controversial issues in regards to policing in the 21st century are police shootings. The 'police shooting' topic causes much debate and is always in the headlines of every media outlet when it occurs. After an officer-involved shooting, citizens want answers, rightfully so. Unfortunately, police departments cannot immediately provide those answers. The all too familiar 'no comment' or 'we do not have any information at this time' or only providing limited facts, does not appease saddened or angry family members or the general public.

Police departments cannot comment because they may genuinely not know the entire story. Police unions are there to protect officers, and the officers need time between the shooting and when they are required to write the police report on the incident and answer questions about the shooting for a variety of reasons. Therefore, directly after the shooting, when the media or the general public wants answers, there might not be any answers known to give. However, this immediately reads as the department has something to hide. Whether that is true does not matter in the eyes of many. An investigation must occur before the department can make a formal statement, and release body camera or dash mounted camera footage and information about the shooting. All too often though, this information comes too late.

One case that signifies this all too well is the officer-involved shooting and killing of Michael Brown, in Ferguson, Missouri. [1]

In the News: Michael Brown- Ferguson Missouri – Officer Involved Shooting

https://www.youtube.com/watch?v=t2104nz_h5A

Ferguson Police Department Michael Brown Crime Scene

The riots that occurred during the aftermath of the incident resulted in numerous arrests, millions of dollars in property damage sustained, and almost insurmountable damage to the relationship between police and young Black males. The Ferguson Police Department, where the officer is employed who shot and killed Michael Brown, had many issues; however, much of the information that the media released shortly after the shooting was later investigated and found incorrect.

Police officer involved shootings are very serious. Officers train and qualify quarterly with their duty firearms and regularly review what is required to use deadly force. After every police-involved shooting (use of deadly force), once the investigation is complete, a grand jury or coroner's inquest (depending on the jurisdiction and outcome of the shooting) must take place. There is a trial where the actions of the officer involved are examined to determine if the use of deadly force was justified. The officer describes in detail the shooting and why the officer felt it necessary to use deadly force. Witnesses take the stand and tell what they heard or saw. Finally, a jury decides whether or not the use of deadly force was justified. If the shooting is justified, the officer will not face formal charges for the use of the use of deadly force. However, if the shooting is determined to be unjustified, the officer can face felony charges, up to the murder. Generally, at this point, the officer is fired from the respective police department, and the prosecutor's office files charges against the officer. For instance, at the Portland Police Bureau, any use of deadly force goes through eight different reviews, in order to determine if the officer was justified.

In the News: Officers that utilize deadly force (such as a police shooting) once the investigaiton is completed are required to go through a grand jury or coroner's inquest (depending on the state). This process is similar to any criminal trial. If the jury finds that the officer was NOT justified (in their decision to use deadly force) that officer is generally fired by their police department and then can face murder or manslaughter charges. For example: Chicago police officer found guilty of murder https://www.cnn.com/videos/us/2018/09/05/jason-van-dyke-trial-orig-bk.cnn

1. Department of Justice. (2015). *Department of Justice report regarding the criminal investigation into the shooting death of Michael Brown by Ferguson, Missouri police Officer Darren Wilson*. Washington, DC: Department of Justice. ↵

4.9: Current Issues- Use of Force and Vehicle Pursuits

Police officers have the power to use force if deemed necessary. If an officer uses more force than required for the situation, this brings up many red flags. The Violent Crime Control and Law Enforcement Act of 1994 authorized the Civil Rights Division of the U.S. Department of Justice (DOJ) to initiate civil actions against policing agencies if the use of force utilized is excessive or constitutes a pattern of depriving individuals of their rights. [1]

One additional issue in police use of force situations is that it is difficult to measure. There are many types of force police can use. The force utilized varies from going hands-on to pepper spray, taser, ASP baton, control holds or takedowns, to deadly force. Every situation is different because it involves human beings and can be interpreted differently from those involved to those standing on the side-lines.

Vehicle Pursuits

Vehicle pursuits have dramatically changed over the last decade. It used to be commonplace for officers to engage in several vehicle pursuits during one-shift. Officers would get in a vehicle pursuit for many reasons, stemming from locating a rolling stolen vehicle to a driver failing to stop after running a stop sign. Vehicle pursuits have at a minimum, two, four-to-five thousand-pound deadly weapons (a.k.a.= the vehicles) that are driven recklessly (most times), chasing one another. The morgue has seen large numbers of fatalities due to vehicle pursuits. Victims range from an innocent person in a crosswalk at the wrong time when the vehicle police pursued, hit the victim, or the innocent person driving across an intersection with a green traffic light struck while the pursuing vehicle runs a red traffic light. There are too many sad stories of the innocent victim killed because the police decided to pursue a vehicle with lights and siren and the pursuing vehicle refused to pull over.

Because of the many senseless fatalities, many police departments have updated their vehicle pursuit policies and procedures. Although the policies of each department do differ in minor areas, most departments have chosen to only approve a vehicle pursuit in dire situations. Such a situation fitting that description would be if the driver of the fleeing vehicle were actively engaging in behavior that was placing other citizens in immediately dire harm.

1. DOJ. (March 2, 1998). Justice Department Consent Decree Pushes Police to Overhaul Operations, *Pittsburgh Post-Gazette*, C-1. ↵

4.10: Current Issues- Stereotypes in Policing

Human beings are infamous for stereotyping. A first impression when meeting a new person takes only seven seconds. According to Pitts (2013), smiling, shaking hands, introductions, speaking clearly, maintaining eye contact, looking smart, and not sitting down, are sure-fire ways to ensure a more positive stereotype; however regardless, the seven seconds is irrefutable.

Stereotyping in policing is almost a foregone conclusion. Citizens expect their police to protect them by being not only reactive but proactive. One of the most popular policing methods is to view a situation and proactively make a quick decision on whether or not a crime is about to occur, and if it is, stop it from happening. One of the ways police proactively operate is through stereotyping. "Police officers spend a great deal of time working their beats…one thing is common to all police officer working personalities: in an effort to know who or what is 'wrong' on their beat, police officers must know who is 'right' or who belongs." [1]

When officers cross over the line is when they leave out the step of asking the who, what, where, when, why, and how after the stereotyping occurs, to confirm their thoughts. It is at this point that the officer is engaging in a type of implicit bias policing and this opens many doors to corruption. It is another slippery slope that officers must always be aware of while performing their many duties.

✔ " Stereotyping or Terry Stop" Example

No matter how controversial policing is today, one common thread is that citizens want police to be proactive, not reactive to violent crime. Whether it is stopping an active shooter in a school, a burglary, or even a robbery, proactivity in policing is necessary to halt horrendous crimes from occurring. In 1968 the United States Supreme Court decided *Terry v. Ohio*, which further explained reasonable searches under the 4th amendment and played a vital role in the below story.

I was one of six officers with my department, chosen to work in our first ever problem-solving unit (PSU). Our substation was placed in a neighborhood where 21 murders had occurred in just a few months. We were tasked with being proactive and working with the community to stop the bloodshed. The two-mile radius neighborhood were composed predominantly of minority residents, and their distrust of our presence was apparent immediately. The residents had stereotyped us as rotten apple police officers and at first, did not want our assistance, they did not trust us. This was further agitated by the fact that we were there to be proactive and stop any future murders from occurring. Plus, we had the *Terry v. Ohio* decision to assist with our proactive actions. The citizens did not understand what that meant. They also did not understand that as one of the officers pledged to protect the area, I was feeling like an unwanted officer in their neighborhood. They did not know that I got into policing to change the world, if even just a little. They did not know how frustrated it made me feel when no matter how hard I tried, no one would not trust me. One day, as a four-year-old child approached me for a police sticker, the mom grabbed the child by the arm and said, "Get away from that Po-Po, she is a Bi***, and don't you dare talk to her, ever, or you'll get it!" I cried that night when I got home from work, wondering how I could help this neighborhood if I couldn't even get one mom to trust me? Whether or not it was true, stereotyping had occurred in this neighborhood. Then on top of it, I had to utilize the *Terry v. Ohio* decision to be proactive, to keep the murders from occurring. It felt like a Catch-22 with no solution. The answer did not come to me instantly. All I could think to do was my job and stop the murders (as I was directed to do). I remembered that four-year-old in my everyday actions. I knew my efforts could make him safer, but would he ever understand? I utilized *Terry v. Ohio*, by learning the neighborhood, recognizing the residents, and learning who belonged, and who did not. I was either on foot or on a bicycle in this neighborhood due to the small size. This allowed for a lot of interaction with the residents. If I had reasonable suspicion to think a citizen was about to commit a crime or had evidence of a crime, *Terry v. Ohio* gave me the right to investigate further. At first, this angered the neighborhood. They felt we were harassing them, stereotyping them. I could understand how they felt that way, and instead of trying to make this neighborhood safe overnight, I decided to begin to change how the neighborhood perceived us, slowly. The way I did this was through education. Through my daily interactions, I talked to the citizens in the neighborhood about what I was doing and why. Instead of speaking in 'general' I spoke about only one incident at a time.

One night, at 2:00 a.m., I was walking with my partner through the neighborhood. I had to head back to the sub-station and as I rounded one building, I saw two citizens looking through a window of an apartment. I stopped and just watched. Everything ran through my mind. Had they lost their keys? Was this their apartment? Or, were they looking to break-in and burglarize the apartment, possibly even commit a home invasion and hurt those inside? All of this happened in seconds, not minutes. Because of *Terry v. Ohio*, I legally investigated. The two citizens did not live in the apartment and they were trying to burglarize it. One of the suspects had a gun. Because of *Terry v. Ohio*, I was able to be pro-active and stop this from occurring. A single mom and

three children under six years of age lived in that apartment and were home. The mom did not trust banks and kept her savings in between her mattresses. I do not know what I stopped that night. I do not know if the suspects would have used the gun, or if they would have found the mom's large cash savings or what else they might have taken; however, I did stop a burglary from occurring and that felt good. The next day while speaking to some of the citizens in the neighborhood, I explained this. I used this one example to explain why my unit was there. How we stopped this crime and how we all wanted to make a difference. This one story did not change how the neighborhood saw us; however, after many more stories such as this, I began to see a change.

Michelle, one of the citizens in the neighborhood got my cellular telephone number (yes we had cell phones back in the day!). She began calling me when she heard talk about a possible crime occurring. We hosted many events in the neighborhood as well. From ice cream socials, back-to-school fairs, and we even worked hard to find donations and get every child in the neighborhood a bicycle (or scooter). After three years, our substation closed. We had gone a year without a murder and the crime rate dropped 98%. To this day Michelle still calls me and we chat about what is currently occurring in our lives. Michelle is my friend and I dare say I think she thinks of me as her friend too. There was a lot of stereotyping that went on in that neighborhood during those years. I found my way through it all and I think the neighborhood did as well. In the end, we worked together through good ole community policing and made the area safe again.

1. Perez, D.W. (2011). *The paradoxes of police work*. Florence, KY: Cengage Publ. ↵

4.11: Current Issues- Accountability

One of the most significant issues with police accountability is knowledge of the job of a police officer. If a person is ignorant about policing policies, procedures, rules, regulations, and how police operate, then there is going to be a disconnect when the media portrays police in different situations. All too often citizens get their knowledge of how the police operate through television shows. *Miranda* admonition is a classic example. The television show 'Law and Order' is notorious for showing the actors playing detectives, giving *Miranda* to a suspect, every single time; they place a suspect under arrest. The classic clip shows the hand-cuffs 'click, click' going on, and then as the detectives walk the suspect to their vehicle, they are verbalizing, from memory, *Miranda*. In reality, this could not be further from the truth.

Police have a considerable amount of power. Due to the temptation to abuse assigned power police must ascribe to a higher standard than someone in a non-policing profession. However, members of the public cannot appropriately identify police misconduct at all levels. "Most citizens possess an incomplete and incorrect understanding of what it entails. Often…American citizens frequently believe the police guilty of misconduct when, in fact, they are not…Dirty Harry is a hero of sorts to many Americans. When a Dirty Harry-type officer engages in curbside justice aimed at a local bully, for example, people tend to be very supportive of this type of misconduct. [1]

Miranda Misconception

Thanks to the CSI Effect, Miranda is misunderstood by the general population. Shows such as Law and Order, show the detectives slapping the hand-cuffs on the suspect, after the investigation is completed, and immediately verbalizing the Miranda requirements aloud to the suspect. This is not how Miranda is applied. The Miranda decision requires officers to read certain statements when those officers plan on INTERROGATING a suspect. If the suspect is NOT free to leave and the officer wants to question the suspect, in an attempt for the suspect to make incriminating statements, the suspect must be read Miranda admonishments AND must understand the admonishments. If an officer sees a person break the law, the only time that officer needs to read Miranda prior to interrogating the suspect, is if the officer wants to question the suspect. If the officer sees the crime, there generally is no need to question the suspect about the crime, therefore Miranda is not required. For instance, if an officer is using a radar gun and sees a vehicle speeding 40 mph in a 25 mph speed zone, the officer does not need to read the driver of the vehicle Miranda, unless that officer wants to interrogate the driver. The officer can write the driver a citation without reading Miranda and in some states the officer can arrest the driver for speeding without reading Miranda (in Oregon, speeding is a traffic violation, therefore, drivers cannot be arrested for speeding, this is not true for all states, in some states traffic violations are misdemeanors).

1. Perez, D.W. (2011). *The paradoxes of police work*. Florence, KY: Cengage Publ. ↵

4.12: Current Issues- Internal Affairs and Discipline

Internal affairs (IA) exists to hold officers accountable for their actions. Whenever there is an issue, either brought forth by another officer, a supervisor or a member of the general public, the IA division of the police department is responsible for conducting a thorough investigation into the incident. Members of the IA division work directly under the Chief or Sheriff.

In the 1960s the overwhelming number of riots revealed the problem of corruption and misconduct in policing- one of the most significant issues centered around citizen complaints against officers and the lack of proper investigation into the complaint. Most officers back then were found exonerated (not guilty) when a complaint ensued, and this did not bode with the public. [1]

Supervisors in policing Example

As a young girl, I never had dreams of one day being a supervisor in the police world. In fact, I didn't even want to be a cop! However, life would direct me towards policing, and after years of testing, I found myself hired as a police officer in Las Vegas. The life of an officer is full of wonder and excitement, but it is also full of stress, and a lot of pressure! After I completed the police academy, field training, and probation I soon learned that all supervisors (sergeants and lieutenants) were not created equal.I received my first police oficer annual evaluation and found that I ONLY met standards in the areas evaluated. How could that be, I thought? I had never worked harder! I always stayed late, I wrote amazing reports, I volunteered and helped out my community, I engaged in constant training, I did everything I knew AND was trained to do. Yet, I still only met standards. Now I wasn't delusional. I knew that I was a new police officer and had many things to learn, but why was my sergeant failing to mentor or recognize me for my above average efforts in many areas? I was even told by a female sergeant, that she had to work harder than any other police officer because she was a female, so I should have to do the same. Where was mentoring? Where was the training offered by supervision? I soon learned it did not exist and the only way to create it was to test for promotion myself and enter the world of supervision as a sergeant. Don't get me wrong, throughout my tenure as a police officer I did encounter some amazing supervisors, but they were rare and an exception to the rule. I did the test for promotion, and I was promoted to sergeant. My goals were to change the way officers were supervised at my department. I worked hard to create a sergeant training program that ensured future supervisors received the knowledge and power of how-to mentor and train their employees. Three years later I tested and promoted to lieutenant. I took advantage of my new position in adminstration to mentor many young officers and help them to succeed in their careers.

Discipline

Police departments are paramilitary organizations or a semi-militarized force whose organizational structure, tactics, training, subculture, and (often) function are similar to those of a professional military, but which is formally not part of a government's armed forces. Therefore, the handling of discipline is serious business. If an officer is accused of a minor infraction, such as the use of profanity, the officer's immediate supervisor will generally handle the policy infraction and note what occurred in the officer's file and counsel the officer of the following: 1- Inform the police officer why the conduct was wrong 2- Inform the police officer how to stop engaging in the conduct 3- Inform the police officer when the conduct must stop 4- Inform the police officer the time elapsed after the conduct and a scheduled meeting to review and ensure the conduct is still not occurring. Depending on the conduct, the supervisor may require the officer to attend training to assist the officer.

Another answer was to create external civilian review boards to hold police accountable for their actions by reviewing all use of force incidents. With the onset of the 21st century and new technology, came new tools in policing. One such tool was a new program called IA Pro. This program followed individual officers throughout their entire career. A scheming grass or meat eater officer could bid on a new shift each year, gaining a new supervisor who would be oblivious to past infractions. IA Pro ensured any, and all infractions by an officer were recorded and followed through upon by the applicable supervisor. If an officer used profanity, the program would require the officer to attend training. If the officer used profanity a second time within the prescribed time limits, the officer would be placed on an timed employee development program and could face discipline up to termination. IA Pro was not a panacea, but it would significantly lower the number of officers allowed to continue to operate as grass or meat eaters.

If an officer is accused of a more serious infraction, such as excessive use of force or lying, the officer will immediately be placed on administrative leave and The Internal Affairs Division of the department will investigate the incident. The Internal Affairs Division will offer a finding of 1- Sustained Complaint 2- Not-Sustained Complaint 3- Exonerated Complaint 4- Unfounded Complaint. Once one of the above complaint dispositions is assigned, it is then forwarded to the Command Staff (Chief or Sheriff

and Assistant Chief/Sheriff, Deputy Chief/Sheriff, and Captains) for review and discipline. Discipline can include time-off up to termination.

When an Officer Does Something Illegal Example

I was a lieutenant over two sergeants and dozens of officers when I received the dreaded phone call. One of my officers was being placed on administrative leave by Internal Affairs due to a horrendous allegation. The officer had been pulling over female drivers for 'so-called' traffic violations and offering them an 'out' if they performed some sort of sexual activity. My heart sank, how could this have happened and on my watch? After weeks of investigation, I learned that the officer had been engaging in this illegal activity for months. It took several brave women to contact our Internal Affairs Division and tell their stories, to stop it. I racked my brain as to what I could have done to prevent the officer. Did I miss the signs? Should I have been sterner? What could I have done? Even years later it tears at my soul. What those women had to endure. How scared they must have been. It must have been their worst nightmare come true. I have played many scenarios in my head as to what I could have done or should have done to stop this officer's actions. And I finally learned that some people are just ethically and morally corrupt. No matter how hard we, in supervision, try to identify them through the L.E.T. Process or keep tabs on them when they engage in such acts, sometimes they slip through the cracks and are allowed to spread their evilness. This is what happened with this officer. The officer was smart enough to engage in this activity while alone on patrol, knowing that he could stop this action if another officer or supervisor assisted on the traffic stop. His actions were scary and should send a message to every police department and every supervisor that they must always be on the look-out for those officers that are corrupt and will use their power to engage in illegal and horrendous crimes. This was a hard lesson for me to learn, but an eye-opening one that would forever change the way I supervised those officers in my command.

1. Goldstein, H. (1977). *Policing a free society*. Cambridge, MA: Ballinger. ↵

4.13: Current Issues- Body Cameras

An overwhelming number of police officers welcome body cameras, just like citizens. The reason being the high number of citizen complaints received which center around a citizen exaggerating or lying in order to try and get out of an expensive traffic related citation. 'The officer yelled at me and made me feel stupid and used profanity.' Is an example of a citizen complaint often reported to a supervisor. Body camera footage of the incident more than often shows the exact opposite. The truth often is that the citizen did run the red light or failed to stop at the stop sign and did not want to accept responsibility and pay the fine. Body cameras changed the environment of citizen complaints; however, body cameras also ensure that grass-eaters do not partake in temptation. Moreover, those meat-eaters are held accountable for excessive use of force or illegal actions.

Body cameras would seem to be the panacea for all police misconduct, the truth of the matter is not so concrete. First, body cameras only show one point of view. Until small drones can hover above the officer showing a 360-degree view, the accurate recollection of an event can never be indeed known. Second, no matter how full-proof department policies and procedures regulate the use of body cameras, there will always be a user that can turn off the camera in certain situations. Body cameras are one answer in a giant puzzle to hamper and stop police misconduct. As technology improves, so hopefully will view the body cameras record.

? Police Body Cameras: What do you see Exercise

https://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html

"People are expecting more of body cameras than the technology will deliver," Professor Stoughton said. "They expect it to be a broad solution for the problem of police-community relations, when in fact it's just a tool, and like any tool, there's limited value to what it can do." You will have a 500-word response to the questions below.

- First, go to the above link and complete the activity. Be as honest with yourself as possible.
- Second, after the videos and this experiment, has your view of policing and the role of video changed? Do you think body cameras are worth the expense or could we do without? What are the pros and cons?

4.14: Myth- “Police Only Write Speeding Tickets to Harass Citizens and it is Entrapment.”

Many people believe that a traffic officer or for that fact, any police officer, who is engaging in speed enforcement and is hidden, is guilty of entrapment and such behavior is tantamount to harassment. First, an officer does not have to be wholly or partially visible in order for a traffic citation to be valid. Also, the officer does not have to take you to, or show you a photo of, the speed limit sign (applicable for the location you were driving), before a citation is issued. If you get behind the wheel of a motor vehicle, you are required to know the speed limit of the roads you drive. If you decide to speed, even just one mile over the speed limit, you are, by the letter of the law, speeding, and this is a traffic offense. If an officer either through radar or visual speed estimation, determines you are speeding, that officer has every legal right, to issue you a speeding citation.

However, let’s consider a different situation. If, while having coffee at a local coffee shop, an officer started chatting with you about a new speed limit along Main St. The officer told you that the speed limit had been raised from 20 mph to 35 mph (which was a lie); and believing that officer, you left the coffee shop and drove along Main St. going 35 mph. You then glanced up and saw the unmistakable red and blue lights in your rear-view mirror. You were stopped by a different officer, who told you the speed limit was only 20 mph (not 35 mph) and issued you a speeding citation. These actions would be considered entrapment because the other officer was trying to get you to engage in criminal behavior.

Now onto why it is not harassment for an officer to give out speeding citations. According to The Association for Safe International Road Travel; “Nearly 1.25 million people die in road crashes each year, and an additional 20-50 million are injured or disabled” (2018). Our police are tasked with making our roads safe and saving lives. Since 3,287 people die every DAY from traffic collisions, police must take responsibility and try to lower this massive number. Therefore, police study not only where these crashes are occurring, but the mitigating factors that cause them. It may surprise you to know that the number one cause for road crashes, is speeding. How do police then slow people down? Education is the first step, however, sometimes the only way to educate is through a speeding citation.

The next time you get a speeding citation (for going faster than the posted speed limit), instead of accusing the officer of harassment, you should take responsibility and be the first step in lowering the number of deaths from related road crashes. [1]

1. Road Safety Facts. (2018). Retrieved from https://www.asirt.org/safe-travel/road-safety-facts/ ↵

CHAPTER OVERVIEW

5: Courts

Learning Objectives

- This section examines the structure and function of the criminal courts in America. It examines the concept of jurisdiction and describes the dual court system (the federal court system and the various state court systems). This section also examines the role and function of the various courtroom participants–the people who work in the courts. After reading this section, students will be able to:
- Differentiate between what happens at trial and what happens on appeal and identify the procedural history of a criminal case by reading appellate opinions written in the case.
- Describe how a crime/criminal case proceeds from the lowest level trial court up through the U.S. Supreme Court. (i.e., students should understand the hierarchy of the federal and state courts).
- Discuss the function and selection of state and federal trial and appellate judges in the American criminal justice system.
- Discuss the function and selection of state and federal prosecutors in the American criminal justice system.
- Discuss the importance of the criminal defense attorney in the American criminal justice system.
- Identify at what stages of the criminal justice process a defendant is entitled to the assistance of a court-appointed attorney.

Critical Thinking Questions

1. Knowing what happens at trial and what happens on appeal, would you be more interested in being a trial judge or an appellate judge? Why?
2. Why is there a different standard of review for questions of fact and questions of law?
3. Do you agree that cases should be overturned only when there was a fundamental or prejudicial error that occurred during the trial?
4. Do you think it is easier to be a defense attorney than a prosecutor believing the defendant is guilty but knowing that the justice system has violated the defendant's rights?
5. Should the defendant ever waive the assistance of counsel?
6. Is there any position as a court staff that particularly interests you? Why?

5.1: Introduction to the U.S. Court System

What follows is an examination of the structure and role of the courts in the American criminal justice system and the requirement of **jurisdiction**. As you read this chapter, pay attention to the context when you see the word “court” because it is used in a variety of ways. “Court” can mean a building—it is short for “courthouse” (for example, “he went to the court”); one judge (for example, “the trial court decided in his favor”); a group of judges (for example, “the Supreme Court unanimously upheld the conviction”), or an institution/process generally (for example, “courts hopefully resolve disputes in an even-handed manner”). Courts (the institution and processes) determine both the facts of a crime (did the defendant do the crime?) and also the legal sufficiency of the criminal charge (can the government prove it?). Courts ensure that criminal defendants are provided **due process of law**, or the procedures used to convict the defendant are fair. Courts are possibly more important in criminal cases than in civil cases because, in civil matters, the parties have the option of settling their disputes outside of the court system, but all criminal prosecutions must be funneled through the criminal courts.

After reading this chapter, you will be able to project the trajectory of a criminal case from the filing of criminal charges in a local courthouse through all final appeals processes. This requires an understanding of the **dual court system,** the structure of typical state court systems and the federal court system. This chapter explores the differences between a trial court and an appellate court, and you will learn how trial judges and juries decide (determine the outcome of) a case by applying the legal standards to the facts presented during trial and how appellate judges decide if the case was rightly decided after examining the trial record for legal error. Appellate courts make known their decisions known through their written opinions, and this chapter introduces the types of opinions and rulings of appellate courts.

This chapter also examines the selection, roles, and responsibilities of the participants in the criminal courts frequently referred to as the **courtroom workgroup.** You will become familiar with who the players are during each of these steps of the process.

5.2: Jurisdiction

In order to understand the courts, it is essential to understand the many facets of the word **jurisdiction**. Jurisdiction refers to the legal authority to hear and decide a **case** (legal suit).

Jurisdiction Based on the Function of the Court

Trial Courts versus Appellate Courts

Jurisdiction may be based on the function of the court, such as the difference between trial and appellate functions. The federal and state court systems each have court hierarchies that divide trial courts and appellate courts. Trial courts have jurisdiction over pretrial matters, trials, sentencing, probation, and parole violations. Trial courts deal with facts. Did the defendant stab the victim? Was the eyewitness able to clearly see the stabbing? Did the probationer willfully violate terms of probation? As a result, trial courts determine guilt and impose punishments.

Appellate courts, on the other hand, review the decisions of the trial courts. They are primarily concerned with matters of law. Did the trial judge properly instruct the jury about the controlling law? Did the trial court properly suppress evidence in a pretrial hearing? Does the applicable statute allow the defendant to raise a particular affirmative defense? Appellate courts correct legal errors made by trial courts and develop law when new legal questions arise. Appellate courts do not hold hearings in which evidence is developed, but rather they only review the record, or "transcript", of the trial court. In some instances, appellate courts determine if it is legally sufficient, or enough, evidence to uphold a conviction.

Jurisdiction Based on Subject Matter

Jurisdiction can also be based on the subject matter of the case. For example, criminal courts handle criminal matters, tax courts handle tax matters, and customs and patent courts handle patent matters. Regarding "subject matter jurisdiction" Kerper (1979, 34) noted,

"The [subject matter] jurisdictional distinction . . . tends to be utilized primarily in distinguishing between different trial courts. Appellate courts ordinarily can hear all types of cases, although there are several states that have separate appellate courts for criminal and civil appeals. At the trial level, most states have established one or more specialized courts to deal with particular legal fields. The most common areas delegated to specialized courts are wills and estates (assigned to courts commonly known as probate . . . courts), divorce, adoption or other aspects of family law (family or domestic relations courts), and actions based on the English law of equity (chancery courts). The federal system also includes specialized courts for such areas as customs and patents. While significant, the specialized courts represent only a small portion of all trial courts. Most trial courts are not limited to a particular subject but may deal with all fields. Such trial courts are commonly described as having general jurisdiction since they cover the general (i.e., non-specialized) areas of law. Criminal cases traditionally are assigned to courts with general jurisdiction." [1]

Jurisdiction Based on the Seriousness of the Case

The jurisdiction of trial courts may also be based on the seriousness of the case. For example, some courts, called **courts of limited jurisdiction** only have authority to try infractions, violations, and petty crimes (misdemeanors) whereas other trial courts, called **courts of general jurisdiction**, have authority to try serious crimes (felonies) as well as minor crimes and offenses.

Jurisdiction Based on the Court's Authority over the Parties to the Case

Jurisdiction also refers to the court's authority over the parties in the case. For example, juvenile courts have jurisdiction over dependency and delinquency cases involving youth. Other courts have jurisdiction that is based on the special nature of the parties are the military tribunals, including courts-martial, Courts of Criminal Appeals, and the United States Court of Appeals for the Armed Services.

Jurisdiction based on State and Federal Autonomy (Geography)

Finally, jurisdiction is also tied to our system of federalism, the autonomy of both national and state governments. State courts have jurisdiction over state matters, and federal courts have jurisdiction over federal matters. Jurisdiction is most commonly

known to represent geographic locations of the court's oversight. For example, Oregon courts do not have jurisdiction over crimes in California.

1. Kerper, H. B. (1979). *Introduction to the criminal justice system* (2nd ed.). West Publishing Company. ↵

5.3: Structure of the Courts- The Dual Court and Federal Court System

Each state has two complete parallel court systems: the federal system, and the state's own system. Thus, there are at least 51 legal systems: the fifty created under state laws and the federal system created under federal law. Additionally, there are court systems in the U.S. Territories, and the military has a separate court system as well.

The state/federal court structure is sometimes referred to as the **dual court system**. State crimes, created by state legislatures, are prosecuted in state courts which are concerned primarily with the applying state law. Federal crimes, created by Congress, are prosecuted in the federal courts which are concerned primarily with applying federal law. As discussed below, it is possible for a case to move from the state system to the federal system when a defendant challenges the conviction on direct appeal through a **writ of certiorari,** or when the defendant challenges the conditions of confinement through a **writ of habeas corpus**.

Dual Court System Structure

Highest Appellate Court	**U.S. Supreme Court** (Justices) (NoteCourt also has original/trial court jurisdiction in rare cases) (Note: Court will also review petitions for writ of certiorari from State Supreme Court cases).	**State Supreme Court** (Justices)
Intermediate Appellate Court	**U.S. Circuit Court of Appeals** (Judges)	**State Appellate Court** (e.g., Oregon Court of Appeals) (Judges)
Trial Court of General Jurisdiction	**U.S. District Court** (Judges) (Note: this court will review petitions for writs of habeas corpus from federal and state court prisoners)	**Circuit Court, Commonwealth Court, District Court, Superior Court** (Judges)
Trial Court of Limited Jurisdiction	**U.S. Magistrate Courts** (Magistrate Judges)	**District Court, Justice of the Peace, Municipal Courts** (Judges, Magistrates, Justices of the Peace)

The Federal Court System

Article III of the U.S. Constitution established a Supreme Court of the United States and granted Congress discretion as to whether to adopt a lower court system. It states the "judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Fearing that the state courts might be hostile to congressional legislation, Congress immediately created a lower federal court system in 1789. [1] The lower federal court system has been expanded over the years, such as when Congress created the separate appellate courts in 1891.

View the authorized federal judgeships at http://www.uscourts.gov/sites/default/files/allauth.pdf

Trace the history of the federal courts at https://www.fjc.gov/history/timeline/8276

Trace the history of the subject matter jurisdiction of the federal courts here https://www.fjc.gov/history/timeline/8271

View cases that shaped the roles of the federal courts at https://www.fjc.gov/history/timeline/8271

Trace the administration of the federal courts at https://www.fjc.gov/history/timeline/8286

United States Supreme Court

The United States Supreme Court (Court), located in Washington, D.C., is the highest appellate court in the federal judicial system. Nine justices sitting ***en banc,*** as one panel, together with their clerks and administrative staff, make up the Supreme Court. [View the biographies of the current U.S. Supreme Court Justices here: https://www.supremecourt.gov/about/biographies.aspx]. The Court's decisions have the broadest impact because they govern both the state and federal judicial system. Additionally, this Court influences federal criminal law because it supervises the activities of the lower federal courts. The nine justices have the final word in determining what the U.S. Constitution permits and prohibits, and it is most influential when interpreting the U.S. Constitution. Associate Justice of the Supreme Court, Robert H. Jackson stated in *Brown v. Allen*, 344 U.S. 433, 450 (1953), "We are not final because we are infallible, but we are infallible only because we are final." Although it is commonly thought that the U.S. Supreme Court has the final say, this is not one hundred percent accurate. After the Court has read written appellate briefs and listened to oral arguments, it will "decide" the case. However, it frequently refers or sends, the case back to the state's supreme court for them

to determine what their own state constitution holds. Similarly, as long as the Court has interpreted a statute and not the constitution, Congress can always enact a new statute which modifies or nullifies the Court's holding.

Writs of Certiorari and the Rule of Four

The Court has a discretionary review over most cases brought from the state supreme courts and federal appeals courts in a process called a **petition for the writ of certiorari**. Four justices must agree to accept and review a case, and this only happens in roughly 10% of the cases filed. (This is known as the **rule of four**.) Once accepted, the Court schedules and hears oral arguments on the case, then delivers written opinions. Over the past ten years, approximately 8,000 petitions for writ of certiorari are filed annually. It is difficult to guess which cases the court will accept for review. However, a common reason the court accepts to review a case is that the federal circuits courts have reached conflicting results on important issues presented in the case.

Take a virtual tour of the U.S. Supreme Court building: https://www.oyez.org/tour

The United States Supreme Court Building

"The United States Supreme Court occupies a majestic building in Washington, D.C., with spacious office suites and impressive corridors and library facilities. With enhancements and attributes similar to those of appellate courts, the elegance and dignity of the facilities comport with the significant role of the Court as the final arbiter in the nation's judicial system. There is a sparse crowd at most state and intermediate federal appellate courts; at the Supreme Court, by contrast, parties interested in the decisions that will result from arguments, a coterie of media persons, and many spectators fill the courtroom to hear arguments in cases that often significantly affect the economic, social, and political life of the nation. Photography is not allowed, and the arguments and dialogue between counsel and the justices are observed silently and respectfully by those who attend." [2]

Take a tour of the U.S. Supreme Court with CNN: https://www.youtube.com/watch?v=Unyswl36q8w

Original (Trial Court) Jurisdiction of the Supreme Court: A Rarity

When the Court acts as a trial court it is said to have **original jurisdiction**, and it does so in a few important situations, such as when one state sues another state. The U.S. Constitution, Art. III, §2, sets forth the jurisdiction of the Court. It states,

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-between a State and Citizens of another State;-between Citizens of different States;-between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make."

Original jurisdiction cases are rare for several reasons. First, the Constitution prohibits Congress from increasing the types of cases over which the Supreme Court has original jurisdiction. Second, parties in an original jurisdiction suit must get permission by petitioning the court to file a complaint in the Supreme Court. In fact, there is no right to have a case heard by the Supreme Court, even though it may be the only venue in which the case may be brought. The Supreme Court may deny petitions for it to exercise original jurisdiction because it finds that the dispute between the states is too trivial, or conversely, too broad, and complex. The Court does not need to explain why it refuses to take up an original jurisdiction case. Original jurisdiction cases are also rare because, except in suits or controversies between two states, the Court has increasingly permitted the lower federal courts to share its original jurisdiction.

United States Courts of Appeal

Ninety-four judicial districts comprise the 13 intermediate appellate courts in the federal system known as the U.S. Courts of Appeals, sometimes referred to as the federal circuit courts. These courts hear challenges to lower court decisions from the U.S. District Courts located within the circuit, as well as appeals from decisions of federal administrative agencies, such as the social

security courts or bankruptcy courts. There are twelve circuits based on geographic locations and one federal circuit which has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws, and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims. The smallest circuit is the First Circuit with six judgeships, and the largest court is the Ninth Circuit, with 29 judgeships. Appeals court panels consist of three judges. The court will occasionally convene *en banc* and only after a party who has lost in front of the three-judge panel requests review. Because the Circuit Courts are appellate courts which review trial court records, they do not conduct trials and, thus, they do not use a jury.

The U.S. Courts of Appeal, like the U.S. Supreme Court, trace their existence to Article III of the U.S. Constitution. These courts are busy, and there have been efforts to both fill vacancies and increase the number of judgeships to help deal with the caseloads. For example, the Federal Judgeship Act of 2013 would have created five permanent and one temporary circuit court judgeships, in an attempt to keep up with increased case filings. However, the bill died in Congress. Fortunately, in recent years, fewer cases have been filed.

Click on this link to see the geographical jurisdiction of the U.S. Courts of Appeals: http://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf

United States District Courts

The U.S. District Courts, also known as "**Article III Courts"**, are the main trial courts in the federal court system. Congress first created these U.S. District Courts in the Judiciary Act of 1789. Now, ninety-four U.S. District Courts, located in the states and four territories, handle prosecutions for violations of federal statutes. Each state has at least one district, and larger states have up to four districts. Each district court is described by reference to the state or geographical segment of the state in which it is located (for example, the U.S. District Court for the Northern District of California). The district courts have jurisdiction over all prosecutions brought under federal criminal law and all civil suits brought under federal statutes. A criminal trial in the district court is presided over by a judge who is appointed for life by the president with the consent of the Senate. Trials in these courts may be jury trials.

Link to a number of cases filed in U.S. District Courts http://www.uscourts.gov/federal-judicial-caseload-statistics-2018-tables

Although the U.S. District Courts are primarily trial courts, district court judges also exercise an appellate-type function in their review of **petitions for writs of habeas corpus** brought by state prisoners. Writs of habeas corpus are claims by state and federal prisoners who allege that the government is illegally confining them in violation of the federal constitution. The party who loses at the U.S. District Court can appeal the case in the court of appeals for the circuit in which the district court is located. These first appeals must be reviewed, and thus are referred to as **appeals of right**.

United States Magistrate Courts

U.S. Magistrate Courts are **courts of limited jurisdiction** in the federal court system, meaning that these legislatively-created courts do not have full judicial power. Congress first created the U.S. Magistrate Courts with the Federal Magistrate Act of 1968. Under the Act, federal magistrate judges assist district court judges by conducting pretrial proceedings, such as setting bail, issuing warrants, and conducting trials of federal misdemeanor crimes. There are more than five hundred Magistrate Judges who disposed of over one million matters.

In the News: https://www.uscourts.gov/sites/default/files/data_tables/jb_s17_0930.2017.pdf)

U.S. Magistrate Courts are "**Article I Courts"** as they owe their existence to an act of Congress, not the Constitution. Unlike Article III judges who hold lifetime appointments, Magistrate Judges, formerly referred to as "Magistrates" before the Judicial Improvement Act which took effect December 1, 1990, are appointed for eight-year terms.

For a comprehensive review of the U.S. Magistrate Courts and U.S. Magistrate Judges see: http://www.fedbar.org/PDFs/A-Guide-to-the-Federal-Magistrate-Judge-System

? Course Assignment

Watch season two of the popular Netflix series, Making a Murder which covers the appeals of the murder convictions of Steven Avery and his nephew Brendan Dassey. Pay attention to the discussions among Brendan Dassey's appellate team from Northwestern School of Law concerning the appeals process from the state courts through the federal Seventh Circuit Court of Appeals, which convened *en banc* after a 2-1 panel decision finding Brendan Dassey's confession was inadmissible.

See also, http://involuntary.http://www.abajournal.com/news/article/en_banc_7th_circuit_reinstates_brendan_dasseys_conviction_in_ma

king_a_murde?icn=most_read

- Write a 500-word response about what you saw during the appeals process and how it made you feel. Did you agree with it or disagree with it? Is this justice?

  Click on this link to see the number of filings: http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2018

1. (The Judiciary Act of 1789 (Ch. 20, 1 Stat 73) ↵
2. Scheb II, J.M. (2013). *Criminal Law and Procedure* (8th ed., pp. 45). Belmont, CA: Cengage. ↵

5.4: Structure of the Courts- State Courts

State Court Systems

Each state has its own independent judicial system. State courts handle more than 90 percent of criminal prosecutions in the United States. Although state court systems vary, there are some common features. Every state has one or more level of trial courts and at least one appellate court. Although there is no federal constitutional requirement that defendants be given the right to appeal their convictions, such a right is arguably implicit in the due process clause of the Fourteenth Amendment. Moreover, every state has some provision, usually within its own constitution or statutes, that provides defendants at least one appeal. Most state courts have both courts of general jurisdiction, which conduct felony and major misdemeanor trials, and courts of limited jurisdiction, which conduct violations, infractions, and minor misdemeanor trials. Similar to the U.S. Magistrate Courts, states' courts of limited jurisdiction will also handle pre-trial matters for felonies until they are moved into the general jurisdiction court. Most states have intermediate courts of appeals and some have more than one level of these courts. All states have a **court of last resort,** generally referred to as the Supreme Court. Some states court systems are streamlined, and some are complex, with most states fall between the two extremes.

Hierarchy of State Courts

State trial courts tend to be busy, bustling places with lots of activity. Appellate courts, on the other hand, tend to be solemn and serene, formal places. Scheb noted,

"Appellate courts are different than trial courts, both in function and 'feel.' Unlike a trial court, which is normally surrounded by a busy atmosphere, an appellate court often sits in the state capitol building or its own facility, usually with a complete law library. The décor in the building that house appellate courts is usually quite formal, and often features portraits of former judges regarded as oracles of the law. When a panel of judges sits to hear oral arguments, they normally emerge from behind a velvet curtain on a precise schedule and to the cry of the court's marshal. When not hearing oral arguments, appellate judges usually occupy a suite of offices with their secretaries and law clerks. It is in these individual chambers that appellate judges study and write their opinions on cases assigned to them." [1]

Kerper describes the flow of a case through the hierarchical structure of the courts as follows:

"When the specialized courts are put to one side, we find that a judicial system typically has three or possibly four levels of courts. This will be the hierarchy commonly applicable to criminal cases.

At the bottom level in the typical hierarchy will be the magistrate court. Judges on that level will try minor civil and criminal cases. They will also have some preliminary functions in the more serious felony cases that will eventually be tried in the general trial court. Thus a person arrested on a felony charge initially will be brought before a magistrate who will inform the arrestee of the charge against him, set bail, and screen the prosecution's case to ensure that it is sufficient to send on to the general trial court.

At the next court level is the general trial court, which will try all major civil and criminal cases. While this court is predominantly a trial court, it also serves as an appellate court for the minor cases tired in the magistrate court. Thus, if a defendant is convicted on a misdemeanor charge in a magistrate court, his natural route of appeal is to the general trial court as the next highest court. The appellate review in the general trial court will take a special form where the magistrate court is one described as a court "not of record." In most instances, however, the general trial court will review the record in the magistrate court for possible error in the same way that the appellate court at the next tier will review the trial decisions of the general trial court in major cases.

The court at the next level may be either the first of two or the only general appellate court in the judicial hierarchy. In almost half of the states and the federal system, there are two appellate tiers. The first appellate court, which would be at the third level in the hierarchy, is commonly described as the intermediate appellate court. The next level of appellate court is the appellate court of last resort; it is the highest court to which a case can ordinarily be taken. These highest appellate courts frequently are titled, "supreme courts." . . . Where a judicial system has two tiers of appellate courts, the supreme court will be at the fourth level of the hierarchy. In those states that have only one tier, there is no intermediate appellate court. The supreme court is the court at the third level of the hierarchy.

In most jurisdictions, the losing party at trial is given an absolute right to one level of appellate review, but any subsequent reviews by a higher appellate court are at the discretion of that higher court. Thus, in a system that has no intermediate appellate court, a defendant convicted of a felony in a general trial court has an absolute right to have his conviction reviewed by the next highest court, the supreme court. In a system that has an intermediate appellate court, the felony defendant's absolute right to review

extends only to that intermediate court. If that court should decide the case against him, the defendant can ask the supreme court to review his case, but it need do so only at its discretion. The application requesting such discretionary review is called a petition for certiorari. If the court decides to review the case, it issues a writ of certiorari directing that the record in the case be sent to it by the intermediate appellate court. Those supreme courts having discretionary appellate jurisdiction commonly refuse to grant most petitions for certiorari, limiting their review to the most important cases. Consequently, even where a state judicial hierarchy has four rather than three levels, most civil or criminal cases will not get beyond the third level.

Our description of the hierarchy of the courts has assumed so far that all trial courts are "courts of record," and appellate review accordingly will be on the record. There is one major exception to that assumption which we should note—the court "not of record." The division between courts of record and courts not of the record originally was drawn when many trial courts lacked the mechanical capacity to maintain a complete record of their proceedings. If a court could provide such a record, the losing party could readily gain an appellate review of the trial decision before the next highest court. If the record was not available, however, the higher court had no way of examining the proceedings below to determine if an error was committed. Without a court of record, a second look at the case could only be provided by the higher court giving the case de novo consideration (i.e., fresh consideration). This was done by conducting a new trial called a trial de novo. The trial de novo was not in fact appellate review, since it did not review the decision below, but proceeded as if the case had begun in the higher court. The trial de novo simply was a substitute for appellate review, necessitated by the absence of a record." [2]

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1. Scheb II, J.M. (2013). *Criminal Law and Procedure* (8th ed., pp. 43). Belmont, CA: Cengage. ↵
2. Kerper, H. B. (1979). *Introduction to the criminal justice system* (2nd ed., pp. 38-39). West Publishing Company. ↵

5.5: American Trial Courts and the Principle of Orality

At trial, the state will present evidence showing facts demonstrating that the defendant committed the crime. The defendant may also present facts that show he or she did not commit the crime. The **principle of orality** requires that the **trier of fact** (generally the jury, but the judge when the defendant waives a jury trial) considers only the evidence that was developed, presented, and received into the record during the trial. As such, jurors should only make their decision based upon the testimony they heard at trial in addition to the documents and physical evidence introduced and admitted by the court. The principle of orality would be violated if, for example, during deliberations, the jury searched the Internet to find information on the defendant or witnesses. Similarly, if the police question the defendant and write a report, the jury cannot consider the contents of the report unless it has been offered in a way that complies with the rules of evidence and the court has received it during the trial. The principle of orality distinguishes the functions of a trial court, developing the evidence, and the function of the appellate courts, reviewing the record for legal error.

The principle of orality is one major difference between the **adversarial system** generally followed by the United States and the **inquisitorial system** generally followed in most other countries. Frequently in **civil law countries** (for example, most European nations), the police, prosecutors, or investigating magistrates question witnesses prior to trial and write summaries of their statements called a **dossier**. In determining guilt, the trier of fact is presented with just the summaries of the witness statements. The trial in civil law countries is less about the presentation of evidence establishing the defendant's guilt and more about the defendant's presentation of mitigation evidence which assists the court in giving an appropriate **sentence**, or sanction.

5.6: The Appeals Process, Standard of Review, and Appellate Decisions

The Appeals Process

The government cannot appeal a jury's decision by **acquitting** the defendant, or finding the defendant not guilty. Thus, most criminal appeals involve defendants who have been found guilty at trial. The government may appeal a court's pretrial ruling in a criminal matter before the case is tried, for example a decision to suppress evidence obtained in a police search. This is called an **interlocutory appeal**. Although the defendant is permitted to appeal after entering a guilty plea, the only basis for his or her appeal is to challenge the sentence given. When the defendant appeals, he or she is now referred to as the **appellant**, and the State is the **appellee**. (Note that often the court will use the words **petitioner** and **respondent**. The petitioner is the party who lost in the last court who is petitioning the next level court for review; the respondent is the party who won in the last court). In routine appeals, the primary function of appellate courts is to review the record to discern if errors were made by the trial court before, during, or after the trial. No trial is perfect, so the goal is to ensure there was a fair, albeit imperfect, trial. Accordingly, the appellate courts review for **fundamental, prejudicial or plain error**. Appellate courts will reverse the conviction and possibly send the case back for a new trial when they find that trial errors affected the outcome of the case. A lower court's judgment will not be reversed unless the appellant can show that some prejudice resulted from the error and that the outcome of the trial or sentence would have been different if there had been no error. By reviewing for error and then writing opinions that become case law, appellate courts perform dual functions in the criminal process: error correction and lawmaking.

Appellate judges generally sit in panels of three judges. They read the **appellant's brief** (a written document filed by the appellant), the **reply brief** (a written document filed by the the appellee), and any other written work submitted by the parties or **friend of the court amicus curiae briefs.** Amicus curiae are individuals or groups who have an interest in the case or some sort of expertise but are not parties to the case. The appellate panel will generally listen to very short oral arguments, generally twenty minutes or less, by the parties' attorneys. During these oral arguments, it is common for the appellate judges to interrupt and ask the attorneys questions about their positions. The judges will then consider the briefs and arguments and the panel will then meet and deliberate and decide based on majority rule. If the appellate court finds that no error was committed at trial, it will **affirm** the decision, but if it finds there was an error that deprived the losing party of a fair trial, it may issue an **order of reversal**. When the case is reversed, in most instances, the court simply will require a new trial during which the error will not be repeated. This is called a **remand**. In some cases, however, the order of reversal might include a direction to dismiss the case completely, for example when the appellate court concludes that the defendant's behavior does not constitute a crime under the law in that state. When reading an opinion, also known as decisions, from an appellate court, you can tell the **procedural history** of a case (i.e., a roadmap of where the case has been: what happened at trial, what happened as the case was appealed up from the various appellate courts).

Standards of Review

You have just learned that one function of the appellate courts is to review the trial record and see if there is a prejudicial or fundamental error. Appellate courts do not consider each error in isolation, but instead, they look at the cumulative effect of all the errors during the whole trial. Appellate court judges must sometimes let a decision of a lower court stand, even if they personally don't agree with it. Sports enthusiasts are familiar with the use of instant/video replay, and it provides us a good analogy. Officials in football, for example, will make a call, a ruling on the field, immediately after a play is made. This decision, when challenged, will be reviewed, and the decision will be upheld unless there is "incontrovertible evidence" that the call was wrong. When dealing with appeals, how much deference to show the lower court is the essence of **the standard of review**. Sometimes the appellate courts will give great deference to the trial court's decision, and sometimes the appellate courts will give no deference to the trial court's decision. How much deference to give is based on what the trial court was deciding—was it a question of fact, a question of law, or a mixed question of law and fact.

The appellate court will allow a trial court's decision about a factual matter to stand unless the court clearly got it wrong. The appellate court reasons that the judge and jury were in the courtroom listening to and watching the demeanor of the witnesses and examining the physical evidence. They are in a much better position to determine the credibility of the evidence. Thus, the appellate court will not overturn findings of fact unless it is firmly convinced that a mistake has been made and that the trial court's decision is clearly erroneous or "arbitrary and capricious." The arbitrary and capricious standard means the trial court's decision was completely unreasonable and it had no rational connection between the facts found and the decision made. The lower courts finding will be overturned only if it is completely implausible in light of all of the evidence. One court noted, "Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." [1]

Sometimes the law requires, or at the parties' request, that a trial judge or jury make a special finding of fact. Findings of fact are made on the basis of evidentiary hearings and usually involve credibility determinations that are better made by the trial judge sitting in the courtroom listening to the evidence and observing the demeanor of the witnesses. It is not enough that the appellate court may have weighed the evidence and reached a different conclusion unless the decision was clearly erroneous, the appellate court will defer to the trial judge.

Trial judges often make discretionary rulings., for example, whether to allow a party's request for a continuance or to allow a party to amend its pleadings or file documents late. In these **matters of discretion**, the appellate court will only overturn the trial judge if they find such a decision was an abuse of discretion. The lower court's judgment will be termed an **abuse of discretion** only if the judge failed to exercise sound, reasonable, and legal decision-making skills. A trial court abuses its discretion, for example, when: it does not apply the correct law, erroneously interprets a law, rests its decision on a clearly inaccurate view of the law, rests its decision on a clearly erroneous finding of a material fact, or rules in a completely irrational manner. Abuse of discretion exists when the record contains no evidence to support the trial court's decision.

When it comes to questions of law, the appellate courts employ a different standard of review called **de novo review.** De novo review allows the appellate court to use its own judgment about whether the trial court correctly applied the law. Appellate courts give little or no deference to the trial court's determinations and may substitute its own judgment on questions of law. Questions of law include interpretation of statutes or contracts, the constitutionality of a statute, the interpretation of rules of criminal and civil procedure. Trial courts presume that laws are valid and do not violate the constitution, and the burden of proving otherwise falls on the defendant. Trial courts sometimes get it wrong. De novo review allows the court to use its own judgment about whether the court correctly applied the law. Appellate judges are perhaps in a better position to decide what the law is as the trial judge since they are not faced with the fast-pace of the trial and have time to research and reflect.

Sometimes the trial court must resolve a question in a case that presents both factual and legal issues. For example, if police stop and question a suspect, there are legal questions, such as whether the police had reasonable suspicion for the stop or whether the questioning constituted an "interrogation", and factual questions, such as whether police read the suspect the required warnings. Mixed questions of law and fact are generally reviewed *de novo*. However, factual findings underlying the lower court's ruling are reviewed for clear error. Thus, if the application of the law to the facts requires an inquiry that is "essentially factual," review is for clear error.

In reviewing the trial court record, the appellate court may discover an error that parties failed to complain about. Generally, appellate courts will not correct errors that aren't complained about, but this is not the case when they come upon **plain error**. Plain error exists "[w]hen a trial court makes an error that is so obvious and substantial that the appellate court should address it, even though the parties failed to object to the error at the time it was made." [2] If the appellate court determines that the error was evident, obvious, clear and materially prejudiced a substantial right (meaning that it was likely that the mistake affected the outcome of the case below in a significant way), the court may correct the error. Usually, the court will not correct plain error unless it led to a miscarriage of justice.

The selection of the appropriate standard of review depends on the context. For example, the de novo standard applies when issues of law tend to dominate in the lower court's decision. When a mixed question of law and fact is presented, the standard of review turns on whether factual matters or legal matters tend to dominate or control the court's decision. The controlling standard of review may determine the outcome of the case. Sometimes the appellate court can substitute its judgment for that of the trial court and overturn a holding it does not agree with, but other times, it must uphold the lower court's decision even if it would have decided differently.

Appellate Decisions

In most appeals filed in the intermediate courts of appeal, the appellate panel will rule but not write a supporting document called a **written opinion** stating why it ruled as it did. Instead, the appellate panel will **affirm** the lower court's decision **without an opinion** (colloquially referred to as an AWOP). Sometimes, however, appellate court judges will support their decisions with a written opinion stating why the panel decided as it did and its reasons for **affirming** (upholding) or **reversing** (overturning) the lower court's decision. The position and decision by the majority of the panel (or the entire court when it is a supreme court case), is, not surprisingly, called the **majority opinion.** Appellate court judges frequently disagree with one another, and a judge may want to issue a written opinion stating why he or she has a different opinion than the one expressed in the majority opinion. If a particular judge agrees with the result reached in the majority opinion but not the reasoning, he or she may write a separate **concurring opinion**. If a judge disagrees with the result and votes against the majority's decision, he or she will write a **dissenting opinion**. Sometimes opinions are unsigned, and these are referred to as **per curium** opinions. Finally, if not enough justices agree

on the result for the same reason, a **plurality opinion** will be written. A plurality opinion controls only the case currently being decided by the court and does not establish a precedent which judges in later similar cases must follow.

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1. *United States v. Yellow Cab Co.*, 338 U.S. 338. 342 (1949). ↵
2. (http://www.law.cornell.edu/wex/plain_error.) ↵

5.7: Federal Appellate Review of State Cases

Through petitions for writ of certiorari, the U.S. Supreme Court will be in a position to review cases coming to it from the state courts. Because the review is discretionary, the Court will generally accept review only when these cases appear to involve a significant question involving the federal constitution. As a case works its way through the state appeals process, the state courts may have made rulings about both the federal constitution and its own state constitution. Depending on the case and how the state opinions were written, the U.S. Supreme Court may find it difficult to determine whether the state interpreted its own constitution, in which case the Court will not accept review, or whether it interpreted the federal constitution, in which case the Court may accept review. The U.S. Supreme Court in *Michigan v. Long*, 463 U.S. 1032, at 1040-1041 (1983), explained when the Court will "weigh in" on a state court matter. [1] It held,

"When . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved. If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

This approach obviates [*does away with*] in most instances the need to examine state law in order to decide the nature of the state court decision, and will at the same time avoid the danger of our rendering advisory opinions. It also avoids the unsatisfactory and intrusive practice of requiring state courts to clarify their decisions to the satisfaction of this Court. We believe that such an approach will provide state judges with a clearer opportunity to develop state jurisprudence unimpeded by federal interference, and yet will preserve the integrity of federal law. 'It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action' (Citations omitted)."

1. *Michigan v. Long*, 463 U.S. 1032, at 1040-1041 (1983) ↵

5.8: Courtroom Players- Judges and Court Staff

In their 1977 book, *Felony Justice: An organizational analysis of criminal courts*, James Eisenstein and Herbert Jacob, coined the term "courtroom workgroup." [1] They specifically referred to the cooperative working relationship between prosecutors, defense attorneys, and judges in working together (as opposed to an adversarial relationship that the public might expect) to efficiently resolve most of the cases in the criminal courts. This chapter more generally uses the term to include all the individuals working in the criminal courts—judges, attorneys, and the variety of court staff.

The **accusatory phase** (the pre-trial phase) and **adjudicatory phase** (the trial phase) of the criminal justice process include individuals who regularly work together in the trial courts. The prosecutor files the accusatory instrument called either **an information** or **an indictment**, and represents the state in plea bargaining, on pretrial motions, during the trial, and in the sentencing phase. The defense attorney represents the defendant after charges have been filed, through the pre-trial process, in a trial, and during sentencing, and maybe on the appeal as well. Judges, aided by several court personnel, conduct the pretrial, trial, and sentencing hearings. Prosecutors, defense counsel, and judges perform different roles, but all are concerned with the judicial process and the interpretation of the law. These law professionals are graduates of law schools and have passed the bar examination establishing their knowledge of the law and their ability to do legal analysis. As persons admitted by the state or federal bar associations to the practice of law, they are subject to the same legal codes of professional responsibility, disciplinary rules, and ethical rules and opinions for lawyers. Although the American criminal justice system is said to represent the adversarial model, the reality is that prosecutors, defense attorneys, judges and court staff work with cooperation and consensus rather than conflict. This is understandable when considering the common goal of efficient and expedition case processing and prescribed and agreed upon rules for achieving those goals.

Trial judges: Misperceptions and Realities

Trial court judges are responsible for presiding over pre-trial, trial and sentencing hearings, as well as probation and parole revocation hearings. They issue search and arrest warrants, set bail or authorize release, sentence offenders, engage in pre-sentence conferences with attorneys, work with court clerks, bailiffs, jail staff, etc. Trial judges have considerable, but not unlimited, discretion. In addition to the ethical and disciplinary rules governing all attorneys in the state, trial judges are subject to judicial codes of conduct. Judges are bound by the applicable rules of law when deciding cases and writing their legal opinions. Some rules governing judges are flexible guidelines while other rules are very precise requirements.

During the pretrial phase, judges make rulings on the parties' motions, such as motions to exclude certain physical or testimonial evidence, motions to compel discovery, and motions to change venue. Because most cases are resolved prior to trial through plea-bargaining, one important judicial function is taking the defendant's guilty plea.

At trial, if the defendant elects to waive a jury, there is a **bench trial,** and the judge sits as the "trier of fact." Like jurors in a jury trial, the judge has considerable discretion when deciding what facts were proven (or not) by the parties and what witnesses he or she finds credible. When the defendant elects for a jury trial, the jury decides what the facts are. In either a bench or jury trial, the trial judge rules: on the admissibility of evidence (whether a jury is entitled to hear certain testimony or look at physical evidence), whether witnesses are competent, whether privileges exist, whether witnesses qualify as experts, whether jurors will be excused from jury service, etc. At the end of the jury trial, the judge gives a set of **jury instructions** to the jurors which informs them on the law that applies to the case they are deciding.

If the defendant is convicted, then the judge will impose the sentence. Except for death penalty cases, jurors are generally not involved with sentencing the defendant. Judges have perhaps the broadest discretion in their role imposing sentences. However, with more states enacting mandatory minimums and sentence guidelines, judicial discretion has been severely curtailed.

"In the eyes of most Americans, the judge is the key player in the courtroom workgroup. The symbolism and ceremony of a criminal trial reinforce this view. The judge is seated on a raised bench, robed in black, and wields a gavel to maintain order in the courtroom. Moreover, the participants and spectators—including the defense attorney and the prosecutor—are commanded to 'all rise' when the judge enters or leaves the courtroom. It is no wonder, then that the judge is seen as the most influential person in court.

This view of the judge, though accurate to some degree, is misleading for at least two reasons. First, although the judge clearly plays an important role—in many cases, the lead role—in state and federal criminal courts, other actors play significant supporting roles. This is particularly the case in the majority of criminal cases that are settled by plea, not trial. In these cases,

the key player may be the prosecutor rather than the judge. A second reason why the traditional view of the judge is misleading is that it is based on an inaccurate assessment of the role of the judge. Judging involves more than presiding at trials. In fact, most of what judges do during a typical day or week is something other than presiding at trials—reading case files, conducting hearings, accepting guilty pleas, pronouncing sentences, and managing court dockets." [2]

The role played by the judge, in other words, is both less influential and more varied than the traditional view would have people believe.

Trial Judge Selection and Qualifications

The sole qualification to be a judge in most jurisdictions is graduating from a law school and membership in the state's bar association. Although the trend is for judges to be lawyers prior, a few jurisdictions do not require justices of the peace or municipal judges to be attorneys.

States procedures in selecting judges vary tremendously. "Almost no two states are alike and many states employ different methods of selection depending on the different levels of the judiciary creating 'hybrid' systems of selection" [3]. Nevertheless, the primary differences surround whether judges are elected or appointed, or selected based on merit. There are four primary methods used to select judges in the United States: appointment, with or without confirmation by another agency; partisan political election; non-partisan election; and a combination of nomination by a commission, appointment and periodic reelection (the Missouri Plan).

There are variations within these four primary methods. As noted above, states may use different methods to select judges based on the level in the judicial hierarchy. For example, municipal judges may be appointed, while supreme court judges are elected. Each selection method has its critics and advocates, and the relative merits of each are generally judged by the selection methods ability to achieve judicial independence and accountability. Notwithstanding the critiques of each of the methods, there has been little empirical evidence that the quality of judges, in terms of competency, effectiveness, or honesty, varies depending on the methods used to select the judge. [4] [5][6]

The length of time a judge will "sit", called a **term in office** or **tenure,** varies greatly, generally from four to sixteen years. Frequently, the term for a trial judge is less than a term for an appellate judge. At the appellate level, six years is the shortest term, and many states use terms of ten years or more for their appellate judges. Only a few states have lifetime tenure for their judges.

In the federal system, the President appoints Article III judges (U.S. District Court, U.S. Circuit Court, and U.S. Supreme Court judges) with the advice and consent of the Senate. In Article III, U.S. Constitution states that federal judges are appointed to "hold their Offices during Good Behavior." On February 25, 2019, the Court in Rizo v. Yovino, ___ U.S. ___ (2019) refused to address the merits of the case (an important employment wage discrimination case) because the judge who wrote the Ninth Circuit opinion died eleven days before its release. What will likely become an oft-quoted sentiment, "Federal judges are appointed for life, not for eternity."

The district courts appoint federal magistrate judges to either four or eight-year terms. Though it would seem that politics has played an increasing role in the selection of judges in the federal system, perceptions are influenced by what we currently hear and read. The reality is that complaints of political overreaching in selecting federal judges have been with us since the federal courts were first staffed.

Link to Washington Post showing political judicial appointments since President Reagan https://www.washingtonpost.com/graphics/2018/politics/trump-federal-judges/?utm_term=.479982ef3fd6)

Link to Washington Post article showing political party breakdown in the confirmation of Justice Gorsuch in 2017 and comparing the breakdown with other current U.S. Supreme Court justices https://www.washingtonpost.com/graphics/politics/scotus-confirmation-votes/?tid=graphics-story&utm_term=.35b33aa30d39

A 1952 article shows that the role of politics in judicial selection is not only a recent concern https://library.cqpress.com/cqresearcher/document.php?id=cqresrre1952012300

Judicial Clerk, Law Clerk, and Judicial Assistants

Generally, judges have one or two main assistants. These individuals are known as "judicial clerk", "clerk of court", "law clerk", or "judicial assistant". Of course, there may be several court clerks who interact each day with all the judges in the courthouse, but generally, judges have only one or two judicial assistants who work directly with them. The clerk of court

works directly with the trial judge and is responsible for court records and paperwork both before and after the trial. Usually, each judge has his or her own clerk. The clerk prepares all case files that a judge will need for the day. During hearings and the trial, these clerks record and mark physical evidence introduced in the trial, **swear in the witnesses,** or administer the oath to the witness, take notes cataloging the recordings, etc. In some jurisdictions, the law clerks are lawyers who have just completed law school and may have already passed the bar exam. In other jurisdictions, the law clerks are not legally trained but may have specialized paralegal training or legal assistant training.

Local and State Trial Court Administrators

Local and state trial court administrators oversee the administration of the courts. These administrators' responsibility includes: hiring and training court personnel (clerks, judicial assistants, bailiffs), ensuring that the court caseloads are efficiently processed, keeping records, sending case files to reviewing courts, ensuring that local court rules are being implemented, and working with the local and state bar associations to establish effective communications to promote the expedient resolutions of civil and criminal cases.

Indigency Verification Officers

The Indigency Verification Officer (IVO) is a court employee who investigates defendants' financial status and determines whether they meet the criteria for court-appointed counsel. More than 75% of all individuals accused of a crime qualify as indigent. How poor a defendant must be to qualify for a court-appointed attorney varies from place to place, and each IVO uses a screening device that takes into consideration the cost of defense in the locality as well as defendant's financial circumstances. One difficulty in qualifying for a court-appointed attorney is having equity in a home that cannot be easily sold quickly enough to provide resources for the defendant to hire an attorney. Another difficulty for indigency verification officers is getting the information needed from defendants who may be suffering from mental health issues.

Bailiffs

Bailiffs are the court staff responsible for courtroom security. Bailiffs are often local sheriff deputies or other law enforcement officers (or sometimes former officers), but they can also be civilians hired by the court. Sometimes, courts will use volunteer bailiffs. Bailiffs work under the supervision of the trial court administrator. During court proceedings, bailiffs or clerks call the session to order, announce the entry of the judge, make sure that public spectators remain orderly, keep out witnesses who might testify later (if the judge orders them excluded upon request of either party), and attend to the jurors. As courtroom security becomes a bigger concern, law enforcement officers are increasingly used as bailiffs, and they are responsible for the safety of the court personnel, spectators, witnesses, and any of the parties. In some communities, law enforcement bailiffs may transport in-custody defendants from the jail to the courthouse and back. In most jurisdictions today, bailiffs screen people for weapons and require them to silence cell phones before allowing them to enter the courtroom.

Jury Clerk

The jury clerk: sends out jury summons to potential jurors, works with jurors requests for postponements of jury service, coordinates with the scheduling clerk to make sure enough potential jurors show up at the courthouse each day there is a trial, schedules enough grand jurors to fill all the necessary grand jury panels, arranges payment to jurors for their jury service, and arranges lodging and meals for jurors in the rare event of jury sequestration.

Court Clerks and Staff

Court structure varies from the courthouse to courthouse, but frequently court staff is divided into units. For example, staff may be assigned to work in the criminal unit, the civil unit, the traffic unit, the small claims unit, the juvenile unit, the family unit, or the probate unit. In smaller communities, there may be just a few court clerks who "do it all". With the trend towards specialized courts (drug courts, mental health courts, domestic violence courts, and veteran courts), staff may specialize in and/or rotate in and out of the various units. Court staff are expected to have a vast knowledge of myriad local court rules and protocols, statutes, and administrative rules that govern filing processes, filing fees, filing timelines, accounting, record maintenance, as well as a knowledge of general office practices such as ordering supplies, mastering office machinery, and ensuring that safety protocol is established and followed. Recently, many courts have transitioned to electronic filing of all

documents, usually managed through a centralized state court system. This transition presents challenges to court staff as they learn the new filing software, keep up with new filings, and archive the past court documents.

Release Assistance Officers

Release assistance officers (RAO) are court employees who meet with defendants at the jail to gather information to pass on to the judge who makes release decisions. Release assistance officers make their recommendations based on the defendant's likelihood of reappearance and other considerations specified by statute or local rules. In determining whether the defendant is likely to reappear, the RAO considers: the defendant's ties to the community, the defendant's prior record of failures to appear, the defendant's employment history, whether the defendant lives in the community, the nature and seriousness of the charges, and any potential threat the defendant may present to the community.

The availability of space at the jail may also play a role in whether an individual is released. Court and jail staff may need to work together to establish release protocols when space is limited. The RAO should have a significant voice in drafting those protocols. Whether the RAO recommends security (bail) or conditional release, the RAO will generally suggest to the judge the conditions that the defendant should abide by if he or she makes bail or is conditionally released. Defendants released prior to trial will sign release agreements indicating the conditions of release recommended by the RAO and imposed by the judge. RAOs may also investigate the defendant's proposed living conditions upon release to make sure that they promote lawful activity and the ability for reappearance for all scheduled court appearances.

Scheduling Clerk

The scheduling clerk, or docketing clerk, set all hearings and trials on the court docket. The scheduling clerk notes the anticipated duration of trials (most trials are concluded within one day), speedy trial constraints, statutory and local court rules time frames, etc. The role of the scheduling clerk is extremely important, and an experienced scheduling clerk contributes to the overall efficiency of the legal process. Ineffective or inefficient scheduling causes delay, frustration, and may impede the justice process. Part of scheduling, or docketing, is keeping track of law enforcement officers' and defense attorneys' scheduled vacations. In addition, the scheduling clerk must be mindful of the judges' calendars which should track scheduled vacation time and training days, and also needed desk time, the time necessary for resolving cases they have **taken under advisement.** (Note that trial judges can either decide "from the bench", meaning they will rule immediately on the issues before them during the hearing, or after taking the case under advisement, meaning they will rule through a written decision/opinion letter after spending time researching the law, reviewing the parties written pleadings, and considering the oral arguments).

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5. Dubois, P.L. (1986), Accountability, independence, and the selection of state judges: The role of popular judicial elections. *Southwestern Law Journal*, 40, 31-52 ↵
6. Nagel, S. (1975). *Improving the legal process*. Lexington, MA: Lexington Books. ↵

5.9: Courtroom Players- Prosecutors

Prosecutors play a pivotal role in the criminal justice and work closely with: law enforcement officials, judges, defense attorneys, probation and parole officers, victims services, human services, and to a lesser extent, with jail and other corrections officers. The authority to prosecute is divided among various city, state and federal officials. City and state officials are responsible for prosecutions under local and state laws, and federal officials for prosecutions under federal law. Associate Justice Robert Jackson, while he was the U.S. Attorney General addressed the Conference of United States Attorneys (federal prosecutors) in Washington, D.C. on April 1, 1940 and stated,

"The qualities of a good prosecutor are . . . [elusive and . . . impossible to define]. …

The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst. …

Nothing better can come out of this meeting of law enforcement officers than a rededication to the spirit of fair play and decency that should animate the federal prosecutor. Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just. Although the government technically loses its case, it has really won if justice has been done. . . .

There is a most important reason why the prosecutor should have, as nearly as possible, a detached and impartial view of all groups in his community. Law enforcement is not automatic. It isn't blind. One of the greatest difficulties of the position of prosecutor is that he must pick his cases because no prosecutor can even investigate all of the cases in which he receives complaints. If the department of justice were to make even a pretense of reaching every probable violation of federal law, ten times its present staff would be inadequate. We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning. What every prosecutor is practically required to do is to select the cases for prosecution and to select those in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain.

… A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility" [1]

State Prosecuting Attorneys

Prosecutors represent the citizens of the state, not necessarily a particular victim of a crime. States vary in how they organize the groups of attorneys hired to represent the state's interest. Ordinarily, the official with the primary responsibility for prosecuting state violations is the local prosecutor who is referred to as the "district attorney", "county attorney", or "state's attorney". Local prosecutors are usually elected from a single county or a group of counties combined into a prosecutorial district. In many states, the state attorney general's office has the authority that trumps over the local prosecutors' authority, but in practice, the state attorney general rarely intervenes in local matters. The state attorney general's office will intervene, for example, if there is a conflict of interest or when requested by the district attorney. It is not uncommon for a small local prosecutor's office faced with the prosecution of a major, complex, time-consuming trial, to request the aid of the attorney general's office. In these smaller offices, there may be insufficient resources to handle complicated prosecutions and still keep up with the day-to-day filings and cases.

The prosecuting attorney and the attorney general ordinarily are the only officials with authority to prosecute violations of state law. City attorneys may be hired to prosecute city ordinances, but these attorneys primarily specialize in civil matters. When city attorneys and prosecuting attorneys have different policies for treating minor offenses, the result may be disparate, or different, treatment of similarly situated offenders. This raises a concern of inconsistent application of the law. Additionally, different county prosecutors may follow different policies on which matters they will charge, the use of diversion programs, the

use of plea bargaining, and the use of certain trial tactics. To limit some of these differences, some states have used statewide training, and district attorneys' conferences. Still, the policies and practices are far from uniform.

Generally, assistant prosecutors, called deputy district attorneys, are hired as "at will" employees by the elected district attorney. Historically, the political party of the applicant was a key criterion, and newly elected prosecutors would make a virtual clean sweep of the office and hire outsiders from the former office. Now, most offices hire on a non-partisan, merit-oriented, basis.

Most states require that the prosecutor be a member of the state bar. Some states also require that he or she have several years in the practice of law. Deputy district attorneys, on the other hand, are frequently fresh out of law school. They may have limited knowledge of state criminal law, as law school is designed to teach lawyers to enter any new field and educate themselves.

Link to the Oregon District Attorneys Association Website https://www.oregonda.org/

Federal Prosecuting Attorneys

Prosecutors in the federal system are part of the U.S. Department of Justice and work under the Attorney General of the United States. The Attorney General does not supervise individual prosecutors and relies on the 94 United States Attorneys, one for each federal district. U.S. Attorneys are given considerable discretion, but they must operate within general guidelines prescribed by the Attorney General. The U.S. Attorneys have a cadre of Assistant U.S. Attorneys who do the day-to-day prosecution of federal crimes. For certain types of cases, approval is needed from the Attorney General or the Deputy Attorney General in charge of the Criminal Division of the Department of Justice. The Criminal Division of the Department of Justice (DOJ) operates as the arm of the Attorney General in coordinating the enforcement of federal laws by the U.S. Attorneys.

Link to cite to find the U.S. Attorney https://www.justice.gov/usao/find-your-united-states-attorney

Selection and Qualifications of Prosecutors

Most local prosecuting attorneys are elected in a partisan election in the district they serve. State attorney generals may also have significant prosecutorial authority. They are elected in forty-two states, appointed by the governor in six states, appointed by the legislature in one state, and appointed by the state supreme court in another. State attorney generals serve between two to six-year terms, which can be repeated. Federally, senators from each state recommend potential U.S. Attorney nominees who are then appointed by the President with the consent of the Senate. U.S. Attorneys tend to be of the same political party as the President and are usually replaced when a new President from another party takes office.

Prosecutor's Function

Prosecutors arguably have more discretion than any other official in the criminal justice system. They decide whether to charge an individual or not. Much has been written about the prosecutor's broad discretion and the constraints on his or her discretion. If they choose not to prosecute, this is referred to as nolle prosequi, and this decision is largely unreviewable. Spohn and Hemmens (2012, p. 123) concluded in their review of the studies on prosecutor's charging decisions that "these highly discretionary and largely invisible decisions reflect a mix of (1) legally relevant measures of case seriousness and evidence strength and (2) legally irrelevant characteristics of the victim and the suspect" [2].

Prosecutors guide the criminal investigation and work with law enforcement to procure search and arrest warrants. Following arrest, prosecutors continue to be involved with various aspects of the investigation. Roles include: meet with the arresting officers, interview witnesses, visit the crime scene, review the physical evidence, determine the offenders prior criminal history, make bail and release recommendations, appear on pretrial motions, initiate plea negotiations, initiate **diversions** (pre-trial contracts between the government and the defendant which divert cases out of the system), work with law enforcement officers from other states who seek to extradite offenders, prepare the accusation to present to grand jury, call witnesses and present a *prima facia* case (present enough evidence which, when unrebutted by the defendant, shows that the defendant committed the crime) at a preliminary hearing, represent that state at arraignments and status conferences, conduct the trial, and, upon conviction, make sentencing recommendations while representing the state at the sentencing hearing.

In many communities, the prosecutor is the spokesperson for the criminal justice system and appears before the legislature to recommend or oppose penal reform. Prosecutors make public speeches on crime and law enforcement, take positions on requests for clemency for cases they have prosecuted, work extensively with victims' services offices, which may be an arm of the

prosecutor's office. In some communities, the prosecutor is also responsible for representing the local government in civil matters and may represent the state in civil commitment proceedings and answer accident claims, contract claims, and labor relation matters for the county. However, only a few counties have prosecutors still perform this function. U.S. Attorneys still have substantial responsibilities for representation of the U.S. government in civil litigation, and there is generally a civil division, a criminal division, and an appellate division of the U.S Attorneys office.

The American Bar Association (ABA) standards indicate that "the prosecutor's [ethical] duty is to seek justice". This means that the state should not go forward with prosecution if there is insufficient evidence of the defendant's guilt or if the state has "unclean hands", for example, illegally conducted searches or seizures or illegally obtained confessions. Ethical and disciplinary rules of the state bar associations govern prosecutors who must also follow state and constitutional directives when they prosecute crimes.

Link to the ABA Standards on the Prosecution Function https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition-TableofContents/

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1. Associate Justice Robert Jackson while he was the U.S. Attorney General addressed the Conference of United States Attorneys (federal prosecutors) in Washington, D.C. on April 1, 1940 ↵
2. Spohn, C. & Hemmens, C. (2012) *Courts: A Text/Reader* (2nd ed.). Los Angeles, CA: SAGE Publications, Inc. ↵

5.10: Courtroom Workgroup- Defense Attorneys

The Sixth Amendment to the U.S. Constitution provides, “The accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” Most state constitutions have similar provisions. Historically, the right to counsel meant that the defendant, if he or she could afford to hire an attorney, could have an attorney’s assistance during his or her criminal trial. This right has developed over time and now includes the right to have an attorney’s assistance at all **critical stages** in the process, or at all criminal proceedings that may substantially affect the right of the accused. Importantly, the right to assistance of a defense counsel has been held to require that the state pay the costs of the defense counsel when a person is **indigent** or has insufficient financial resources to pay.

Privately Retained Defense Attorneys

Individuals accused of any infraction or crime, no matter how minor, have the right to hire counsel and have them appear with them at trial. The attorney must be recognized as qualified to practice law within the state or jurisdiction, and generally, criminal defendants do well to hire an attorney who specializes in criminal defense work. However, because many criminal defendants don’t have enough money to hire an attorney to represent them, the court will need to appoint an attorney to represent them in criminal cases.

Appointed Counsel

Federal and state constitutions do not mention what to do when the defendant wants, but cannot afford an attorney’s representation. Initially, the Court interpreted the Sixth Amendment as permitting defendants to hire an attorney who would assist them during the trial. Later, the Court held that the Due Process Clause of the Fifth and Fourteenth Amendment includes the right to a fair trial, and a fair trial includes the right to the assistance of counsel. In *Powell v. Alabama*, 287 U.S. 45, at 58 (1932), the Court concluded that the focus on trial was too narrow. It stated, “[T]he most critical period of the proceeding[s] against the defendants might be that period from the time of their arraignment until the beginning of their trial, when consultation, thoroughgoing investigation, and preparation are vitally important. Defendants are as much entitled to . . . [counsel’s] aid during that period as at the trial itself.” [1]

Powell also dealt with the need for states to provide representation to defendants who could not afford to hire counsel in those cases where fundamental fairness required it. In a statement that led to the dramatic extensions to the right to counsel, the Court continued,

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has a small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he is not guilty, he faces the danger of conviction because he does not know how to establish his innocence.” [2]

Powell was decided in 1932, and because of television and the multitude of crime drama programs, people probably know more about the criminal justice process than ever imagined by the Powell court. Nevertheless, the Court’s admonitions still ring true. Not too many non-lawyers know how to conduct themselves at trial, challenge the state’s evidence, make evidentiary objections, or file proper pretrial motions with the rudimentary knowledge gained from watching television. One could consult with the many great Internet sources that are easily accessible, however, many individuals charged with crimes have limited education and lack the sophistication to distinguish between those sources that are applicable to their case and which are not.

Between Powell (1932) and the case of Gideon v. Wainwright, 372 U.S. 335 (1963), the Court decided when the appointment of counsel was necessary for a fair trial in state prosecutions on a case-by-case basis. In Gideon, however, the Court held that this case-by case-approach was inappropriate. It held that the state had to provide poor defendants access to counsel in every state felony prosecution. Lawyers in serious criminal cases, it said, were “necessities, not luxuries”. Since Gideon, the Court has extended the obligation to provide counsel to state misdemeanors prosecutions that result in the defendant receiving a jail term. The Court found that the legal problems presented in a misdemeanor case often are just as complex as those in felonies. [3] *In two cases, Argersinger v. Hamlin, 407 U.S. 25 (1972) and Scott v. Illinois, 440 U.S. 367 (1979), the Court tied the right*

to counsel in misdemeanor cases to the defendant's actual incarceration. Because it is difficult to predict when a judge will want to incarcerate a person convicted of a misdemeanor, this approach is difficult to implement. [4] [5]Many states instead appoint counsel to an indigent defendant charged with a crime where a possible term of incarceration could be imposed.

The Court left it for the lower courts to decide when a person is indigent. Lower courts have generally held that the financial resources of a family member cannot be considered. Also, courts cannot merely conclude that because a college student is capable of financing his or her education that he or she is capable of hiring an attorney. A person does not have to become destitute in order to be classified as indigent. An indigent defendant may have to pay back the court-appointed attorney's fees if they are convicted or enter a plea. In practice, most courts collect appointed attorneys' fees at a standard rate and much reduced from the actual costs of representation as part of the fines that a convicted defendant must pay. When acquitted, defendants are not required to pay the state back for the attorney fees.

Public Defenders, Assigned Attorneys, and Defense Attorney Associations

Most states now have public defenders' offices. Because public defenders and assistant public defenders handle only criminal cases, they become the specialists and have considerable expertise in representing criminal defendants. Public defender offices frequently have investigators on staff to help the attorneys represent their clients. In some states, courts appoint or assign attorneys from the private bar (not from the public defender's office) to represent indigent defendants. The mixed system uses both assigned counsel, or associations of private attorneys who contract to do indigent criminal defense, and public defenders. For example, the public defender's office may contract with the state to provide 80% of all indigent representations in a particular county. The remaining 20% of cases would be assigned to the association of individual attorneys who do criminal defense work- some retained clients, some indigent clients-or private attorneys willing to take indigent defense cases.

In practice, there is no purely public defender system because of "conflict cases." Conflicts exist when one law firm tries to represent more than one party in a case. Assume, for example, that Defendant A conspired with Defendant B to rob a bank. One law firm could not represent both Defendant A and Defendant B. Public defender offices are generally considered one law firm, so attorneys from that office could not represent both A and B, and the court will have to assign a "conflict" attorney to one of the defendants.

***Controversial Issue:** Link to the 2017 report from the Oregon Public Defense Services about indigent representation in Oregon*

https://www.oregon.gov/opds/commission/reports/EDAnnualReport2017.pdf

Link to the National Legal Aid and Defenders Association

http://www.nlada.org/

Link to the Oregon Criminal Defense Lawyers Association

https://www.ocdla.org/

The Right to Counsel in Federal Trials

The Court in *Johnson v. Zerbst*, 304 U.S. 458 (1938), held that in all federal felony, trials counsel must represent a defendant unless the defendant waives that right. The Court further held that the lack of counsel is a jurisdictional error which would render, or make, the defendant's conviction void. A court that allows a defendant to be convicted without an attorney's representation has no power or authority to deprive an accused of life or liberty. [6]

Zerbst also established rules for a proper waiver of the Sixth Amendment right to counsel. The court said that it is presumed that the defendant has not waived her right to counsel. For a waiver to be constitutional, the court must find that the defendant knew he or she had a right to counsel and voluntarily gave up that right, knowing that he or she had the right to claim it. Therefore, if the defendant silently goes along with the court process without complaining about the lack of counsel, his or her silence does not amount to a waiver. The Court defined waiver as an "intelligent relinquishment or abandonment of a known right or privilege".

In 1945 Congress passed the Federal Rules of Criminal Procedure (FRCP). Rule 44 of the FRCP requires defendants to have counsel, or affirmatively waive counsel, either retained or appointed, at every stage of the proceedings from the initial appearance through appeal. This rule was difficult to implement because there was no recognized federal defense bar, or federal defense attorneys, available or willing to take on appointed cases. So, in 1964, Congress passed the Criminal Justice Act of 1964 that established a national system for providing counsel to indigent defendants in federal courts.

When Does a Defendant Have the Right to Assistance of an Attorney?

Critical Stages of the Criminal Justice Process

In *White v. Maryland*, 373 U.S 59 (1963), the Court found that defendants are entitled to the right to counsel at any critical stage of the proceeding, defined as a stage in which he or she is compelled to make a decision which may later formally be used against him or her. The Court has found the following court procedures to be critical stages:

- The initial appearance in which the defendant enters a non-binding plea–*White v. Maryland*, 373 U.S.59 (1963).
- A preliminary hearing–*Coleman v. Alabama*, 399 U.S. 1 (1970).
- A lineup that includes a previously indicted defendant–*Wade v. United States*, 388 U.S. 218 (1967) and *Gilbert v. California*, 388 U.S. 263 (1967).

During Other Proceedings

The Court has extended the right to counsel to psychiatric examinations, juvenile delinquency proceedings [7], civil commitments proceedings [8]and probation and parole hearings (see, below). Further, the court in *Estelle v. Smith*, 451 U.S. 454 (1981), held that a defendant charged with a capital crime and ordered by the court to be examined by a psychiatrist, to evaluate possible future dangerousness, was entitled to consult with counsel. Similarly, in *Satterwhite v. Texas*, 486 U.S. 249 (1988), the Court found prejudicial error occurs when defense counsel was not appointed to represent a defendant subjected to a psychiatric evaluation. The Court further held that counsel must be made aware of the projected psychiatric evaluation before it occurs.

During Probation and Parole Revocation Hearings

In *Mempa v. Rhay*, 389 U.S. 128 (1967), 17-year-old Mempa was placed on probation for two years after he pleads guilty to "joyriding". About four months later, the prosecutor moved to have petitioner's probation revoked alleging that Mempa had committed a burglary while on probation. Mempa, who was not represented by counsel at the probation revocation hearing. admitted being involved in the burglary. The court revoked his probation based on his admission to the burglary. The U.S. Supreme Court held that Mempa should have had counsel to assist him in his hearing.

Five years later, in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), the state sought to revoke defendant's probation. Originally, Gagnon was sentenced to fifteen years of imprisonment for armed robbery, but the judge had suspended the imposition of sentence and placed him instead on seven years of probation. The Court found that the probation revocation hearing did not meet the standards of due process. Because a probation revocation involves a loss of liberty, the probationer was entitled to due process. The Court did not adopt a *per se* rule that all probationers must have the assistance of counsel in every revocation hearings, but rather stated:

"We find no justification for a new, inflexible constitutional rule with respect to the requirement of counsel. We think rather, that the decision as to the need for counsel must be made on a case-by-case basis in the exercise of sound discretion by the state authority charged with responsibility for administering the probation and parole system. . . . Presumptively, it may be said that counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request based on a timely and colorable claim. . . . In passing on a request for the appointment of counsel, the responsible agency should also consider, especially in doubtful cases, whether probationer appears to be capable of speaking effectively for himself. In every case in which a request for counsel at a preliminary or final hearing is refused, the grounds for refusal shall be stated succinctly in the record." [9]

At Some Post-Trial Proceedings

The Sixth Amendment's right to the assistance of counsel does not stop when the jury finds the defendant guilty. When an out-of-custody defendant is found guilty at the end of a trial, the judge may remand the defendant to custody- has the bailiff take the defendant into custody and transport them to the jail- and revokes conditions of bail if there had been any. Counsel must assist the defendant through the end of the sentencing hearing, and the defendant's attorney has the legal obligation to make post-trial motions to preserve the defendant's rights.

The Court has distinguished between the defendant's right to the assistance of counsel on mandatory appeals and discretionary appeals. In *Douglas v. California*, 372 U.S. 353 (1963), the Court found that indigent counsel should be provided to individuals when an appellate court must review their appeal or **an appeal of right**. Once the first appeal has been dismissed or resolved, however, *Ross v. Moffitt*, 417 U.S. 600 (1974), holds that indigent defendants do not have a right to appointed counsel for discretionary review in either the state supreme court or with the U.S. Supreme Court. The *Ross* majority reasoned that the

defendant did not need an attorney to have "meaningful access" to the higher appellate courts because all the legal issues would have already been fully briefed in the intermediate appellate court. Additionally, the Court noted that the concept of equal protection does not require absolute equality. The majority opinion states,

"We do not believe that the Due Process Clause requires North Carolina to provide the respondent with counsel on his discretionary appeal to the State Supreme Court. At the trial stage of a criminal proceeding, the right of an indigent defendant to counsel is fundamental and binding upon the States by virtue of the Sixth and Fourteenth Amendments. But there are significant differences between the trial and appellate stages of a criminal proceeding. The purpose of the trial stage from the State's point of view is to convert a criminal defendant from a person presumed innocent to one found guilty beyond a reasonable doubt. To accomplish this purpose, the State employs a prosecuting attorney who presents evidence to the court, challenges any witnesses offered by the defendant, argues rulings of the court, and makes direct arguments to the court and jury seeking to persuade them of the defendant's guilt. Under these circumstances "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him" (Citations omitted).

By contrast, it is ordinarily the defendant, rather than the State, who initiates the appellate process, seeking not to fend off the efforts of the State's prosecutor but rather to overturn a finding of guilt made by a judge or jury below. The defendant needs an attorney on appeal not as a shield to protect him against being "haled into court" by the State and stripped of his presumption of innocence, but rather as a word to upset the prior determination of guilt. This difference is significant for, while no one would agree that the State may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the State need not provide any appeal at all. The fact that an appeal has been provided does not automatically mean that a State then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way. . . . (Citations omitted.)

The facts show that respondent … received the benefit of counsel in examining the record of his trial and in preparing an appellate brief on his behalf for the state Court of Appeals. Thus, prior to his seeking discretionary review in the State Supreme Court, his claims had "once been presented by a lawyer and passed upon by an appellate court." We do not believe that it can be said, therefore, that a defendant in respondent's circumstances is denied meaningful access to the North Carolina Supreme Court simply because the State does not appoint counsel to aid him in seeking review in that court. At that stage, he will have, at the very least, a transcript or other record of trial proceedings, a brief on his behalf in the Court of Appeals setting forth his claims of error, and in many cases an opinion by the Court of Appeals disposing of his case. These materials . . . would appear to provide the Supreme Court of North Carolina with an adequate basis for its decision to grant or deny review" (Citations omitted).

This is not to say, of course, that a skilled lawyer, particularly one trained in the somewhat arcane art of preparing petitions for discretionary review, would not prove helpful to any litigant able to employ him. An indigent defendant seeking review in the Supreme Court of North Carolina is therefore somewhat handicapped in comparison with a wealthy defendant who has counsel assisting him in every conceivable manner at every stage in the proceeding. But both the opportunity to have counsel prepare an initial brief in the Court of Appeals and the nature of discretionary review in the Supreme Court of North Carolina make this relative handicap far less than the handicap borne by the indigent defendant denied counsel on his initial appeal as of right in Douglas. And the fact that a particular service might be of benefit to an indigent defendant does not mean that the service is constitutionally required. (Emphasis added). The duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process. We think the respondent was given that opportunity under the existing North Carolina system." [10]

Similarly, prisoners have a limited right to legal assistance for the purpose of filing writs of habeas corpus. In *Bounds v. Smith*, 430 U.S. 817 (1977), the Court held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law". Prisons can meet this obligation by training prisoners to be paralegal assistants to work under a lawyer's supervision or by using law students, paralegals, and volunteer lawyers. Again, it may seem inconsistent that the court requires more for habeas corpus relief than it does for discretionary review on appeals. The difference lies in the nature of habeas corpus as a collateral attack, or side attack, where the claim is often being advanced for the first time and therefore the need for legal assistance may be greater.

Functions of Defense Attorneys

Defense lawyers investigate the circumstances of the case, keep clients informed of any developments in the case, and take action to preserve the legal rights of the accused. Some decisions, such as which witnesses to call, when to object to evidence, and what questions to ask on cross-examination, are considered to be strategic ones and may be decided by the attorney. Other decisions must be made by the defendant, most notably, after getting advice from the attorney about the options and their likely consequences. Defendants' decisions include whether to plead guilty and forego a trial, whether to waive a jury trial, and whether to testify in their own behalf.

The ABA Standards relating to the Defense Function established basic guidelines for defense counsel in fulfilling obligations to the client. The primary duty is to zealously represent the defendant within the bounds of the law. Defense counsel is to avoid unnecessary delay, to refrain from misrepresentations of law and fact, and to avoid personal publicity connected with the case. Fees are set on the basis of the time and effort required by counsel, the responsibility assumed, the novelty and difficulty of the question involved, the gravity of the charge, and the experience, reputation, and ability of the lawyer.

ABA Standard 4- 1.2, The Function of Defense Counsel, states:

(a) Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.

(b) The basic duty defense counsel owes to the administration of justice and as an officer of the court is to serve as the accused's counselor and advocate with courage and devotion and to render effective, quality representation.

(c) Since the death penalty differs from other criminal penalties in its finality, defense counsel in a capital case should respond to this difference by making extraordinary efforts on behalf of the accused. Defense counsel should comply with the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases.

(d) Defense counsel should seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to defense counsel's attention, he or she should stimulate efforts for remedial action.

(e) Defense counsel, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of courts, and codes, canons, or other standards of professional conduct. Defense counsel has no duty to execute any directive of the accused which does not comport with the law or such standards. Defense counsel is the professional representative of the accused, not the accused's alter ego.

(f) Defense counsel should not intentionally misrepresent matters of fact or law to the court.

(g) Defense counsel should disclose to the tribunal legal authority in the controlling jurisdiction known to defense counsel to be directly adverse to the position of the accused and not disclosed by the prosecutor.

(h) It is the duty of defense counsel to know and be guided by the standards of professional conduct as defined in codes and canons of the legal profession applicable in defense counsel's jurisdiction. Once representation has been undertaken, the functions and duties of defense counsel are the same whether defense counsel is assigned, privately retained, or serving in legal aid or defender program. [11]

Tricky Issues in Representation

Defendants sometimes want to have a friend or family member speak up for them, but, the Court will not permit that. The right to counsel means the right to be represented by an attorney, someone legally trained and recognized as a member of the bar association. Similarly, defendants may not necessarily get the attorney of their choice. For example, in Wheat v. United States, 486 U.S. 153 (1988), one defendant who wanted to be represented by the same attorney who was representing his accomplice/co-conspirator in a complex drug distribution conspiracy was not allowed to have that attorney. The Court disallowed his application for the appointment of counsel noting that irreconcilable and unwaivable conflicts of interest would be created since there was the likelihood that the petitioning defendant would be called to testify at a subsequent trial of his co-defendant and that his co-defendant would be testifying in petitioner's trial. On the other hand, in United States. v. Gonzalez-Lopez, 553 U.S. 285 (2008), the Court reversed the defendant's conviction because the trial court erroneously deprived the defendant of his choice of counsel. The defendant, Gonzales-Lopez, had hired counsel from a different state, and during pretrial proceedings, the judge and the counsel had some disagreements. The judge then prohibited the attorney from taking part in the defendant's trial. The Court found that a trial judge violated the defendant's Sixth Amendment rights.

Defendants cannot repeatedly "fire" their appointed counsel as a stall tactic, and, at some point, the court will not allow the defendant to substitute attorneys and will require the defendant work with whatever attorney is currently assigned. A defendant may not force an unwilling attorney to represent him or her, but a court does have the discretion to deny an attorney's motion to withdraw from representation after inquiring about counsel's reasons for wishing to withdraw. This may present an ethical dilemma for the attorney because professional rules of responsibility require that even when an attorney withdraws from a case, he or she must still maintain attorney-client confidences. If, for example, the attorney knows that the defendant insists on taking the stand and presenting perjured testimony, the attorney must withdraw. But, at the same time, the attorney cannot discuss with the court why he or she needs to withdraw. At some point in the inquiry, after the judge has asked and the attorney has talked around the subject, the judge hopefully catches on, and the judges will allow the attorney to withdraw.

Effective Assistance of Counsel

Defendant's attorneys must provide competent assistance and should not harm the defendant's case by their legal representation. According to *McMann v. Richardson*, 397 U.S. 759 (1970), the right to counsel means the right to effective assistance of counsel. The constitutional standard for evaluating effective assistance was determined in *Strickland v. Washington*, 466 U.S. 688 (1984). The *Strickland* decision looked at two aspects of the representation to determine whether counsel was ineffective. First, the defense attorney's actions were not those of a reasonably competent attorney exercising reasonable professional judgment; and second, the defense attorney's actions caused the defendant prejudice, meaning that they adversely affected the outcome of the case (i.e., they likely caused the jury to find the defendant guilty).

Courts may be more inclined to find ineffective assistance of counsel in a death penalty case than other run-of-the-mill cases. For example, the Court found the defense attorneys provided ineffective assistance in the sentencing portion of defendant's death penalty trial for the murder of a 77-year-old woman because they had failed to conduct an adequate "social history" investigation of the defendant's life and had not presented information to the jury they did have which showed that defendant had been subject to regular sexual abuse as a child. *Wiggins v. Smith*, 539 U.S. 510 (2003). The Court stated,

"In finding that Schlaich and Nethercott's investigation did not meet Strickland's performance standards, we emphasize that Strickland does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing. Nor does Strickland require defense counsel to present mitigating evidence at sentencing in every case. Both conclusions would interfere with the "constitutionally protected independence of counsel" at the heart of Strickland. We base our conclusion on the much more limited principle that "strategic choices made after less than complete investigation are reasonable" only to the extent that reasonable professional judgments support the limitations on investigation. . . . A decision not to investigate thus must be directly assessed for reasonableness in all the circumstances.

Counsel's investigation into Wiggins' background did not reflect reasonable professional judgment. Their decision to end their investigation when they did was neither consistent with the professional standards that prevailed in 1989, nor reasonable in light of the evidence counsel uncovered in the social services records–evidence that would have led a reasonably competent attorney to investigate further. Counsel's pursuit of bifurcation until the eve of sentencing and their partial presentation of a mitigation case suggest that their incomplete investigation was the result of inattention, not reasoned strategic judgment. In deferring to defense counsel's decision not to pursue a mitigation case despite their unreasonable investigation, the Maryland Court of Appeals unreasonably applied *Strickland."*

Waiving Counsel

Sometimes, a defendant wishes to waive counsel and appear ***pro se,*** *or represent him or herself at trial. The Court, in Faretta v. California, 422 U.S. 806 (1975), held that the Sixth Amendment includes the defendant's right to represent himself or herself. The Faretta Court found that, where a defendant is adamantly opposed to representation, there is little value in forcing him or her to have a lawyer. The Court stressed that it was important for the trial court to make certain and establish a record that the defendant knowingly and intelligently gave up his or her rights.*

"Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish he knows what he is doing and his choice is made with eyes open." [12]

In McKaskle v. Wiggins, 465 U.S. 168, at 174 (1984), the Court held that a "defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. Nor does the Constitution require judges to take over

chores for a pro se defendant that would normally be attended to by trained counsel as a matter of course." The constitutional right to self-representation does not mean that the defendant is free to obstruct the trial, and a judge may terminate self-representation by a defendant who is obstructing the process. Frequently, judges will assign a ***standby counsel*** *to assist defendants. Stand-by counsel is an attorney who can be available to answer questions of a pro se defendant, and if necessary, standby counsel can step in if the defendant is engaging in misconduct.*

Conclusion

Court jurisdiction determines where a case will be filed and which courthouse has the legal authority to hear a case. Jurisdiction can be based on geography, subject matter, or seriousness of the offense. Jurisdiction is also divided between trial courts (original jurisdiction) and appellate courts (appellate jurisdiction).

More than 51 court systems operate in the United States. We have a dual court system comprised of federal trial and appellate courts and state trial and appellate courts. Federal and state courts have similar hierarchical structures with cases flowing from lower trial courts through intermediate courts of appeals and up to the supreme courts.

Defendants who wish to appeal their convictions are entitled to have their cases reviewed at least once, a mandatory appeal of right in the intermediate courts of appeal. After that, the review is discretionary and rare. Appellate courts generally affirm the decision of the trial courts, but may also reverse and remand the case back to the trial court if they determine that prejudicial error occurred. At the intermediate appellate court level, judges most frequently affirm the trial court's decision without writing an opinion, but sometimes the judges will write opinions informing the parties of their decision and the reasons for holding as they did. Judges don't always agree, and at times, judges will write dissenting opinions or concurring opinions. Appellate court opinions become precedent that must be followed in the trial courts.

Judges, prosecutors, defense attorneys work together along with court clerks, bailiffs, and other court staff to process tens of thousands of cases daily in trial courts across the nation. Judges, prosecutors, and defense attorneys play an important role in the criminal justice process. Although few cases actually go to trial, and the vast majority of criminal cases are resolved in the trial courts at the pre-trial stage, the defendants must be represented by an attorney at critical stages in the process, and at the government's expense if they cannot afford to hire an attorney, unless they have voluntarily waived the right and wish to represent themselves.

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1. *Powell v. Alabama, 287 U.S. 45, at 58 (1932)* ↵
2. *Powell v. Alabama, 287* U.S. 45, at 68-69 (1932) ↵
3. *Gideon v. Wainwright*, 372 U.S. 335 (1963) ↵
4. *Argersinger v. Hamlin*, 407 U.S. 25 (1972) ↵

5. *Scott v. Illinois*, 440 U.S. 367 (1979) ↵
6. *Johnson v. Zerbst*, 304 U.S. 458 (1938) ↵
7. *In re Gault*, 387 U.S. 1 (1967) ↵
8. Stefan, S. (1985). Right to Counsel in Civil Commitment Proceedings. *Mental & Physical Disability L. Rep.*, 9, 230. ↵
9. *Gagnon v. Scarpelli*, 411 U.S. 788, 790 (1973). ↵
10. *Ross v. Moffitt*, 417 U.S. 600, 610-611, 614, 616 (1974). ↵
11. ABA Standard 4- 1.2 The Function of Defense Counsel (2015). *Criminal Justice: Prosecution and Defense Function.* American Bar Association. ↵
12. *Faretta v. California*, 422 U.S. 806, 835 (1975). ↵

CHAPTER OVERVIEW

6: Corrections

Learning Objectives

- Up to this point, we have spent much time on understanding crime, how it is policed, and how it is prosecuted in the courts. This section will cover the last third of the justice system, corrections. This section will focus on a brief history of corrections, to include the philosophical underpinnings of why and how we punish people. After reading this section, students will be able to:
- Understand where the basic concept of punishment comes from
- Recognize the different ideologies of why and how people are punished
- Understand how punishment has evolved in the world, and how that has shaped punishment in the United States

Critical Thinking Questions

1. Why are we more punitive at times than others? What changes our punitive values?
2. What are some of the pros/cons of each of the four correctional ideologies?
3. Does crime change depending on our collective correctional ideology, or practice?
4. Does punishment change, based on our correctional ideology? How?
5. What are some key explanations for the rise in the prison population in the U.S.?

6.1: A Brief History of The Philosophies of Punishment

A Brief History of Punishment

Feeling safe and secure in person and home is arguably one of the most discussed feelings in our nation today. The “fear of crime” influences how we think and act day to day. This has caused great fluctuation in the United States in regards to how we punish people who are convicted of violating the law. In part, punishment comes from the will of the people, which is then carried out through the legislative process, and converted into sentencing practices. People have differing views on why people should be punished, and how much punishment they should receive. These correctional ideologies, or philosophical underpinnings of punishment, have been prevalent throughout history, and are not brand new in the United States. This section details basic concepts of some of the more frequently held punishment ideologies, which include: retribution, deterrence, incapacitation, and rehabilitation.

In the News: One of the more frequently used statistics in the news about crime is homicides in the United States. Often, you will hear something about a homicide rate or the number of homicides in a state, or a city for a particular year. An interesting clarifier about this number is that it typically does not include a number of deaths in prison. Deaths in prison occur every year, yet these are not normally counted in any statistic. In 2014, there were approximately 3,927 deaths that occurred in prisons in the United States. There are a variety of reasons for these deaths, to include homicide. For more information on this, look up – Mortality in Correctional Institutions (MCI). This is also formerly known as Deaths in Custody Reporting Program (DCRP). The Bureau of Justice Statistics houses and publishes data on this phenomenon. Additionally, this is a voluntary reporting structure, which may actually not capture all deaths that occur in prison. https://www.bjs.gov/index.cfm?ty=dcdetail&iid=243

Philosophies of Punishment Example

Two stories come on during the crime section of the 6 o’clock news. In the first story, a man is described as a convicted sex offender. He is living at an address that you know is in your city. Citizens that live on the streets nearby his address are shown picketing in front of his house, voicing their displeasure that he is allowed to live there. The video shows how angry the neighborhood is, and you can visibly see their frustration and angst on the people’s faces in the news clip.

The second story is of a woman who was detained (shown in the back of a squad car) for stealing food from a local grocery store, apparently to feed her children. The store manager is then on the screen describing that he is offering to donate the food to her so that she does not have to spend time in jail or get into any more trouble.

How do these two stories make you feel? Is it the same feeling for each story? Does one of these stories make you feel more afraid of crime? More angry or upset? Which one? Who deserves to get punished more? How much punishment should they get? The answers to questions like these instantly flood our thoughts as we are watching news blurbs like this, and in general, when we hear about a crime. This is all normal. And, this process is what generates our own personal punishment ideology.

Now, which one of these two individuals has actually committed a crime? A second point to this story is that our perceptions of punishment can be influenced by the narrative (what is presented to us).

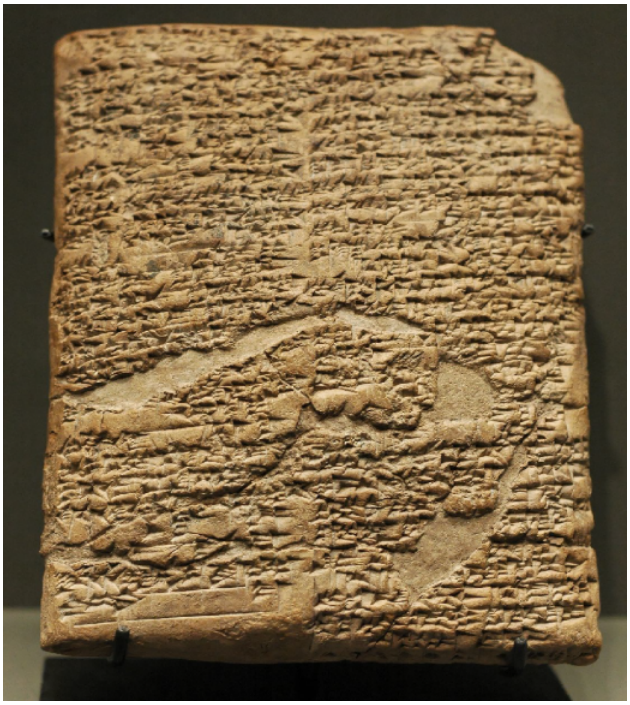
Although the change in our overall perception or use of the rehabilitation ideology is slow, it is necessary. As we will see in the next sections, our reliance on the “Brick and Mortar” approach to punishment comes at a great cost, and the results are less than desirable.

6.2: Retribution

Retribution

Retribution, arguably the oldest of the ideologies/philosophies of punishment, is the only backward-looking philosophy of punishment. That is, the primary goal of retribution (in its original form) is to ensure that punishments are proportionate to the seriousness of the crimes committed, regardless of the individual differences between offenders, other than *mens rea* and an understanding of moral culpability. Thus, retribution focuses on the past offense, rather than the offender. This can be phrased as "a balance of justice for past harm." People committing the same crime should receive a punishment of the same type and duration that balances out the crime that was committed. The term-backward-looking means that the punishment does not address anything in the future, only for the past harm done.

It is argued as the oldest of the main correctional/punishment ideologies because it comes from a basic concept of revenge, or "an eye for an eye." This concept of an eye for an eye, or vengeance, basically means that if someone perceives harm, they are within their right to retaliate at a proportional level. This idea that retaliation against a transgression is allowable has ancient roots in the concept of Lex Talionis, which roughly translates into the law of retaliation. A person who injures someone should be punished with a similar amount of harm (punishment). This concept was developed in early Babylonian law, and it is here that we see some of the first written forms of customs and practices. Thus, around 1780 b.c., the Babylonian Code, or the Code of Hammurabi, is considered the first attempt to codify practices by individuals of a group. We recognize these today to be our first attempt at written laws. These laws (pictured below) represent a retributive approach to punishment. That is proportional punishments for past harms done.



Hammurabi Code

The retributivist philosophy also calls for any suffering beyond what was originally intended during sentencing to be removed. This is because the dosage of punishment is the core principle of retribution: offenders who commit the same crime must receive the same punishment. Punishments beyond the original balancing of justice for the past harm is outside of the scope of retribution, and thus, does not fit with retribution. This also helps to explain why retribution is a backward-looking ideology. As we continue forward in the history of punishment, we see changes to our perceptions of how to react to crime. This includes our changing views of punishment, to include punishment ideologies that are more forward-looking.

6.3: Deterrence

Deterrence

Forward-looking ideologies are designed to provide punishment, but also to reduce the level of reoffending (**recidivism**) through some type of change, while the backward-looking approach is solely for the punishment of the offender's past actions. This change in how we view punishment is a large shift that has ripples in culture, the politic of the times, and even religion. Moving many eras forward from Hammurabi, deterrence is the next major punishment ideology. Rooted in the concepts of classical criminology, deterrence is designed to punish current behavior(s), but also ward off future behaviors through sanctions or threats of sanctions. Moreover, it can be focused on a group or on one individual. Thus, the basic concept of **deterrence** is "the reduction of offending (and future offending) through the sanction or threat of sanction."

When looking at punishment through this deterrent design, it can be split into two distinct categories: general and specific. **Specific deterrence** is geared towards trying to teach the individual offender a lesson. It is meant to better that individual so they will not recidivate. By punishing the offender (or threatening a sanction), it is assumed they will not commit a crime again. It is this point that makes deterrence a forward-looking theory of punishment. General deterrence runs along the same track as specific deterrence. However, **general deterrence** differs by when one person offends, the punishment received is going to be the same for all. In this way, the group doing the punishing attempts to relay the message of future events to the masses. If someone commits this act, they will be punished; this is part of the core design for deterrence.

Some other principles of deterrence to discuss in brief are: marginal, absolute, and displacement. Marginal deterrence works on the principle that the action itself is only reduced in amount by the offender, not removed. An example of this would be, a person sees a police officer sitting on the side of the freeway. If they are driving 70 mph, they might slow to 58 mph. Technically, they may still be breaking the law, yet their level of criminal behavior has been reduced. Absolute deterrence is a surrealistic concept often thought to be created by Robert Peel, in his idea of creating a police force to remove all crime. In today's standards, we know this to be false. There is little to no evidence to support that all crime can be deterred within a specific area, or even in general. Displacement argues that crime is not deterred, but rather, it is shifted on three levels. It may be shifted by time, location, or the type of crime committed. Instead of someone stealing cars on the weekend, they may sell drugs during the day. Although the weekend crime carjacking rate will decrease, the daily drug trade will increase.

In order for all of these principles of deterrence to work, the people who are involved (meaning society as a whole) must have a conceptual (perceived) idea of the level of punishment they will receive. For the efficacy of this theory, three key things must be instilled within each individual in society. They must have free will, some amount of rationality, and felicity. Free will refers to everyone's ability to make choices about their future actions, like choosing when to offend and not offend. They must also have a rationalistic ability (ability to be rational) to see what the outcomes of their choices will be. The third element, hedonism (or a hedonistic calculus), is essential. We must desire more pleasurable things than harmful ones. It is more probable that crime will be deterred if all three of these elements are in place within society. This is both a strength and weakness of the deterrence theory.

Deterrence theory works on these three key elements: **certainty, celerity**, and **severity,** in incremental steps. First, by making certain, or at least making the public think that their offenses are not going to go unpunished, then there will be a deterrent factor. As Beccaria relates, this is the most important of these three elements within deterrence theory. The celerity, or swiftness of punishment, is a secondary factor in rationalizing for the offender. If they know how swift the punishment will be, they will not offend. These concepts were cornerstones to the works of Cesare Beccaria (1738-1794), an Italian philosopher in the latter half of the 18th century. Beccaria's works were profound, and many of his concepts helped to shape the U.S. Bill of Rights. He is also considered the Father of the Classical School of Criminology, and a prominent figure in penology. According to Beccaria, "For punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime… All beyond this is superfluous and for that reason tyrannical." [1]

Cesare_Beccaria_1738-1794.jpg

In saying this, Beccaria refers to the severity or amount of punishment. It is not how much punishment that is the primary motivator of deterrence, rather, the certainty. If deterrence is to work, the ideology of the punishment is what should drive this goal of corrections.

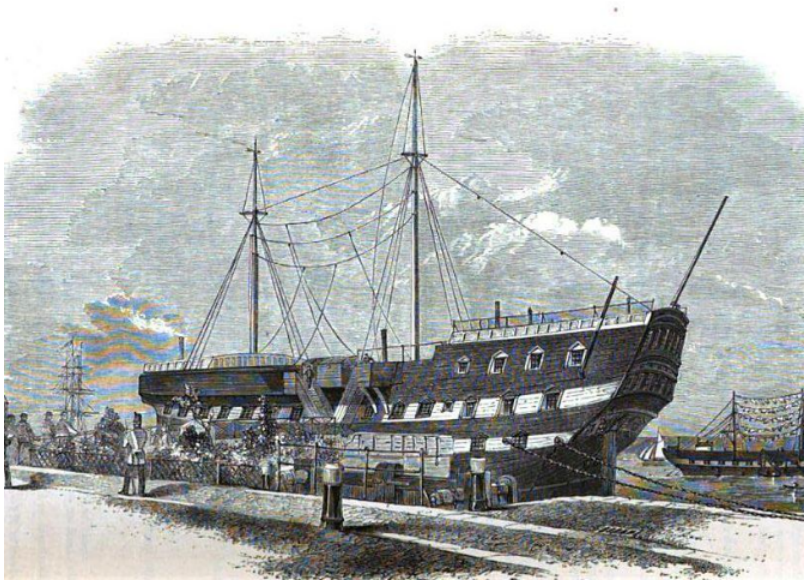
Today, we have a better understanding of the effectiveness of deterrence. It does appear to work for lower level offenses, and for individuals that are generally prosocial. However, the overall effect of deterrence is limited. For more detail on things to know about deterrence, please see: https://www.ncjrs.gov/pdffiles1/nij/247350.pdf

1. Beccaria, 1764/1963, 43. ↵

6.4: Incapacitation

Incapacitation

Rooted in the concepts of banishing individuals from society, **incapacitation** is the removal of an individual (from society), for a set amount of time, so as they cannot commit crimes (in society) for an amount of time in the future. In British history, this often occurred on Hulks. **Hulks** were large ships that carried convicted individuals off to far away lands. The point was to not allow them to be able to commit crimes in their community any longer.



The_Warrior_prison_ship.JPG

In the 1950s, punishment became much more of a political topic in the United States, and this is one of the issues that started this section, our perceptions of the fear of crime. Lawmakers, justicians, and others began to campaign with their toughness on crime, using the fear of crime and the criminal element to benefit their agendas. One of the examples of being tough on crime was the use of long periods of incarceration in general. This could be considered as **collective incapacitation**, or the incarceration of large groups of individuals to remove their ability to commit crimes for a set amount of time in the future.

Since this time, and most greatly exacerbated in the 1980s and 1990s, there has been the increasing use of punishment by prison sentences. Thus, we saw rapid growth in the prison population in the United States. The 'politicization of punishment' increased the overall prisoner levels in two ways. First, by changing the views toward the discretion allowed to decision makers, we have gotten tougher on crime. In turn, more people are being sentenced to prison that may have otherwise gone to a specialized probation or community sanction alternatives. Second, these same attitudes have led to harsher and lengthier punishments for certain crimes. Offenders are being sent away for longer sentences, which has caused the intake-to-release ratio to change, causing enormous buildups of the prison population.

The incapacitative ideology followed this design for several decades. In the early 1990s, policies were implemented that would target individuals more specifically. These would come to be known as "three-strikes" policies. These policies would incarcerate an individual for greater lengths of time, based on prior offenses. The **selective incapacitation** philosophy incarcerated individuals for longer periods of time than others. Thus, it removed their individual ability to commit crimes (in society) for greater periods of time in the future than others.

There are mixed feelings about selective and collective incapacitation. Policymakers would promote their utility through anecdotal examples of locking certain offenders away, in order to help assuage the fear of crime. Others have offered that there are minimal savings at best, stating that these goals do not achieve the intended results as previously suggested. [1] Future styles of selective incapacitation that have evolved include tighter crime control strategies that incorporate variated sentencing strategies to selectively incapacitate the higher rate offender. Others opt for tougher parole procedures to retain the hardened criminals longer. In sum, we do see a definite shift from the insignificance of collective incapacitation, to a more selective approach.

In all, we are still left with the same questions, does it work? And, at what cost? Do these lengthier punishments for particular crimes have an effect by selectively incapacitating hardened criminals? Are there other methods that seem the same or are more effective than the ones already in practice? This takes us to the last of the four main punishment ideologies, rehabilitation.

1. Blokland, A.A.J., & Nieuwbeerta, P. J (2007). Selectively incapacitating frequent offenders: Costs and benefits of various penal scenarios. *Journal of Quantitative Criminology, 23*: 327. https://doi.org/10.1007/s10940-007-9033-3 ↵

6.5: Rehabilitation

Rehabilitation

Although not as old as some of the older ideologies, **rehabilitation** is not brand new. Additionally, it is the only one of the four main ideologies that most accurately attempts to address all three goals of corrections, which are:

1. Punish the offender

2. Protect Society

3. Rehabilitate the offender.

Certainly, all four ideologies address the first two goals, punishment, and societal protection. However, the goal of rehabilitating the offender is either silent, or not addressed in retribution, deterrence, or incapacitation. This does come as a cost. As we will talk about in more detail when covering prisons and jails, there is a great paradox that is happening in our society when we heavily rely on jails and prisons. Most offenders will come out of institutions (roughly 95% of all people who enter prisons are released), and little is done to change them while they are there. This is mostly due to our attitudes towards offenders, the policies that are necessarily placed on individuals while they are locked up, and the institutions themselves. And yet, there is the expectation that these individual leaving prisons will not commit crimes in the future.

The question here is this: what have we done to change them so that they are not reoffending? Without the incorporation of some form of rehabilitation, the answer is fairly clear… Nothing. Yet, we expect it.

Rehabilitation has taken on different forms through its history in the United States. We have considered individuals out of touch with God, and so offenders needed to be penitent, in order to get right with God. One of America's earliest prisons was designed with this in mind. The Eastern State Penitentiary, opening in 1829, included outside reflection yards; so that offenders could look up to God for penance.

To see more of this prison, visit https://www.easternstate.org/.

Reformatories were another example of how rehabilitation was viewed in the past. The reform movement tried to rehabilitate the offender through more humane treatment, to include basic education, religious services, work experience, and general reform efforts. This was done in an effort to reform individuals, thus allowing them to come back to society. The Elmira Reformatory was one of the earliest efforts of the reform ideal, and many prisons built in the United States were based on this prison. Below is a picture of Elmira.

Elmira Reformatory

Other attempts at rehabilitation included more medical approaches. In the past, offenders were viewed as sick, and in need of medical cures. This medical approach, while greatly reduced, is still used in some areas today. For example, the chemical castration of certain offenders does still occur. For example HB 2543, in Oklahoma, in September of 2018, focuses on the mandated use of medroxyprogesterone acetate as a treatment, and is required before appropriate release of convicted sex offenders.

Rehabilitation, as an ideology has had critics. This is in large part due to how it is perceived. Many have voiced an objection, as it is seen as being "soft" on offenders. This is also how it has been discounted when coupled with the fear of crime. Several examples are presented as to its ineffectiveness, and weakness to the problem of crime. Probably the most notable example of the ineffectiveness of rehabilitation came in the 1970s. In 1974, Robert Martinson provided support for many that were clambering to demonstrate that the ideas of rehabilitation were ineffective. In a review of over 230 programs, Martinson concluded that "With few and isolated exceptions, the rehabilitative efforts that have been undertaken so far have had no appreciative effect on recidivism" (Martinson, 1974, p. 25). [1] This was the spark that many needed to turn toward the more punitive ideologies that we have so far discussed. However, it did help some to ask more detailed questions about why rehabilitation was not working. Additionally, it helped researchers to ask more critical questions about measurement, how to more properly evaluate rehabilitation and to understand the difference of what does not work versus what does work for offenders. These principles of effective intervention become the cornerstone of modern rehabilitation.

Understanding Risk and Needs in Rehabilitation

Today's rehabilitative efforts do still carry punishment and societal protection as goals, but the focus of rehabilitation is on the changing of offenders behaviors so that they are not committing crimes in the future. This is done by understanding what are the items that make offenders at risk for offending. Additionally, based on the levels of risk items, some offenders are at higher risk for offending than other offenders. This includes items like prior criminal history, antisocial attitudes, antisocial (pro-criminal) friends, a lack of education, family or marital problems, a lack of job stability, substance abuse, and personality characteristics (mental health and antisocial personality). Collectively these are considered as risk factors for offending (re-offending). While we can change the number of priors someone already has, all of these other items can be addressed. These are considered as criminogenic needs. Criminogenic needs are items that when changed, can lower an individual's risk of offending. This is a core component of Paul Gendreau's (1996) principles of effective intervention, and are at the heart of most modern effective rehabilitation programs. [2] Additionally, thousands of offenders have been assessed on these items, which has helped to develop evidence-based rehabilitation practices. These are efforts that are based on empirical data about offenders. When these criminogenic needs are addressed, higher-risk offenders demonstrate positive reductions in their risk to offend.

Over the last 40 years, efforts to change these characteristics, in order to reduce offending have been varied. One of the most useful approaches to changing the antisocial attitudes and behaviors of offenders has come in the form of behavioral and cognitive behavioral change efforts. Cognitive behavioral change for offenders is based on the concepts that the behaviors that one exhibit can be changed by changing the thinking patterns behind (before) the behaviors are exhibited. That is (criminal) behavior is based on cognition, values, and beliefs that are learned vicariously through the interactions and observations of others. It is especially relevant since we are receiving individuals from prison, where these ideas, peers, values, and beliefs may dominate the institution. For a more detailed explanation, please see https://www.apa.org/ptsd-guideline/patients-and-families/cognitive-behavioral.pdf.

Today, evidence-based rehabilitative efforts are now used as benchmarks when establishing programs that are seen as effective, versus ones that show little to no (or even negative) results. Rehabilitation programs that follow these principles of effective intervention are showing that they can achieve these three goals of corrections (punishment, societal protection, and offender change). In fact, the U.S. Federal Government has a section of the National Institute of Justice devoted to these evidence-based practices, and what programs are seen as effective, promising, and not effective. This site is called "CrimeSolutions," and can be visited at https://www.crimesolutions.gov/. This resource provides invaluable information for individuals making decisions on what works for offenders and is based on empirical studies of hundreds of different approaches.

1. Martinson, R. (1974). What works? Questions and answers about prison reform. *Public Interest* 35, 22-54. ↵
2. Gendreau, P. (1996). Principles of effective intervention with offenders. *Choosing correctional options that work: Defining the demand and evaluating the supply*, 117-130, Alan T Harland, ed. -- See NCJ-158983) https://www.ncjrs.gov/App/Publicatio...aspx?ID=158988 ↵

6.6: Prisons and Jails

Learning Objectives

- This section focuses on prisons and jails in the United States. We start with a brief historical account of prisons and jails in America. We then turn to our current situation of prisons and jails, to include types, function, and volume. After reading this section, students should be able to:
- Understand the emergence of prisons and jails in the United States
- Recognize the different types of jails
- Recognize the different types of prisons

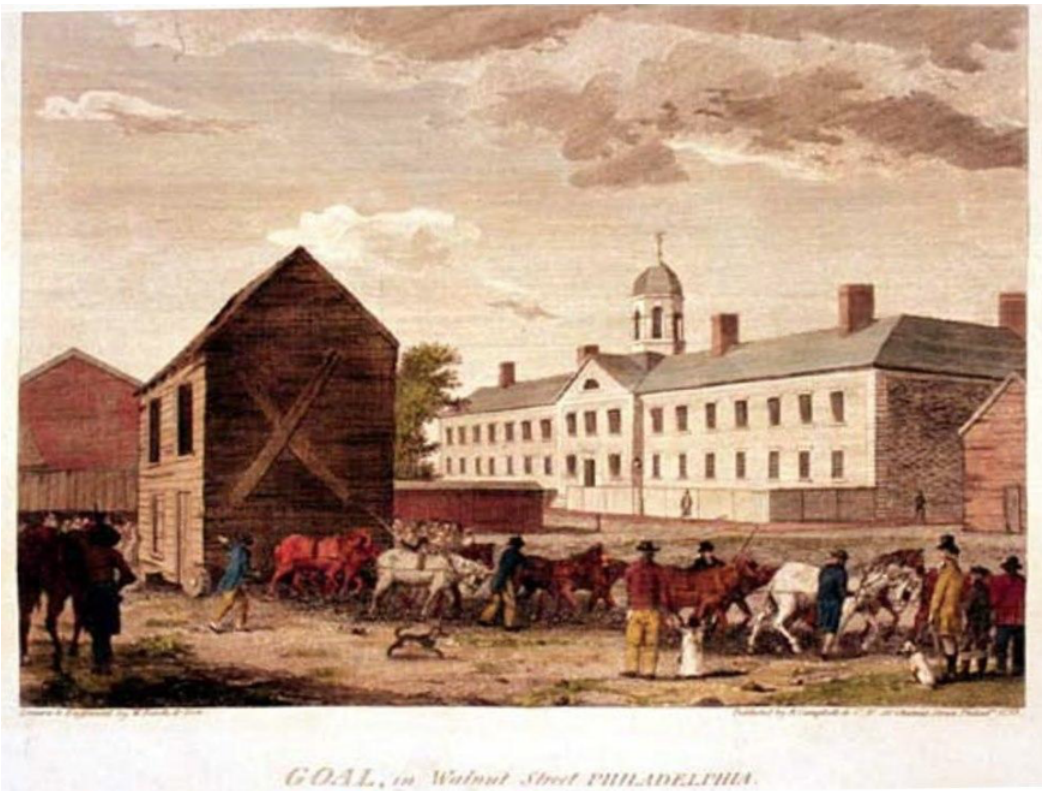
Critical Thinking Questions

1. Explain the operational process of most jails in the United States today. Where does this come from historically?
2. How does the difference in the type of jail influence how the jail is managed?
3. Explain the similarities and differences in the two early types of prisons in the United States.
4. Explain the current operational process of most State prisons in the United States today. Where does this come from historically?

6.7: A Brief History of Prisons and Jails

The Growth of Jails in the United States

The concept of a **jail** (GOAL – old English spelling) is yet another concept that we have carried with us from Western Europe (England, etc…) when the United States was first forming. Spawning from the County-level establishment and management of jails in England; these have largely been run by County Sheriffs in the United States, ever since we began to have them. They have had various names, depending on their function and use, such as **Bridewells**, and Workhouses. Pictured below is what is commonly accepted as the first "built" structure to house individuals that have been processed through the courts, the Walnut Street Jail. Opening around 1790, this facility housed both jail inmates, and at some points in time convicted offenders.



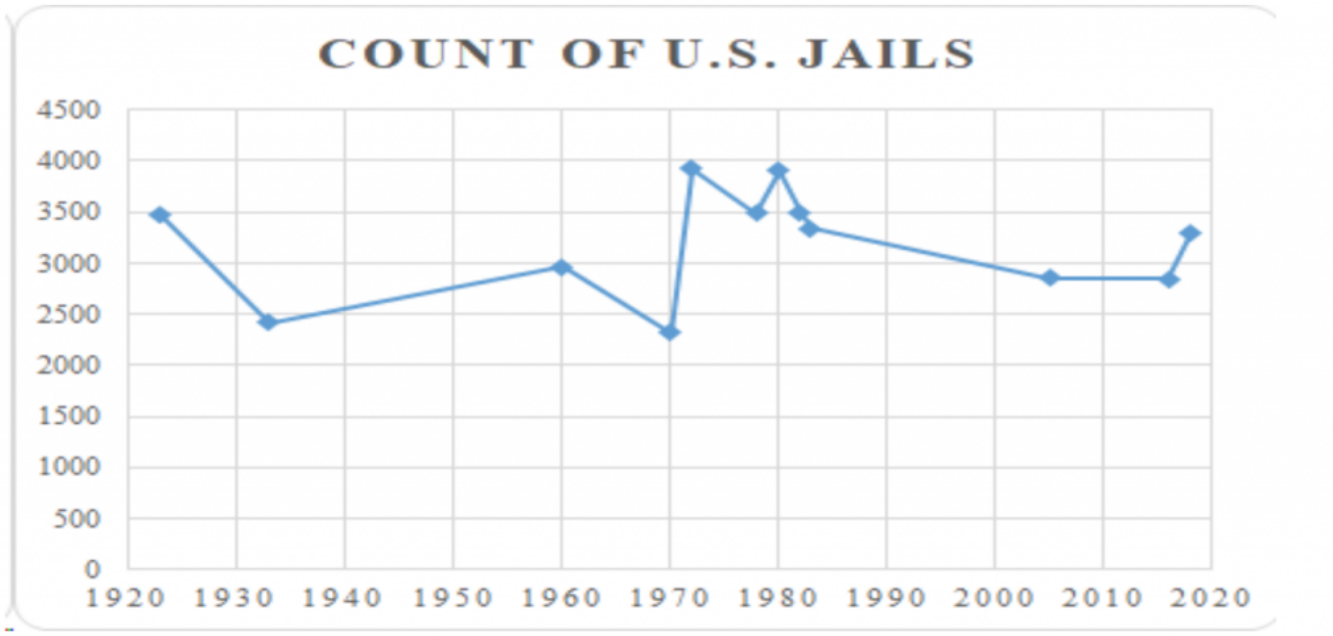
Goal_in_Walnut_Street_Philadelphia_Birch's_views_plate_24_(cropped).jpg

Later, labeled as a prison (as depicted by the historical marker below), the Walnut Street Jail was a blueprint for later prison construction, which we discuss in the latter half of this chapter.

Walnut Street Prison Historical Marker

As the United States began to populate, county lines began to be drawn up for States earning Statehood. Sheriffs began to police their Counties, and also be responsible for managing the lower level infractions (misdemeanors) within their jurisdictions. Thus, County Jails began to flourish in the United States. Initially, many jails were nothing more than parts of a Sheriff's office, literally, cells in the back room. Today, large structures (even multiple structures in a single county) constitute jails in the United States. Overall, we have seen changes in the growth of jails in the United States. While we were certainly growing in the number of jails as States gained Statehood, there has been a shift in jails structures. The vast majority of jails are small in size. There are few larger jails, but they hold more individuals. As can be seen in a report from Cahalan and Parsons (1986), and reports by Harrison and Beck of the Bureau of Justice Statistics (2005), the numbers of jails has changed immensely. [1][2]

Table 2-1 Jails in the United States



This is due to a variety of reasons, to include: inclusion or exclusion of Youth Facilities, Native American Facilities, Privately Owned Facilities, and reporting structures (who reports a jail in a given year). Based on these fluctuations, it is difficult to get an exact count of jails each year. However, it appears that there are roughly 3,300 jails in the United States today.

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1. Cahalan, M. W., & Parsons, L. A. (1986). Historical corrections statistics in the United States, 1850-1984. *U.S. Department of Justice.* https://www.bjs.gov/content/pub/pdf/hcsus5084.pdf ↵
2. Harrison, P. M., & Beck, A. J. (2005). Prisons and jail inmates at midyear, *2005.BJS Bulletin*. https://www.bjs.gov/content/pub/pdf/pjim05.pdf ↵

6.8: Types of Jails

Jails vary greatly in function and size. For example, the vast majority of jails hold less than 50 jail detainees each (roughly 2,000 jails). Yet, the 50 biggest jails hold over half of the total number of detainees, more than 350,000 in the 50 biggest jails. [1] For example, Los Angeles County Jail is actually a system of buildings spread across LA County, which includes the Inmate Reception Center, North Facility, South Facility, LOMA, Twin Towers, Men's Central, just to name a few of the facilities. For a more detailed description of the jail facilities in L.A. County Jail, please see http://shq.lasdnews.net/pages/tgen1.aspx?id=as1.

While most jails are run by County Sheriff, there are some jails that are managed by cities or jurisdictions. For example, Chicago, New York, Philadelphia, and Washington D.C. all have their own jails, which are not managed directly by the county in which they reside.

Jails also vary by how they are designed. While there are others, jails can be separated into two broad types, the older generation, and the new generation. **Older generation jails** are jails that are typically linear in design, with cell doors separating rooms or sections down long corridors. Many jails operate with this design. **Newer generation jails** are more podular in design, where multiple cells face a central area. Additionally, when these podular designs are used, a direct supervision approach is also often used. Direct supervision is where there are no particular barriers between the deputies and the detainees within a facility. For example, the image below depicts what a direct supervision jail may look like.

New Generation Jail Design

As you can see in the image, the operational booth (immediate left) is open to access the day area or common area, and the doors of the cells for this jail section open to this space. Below is an image of the older generation, linear style of jail. This typically uses the indirect supervision approach.

Older Generation Jail Design

1. Minton, T. D. (2012). Jail inmates at midyear, statistical tables. *U.S. Department of Justice.* https://www.bjs.gov/content/pub/pdf/jim11st.pdf ↵

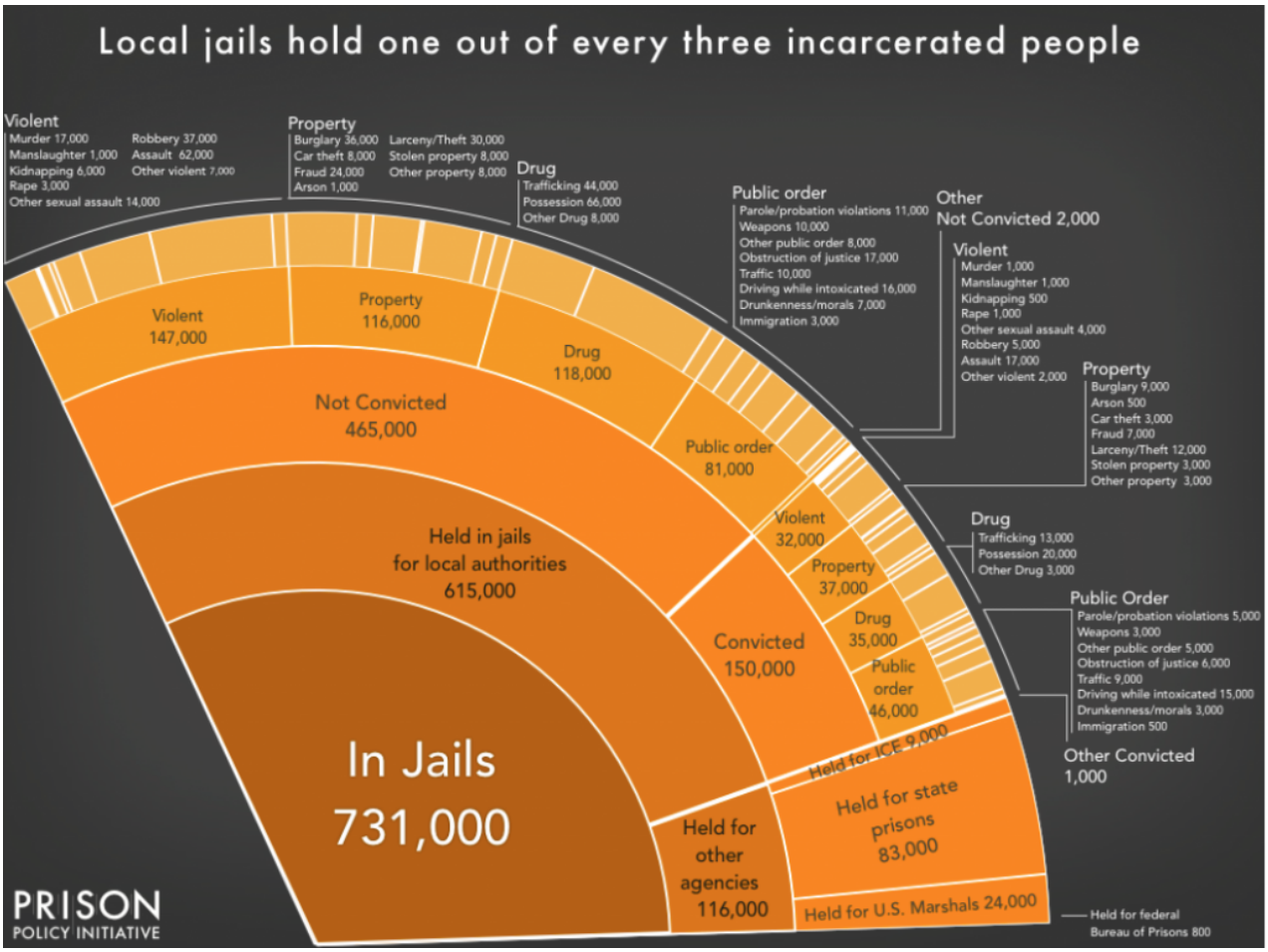
6.9: Who Goes to Jail?

One of the more fascinating aspects of jails in the United States is who gets placed in them. The short answer is everyone. Whenever someone is arrested, this typically starts their process in the criminal justice system. While it might not be the first time they have been arrested, this action places them en route to a jail. Thus, jails are a collection point for many differing agencies, to include: County Sheriff's Office, Municipal, local, City – Police. State Police may send individuals directly to jail, even Federal agencies may use a local jail as a point of entry. For example, ICE (immigration and customs enforcement) houses many thousands of ICE-holds in jails across the country. Jails hold all kinds of individuals. While this list is not comprehensive, it does present many of the types of people held in jails:

- Felons and Misdemeanants
- First time and repeat offenders
- Those awaiting arraignment or trial
- Accused and Convicted
- Parolees stepping down from prison
- Juveniles pending transfer
- Those with mental illness awaiting transfer
- Chronic alcoholics and Drug abusers
- Those held for the military
- Those held for federal agencies
- Protective custody
- Witnesses
- Those in contempt of court
- Persons awaiting transfer to state, federal or other local authorities
- Temporarily detained persons

As one can see from this list, there are many types of people in the 3,300 plus jails at any given time. In fact, at any given point in time, there are 700,000 plus individuals within jails in the United States. This number has steadily increased since the 1970s. While there have been some decreases in recent years, it generally fluctuates around 725,000 to 750,000 jail inmates. However, this is only one portion of the people in jails. It is estimated that roughly 11 million people process through America's jails annually. Average lengths of stay vary by jurisdiction, but a general average is that a person spends around 25 days in jail. As Wagner and Sawyer (2018) depict in the picture below, the types of people in jail at a point in time is varied. [1]

Snapshot of Individuals in Jail



Who goes to jail?

Probably one of the most notable items in the snapshot above is the proportions of individuals that are or are not convicted. Roughly 63% of individuals in jails at any given time are not convicted. Other notable groups are individuals held for other agencies. This could be a matter of processing time or allocations of bed space. In all, it is relatively easy to see the volumes and different types of people that pass through a jail in this graphic. Still, jails only make up one portion of the brick-and-mortar approach to punishment. Prisons are the other large part.

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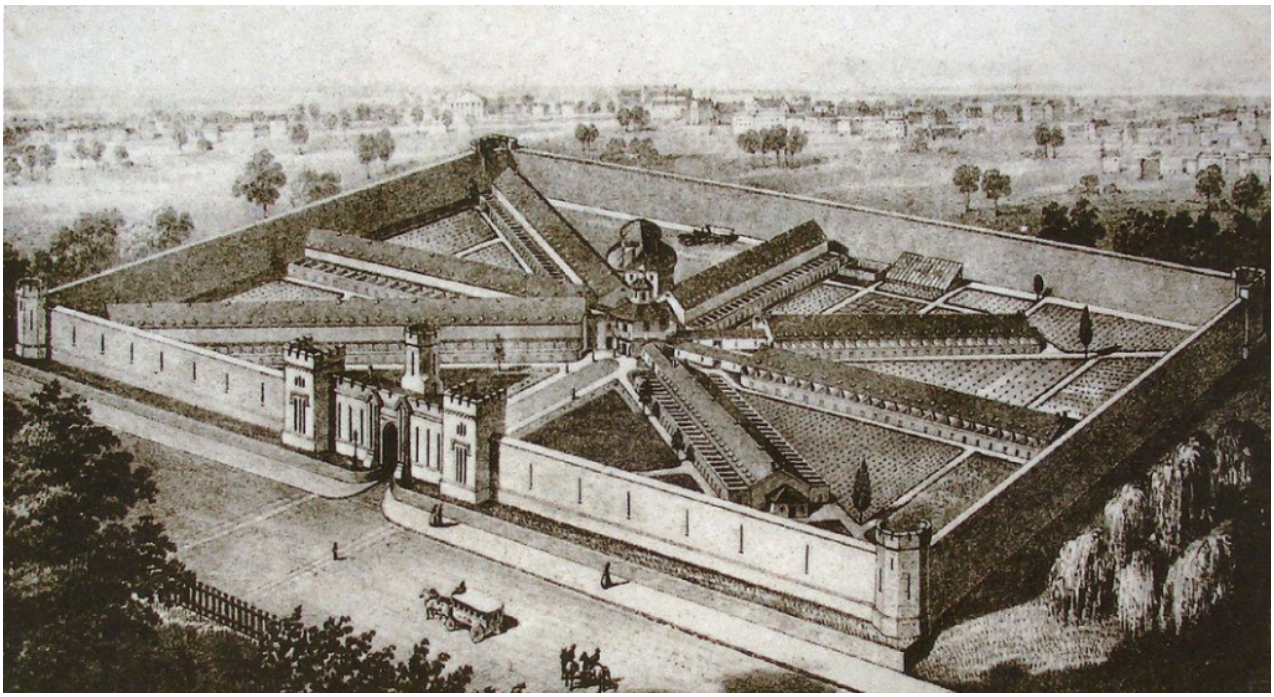
1. Wagner, P., & Sawyer, W. (2018). Mass incarceration: The whole pie 2018. Available at the Prison Policy Organization https://www.prisonpolicy.org/reports/pie2018.html ↵

6.10: Growth of Prisons in the United States

As mentioned at the beginning of this section on jails and prisons, the Walnut Street Jail is recognized as the first built institution in the United States to house individuals. Soon after, another prison was built, the Eastern State Penitentiary (ESP), and it ran like a prison for nearly 150 years. Many of the prisons today were first built on this idea of a separated penitent prison. Many of the cells in the prison (as depicted below) would open to individual courtyards where individuals could look up and "get right with God," hence the concept of penitentiary (penance).

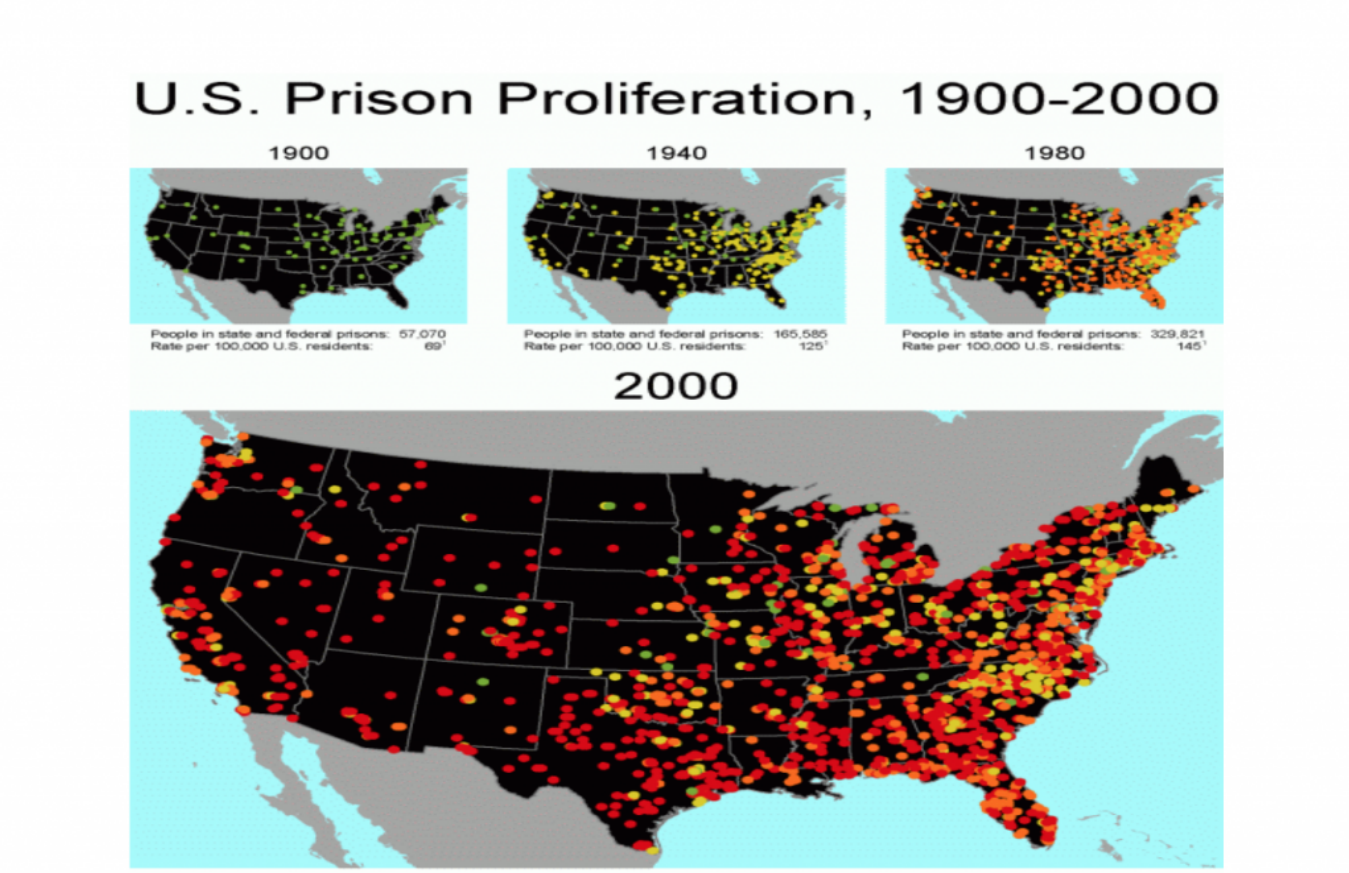
Eastern State Penitentiary Design



The State Penitentiary for the Eastern District of Pennsylvania, Lithograph by P.S: Duval and Co., 1855.

Individuals in ESP spent much of their time in their cells, or in their own reflection yards, reading the bible, praying, and always in silence. The solitude was also a way to serve penance. Shortly after the implementation of ESP, another prison was built in New York, in 1819, named the Auburn prison. This prison would become the leader of the second main prison style, the Auburn prison system. Many of the facets of the ESP were in the Auburn, save one. Auburn utilized a congregate system, which meant that (still in silence) the inmates would gather to do tasks or work.

Prison Growth in the United States



Proliferation1900-2000

This concept of labor eventually replaced the ideals of constant solitude. The congregate system took hold as the dominant model for many prisons, and many states began to model their prisons on the Auburn prison. Notably, Auburn was also the prison where the first death by electric chair was executed in 1890. Today, there are roughly 1,700 State or municipal prisons in the United States. As the images demonstrate, it is clear that many of the prisons in the U.S. have been built more recently.

6.11: Types of Prisons

Prisons in the United States can be parcelled out by jurisdiction and by intensity. By jurisdiction, this is referring to who manages the prisons. A prison warden is generally considered the managerial face of the institution. However, a prison warden and the prison itself is usually within a much larger organizational structure. Although not always, these are usually separated by State. There are a few jurisdictions not at the State level that manage or operate prisons. This includes places like New York, Chicago, Philadelphia, and Washington D.C. Puerto Rico (not a State) also has a prison, as does the U.S. territory of the Virgin Islands.

State Prisons

The normal label for the organizational structure of prisons in a particular State is often called Departments of Corrections and are run by a Director, who is usually appointed by a Governor. For example, in Oregon, it is the Oregon Department of Corrections, and Director Peters is the current head of this organization (2012-present). The Oregon Department of Corrections currently overseas 14 State prisons. More information about the ODOC can be found here: https://www.oregon.gov/doc/Pages/default.aspx. California has the California Department of Corrections, and Secretary Diaz is the head of this organization (2018 to present). CDCR oversees 34 adult institutions. For more information about CDCR, see https://www.cdcr.ca.gov/.

Federal Prisons

The Federal Bureau of Prisons was established in the early 1930s as a result of the need to house an increasing number of individuals convicted of federal crimes. There were already some federal prisons in place, but it was not until 1930 that the U.S. Congress passed legislation to create the BOP, housing it under the justice department. Sanford Bates became the first Director of the Federal Bureau of Prisons (FBOP or BOP), based on his long-standing work as an organizer and leader at Elmira Reformatory in New York. As more federal legislation was passed, the need for more prisons became apparent.

Today, the BOP has 109 prisons, along with numerous additional facilities (camps) adjoining at these locations. There are also military prisons, and alternative facilities, reentry centers, and training centers, that are managed by the BOP. The federal prisons are separated into six regions., which include: the Mid-Atlantic Region, the North Central Region, the Northeast Region, the Southeast Region, the South Central Region, and the Western Region.

Within these regions are regional directors, which is similar to state-level directors of departments of corrections. Below is a detailed map of the regions of the Federal Bureau of Prisons. As is depicted, there are several different types of facilities within each region. A central office is also designated for each of the six regions. Click on the link in the annotation of the map to see it in a larger scale.

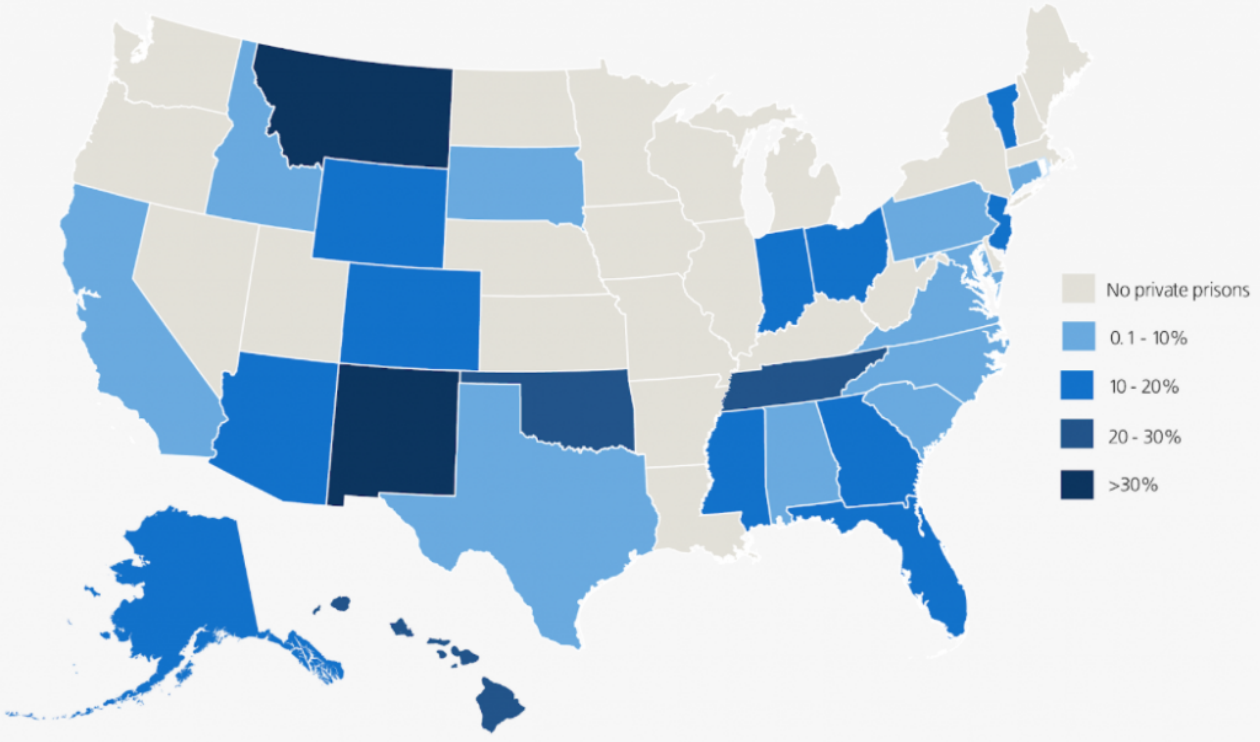
FBOP Regional Map

BOP Regional map

Private Prisons

The privatization of goods and services has long been a staple of state departments of corrections, as it allows these organizations to subcontract specific tasks within their prisons. This includes services like food and transportation services, medical, dental, and mental health services, education services, even laundry services. As mentioned in the previous section on punishment, there was much ado about crime in the United States in the 1970s and 1980s. This brought on an increased fear of crime and a more punitive state within the United States. It was during this time that a small company known as Wackenhut, a subsidiary of The Wackenhut Corporation (TWC) sought to privatize the entirety of a prison, not just services within the prison. A second company, Corrections Corporation of America ultimately won the contract and became the first privately owned prison in the United States (1984). Today, Core Civic (formerly Corrections Corporation of America) runs approximately 128 facilities in the United States. [1] The GEO Group, the other primary private prison company runs 136 correctional, detention, or reentry facilities. [2] Pictured below, roughly half of the 50 States in America use private prison industry prisons.

States Using Private Prison Industry



Private Prison State Map

Much debate has come from the incorporation of private prisons. The critics of private prisons denote the lack of transparency in the reporting processes that would come from a normal prison. Still, others tackle a bigger issue – punishment for profit. That is – while taxpayers ultimately pay for all punishment of individuals, either at the State or Federal level, shareholders and administrators of the companies are making money by punishing people, under the guise of capitalism. For a more in-depth review of this, see a report presented by the Sentencing Project: https://www.sentencingproject.org/publications/private-prisons-united-states/ and on NPR: https://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law

1. See Core Civic facilities map: http://www.corecivic.com/facilities ↵
2. See Geo Group facilities map: https://www.geogroup.com/LOCATIONS ↵

6.12: Prison Levels

Each of these jurisdictions of prisons also has varying degrees of intensity or seriousness. These are often considered prison levels or classifications. Depending on the State, the BOP, or even in the private sector, it is usually associated with the seriousness of the offenders that are housed within these institutions. For example, many States have three classification levels: minimum, medium, and maximum. Some States have a fourth level called super-maximum. Others call this close, or administrative level. The BOP has five levels, minimum, low, medium, high, and unclassified. Although not a true designation, and would be considered an unclassified, administrative control, ADX Florence is a United States Penitentiary (USP) that would be counted as a super-max. It houses the most dangerous individuals at the Federal level. Although not in operation today, Alcatraz was probably the most famous Federal USP (also considered a super-max at one point). It too housed the most dangerous federal inmates. Below are two images of this iconic prison, known as the “rock.”

Alcatraz

Alcatraz

Alcatraz in the Bay against the Backdrop of San Francisco

Alcatraz in the Bay against the Backdrop of San Francisco

Other States use a simple number designator to assign prison intensity, such as Level I, Level II, Level III, Level IV, and sometimes Level V. While still, other States incorporate a Camp to their list of designations, indicating a specific purpose within the low level,

such as a Fire Camp. These types of camps are dedicated to fighting fires. In all there are some basic concepts to point out for each type:

Minimum – These prisons usually have dorm style housing, typically for only non-violent offenders, with shorter sentences (or sentence lengths left after downgrading). The fencing or perimeters of these types of facilities are usually low levels. The BOP generally refers to these as camps.

Low – These types of prisons are similar to minimums, to include some kind of dormitory style housing. However, there are normally more serious or disruptive offenders in these types of prisons. The fencing around the perimeter of these is generally higher, and maybe even a double fence. Offenders are typically in these institutions for longer periods.

Medium – Here, there is a transition from dorm-style housing to cells. Normally, there are two persons to a cell, but not always. The perimeter is usually a high fence, and may even have barbed wire, or there are large walls surrounding the institution. Freedom of movement within the institution is reduced, seen as privilege. Inmates here typically longer sentences, and include violence convictions.

High or Maximum – Similar to medium, but most of these offenders have violence convictions, and longer sentences, including life. Many of these individuals will spend most of their day in a cell, and more often than not, these are single occupancy.

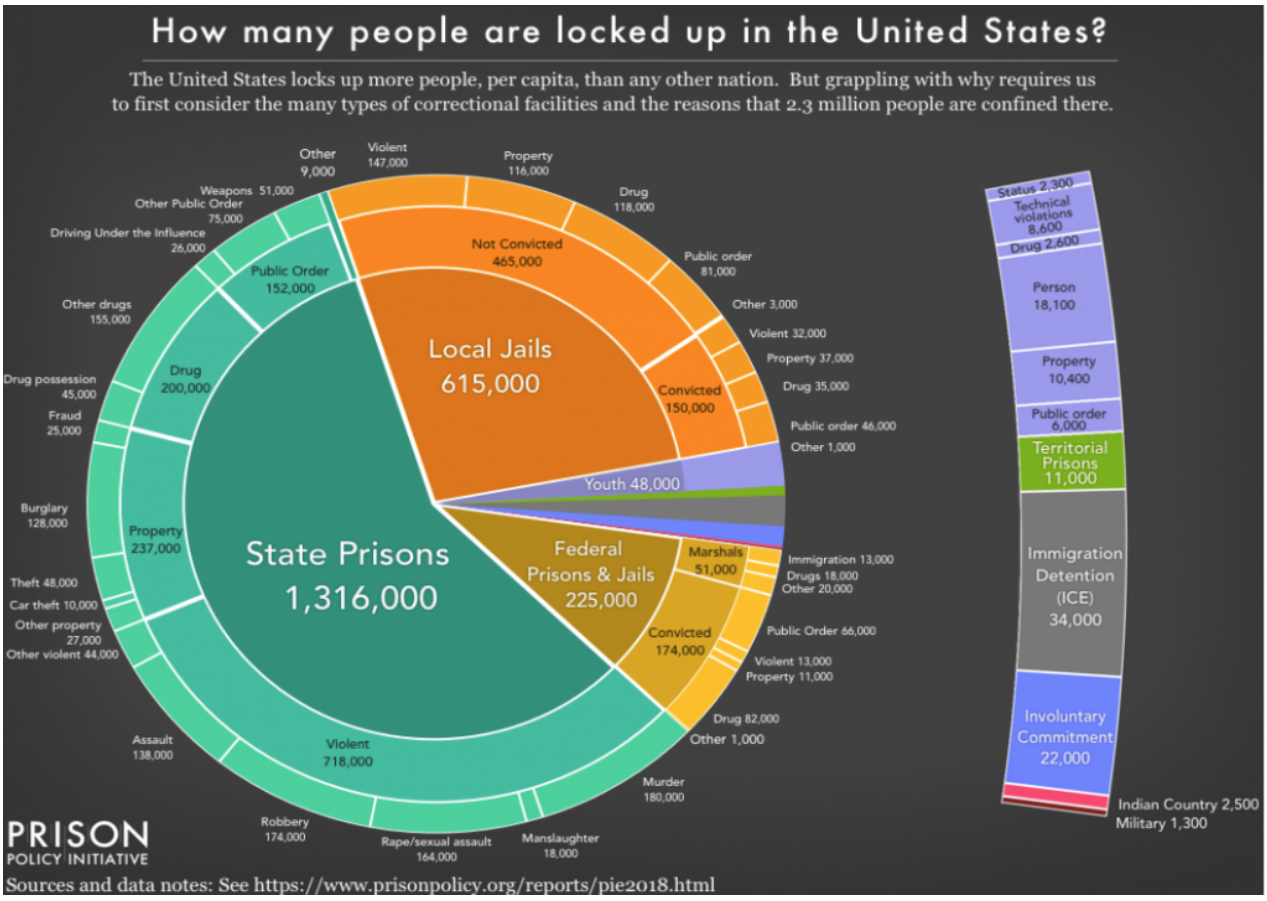
Super-Max or Administrative Control – Depending on what the mission is for that particular prison, the prisoners in these institutions could be vastly different. For instance, if it is a facility that is designated for mental health, it would not operate the same as one that is a super-max. The super-max facilities would have individuals in their cells for almost all of every day. Many services would come to them at their cell, instead of them going somewhere (i.e., sick call), the cells would almost all be single occupancy. Visitation of these inmates would be much more regimented and monitored. Most of these individuals are also classified as extreme threats to the successful operations of the prison and are long-term inmates (LWOP – life without the possibility of Parole).

Intake Centers – An intake center can be part of an institution, running alongside the normal operations of an institution. The purpose of an intake center is to classify the offenders coming from the various courts in the jurisdiction, post felony conviction. The offender has an initial classification, where they are getting assigned to one of the jurisdiction's prisons, based on a point system for that agency. This assessment is looking at priors, prior and current violence, escape risk, and potential self-harm. For example, Coffee Creek Correctional Facility in Oregon is their intake of prison. It also is the women's prison for Oregon. Inmates come to CCCF and are assessed, then shipped off to one of the other institutions in Oregon (or placed in a level there if female). Inmates will gain later classifications at their destination prison, in terms of work assignments, mental health status, cell assignments, and other items.

6.13: Who Goes to Prison?

The types of people that end up in prison are quite different than individuals that go to jail. Almost all people that go to prisons in the United States are people that have been convicted of felony-level crimes and will be serving more than a year (or they could have multiple years on their jail sentence). To give you a more detailed depiction of this, see the image below.

People Incarcerated in the U.S.



People Incarcerated in the U.S.

Focusing in on the left side of the graphic, there are roughly 1,316,000 State Prisoners. Here we can see the types of crimes that they are convicted of. A little over half (54-55%) are incarcerated for violent crimes. Drug crimes and property crimes make up the next big sections for the state prisoners. When you add in the federal prisoners (about 180,000) and the private sector prisoners (another 150,000+), territorial prisoners (11,000), Indian Country prisoners (2,500), we start to see how that number changes to about 1,700,000 prisoners.

One of the more notable items here, and what is different from the jails, roughly 93% of the prisoners are male. In jail, that number is roughly 85% male. While the total volume of prisoners has dropped slightly in the last few years (since 2015), this following graphic shows that we have increased our number substantially over the last 45 years.

u.s.-state-and-federal-prison-population-1925-2016.jpg
Source: https://www.sentencingproject.org/wp-content/uploads/2018/07/u.s.-state-and-federal-prison-population-1925-2016.png
License: public domain, https://www.sentencingproject.org/criminal-justice-facts/
Attribution - Bureau of Justice Statistics *http://www.sentencingproject.org/wp-content/uploads/2018/07/u.s.-state-and-federal-prison-population-1925-2016.png*

US State and Federal Prison population

This growth of the prison population will be discussed in greater detail in the final section on corrections, Special Issues. However, in the next section, we will discuss where the largest volume of individuals under correctional control resides, probation and community corrections.

CHAPTER OVERVIEW

7: Junenile Justice

Learning Objectives

- In this section, you will be introduced to juvenile justice. This section is designed to be a broad overview of the juvenile court system, to examine the pros and cons of the juvenile justice system, examine the various stages in the juvenile justice system, and discuss contemporary issues facing juvenile justice. After reading this section, students will be able to:
- Summarize the history and purpose of the juvenile court
- Explain the pros and cons of the juvenile justice system.
- Briefly examine the stages of the juvenile justice system
- Examine the reasons supporting and criticizing the process of waiver to adult court
- Explain how due process has evolved through the juvenile court.

Critical Thinking Question

1. What impact did the child savers have on juvenile justice reform?
2. Explain how due process has been used throughout the history of the juvenile justice system.
3. How has the juvenile justice system evolved since it was created?
4. What are the different types of waiver?
5. What four areas changed the juvenile court?

7.1: Youth Crime

Since the early 1990s, America has witnessed an increase in the fear of youth crime. [1] Sensationalized media exposure in the 1990s facilitated the public's fear of youth crime, which resulted in get tough legislation and a perceived need to "do something" about juvenile crime. [2] The juvenile court was criticized for its inability to control youth crime and, as a result, policies shifted from rehabilitation to punishment of juvenile offenders. [3] This punishment included an increase in the number of states that adopted new legislation or revised their previous statutes to facilitate the transfer of youthful offenders from juvenile court to criminal court to be tried as adults. [4]

Ted Talks: *Jeffrey Brown* An architect of the "Boston miracle," Rev. Jeffrey Brown started out as a bewildered young pastor watching his Boston neighborhood fall apart around him, as drugs and gang violence took hold of the kids on the streets. The first step to recovery: Listen to those kids don't just preach to them and help them reduce violence in their own neighborhoods. It's a powerful talk about listening to make a change. https://www.ted.com/talks/jeffrey_brown_how_we_cut_youth_violence_in_boston_by_79_percent?language=en#t-24954

1. Benekos, P., & Merlo, A. (2004). *Controversies in juvenile justice and delinquency.* Anderson Publishing. ↵
2. Myers, D.L. (2001). *Excluding violent youth from the juvenile court: The effectiveness of legislative waiver*.New York: LBF Scholarly Press. ↵
3. Feld, B.C. (2001). Race, youth violence, and the changing jurisprudence of waiver. *Behavioral Sciences & the Law, 19*(1), 3-22. ↵
4. Snyder, H. N., & Sickmund, M. (2006). Juvenile offenders and victims: 2006 National Report. Washington, DC: *U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention* ↵

7.2: Juvenile Justice

The contemporary juvenile justice system operates under the premise that juveniles are different than adults and require special attention and treatment. The juvenile justice system believes that juveniles are malleable and can be rehabilitated. The juvenile court is based on the premise that public safety is best served by emphasizing the rehabilitation, rather than the incapacitation and punishment of juveniles. [1] Unfortunately, sensationalized media exposure of violent youth has led to exaggerated public fear of juvenile crime, get tough legislation, and a perceived need to "do something" about juvenile crime. [2] This punitive position is nothing new. Before the inception of the juvenile justice system a mere 100 years ago, youth were treated the same as adults. They were considered culpable for their actions and housed alongside adult offenders in jails and prisons. Recent research has utilized neuroscience to support the need to treat juveniles differently because they are different. The sections of the brain that govern characteristics associated with moral culpability do not stop maturing until the early 20s. Therefore, it is assumed that someone under age 20, such as a juvenile delinquent, has an underdeveloped brain.

When addressing juvenile delinquency in America, the pendulum swings from punitive policies to rehabilitative policies and then back again depending on media, politics, and the current climate. There is no magic bullet approach to preventing juvenile delinquency, but as the court evolves, changes, and utilizes best practices, it gets closer.

Ted Talks: *Stephen Case* The youth crime 'problem' is examined as a social construction and moral panic created by institutions in Western societies. The talk traces the evolution of youth crime into a phenomenon persistently misrepresented as an escalating social epidemic. The developmental life stages of 'childhood' and 'adolescence' as inventions are explored, highlighting differences between young people and adults. In this way, 'youth crime' can be identified as a social problem requiring distinct responses. A running theme is a child as a source of adult anxiety and fear, motivating societies to create structures, processes, theories, and images of youth crime that punish lawbreakers. The 'solution' is the 'positive youth justice' model. Children should not be punished as if they are adults but their criminal behavior should be seen as a normal part of growing up. Instead, they should be worked with to meet their needs, to embrace their human rights and to promote their life chances. https://www.youtube.com/watch?v=QYWPyiZIpV8

1. Cox, S. M., Conrad, J. J., & Allen, J. M. (2003). *Juvenile justice: A guide to theory and practice.* McGraw-Hill Humanities, Social Sciences & World Languages. ↵
2. Benekos, P., & Merlo, A. (2004). *Controversies in juvenile justice and delinquency.* Anderson Publishing. ↵

7.3: History of the Juvenile Justice System

The juvenile court was created in Cook County Illinois in 1899, but the concept dates back to seventeenth century Europe. The term ***parens patriae*** originated in the 12th century with the King of England and literally means "the father of the country." Applied to juvenile matters, *parens patriae* means the king is responsible for and in charge of everything involving youth. [1] *Parens patriae* was often used by royalty in England from their homes in the name of the king. Children were often seen as property and were thus subject to the wishes of the king or his agents. [2] This was especially relevant when they violated the law.

Within the scope of early English common law, parents had the primary responsibility of raising their children in any manner they deemed fit. However, when children reached 7 years of age or committed a criminal act, chancellors, acting in the name of the king, adjudicated matters concerning the youth. The youth has no legal rights and were essentially wards of the court. As such, the courts were tasked with safeguarding their welfare. While parents were merely responsible for childbearing, the state had the primary and legitimate interest in the upbringing of the children. [3]

The concept of *parens patriae* had a substantial influence on events in the United States, such as the child-saving movement, houses of refuge, and reform schools. The persistent doctrine of *parens patraie* can be seen evolving from "king as a father" to a more general ideology, that of the state "acting in the best interest of the child." Subsequent matters involving youth revolve around this notion of acting in the best interest of the child, whether children were taken away from wayward parents, sent to reform schools for vagrancy, or even held in institutions until they read the age of majority, or 18 years old. The idea is that the state is acting in their best interest, protecting the youth from growing up to be ill-prepared members of society. Thus, the courts are intervening for the youth's own good.

In the nineteenth century, children were gradually seen as vulnerable and in need of special care and supervision. One illustration of this concept was the establishment of a **house of refuge** in New York City in 1825. These were urban establishment used to corral youth who were roaming the street unsupervised or who had been referred by the courts. [4]

These houses were not intended to house criminals, but rather at-risk youth, or youth who were on the verge of falling into a life of crime because of their social circumstances. Because of the notion of *parens patriea*, many of the parents of these youth were not involved in the placement of their children in these houses. The case of ***Ex Parte Crouse*** is an example. [5]

In 1838, a girl named Mary Ann Crouse was sent to a Philadelphia house of refuge at the request of her mother. Her father petitioned to have her released since she was committed without his consent. However, on the grounds that the state has the right to remove children from their home, in their best interest and even sometimes over parental objection (because of parens patriae), the Pennsylvania Supreme Court denied the father's petition. The court declared that failed parents lose their rights to raise their children. Parental custody and control of their children is natural, but not an absolute right. If parents fail to care for their children, educate, train, or supervise them, then the children can be taken by the state. The state is acting in the best interest of the child.

Reform Schools: The 1850s ushered in the development of **reform schools** or institutions used for the housing of delinquent and dependent children. The schools were structured around a school schedule rather than the work hours that defined the workhouses and houses of refuge. Many reform schools operated like a cottage system where the youth were divided into "families" with cottage parents who oversaw the day to day running of the family, discipline of the youth, and schooling. The structure is still used in some youth correction institutions today, however, back in the nineteenth century, children were often exploited for labor and many of the school de-emphasis formal education. [6] Additionally, the emphasis of the reform school was on the strength of the family and they believed that by reinserting a strong family presence in the lives of the youth, they would be deterred from further criminal pursuits. [7] Regardless of the lack of evaluations as to the effectiveness of these institutions, the popularity of reformatories continued to grow.

The state had the legal authority to commit children and youth to reform schools based under *parens patriae*. However, in 1870, a boy named Daniel Turner was considered a "misfortunate", or someone who was in danger of becoming delinquent because his family was poor and unable to care for him. He was remanded to a Chicago house of refuge for vagrancy, not a delinquent act. His father filed a writ of habeas corpus and the court ruled that the state has no power to imprison a child, who has committed no crime, on the mere allegation that he is " destitute of proper parental care, and is growing up in mendicancy, ignorance, idleness, and vice." [8] *People Ex Rel. O'connell v. Turner*, 55 Ill. 280 (Ill. 1870). This effectively closed the reform schools in Illinois since they could no longer house non-criminal children. This case challenged the practice of *parens patriae* and ruled that the state can only take control of children if the parents are completely and utterly unfit and/or the child had committed some act of "gross misconduct." [9]

Child Saving Movement: By the end of the ninetieth century, cities were experiencing the effects of three major things: **industrialization, urbanization, and immigration**. Industrialization refers to the shift in work from agricultural jobs to more manufacturing work. This led to a greater number of people moving from the country to the cities, and the cities increasing exponentially in population without the infrastructure to support the increase. Immigration refers to the internal migration of people in America and the external movement of people from other countries. Within America, people were moving from the southern states (remember, this is not long after the end of the Civil War, which ended in 1865) and immigrating from European countries such as Ireland (the potato famine lasted from 1845-1854 and killed an estimated 1.5 million people). Millions of Germans and Asians also immigrated to America during this time lured by Midwest farmlands and the California Goldrush. [10]

The influx of people into cities weakened the cohesiveness of communities and the abilities of communities and families to socialize and control children effectively. [11] Nonetheless, the **child-saving movement** emerged during this time in an effort to change the way the state was dealing with dependent, neglected, and delinquent children. The child savers were women from middle and upper-class backgrounds.

There is some debate as to the motives of the child savers. The traditional view is that they were progressive reformers who sought to solve problems of urban life, while others contend that they used their station and resources as an effort to preserve their middle-class white way of life by overseeing the treatment of the immigrant children. Regardless of their motives, it is safe to say that child-savers were prominent, influential, philanthropic women, who were "generally well educated, widely traveled, and had access to political and financial resources." [12]

Creation of the Juvenile Court

The juvenile court was created in Cook County, Illinois in 1899. The Illinois Juvenile Court Act of 1899 was the first statutory provision in the United States to provide for an entirely separate system of juvenile justice. The court was created to have jurisdiction over all matters pertaining to youth- dependent, neglected, and delinquent youth.

A 1905 Pennsylvania Supreme Court case, *Commonwealth v. Fisher Commonwealth v. Fisher,* 213 Pennsylvania *48 (1905)* , conveyed the legal authority of the new juvenile court under *parens patriae*:

"To save a child from becoming a criminal, or from continuing in a career of crime, . . . the legislatures surely may provide for the salvation of such a child, if its parents or guardians be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection."

In this case, a juvenile was given a seven-year sentence for a minor crime which would have received a much lesser sentence in adult court. The court upheld the sentence and deemed it was in the best interest of the child. As a result of the case, parens patriae was back. The court ruled that "importance to the commonwealth which is vitally interested in rescuing and saving its children, wherever rescue, care and a substitute for parental control are required, to the end that they may, in the enjoyment of sober, industrious and happy lives, fill the full measure of good citizenship."

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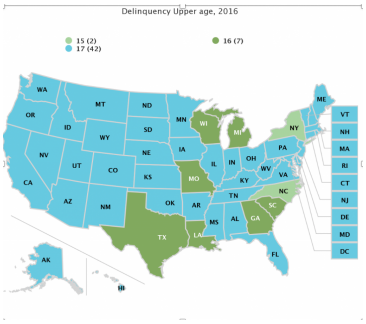
1. Merlo, A., & Benekos, P. (2019). *The Juvenile Justice System, Delinquency, Processing, and the Law* (9th ed.) Pearson. ↵
2. Shoemaker, D. (2018). *Juvenile Delinquency* (3rd ed.). Rowman & Littlefield. ↵
3. Merlo, A., & Benekos, P. (2019). *The Juvenile Justice System, Delinquency, Processing, and the Law* (9th ed.). Pearson. ↵
4. Merlo, A., & Benekos, P. 2019. *The Juvenile Justice System, Delinquency, Processing, and the Law* (9th ed.). Pearson. ↵
5. *Ex Parte Crouse* (1839) ↵
6. Mennel, R.M. (1973). *Thorns & Thistles: Juvenile Delinquents in the United States from 1825–1940*. Hanover, NH: University Press of New England. ↵
7. Shoemaker, D. (2018). *Juvenile Delinquency* (3rd ed.). Rowman & Littlefield. ↵
8. *People Ex Rel. O'connell v. Turner,* 55 Ill. 280 (Ill. 1870). ↵
9. Fox, S.J. (1970). Juvenile Justice Reform: An Historical Perspective. *Stanford Law Review, 22*:1187–1239 ↵
10. History (n.d.). US immigration before 1965. https://www.history.com/topics/u-s-i...on-before-1965 ↵
11. Feld, B.C. (1999). *Bad Kids: Race and the Transformation of the Juvenile Court.* New York: Oxford University Press. ↵
12. Platt, A. (1977). *The Child Savers: The Invention of Delinquency (*2nd ed., pp.83). Chicago: University of Chicago Press. ↵

7.4: Delinquency

Before the creation of the juvenile court, there was no such thing as “delinquency.” Youth were convicted of crimes, the same as adults. Just as the concept of “childhood” is socially constructed, scholars also say that “juvenile delinquency” is likewise socially constructed as a result of social, economic, and religious changes. [1] The juvenile court oversees cases for youth between the ages of 7 and 17. Seven is considered the lower limit of the reaches or protections of the juvenile justice system, while 17 is the upper limit. At 18, youth are considered adults and are tried under the laws of the adult criminal justice system. However, some states have differing upper age limits. For example, in Oregon, the Oregon Youth Authority houses youth until the age of 25. Other states have similar provisions and although the lower limit is seven years of age, most states do not intervene in cases under nine.



Youth Processing Ages

After the creation of the juvenile court, the child savers and reformers were worried that restricting the court to only deal with criminal youth would make the court function like an adult criminal court rather than a rehabilitative parental figure. Within a couple of years of its founding, amendments to the Illinois Juvenile Court Act broadened the definition of delinquency to include incorrigible youth, or otherwise unruly and out of the control of their parents. [2] The definition of juvenile delinquency now included **status offenses** or offenses that are only illegal because of the age of the offender. Examples include: drinking alcohol, running away, ungovernability, truancy (skipping school), and curfew violations. Overall, the juvenile justice system is responsible for youth who are considered dependent, neglected, incorrigible, delinquent, and/or status offenders.

Podcast: Caught

https://www.npr.org/podcasts/589480586/caught

The purpose of the original court was to act in a rehabilitative ideal. The main function was to emphasize reform and treatment over punishment and punitive action. [3] Terminology in the court is even different, to denote the separate nature from the adversarial adult processes. To initiate the juvenile court process, a **petition** is filed “in the welfare of the child,” whereas this is called an indictment in the adult criminal process. The proceedings of juvenile courts are referred to as “hearings,” instead of trials, as in adult courts. Juvenile courts find youths to be “**delinquent,**” rather than criminal or guilty of an offense, and juvenile delinquents are given a “**disposition**,” instead of a sentence, as in adult criminal courts.

1. Feld, B.C. (1999). *Bad Kids: Race and the Transformation of the Juvenile Court.* New York: Oxford University Press. ↵
2. Feld, B.C. (1999). *Bad Kids: Race and the Transformation of the Juvenile Court.* New York: Oxford University Press. ↵
3. Feld, B.C. (1999). *Bad Kids: Race and the Transformation of the Juvenile Court.* New York: Oxford University Press. ↵

7.5: Juvenile Justice Process

Did you know that there is no uniform juvenile justice system in the United States? It is quite surprising! Matters concerning minors and children who break the law are left to the discretion of individual states and their legislative bodies. States have different priorities, and legislators enact new laws and revise legislation according to their own needs at the time. Although every state operates independently, they manifest common trends and respond to certain issues in a similar manner. For example, the increasing fear of youth violence in the 1990s precipitated more specific and punitive legislation in almost every state. [1] Some states with very specific and real gang problems devised targeted gang suppression laws and legislation, while other states did not. The fear of youth crime led states to create mandatory minimum legislation (like Measure 11 laws in Oregon), waiver and transfer laws, and zero tolerance policies.

The juvenile justice system has two main responsibilities: to oversee cases involving (1) juvenile delinquency (criminal law violations and status offenses) and (2) dependency, neglect, and child abuse. [2] Due to the loose definitions of *parens patrea* and the court's attempt to act in the best interest of the child, after World War II, the juvenile court was criticized for disregarding due process.

Due process refers to the procedural rights established in the Constitution, especially the Bill of Rights. It includes rights such as the right to legal counsel, right to call witnesses, and right to be notified of charges (which will be revisited in *In re Gault*). The original juvenile court did not implement due process rights because it was intervening in the lives of youth for their own good, not in such a formalized adult way where they would need constitutional protections. However, because of the abuse of power, this changed in later decades.

Beginning in the 1960s, four areas drastically changed in the juvenile court:

(1) the juvenile due process revolution from 1966 to 1975

(2) the Juvenile Justice and Delinquency Prevention Act of 1974

(3) a growing emphasis on punishment and accountability in the 1980s and 1990s

(4) contemporary juvenile justice reform that is driven by evidence-based practices and empirical research on adolescent development, which in turn leads us back to rehabilitation

1. Feld, B.C. (2003). *The Politics of Race and Juvenile Justice: The 'Due Process Revolution' and the Conservative Reaction*. Justice Quarterly 20:765-800. ↵
2. Rubin 1985 ↵

7.6: Due Process in the Juvenile Court

As discussed, the juvenile court was created with rehabilitation and individualized treatment in mind. However, between 1966 and 1975, the court became more formalized and started “adultifying” the process. Landmark cases for establishing due process rights in the juvenile justice system include.

Kent v. United States (1966) [1]

Morris Kent was a 16-year-old boy living in Washington DC who was on probation for burglary and theft. He was arrested again and charged with three burglaries, three robberies, and two counts of rape. Due to the seriousness of the changes and Kent’s previous criminal history, the prosecutors moved to try Kent in adult court. However, because of his age, he was under the exclusive jurisdiction of the juvenile court. Kent’s lawyers wanted his case to be heard in juvenile court. Without a hearing or a full investigation, the judge sided with the prosecutors and Kent was tried in adult court. He was found guilty and sentenced to 30 to 90 years in prison. On appeal, Kent lawyers argued that the case should have to stay in juvenile court and it was unfairly moved to adult court without a proper hearing.

The Supreme Court ruled that while minors can be tried in adult court, the original judge needed to conduct a full investigation and an official waiver hearing where the merits of the case were weighed, such as the juvenile’s age, prior charges, and mental state. Essentially, Kent was entitled to a hearing that provided “the essentials of due process and fair treatment.” This standard includes the right to a formal hearing on the motion of waiver and a written statement of the reasons for a waiver, the right to counsel, and the defense’s access to all records involved in the waiver decision. It also ruled that “The *parens patriae* philosophy of the Juvenile Court ‘is not an invitation to procedural arbitrariness.'” [2]

In re Gault (1967). [3]

Gerald “Jerry” Gault, a 15-year-old Arizona boy, was taken into custody for making obscene calls to a neighbor’s house. After the neighbor, Mrs. Cook filed charges, Gault and his friend were taken to the Juvenile Detention Home. At the time he was taken into custody, his parents were at work and the arresting officers made no effort to contact them nor did they leave a note about the arrest or where they were taking their son. They finally learned of his whereabouts from the family of the friend who arrested with him.

When the habeas corpus hearing was held two months later, Mrs. Cook was not present, no one was sworn in prior to testifying, and no notes were taken. He was released and scheduled to reappear a few months later for an adjudication hearing. In the following hearing, again, Mrs. Cook was not present and again, no official transcripts of the proceeding were taken.

The official charge was “making lewd phone calls.” The maximum penalty for an adult charge with this was a $50 fine or not more than two months in jail. Gault was found guilty and sentenced to 6 years in juvenile detention.

Gault’s parents filed a writ of habeas corpus which was eventually heard by the Supreme Court. The Supreme Court ruled that juveniles are entitled to due process rights when the court proceedings may result in confinement to a secure facility. The specific due process rights highlighted in this case include (1) fair notice of charges; (2) right to counsel; (3) right to confront and cross-examine witnesses; and (4) privilege against self-incrimination.

The Court held that the Due Process Clause of the Fourteenth Amendment applies to juvenile defendants as well as adult defendants. “Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.”

In re Winship (1970) [4]

Samuel Winship, a 12-year old boy living in New York, was charged with stealing $112 from a woman’s purse in a store, a charge that “if done by an adult would constitute the crime or crimes of Larceny.” Since he committed a crime, the charges of juvenile delinquency were justified. Winship was found delinquent in a New York juvenile court, using the civil law standard of proof, “preponderance of the evidence.” Winship was committed to a state training school for an initial period of 18 months with the annual extension of no more than six years.

Upon appeal, the U.S. Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment requires “proof beyond a reasonable doubt.” The court acknowledged that juvenile proceeding is designed to be more informal than adult proceedings,

but if charged with a crime, the juvenile is granted protections of proof beyond a reasonable doubt. Winship expanded the constitutional protections established in Gault.

Breed v. Jones (1975) [5]

A 17-year-old boy named Gary Jones was charged with armed robbery and found guilty in a California juvenile court. At the dispositional hearing, the probation officer assigned to the case testified that Jones was not amenable to treatment. After the hearing, the court determined that Jones should subsequently be tried as an adult. Jones' lawyers filed a writ of habeas corpus and argued that waiving the case to adult court after it was already adjudicated in juvenile court violated the double jeopardy clause in the Fifth Amendment. The Supreme Court ruled that, yes, Jones had been placed in double jeopardy. This further formalized the juvenile court, however, The Court moved, "Giving respondent the constitutional protection against multiple trials in this context will not, as petitioner claims, diminish the flexibility and informality of juvenile-court proceedings." [6]

1. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045 (1966). ↵
2. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, pp. 554-556 (1966) ↵
3. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967) ↵
4. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970) ↵
5. *Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779 (1975) ↵
6. 27 Raley, Gordon. 1995. "The JJDP Act: A Second Look." *Juvenile Justice Journal*, *2*:11–18. ↵

7.7: The Juvenile Justice and Delinquency Prevention Act of 1974

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 reformed and redefined the philosophy, authority, and procedures of the juvenile justice system in the United States. This was the first major federal initiative to address juvenile delinquency across the nation. [1] While historically, the overseeing of juvenile matters fell on the states, the JJDP Act established some oversight at the federal level.

The JJDP Act attached to state funding to reform efforts. For example, one major reform effort involved revising policies around secure detention, separating juvenile from adult offenders, and deinstitutionalizing status offenders. Status offenders were no longer to be held in secure facilities with delinquent youth. [2] In 1992, as part of the reauthorization of JJDPA, states were encouraged to identify gaps in their ability to provide appropriate services for female juvenile delinquents (42 U.S.C. 5601; OJJDP). The federal government expected states to provide specific services for the prevention and treatment of female delinquency and prohibit gender bias in the placement, treatment, and programming of female delinquents.

Campaign for Youth Justice

http://www.campaignforyouthjustice.org/

1. Office of Juvenile Justice and Delinquency Prevention (1998). *Juvenile female offender: A status of the state's report.* ↵
2. Office of Juvenile Justice and Delinquency Prevention (1998). *Juvenile female offender: A status of the state's report.* ↵

7.8: Getting Tough- Initiatives for Punishment and Accountability

The 1980s saw a huge shift in the way states and federal laws were addressing juvenile law. Gangs, gun violence, and drugs drew attention to the identification, punishment, and prevention of violent and chronic youth offenders. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) focused research on youth violence and state and local programming. Attention focused on the identification and control of serious, violent, and chronic offenders. [1]

At the state level, lawmakers enacted policies to crack down on youth crime. In the mid-1990s the idea of the juvenile **superpredator**– youth so impulsively violent, remorseless, and have no respect for human life- led to widespread reform and more punitive approaches to juvenile crime and delinquency. This included more punitive sentences, lowering the age at which a juvenile could be tried as an adult, and loosening the provisions for trying juveniles in adult court. The motto "adult time for adult crime" drove accountability initiatives and get-tough campaigns. A youth was no longer seen as vulnerable minors in need of protection and treatment. Instead, the narrative changed and they were seen as violent monsters acting "with no conscience and no empathy", a statement Hillary Clinton has publicly regretted saying.

Rethinking zero tolerance

https://www.youtube.com/watch?v=6ZDFs-EmP74

Waiver and Adult Time

All states have enacted laws that allow juveniles to be tried in adult criminal courts. There are several mechanisms by which a juvenile can be transferred to adult criminal court: **prosecutorial, legislative, and judicial waiver**. The **prosecutorial waiver** also is referred to as "Direct File" and "Concurrent Jurisdiction." With this waiver mechanism, the legislature grants a prosecutor the discretion to determine in which court to file charges against the juvenile. [2] The prosecutor, or district attorney, can choose to file charges in juvenile court or adult criminal court. This procedure does not require a transfer hearing, so the defense is not accorded the opportunity to present evidence in an attempt to avoid the transfer [3]

Legislative waiver, or statutory waiver, identifies certain offenses which have been mandated by state law to be excluded from juvenile court jurisdiction. It is utilized as a method to decrease or eliminate the discretionary powers of judges and prosecutors. For example, the number of state statutes specifies that violent felony offenses such as homicide, rape, and robbery, when committed by older adolescents, are automatically sent to adult criminal court.

In the News: Raising the Age and Raising the Bar

As part of the "Raise the Age" legislation passed in 2017, all minors on Rikers Island awaiting trial or otherwise, have to be moved out of the notorious New York City jail in October 2018. Rikers Island is famed for abuse, corruption, and violence and has begun the 10 years shut down a plan to close the scandal-ridden jail complex. The jail houses some 9,000 inmates, more than 2,000 who are juveniles. The plan is to reduce the jail population while moving the inmates to other facilities throughout New York's boroughs.

Part of the reduction in the number of inmates stems from the recent law which mandates that 16 and 17 year-olds in New York State will no longer automatically be charged as adults in criminal courts. And the age raises even more, to 18, on October 18, 2 019.

Rikers Island has a sordid history of brutality and inhumane treatment of prisoners. Perhaps the most well-known case in recent history is the story of Kalief Browder, a 16-year-old kid from the Bronx, who was charged with stealing a backpack. Although he claimed he was innocent, he ended up spending three years at Rikers Island, and more than two years were spent in solitary confinement. The charges were eventually dismissed and Browder was released, but the time spent in solitary caused significant and detrimental mental health issues. Tragically, he committed suicide in 2015, just two years after his release. His case garnered national attention prompting New York to ban the use of solitary confinement for inmates under the age of 18.

Research shows that solitary confinement is linked to mental health problems like depression, anxiety, psychosis, and even suicidal ideation. For these reasons, all federal prisons ban solitary confinement for juveniles and most states don't allow the use of solitary in juvenile facilities. However, solitary is still used in adult prisons. Each year around 200,000 youth are tried as adults and many are sentenced to time in regular, adult prisons. Many of these state jails and prisons still use solitary confinement for the "safety" and "protection" of juveniles housed with adults (Resitvo, 2019).

Raising the age legislation is a step in the right direction and will prevent more juveniles from beginning sent to adult facilities. New York and North Carolina were the last two states in the nation to charge 16 and 17 year-olds as adults up until last year when both amended their laws. The legislation will have a profound impact on New York's criminal justice system and is seen as a massive win for reformers who have been pushing for better treatment of children at Rikers Island for years.

Listen to the story and read more at:

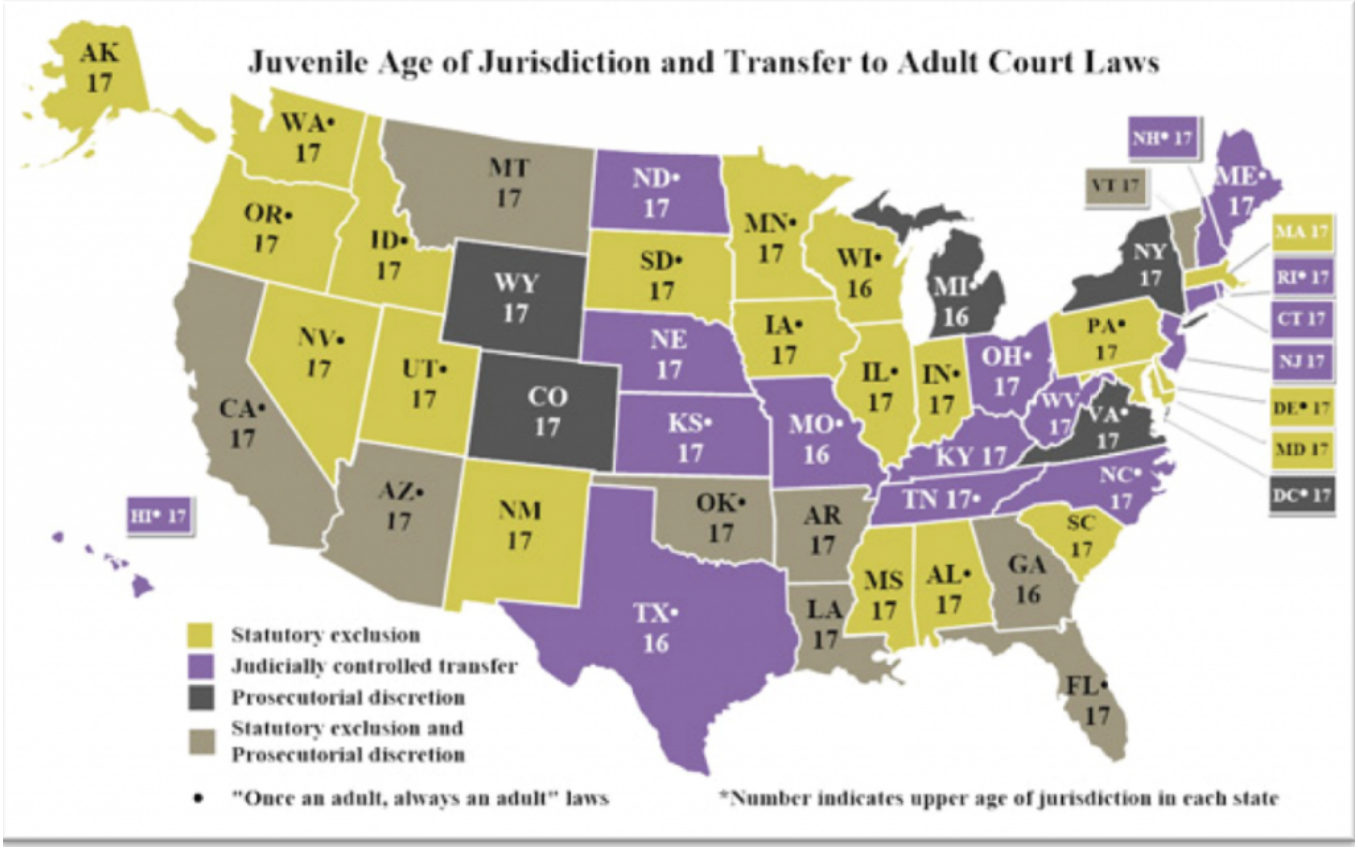
https://www.wnycstudios.org/story/raise-age-new-york-minors-rikers [4]

Judicial waiver affords the juvenile court judge the authority to transfer a case to adult criminal court. [5] There are three types of judicial waiver: **discretionary, presumptive, and mandatory**.

The **discretionary** (regular) transfer allows a judge to transfer a juvenile from juvenile court to adult criminal court. [6] With this type of transfer, the burden of proof rests with the state and the prosecutor must confirm that the juvenile is not amenable to treatment. As discussed previously, in *Kent v. United States* (383 U.S. 541, 566-67 [1966]), the Supreme Court outlined threshold criteria that must be met before a court can consider waiving a case. These waiver statutes typically include a minimum age, the specified type of offense, a sufficiently serious prior record, or a combination of the three.

Presumptive waiver shifts the burden of proof from the State to the defendant. It is presumptive because it is *presumed* that it will occur unless the youth can meet the burden of proof and provide a justifiable reason to remain in juvenile court. If the youth is unable to show just cause or sufficient reason why the case should be tried in juvenile court, the case will be transferred and tried in adult court.

The third type of judicial waiver is a **mandatory waiver**. Mandatory waiver means that a juvenile judge must automatically transfer to adult court juvenile offenders who meet certain criteria, such as age and current offense. In these cases, the role of the judge is simply to confirm that the waiver criteria are met and then to transfer the case to adult court. Mandatory waiver attempts to remove all discretionary powers from the juvenile court judge in transfer proceedings. [7]



State juvenile courts with delinquency jurisdiction handle cases in which juveniles are accused of acts that would be crimes if adults committed them.
In 45 states, the maximum age of juvenile court jurisdiction is age 17. Five states– Georgia, Michigan, Missouri, Texas, and Wisconsin–now draw the juvenile/adult line at age 16.
However, all states have transfer laws that allow or require young offenders to be prosecuted as adults for more serious offenses, regardless of their age

In addition to increasing transfer mechanisms, at least 13 states lowered the age of majority to 15, 16, and 17, which allowed the youth of these ages to be automatically tried in adult criminal courts. These were supposed to provide procedures that curbed only the worst of the worst offenders, however, these provisions increased the prosecution of all juvenile offenders and youth of color in particular.

Ted Talks: Alice Goffman In the United States, two institutions guide teenagers on the journey to adulthood: college and prison. Sociologist Alice Goffman spent six years in a troubled Philadelphia neighborhood and saw first-hand how teenagers of African-American and Latino backgrounds are funneled down the path to prison — sometimes starting with relatively minor infractions. In an impassioned talk she asks, "Why are we offering only handcuffs and jail time?" https://www.ted.com/talks/alice_goffman_college_or_prison_two_destinies_one_blatant_injustice?language=en

1. Krisberg, B., & Austin,J. (1978). History of the Control and Prevention of Juvenile Delinquency in America. In B. Krisberg & J. Austin (Eds.), *The Children of Ishmael: Critical Perspective on Juvenile Justice* (pp. 7-50). Palo Alto, CA: Mayfield. ↵
2. Feld, B.C. (2001). Race, youth violence, and the changing jurisprudence of waiver. *Behavioral Sciences & the Law, 19*(1), 3-22. ↵
3. Steiner, B., Hemmens, C., & Bell, V. (2006). Legislative waiver reconsidered: General deterrent effects of statutory exclusion laws enacted post-1979. *Justice Quarterly, 23*(1), 34-50 ↵
4. Restivo, E. (2019, Feb 14). Stop putting juveniles in solitary confinement. Daily News. https://www.greensburgdailynews.com/opinion/columns/stop-putting-juveniles-in-solitary-confinement/article_d438d7bc-4e3d-5a9e-97da-22706d6037c8.html ↵
5. Hemmens, S., & Bell, C. (2006). Legislative waiver reconsidered: General deterrent effects of statutory exclusion laws enacted Post 1990. *Justice Quarterly, 23*(1), p34-59. ↵

6. Sanborn, J. (2004). The adultification of youth. In P. Benekos & A. Merlo (Eds.), *Controversies in juvenile justice and delinquency* (pp. 143-164). Anderson Publishing. ↵
7. Burke, A. (2016). Trends of the time. ↵

7.9: Returning to Rehabilitation in the Contemporary Juvenile Justice System

Empirical research drives recent reform efforts. The past decade has witnessed the identification of key developmental processes associated with delinquent behavior, such as brain development research. Ergo, **evidence-based practices**, which utilize the scientific method to assess the effectiveness of interventions, policies, and programs. In looking at what works, what doesn't, and what is promising, researchers and policymakers alike assess the implementation of interventions to best meet the needs of the individual youth.

Additionally, several noteworthy Supreme Court cases exemplify society's evolving standards of decency and treatment of youth. These key cases demonstrate a move back to rehabilitation and acknowledge the fundamental differences between children and adults.

Key Supreme Court Cases

Roper v Simmons (2005)

In 2005, a landmark decision by the Supreme Court ruled it unconstitutional to impose a death penalty sentence on any youth who was under the age of 18 when they committed their offense (*Roper v. Simmons*). Although Christopher Simmons planned and committed a capital offense (he murdered his neighbor, Shirley Cook), the court ruled that 18 years of age is where criminal responsibility should rest. That is to say, if a child is too young to vote, sign contracts, or do a number of other things (because society deems them not responsible enough), then they are too young to receive the death penalty. The court stated,"the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be "cruel and unusual." Simmons received life in prison. It was ruled that imposing the death penalty on a person who was under the age of 18 at the time of the crime constituted cruel and unusual punishment. At the time of the *Roper v Simmons* verdict, the U.S. was only one out of a handful of countries that still imposed the death penalty on juveniles (among other countries were Yemen, Saudi Arabia, and Iran).

Graham v Florida (2010)

While the death penalty was taken off the table for youth under the age of 18, they were instead being sentenced to **life in prison without the possibility of parole (LWOP**). This was until the 2010 case of *Graham v. Florida*. Terrance Graham received life in prison for a felony offense (armed burglary) when he was only 16 years old. Since Florida does not have parole, his sentence de facto became a life without the possibility of parole. The Supreme Court heard his case and ruled that it was unconstitutional to sentence a minor to life without the possibility of parole for a non-homicide offense.

Miller v Alabama (2012)

Two years later, juvenile law again rested in the hands of the Supreme Court. Even though *Graham v. Florida* abolished life without the possibility of parole for non-homicide offenses, youth under the age of 18 were still receiving that sentence for crimes of murder. In 2012, Evan Miller was 14 years old when he killed his neighbor by severely beating him with a baseball bat while attempting to rob him. With contemporary research about brain formation and juvenile culpability, the Supreme Court ruled that youth are not as responsible as adults for their actions because their brains have not fully formed. In the majority opinion, Justice Elena Kagan wrote that "mandatory life without parole for those under age of 18 at the time of their crime violates the 8th Amendment's prohibition on cruel and unusual punishments." "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences," Justice Kagan said. "It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional."

This seemed like a huge win for juvenile justice reformers. Juveniles could no longer receive the death penalty, life without parole for non-homicide, nor mandatory life without parole for homicide. However, there were still so many people serving LWOP sentences who were juveniles when they committed their crime.

Montgomery v Louisiana (2016)

In 2016, the Supreme Court heard the case of Henry Montgomery, who was 17 years old in 1963 when killed a sheriff's deputy. He initially received a death sentence, but this was overturned because of the racial tension of the time (Montgomery

> was black youth who killed a white law enforcement officer.) He instead received a life sentence and appealed this sentence after the Miller v. Alabama ruling. *Montgomery v. Alabama* barred mandatory life without parole sentences retroactively. This meant that all youth sentenced prior to 2012 with LWOP sentences needed to be retried.

These four major Supreme Court cases identify the differences between adults and juveniles. They recognize the difference in brain formation and culpability, owning the ability for rehabilitation of youth and moving step by step away from a retribution/punishment model for youth.

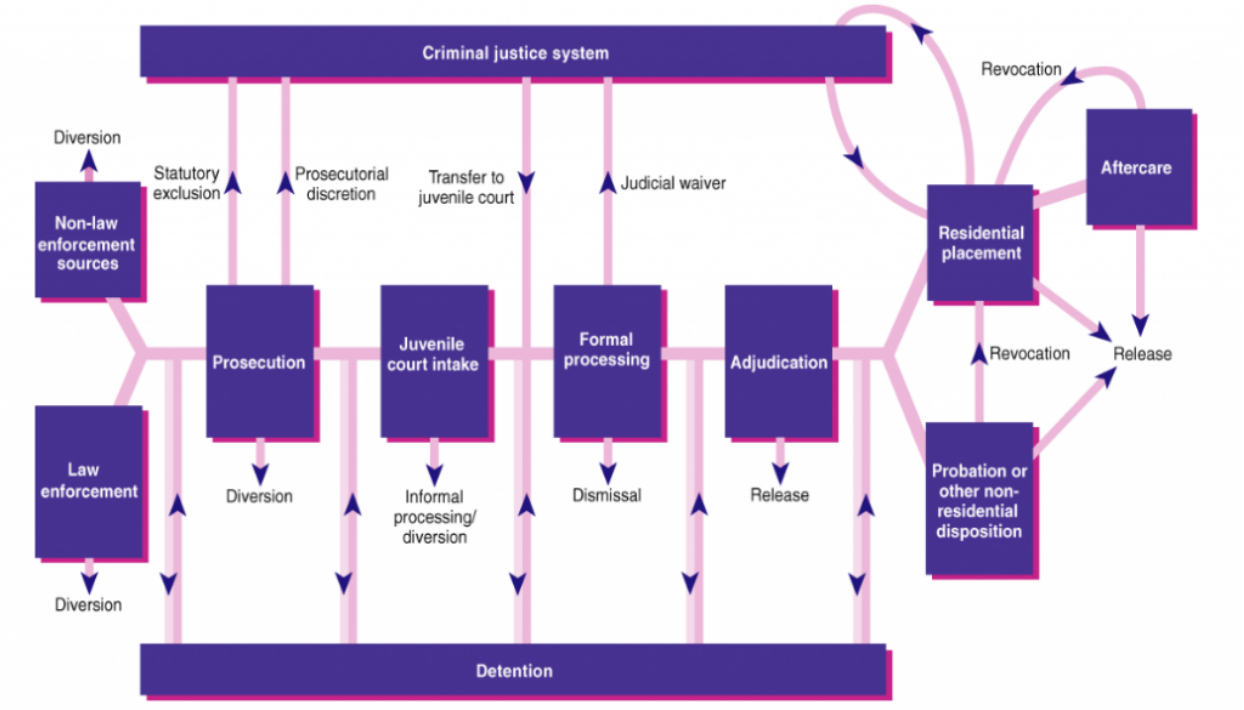
7.10: The Structure of the Juvenile Justice System

The juvenile justice process involves nine major decision points: (1) arrest, (2) referral to court, (3) diversion, (4) secure detention, (5) judicial waiver to adult criminal court, (6) case petitioning, (7) delinquency finding/adjudication, (8) probation, and (9) residential placement, including confinement in a secure correctional facility (see Juvenile Justice Process flow chart). [1]

The majority of cases are first referred to the juvenile justice system through contact with police. Probation officers, school officials, or parents usually refer to the remaining cases. The most common offenses referred to court are property offenses (roughly 92%), followed by person offenses (89.5%), drugs (88.2%), and general delinquency charges (81.6%). Other referrals come from schools, family, or social workers or probation officers.

At the intake stage, probation officers or attorneys determine whether or not the case needs the attention of the juvenile court or if it can be handled informally, such as diversion to probation or a drug treatment program. If the case progresses to court, the authorities need to determine if the youth can be released to a parent/guardian or if the youth needs to be held in a secure detention center. When determining this, the court needs to assess the risk the youth poses to society and if the youth poses a flight risk. In some cases, the parent cannot be located or, if located, refuses to take custody of the youth. In these cases, the juvenile is remanded to custody. The decision to detain or release the juvenile will be made by the judge at a detention hearing.

If the case is handled in court, the county attorney needs to file a petition. When the youth has a formal hearing, it is called an **adjudication** rather than a trial in adult court. The adjudication of youth as delinquent can result in either dismissal of the charges or confinement at a secure institution. In most juvenile cases, the least restrictive option is usually sought, so the youth is usually put on probation or some sort of community treatment. Formal processing is less common than informal processing involving diversion or community-based programming.



The Juvenile Justice Process. The major decision points in this process are: (1) arrest, (2) referral to court, (3) diversion (at multiple points in the process), (4) secure detention, (5) judicial waiver to adult criminal court, (6) case petitioning, (7) delinquency finding/adjudication, (8) probation, and (9) residential placement, including confinement in a secure correctional facility

Working With Youth

When I graduated from college with a BA in psychology, I applied for a job working with the Division of Youth Corrections in Denver, CO. I worked in a Residential Treatment Facility (RTC), which used behavior modification techniques, assigned case-workers to each youth and their families, and attempted to help the kids learn problem-solving skills and accountability. Youth

were confined for a variety of reasons, from committing gang affiliated drive-by shootings, to youth who were designated dependent youth through social services and had nowhere else to go. We had high-risk kids, low-risk kids, conduct disorder and mental health kids all together on the same unit. Having the mix of all these different kids is not a great formula; the low-risk kids learn negative behavior from the high-risk kids, and the conduct disorder kids victimize the mental health kids. In an ideal institution, these different populations would all be on separate units.

Working with youth is hard. They push boundaries, are angry, try to manipulate those around them, and reject authority. However, working with youth is exceptionally rewarding. They are kids. They come from abusive and neglectful homes and are yearning for approval and love. For example, one boy in our facility was named Josh. He was a super angry and violent sixteen-year-old who was sentenced for committing aggravated assault. Through working with counselors and caseworkers, we discovered his anger was hiding immense sadness. He lashed out at those around him when he was sad because he had no way to show his feeling other than through aggression. Many months of working with him, encouraging him to journal, express his feelings, talk with others, use other tools to help him with his sadness led to amazing results. He left our facility after more than a year, graduated from high school and even went to college! Getting the individualized attention helped Josh change. He became a success story of the juvenile justice system.

Working with youth takes patience, consistency, and compassion. It is one of the most difficult jobs there is, but it is possible to be a very positive influence in the lives of kids who need it the most. If you are interested in working with youth, plan on committing to at least a year. Incarcerated kids are used to having people give up on them and disappoint them, so you do not want to add to their negative experiences. Show up, follow through, and be optimistic about a better future for justice-involved youth.

1. Sickmund, M., & Puzzanchera, C. (2014). *Juvenile offenders and victims*: 2014 national report. ↵

7.11: Juvenile Institutions

Just as the juvenile court has different practices, so too does the correctional side of the juvenile justice system. Since the aim of the juvenile justice system is rehabilitation, the treatment of youth is somewhat different than the treatment of adults. For example, justice-involved youth can be sent to detention centers, group homes, boot or wilderness camps, residential treatment centers, long-term secure facilities, or other institutions.

Detention: In the first stages of the justice system, the court must decide if it will detain the youth. If a youth is detained, he/she is sent to a detention center, which is a short-term, secure facility. These are comparable to adult jails. Youth are often kept in detention facilities while waiting for disposition or transfer to another location. The average length of stay is 2-3 weeks. Factors that increase the likelihood of detention include prior offenses, age at first offense and current age, and the severity of the current offense. Research also suggests that race, gender, and socioeconomic status also play a role in deciding whether to detain a youth.

Group Homes: Group homes are long-term facilities where youth are allowed and encouraged to have extensive contact with the community. Youth attend regular school, hold jobs, take public transportation, etc. In many group homes, youth learn independent living skills that prepare them for living on their own. These are similar to adult halfway houses.

Boot Camps and Wilderness Camps: Boot Camps are secure facilities that operate like military basic training. They focus on drills, manual labor, and physical activity. They are often punitive and overly strict. Despite popular opinion, research shows that these are ineffective for preventing future delinquency. The length of stay is generally for several weeks. On the other hand, ranch/wilderness camps are actually prosocial and preventative. These are long term residential facilities that are non-restrictive and are for youth who not require confinement. These include forestry camps and wilderness programs.

Residential Treatment Centers: RTCs are long term facilities that focus on individual treatment. They include positive peer culture, behavior modification programming, and helping youth develop healthy coping mechanisms. Many have specific targeted populations, such as kids with histories of substance abuse or issues with mental health. They are often considered medium security, and the average stay is often six months to a year.

Long-term Secure Facilities: Long term facilities are strict secure conferment. These include training schools, reformatories, and juvenile correctional facilities. These facilities are often reserved for youth who have committed serious offenses. They are similar to adult prisons but operate under a different philosophy. For example, incarcerated youth are still required to attend school, which is within the facility.

Disproportionate Minority Contact: Considerable research on disproportionate minority contact has been conducted over the past three decades. **Disproportionate minority contact (DMC)** "occurs when the proportion of youth of color who pass through the juvenile justice system exceeds the proportion of youth of color in the general population." [1] It can be assessed at every stage of the juvenile justice system, from arrest to adjudication. Research shows minority youth are over-represented in arrests, sentencing, waiver, and secure placement. States receiving federal grant money are required to address DMC "regardless of whether those disparities were motivated by intentional discrimination or justified by 'legitimate' agency interests." [2]

In the News: The Prison Pipeline

6-year-old Zachery Christy, a first grader in Newark Delaware, was suspended for 45 days for bringing a spork to school. The camping utensil, which contains a spoon, fork, knife, and bottle opener was a gift for Cubs Scouts. The first grader brought the camping utensil to school although the "dangerous weapon" violated zero tolerance rules at the school.

"Spurred in part by the Columbine and Virginia Tech shootings, many school districts around the country adopted zero-tolerance policies on the possession of weapons on school grounds. More recently, there has been growing debate over whether the policies have gone too far." [3]

Zero Tolerance policies are strict adherence to regulations and bans to prevent undesirable behaviors. The idea behind them is to promote student safety and to be fair and consistent with all children. The idea behind them is to promote a one size fits all approach, so as to treat all children equally, however, research suggests that minority youth are unfairly targeted by such practices, which counters the purposes of them.

However, Zero Tolerance policies contribute to the school to prison pipeline. Children who interact with law enforcement at earlier ages are more likely to end up in the criminal justice system.

What was thought to remove discretion from school administrators in issues of discipline, actually results in African American students being more likely to be suspended or expelled than other students for the same offenses? Additionally, the suspension or expulsion from school severs ties and harms the relationship youth have with school, making it harder for the youth to return and engage.

For Zachary and his spork, it's more than breaking his attachment to school and his teachers. He fears being teased by the other students. If his parents choose not to home school him, he must spend the next 45 days in the district's reform school.

An in-depth look at zero tolerance policies.

https://sites.duke.edu/education303final/an-in-depth-look-at-zero-tolerance-policies-and-racial-biases/

[4]

Conclusion

The juvenile court has its own philosophy, the court system, and correctional institutions that differ from the adult criminal justice system. The major difference between the juvenile justice system and the adult system is its focus on rehabilitation. The juvenile justice system uses private, informal hearings, and individualized justice to act in the best interest of the delinquent youth.

The past century has witnessed a marked change in the way the law deals with youth. From the inception of the juvenile justice system in 1899 to the ruling of *Mongomery v Louisiana* in 2016, the pendulum of juvenile justice swings from a *parens* patriae model of protection of youth to juvenile waiver, fear of youth crime, and punishment, back to incorporating brain research in assessing rehabilitation. The juvenile justice system was designed to treat juveniles differently from adults and take their unique needs and circumstances into consideration. Youth are malleable and can change their trajectories with the right treatment and intervention at the right time.

1. Short, J., & Sharp, C. (2005). *Disproportionate minority contact in the juvenile justice system.* Washington, DC: Child Welfare League of America. ↵
2. (Johnson, 2007, p. 374). ↵
3. (Urbina, 2009, para 4). ↵
4. Urbina, I. (2009, Oct. 1). It's a fork, it's a spoon, it's a….weapon? The New York Times. https://www.nytimes.com/2009/10/12/e...iscipline.html ↵

CHAPTER OVERVIEW

8: Key Ethical Issues within Law Enforcement

8.1: Ethical Issues

There are numerous ethical issues that arise in law enforcement that are particular only to law enforcement. While widespread systemic corruption and lawbreaking by law enforcement officers in Canada is relatively rare, although it does occur from time to time. Such infractions include a clear violation of federal, provincial, or municipal statutes, and for the sake of brevity, they do not warrant discussion in this text. However, readers should look at such issues critically to gain an understanding of the variables that surround them. It is important to look beyond the obvious moral, ethical, and/or legal violations of the main actor and to critically assess the ethical issues that can, at times, surround the case peripherally. For example, Vancouver police officer Constable Hodson was arrested for selling drugs from his police car and threatening his former informant. This is a clear-cut violation of numerous statutes, including the Criminal Code and the Controlled Drugs and Substances Act. Nonetheless, the following questions may be asked relating to the case:

- What questions arise about the ethics of the Vancouver Police Department investigating Hodson?
- Did the Vancouver Police Department choose to ignore warning signs that Hodson was becoming increasingly involved in immoral behaviour?
- Should the Vancouver Police Department have conducted integrity testing of members making drug arrests?
- What can the Vancouver Police Department do to avoid such a serious breach in the future?
- Should the Vancouver Police Department have detected this moral flaw in Hodson before hiring him?

Key ethical issues that face law enforcement are not easy to identify at times, and when they are identified, they are open to interpretation. Often in law enforcement, a high-profile decision made by an officer in a millisecond is analyzed over months and sometimes years. Even with this ability to analyze the decision over years, a consensus is often not reached about whether the law enforcement officer’s actions were ethical or not. It is for this reason that it is important to look at all ethical issues in law enforcement with a critical mind, so we can understand both sides of each issue. It is also why this text will focus on those issues that are not clearly ethical or unethical, but nonetheless are deserving of debate.

8.2: The Ethics of Power and Authority

Law enforcement officers possess enormous amounts of power, which can be used against citizens to deprive them of their freedom, search them and their dwellings, seize their property, and use force against them. These powers are legally permitted under specific circumstances, and law enforcement officers are trained to know when these powers can be legally applied. As law enforcement officers rank among the most powerful occupations in society, what compounds their ability to use their power is that they are often in contact with relatively powerless and disenfranchised citizens who may be unable to resist an officer's illegitimate use of that power. These powers are legally prescribed, and law enforcement officers are well aware of them. It is important that law enforcement officers not misuse their power for the following reasons.

- **Because of the psychology of citizenship.**
  Citizens, for the most part, want to participate in the "social contract," to be a part of mainstream society and carry out their citizenship responsibilities. They want to belong to society and will do what they think is required by authorities to accomplish this. As a result, they will often try very hard to respond to what law enforcement requires and may be susceptible to unreasonable requests by law enforcement.
- **To maintain due process.**
  Every law enforcement officer should acknowledge the importance of due process. The abuse of power runs directly contrary to the notion of due process, and officers who misuse their power are creating an environment in which due process cannot flourish. Ideally, all officers in the criminal justice system should be focused on due process, and the police have a role in accomplishing due process by being fact finders and apprehenders (Manning, 2010). Along with this, law enforcement officers who are under pressure to charge a suspect must resist the power they are afforded when charges or other actions such as search and seizure are not warranted (Reiner, 2010). Police officers, in particular, face the challenge of weighing crime control against due process, in which they are faced with opportunities to misuse their power. Officers must make decisions on when and in what situations they should use their power. Officers must reflect on how the use of their power would look in a court of law under close scrutiny.
- **To safeguard discretionary power and therefore efficiency.**
  As mentioned previously, law enforcement officers exercise power through discretion. Radical criminologists propose that the police have too much discretion, with the end result being "too much street justice" for the poor, while ignoring crimes of the powerful, of which the police are a member (Box, 2008, p.274). Box argues that the way to eliminate this lack of due process is to place restrictions on discretion. Should law enforcement officers desire to maintain the discretion that they have, which is critical for efficiency, they must not abuse their power.

Power and authority are tools that law enforcement officers must use judiciously and ethically. Without an ethical life, this power will be misused, creating a power imbalance that is bad for the officer, the agency, and society.

8.3: The Milgram Experiment

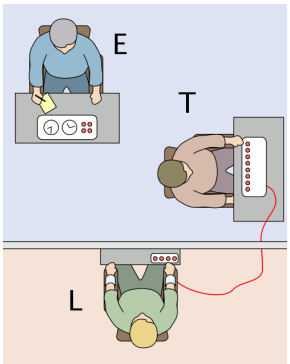
To demonstrate the ease with which power can be used to coerce people, Stanley Milgram conducted a scientific experiment that demonstrated how far people will go when confronted with someone who has power and is in a position of authority. In this instance, subjects often performed actions that were unethical when ordered to by a person in authority. Milgram's experiment demonstrated the power of authority and how someone in a position of authority can influence people to behave unethically and against their wishes.

Milgram's Studies on Obedience to Authority

The powerful ability of those in authority to control others was demonstrated in a remarkable set of studies performed by Stanley Milgram (1963). Milgram was interested in understanding the factors that lead people to obey the orders given by people in authority. He designed a study in which he could observe the extent to which a person who presented himself as an authority would be able to produce obedience, even to the extent of leading people to cause harm to others.

Like his professor Solomon Asch, Milgram's interest in social influence stemmed in part from his desire to understand how the presence of a powerful person—particularly the German dictator Adolf Hitler who ordered the killing of millions of people during World War II—could produce obedience. Under Hitler's direction, the German SS troops oversaw the execution of 6 million Jews as well as other "undesirables," including political and religious dissidents, homosexuals, mentally and physically disabled people, and prisoners of war. Milgram used newspaper ads to recruit men (and in one study, women) from a wide variety of backgrounds to participate in his research. When the research participant arrived at the lab, he or she was introduced to a man who the participant believed was another research participant but who was actually an experimental confederate. The experimenter explained that the goal of the research was to study the effects of punishment on learning. After the participant and the confederate both consented to participate in the study, the researcher explained that one of them would be randomly assigned to be the teacher and the other the learner. They were each given a slip of paper and asked to open it and to indicate what it said. In fact both papers read *teacher*, which allowed the confederate to pretend that he had been assigned to be the learner and thus to assure that the actual participant was always the teacher. While the research participant (now the teacher) looked on, the learner was taken into the adjoining shock room and strapped to an electrode that was to deliver the punishment. The experimenter explained that the teacher's job would be to sit in the control room and to read a list of word pairs to the learner. After the teacher read the list once, it would be the learner's job to remember which words went together. For instance, if the word pair was *blue-sofa*, the teacher would say the word *blue* on the testing trials and the learner would have to indicate which of four possible words (*house*, *sofa*, *cat*, or *carpet*) was the correct answer by pressing one of four buttons in front of him. After the experimenter gave the "teacher" a sample shock (which was said to be at 45 volts) to demonstrate that the shocks really were painful, the experiment began. The research participant first read the list of words to the learner and then began testing him on his learning.

The shock panel, as shown in [the figure],"The Shock Apparatus Used in Milgram's Obedience Study," was presented in front of the teacher, and the learner was not visible in the shock room. The experimenter sat behind the teacher and explained to him that each time the learner made a mistake the teacher was to press one of the shock switches to administer the shock. They were to begin with the smallest possible shock (15 volts) but with each mistake the shock was increased by one level (an additional 15 volts).



Once the learner (who was, of course, actually an experimental confederate) was alone in the shock room, he unstrapped himself from the shock machine and brought out a tape recorder that he used to play a prerecorded series of responses that the teacher could hear through the wall of the room. As you can see in [the figure], "The Confederate's Schedule of Protest in the Milgram

Experiments," the teacher heard the learner say "ugh!" after the first few shocks. After the next few mistakes, when the shock level reached 150 volts, the learner was heard to exclaim "Get me out of here, please. My heart's starting to bother me. I refuse to go on. Let me out!" As the shock reached about 270 volts, the learner's protests became more vehement, and after 300 volts the learner proclaimed that he was not going to answer any more questions. From 330 volts and up the learner was silent. The experimenter responded to participants' questions at this point, if they asked any, with a scripted response indicating that they should continue reading the questions and applying increasing shock when the learner did not respond.

The Confederate's Schedule of Protest in the Milgram Experiments

75 volts	Ugh!
90 volts	Ugh!
105 volts	Ugh! (*louder*)
120 volts	Ugh! Hey, *this* really hurts.
135 volts	Ugh!!
150 volts	Ugh!! Experimenter! That's all. Get me out of here. I told you I had heart trouble. My heart's starting to bother me now. Get me out of here, please. My heart's starting to bother me. I refuse to go on. Let me out!
165 volts	Ugh! Let me out! (*shouting*)
180 volts	Ugh! I can't stand the pain. Let me out of here! (*shouting*)
195 volts	Ugh! Let me out of here! Let me out of here! My heart's bothering me. Let me out of here! You have no right to keep me here! Let me out! Let me out of here! Let me out! Let me out of here! My heart's bothering me. Let me out! Let me out!
210 volts	Ugh!! Experimenter! *Get* me out of here. I've had enough. I *won't* be in the experiment any more.
225 volts	Ugh!
240 volts	Ugh!
255 volts	Ugh! Get me *out* of here.
270 volts	(*agonized scream*) Let me out of here. Let me out of here. Let me out of here. Let me out. Do you hear? Let me out of here.
285 volts	(*agonized scream*)
300 volts	(*agonized scream*) I absolutely refuse to answer any more. Get me out of here. You can't hold me here. Get me out. Get me out of here.
315 volts	(*intensely agonized scream*) Let me out of here. Let me out of here. My heart's bothering me. Let me out, I tell you. (*hysterically*) Let me out of here. Let me out of here. You have no right to hold me here. Let me out! Let me out! Let me out! Let me out of here! Let me out! Let me out!

Before Milgram conducted his study, he described the procedure to three groups—college students, middle-class adults, and psychiatrists—asking each of them if they thought they would shock a participant who made sufficient errors at the highest end of the scale (450 volts). One hundred percent of all three groups thought they would not do so. He then asked them what percentage of "other people" would be likely to use the highest end of the shock scale, at which point the three groups demonstrated remarkable consistency by all producing (rather optimistic) estimates of around 1% to 2%.

The results of the actual experiments were themselves quite shocking. Although all of the participants gave the initial mild levels of shock, responses varied after that. Some refused to continue after about 150 volts, despite the insistence of the experimenter to continue to increase the shock level. Still others, however, continued to present the questions, and to administer the shocks, under the pressure of the experimenter, who demanded that they continue. In the end, 65% of the participants continued giving the shock to the learner all the way up to the 450 volts maximum, even though that shock was marked as "danger: severe shock," and there had been no response heard from the participant for several trials. In sum, almost two-thirds of the men who participated had, as far as they knew, shocked another person to death, all as part of a supposed experiment on learning.

Milgram's study is important in a law enforcement context for the following reasons:

1. Officers must be careful in exercising authority, especially to those that are most vulnerable.
2. Officers can also be greatly influenced by the negative/unethical actions of fellow officers and their own supervisors. It is important for senior officers to understand that Milgram's study strongly suggests that the actions of senior officers will coerce the same action in junior officers. While senior officers may think they are not being copied, or are manipulating the junior officer, Milgram's study suggests that they may be doing so.
3. Law enforcement officers are commonly involved in extraordinary situations, where heightened stress and perceived danger are high. In this environment, even those most strong-willed individuals may be vulnerable to coercion.
4. When a person is being arrested, his or her perception of losing freedom may provoke a reaction to the officer, despite the officer's position of power.

It is important for any person who possesses power to understand and be aware of the coercive nature of power; that power and authority are easily used to make people do things they otherwise would not do. It is within this paradigm, that abuse of power can occur, and officers must be aware of their power and the ease with which it can be abused.

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8.4: Person, Gender, and Cultural Differences in Conformity

Person Differences

Even in cases in which the pressure to conform is strong and a large percentage of individuals do conform (such as in Solomon Asch's line-judging research), not everyone does so. There are usually some people willing and able to go against the prevailing norm. In Asch's study, for instance, despite the strong situational pressures, 24% of the participants never conformed on any of the trials.

People prefer to have an "optimal" balance between being similar to, and different from, others (Brewer, 2003). When people are made to feel too similar to others, they tend to express their individuality, but when they are made to feel too different from others, they attempt to increase their acceptance by others. Supporting this idea, research has found that people who have lower self-esteem are more likely to conform in comparison with those who have higher self-esteem. This makes sense because self-esteem rises when we know we are being accepted by others, and people with lower self-esteem have a greater need to belong. And people who are dependent on and who have a strong need for approval from others are also more conforming (Bornstein, 1992).

Age also matters, with individuals who are either younger or older being more easily influenced than individuals who are in their 40s and 50s (Visser & Krosnick, 1998). People who highly identify with the group that is creating the conformity are also more likely to conform to group norms, in comparison to people who don't really care very much (Jetten, Spears, & Manstead, 1997; Terry & Hogg, 1996).

However, although there are some differences among people in terms of their tendency to conform (it has even been suggested that some people have a "need for uniqueness" that leads them to be particularly likely to resist conformity; Snyder & Fromkin, 1977), research has generally found that the impact of person variables on conformity is smaller than the influence of situational variables, such as the number and unanimity of the majority.

Gender Differences

Several reviews and meta-analyses of the existing research on conformity and leadership in men and women have now been conducted, and so it is possible to draw some strong conclusions in this regard. In terms of conformity, the overall conclusion from these studies is that that there are only small differences between men and women in the amount of conformity they exhibit, and these differences are influenced as much by the social situation in which the conformity occurs as by gender differences themselves.

On average, men and women have different levels of self-concern and other-concern. Men are, on average, more concerned about appearing to have high status and may be able to demonstrate this status by acting independently from the opinions of others. On the other hand, and again although there are substantial individual differences among them, women are, on average, more concerned with connecting to others and maintaining group harmony. Taken together, this means that, at least when they are being observed by others, men are likely to hold their ground, act independently, and refuse to conform, whereas women are more likely to conform to the opinions of others in order to prevent social disagreement. These differences are less apparent when the conformity occurs in private (Eagly, 1978, 1983).

The observed gender differences in conformity have social explanations—namely that women are socialized to be more caring about the desires of others—but there are also evolutionary explanations. Men may be more likely to resist conformity to demonstrate to women that they are good mates. Griskevicius, Goldstein, Mortensen, Cialdini, and Kenrick (2006) found that men, but not women, who had been primed with thoughts about romantic and sexual attraction were less likely to conform to the opinions of others on a subsequent task than were men who had not been primed to think about romantic attraction.

In addition to the public versus private nature of the situation, the topic being discussed also is important, with both men and women being less likely to conform on topics that they know a lot about, in comparison with topics on which they feel less knowledgeable (Eagly & Chravala, 1986). When the topic is sports, women tend to conform to men, whereas the opposite is true when the topic is fashion. Thus it appears that the small observed differences between men and women in conformity are due, at least in part, to informational influence.

Because men have higher status in most societies, they are more likely to be perceived as effective leaders (Eagly, Makhijani, & Klonsky, 1992; Rojahn & Willemsen, 1994; Shackelford, Wood, & Worchel, 1996). And men are more likely to be leaders in most cultures. For instance, women hold only about 20% of the key elected and appointed political positions in the world (World Economic Forum, 2013). There are also more men than women in leadership roles, particularly in high-level administrative

positions, in many different types of businesses and other organizations. Women are not promoted to positions of leadership as fast as men are in real working groups, even when actual performance is taken into consideration (Geis, Boston, & Hoffman, 1985; Heilman, Block, & Martell, 1995).

Men are also more likely than women to emerge and act as leaders in small groups, even when other personality characteristics are accounted for (Bartol & Martin, 1986; Megargee, 1969; Porter, Geis, Cooper, & Newman, 1985). In one experiment, Nyquist and Spence (1986) had pairs of same- and mixed-sex students interact. In each pair there was one highly dominant and one low dominant individual, as assessed by previous personality measures. They found that in pairs in which there was one man and one woman, the dominant man became the leader 90% of the time, but the dominant woman became the leader only 35% of the time.

Keep in mind, however, that the fact that men are perceived as effective leaders, and are more likely to become leaders, does not necessarily mean that they are actually better, more effective leaders than women. Indeed, a meta-analysis studying the *effectiveness* of male and female leaders did not find that there were any gender differences overall (Eagly, Karau, & Makhijani, 1995) and even found that women excelled over men in some domains. Furthermore, the differences that were found tended to occur primarily when a group was first forming but dissipated over time as the group members got to know one another individually.

One difficulty for women as they attempt to lead is that traditional leadership behaviors, such as showing independence and exerting power over others, conflict with the expected social roles for women. The norms for what constitutes success in corporate life are usually defined in masculine terms, including assertiveness or aggressiveness, self-promotion, and perhaps even macho behavior. It is difficult for women to gain power because to do so they must conform to these masculine norms, and often this goes against their personal beliefs about appropriate behavior (Rudman & Glick, 1999). And when women do take on male models of expressing power, it may backfire on them because they end up being disliked because they are acting nonstereotypically for their gender. A recent experimental study with MBA students simulated the initial public offering (IPO) of a company whose chief executive was either male or female (personal qualifications and company financial statements were held constant across both conditions). The results indicated a clear gender bias as female chief executive officers were perceived as being less capable and having a poorer strategic position than their male counterparts. Furthermore, IPOs led by female executives were perceived as less attractive investments (Bigelow, Lundmark, McLean Parks, & Wuebker, 2012). Little wonder then that women hold fewer than 5% of Fortune 500 chief executive positions.

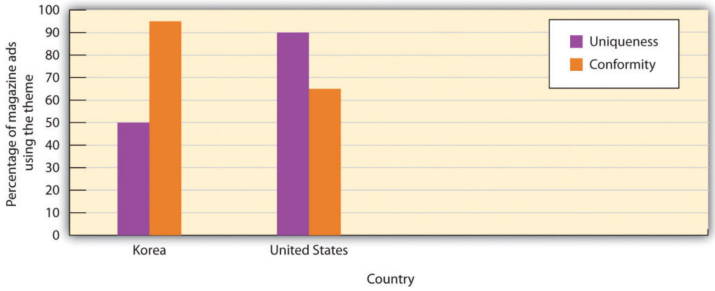
One way that women can react to this “double-bind” in which they must take on masculine characteristics to succeed, but if they do they are not liked, is to adopt more feminine leadership styles, in which they use more interpersonally oriented behaviors such as agreeing with others, acting in a friendly manner, and encouraging subordinates to participate in the decision-making process (Eagly & Johnson, 1990; Eagly et al., 1992; Wood, 1987). In short, women are more likely to take on a transformational leadership style than are men—doing so allows them to be effective leaders while not acting in an excessively masculine way (Eagly & Carli, 2007; Eagly, Johannesen-Schmidt, & van Egen, 2003).

In sum, women may conform somewhat more than men, although these differences are small and limited to situations in which the responses are made publicly. In terms of leadership effectiveness, there is no evidence that men, overall, make better leaders than do women. However, men do better as leaders on tasks that are “masculine” in the sense that they require the ability to direct and control people. On the other hand, women do better on tasks that are more “feminine” in the sense that they involve creating harmonious relationships among the group members.

Cultural Differences

In addition to gender differences, there is also evidence that conformity is greater in some cultures than others. Your knowledge about the cultural differences between individualistic and collectivistic cultures might lead you to think that collectivists will be more conforming than individualists, and there is some support for this. Bond and Smith (1996) analyzed results of 133 studies that had used Asch’s line-judging task in 17 different countries. They then categorized each of the countries in terms of the degree to which it could be considered collectivist versus individualist in orientation. They found a significant relationship: conformity was greater in more collectivistic than in individualistic countries.

Kim and Markus (1999) analyzed advertisements from popular magazines in the United States and in Korea to see if they differentially emphasized conformity and uniqueness. As you can see in [the figure], “Culture and Conformity,” they found that while U.S. magazine ads tended to focus on uniqueness (e.g., “Choose your own view!”; “Individualize”) Korean ads tended to focus more on themes of conformity (e.g., “Seven out of 10 people use this product”; “Our company is working toward building a harmonious society”).



Culture and Conformity

Kim and Markus (1999) found that U.S. magazine ads tended to focus on uniqueness whereas Korean ads tended to focus more on conformity.

In summary, although the effects of individual differences on conformity tend to be smaller than those of the social context, they do matter. And gender and cultural differences can also be important. Conformity, like most other social psychological processes, represents an interaction between the situation and the person.

Psychological Reactance

Conformity is usually quite adaptive overall, both for the individuals who conform and for the group as a whole. Conforming to the opinions of others can help us enhance and protect ourselves by providing us with important and accurate information and can help us better relate to others. Following the directives of effective leaders can help a group attain goals that would not be possible without them. And if only half of the people in your neighborhood thought it was appropriate to stop on red and go on green but the other half thought the opposite—and behaved accordingly—there would be problems indeed.

But social influence does not always produce the intended result. If we feel that we have the choice to conform or not conform, we may well choose to do so in order to be accepted or to obtain valid knowledge. On the other hand, if we perceive that others are trying to force or manipulate our behavior, the influence pressure may backfire, resulting in the opposite of what the influencer intends.

Consider an experiment conducted by Pennebaker and Sanders (1976), who attempted to get people to stop writing graffiti on the walls of campus restrooms. In some restrooms they posted a sign that read “Do not write on these walls under any circumstances!” whereas in other restrooms they placed a sign that simply said “Please don’t write on these walls.” Two weeks later, the researchers returned to the restrooms to see if the signs had made a difference. They found that there was much less graffiti in the second restroom than in the first one. It seems as if people who were given strong pressures to not engage in the behavior were more likely to react against those directives than were people who were given a weaker message.

When individuals feel that their freedom is being threatened by influence attempts and yet they also have the ability to resist that persuasion, they may experience psychological reactance, *a strong motivational state that resists social influence* (Brehm, 1966; Miron & Brehm, 2006). Reactance is aroused when our ability to choose which behaviors to engage in is eliminated or threatened with elimination. The outcome of the experience of reactance is that people may not conform or obey at all and may even move their opinions or behaviors away from the desires of the influencer.

Reactance represents a desire to restore freedom that is being threatened. And an adult who feels that she is being pressured by a car sales representative might feel the same way and leave the showroom entirely, resulting in the opposite of the sales rep’s intended outcome.

Of course, parents are sometimes aware of this potential, and even use “reverse psychology”—for example, telling a child that he or she cannot go outside when they really want the child to do so, hoping that reactance will occur. In the musical *The Fantasticks*, neighboring fathers set up to make the daughter of one of them and the son of the other fall in love with each other by building a fence between their properties. The fence is seen by the children as an infringement on their freedom to see each other, and as predicted by the idea of reactance, they ultimately fall in love.

In addition to helping us understand the affective determinants of conformity and of failure to conform, reactance has been observed to have its ironic effects in a number of real-world contexts. For instance, Wolf and Montgomery (1977) found that when judges give jury members instructions indicating that they absolutely must not pay any attention to particular information that had been presented in a courtroom trial (because it had been ruled as inadmissible), the jurors were *more* likely to use that information

in their judgments. And Bushman and Stack (1996) found that warning labels on violent films (for instance, “This film contains extreme violence—viewer discretion advised”) created more reactance (and thus led participants to be *more* interested in viewing the film) than did similar labels that simply provided information (“This film contains extreme violence”). In another relevant study, Kray, Reb, Galinsky, and Thompson (2004) found that when women were told that they were poor negotiators and would be unable to succeed on a negotiation task, this information led them to work even harder and to be more successful at the task.

Finally, within clinical therapy, it has been argued that people sometimes are less likely to try to reduce the harmful behaviors that they engage in, such as smoking or drug abuse, when the people they care about try too hard to press them to do so (Shoham, Trost, & Rohrbaugh, 2004). One patient was recorded as having reported that his wife kept telling him that he should quit drinking, saying, “If you loved me enough, you’d give up the booze.” However, he also reported that when she gave up on him and said instead, “I don’t care what you do anymore,” he then enrolled in a treatment program (Shoham et al., 2004, p. 177).

Person, gender, and cultural differences in conformity are important in a law enforcement context for the reasons discussed below.

Citizens may not obey a lawful order by a police officer when the officer uses power lawfully. This may occur when the citizen perceives the officer is eliminating the citizen’s right to engage in the behavior they wish to. This, according to Dr. Rajiv Jhangiani and Dr. Hammond Tarry, may lead people not to conform, or obey an order, and may indeed lead the citizen to oppose the officer who is trying to make a lawful order.

Furthermore, while person variables may predict conformity, situational variables are usually more important. This would suggest that the behavior and action of the officers may have a strong role to play in determining whether or not the citizen will conform.

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- Culture and Conformity © "Principles of Social Psychology"

8.5: Ethical Issues during an Investigation

Caseload Management

Law enforcement officers who are in investigative roles are often confronted with ethical issues during the investigative process. Officers who have a heavy caseload are expected to determine which case to investigate at the expense of other cases. Officers often rely on the solvability of the case, and concentrate on that case, which means that cases that may be slightly more difficult to solve are never solved. This is a consequentialist perspective, in which the end result is seen as the most important aspect of the investigation.

Some officers may do an assessment of the victim, coupled with other investigative variables that allow the officer to decide which case is ultimately more serious and more important to work on. The difficulty with this approach is that the officer's values are taken into account and are weighed against the rights of all victims. Problems arise when victims who may not be considered high on the investigator's valued list (for example an officer who does not value sex-trade workers), do not receive the same level of service that other, favoured victims do. Officers must be cognizant of their personal biases and ensure that they consider other variables, such as solvability, continuation of the offence, serial offences of the suspect, seriousness of the injury, and perishable evidence.

Lies, Deception, and Tricks

Investigators walk a line between being tenacious in their investigations and being overzealous in refusing to give up a case that ought to be closed due to a lack of evidence. Officers must be aware not to allow their personal feelings to interrupt objective, critical and reflective consideration of the case. Investigators should routinely ask themselves how a case would look in court when all the facts are known by the defence counsel and the judge. Would their credibility suffer as a result? If the answer is yes, investigators need to address this and decide whether they should continue along their investigative path, or stop.

The Supreme Court of Canada does permit officers to use "tricks" to solve crimes. In *Regina v. Rothman*, the Supreme Court ruled that police can use tricks, so long as they do not shock the community. Such shocking or "dirty" tricks include things such as impersonating a priest or a lawyer to gain a covert confession.

Tricks that officers are able to use include posing as gangsters or drug dealers in undercover operations in order to obtain covert confessions. Other tricks that officers may use are lies in interviews to bond with subjects. Lying in law enforcement is allowed in certain circumstances, but is strictly forbidden in other circumstances. These include, but are not limited to:

- Creating evidence or planting evidence
- Lying in court (testifying)
- Lying in reports, notebooks, or other administrative or investigative reports
- Lying in any administrative or civil proceedings
- Lying to fellow officers or supervisors

The scope for lying is very narrow and it should be used sparingly for serious investigations by officers who know the boundaries and what would be accepted in court. However, the ethics around lying lead some officers to discount it as a tactic. Some of the reasons they cite for the unacceptability of lying include:

- Lies destroy confidence in the police. Both the suspect and the community at large will not believe even truthful information brought forward in the future by an officer who uses lying.
- Lies are immoral because they are an illegitimate means to an ends. It goes against Kant's categorical imperative that we should never lie, regardless of the consequences of not getting a confession in what may be an important case.
- The courts may disallow the evidence because the courts may determine that the evidence was obtained through tactics not warranted under *Regina v. Rothman.*
- The officer's religious beliefs and scripture prohibit or strongly discourage lying for interviews and criminal investigations.

Some officers have little issue with lying to suspects, taking a utilitarian and legalistic approach. They argue the following:

- It is for the greater good because lying justifies the end result (a classic utilitarian perspective that maximizes happiness).
- The positive consequence of lying to find evidence outweighs the consequence of not lying and thus not retrieving evidence.

Other officers take a different perspective, arguing:

- It is their duty to do what they can to solve a crime. However, lying does not follow Kantian logic because the act itself is wrong. The duty is to solve crime, not to lie. Furthermore, Kant would argue that the officer is using the person as a means to an end to get a confession.
- Solving a crime means you have to play at the criminal's moral level at times, and that as long as the evidence is admissible, anything goes. This perspective brings officers dangerously close to crossing the ethical line, venturing into noble-cause corruption. Officers must, in this case, be aware of the limits allowed by the court and not be tempted to surpass these limits.

Other investigative tricks include undercover operations ranging from simple stolen property investigations to elaborate and lengthy operations for murder and drug conspiracies. Essential in undercover operations is the need for an undercover officer to establish credibility with the suspect or target. In doing so, the officer may have to commit, or appear to commit, a crime. This may include stealing or damaging property, selling and handling drugs, or selling and handling restricted weapons. The actions of undercover officers have limits, such as officers not engaging in drug use, crimes of violence, or sex-related activities. Section 25.1 of the Criminal Code protects officers against prosecution as long as they are in the lawful execution of their duty and can account for the need to "break the law."

8.6: Gratuities

For the purpose of discussion surrounding ethics in law enforcement, a gratuity is the gift of an item to another person based solely on their occupation. A gratuity is most often given to officers by workers in the service industry, such as waiters and bartenders. Additionally and problematically, gratuities are given for services expected and services already rendered; free coffees for law enforcement officers often come with strings attached, or at the very least, as an insurance policy to gain favours in the future should the need arise. A cynic would argue that offering free coffee is not an altruistic gesture, but rather an insurance policy for security in the future. A law enforcement officer who receives free coffee from a restaurateur will likely be expected to provide extra service to the restaurant should it be required. Conversely, a law enforcement officer who removes a drunk person from a restaurant can often expect a free coffee after the drunk has been removed. Four main reasons that gratuities are given to law enforcement officers are:

1. Because of the theory of reciprocity, where people feel they owe something to the giver. In a law enforcement context, this will be collected after the gift (the free coffee) is given.
2. To ensure future cooperation, where the gift-giver may want the services of the officer in the future. This can include gaining biased support of officers in spite of the facts surrounding an issue.
3. To use the presence of police officers, attracted by free coffee, as an advertisement to potential patrons that the environment is safe.
4. To use the presence of police officers, attracted by free coffee, as a way to dissuade potentially problematic patrons from patronizing the restaurant.

Gratuities are often seen as the first step on the slippery slope toward major corruption (Coleman, 2004), and it is for this reason that accepting gratuities is always frowned upon by law enforcement agencies. Coleman argues that while each step is, on the slippery slope, individually insignificant, it is the cumulative effect of the steps that draws and pushes officers to more serious forms of unethical behaviours. Once an officer starts on the slippery slope, pne step leads to another: the coffee leads to a coffee and a donut, which eventually leads to a free dinner. The cumulative effect of these gratuities, according to Coleman (2004), leads to a situation that is difficult for the officer to stop doing or turn around.

Coleman (2004) also identifies an absolutist perspective in which the free-coffee gratuity is viewed the same as receiving a thousand dollar bribe. They are both wrong regardless of the financial gain received by the officer. It can be argued that the intent of the officer should be considered. If the officer’s intent in receiving the free coffee is to build community cohesion and better relations with the police, that should always be considered. However, if the intent is unethical, such as to save money by using the officer’s power position, then this too should be considered.

In a controversial paper, Kania (1998) proposes that the police should be allowed to exercise discretion and decide the appropriateness of receiving minor gratuities such as free coffee. This, he argues, is similar to other professions and is a way to foster community relations; refusing minor gratuities such as coffee strikes at the core of building bridges with the community and can have an adverse effect on relationships. Kania (1998) offers little more than anecdotal evidence of this and recalls incidents in his own policing career in which he observed noble officers rejecting free coffee to the consternation of the provider, thus creating a rift between police and the community.

The most balanced view on gratuities belongs to Pollock (2007), who draws a sharp distinction between a gift and a gratuity. The gift refers to an exchange in which there are no strings attached, whereas a gratuity would likely be given for future favour, however subtle (Pollock, 2007). The difficulty is in determining what is and is not a gift versus a gratuity. Pollock utilizes ethical systems to make this determination.

A deontological perspective would suggest that if all businesses were to give all police gratuities, the ramifications would not be desirable (Pollock 2007). In essence, Rawls’ (1999) principles of justice would be subverted by a system in which only those who pay are entitled to service. Pollock (2007) also suggests from a formalism perspective that the motive of the giver would be paramount and that the giver who has good intentions would make the gift morally permissible. Conversely, utilitarianism would suggest that the negatives outweigh the positives and, as a result, the gratuities would be unethical; however, act utilitarianism would judge each act on its own merits, allowing for gratuities to be accepted when the consequences are good for all concerned (Pollock, 2007). Rule utilitarianism, on the other hand, would determine that the long-term consequences of gratuities would be damaging to more people than they would aid, and therefore would not be morally permissible (Pollock, 2007).

Kania's (1998) perspective would fall under an ethics of care approach, in which gratuities would be ethical if there were a positive social relationship already formed between the giver and the taker. The ethics of virtue would be concerned only with the virtues of the receiving officer (Pollock, 2007).

In conclusion, while other professions, such as doctors, are free to receive gratuities, law enforcement officers must be careful when receiving gratuities for the following reasons:

- Police are professionals and professionals don't take gratuities.
- People will expect different treatment.
- Gratuities could erode public confidence.
- There is the slippery slope potential; the receipt of gratuities can be a gateway for more corruption.
- Police get paid by the public to treat everyone equally.

8.7: Use of Force Philosophy Theory and Law

Introduction

One of the most contentious issues facing peace officers, including police, corrections and sheriffs, is the use of force on citizens being arrested or citizens under an officer's custodial care. Officers who use force are subject to scrutiny in the following ways:

1. Court. In the courts (criminal and civil), officers who use force, where it is determined the force is unreasonable given the totality of the circumstances, are subject to criminal charges or lawsuits in civil court. The force used by the officers does not have to result in injury to the subject for charges or civil action to result. The key is if the use of force is determined to be unreasonable given the totality of the circumstances. Charges in criminal court can range from first degree murder to assault. In civil court, officers may be held accountable for their actions and be found liable for the damages they have caused.
2. Internal Investigations. Officers may be subject to investigations conducted by their own police department's investigators within the department's professional standards unit. The investigation will determine whether a criminal offence has been committed, but also whether the officer has breached the *Police Act* and/or departmental policy and procedures. When it has been determined that an officer has breached the *Police Act* or a departmental policy, the consequences may range from a verbal reprimand to suspension to termination of employment.
3. Media Coverage. With the prevalence of cameras in the community, officers' actions will often be captured on video. Even the most legitimate use of force can appear to be ugly, unnecessary, overly violent, and troubling. Video coverage of a use of force event is often biased and misrepresentative of the whole incident, or has been taken out of context. The November 6, 2014 incident, in which a Vancouver police officer broke a car window of a motorist to arrest the driver, was portrayed as excessive use of force against a driver for a driving violation. The police state that the window was broken after the driver failed to comply with the officer, and the officer broke the window to allow him to make a drug arrest in a potentially dangerous situation. The depiction by the media was somewhat balanced, including views from the police. However, the dissenting view in the article suggested that this type of action would eventually lead Canada to become a 'totalitarian' country. The officer's picture was presented in the media, regardless of the final findings of the investigation into the levels of force the officer used. While media is an excellent vehicle for accountability, officers must be mindful that their actions will be publicized and ensure that they appear in a positive light, exercising proper discretion, control, and minimal use of force.

Other Officers. Officers who use excessive force will often find themselves the subject of a complaint by another officer who witnessed the use of force action. Contrary to the perspective of many outsiders to law enforcement, officers will report and initiate a formal complaint against other officers who use excessive force. Instead of formally reporting the officer, other officers who witness excessive force may choose not to work with the officer or advise other officers not to work with the officer. While this is not a desirable outcome, officers using excessive force must be aware that other officers are scrutinizing their conduct, and that the repercussions can range from facing criminal charges to being ostracized.

History of Force in a Sovereign State

The use of force is an unfortunate but necessary component of state governance. Without the ability of the state to use force legitimately, the state would fall into anarchy or, as Hobbes suggests, a state of nature. Force should only be used by the state in a limited fashion and in limited circumstances. Max Weber observed that the state should be the only source that uses force legitimately, and that the use of force must be a tool available for the state to ensure it survives (Waters, 2015). Weber suggests that there is a need for violence to be used against citizens periodically by the state in order for a sovereign state to ensure order (Waters, 2015).

Nozick (1974) concurs, suggesting that the state must claim monopoly on the legitimate use of force and the ability to punish those who use force illegitimately. In the end, for a state to function, force is expected to be used against the citizens of that state from time to time. The inevitable tension arises when trying to determine the actions that constitute legitimate force as opposed to illegitimate force.

The police use force at times as part of the social contract in which force is required to ensure peace. As citizens, it is ironic that we expect the use of force to be used at times to ensure peace and keep us from a state of nature, however, we collectively agree that there are times in which force will be used against anyone who threatens the peace, or who has victimized someone else. The consequences of not allowing the government, and by extension the police, to create and execute laws, would be a society that would be, as Locke describes "solitary, poor, nasty, brutish and short" (Hobbes, 1950, p. 104). However, the costs of the social contract can at times lead to abuse of authority, in which the contract is abused on behalf of the government and police.

Governments, and, in particular, the police are in a position under the social contract theory to abuse this trust under the guise of protecting society, and must be overseen by accountability measures to ensure that the force used is appropriate and not excessive. Force, therefore, must be used against citizens only when appropriate and with the consent of society as a whole. In support of the notion of social contract theory, Sir Robert Peel's nine principles include the necessity to recognize that the use of force by the police is at times necessary. While Peel's idea was to have a non-military force keep public order, it was necessary to account for the need to use force when necessary. Peel recognized that force must be a last resort, and used only to the minimum required to achieve police objectives.

The issue with Peel's ideas is the subjective nature determining the action considered minimal force. Police officers in Canada differ from officers in the United States and the UK. Officers in the USA are confronted on a daily basis with a culture that considers the second amendment (Amendment 11: 'A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed') a sacred right. Interpretation of this amendment entitles Americans to possess firearms for lawful purpose. In the United States, gun possession is common, and police must be mindful that many persons they deal with may be in possession of a gun. In the UK, gun ownership is uncommon, and police do not expect to encounter a person in possession of a gun; as a result, the level of force they use on a day-to-day basis is expected to be lower than that used by their American counterparts.

Canadian police officers' use of force would fall somewhere between the UK and the US. Canadian police officers are required to be diligent when interacting with citizens, while remaining cognizant that there are fewer guns in Canada than the US, but more than in the UK.

In using force, officers are provided with a range of tools that are at times controversial. Each of these tools must be used sparingly, and only when deemed necessary against subjects who pose threats to themselves or others. Conducted energy weapons, more commonly referred to as Tasers, are an example of a weapon used by police officers that has garnered much controversy. The issue of 'creepage' is a concern. This is the notion that, when officers are given and trained in a compliance tool, they tend to use it too liberally, and only once there is official follow up in a judicial inquiry do they become more judicious in the use of the weapon. We also saw this happen when OC, or pepper spray, was introduced. The use of such tools increases in frequency. This trend is prevalent, until there is official oversight admonishing the liberal use of the tool. The use of Tasers, in cases in which the subject is not a threat to the officer or to another person, constitutes torture, as defined by UN Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment. As such, Tasers cannot be used to modify subject behavior; for example, a Taser should not be used when a subject is loudly expressive and angry. Only when the officer feels the subject is a threat and there are no other lesser means available should the Taser be deployed.

A police officer is inherently at risk of being the victim of violence, and the state has a responsibility to minimize the risk of violence. Likewise, police officers in democratic nations have rights as employees and as individuals, and as such they are entitled to do what they must to ensure their safety (Smith, 2009).

Hicks (2004) further attributes the abilities of police in modern democracies to use lethal force as per the ancient traditions of the 'Just War Doctrine' (jus ad bellum), which "was utilized to draw a moral boundary between those wars deemed appropriate and necessary and those uses of force deemed morally reprehensible." (Hicks,2004: 256). Nations considering waging a just war must abide by the following criteria, according to Hicks (2004: 258):

'(a) competent authority, indicating the need for a sovereign entity to wage war versus a single individual; (b) just cause, which incorporates the proportionality between the just cause and the means of pursuing it; (c) just intent, of which the ultimate aim is peace; (d) last resort, indicating an absence of the availability of other means of resolving the conflict; and (e) reasonable hope of success, a requirement that any morally just conflict must have a semblance of hope for achieving a peaceful resolution.'

These criteria closely align with the use of force continuum developed within the use of force models that officers in the USA must adhere to. Hicks (2004) feels that force is necessary only when it can be considered just, and thus provides the moral underpinnings that enable war. The requirements for a just war are therefore similar in nature to use of force models that are used by police officers. While Canada does not have a Use of Force Continuum, Canada has a National Use of Force Framework that contains the National Use of Force Model (graphic).

Use of Force Theory and Background

Police officers in Canada have a common law duty to protect life and property. To fulfill this duty, they must at times use force; to not use force to protect life is a dereliction of duty that may result in the officer being charged under the *Police Act* or under the

Criminal Code. While the use of force is not expressly sanctioned under common law, it includes an understanding that force may at times be required.

Police officers in Canada are also authorized to use force by federal statute, provincial statute, and departmental policy and procedure. The theory of use of force is guided by the National Use of Force Framework.

History

Graphic models describing use of force by officers first began to appear in the 1970s in the United States. These early models depicted a rather rigid, linear-progressive process, giving the impression that the officer must exhaust all efforts at one level prior to being allowed to consider alternative options. A frequent criticism of these early models was that they did not accurately reflect the dynamic nature of potentially violent situations, in which the entire range of subject behaviour and police force options must be constantly assessed throughout the course of the interaction.

In Canada, use of force models first began appearing in the 1980s. As part of a comprehensive use of force strategy, Ontario developed a provincial use of force model in 1994; some provinces and the Royal Canadian Mounted Police followed suit shortly thereafter.

In 1999, the Canadian Association of Chiefs of Police (CACP) endorsed an initiative involving a proposal to develop a national use of force model. In April of the same year, use of force experts and trainers from across Canada met at the Ontario Police College to create one model encompassing the best theory, research and practice for officers' use of force. The model would be dynamic, support officer training, and facilitate professional and public understanding of officer use of force.

Core Values of the Use of Force Framework

The use of force framework revolves around a series of core principles with which all strategies, tactics and protocols must align. For example, any new tactic developed by use of force experts for officer safety must align with these values. The following values form the framework of the use of force model:

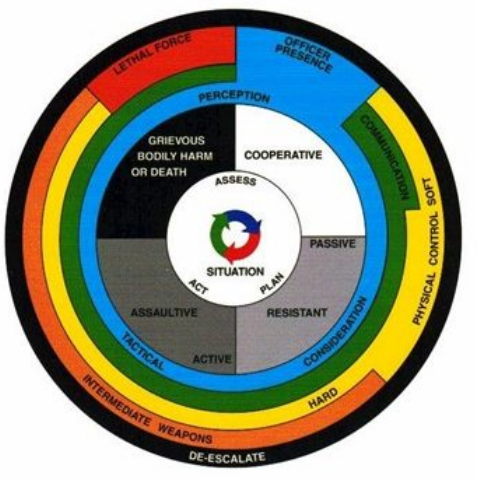
- The primary responsibility of a peace officer is to preserve and protect life.
- The primary objective of any use of force is to ensure public safety.
- Police officer safety is essential to public safety.
- The National Use of Force Model does not replace or augment the criminal, civil and case law; the law speaks for itself.
- The National Use of Force Model was constructed in consideration of (federal) statute law and current case law.
- The National Use of Force Model is not intended to dictate policy to any agency.

The Canadian Charter of Rights and Freedoms clearly establishes that everyone has certain basic rights. Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Police officers are duty-bound to adhere to this Charter. However, to implement the mandate given to police officers within the limits set by law, it may become necessary for an officer, in some circumstances, to breach certain rights and individual liberties. Further, while engaged in the duties of policing, such as maintaining law and order, preventing crime, and protecting the public and/or officers themselves, police officers may be called upon to use force.

Canadian Society specifically acknowledges that in certain circumstances police officers are justified, on reasonable grounds, to use the appropriate level of necessary force in order to apply or execute the law. The officer is protected by law, as long as his or her actions are justifiable, and that the use of force remains in accordance with the law, human rights, professional ethics, and organizational and social values.

The National Use of Force Model

The National Use of Force Model (NUFM) was developed to assist in the training of police officers, and as a reference when making decisions and explaining officers' actions with respect to the use of force. The model does not justify an officer's actions; rather it identifies to officers the steps they must take to ensure that the actions they take are appropriate and measured. The use of force model is a tool that assists officers in knowing what level of force is appropriate.



Situation:

With every situation, an officer must do three things, before, during, and after the incident is concluded:

Assess: The officer must consider all elements of the situation. He/she needs to know the nature of the call, the suspect(s) involved, if he/she has backup available, what his/her physical abilities are, what the terrain at the location will be like, weather conditions, and so on.

Plan: The officer must formulate an action plan, bearing in mind that all situations are dynamic and constantly changing. Remember, every action has a reaction, so contingency plans must also be considered.

Act: Once on scene, the officer must put his/her plan into action.

It is important to remember that oftentimes officers must assess, plan, and act in a fraction of a second, as in the case of a spontaneous assault on the officer.

Subject Behaviour

The level of force that officers use is contingent upon the subject's behavior. Subject behavior is categorized in the following levels, ranging from complete cooperation to potentially lethal acts:

Cooperative: This type of subject is referred to as "yes people" because oftentimes seeing the police, or a simple gesture or request to leave will achieve voluntary compliance.

Passive Resistance: Subjects displaying this type of behavior do not do anything to hinder the police, but they also do not do anything to help the police. They may simply become dead weight and are typically seen at sit-in type protests.

Active Resistance: Subjects who actively resist will typically pull arms away from controlling officers, run away, hold onto fixed objects, and brace themselves in doorways or "turtle" by pulling their arms into their chest area, resisting officers' attempts to straighten the arms.

Assaultive: Assaultive subjects will strike or kick at officers. They may spit, swear, or yell threats at officers and display various pre-assaultive cues that signal a possible physical assault on the officer, including, but not limited to:

- ignoring the officer;
- repetitious questioning;
- aggressive verbalization;
- emotional venting;
- refusing to comply with lawful request;
- ceasing all movement;
- invasion of personal space;
- adopting an aggressive stance; and
- hiding.

Grievous Bodily Harm/Death: Subjects in this category are attacking the officer with intent to injure or kill the officer, with or without weapons. This is the highest and most dangerous level of subject behavior and may result in the subject's death.

Response Options

Officers have five response options available to them. It is important to remember that, while these are not levels of force, each category of response options has levels of force, ranging from implied to lethal force.

Officer Presence: There are many elements of officer presence, including the officer's appearance in uniform, his/her perceived level of fitness, size, sex, number of officers, available equipment, etc. Included in this category are perception (all officers see a given situation uniquely) and tactical considerations (any available options to confront the situation, see below).

Communication: This category includes verbal and non-verbal communication; once the communication commences, it should continue throughout the incident.

Physical Control: Physical control is sub-divided into two categories: soft and hard. Soft physical control includes joint locks and manipulations, and takedowns. Hard physical control techniques include strikes, stuns, kicks, and neck restraints. All techniques in this category are typically performed with empty hands, and were formerly referred to as Empty Hand Control Tactics. These techniques range from implied to deadly force in context.

Intermediate Weapons: These "gadgets" that are available to police officers include: Conducted Energy Weapons, OC Sprays and other chemical agents, batons, impact energy weapons (ARWEN, bean bag, etc.), vehicles, weapons of opportunity, noise/flash diversionary devices, and the list goes on. As with other response options, levels of force in this category range from implied to deadly force.

Lethal Force: This category includes all of the other options available in the preceding categories, as well as the various firearms available to the police.

Perception and Tactical Considerations

Perception and Tactical Considerations are two separate factors that may affect the officer's overall assessment. Because they are viewed as interrelated, they are graphically represented in the same area on the model. They should be thought of as a group of conditions that mediate between the inner two circles (Subject Behavior and Response Options) and the responses available to the officer.

The mediating effect of the Perception and Tactical Considerations circle explains why two officers may respond differently to the same situation and subject. This is because tactical considerations and perceptions may vary significantly from officer to officer and/or agency to agency. Two officers, both faced with the same tactical considerations, may assess the situation differently and therefore respond differently, because they possess different personal traits or have dissimilar agency policies or guidelines. Each officer's perception will directly impact their own assessment and subsequent selection of tactical considerations and/or their own use of force options.

Perception

How an officer sees or perceives a situation is, in part, a function of the personal characteristics he or she brings to the situation. These personal characteristics affect the officer's beliefs concerning his or her ability to deal with the situation. For various reasons, one officer may be confident in his or her ability to deal with the situation, and the resulting assessment will reflect this fact. In contrast to this, another officer, for equally legitimate reasons, may feel that the situation is more threatening and demands a different response. The following list includes factors unique to the individual officer, which interact with situational and behavioral factors to affect how the officer perceives and ultimately assesses and responds to a situation.

Factors that may be unique to the individual officer include but are not limited to:

- strength/overall fitness;
- personal experience;
- skill/ability/training;
- fears;
- gender;
- fatigue;
- injuries;

- critical incident stress symptoms;
- cultural background; and
- sight/vision.

Tactical Considerations

An officer's assessment of a situation may lead to one of the following tactical considerations. Conversely, these same factors may impact an officer's assessment of a situation.

- disengage and consequences**;
- officer appearance;
- uniform and equipment;
- number of officers;
- availability of backup;
- availability of cover;
- geographic considerations;
- practicality of containment, distance, communications;
- agency policies and guidelines; and
- availability of special units and equipment: canine, tactical, helicopter, crowd management unit, command post, etc.

** Note: An officer's primary duty is to protect life and preserve the peace, however, when a situation escalates dangerously or when the consequences of continued police intervention seriously increase danger to anyone, the option to disengage may be considered appropriate. It is also recognized that, due to insufficient time and distance or the nature of the situation, the option to disengage may be precluded. If the officer determines the option to disengage to be tactically appropriate, the officer may consider disengagement with the goal of containment and consideration of other options such as seeking alternative cover, waiting for back-up, specialty units, etc.

The National Use of Force Model (NUFM) represents the process by which an officer assesses, plans and responds to situations that threaten public and officer safety. The assessment process begins in the center of the model with the Situation confronting the officer. From there, the assessment process moves outward and addresses the Subject Behavior and the officer's Perceptions and Tactical Considerations. Based on the officer's assessment of the conditions represented by these inner circles, the officer selects from the use of force Response Options contained within the model's outer circle. After the officer chooses a response option s/he must continue to Assess, Plan and Act to determine if his or her actions are appropriate and/or effective, or if a new strategy should be selected. The whole process should be seen as dynamic and constantly evolving until the Situation is brought under control.

Authority to use force separates law enforcement officials from other members of society, and the reasonable use of force is central to every officer's duties. The National Use of Force Model provides a framework that guides the officer in that duty.

Risk Assessment

An officer uses a risk assessment process to choose a response option. In order to choose the appropriate level of force for the situation before them, an officer must continue risk assessment throughout the situation. Observing only the demonstrated behavior of the subject and any related threat cues may not always be enough to justify using a particular level of force. There may be other times when valuable risk assessment information can be gathered and analyzed, prior to responding.

Stages of Risk Assessment

Risk Assessment should include two factors that officers must take into consideration:

1. The likelihood someone or something might be hurt or damaged.
2. Whether the police officer should intervene given the seriousness of the harm or damage that appeared imminent.

These are often difficult decisions, and the more adept the officer is at assessing risk, the more readily and appropriately they will respond under urgent circumstances.

Assessing the risk the officer may be exposed to during a call may begin very early in the evolution of the call.

- The officer should gather as much information as possible when the call is first received.
- The who, what, when, where and why of the call.
- Continue while enroute to the call.

- Upon arrival at the scene.
- During the officer's approach while at the scene.
- While entering onto the immediate scene.
- While in the interior of the scene.
- While exiting the scene.
- While handling prisoners at the scene and in a jail setting.

The officer's assessment of the risk will constantly evolve as more information is received. The closer to the scene the officer gets, the better their assessment may be. While on scene they must continue to assess the risk. If they have controlled the risk, they must maintain control with the effective method. They must not afford the subject the opportunity to re-escalate. Even while exiting the scene, the officers should monitor the possible risks that may occur from bystanders or associates. In some instances, the officer(s) may be afforded very little initial risk assessment information. Spontaneous attacks, by their nature, afford the officers very little initial risk assessment opportunities.

Legal Justification for the Use of Force

Officers may have plenty of operational discretion, however in use of force, discretion is limited by the criminal code. An officer's ethical values, in relation to use of force, must closely align with the criminal code and the legal parameters set out. If the officer's values do not align, the officer is destined for either legal consequences for excessive use of force or injury for not using the appropriate level of force. The law is very clear regarding the limits placed on an officer's use of force and the legal consequences for officers who use excessive force. The use of force must satisfy the following two tests. It must be:

1. Subjectively reasonable (based on the officer's genuine thoughts, feelings and beliefs). Here the officer is given some leeway, in that they may have mistakenly used force against an unarmed subject in the belief that the subject was armed. This may be because the subject appeared to be reaching for a gun in their pocket after acting in a suspicious manner. The courts may believe that this was subjectively reasonable.
2. Objectively reasonable (facts that would convince an ordinary reasonable person that the officer acted reasonably). Here the courts may compare the officer against what would be expected of a reasonable person. In this way the courts determine whether or not the actions are consistent with those of a reasonable person.

What the courts actually require is for judges to apply the "doppelganger test." Here, a judge will "go" with the officer from the time the officer was first sent to the place where the incident took place, and consider that officer's training and experience, to determine if the officer acted reasonably. The judge must then consider what a reasonable officer with the same training and experience as the officer who took action would have done. This is significantly different from a judge considering what he or she would have done.

The discretion police have regarding the use of force is controlled by law. The primary authorization in law that allows police officers to legally use force on a person is contained in Section 25 of the *Criminal Code*. It reads as follows:
25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
(*a*) as a private person,

(*b*) as a peace officer or public officer,

(*c*) in aid of a peace officer or public officer, or

(*d*) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm [1] (Grievous bodily harm means serious hurt or pain. In determining a defense under this section the jury must be directed to the circumstances as they existed at the time that the force was used, keeping in mind that the officer could not be expected to measure the force used with exactitude) unless the person believes on reasonable grounds that

it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(*a*) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(*b*) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(*c*) the person to be arrested takes flight to avoid arrest;

(*d*) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(*e*) the flight cannot be prevented by reasonable means in a less violent manner.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act*, if

(*a*) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and

(*b*) the escape cannot be prevented by reasonable means in a less violent manner.

Police officers are required to discharge various duties authorized by legislation, such as preserving life and protecting property, preserving the peace, enforcing the law and preventing crime. Under Section 25(1) of the Criminal Code of Canada, police must satisfy three elements to justify the use of force:

1. Be "required or authorized" by law to do "anything" in the "administration or enforcement" of the law.
2. The police officer must act on reasonable grounds.
3. The police officer can only use "as much force as is necessary" for the purpose in question.

Additionally, the *Criminal Code* contains the following sections dealing with the use of force, not only by peace officers, but also by members of the public:

Section 27 – Prevention of a crime

Section 30 – Prevention of a breach of the peace

Section 31 – Actual breach of peace

Section 32 – Suppressing a riot

Section 34 – Self-defense against an unprovoked assault

Section 35 – Self-defense in case of aggression (property)

Section 43 – Correction of a child by force

Section 45 – Surgical operations

When considering if the use of force can be justified under law, legal and effective methods of force occur when:

- the method is reasonable;
- it is necessary; and
- it is not overly aggressive under the circumstances presented.

In order for police to use force to control a subject, three elements **MUST** exist.

- **A –** Did the suspect have or reasonably appear to have the **ABILITY** to cause injury or death to the officer or others?
- **I –** Did the suspect **demonstrate INTENT?** Did words and/or actions lead the officer to believe the suspect had the intent to cause injury or death to the officer or others?
- **M –** Did the suspect have the **MEANS** to deliver the perceived threat?

If the suspect demonstrates the above noted elements, the officer is justified in using the force option most appropriate to control the suspect. There are several considerations that a police officer must be aware of when controlling the suspect, such as:

- Was there a lower level of force available to gain control?
- Did or could the officer identify he or she as a police officer?
- Did or could the officer provide the suspect(s) the opportunity to de-escalate his/her level of resistance towards the officer? (A warning) There is an onus on the officer, if the situation allows, to provide the opportunity to de-escalate. If the suspect de-escalates, the member must de-escalate their use of force.
- Did the officer identify the proper risk before intervening accordingly?
- Was the subject isolated? What would the officer hit if the officer missed the suspect?

If the officer(s) involved cannot reasonably articulate the reason(s) for their use of force actions, Section 26 of the *Criminal Code* (excessive force) may apply:

26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.

Theory Meets Practice and Case Law – Subject Behaviour

Subject behavior can be displayed overtly through physical acts of aggression and/or violence toward others, or covertly through gestures, changes in posture, verbal statements, states of intoxication, inattentiveness, feigned compliance, and the list goes on.

A guiding principle in the use of force that officers follow when classifying subject behavior is that if the officer detects two or more pre-assaultive cues, the officer can intervene with force prior to an overt physical assault by the subject. To justify his/her actions as self defense in a civil action, the officer must prove two elements:

1. The circumstances warranted defensive action.
2. That the force used was not excessive.

When judging the level of force used by an officer, case law anticipates that the use of force is not to be measured to a "nicety" and that reasonableness "fails to be determined in light of the circumstances and not through the lens of hindsight". What this means is that hindsight is not to be used by the trier of fact in determining the reasonableness of an officer's use of force. While these are both important points, special consideration ought to be given to the second point. Those who will judge the use of force actions of the police: lawyers, judges, supervisors, media, peers, family, and the public – generally forget or simply are not aware of this standard. This can be referred to as the "would have, could have, should have" principle.

We see the hindsight principle being abused more and more with the availability of video recordings. Members involved in force-related incidents usually provide duty reports and/or statements without the benefit of having seen video of the incident, and they are only required to answer questions about their actions and corresponding statements during a frame-by-frame review and analysis of the video. Often the first opportunity for officers to see the video is at trial, and their testimony may conflict with their initial reports and statements.

In a recent report published in the *Force Science News*, Dr. Bill Lewinski asserts that officers should be allowed to review video footage of their critical incident and conduct a walk-through of the scene prior to giving their official statement of account. Lewinski says, "After a high-stress experience, such as a major force confrontation, an officer's memory of what happened is likely to be fragmentary at best," and added, "An incident is never completely recorded in memory."

According to Dr. Lewinski's research into force-related encounters and memory recall, "The average person will actually miss a large amount of what happened in a stressful event and, of course, will be completely unaware of what they did not pay attention to and commit to memory."

Compounding the problem, a participant or witness, "…may unintentionally add information in their report that was not actually part of the original incident," Lewinski explained – not in a plot to deceive, but rather in a humanly instinctive effort to fill in frustrating memory gaps.

Timing of the interview is a major factor because an officer's version of an incident will vary, depending on whether his/her statement is taken before, after, or without a walk-through or a viewing of a videotape of the incident. The most enriched, complete, and factually accurate version of a high-stress encounter is most likely to occur after a walk-through and/or after the officer has had at least one opportunity to view an available video of the incident."

Ideally, Lewinski believes, a video review should be permitted *before* an involved officer gives his/her official statement.

Dr. Lewinski cautions that relying solely on video of a critical incident may be misleading. He cited the following reasons to support his research conclusions:

- Video cameras generally record only a portion of an incident and are bereft of the context of the event.
- Video is a 2-dimensional representation of an incident from a particular perspective and tends to distort distance and other aspects associated with depth of field.
- Generally, video does not faithfully record light levels and does not represent what a human being in the incident would perceive.
- A video does not present the incident as viewed through the officer's eyes.
- Video cameras recording at less than 10 frames per second can leave out significant aspects of an incident that occur at speeds faster than that.

Allowances for Misconceptions

Police officers arresting a suspect are even afforded the privilege of misjudging the degree of force necessary to affect their purpose during the exigencies of the moment. It has also been determined in case law that it is both unreasonable and unrealistic for officers to use the least amount of force which might successfully achieve their objective, as this would result in unnecessary danger to the officer(s) and others. Case law confirms that injuries suffered by subjects as a result of a peace officer's use of force do not necessarily establish the use of excessive force.

The use of force is to be judged on a subjective-objective basis. Police actions should not be judged against a standard of perfection, but according to the circumstances as they existed at the time that the force was used.

Use of Force on Persons Held in Custody

As long as the force is reasonably necessary, a constable holding a person in custody is legally authorized to use force to the same extent as a constable who seeks to place a person in custody.

An officer acting on reasonable grounds who is charged with maintaining lawful custody of a subject may use force to return that subject to their cell if they refuse to comply with the operation procedures of the prison.

Authorization for Use of Mechanical Restraints

A peace officer who lawfully arrests a subject is entitled to secure his/her prisoner using mechanical restraints to handcuff or bind the subject. The restraint must be performed reasonably and the officer(s) involved must articulate their reasons for the use of restraints.

Supreme Court

Recently, the Supreme Court of Canada, in Wood versus Shaeffer (2013 SCC71), ruled that a police officer's notes are to be written immediately after the incident and without discussion with a lawyer. Supreme Court Justice Michael Moldaver, on behalf of the majority residing justices, wrote:

Permitting officers to consult with counsel before preparing their notes runs the risk that the focus of the notes will shift away from the officer's public duty toward his or her private interest in justifying what has taken place. This shift would not be in accord with the officer's duty.

Applying the SCC rationale in BC, it appears that this decision prevents officers from specifically demanding a right to counsel prior to completing their notes, particularly as there is no specific statutory entitlement to counsel during a professional standards investigation interview (in BC). However; the SCC ruling specifically states:

nothing … prevents officers who have been involved in traumatic incidents from speaking to doctors, mental health professionals, or uninvolved senior police officers before they write their notes.

Articulation of the Use of Force

There are seven crucial elements that an officer who is involved in a use of force encounter should record in their notes. Each element has several questions that must be addressed objectively to fully assist in articulating the use of force. They include:

1. Scope of Employment

One of the basic points that must be proven by officers involved in a force-related incident is whether or not they were in the lawful execution of their duty and had reasonable grounds to arrest or detain the subject(s) implicated. If excessive force can be proven, the officer's actions can be considered illegal, and s/he could be liable for criminal and/or civil litigation and/or disciplinary action

under the Police Act. Therefore, it is important that the involved officer(s) clearly articulate their reasonable grounds for contacting the subject and their use of force.

The following questions should be considered by the involved officer(s):

What was the work assignment?

- What was the date, time, and location of the incident?
- Were they in uniform (describe: Patrol, ERT, K9, etc.) or plain clothes (describe)?
- Where were they when dispatched to the incident?
- What was the nature of the assignment or on-view activity of related persons?
- What were they told and by whom?
- What did they observe?
- What was their role in the incident and who assigned them that role?
- Who reported the incident and what did they report?
- Did they identify themselves as a police officer?

2. Severity of the Crime

It is important that an officer have all the vital information about the severity of the crime to enable a safe and proper approach to the scene. To properly assess the reasonableness of an officer's actions in a force-related encounter, it is necessary to articulate what was known at the time of the incident. Likewise, if the offence is minor in nature, the officer should consider the ramifications of using force for a minor infraction.

The following questions should be considered by the involved officer(s):

- What specific subject behavior was observed?
- What were they told that led them to believe a crime was about to occur or had occurred?
- What were the elements of the crime?
- If the alleged crime was violent in nature, what threat did they perceive to the officer or others?
- Prior to the actual use of force, were they aware if the subject had a history of violence or weapons?
- If so, how did they learn this information (history with the subject, dispatch, other officers, etc.)?
- Did they believe that the subject had access to weapons?
- If so, how was this determined?
- Were the subject's actions or behavior connected to criminal activity?
- Were there reasonable grounds to believe that the subject's actions posed a real threat of Grievous Bodily Harm or Death to the officer or another?
- If so, how was this determined?

3. Level of Force Used

The level of force used by a police officer must be subjectively and objectively reasonable. Whenever reportable force is used by an officer, it must be thoroughly documented in the officer's notebook. Officers are also obligated to complete a report called a 'Subject Behavior – Officer Response Report'.

The following questions should be considered by the involved officer(s):

- What was the specific type and amount of force used?
- Why?
- Did the officer have other reasonable force options available?
- Did the officer try these other reasonable force options?
- If not, why were they not tried?
- Specifically, what did the subject do that caused the officer to use force?
- Once under control, did the officer handcuff the subject?
- Did another officer assist in the use of force, or after the force was used?
- If so, who?
- Were the handcuffs double-locked to prevent tightening?
- Who double-locked the handcuffs?
- Did the officer tell the subject that s/he was under arrest?

- If not, who did?
- Did the officer know the subject was lawfully arrestable?
- How did the subject refuse to submit to the arrest?
- Did the officer use special restraints to control the subject after arrest?
- If so, what were they?
- Is the officer trained in that specific restraint device?
- If so, how recently was the officer certified and by whom?
- If not, what were the exigent circumstances that prompted the officer to choose that restraint device?

4. Warnings

Warnings are considered an alarm, signal or admonition of a person to stop what is presumed to be unlawful or unwanted behavior. Warnings are reasonable and, when appropriate and reasonable to do so, should be given to subjects and by-standers.

The following questions should be considered by the involved officer(s):

- Was a warning given?
- Provide a description of the specific warning (to whom, how many times, specifics, etc.).
- Did the officer attempt Crisis Intervention De-escalation (CID) Techniques?
- If yes, what was the degree of effectiveness?
- If no, why not?
- Was the officer's warning consistent with department policy?
- Were there any known barriers to the subject's understanding of the warning (language, hearing loss, background noise, etc.)?
- Was the warning tape recorded?
- Were other officers aware of the officer's warning?
- Was the officer aware of other officers' warnings?

5. Nature of the Crime

In order to show that the officer's level of force was subjectively and objectively reasonable, the officer must articulate what he or she knew at the time of the force-related encounter, based on the totality of the circumstances. The officer's state of mind and facts that were perceived, known, or told to the officer are important. The nature of crime dictates the appropriate force response option.

The following questions should be considered by the involved officer(s):

- Is the location of the force-related encounter described as a business, residential area, park, school, open area or another type?
- What were the environmental conditions in the area at the time of the force-related encounter (weather, lighting, footing, terrain, background noise, other parties present, etc.)?
- Was the area of the force-related incident considered to be a high crime area?
- Can this be corroborated?
- How many subjects were involved in the incident?
- Did the officer know the subject(s)?
- How did the officer know the subject(s)?
- Was the officer aware of or did he or she suspect the presence of weapons at the scene?
- What was the known or suspected crime the officer was investigating?
- Was it a violent crime?
- Was anyone injured?
- If so, who, how, and can the officer describe the severity of the injury?
- Was the suspect armed, suspected of being armed or known to be prone to violence?

6. Officer's State of Mind

Under current Canadian law, the officer's use of force is not to be judged with the benefit of 20/20 hindsight, but on the totality of the circumstances of the incident, using the objective standard and including the facts that would convince an ordinary, reasonable person that the officer acted appropriately. Finally, the officer can only use information known to the officer prior to the officer's use of force in the officer's articulation of the why the officer did what the officer did.

The following questions should be considered by the involved officer(s):

- What training relevant to the scope of the officer's duties (including this incident response) did the officer receive?
- Describe any similar experiences the officer has had that can relate to the officer's response to this incident.
- Did the officer identify themselves as a police officer?
- Provide details of why the officer felt threatened, fearful and that the officer's safety or that of others was in jeopardy.
- Did the officer see a weapon?
- How many subjects were present?
- What led the officer to believe that the subject(s) posed a threat of Grievous Bodily Harm or Death to the officer or others (known, perceived, learned)?
- What was the subject's state of mind?
- Did the subject appear to be under the influence of alcohol, drugs, or both?
- Did the subject appear to be an Emotionally Disturbed Person (EDP)?
- Did the subject appear to be in a state of Excited Delirium (ExDS)?
- What was the subject's sex, perceived age, physical size, and perceived abilities (martial arts, military, etc.)?
- According to the National Use of Force Model, what subject behaviors were demonstrated (Cooperative, Passive Resistance, Active Resistance, Assaultive, Grievous Bodily Harm or Death)?
- Explain the noted behavior(s) in detail.
- Did the subject(s) pose a tactical advantage that adversely affected the officer's or another person's safety?
- What force options did the officer employ to resolve the situation?
- For each force option used, can the officer describe the effect(s) on the subject(s)?
- Was tactical repositioning considered or employed?
- If not, why?

7. Medical Care

Any subject that is injured as a result of an officer's intervention using force has the absolute right to medical assessment and treatment, when it is safe and reasonable to provide it. Simply, the officer has a duty to care for those under the officer's control. The officer should report and document all circumstances surrounding the need for medical care of the subject(s) as a result of the force-related encounter.

The following questions should be considered by the involved officer(s):

- Did the officer receive any injuries attributable to the force-related encounter?
- Who caused the injuries?
- What is the nature and extent of the officer's injuries?
- Did the officer require medical treatment or hospitalization for injuries?
- Was the officer aware of any subject injuries prior to the officer's use of force?
- If so, what was the nature and extent of the injuries?
- Did the officer's application of force result in any injury to the subject?
- If so, which force option?
- What was the nature and extent of the injuries caused by the officer's application of force?
- Once the subject(s) and scene were under control, were the injured parties provided first aid?
- Was PAS summoned?
- If so, by whom?
- Is the officer aware whether anyone else was injured as a result of the subject's actions?
- If so, what was the nature and extent of the injuries?
- Was PAS summoned?
- If so, by whom?
- Who, if any, of the injured parties went to the hospital?

Conclusion

The detail that officers are required to use to articulate their use of force is extensive. In the past, legal counsel was provided to police prior to providing written details of the force-related incident. According to the Supreme Court of Canada, police are no longer afforded this opportunity.

Officers employing force on subjects resulting in serious injury will experience a great deal of mental trauma. Care should be taken that the involved officers provide detailed notes and duty reports that fully articulate the nature and scope of the incident and their reasonable attempts at a non-violent resolution. In some cases, a non-violent resolution cannot be achieved; it is for these situations that this guide is intended.

Above all, remember that if the officer has been involved in a traumatic incident, nothing prevents the officer from speaking to doctors, mental health professionals, or uninvolved senior police officers before the officer writes their notes.

Media Attributions

- The National Use of Force Model © the RCMP Use of the Conducted Energy Weapon (CEW) report is a copy of the version available at https://www.crcc-ccetp.gc.ca/en/arch...on-cew#figure1.

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CHAPTER OVERVIEW

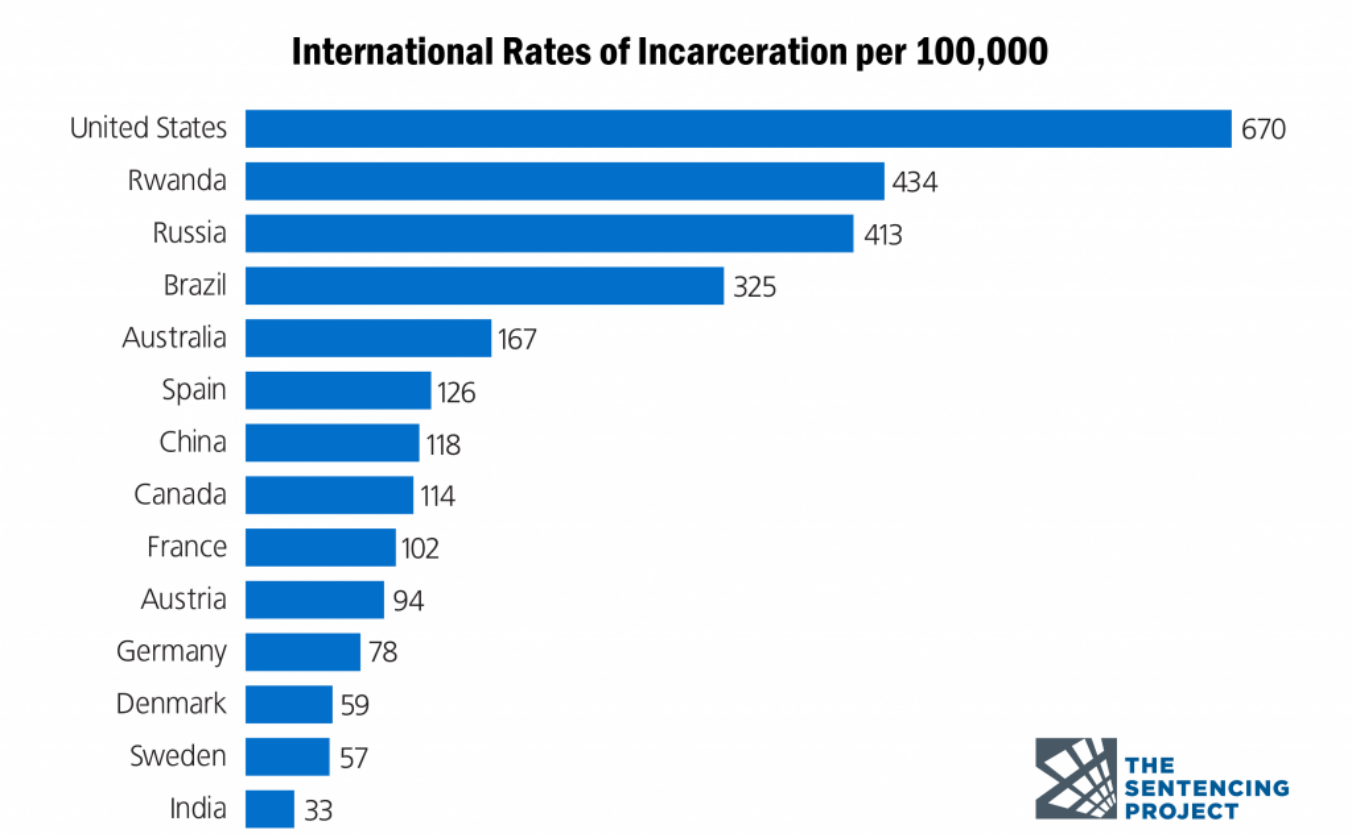
9: Community Corrections

9.1: Current Issues in Corrections- Mass Incarceration

The section on punishment started with a discussion about feeling safe and secure in our homes. Feeling safe and secure in person and home is arguably one of the most discussed feelings in our nation today. Our fear of crime influences how we think and act day to day. This has caused great fluctuation in the United States, in regards to how we punish people who are convicted of violating the law. In part, punishment comes from the will of the people, which is then carried out by the legislative process, and converted into sentencing practices. However, has our desire to feel safe and secure been taken too far by policy? And, have these policies created even bigger problems for us as citizens? This final section on corrections attempts to answer how we as America are doing, in order to solve our crisis in corrections.

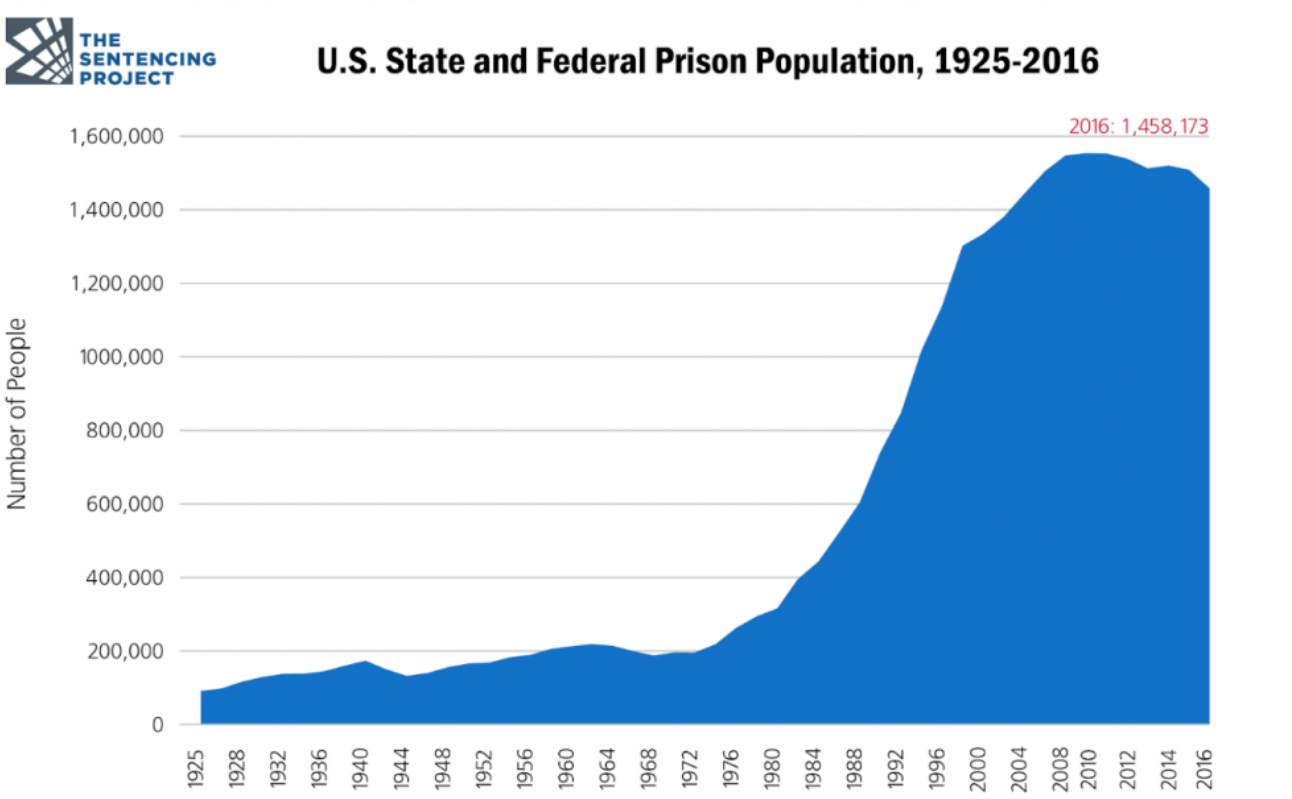
To give an idea about America's use of prisons, here is a comparison of the United States to other countries around the world. As one can see, America uses punishment fairly well. In fact, one could argue that we are the best at it.

International Imprisonment Rates



The United States wasn't always this punitive. As we have discussed, the context of eras that we have moved through, our underlying philosophy of punishment constantly evolves, even if it is rather slow at times. Unfortunately, in the 1970s, there was a confluence of events that kicked us off on a path of incarcerating many types of individuals, more so than we had done in the past. This path of imprisonment or mass incarceration has had lasting effects. Below, you can see when the expansion of the correctional system began.

Mass Increase in Incarceration



Mass Increase in Incarceration

The United States had just gone through a large scale amount of civil unrest, which leads to a civil rights movement of many Americans. As a country, we were not happy with how subpopulations were being treated, and it was during this that many positive changes in the country were being adapted into law. This also corresponded with a massive influx of men that were returning from the Vietnam war. The disapproval of the war, increased our growing distrust of the government to provide programs that could help individuals within the justice system. Many State-funded operations were seen as intrusive on the public, to include mental health facilities. There was also a large scale importation of drugs occurring in America. All of these items and more shifted our ideology rather abruptly in the United States, and we turned toward a more punitive approach to people in society that were getting into trouble. Collectively, we would consider this the “get tough era” on crime. This included the war on drugs (gang involvement), tougher sentencing legislation across the country, transinstitutionalization or transcarceration (the removal of many individuals from state mental health hospitals), and others. Collectively, these all had a large-scale increase in the prison population.

Full Jails

It is 3:00 AM on a Sunday morning and Terry is getting force-released from jail because the jail is full. Force Releases occur when a facility is at its maximum capacity and a more serious offender is coming in. The decision has to be made in order to protect the community the facility is supposed to protect, but still, maintain the constitutional rights of the individuals it is required to secure. Like many others in the community, Terry made some poor decisions, was arrested for a lower level of crime and has started the process of going through the justice system. However, for Terry, and unfortunately many others, now Terry is being pushed back out onto the street, prior to receiving some basic services that may help him change his behaviors. This is not his fault, it is only due to the fact that a more dangerous offender is coming into the jail, and a decision had to be made.

To make matters more complicated, Terry is a dually diagnosed individual. This means that he has both a substance abuse problem and a low-level mental health issue. Terry has been managing his mental health issue with medications that he is able to afford because of his job at the local Wal-Mart. Now Terry will probably lose his job because he hasn’t shown up for two shifts, due to him being in jail. While not excusing any of Terry’s actions that got him in jail, Terry is now out on the street, without his medication. He is nervous that he is not sure what he is going to do.

> **This story is more common than you think. It happens to tens of thousands of individuals a year. What should the community do?**

9.2: Current Issues in Corrections- War on Drugs and Gangs

The war on drugs, initiated by President Nixon in 1971, was framed as an all-out war to eradicate drugs in the United States. The massive expenditures on the curtailment of the drug epidemic also shifted our views on drug use. We became much more punitive towards drugs, treating it as more of a criminal justice issue, rather than as a substance dependence issue. Good or bad, drug use was demonized in the public and media, which aided in the development of much tougher sanctions on drug use in America. The Drug Enforcement Agency was created in 1973, to provide another arm of the government to tackle a specific issue, drugs. By the 1980s, lengthy sentences for drug possession were also in place. One to five-year sentences for possession were increased to upwards of 25 years. There was also an increased focus on gangs, which were held responsible for the majority of the drug trade in the United States.

Gang activity in the United States was prevalent long before the enactment of the war on drugs. However, once the linkages between our fear of crime, and the drug trade by gangs became more pronounced due to the war on drugs, the conflict escalated. While there are hundreds of different gangs in many neighborhoods and communities in the United States today, gangs in prison have converged into four main gangs, or what corrections call security threat groups. These four basic gangs include the Whites, the Blacks, the Southerners (Surenos, or EME), and the Northerners (Nortenos). Not only are these STGs considered violent inside and outside of prison, but they are also actively involved in the continuing drug trade in the United States today, even behind bars. In fact, many of the leaders of all of the gangs on the streets are held in one prison in California, Pelican Bay State Prison.

Within the prisons in the United States, gangs actively recruit members, communicate with gangs on the streets, run the drug trade, and are also at war with each other over the power within the institutions, from their perspective. There have been numerous documentaries on gangs in the U.S., and even mainstream films about gangs and gang life, both inside and out. A few notable examples of films to watch on this subject include Felon (2008), Shot Caller (2017), and American Me (1992).

Transcarceration

At the same time, the proliferation of gangs was occurring in prisons in the United States, there were another sizeable increase of prisoner type, mentally ill inmates. This is due to the transinstitutionalization that occurred for thousands during the late 1970s, 1980s. Transinstitutionalization, or transcarceration is a process that occurred for many with mental health issues when State-run mental health facilities began to close their doors. Having few choices of where to go, many became homeless or destitute. Ultimately, these individuals wound up in America's jails and prisons. This is also compounded by how we have shifted our views on the mentally ill within the courts and justice system. While insanity is a defense that is used in court, it is rare (roughly 1% of cases), and even more rarely does it conclude in success. This shift occurred within our understanding of guilt surrounding mental illness. In the past, an individual would be held not guilty by reason of insanity. However, this shifted to guilty, but legally insane. The guilt would be grounds to still incarcerated individuals. Changes in policy like this also contributed to the increase in offenders in the 1980s.

Get Tough Policies

Another reason for the large scale increases can be found in our changes to policies surrounding sentences and sentence lengths. Get tough policies flourished in the latter half of the 1980s and into the 1990s. This included truth in sentencing legislation three-strikes policies, and drug crime minimums. Truth in sentencing, also known as the 85% rule, is where mandatory minimums of sentences would be forced to be served by incarcerated individuals. Thus if an individual was sentenced to prison, a mandatory minimum of 85% of the sentence would have to be served before the individual was eligible for release (parole). This added to the average length of sentences served in American prisons, which meant that individuals were not being released as early as in prior years. Thus, as more individuals were coming in due to increases in other legislation, there were already more people in the prisons.

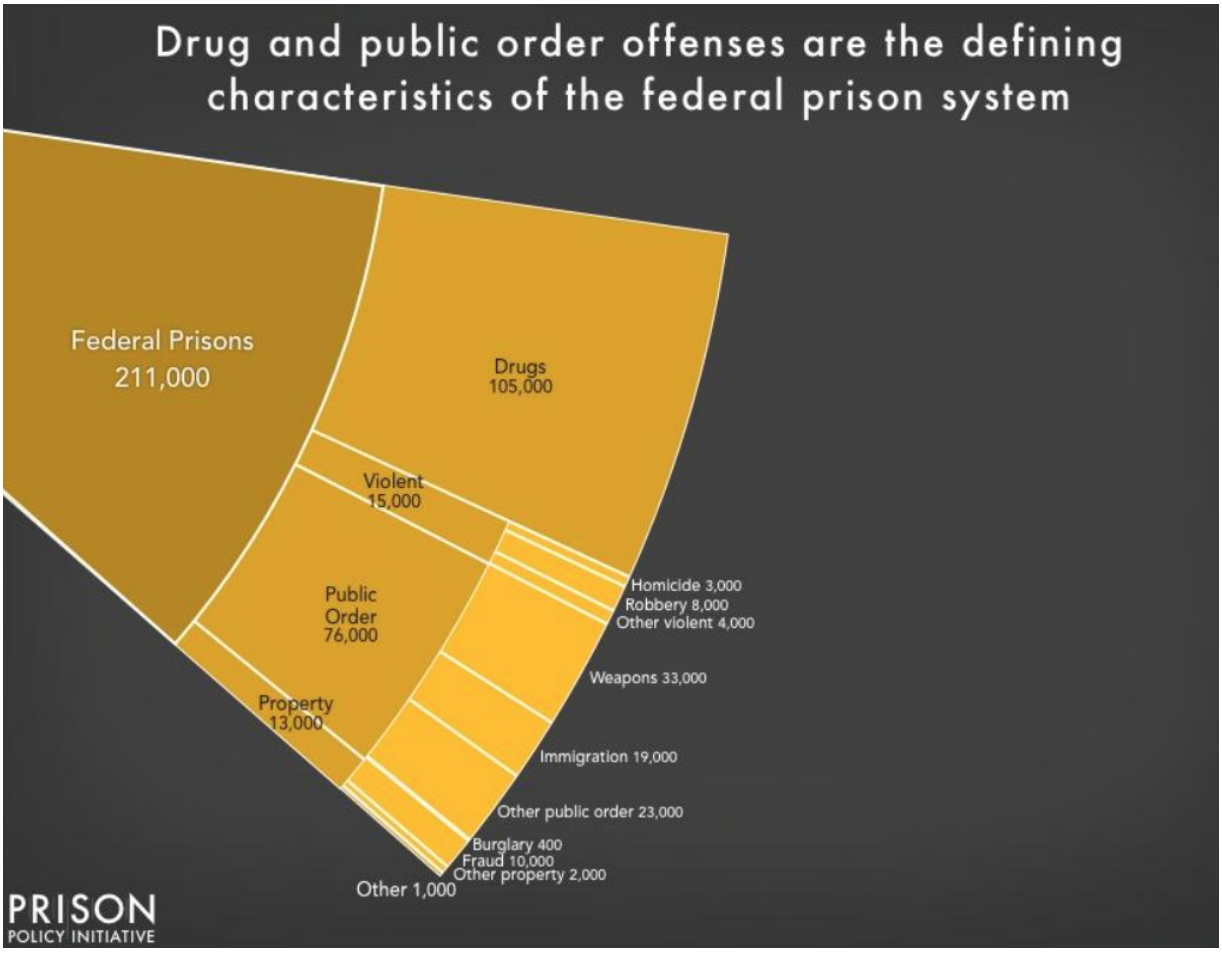
Three strikes policies were enacted in many States. In 1993, Washington overwhelmingly passed (75% voted yes) to approve initiative 593 [1] This policy increased sentence lengths for 40 felonies, which included life imprisonment. Perhaps the largest 3 strikes policy was in 1994, in California, with Proposition 184, commonly called the Three Strikes and You're Out policy. It mandated a minimum of 25 years of prison for individuals committing 3 felonies. What made this policy more pervasive than others was the way in which it could be applied. If a person had two previous strikes for violent, or serious felonies (not necessarily violent), any new felony was life imprisonment, with a minimum of 25 years. For a more detailed view of this policy, see https://lao.ca.gov/2005/3_strikes/3_strikes_102005.htm

Drug laws were also changing at this time. The Controlled Substances Import and Export Act (1970), started the increases for drugs in the U.S. under federally mandated minimums found within the federal code 21 U.S.C. § 841. For a detailed reporting of these minimums, see https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf

One of the most debated issues within the drug sentencing laws was the differential between cocaine (in powder form) and crack (also form of cocaine, diluted and in a hardened paste form). During the increases in sentencing, there was a disparity in the lengths of sentences for comparable weights of these two drugs. There has been much debate whether this targeted poorer individuals more harshly, as crack was seen as a poor man's cocaine. However, with additional mandatory minimum increases in the 1980s, differences in sentence lengths began to widen. In a detailed report, Barbara Meierhoefer (1992) detailed how the average sentence lengths for African Americans (for similar weights of crack v. cocaine for Whites) was roughly 50% higher, supporting this assertion that drug sentences were not equal. [2]

With over a million arrests per year for drugs, it does add to the prison system as a whole. While the proportion of drug offenders in State prisons hovers around 20-25%, it is much larger at the federal level. As seen below, it makes up over half of the federal prisons. In all, the drug seriousness went up (how drugs are scheduled within federal guidelines), and sentence lengths for drugs went up; certain drugs more than others also went up.

Federal Drug Inmates



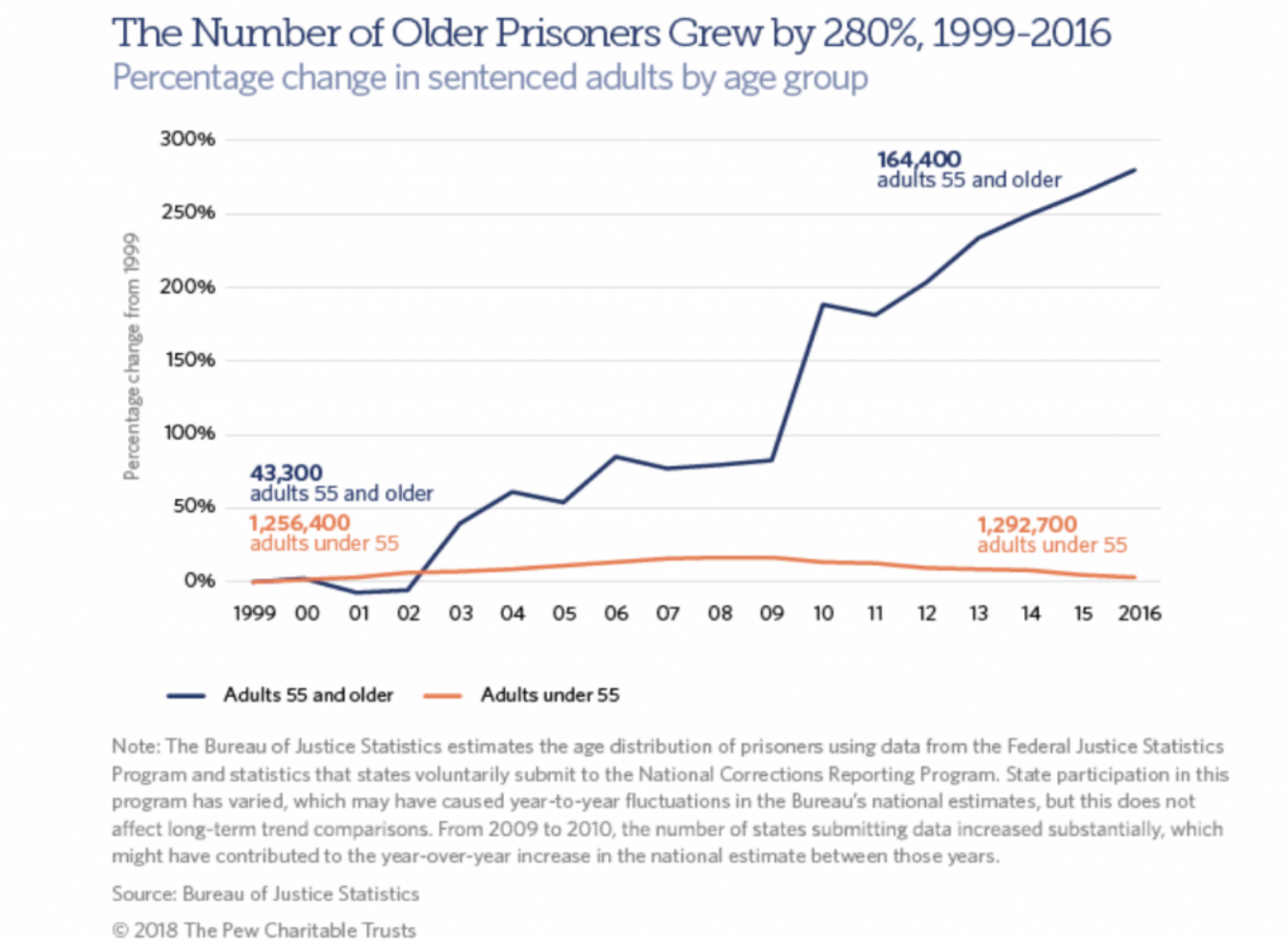
Federal Drug Inmates

1. Wright, P. (1995). Three strikes racks 'em up. *Journal of Prisoners on Prisons*, *6*(2), 3-6. https://www.ncjrs.gov/App/Publicatio...aspx?ID=162918 ↵
2. Meierhoefer, B. (1992). The general effect of mandatory minimum prison terms: A longitudinal study of federal sentences imposed. *Federal Judicial Center*. https://www.fjc.gov/sites/default/fi...2/GenEffMM.pdf ↵

9.3: Current Issues in Corrections- Aging and Overcrowding

One of the side effects of lengthier sentences is that: the individuals in prison get older, in prison. Thus, the amounts of individuals in prisons over 55 years old has dramatically increased. As McKillop and Boucher (2018) relate in the graphic below, based on BJS data, there has been a 280% increase in prisoners, age 55 and older. [1]

Aging Prisoners



Aging Prisoners

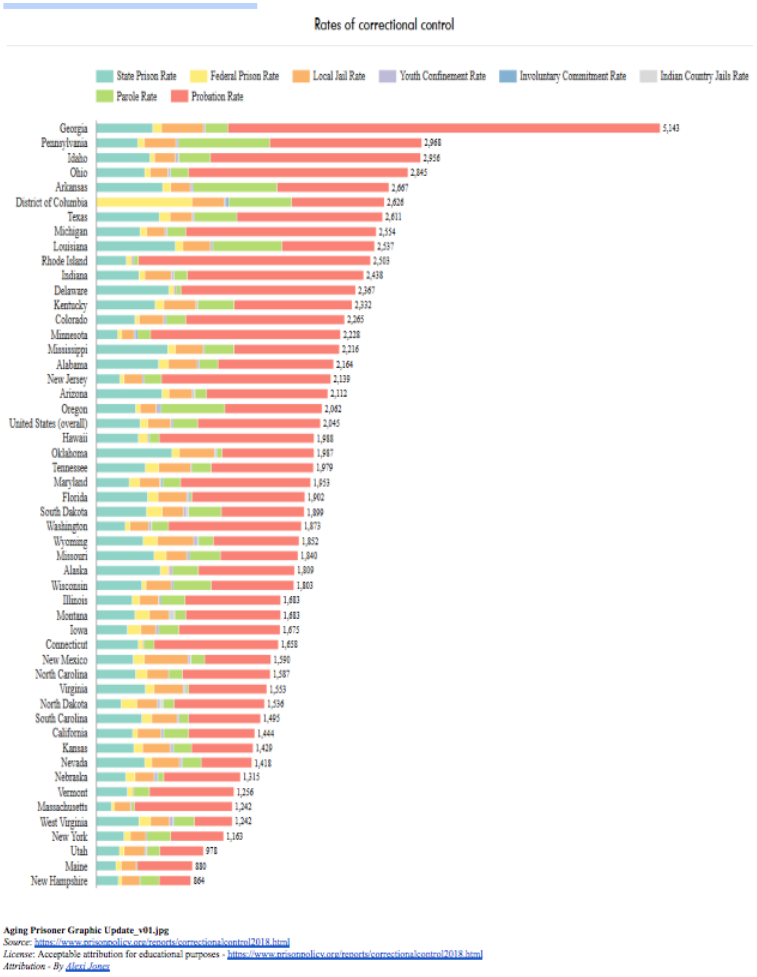
And as the title of their article depicts, there is a growing cost within this subpopulation of inmates. McKillop and Boucher (2018) relay that the cost of this group of inmates can be upwards of three times the cost of the normal inmate (30k to 100k per inmate). [2]

Beyond just the cost of these inmates, a more philosophical question has risen, in regards to how to treat prisoners as they enter their last phase in life. Some have articulated for compassionate releases for individuals that are entering hospice care or in need of assisted living conditions. Other articulate that this is unfair to put the burden on the inmate, as they have been incarcerated for long periods of time and have few self-support options available. In a powerful documentary on this matter, Edgar Barens details these issues. Information about this film, The Prison Terminal (2013), can be seen here: https://www.prisonterminal.com/.

Overcrowding

These issues and others have all contributed to the rising correctional population in the United States. It is estimated that we have over 8 million people in correctional control, and that number does not seem to be subsiding. Yes, there are reductions in certain areas, such as a decline in the prison population in the last few years, but this does not mean that they are not still under control. In one of the more detailed examples of just where individuals are at in corrections, Alexi Jones (2018) of the Prison Policy Initiative provides a graphic, based on State and Federal data to demonstrate this impact.

Rates of Correctional Control



Aging Prisoner Graphic

Not only does this graphic demonstrate the overall volume of correctional control, but it also highlights how states are handling their populations differentially. The second half of Jones' (2018) [3] report details the volume of individuals with each state. Please take a moment to review the last portion of this report to see how many are under correctional control, found here: https://www.prisonpolicy.org/reports/correctionalcontrol2018.html#statedata

Prison overcrowding is problematic for multiple reasons. First, when there are too many individuals (especially antisocial ones) within a facility, there are more assaults and injuries that occur within the institution. Moreover, there is a safety concern for not only the inmate on inmate violence but also inmate on staff crimes. Second, the more people you have in a facility, the faster that facility wears down. Operating a jail or prison at maximum (or over maximum) capacity causes more items to break or wear out within the facility at a fast rate. Finally, when individuals are unable to access adequate health care because of the excessively long waits, due to overcrowding, it is a violation of their constitutional rights.

As prisoners, we (the public and the State) have a responsibility to house and properly care for the prisoners overseen. This is not to say that offenders are getting premier care, but that they are at least receiving a modicum of care. When this low level of care is deliberately denied due to excessive volumes of individuals, it is a violation of a person's 8th amendment rights against cruel and unusual punishment. As was found in the case of Estelle v. Gamble, (1976). [4] This similar issue was presented in California over ten years ago. A three-judge panel ruled with the prisoners, citing the need for California to reduce its prison population to a level where the individuals could effectively be managed, and cared for [emphasis on the latter]. Dealing with overcrowding is a constant issue for most prisons and jails. Some have resolved to release more out into the community at a higher volume, on parole or just release. However, this too has its own set of problems, as reentry is now becoming the current issue within corrections.

1. McKillop, M., & Boucher, A. (2018). Aging prison populations drive up costs. Older individuals have more chronic illnesses and other ailments that necessitate greater spending. Available at: https://www.pewtrusts.org/en/researc...drive-up-costs ↵
2. McKillop, M., & Boucher, A. (2018). Aging prison populations drive up costs. Older individuals have more chronic illnesses and other ailments that necessitate greater spending. Available at: https://www.pewtrusts.org/en/researc...drive-up-costs ↵
3. Jones, A. (2018). Correctional control 2018: Incarceration and supervision by state Prison Policy Initiative. Available at: https://www.prisonpolicy.org/reports...html#statedata . ↵
4. *Estelle v. Gamble*, 429 U.S. 97 (1976). ↵

9.4: Current Issues in Corrections- Reentry and the Future of Corrections

Reentry and the Revolving Door

Parole, as discussed in the previous chapter, has had mixed reviews. Overall, the effectiveness of parole hovers around 50% success. It is estimated somewhere between 600,000 and 800,000 parolees are on parole in any given year over the last 3 decades. Additionally, several hundred thousand are exiting parole in each of these years. This brings up questions about what happens to these individuals. The reality is that most of them will be rearrested. In one of the more comprehensive studies on recidivism, Alper, Durose, and Markman (2018) discussed the recidivism rate of individuals tracked over a 9-year follow up period. What they found was that rearrest occurred for about 70% in the first three years, and by year 9, 83% of the individuals released has been rearrested. Many of these individuals return to prison, hence the concept of the "revolving door" of justice. In order for reentry programs to be more successful, individuals returning to society need assistance to get back on their feet and stay on their feet. This includes items such as education and training, employment assistance to get a job, legal services, education on public benefits, and housing assistance. Interestingly, it appears as though many of the items here are the same items that many of them had deficits in that landed them in trouble in their lives before [1] That is – many of these items are those same predictors of offending that were discussed in the first section (known as the know predictors of recidivism). Unfortunately, it appears as though they are not getting these while they are incarcerated. Again, creating a cycle of release and catch again.

Situations and circumstances that compound these problems for many ex-offenders is the difficulty faced with trying to get a job once released. Over the last 20 years, there was an overwhelming push to include items on employment applications that asked questions about prior incarceration history. Not only were there questions about prior incarcerations and prior convictions, but many employers also have questions about ever being arrested. If an individual told the truth (which is what they should do), the reality is that their applications would be discarded, or overlooked for others without an arrest/conviction. If an ex-offender lied about it, and it was discovered during a background investigation, the application was certainly discarded. In either scenario, it became increasingly difficult for an individual to obtain legitimate employment.

This is also true on apartment rental applications. Again, when individuals would put down prior arrests, their applications would often be placed at the bottom of the pile. If someone were to lie about it, and it was discovered, it could be used as grounds for not selecting an individual for tenancy. Once again, society was making it difficult for ex-offenders to even function as a normal citizen, based on a sentence that they had served, which is when the punishment should have ended. Collectively, these items are included in the concept of collateral consequences. That is – items that are barriers to successful integration that are remnants of prior punishment.

Future Outlook of Corrections

Based on the major issues presented, overcrowding and reentry, the problems faced in corrections are not likely to go away anytime soon. We have seen an increase in the overall correctional population for years now. While there are some reductions in prisons, this is not likely to stay this way, unless changes are made. Additionally, while there is space for growth in the area of community corrections, the functions of CC need to be supported and done based on evidence-based practices if it is to be more successful. It too has limits, and without the support, it is more likely to be another failure. If it is not supported, then the prison population is likely to increase even more, due to the eventual placement of too many failures of individuals in community corrections. Most offenders are in need of some basic assistance to get themselves back to a functioning level in society, including addressing their education, their substance abuse, their employment, and general and mental health. Our correctional system needs to change its habit of treating substance abuse and mental health issues as legal and punish-oriented issues if we are going to curb the tide of the growing problems we face in corrections. If not, our 8 million individuals in all forms of correctional control can quickly turn 10 million. According to a 2016 report from the U.S. Department of Education (p. 13), "from 1979–80 to 2012–13, state and local government expenditures on corrections rose by 324 percent (from $17billion to $71 billion)." [2] Keep in mind that is taxpayer money. We are funding this issue. It is time to address these problems from a more holistic approach if we are going to see a change in our current correctional practices.

1. Alper, M., Durose, M. R., & Markman, J. (2018). Update on prisoner recidivism: A 9-year follow-up period (2005-2014). *U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics.* https://www.bjs.gov/content/pub/pdf/...r9yfup0514.pdf ↵
2. https://www2.ed.gov/rschstat/eval/ot...tion/brief.pdf ↵

CHAPTER OVERVIEW

10: Crime and Criminal Justice

Social Problems in the News

"Wilson St. Residents Stunned by Shooting," the headline said. A shooting of a toddler in Chattanooga, TN, left a neighbor afraid. At 9:45 p.m. on a Friday night, someone walked up to an apartment and fired a gun through a window. One bullet struck the toddler in the leg, and another bullet struck a 20-year-old male with him in the hand. A neighbor across the hallway heard the shots and later told a reporter, "It scared me, my heart was beating, my hands were shaking. I was nervous and scared, is the baby going to survive. I was stuck on my bed and I was like what am I supposed to do, go see who is at my door or if I open it I might get shot at. I'm worrying about the baby, that's all I'm worrying about." Because the 20-year-old victim was a known gang member, police suspected that the incident was related to a drive-by gang shooting that occurred earlier in the evening.

Source: Boatwright, 2011Boatwright, M. (2011, March 5). Wilson St. residents stunned by shooting. *WRCB-TV*. Retrieved from http://www.wrcbtv.com/Global/story.asp?S=14194540.

As this poignant account reminds us, many people across the nation live in fear of crime, and you may know several people, perhaps including yourself, who have been victims of a crime. The study of crime bears directly on this book's theme of continuity and change: Crime seems to have always been with us, yet sound social science research points to many programs and policies with great promise for reducing crime if only our nation would undertake them. We begin with some conceptual issues in understanding crime before turning to the types of crime, explanations for crime, and some aspects of the criminal justice system.

10.1: The Problem of Crime

Learning Objectives

- Understand the extent of public concern about crime.
- Explain how the news media contribute to myths about crime.
- Describe how crime in the United States is measured.

Put most simply, **crime** is behavior that is prohibited by the criminal law because it is considered especially harmful or offensive. This simple definition, however, raises many questions:

- Who decides what is offensive or harmful?
- Are some harmful behaviors not considered crimes, and are some crimes not that harmful?
- Are some people more likely than others to be considered criminals because of their gender, race and ethnicity, social class, age, or other aspect of their social backgrounds?

These questions lie at the heart of the sociological study of deviance, of which crime is a special type. **Deviance** is behavior that violates social norms and arouses strong social disapproval. This definition reflects the common sociological view that deviance is not a quality of a behavior itself but rather the result of what other people think about the behavior. This view is reflected in an often-cited quote from sociologist Howard S. Becker (1963, p. 9),Becker, H. S. (1963). *Outsiders: Studies in the sociology of deviance*. New York, NY: Free Press. who wrote several decades ago that “deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules or sanctions to an ‘offender.’ The deviant is one to whom that label has been successfully applied; deviant behavior is behavior that people so label.”

This definition reminds us that some harmful behaviors, such as white-collar crime, may not be considered deviant and fail to result in severe legal punishment, perhaps because wealthy individuals perform them. It also reminds us that some less harmful behaviors, such as prostitution, may be considered very deviant because the public deems the behavior immoral and because poor people engage in them. As these possibilities suggest, the application of a criminal label to an offender is *problematic*: People arrested and/or convicted of a crime may not have engaged in a very harmful behavior or even in the behavior of which they are suspected, and people with no criminal record have in fact engaged in harmful and even criminal behavior.

Public Concern about Crime

The American public is clearly concerned about crime. Two-thirds of the public said in a 2011 Gallup poll that crime had risen from the previous year. More than a third, 38 percent, said they would be “afraid to walk alone at night” within one mile of their residence; this figure translates to more than 86 million adults. In the same poll, 47 percent (or about 114 million adults) said they worry about their homes being burglarized, and 44 percent said they worry about thefts of or from their motor vehicles. Corresponding figures for other crimes were: experiencing identity theft, 67 percent; getting mugged, 34 percent; getting attacked while driving your car, 19 percent; being sexually assaulted, 22 percent (including 37 percent of women); and getting murdered, 20 percent (among the lowest figures in this list, but one that still amounts to 42 million adults worrying about being murdered).

Although the public is concerned about crime, at least some of this concern might exceed what the facts about crime would justify. For example, although most of the public, as we just noted, thinks the crime rate has been rising, this rate has actually been declining since the early 1990s. And although one-fifth of the public worries about getting murdered, homicides comprise less than one-tenth of 1 percent of all violent and property crime (*street crime*); only about 7 of every 100,000 Americans, or 0.007 percent, are murdered every year; homicide does not rank among the top ten causes of death (which include heart disease and cancer); and the number of homicides is much lower than the number of deaths from harmful behavior by corporations (such as pollution or unsafe products and workplaces). Crime is indeed a real problem, but public concern about crime may be higher than the facts warrant.

Media Myths

To the extent this is true, news media coverage of crime may be partly responsible (Robinson, 2011).Robinson, M. B. (2011). *Media coverage of crime and criminal justice*. Durham, NC: Carolina Academic Press. For example, if the television news and newspapers suddenly have several stories about a few sensational crimes, public concern about crime may jump, even though crime in general has not risen at all. Similarly, the news media have increased their crime coverage even when crime is falling, as

happened during the early 1990s when the major US television networks more than doubled their nightly news stories about crime even though crime had been declining (Freeman, 1994).Freeman, M. (1994, March 14). Networks doubled crime coverage in '93, despite flat violence levels in US society. *Mediaweek, 4*, p. 4.

The news media, in fact, distort the amount and nature of crime in several ways (Surette, 2011).Surette, R. (2011). *Media, crime, and criminal justice: Images, realities, and policies* (4th ed.). Belmont, CA: Wadsworth. First, they overdramatize crime by reporting it in many news stories. Crime dominates news coverage in many newspapers and television newscasts, and, as just noted, the media may devote much coverage to a few sensational crimes and create the false impression that a "crime wave" is occurring when the crime rate may even be declining.

Second, the media devote particularly heavy coverage to violent crime, reflecting the common saying that "if it bleeds, it leads." For example, more than 25 percent of the crime stories on evening newscasts and in newspapers concern homicide, even though homicide comprises less than 1 percent of all crime (Feld, 2003).Feld, B. C. (2003). The politics of race and juvenile justice: The "due process revolution" and the conservative reaction. *Justice Quarterly, 20*, 765–800. Similarly, the vast majority of crime stories feature violent crime, even though violent crime comprises only about 12–14 percent of all street crimes combined. Media attention to violent crime thus gives the public the false impression that most crime is violent when in fact most crime involves a theft of some sort (*property crime*).

Third, the media tend to highlight crimes committed by African Americans or other people of color and crimes with white victims. A greater percentage of crime stories involve people of color as offenders than is true in arrest statistics. A greater percentage of crime stories also involve whites as victims than is actually true, and newspaper stories of white-victim crimes are longer than those of black-victim crimes. Crimes in which African Americans are the offenders and whites are the victims also receive disproportionate media coverage even though most crimes involve offenders and victims of the same race. In all these ways, the news media exaggerate the extent to which people of color commit crimes and the extent to which whites are victims of crimes.

Fourth, the media also tend to highlight crimes committed by youths. In one study of thousands of local newscast stories, about two-thirds of the stories about violence depicted youthful offenders, even though teenagers commit only about 14–16 percent of violent crime (Jackson, 1997).Jackson, D. Z. (1997, September 10). No wonder we're afraid of youths. *The Boston Globe*, p. A15. In a related problem, media stories involving teenagers are much more likely to show them committing crime or other antisocial acts than committing good deeds or other positive behavior. In these ways, the news media convey a false impression that leads the public to believe both that youths commit much of our violent crime and that youth violence has been rising even though it has actually declined since the early 1990s.

Measuring Crime

It is surprisingly difficult to know how much crime occurs. Crime is not like the weather, when we all can see whether it is raining, snowing, or sunny. Usually when crime occurs, only the criminal and the victim, and sometimes an occasional witness, know about it. We thus have an incomplete picture of the crime problem, but because of various data sources we still have a pretty good understanding of how much crime exists and of who is most likely to commit it and be victimized by it.

The government's primary source of crime data is the **Uniform Crime Reports (UCR)**, published annually by the Federal Bureau of Investigation. The FBI gathers its data from police departments around the country who tell the FBI about crimes that have come to their attention. The police also tell the FBI whether someone is arrested for the crime and, if so, the person's age, gender, and race. The FBI gathers all these UCR data and reports them in an annual volume called *Crime in the United States* (Federal Bureau of Investigation, 2011).Federal Bureau of Investigation. (2011). *Crime in the United States, 2010*. Washington, DC: Author.

Most UCR data concern the so-called **Part I Crimes**, eight felonies that the FBI considers the most serious. Four of these are violent crimes—homicide, rape, aggravated assault, and robbery—and four are property crimes—burglary, larceny (e.g., shoplifting, pick-pocketing, purse-snatching), motor vehicle theft, and arson.

According to the FBI, 1,246,248 violent crimes and 9,082,887 property crimes occurred in 2010, for a total of about 10.3 million. This is the nation's official crime count, and by any standard it is a lot of crime. However, this number is much lower than it should be because *more than half of all crime victims do not report their crimes to the police*, and the police thus do not know about them. These unreported crimes represent "hidden" crimes or, as they are often called, the **dark figure of crime**. Thus the true crime problem is much greater than suggested by the UCR.

This underreporting of crime represents a major problem for the UCR's validity. Several other problems exist. First, the UCR excludes white-collar crimes and thus diverts attention away from their harm. Second, police practices affect the number of crimes

listed in the UCR. For example, the police do not record every report they hear from a citizen as a crime. Sometimes they do not have the time to do so, and sometimes they do not believe the citizen. If they do not record the report, the FBI does not count it as a crime. If the police start recording more reports or fail to record even more reports, the official crime rate will rise or fall, respectively, even though the actual number of crimes has not changed. This fact has led to crime-reporting scandals during the past two decades, as police departments in several major cities failed to record many crimes or downgraded others (e.g., calling a rape a simple assault) in an apparent effort to make it appear as if the crime rate were falling (Hart, 2004).Hart, A. (2004, *February 21*). Report finds Atlanta police cut figures on crimes. *New York Times*, p. A1. In a third problem, if crime victims become more or less likely to report their crimes to the police (e.g., the advent of the 911 emergency number may have increased calls to the police), the official crime rate will again change, even if the actual number of crimes has not.

To get a more accurate picture of crime, the federal government began in the early 1970s to administer a survey, now called the **National Crime Victimization Survey (NCVS)**, to tens of thousands of randomly selected US households. People in the households are asked whether they or their residence has been the victim of several different types of crimes in the past half year. Their responses are then extrapolated to the entire US population to yield fairly accurate estimates of the actual number of crimes occurring in the nation. These estimates are thought to be more accurate than the UCR's figures, even if it is true that victims sometimes might not want to tell NCVS interviewers what happened to them (Catalano, 2006).Catalano, S. M. (2006). *The measurement of crime: Victim reporting and police recording*. New York, NY: LFB Scholarly.

Table 8.1 lists the number of street crimes as reported by the UCR and estimated by NCVS. Note that these two crime sources do not measure exactly the crimes. For example, the NCVS excludes commercial crimes such as shoplifting, while the UCR includes them. The NCVS also includes simple assaults (where someone receives only a minor injury), while the UCR excludes them. These differences notwithstanding, we can still see that the NCVS estimates about 1.8 times as many crimes as the UCR reports to us. The *dark figure* of crime is large indeed.

Table 8.1 Number of Crimes: Uniform Crime Reports (UCR) and National Crime Victimization Survey (NCVS), 2010

	UCR	NCVS
Violent crime	1,246,248	3,817,380
Property crime	9,082,887	14,908,330
Total	10,329,135	18,725,710

Source: Maguire, K. (Ed.). (2011). *Sourcebook of criminal justice statistics*. Retrieved from http://www.albany.edu/sourcebook/toc_3.html.

A third source of crime information is the **self-report survey**. Here subjects, usually adolescents, indicate on an anonymous questionnaire whether and how often they committed various offenses in, say, the past year. Typically, they also answer questions about their family relationships, school performance, and other aspects of their backgrounds. Self-report studies have yielded valuable information about delinquency and explanations of crime. Like the NCVS, they underscore how much crime is committed that does not come to the attention of the police.

Key Takeaways

- Much of the American public is concerned about crime, and many people worry about becoming a victim of various types of crime.
- The news media overdramatize the nature and amount of crime, and they give more attention to crimes involving African Americans and Latinos as offenders and whites as victims.
- The nation's major source of crime data is the Uniform Crime Reports (UCR). However, many people do not report their crimes to the police, and police practices affect the number of "official" crimes reported by the UCR.

For Your Review

1. Why do you think so many Americans are afraid of crime even though the crime rate has greatly declined since the early 1990s?
2. Why is it difficult to measure crime accurately? Why is the measurement of crime by the FBI inaccurate?

10.2: Types of Crime

Learning Objectives

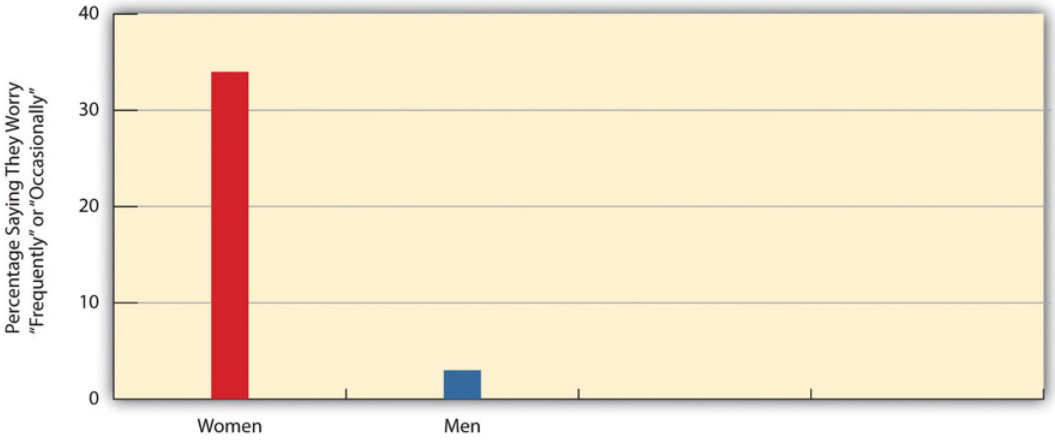
1. Describe the major aspects of homicide.
2. Discuss evidence indicating that white-collar crime is more serious than street crime.
3. Explain the major issues raised by the concept of consensual crime.

Many types of crime exist. Criminologists commonly group crimes into several major categories: (1) violent crime; (2) property crime; (3) white-collar crime; (4) organized crime; and (5) consensual or victimless crime. Within each category, many more specific crimes exist. For example, violent crime includes homicide, aggravated and simple assault, rape and sexual assault, and robbery, while property crime includes burglary, larceny, motor vehicle theft, and arson. Because a full discussion of the many types of crime would take several chapters or even an entire book or more, we highlight here the most important dimensions of the major categories of crime and the issues they raise for public safety and crime control.

Violent Crime

Even if, as our earlier discussion indicated, the news media exaggerate the problem of violent crime, it remains true that violent crime plagues many communities around the country and is the type of crime that most concerns Americans. The news story that began this chapter reminds us that violent crime is all too real for too many people; it traps some people inside their homes and makes others afraid to let their children play outside or even to walk to school. Rape and sexual assault are a common concern for many women and leads them to be more fearful of being victimized than men: In the 2011 Gallup poll mentioned earlier, 37 percent of women said they worried about being sexually assaulted, compared to only 6 percent of men (see Figure 8.1).

Figure 8.1 Gender and Worry about Being Sexually Assaulted (Percentage Saying They Worry “Frequently” or “Occasionally”)



Source: Data from Maguire, K. (Ed.). (2011). Sourcebook of criminal justice statistics. Retrieved from http://www.albany.edu/sourcebook.

Research on violent crime tends to focus on homicide and on rape and sexual assault. Homicide, of course, is considered the most serious crime because it involves the taking of a human life. As well, homicide data are considered more accurate than those for other crimes because most homicides come to the attention of the police and are more likely than other crimes to lead to an arrest. For its part, the focus on rape and sexual assault reflects the contemporary women’s movement’s interest in these related crimes beginning in the 1970s and the corresponding interest of criminologists, both female and male, in the criminal victimization of women.

Certain aspects of homicide are worth noting. First, although some homicides are premeditated, most in fact are relatively spontaneous and the result of intense emotions like anger, hatred, or jealousy (Fox, Levin, & Quinet, 2012).Fox, J. A., Levin, J., & Quinet, K. (2012). *The will to kill: Making sense of senseless murder*. Upper Saddle River, NJ: Prentice Hall. Two people may begin arguing for any number of reasons, and things escalate. A fight may then ensue that results in a fatal injury, but one of the antagonists may also pick up a weapon and use it. About 25–50 percent of all homicides are victim-precipitated, meaning that the eventual victim is the one who starts the argument or the first one to escalate it once it has begun.

Second, and related to the first aspect, most homicide offenders and victims knew each other before the homicide occurred. Indeed, about three-fourths of all homicides involve nonstrangers, and only one-fourth involve strangers. Intimate partners (spouses, ex-spouses, and current and former partners) and other relatives commit almost 30 percent of all homicides (Messner, Deane, & Beaulieu, 2002).Messner, S. F., Deane, G., & Beaulieu, M. (2002). A log-multiplicative association model for allocating homicides with unknown victim-offender relationships. *Criminology, 40*, 457–479. Thus although fear of a deadly attack by a stranger dominates the American consciousness, we in fact are much more likely on average to be killed by someone we know than by someone we do not know.

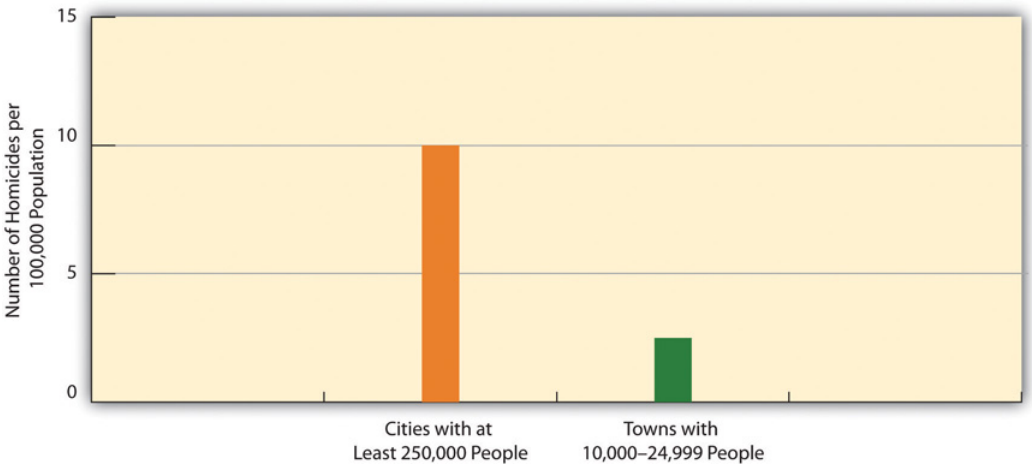
Third, about two-thirds of homicides involve firearms. To be a bit more precise, just over half involve a handgun, and the remaining firearm-related homicides involve a shotgun, rifle, or another undetermined firearm. Combining these first three aspects, then, the most typical homicide involves nonstrangers who have an argument that escalates and then results in the use of deadly force when one of the antagonists uses a handgun.

Fourth, most homicides (as most violent crime in general) are **intraracial**, meaning that they occur within the same race; the offender *and* victim are of the same race. For single offender/single victim homicides where the race of both parties is known, about 90 percent of African American victims are killed by African American offenders, and about 83 percent of white victims are killed by white offenders (Federal Bureau of Investigation, 2011).Federal Bureau of Investigation. (2011). *Crime in the United States, 2010*. Washington, DC: Federal Author. Although whites fear victimization by African Americans more than by whites, whites in fact are much more likely to be killed by other whites than by African Americans. While African Americans do commit about half of all homicides, most of their victims are also African American.

Fifth, males commit about 90 percent of all homicides and females commit only 10 percent. As we discuss in Section 3.1, males are much more likely than women to commit most forms of crime, and this is especially true for homicide and other violent crime.

Sixth, the homicide rate is much higher in large cities than in small towns. In 2010, the homicide rate (number of homicides per 100,000 population) in cities with a population at or over 250,000 was 10.0 percent, compared to only 2.5 percent in towns with a population between 10,000 and 24,999 (see Figure 8.2). Thus the risk for homicide is four times greater in large cities than in small towns. While most people in large cities certainly do *not* die from homicide, where we live still makes a difference in our chances of being victimized by homicide and other crime.

Figure 8.2 Population Size and Homicide Rate, 2010



Source: Data from Federal Bureau of Investigation. (2011). Crime in the United States, 2010. Washington, DC: Author.

Finally, the homicide rate rose in the late 1980s and peaked during the early 1990s before declining sharply until the early 2000s and then leveling off and declining a bit further since then. Although debate continues over why the homicide rate declined during the 1990s, many criminologists attribute the decline to a strong economy, an ebbing of gang wars over drug trafficking, and a decline of people in the 15–25 age group that commits a disproportionate amount of crime (Blumstein & Wallman, 2006).Blumstein, A., & Wallman, J. (Eds.). (2006). *The crime drop in America* (2nd ed.). Cambridge: Cambridge University Press. Some observers believe rising imprisonment rates also made a difference, and we return to this issue later in this chapter.

Rape and sexual assault were included in Chapter 4's discussion of violence against women as a serious manifestation of gender inequality. As that chapter noted, it is estimated that one-third of women on the planet have been raped or sexually assaulted,

beaten, or physically abused in some other way (Heise, Ellseberg, & Gottemoeller, 1999).Heise, L., Ellseberg, M., & Gottemoeller, M. (1999). Ending violence against women. *Population Reports*, *27*(4), 1–44. While it is tempting to conclude that such violence is much more common in poor nations than in a wealthy nation like the United States, we saw in Chapter 4 that violence against women is common in this nation as well. Like homicide, about three-fourths of all rapes and sexual assaults involve individuals who know each other, not strangers.

Property Crime

As noted earlier, the major property crimes are burglary, larceny, motor vehicle theft, and arson. These crimes are quite common in the United States and other nations and, as Table 8.1 indicated, millions occur annually in this country. Many Americans have installed burglar alarms and other security measures in their homes and similar devices in their cars and SUVs. While property crime by definition does not involve physical harm, it still makes us concerned, in part because it touches so many of us. Although property crime has in fact declined along with violent crime since the early 1990s, it still is considered a major component of the crime problem, because it is so common and produces losses of billions of dollars annually.

Much property crime can be understood in terms of the roles and social networks of property criminals. In this regard, many scholars distinguish between *amateur theft* and *professional theft*. Most property offenders are amateur offenders: They are young and unskilled in the ways of crime, and the amount they gain from any single theft is relatively small. They also do not plan their crimes and instead commit them when they see an opportunity for quick illegal gain. In contrast, professional property offenders tend to be older and quite skilled in the ways of crime, and the amount they gain from any single theft is relatively large. Not surprisingly, they often plan their crimes well in advance. The so-called *cat burglar*, someone who scales tall buildings to steal jewels, expensive artwork, or large sums of money, is perhaps the prototypical example of the professional property criminals. Many professional thieves learn how to do their crimes from other professional thieves, and in this sense they are mentored by the latter just as students are mentored by professors, and young workers by older workers.

White-Collar Crime

If you were asked to picture a criminal in your mind, what image would you be likely to think of first: a scruffy young male with a scowl or sneer on his face, or a handsome, middle-aged man dressed in a three-piece business suit? No doubt the former image would come to mind first, if only because violent crime and property crime dominate newspaper headlines and television newscasts and because many of us have been victims of violent or property crime. Yet white-collar crime is arguably much more harmful than street crime, both in terms of economic loss and of physical injury, illness, and even death.

What exactly is **white-collar crime**? The most famous definition comes from Edwin Sutherland (1949, p. 9),Sutherland, E. H. (1949). *White collar crime*. New York, NY: Holt, Rinehart, and Winston. a sociologist who coined the term in the 1940s and defined it as “a crime committed by a person of respectability and high social status in the course of his occupation.” Sutherland examined the behavior of the seventy largest US corporations and found that they had violated the law hundreds of times among them. Several had engaged in crimes during either World War I or II; they provided defective weapons and spoiled food to US troops and even sold weapons to Germany and other nations the United States was fighting.

Although white-collar crime as studied today includes auto shop repair fraud and employee theft by cashiers, bookkeepers, and other employees of relatively low status, most research follows Sutherland’s definition in focusing on crime committed by people of “respectability and high social status.” Thus much of the study of white-collar crime today focuses on fraud by physicians, attorneys, and other professionals and on illegal behavior by executives of corporations designed to protect or improve corporate profits (*corporate crime*).

In the study of professional fraud, health-care fraud stands out for its extent and cost (Rosoff, Pontell, & Tillman, 2010).Rosoff, S. M., Pontell, H. N., & Tillman, R. (2010). *Profit without honor: White collar crime and the looting of America* (5th ed.). Upper Saddle River, NJ: Prentice Hall. Health-care fraud is thought to amount to more than $100 billion per year, compared to less than $20 billion for all property crime combined. For example, some physicians bill Medicare and private insurance for services that patients do not really need and may never receive. Medical supply companies sometimes furnish substandard equipment. To compensate for the economic loss it incurs, health-care fraud drives up medical expenses and insurance costs. In this sense, it steals from the public even though no one ever breaks into your house or robs you at gunpoint.

Although health-care and other professional fraud are serious, corporate crime dwarfs all other forms of white-collar crime in the economic loss it incurs and in the death, injury, and illness it causes. Corporate financial crime involves such activities as fraud, price fixing, and false advertising. The Enron scandal in 2001 involved an energy corporation whose chief executives exaggerated

profits. After their fraud and Enron's more dire financial state were finally revealed, the company's stock plummeted and it finally went bankrupt. Its thousands of workers lost their jobs and pensions, and investors in its stock lost billions of dollars. Several other major corporations engaged in (or strongly suspected of doing so) accounting fraud during the late 1990s and early 2000s, but Enron was merely the most notorious example of widespread scandal that marked this period.

While corporate financial crime and corruption have cost the nation untold billions of dollars in this and earlier decades, **corporate violence**—actions by corporations that kill or maim people or leave them ill—is even more scandalous. The victims of corporate violence include corporate employees, consumers of corporate goods, and the public as a whole. Annual deaths from corporate violence exceed the number of deaths from homicide, and illness and injury from corporate violence affect an untold number of people every year.

Employees of corporations suffer from unsafe workplaces in which workers are exposed to hazardous conditions and chemicals because their companies fail to take adequate measures to reduce or eliminate this exposure. Such exposure may result in illness, and exposure over many years can result in death. According to a recent estimate, more than 50,000 people die each year from workplace exposure (American Federation of Labor and Congress of Industrial Organizations [AFL-CIO], 2010),American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). (2010). *Death on the job: The toll of neglect*. Washington, DC: Author. a figure about three times greater than the number of annual homicides. About 1,500 coal miners die each year from black lung disease, which results from the breathing of coal dust; many and perhaps most of these deaths would be preventable if coal mining companies took adequate safety measures (G. Harris, 1998).Harris, G. (1998, April 19). Despite laws, hundreds are killed by black lung. *The Courier-Journal (Louisville, KY)*, p. A1. In another example, the asbestos industry learned during the 1930s that exposure to asbestos could cause fatal lung disease and cancer. Despite this knowledge, asbestos companies hid evidence of this hazard for more than three decades: They allowed their workers to continue to work with asbestos and marketed asbestos as a fire retardant that was widely installed in schools and other buildings. More than 200,000 asbestos workers and members of the public either have already died or are expected to die from asbestos exposure; most or all of these deaths could have been prevented if the asbestos industry had acted responsibly when it first discovered it was manufacturing a dangerous product (Lilienfeld, 1991).Lilienfeld, D. E. (1991). The silence: The asbestos industry and early occupational cancer research—a case study. *American Journal of Public Health*, *81*, 791–800.

Unsafe products also kill or maim consumers. One of the most notorious examples of deaths from an unsafe product involved the Ford Pinto, a car first sold in the early 1970s that was vulnerable to fire and explosion when hit from behind in a minor rear-end collision (Cullen, Maakestad, & Cavender, 2006).Cullen, F. T., Maakestad, W. J., & Cavender, G. (2006). *Corporate crime under attack: The fight to criminalize business violence*. Cincinnati, OH: Anderson. Ford knew before the Pinto went on the market that its gas tank was unusually vulnerable in a rear-end collision and determined it would take about $11 per car to fix the problem. It then did a cost-benefit analysis to determine whether it would cost more to fix the problem or instead to settle lawsuits after Pinto drivers and passengers died or were burned and injured in rear-end collisions. This analysis indicated that Ford would save about $87 million if it did *not* fix the problem and instead paid out compensation after Pinto drivers and passengers died or got burned. Because Ford made this decision, about five hundred people eventually died in Pinto rear-end collisions and many others were burned.

The toll of white-collar crime, both financial and violent, is difficult to estimate, but by all accounts it exceeds the economic loss and death and injury from all street crime combined. White-collar crime is thought to involve an annual economic loss of more than $700 billion annually from corporate fraud, professional fraud, employee theft, and tax evasion and an annual toll of at least 100,000 deaths from workplace-related illness or injury, unsafe products, and preventable environmental pollution. These figures compare to an economic loss of less than $20 billion from property crime and a death toll of about 17,000 from homicide (Barkan, 2012).Barkan, S. E. (2012). *Criminology: A sociological understanding* (5th ed.). Upper Saddle River, NJ: Prentice Hall. By any measure, the toll of white-collar crime dwarfs the toll of street crime, even though the latter worries us much more than white-collar crime. Despite the harm that white-collar crime causes, the typical corporate criminal receives much more lenient punishment, if any, than the typical street criminal (Rosoff et al., 2010).Rosoff, S. M., Pontell, H. N., & Tillman, R. (2010). *Profit without honor: White collar crime and the looting of America* (5th ed.). Upper Saddle River, NJ: Prentice Hall.

Organized Crime

Organized crime refers to criminal activity by groups or organizations whose major purpose for existing is to commit such crime. When we hear the term "organized crime," we almost automatically think of the so-called Mafia, vividly portrayed in the *Godfather* movies and other films, that comprises several highly organized and hierarchical Italian American "families." Although Italian Americans have certainly been involved in organized crime in the United States, so have Irish Americans, Jews, African

Americans, and other ethnicities over the years. The emphasis on Italian domination of organized crime overlooks these other involvements and diverts attention from the actual roots of organized crime.

What are these roots? Simply put, organized crime exists and even thrives because it provides goods and/or services that the public demands. Organized crime flourished during the 1920s because it was all too ready and willing to provide an illegal product, alcohol, that the pubic continued to demand even after Prohibition began. Today, organized crime earns its considerable money from products and services such as illegal drugs, prostitution, pornography, loan sharking, and gambling. It also began long ago to branch out into legal activities such as trash hauling and the vending industry.

Government efforts against organized crime since the 1920s have focused on arrest, prosecution, and other law-enforcement strategies. Organized crime has certainly continued despite these efforts. This fact leads some scholars to emphasize the need to reduce public demand for the goods and services that organized crime provides. However, other scholars say that reducing this demand is probably a futile or mostly futile task, and they instead urge consideration of legalizing at least some of the illegal products and services (e.g., drugs and prostitution) that organized crime provides. Doing so, they argue, would weaken the influence of organized crime.

Consensual Crime

Consensual crime (also called *victimless crime*) refers to behaviors in which people engage voluntarily and willingly even though these behaviors violate the law. Illegal drug use, discussed in Chapter 7, is a major form of consensual crime; other forms include prostitution, gambling, and pornography. People who use illegal drugs, who hire themselves out as prostitutes or employ the services of a prostitute, who gamble illegally, and who use pornography are all doing so because they want to. These behaviors are not entirely victimless, as illegal drug users, for example, may harm themselves and others, and that is why the term *consensual crime* is often preferred over *victimless crime*. As just discussed, organized crime provides some of the illegal products and services that compose consensual crime, but these products and services certainly come from sources other than organized crime.

This issue aside, the existence of consensual crime raises two related questions that we first encountered in Chapter 7. First, to what degree should the government ban behaviors that people willingly commit and that generally do not have unwilling victims? Second, do government attempts to ban such behaviors do more good than harm or more harm than good? Chapter 7's discussion of these questions focused on illegal drugs, and in particular on the problems caused by laws against certain drugs, but similar problems arise from laws against other types of consensual crime. For example, laws against prostitution enable pimps to control prostitutes and help ensure the transmission of sexual diseases because condoms are not regularly used.

Critics of consensual crime laws say we are now in a new prohibition and that our laws against illegal drugs, prostitution, and certain forms of gambling are causing the same problems now that the ban on alcohol did during the 1920s and, more generally, cause more harm than good. Proponents of these laws respond that the laws are still necessary as an expression of society's moral values and as a means, however imperfect, of reducing involvement in harmful behaviors.

Key Takeaway

- Most homicides are committed for relatively emotional, spontaneous reasons and between people who knew each other beforehand.
- White-collar crime involves more death, injury, and economic loss than street crime, but the punishment of white-collar crime is relatively weak.
- Consensual crime raises two related issues: (a) To what extent should the government prohibit people from engaging in behavior in which there are no unwilling victims, and (b) do laws against consensual crime do more good than harm or more harm than good?

For Your Review

1. If homicide is a relatively emotional, spontaneous crime, what does that imply for efforts to use harsh legal punishment, including the death penalty, to deter people from committing homicide?
2. Do you think consensual crimes should be made legal? Why or why not?

10.3: Who Commits Crime?

Learning Objectives

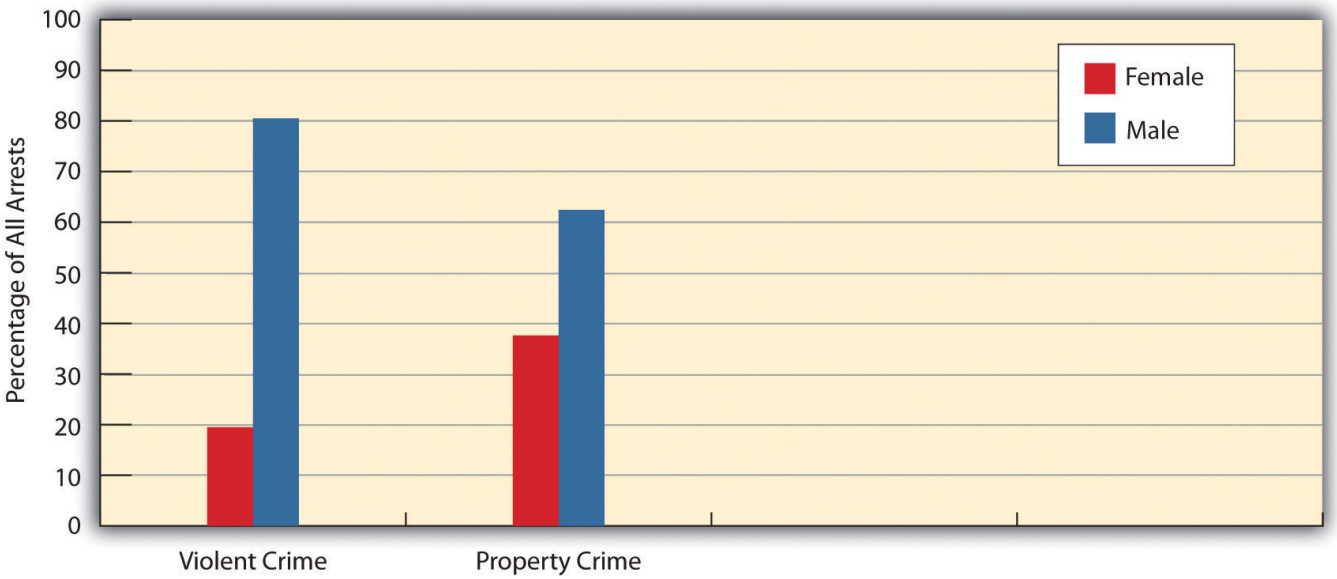
1. Explain why males commit more crime than females.
2. Discuss whether social class differences exist in crime rates.
3. Discuss whether racial/ethnic differences exist in crime rates.

While people from all walks of life commit street crime, some people are still more likely than others to break the law because of their social backgrounds. These social backgrounds include their gender, age, social class, urban/rural residence, and race and ethnicity. Despite their inaccuracies, the three data sources discussed in the first section of this chapter all provide a similar picture of what kinds of people, in terms of their social backgrounds, are more or less likely to commit street crime. We briefly discuss each background in turn.

Gender

Simply put, males commit much more crime than females. In UCR data, men comprise about 81 percent of all arrests for violent crime and about 63 percent of all arrests for property crime. (See Figure 8.3.) In the NCVS, victims report that males commit most of the violent crimes they experienced, and self-report studies find that males far outpace females in the commission of serious street offenses. When it comes to breaking the law, crime is a man's world.

Figure 8.3 Gender and Arrest (Percentage of All Arrests)



Source: Data from Federal Bureau of Investigation. (2011). Crime in the United States, 2010. Washington, DC: Author.

The key question is why such a large gender difference exists. Some scholars attribute this difference to biological differences between the sexes, but most criminologists attribute it to sociological factors. One of these is gender role socialization: Despite greater recognition of gender roles, we continue to raise our boys to be assertive and aggressive, while we raise our girls to be gentle and nurturing (Lindsey, 2011).Lindsey, L. L. (2011). *Gender roles: A sociological perspective* (5th ed.). Upper Saddle River, NJ: Prentice Hall. Such gender socialization has many effects, and one of these is a large gender difference in criminal behavior. A second factor is opportunity. Studies find that parents watch their daughters more closely than they watch their sons, who are allowed to stay out later at night and thus have more opportunity to break the law.

Age

Age also makes a difference in criminal behavior: Offending rates are highest in the late teens and early twenties and decline thereafter. Accordingly, people in the 15–24 age range account for about 40 percent of all arrests even though they comprise only about 14 percent of the population.

Several factors again seem to account for this pattern (Shoemaker, 2010).Shoemaker, D. J. (2010). *Theories of delinquency: An examination of explanations of delinquent behavior* (6th ed.). New York, NY: Oxford University Press. First, peer relationships matter more during this time of one's life than later, and peers are also more likely during this period than later to be offenders themselves. For both reasons, our peer relationships during our teens and early twenties are more likely than those in our later years to draw us into crime. Second, adolescents and young adults are more likely than older adults to lack full-time jobs; for this reason, they are more likely to need money and thus to commit offenses to obtain money and other possessions. Third, as we age out of our early twenties, our ties to conventional society increase: Many people marry, have children, and begin full-time employment, though not necessarily in that order. These events and bonds increase our stakes in conformity, to use some social science jargon, and thus reduce our desire to break the law (Laub, Sampson, & Sweeten, 2006).Laub, J. H., Sampson, R. J., & Sweeten, G. A. (2006). Assessing Sampson and Laub's life-course theory of crime. In F. T. Cullen (Ed.), *Taking stock: The status of criminological theory* (Vol. 15, pp. 313–333). New Brunswick, NJ: Transaction.

Social Class

Findings on social class differences in crime are less clear than they are for gender or age differences. Arrests statistics and much research indicate that poor people are much more likely than wealthier people to commit street crime. However, some scholars attribute the greater arrests of poor people to social class bias against them. Despite this possibility, most criminologists would probably agree that social class differences in criminal offending are "unmistakable" (Harris & Shaw, 2000, p. 138).Harris, A. R., & Shaw, J. A. W. (2000). Looking for patterns: Race, class, and crime. In J. F.Sheley (Ed.), *Criminology: A contemporary handbook* (3rd ed., pp. 129–163). Belmont, CA: Wadsworth. Reflecting this conclusion, one sociologist has even noted, with tongue only partly in cheek, that social scientists know they should not "stroll the streets at night in certain parts of town or even to park there" and that areas of cities that frighten them are "not upper-income neighborhoods" (Stark, 1987, p. 894).Stark, R. (1987). Deviant places: A theory of the ecology of crime. *Criminology, 25*, 893–911. Thus social class does seem to be associated with street crime, with poor individuals doing more than their fair share.

Explanations of this relationship center on the effects of poverty, which, as the next section will discuss further, is said to produce anger, frustration, and economic need and to be associated with a need for respect and with poor parenting skills and other problems that make children more likely to commit antisocial behavior when they reach adolescence and beyond. These effects combine to lead poor people to be more likely than wealthier people to commit street crime, even if it is true that most poor people do not commit street crime at all.

Although the poor are more likely than the wealthy to commit street crime, it is also true that the wealthy are much more likely than the poor to commit white-collar crime, which, as argued earlier, can be much more harmful than street crime. If we consider both street crime and white-collar crime, then there does not appear to be a social class-crime relationship, since the poor have higher rates of the former and the wealthy have higher rates of the latter.

Urban versus Rural Residence

Where we live also makes a difference for our likelihood of committing crime. We saw earlier that big cities have a much higher homicide rate than small towns. This trend exists for violent crime and property crime more generally. Urban areas have high crime rates in part because they are poor, but poverty by itself does not completely explain the urban-rural difference in crime, since many rural areas are poor as well. A key factor that explains the higher crime rates of urban areas is their greater population density (Stark 1987).Stark, R. (1987). Deviant places: A theory of the ecology of crime. *Criminology, 25*, 893–911. When many people live close together, they come into contact with one another more often. This fact means that teenagers and young adults have more peers to influence them to commit crime, and it also means that potential criminals have more targets (people and homes) for their criminal activity. Urban areas also have many bars, convenience stores, and other businesses that can become targets for potential criminals, and bars, taverns, and other settings for drinking can obviously become settings where tempers flare and violence ensues.

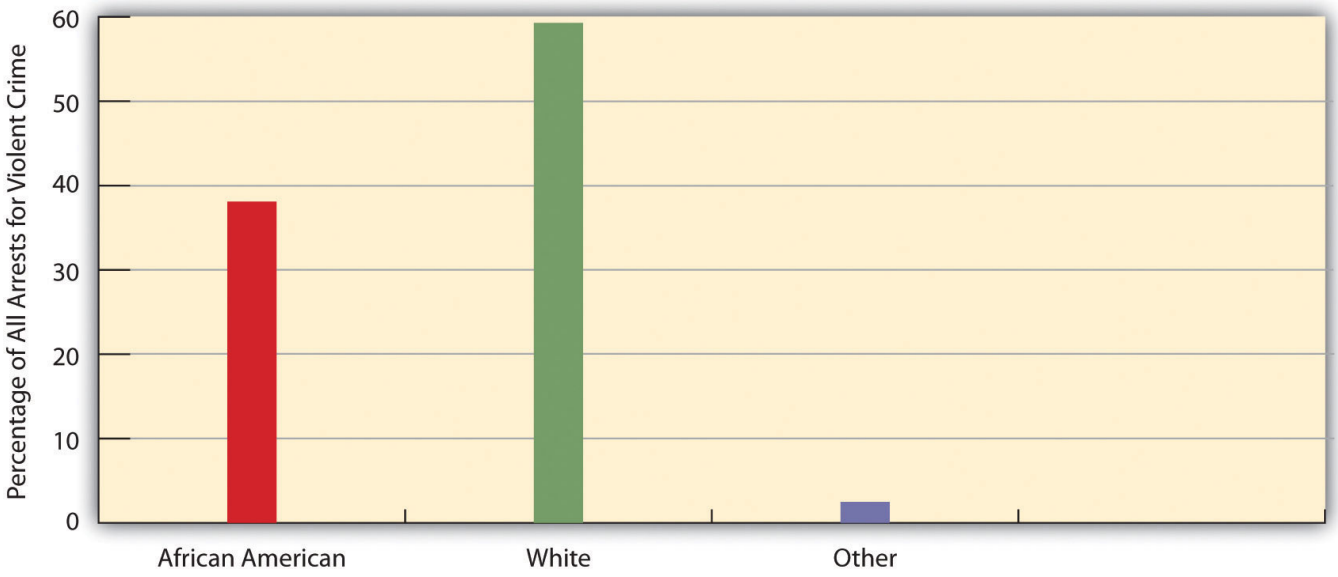
Race and Ethnicity

In discussing who commits crime, any discussion of race and ethnicity is bound to arouse controversy because of the possibility of racial and ethnic stereotyping. But if we can say that men and younger people have relatively high crime rates without necessarily sounding biased against individuals who are male or younger, then it should be possible to acknowledge that certain racial and ethnic groups have higher crime rates without sounding biased against them.

Keeping this in mind, race and ethnicity do seem to be related to criminal offending. In particular, much research finds that African Americans and Latinos have higher rates of street crime than non-Latino whites. For example, although African Americans

comprise about 13 percent of the US population, they account for about 39 percent of all arrests for violent crime (see Figure 8.4).

Figure 8.4 Race and Arrest for Violent Crime (Percentage of All Violent Crime Arrests)



Source: Data from Federal Bureau of Investigation. (2011). Crime in the United States, 2010. Washington, DC: Author.

Latinos also have higher crime rates than non-Latino whites, but lower rates than those for African Americans. Although racial and ethnic bias by the criminal justice system may account for some of these racial/ethnic differences in offending, most criminologists agree that such differences do in fact exist for serious street crimes (Walker, Spohn, & DeLone, 2012).Walker, S., Spohn, C., & DeLone, M. (2012). *The color of justice: Race, ethnicity, and crime in America* (5th ed.). Belmont, CA: Wadsworth.

Why do these differences exist? A racist explanation would attribute them to biological inferiority of the groups, African Americans and Latinos, with the relatively high rates of offending. Such explanations were popular several generations ago but fortunately lost favor as time passed and attitudes changed. Today, scholars attribute racial/ethnic differences in offending to several sociological factors (Unnever & Gabbidon, 2011).Unnever, J. D., & Gabbidon, S. L. (2011). *A theory of African American offending: Race, racism, and crime*. New York, NY: Routledge. First, African Americans and Latinos are much poorer than whites on the average, and poverty contributes to higher crime rates. Second, they are also more likely to live in urban areas, which, as we have seen, also contribute to higher crime rates. Third, the racial and ethnic discrimination they experience leads to anger and frustration that in turn can promote criminal behavior. Although there is less research on Native Americans' criminality, they, too, appear to have higher crime rates than whites because of their much greater poverty and experience of racial discrimination (McCarthy & Hagan, 2003).McCarthy, B., & Hagan, J. (2003). Sanction effects, violence, and native North American street youth. In D. F. Hawkins (Ed.), *Violent crime: Assessing race and ethnic differences* (pp. 117–137). Cambridge: Cambridge University Press.

In appreciating racial/ethnic differences in street crime rates, it is important to keep in mind that whites commit most white-collar crime, and especially corporate crime, as it is white people who lead and manage our many corporations. Just as social class affects the type of crime that people do, so do race and ethnicity. Wealthy, white people commit much crime, but it is white-collar crime they tend to commit, not street crime.

Key Takeaways

- Males commit more street crime than females, in part because of gender role socialization that helps make males more assertive and aggressive.
- Young people commit a disproportionate amount of street crime, in part because of the influence of their peers and their lack of stakes in conformity.
- The disproportionate involvement of African Americans and Latinos in street crime arises largely from their poverty and urban residence.

For Your Review

1. If we say that males commit more crime than females, does that imply that we are prejudiced against males? Why or why not?
2. Write a brief essay that outlines social class and racial/ethnic differences in street crime and explains the reasons for these differences.

10.4: Explaining Crime

Learning Objectives

1. Understand social structure theories of crime.
2. Explain the social bonding theory of crime.
3. Describe the general assumptions of conflict theories of crime.

If we want to be able to reduce crime, we must first understand why it occurs. Sociologists generally discount explanations rooted in the individual biology or psychology of criminal offenders. While a few offenders may suffer from biological defects or psychological problems that lead them to commit crime, most do not. Further, biological and psychological explanations cannot adequately explain the social patterning of crime discussed earlier: why higher crime rates are associated with certain locations and social backgrounds. For example, if California has a higher crime rate than Maine, and the United States has a higher crime rate than Canada, it would sound silly to say that Californians and Americans have more biological and psychological problems than Mainers and Canadians, respectively. Biological and psychological explanations also cannot easily explain why crime rates rise and fall, nor do they lend themselves to practical solutions for reducing crime.

In contrast, sociological explanations do help understand the social patterning of crime and changes in crime rates, and they also lend themselves to possible solutions for reducing crime. A brief discussion of these explanations follows, and a summary appears in Table 8.2.

Table 8.2 Sociological Explanations of Crime

Major perspective	Related explanation	Summary of explanation
Functional (social structure theories)	Social disorganization	Certain social characteristics of urban neighborhoods contribute to high crime rates. These characteristics include poverty, dilapidation, population density, and population turnover.
	Anomie	According to Robert Merton, crime by the poor results from a gap between the cultural emphasis on economic success and the inability to achieve such success through the legitimate means of working.
Interactionist (social process theories)	Differential association	Edwin H. Sutherland argued that criminal behavior is learned by interacting with close friends who teach us how to commit various crimes and also the values, motives, and rationalizations we need to adopt in order to justify breaking the law.
	Social bonding	Travis Hirschi wrote that delinquency results from weak bonds to conventional social institutions, such as families and schools.
	Labeling	Deviance and crime result from being officially labeled; arrest and imprisonment increase the likelihood of reoffending.
Conflict (conflict theories)	Group conflict	Criminal law is shaped by the conflict among the various social groups in society that exist because of differences in race and ethnicity, social class, religion, and other factors.
	Radical	The wealthy try to use the law and criminal justice system to reinforce their power and to keep the poor and people of color at the bottom of society.

Major perspective	Related explanation	Summary of explanation
	Feminist	Gender plays an important role in the following areas: (1) the reasons girls and women commit crime; (2) the reasons female crime is lower than male crime; (3) the victimization of girls and women by rape, sexual assault, and domestic violence; and (4) the experience of women professionals and offenders in the criminal justice system.

The Functional Perspective: Social Structure Theories

Social structure theories all stress that crime results from the breakdown of society's norms and social organization and in this sense fall under the functional perspective outlined in Chapter 1. They trace the roots of crime to problems in the society itself rather than to biological or psychological problems inside individuals. By doing so, they suggest the need to address society's social structure in order to reduce crime. Several social structure theories exist.

Social Disorganization Theory

A popular explanation is **social disorganization theory**. This approach originated primarily in the work of Clifford R. Shaw and Henry D. McKay (1942),Shaw, C. R., & McKay, H. D. (1942). *Juvenile delinquency and urban areas*. Chicago, IL: University of Chicago Press. two social scientists at the University of Chicago who studied that city's delinquency rates during the first three decades of the twentieth century. During this time, the ethnic composition of Chicago changed considerably, as the city's inner zones were first occupied by English, German, and Irish immigrants, and then by Eastern European immigrants, and then by African Americans who moved there from southern states. Shaw and McKay found that the inner zones of Chicago consistently had the highest delinquency rates regardless of which ethnic group lived there, and they also found that the ethnic groups' delinquency rates declined as they moved to outer areas of Chicago. To explain these related patterns, Shaw and McKay reasoned that the inner zones of Chicago suffered from *social disorganization*: A weakening of social institutions such as the family, school, and religion that in turn weakens the strength of social bonds and norms and the effectiveness of socialization. Research today confirms that crime rates are highest in neighborhoods with several kinds of structural problems, including high rates of residential mobility, population density, poverty, and single-parent families (Mazerolle, Wickes, & McBroom, 2010).Mazerolle, L., Wickes, R., & McBroom, J. (2010). Community variations in violence: The role of social ties and collective efficacy in comparative context. *Journal of Research in Crime and Delinquency, 47*(1), 3–30.

Anomie Theory

Another popular explanation is **anomie theory**, first formulated by Robert K. Merton (1938)Merton, R. K. (1938). Social structure and anomie. *American Sociological Review, 3*, 672–682. in a classic article. Writing just after the Great Depression, Merton focused on the effects of poverty in a nation like the United States that places so much emphasis on economic success. With this strong cultural value, wrote Merton, the poor who do not achieve the American dream feel especially frustrated. They have several ways or adaptations of responding to their situation (see Table 8.3).

Table 8.3 Anomie Theory

	Goal of economic success	
	Accept	*Reject*
Value of working		
Accept	Conformity	Ritualism
Reject	Innovation	Retreatism

First, said Merton, they may continue to accept the goal of economic success and also the value of working at a job to achieve such success; Merton labeled this adaptation *conformity*. Second, they may continue to favor economic success but reject the value of working and instead use new, illegitimate means, for example theft, of gaining money and possessions; Merton labeled this adaptation *innovation*. Third, they may abandon hope of economic success but continue to work anyway because work has become a habit. Merton labeled this adaptation *ritualism*. Finally, they may reject both the goal of economic success and the means of

working to achieve such success and withdraw from society either by turning to drugs or by becoming hobos; Merton labeled this adaptation *retreatism*. He also listed a fifth adaptation, which he called *rebellion*, to characterize a response in which people reject economic success and working and work to bring about a new society with new values and a new economic system.

Merton's theory was very influential for many years but eventually lost popularity, partly because many crimes, such as assault and rape, are not committed for the economic motive that his theory assumed, and partly because many people use drugs and alcohol without dropping out of society, as his retreatism category assumed. In recent years, however, scholars have rediscovered and adapted his theory, and it has regained favor as new attention is being paid to the frustration resulting from poverty and other strains in one's life that in turn may produce criminal behavior (Miller, Schreck, & Tewksbury, 2011).Miller, J. M., Schreck, C. J., & Tewksbury, R. (2011). *Criminological theory: A brief introduction* (3rd ed.). Upper Saddle River, NJ: Prentice Hall.

The Interactionist Perspective: Social Process Theories

Social process theories all stress that crime results from the social interaction of individuals with other people, particularly their friends and family, and thus fall under the interactionist perspective outlined in Chapter 1. They trace the roots of crime to the influence that our friends and family have on us and to the meanings and perceptions we derive from their views and expectations. By doing so, they indicate the need to address the peer and family context as a promising way to reduce crime.

Differential Association Theory

One of the most famous criminological theories is **differential association theory**, first formulated at about the same time as Merton's anomie theory by Edwin H. Sutherland and published in its final form in an edition of a criminology text he wrote (Sutherland, 1947).Sutherland, E. H. (1947). *Principles of criminology* (4th ed.). Philadelphia, PA: J. P. Lippincott. Sutherland rejected the idea, fashionable at the time, that crime had strong biological roots and instead said it grew out of interaction with others. Specifically, he wrote that adolescents and other individuals learn that it is acceptable to commit crime and also how to commit crime from their interaction with their close friends. Adolescents become delinquent if they acquire more and stronger attitudes in favor of breaking the law than attitudes opposed to breaking the law. As Sutherland put it, "A person becomes delinquent because of an excess of definitions favorable to the violation of law over definitions unfavorable to the violation of law." Crime and delinquency, then, result from a very normal social process, social interaction. Adolescents are more or less at risk for delinquency partly depending on who their friends are and what their friends do or don't do.

Many scholars today consider peer influences to be among the most important contributors to delinquency and other misbehavior (Akers & Sellers, 2009).Akers, R. L., & Sellers, C. S. (2009). *Criminological theories: Introduction, evaluation, and application* (5th ed.). New York, NY: Oxford University Press. One problem with differential association theory is that it does not explain behavior, like rape, that is usually committed by a lone offender and that is generally the result of attitudes learned from one's close friends.

Social Bonding Theory

In a 1969 book, *Causes of Delinquency*, Travis Hirschi (1969)Hirschi, T. (1969). *Causes of delinquency*. Berkeley, CA: University of California Press. asked not what prompts people to commit crime, but rather what *keeps them from* committing crime. This question was prompted by his view that human nature is basically selfish and that it is society's task to tame this selfishness. He wrote that an adolescent's bonds to society, and specifically the bonds to family and school, help keep the adolescent from breaking the law.

Hirschi identified several types of social bonds, but generally thought that the closer adolescents feel to their family and teachers, the more they value their parents' beliefs and school values, and the more time they spend with their families and on school activities, the less likely they are to be delinquent. Turning that around, they are more likely to be delinquent if they feel more distant from their parents and teachers, if they place less value on their family's and school's values, and if they spend less time with these two very important social institutions in their lives.

Hirschi's **social bonding theory** attracted immediate attention and is one of the most popular and influential theories in criminology today. It highlighted the importance of families and schools for delinquency and stimulated much research on their influence. Much of this research has focused on the relationship between parents and children. When this relationship is warm and harmonious and when children respect their parents' values and parents treat their children firmly but fairly, children are less likely to commit antisocial behavior during childhood and delinquency during adolescence. Schools also matter: Students who do well in

school and are very involved in extracurricular activities are less likely than other students to engage in delinquency (Bohm & Vogel, 2011).Bohm, R. M., & Vogel, B. (2011). *A primer on crime and delinquency theory* (3rd ed.). Belmont, CA: Wadsworth.

Children and Our Future

Saving Children from a Life of Crime

Millions of children around the nation live in circumstances that put them at risk for a childhood, adolescence, and adulthood filled with antisocial behavior, delinquency, and crime, respectively. Although most of these children in fact will not suffer this fate, many of their peers will experience these outcomes. These circumstances thus must be addressed to save these children from a life of crime. As social scientists Brandon C. Welsh and David P. Farrington observe, "Convincing research evidence exists to support a policy of saving children from a life of crime by intervening early in childhood to tackle key risk factors."

What are these risk factors? They include being born to a teenaged, single mother; living in poverty or near poverty; attending poor, dilapidated schools; and living in high-crime urban areas. As should be evident, these risk factors are all related, as most children born to teenaged, single mothers live in poverty or near poverty, and many such children live in high-crime urban areas.

What can be done to help save such children from a life of crime? Ideally, our nation would lift them and their families entirely out of poverty with employment and social payment policies. Although this sort of national policy will not occur in the foreseeable future, a growing amount of rigorous social science evaluation evidence points to several effective programs and policies that can still help at-risk children. These include (1) at the individual level, certain types of preschool programs and social skills training programs; (2) at the family level, home visiting by trained professionals and parenting training programs; and (3) at the school and community levels, certain types of after-school and community-mentoring programs in which local adults spend time with children at risk for delinquency and other problems.

As Welsh and Farrington note, "Early prevention is by no means a panacea. But it does represent an integral part of any plan to reduce the nation's crime rate." They add that several other Western democracies have national agencies devoted to improving behavioral and other outcomes among those nations' children, and they call for the United States to establish a similar national agency, the National Council on Early Prevention, as part of a nationwide strategy to prevent delinquency and other antisocial behaviors among American youth.

Sources: Piquero, Farrington, Welsh, Tremblay, & Jennings, 2009; Welsh & Farrington, 2007Piquero, A. R., Farrington, D. P., Welsh, B. C., Tremblay, R., & Jennings, W. (2009). Effects of early family/parent training programs on antisocial behavior and delinquency. *Journal of Experimental Criminology 5*, 83–120; Welsh, B. C., & Farrington, D. P. (2007). Save children from a life of crime. *Criminology & Public Policy, 6*(4), 871–879.

Another social institution, religion, has also been the subject of research. An increasing number of studies are finding that religious involvement seemingly helps keep adolescents from using alcohol and other drugs (see Chapter 7), from engaging in frequent sexual activity, and from engaging in delinquency generally (Desmond, Soper, & Purpura, 2009).Desmond, S. A., Soper, S. E., & Purpura, D. J. (2009). Religiosity, moral beliefs, and delinquency: Does the effect of religiosity on delinquency depend on moral beliefs? *Sociological Spectrum, 29*, 51–71. Fewer studies of religiosity and criminality during adulthood exist, but one investigation found an association between greater religiosity and fewer sexual partners among never-married adults (Barkan, 2006).Barkan, S. E. (2006). Religiosity and premarital sex during adulthood. *Journal for the Scientific Study of Religion, 45*, 407–417.

Labeling Theory

Our criminal justice system is based on the idea that the prospect of quick arrest and harsh punishment should deter criminal behavior. **Labeling theory** has the opposite idea, as it assumes that labeling someone as a criminal or deviant, which arrest and imprisonment certainly do, makes the person more likely to continue to offend. This result occurs, argues the theory, because the labeling process gives someone a negative self-image, reduces the potential for employment, and makes it difficult to have friendships with law-abiding individuals.

Suppose, for example, that you were just released from prison after serving a five-year term for armed robbery. When you apply for a job and list your prison term on the application, how likely are you to get hired? If you are at a bar and meet someone who interests you and then tell the person where you were for the previous five years, what are the chances that the conversation will

continue? Faced with bleak job prospects and a dearth of people who want to spend time with you, what are your alternatives? Might you not succumb to the temptation to hang out with other offenders and even to commit new crime yourself?

Although research findings are not unanimous, several studies do find that arrest and imprisonment increase future offending, as labeling theory assumes (Nagin, Cullen, & Jonson, 2009).Nagin, D. S., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. *Crime and Justice: A Review of Research, 38*, 115–200. To the extent this undesired consequence occurs, efforts to stem juvenile and adult crime through harsher punishment may sometimes have the opposite result from their intention.

The Conflict Perspective

Several related theories fall under the conflict perspective outlined in Chapter 1. Although they all have something to say about why people commit crime, their major focus is on the use and misuse of the criminal law and criminal justice system to deal with crime. Three branches of the conflict perspective exist in the study of crime and criminal justice.

The first branch is called **group conflict theory**, which assumes that criminal law is shaped by the conflict among the various social groups in society that exist because of differences in race and ethnicity, social class, religion, and other factors. Given that these groups compete for power and influence, the groups with more power and influence try to pass laws that ban behaviors in which subordinate groups tend to engage, and they try to use the criminal justice system to suppress subordinate group members. A widely cited historical example of this view is Prohibition, which was the result of years of effort by temperance advocates, most of them from white, Anglo-Saxon, rural, and Protestant backgrounds, to ban the manufacture, sale, and use of alcohol. Although these advocates thought alcohol use was a sin and incurred great social costs, their hostility toward alcohol was also motivated by their hostility toward the types of people back then who tended to use alcohol: poor, urban, Catholic immigrants. Temperance advocates' use of legal means to ban alcohol was, in effect, a "symbolic crusade" against people toward whom these advocates held prejudicial attitudes (Gusfield, 1963).Gusfield, J. R. (1963). *Symbolic crusade: Status politics and the American temperance movement*. Urbana, IL: University of Illinois Press.

The second branch of the conflict perspective is called **radical theory**. Radical theory makes the same general assumptions as group conflict theory about the use of criminal law and criminal justice, but with one key difference: It highlights the importance of (economic) social class more than the importance of religion, ethnicity, and other social group characteristics. In this way, radical theory evokes the basic views of Karl Marx on the exploitation and oppression of the poor and working class by the ruling class (Lynch & Michalowski, 2006).Lynch, M. J., & Michalowski, R. J. (2006). *Primer in radical criminology: Critical perspectives on crime, power and identity* (4th ed.). Monsey, NY: Criminal Justice Press.

An early but still influential radical explanation of crime was presented by Dutch criminologist Willem Bonger (1916).Bonger, W. (1916). *Criminality and economic conditions* (H. P. Horton, Trans.). Boston, MA: Little, Brown. Bonger blamed the high US crime rate on its economic system, capitalism. As an economic system, he said, capitalism emphasizes the pursuit of profit. Yet, if someone gains profit, someone else is losing it. This emphasis on self-gain, he said, creates an egoistic culture in which people look out for themselves and are ready and even willing to act in a way that disadvantages other people. Amid such a culture, he said, crime is an inevitable outcome. Bonger thought crime would be lower in socialist societies because they place more emphasis on the welfare of one's group than on individual success.

Feminist approaches comprise the third branch of the conflict perspective on the study of crime and criminal justice. Several such approaches exist, but they generally focus on at least one of four areas: (1) the reasons girls and women commit crime; (2) the reasons female crime is lower than male crime; (3) the victimization of girls and women by rape, sexual assault, and domestic violence; and (4) the experience of women professionals and offenders in the criminal justice system.

Regarding the first area, the research generally finds that girls and women commit crime for the same reasons that boys and men commit crime: poverty, parental upbringing, and so forth. But it also finds that both women and men "do gender" when they commit crime. That is, they commit crime according to gender roles, at least to some extent. Thus one study found that women robbers tend to rob other women and not to use a gun when they do so (J. Miller & Brunson, 2000).Miller, J., & Brunson, R. K. (2000). Gender dynamics in youth gangs: A comparison of males' and females' accounts. *Justice Quarterly, 17*, 419–448.

In addressing the second area, on why female crime is less common than male crime, scholars often cite two reasons discussed earlier: gender role socialization and gender-based differences in parental supervision. One additional reason derives from social bonding theory: Girls feel closer to their parents than boys do, and thus are less delinquent (Lanctôt & Blanc, 2002).Lanctôt, N., & Blanc, M. L. (2002). Explaining deviance by adolescent females. *Crime and Justice: A Review of Research, 29*, 113–202.

We have already commented on the victimization of women from rape, sexual assault, and domestic violence, but the study of this topic began with work by feminist criminologists during the 1970s. Since that time, innumerable works have addressed this type of victimization, which is also thought to contribute to girls' delinquency and, more generally, female drug and alcohol abuse (Chesney-Lind & Jones, 2010).Chesney-Lind, M., & Jones, N. (Eds.). (2010). *Fighting for girls: New perspectives on gender and violence*. Albany, NY: State University of New York Press.

The final area for feminist work addresses women professionals and offenders in the criminal justice system. This body of research certainly goes beyond the scope of this book, but it documents the many blatant and subtle forms of discrimination that women face as police, attorneys, judges, prison guards, and other professionals (Muraskin, 2012).Muraskin, R. (Ed.). (2012). *Women and justice: It's a crime* (5th ed.). Upper Saddle River, NJ: Prentice Hall. A primary task of research on women offenders is to determine how they fare in the criminal justice system compared to male offenders. Studies tend to find that females receive somewhat more lenient treatment than males for serious offenses and somewhat harsher treatment for minor offenses, although some studies conclude that gender does not make too much of a difference one way or the other (Chesney-Lind & Pasko, 2004).Chesney-Lind, M., & Pasko, L. (2004). *The female offender: Girls, women, and crime* (2nd ed.). Thousand Oaks, CA: Sage Publications.

Key Takeaways

- Social structure theories stress that crime results from economic and other problems in how society is structured and from poverty and other problems in neighborhoods.
- Interactionist theories stress that crime results from our interaction with family members, peers, and other people, and from labeling by the criminal justice system.
- Conflict theories stress that social groups with power and influence try to use the law and criminal justice system to maintain their power and to keep other groups at the bottom of society.

For Your Review

1. What are any two criminogenic (crime-causing) social or physical characteristics of urban neighborhoods?
2. According to labeling theory, why are arrest and imprisonment sometimes counterproductive?

10.5: The Criminal Justice System

Learning Objectives

1. Describe what is meant by the "working personality" of the police.
2. Discuss the quality of legal representation of criminal defendants.
3. Explain whether incarceration reduces crime in an effective and cost-efficient manner.

The criminal justice system in a democracy like the United States faces two major tasks: (1) keeping the public safe by apprehending criminals and, ideally, reducing crime; and (2) doing so while protecting individual freedom from the abuse of power by law enforcement agents and other government officials. Having a criminal justice system that protects individual rights and liberties is a key feature that distinguishes a democracy from a dictatorship.

How well does the US criminal justice system work in both respects? How well does it control and reduce crime, and how well does it observe individual rights and not treat people differently based on their social class, race and ethnicity, gender, and other social characteristics? What are other problems in our criminal justice system? Once again, whole books have been written about these topics, and we have space here to discuss only some of this rich literature.

Police

The police are our first line of defense against crime and criminals and for that reason are often called "the thin blue line." Police officers realize that their lives may be in danger at any time, and they also often interact with suspects and other citizens whose hostility toward the police is quite evident. For these reasons, officers typically develop a *working personality* that, in response to the danger and hostility police face, tends to be authoritarian and suspicious (Skolnick, 1994).Skolnick, J. H. (1994). *Justice without trial: Law enforcement in democratic society* (3rd ed.). New York, NY: Macmillan. Indeed, it is not too far-fetched to say that police-citizen relations are characterized by mutual hostility and suspicion (Dempsey & Forst, 2012).Dempsey, J. S., & Forst, L. S. (2012). *An introduction to policing* (6th ed.). Belmont, CA: Cengage Learning.

Two aspects of police behavior are especially relevant for a textbook on social problems. The first is police *corruption*. No one knows for sure how much police corruption occurs, but low-level corruption (e.g., accepting small bribes and stealing things from stores while on patrol) is thought to be fairly common, while high-level corruption (e.g., accepting large bribes and confiscating and then selling illegal drugs) is thought to be far from rare. In one study involving trained researchers who rode around in police cars, more than one-fifth of the officers being observed committed some corruption (Reiss, 1980).Reiss, A. J., Jr. (1980). Officer violations of the law. In R. J. Lundman (Ed.), *Police behavior: A sociological perspective* (pp. 253–272). New York, NY: Oxford University Press. Several notorious police scandals have called attention to rampant corruption amid some police forces. One scandal more than three decades ago involved New York City officer Frank Serpico, whose story was later documented in a best-selling book (Maas, 1973)Maas, P. (1973). *Serpico*. New York, NY: Viking Press. and in a tension-filled film starring Al Pacino. After Serpico reported high-level corruption to his superiors, other officers plotted to have him murdered and almost succeeded. A more recent scandal involved the so-called Rampart Division in Los Angeles and involved dozens of officers who beat and shot suspects, stole drugs and money, and lied at the trials of the people they arrested (Glover & Lait, 2000).Glover, S., & Lait, M. (2000, February 10). Police in secret group broke law routinely, transcripts say. *The Los Angeles Times*, p. A1.

The other relevant behavior is *police brutality* or, to use a less provocative term, the *use of undue* (also called *unjustified* or *excessive*) force by police. Police, of course, are permitted and even expected to use physical force when necessary to subdue suspects. Given the context of police work noted earlier (feelings of danger and suspicion) and the strong emotions at work in any encounter between police and suspects, it is inevitable that some police will go beyond the bounds of appropriate force and commit brutality. An important question is how much police brutality occurs. In a recent national survey, about 1 percent of US residents who had had an encounter with the police in 2008 believed that excessive force was used against them (Eith & Durose, 2011).Eith, C., & Durose, M. R. (2011). *Contacts between police and the public, 2008*. Washington, DC: Bureau of Justice Statistics. This is a low figure in percentage terms, but still translates to 417,000 people who may have been victims of police brutality in one year.

How well do the police prevent crime? To answer this question, let us be clear what it is asking. The relevant question is not whether having the police we do have keeps us safer than having no police at all. Rather, the relevant question is whether hiring more police or making some specific change in police practice would lower the crime rate. The evidence on this issue is complex, but certain conclusions are in order.

First, simply adding more officers to a city's existing police force will probably not reduce crime, or will reduce it only to a very small degree and at great expense (Walker, 2011).Walker, S. (2011). *Sense and nonsense about crime, drugs, and communities: A policy guide* (7th ed.). Belmont, CA: Wadsworth. Several reasons may explain why additional police produce small or no reductions in crime. Much violence takes place indoors or in other locations far from police purview, and practical increases in police numbers still would not yield numbers high enough to guarantee a police presence in every public location where crime might happen. Because criminals typically think they can commit a crime with impunity if no police are around, the hiring of additional police is not likely to deter them.

Additional police may not matter, but how police are deployed *does* matter. In this regard, a second conclusion from the policing and crime literature is that *directed patrol* involving the consistent deployment of large numbers of police in high-crime areas ("hot spots") can reduce crime significantly (Mastrofski, Weisburd, & Braga, 2010).Mastrofski, S. D., Weisburd, D., & Braga, A. A. (2010). Rethinking policing: The policy implications of hot spots of crime. In N. A. Frost, J. D. Freilich & T. R. Clear (Eds.), *Contemporary issues in criminal justice policy* (pp. 251–264). Belmont, CA: Wadsworth. *Crackdowns*—in which the police flood a high crime and drug neighborhood, make a lot of arrests, and then leave—have at most a short-term effect, with crime and drug use eventually returning to their previous levels or simply becoming displaced to other neighborhoods.

Criminal Courts

In the US legal system, suspects and defendants enjoy certain rights and protections guaranteed by the Constitution and Bill of Rights and provided in various Supreme Court rulings since these documents were written some 220 years ago. Although these rights and protections do exist and again help distinguish our democratic government from authoritarian regimes, in reality the criminal courts often fail to achieve the high standards by which they should be judged. *Justice Denied* (Downie, 1972)Downie, L., Jr. (1972). *Justice denied: The case for reform of the courts*. Baltimore, MD: Penguin Books. and *Injustice for All* (Strick, 1978)Strick, A. (1978). *Injustice for all*. New York, NY: Penguin. were the titles of two popular critiques of the courts written about four decades ago, and these titles continue to apply to the criminal courts today.

A basic problem is the lack of adequate counsel for the poor. Wealthy defendants can afford the best attorneys and get what they pay for: excellent legal defense. An oft-cited example here is O. J. Simpson, the former football star and television and film celebrity who was arrested and tried during the mid-1990s for allegedly killing his ex-wife and one of her friends (Barkan, 1996).Barkan, S. E. (1996). The social science significance of the O. J. Simpson case. In G. Barak (Ed.), *Representing O. J.: Murder, criminal justice and mass culture* (pp. 36–42). Albany, NY: Harrow and Heston. Simpson hired a "dream team" of nationally famous attorneys and other experts, including private investigators, to defend him at an eventual cost of some $10 million. A jury acquitted him, but a poor defendant in similar circumstances almost undoubtedly would have been found guilty and perhaps received a death sentence.

Almost all criminal defendants are poor or near poor. Although they enjoy the right to free legal counsel, in practice they receive ineffective counsel or virtually no counsel at all. The poor are defended by public defenders or by court-appointed private counsel, and either type of attorney simply has far too many cases in any time period to handle adequately. Many poor defendants see their attorneys for the first time just moments before a hearing before the judge. Because of their heavy caseloads, the defense attorneys do not have the time to consider the complexities of any one case, and most defendants end up pleading guilty.

A 2006 report by a New York state judicial commission reflected these problems (Hakim, 2006, p. B1).Hakim, D. (2006, June 29). Judge urges state control of legal aid for the poor. *New York Times*, p. B1. The report concluded that "local governments were falling well short of constitutional requirements in providing legal representation to the poor," according to a news story. Some New York attorneys, the report found, had an average yearly caseload of 1,000 misdemeanors and 175 felonies. The report also found that many poor defendants in 1,300 towns and villages throughout the state received no legal representation at all. The judge who headed the commission called the situation "a serious crisis."

Another problem is **plea bargaining**, in which a defendant agrees to plead guilty, usually in return for a reduced sentence. Under our system of justice, criminal defendants are entitled to a trial by jury if they want one. In reality, however, most defendants plead guilty, and criminal trials are very rare: Fewer than 3 percent of felony cases go to trial. Prosecutors favor plea bargains because they help ensure convictions while saving the time and expense of jury trials, while defendants favor plea bargains because they help ensure a lower sentence than they might receive if they exercised their right to have a jury trial and then were found guilty. However, this practice in effect means that defendants are punished if they do exercise their right to have a trial. Critics of this aspect say that defendants are being coerced into pleading guilty even when they have a good chance of winning a not guilty

verdict if their case went to trial (Oppel, 2011).Oppel, R. A., Jr. (2011, September 26). Sentencing shift gives new leverage to prosecutors. *New York Times*, p. A1.

The Problem of Prisons

The United States now houses more than 1.5 million people in state and federal prisons and more than 750,000 in local jails. This total of about 2.3 million people behind bars is about double the 1990 number and yields an incarceration rate that is by far the highest rate of any Western democracy. This high rate is troubling, and so is the racial composition of American prisoners. More than 60 percent of all state and federal prisoners are African American or Latino, even though these two groups comprise only about 30 percent of the national population. As Chapter 7 noted, African Americans and Latinos have been arrested and imprisoned for drug offenses far out of proportion to their actual use of illegal drugs. This racial/ethnic disparity has contributed to what law professor Michelle Alexander (2010)Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. New York, NY: New Press. terms the "new Jim Crow" of mass incarceration. Reflecting her concern, about one of every three young African American males are under correctional supervision (in jail or prison or on probation or parole).

The corrections system costs the nation more than $75 billion annually. What does the expenditure of this huge sum accomplish? It would be reassuring to know that the high US incarceration rate keeps the nation safe and even helps reduce the crime rate, and it is certainly true that the crime rate would be much higher if we had no prisons at all. However, many criminologists think the surge in imprisonment during the last few decades has not helped reduce the crime rate at all or at least in a cost-efficient manner (Durlauf & Nagin, 2011).Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy, 10*, 13–54. Greater crime declines would be produced, many criminologists say, if equivalent funds were instead spent on crime prevention programs instead of on incarceration (Welsh & Farrington, 2007),Welsh, B. C., & Farrington, D. P. (Eds.). (2007). *Preventing Crime: What works for children, offenders, victims and places*. New York, NY: Springer. a point returned to in Section 8.6.

Criminologists also worry that prison may be a breeding ground for crime because rehabilitation programs such as vocational training and drug and alcohol counseling are lacking and because prison conditions are substandard. They note that more than 700,000 inmates are released from prison every year and come back into their communities ill equipped to resume a normal life. There they face a lack of job opportunities (how many employers want to hire an ex-con?) and a lack of friendships with law-abiding individuals, as our earlier discussion of labeling theory indicated. Partly for these reasons, imprisonment ironically may increase the likelihood of future offending (Durlauf & Nagin, 2011).Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy, 10*, 13–54.

Living conditions behind bars merit further discussion. A common belief of Americans is that many prisons and jails are like country clubs, with exercise rooms and expensive video and audio equipment abounding. However, this belief is a myth. Although some minimum-security federal prisons may have clean, adequate facilities, state prisons and local jails are typically squalid places. As one critique summarized the situation, "Behind the walls, prisoners are likely to find cramped living conditions, poor ventilation, poor plumbing, substandard heating and cooling, unsanitary conditions, limited private possessions, restricted visitation rights, constant noise, and a complete lack of privacy" (Kappeler & Potter, 2005, p. 293).Kappeler, V. E., & Potter, G. W. (2005). *The mythology of crime and criminal justice* (4th ed.). Prospect Heights, IL: Waveland Press.

Some Americans probably feel that criminals deserve to live amid overcrowding and squalid living conditions, while many Americans are probably at least not very bothered by this situation. But this situation increases the odds that inmates will leave prison and jail as *more* of a threat to public safety than when they were first incarcerated. Treating inmates humanely would be an important step toward successful reentry into mainstream society.

People Making a Difference

Making a Difference in the Lives of Ex-Cons

The text notes that more than 600,000 inmates are released from prison every year. Many of them are burdened with drug, alcohol, and other problems and face bleak prospects for employment, friendships, and stable lives, in general. Since 1967, The Fortune Society has been making a difference in the lives of ex-convicts in and near New York City.

The Fortune Society's website (http://www.fortunesociety.org) describes the group's mission: "The Fortune Society is a nonprofit social service and advocacy, founded in 1967, whose mission is to support successful reentry from prison and promote alternatives to incarceration, thus strengthening the fabric of our communities." About 70 percent of its more than 190

employees are ex-prisoners and/or have histories of substance abuse or homelessness. It is fair to say that The Fortune Society was working on prisoner reentry long before scholars discovered the problem in the late 1990s and early 2000s.

The group's president, JoAnne Page, described its halfway house where inmates stay for up to two months after their release from prisons: "This is what we do. We bring people home safely. There's a point when the crime happened. The sentence was served, and the rehabilitation must begin. We look at a human being as much more than the worst they ever did." Recalling that many of her relatives died in the Holocaust, Page added, "What my family experience did was to make me want to be somebody who fights institutions that damage people and who makes the world a little safer. Prisons are savage institutions."

In addition to its halfway house, the Fortune Society provides many other services for inmates, ex-inmates, and offenders who are put on probation in lieu of incarceration. It regularly offers drug and alcohol counseling, family services, adult education and career development programs, and classes in anger management, parenting skills, and health care. One of its most novel programs is Miss Betty's Practical Cooking and Nutrition Class, an eight-week course for ex-inmates who are young fathers. While a first reaction might be to scoff at such a class, a Fortune counselor pointed to its benefits after conceding her own immediate reaction. "When I found out about the cooking classes, I thought, 'So they're going to learn to cook, so what?' What's that going to do? But it's building self-esteem. For most of these guys, they're in a city, they've grown up on Kool-Aid and a bag of chips. This is building structure. They're at the point where they have really accomplished something…They're learning manners. You really can change patterns."

One ex-convict that Fortune helped was 22-year-old Candice Ellison, who spent more than two years in prison for assault. After not finding a job despite applying to several dozen jobs over a six-month span, she turned in desperation to The Fortune Society for help. Fortune bought her interview clothes and advised her on how to talk about her prison record with potential employers. Commending the help she received, she noted, "Some of my high school friends say it's not that hard to get a job, but for people like me with a criminal background, it's like 20 times harder."

The Fortune Society has received national recognition for its efforts. Two federal agencies, the Department of Justice and the Department of Housing and Urban Development, have featured The Fortune Society as a model program for helping ex-inmates. The Urban Institute featured this model in a video it developed about prisoner reentry programs. And in 2005, the American Society of Criminology presented the Society its President's Award for "Distinguished Contributions to the Cause of Justice." These and other examples of the national recognition won by The Fortune Society indicate that for more than four decades it has indeed been making a difference.

Sources: Bellafante, 2005; Greenhouse, 2011; Richardson, 2004Bellafante, G. (2005, March 9). Recipe for a second chance. *New York Times*, p. F1; Greenhouse, S. (2011, January 25). States help ex-inmates find jobs. *New York Times*, p. B1; Richardson, L. (2004, *July 13*). Defending the despised, and loving to do so. *New York Times*, p. B2.

Focus on the Death Penalty

The death penalty is perhaps the most controversial issue in the criminal justice system today. The United States is the only Western democracy that sentences common criminals to death, as other democracies decided decades ago that civilized nations should not execute anyone, even if the person took a human life. About two-thirds of Americans in national surveys favor the death penalty, with their reasons including the need for retribution ("an eye for an eye"), deterrence of potential murderers, and lower expenditure of public funds compared to a lifetime sentence. Social science evidence is irrelevant to the retribution argument, which is a matter for philosophy and theology, but it is relevant to many other aspects of the death debate. Taken together, the evidence on all these aspects yields a powerful case *against* the death penalty (Death Penalty Information Center, 2011).Death Penalty Information Center. (2011). *Facts about the death penalty*. Washington, DC: Author. Retrieved from http://www.deathpenaltyinfo.org/documents/FactSheet.pdf.

First, capital punishment does not deter homicide: Almost all studies on this issue fail to find a deterrent effect. An important reason for this stems from the nature of homicide. As discussed earlier, it is a relatively spontaneous, emotional crime. Most people who murder do not sit down beforehand to calculate their chances of being arrested, convicted, and executed. Instead they lash out. Premeditated murders do exist, but the people who commit them do not think they will get caught and so, once again, are not deterred by the potential for execution.

Second, the death penalty is racially discriminatory. While some studies find that African Americans are more likely than whites who commit similar homicides to receive the death penalty, the clearest evidence for racial discrimination involves the race of the victim: Homicides with white victims are more likely than those with African American victims to result in a death sentence

(Paternoster & Brame, 2008).Paternoster, R., & Brame, R. (2008). Reassessing race disparities in Maryland capital cases. *Criminology, 46*, 971–1007. Although this difference is not intended, it suggests that the criminal justice system values white lives more than African American lives.

Third, many people have been mistakenly convicted of capital offenses, raising the possibility of *wrongful executions*. Sometimes defendants are convicted out of honest errors, and sometimes they are convicted because the police and/or prosecution fabricated evidence or engaged in other legal misconduct. Whatever their source, wrongful convictions of capital offenses raise the ugly possibility that a defendant will be executed even though he was actually innocent of any capital crime. During the past four decades, more than 130 people have been released from death row after DNA or other evidence cast serious doubt on their guilt. In March 2011, Illinois abolished capital punishment, partly because of concern over the possibility of wrongful executions. As the Illinois governor summarized his reasons for signing the legislative bill to abolish the death penalty, "Since our experience has shown that there is no way to design a perfect death penalty system, free from the numerous flaws that can lead to wrongful convictions or discriminatory treatment, I have concluded that the proper course of action is to abolish it" (Schwartz & Fitzsimmons, 2011:A18).Schwartz, J., & Fitzsimmons, E. G. (2011, March 10). Illinois governor signs capital punishment ban. *New York Times*, p. A18.

Fourth, executions are expensive. Keeping a murderer in prison for life costs about $1 million in current dollars (say 40 years at $25,000 per year), while the average death sentence costs the state about $2 million to $3 million in legal expenses.

This diverse body of evidence leads most criminologists to oppose the death penalty. In 1989, the American Society of Criminology adopted this official policy position on capital punishment: "Be it resolved that because social science research has demonstrated the death penalty to be racist in application and social science research has found no consistent evidence of crime deterrence through execution, The American Society of Criminology publicly condemns this form of punishment, and urges its members to use their professional skills in legislatures and courts to seek a speedy abolition of this form of punishment."

Key Takeaways

- Partly because the police often fear for their lives, they tend to have a "working personality" that is authoritarian and suspicious. Police corruption and use of undue force remain significant problems in many police departments.
- Although criminal defendants have the right to counsel, the legal representation of such defendants, most of whom are poor or near poor, is very inadequate.
- Prisons are squalid places, and incarceration has not been shown to reduce crime in an effective or cost-efficient manner.
- Most criminologists agree that capital punishment does not deter homicide, and they worry about racial discrimination in the use of the death penalty and about the possibility of wrongful executions.

For Your Review

1. Have you ever had an encounter with a police officer? If so, how would you describe the officer's personality? Was it similar to what is described in the text?
2. The text argues that improvement in prison conditions would help reduce the probability of reoffending after inmates leave prison. Do you agree or disagree with this statement? Explain your answer.

10.6: Reducing Crime

Learning Objectives

1. Describe five strategies that criminologists have proposed to reduce crime.

During the last few decades, the United States has used a **get-tough approach** to fight crime. This approach has involved longer prison terms and the building of many more prisons and jails. As noted earlier, scholars doubt that this surge in imprisonment has achieved significant crime reduction at an affordable cost, and they worry that it may be leading to greater problems in the future as hundreds of thousands of prison inmates are released back into their communities every year.

Many of these scholars favor an approach to crime borrowed from the field of public health. In the areas of health and medicine, a **public health approach** tries to treat people who are already ill, but it especially focuses on preventing disease and illness before they begin. While physicians try to help people who already have cancer, medical researchers constantly search for the causes of cancer so that they can try to prevent it before it affects anyone. This model is increasingly being applied to criminal behavior, and criminologists have advanced several ideas that, if implemented with sufficient funds and serious purpose, hold great potential for achieving significant, cost-effective reductions in crime (Barlow & Decker, 2010; Frost, Freilich, & Clear, 2010; Lab, 2010).Barlow, H. D., & Decker, S. H. (Eds.). (2010). *Criminology and public policy: Putting theory to work*. Philadelphia, PA: Temple Univeristy Press; Frost, N. A., Freilich, J. D., & Clear, T. R. (Eds.). (2010). *Contemporary issues in criminal justice policy: Policy proposals from the American society of criminology conference*. Belmont, CA: Wadsworth; Lab, S. P. (2010). *Crime prevention: Approaches, practices and evaluations* (7th ed.). Cincinnati, OH: Anderson. Many of their strategies rest on the huge body of theory and research on the factors underlying crime in the United States, which we had space only to touch on earlier, while other proposals call for criminal justice reforms. We highlight some of these many strategies here.

Applying Social Research

"Three Strikes" Laws Strike Out

The *get-tough* approach highlighted in the text has involved, among other things, mandatory minimum sentencing, in which judges are required to give convicted offenders a minimum prison term, often several years long, rather than a shorter sentence or probation.

Beginning in the 1990s, one of the most publicized types of mandatory sentencing has been the "three strikes and you're out" policy that mandates an extremely long sentence—at least twenty-five years—and sometimes life imprisonment for offenders convicted of a third (or, in some states, a second) felony. The intent of these laws, enacted by about half the states and the federal government, is to reduce crime by keeping dangerous offenders behind bars for many years and by deterring potential offenders from committing crime (*general deterrence*). Sufficient time since the first three strikes laws were passed has elapsed to enable criminologists to assess whether they have, in fact, reduced crime.

Studies of this issue find that three strikes laws do not reduce serious crime and, in fact, may even *increase* the number of homicides. Several studies have focused on California, where tens of thousands of offenders have been sentenced under the state's three strikes law passed in 1994. Almost all these studies conclude that California's law did not reduce subsequent crime or did so by only a negligible amount. A few studies also have examined nationwide samples of city and state crime rates in the states that adopted three strikes laws and in the states that did not do so. These studies also fail to find that three strikes laws have reduced crime. As one of these studies, by three criminologists from the University of Alabama at Birmingham, concludes, "Consistent with other studies, ours finds no credible statistical evidence that passage of three strikes laws reduces crime by deterring potential criminals or incapacitating repeat offenders." The national studies even find that three strikes laws have *increased* the number of homicides. This latter finding is certainly an unintended consequence of these laws and may stem from decisions by felons facing a third strike to kill witnesses so as to avoid life imprisonment.

In retrospect, it is not very surprising that three strikes laws do not work as intended. Many criminals simply do not think they will get caught and thus are not likely to be deterred by increased penalties. Many are also under the influence of drugs and/or alcohol at the time of their offense, making it even less likely they will worry about being caught. In addition, many three strikes offenders tend to be older (because they are being sentenced for their third felony, not just their first) and thus are already "aging out" beyond the high-crime age group, 15–25. Thus three strikes laws target offenders whose criminality is already declining because they are getting older.

In addition to the increase in homicides, research has identified other problems produced by three strikes laws. Because three strikes defendants do not want a life term, some choose a jury trial instead of pleading guilty. Jury trials are expensive and slow compared to guilty pleas and thus cost the prosecution both money and time. In another problem, the additional years that three strikes offenders spend in prison are costing the states millions of dollars in yearly imprisonment costs and in health-care costs as these offenders reach their elderly years.

As should be clear, the body of three strikes research has important policy implications, as noted by the University of Alabama at Birmingham scholars: "(P)olicy makers should reconsider the costs and benefits associated with three strikes laws" (p. 235).Kovandzic, T. V., Sloan, J. J., III, & Vieraitis, L. M. (2004). "Striking out" as crime reduction policy: The impact of "three strikes" laws on crime rates in US cities. *Justice Quarterly, 21*, 207–239. Three strikes laws do not lower crime and in fact increase homicides, and they have forced the states to spend large sums of money on courts and prisons. The three strikes research strongly suggests that three strikes laws should be eliminated.

Sources: Kovandzic, Sloan, & Vieraitis, 2004; Walker, 2011Kovandzic, T. V., Sloan, J. J., III, & Vieraitis, L. M. (2004). "Striking out" as crime reduction policy: The impact of "three strikes" laws on crime rates in US cities. *Justice Quarterly, 21*, 207–239; Walker, S. (2011). *Sense and nonsense about crime, drugs, and communities: A policy guide* (7th ed.). Belmont, CA: Wadsworth.

A first strategy involves serious national efforts to reduce poverty and to improve neighborhood living conditions. It is true that most poor people do not commit crime, but it is also true that most street crime is committed by the poor or near poor for reasons discussed earlier. Efforts that create decent-paying jobs for the poor, enhance their vocational and educational opportunities, and improve their neighborhood living conditions should all help reduce poverty and its attendant problems and thus to reduce crime (Currie, 2011).Currie, E. (2011). On the pitfalls of spurious prudence. *Criminology & Public Policy, 10*, 109–114.

A second strategy involves changes in how American parents raise their boys. To the extent that the large gender difference in serious crime stems from male socialization patterns, changes in male socialization should help reduce crime (Collier, 2004).Collier, R. (2004). Masculinities and crime: Rethinking the "man question"? In C. Sumner (Ed.), *The Blackwell companion to criminology* (pp. 285–308). Oxford, United Kingdom: Blackwell. This will certainly not happen any time soon, but if American parents can begin to raise their boys to be less aggressive and less dominating, they will help reduce the nation's crime rate. As two feminist criminologists have noted, "A large price is paid for structures of male domination and for the very qualities that drive men to be successful, to control others, and to wield uncompromising power.…Gender differences in crime suggest that crime may not be so normal after all. Such differences challenge us to see that in the lives of women, men have a great deal more to learn" (Daly & Chesney-Lind, 1988, p. 527).Daly, K., & Chesney-Lind, M. (1988). Feminism and criminology. *Justice Quarterly, 5*, 497–538.

Lessons from Other Societies

Preventing Crime and Treating Prisoners in Western Europe

The text suggests the get-tough approach that the United States has been using to reduce crime has not worked in a cost-effective manner and has led to other problems, including a flood of inmates returning to their communities every year. In fighting crime, the United States has much to learn from Western Europe. In contrast to the US get-tough approach, Western European nations tend to use a public health model that comprises two components. The first is a focus on crime prevention that uses early childhood intervention programs and other preventive measures to address the roots of crime and other childhood and family problems. The second is a criminal justice policy that involves sentencing defendants and treating prisoners in a manner more likely to rehabilitate offenders and reduce their repeat offending than the more punitive approach in the United States.

The overall Western European approach to offenders is guided by the belief that imprisonment should be reserved for the most dangerous violent offenders, and that probation, community service, and other forms of community corrections should be used for other offenders. Because violent offenders comprise only a small proportion of all offenders, the Western European approach saves a great deal of money while still protecting public safety.

The experience of Denmark and the Netherlands is illustrative. Like the United States, Denmark had to deal with rapidly growing crime rates during the 1960s. Whereas the United States responded with the get-tough approach involving longer and more certain prison terms and the construction of more and more prisons, Denmark took the opposite approach: It adopted shorter prison terms for violent offenders and used the funds saved from the reduced prison costs to expand community

corrections for property offenders. Finland and the Netherlands have also adopted a similar approach that favors community corrections and relatively short prison terms for violent offenders over the get-tough approach the United States adopted.

All these nations save great sums of money in prison costs and other criminal justice expenses because they chose not to adopt the US get-tough approach, yet their rates of serious violent crime lag behind the US rates. Although these nations obviously differ from the United States, the advantages of their approach should be kept in mind as the United States evaluates its get-tough policies. There may be much to learn from their less punitive approach to crime: While the United States got tough, perhaps they got sensible.

Sources: Dammer & Albanese, 2011; Waller & Welsh, 2007Dammer, H. R., & Albanese, J. S. (2011). *Comparative criminal justice systems* (4th ed.). Belmont, CA: Wadsworth; Waller, I., & Welsh, B. C. (2007). Reducing crime by harnessing international best practices. In D. S. Eitzen (Ed.), *Solutions to social problems: Lessons from other societies* (pp. 208–216). Boston, MA: Allyn & Bacon.

A third and very important strategy involves expansion of early childhood intervention (ECI) programs and nutrition services for poor mothers and their children, as the Note 8.28 "Children and Our Future" box discussed earlier. ECI programs generally involve visits by social workers, nurses, or other professionals to young, poor mothers shortly after they give birth, as these mother's children are often at high risk for later behavioral problems (Welsh & Farrington, 2007).Welsh, B. C., & Farrington, D. P. (2007). Save children from a life of crime. *Criminology & Public Policy, 6*(4), 871–879. These visits may be daily or weekly and last for several months, and they involve parenting instruction and training in other life skills. These programs have been shown to be very successful in reducing childhood and adolescent misbehavior in a cost-effective manner (Greenwood, 2006).Greenwood, P. W. (2006). *Changing lives: Delinquency prevention as crime-control policy*. Chicago, IL: University of Chicago Press. In the same vein, nutrition services would also reduce the risk of neurological impairment among newborns and young children and thus their likelihood of developing later behavioral problems.

A fourth strategy calls for a national effort to improve the nation's schools and schooling. This effort would involve replacing large, older, and dilapidated schoolhouses with smaller, nicer, and better equipped ones. For many reasons, this effort should help improve student academic achievement and school commitment and thus lower delinquent and later criminal behavior.

A final set of strategies involves changes in the criminal justice system that should help reduce repeat offending and save much money that could be used to fund the ECI programs and other efforts just outlined. Placing nonviolent property and drug offenders in community corrections (e.g., probation, daytime supervision) would reduce the number of prison and jail inmates by hundreds of thousands annually without endangering Americans' safety and save billions of dollars in prison costs (Jacobson, 2006).Jacobson, M. (2006). Reversing the punitive turn: The Limits and promise of current research. *Criminology & Public Policy, 5*, 277–284. These funds could also be used to improve prison and jail vocational and educational programming and drug and alcohol services, all of which are seriously underfunded. If properly funded, such programs and services hold great promise for rehabilitating many inmates (Cullen, 2007).Cullen, F. T. (2007). Make rehabilitation corrections' guiding paradigm. *Criminology & Public Policy, 6*(4), 717–727. Elimination of the death penalty would also save much money while also eliminating the possibility of wrongful executions.

This is not a complete list of strategies, but it does suggest the kinds of efforts that would help address the roots of crime and, in the long run, help to reduce it. Although the United States may not be interested in pursuing this crime-prevention approach, strategies like the ones just mentioned would in the long run be more likely than our current get-tough approach to create a safer society and at the same time save us billions of dollars annually.

Note that none of these proposals addresses white-collar crime, which should not be neglected in a discussion of reducing the nation's crime problem. One reason white-collar crime is so common is that the laws against it are weakly enforced; more consistent enforcement of these laws should help reduce white-collar crime, as would the greater use of imprisonment for convicted white-collar criminals (Rosoff et al., 2010).Rosoff, S. M., Pontell, H. N., & Tillman, R. (2010). *Profit without honor: White collar crime and the looting of America* (5th ed.). Upper Saddle River, NJ: Prentice Hall.

Key Takeaways

- The get-tough approach has not been shown to reduce crime in an effective and cost-efficient manner. A sociological explanation of crime thus suggests the need to focus more resources on the social roots of crime in order to prevent crime from happening in the first place.

- Strategies suggested by criminologists to reduce crime include (a) reducing poverty and improving neighborhood living conditions, (b) changing male socialization patterns, (c) expanding early childhood intervention programs, (d) improving schools and schooling, and (e) reducing the use of incarceration for drug and property offenders.

For Your Review

1. The text notes that social science research has not shown the get-tough approach to be effective or cost-efficient. If this is true, why do you think this approach has been so popular in the United States since the 1970s?
2. Of the five strategies outlined in the text to reduce crime, which one strategy do you think would be most effective if it were implemented with adequate funding? Explain your answer.

10.7: End-of-Chapter Material

Summary

1. Crime is a major concern for many Americans. More than one-third fear walking alone at night in their neighborhoods, and even larger percentages worry about specific types of crimes. News media coverage of crime contributes to these fears. The media overdramatize crime by covering so much of it and by giving especially heavy attention to violent crime even though most crime is not violent. In other problems, the news media disproportionately depict young people and people of color as offenders and whites as victims.
2. The nation's major source of crime statistics is the FBI's Uniform Crime Reports (UCR). Because many people do not tell the police about crimes they have experienced, the UCR underestimates the actual level of crime in the United States. It is also subject to changes in police reporting practices and in particular to deliberate efforts by police to downplay the amount of crime. To help correct these problems, the National Crime Victimization Survey (NCVS) measures crime every year in a national survey that asks residents to report their criminal victimization. The NCVS is thought to yield a more accurate estimate of crime than the UCR, and it also provides much information on the circumstances under which victimization occurs. Self-report surveys, typically given to adolescents, are a final form of crime measurement and provide much information on the adolescents' social backgrounds and thus on the context of their offending.
3. The major categories of crime are violent crime, property crime, white-collar crime, and consensual crime. Much violent crime is relatively spontaneous and emotional, and a surprising amount involves victims and offenders who knew each other before the violent act occurred. Despite popular perceptions, most violent crime is also intraracial. A major distinction in the understanding of property crime is that between professional thieves, who are very skilled and steal valuable possessions or large sums of money, and amateur thieves, who are unskilled and whose theft is petty by comparison. Corporate crime and other kinds of white-collar crime arguably cost the nation more than street crime in economic loss, health problems, and death; corporate violence involves unsafe working conditions, unsafe products, and environmental pollution. Consensual crime, such as illegal drug use and prostitution, raises two important questions: (1) Which consensual but potentially harmful behaviors should the state ban and which should it not ban, and (2) does banning such behaviors do more harm than good or more good than harm?
4. Crime is socially patterned. Males commit more serious crimes than females. African Americans and Latinos have higher crime rates than whites, poor people have higher crime rates than the wealthy, and youths in their teens and early twenties have higher crime rates than older people. In addition, crime is higher in urban areas than in rural areas.
5. Many sociological theories of criminal behavior exist. Social structure theories highlight poverty and weakened social institutions as important factors underlying crime. Social process theories stress the importance of peer relationships, social bonding, and social reaction. Conflict theories call attention to the possible use of the legal system to punish behavior by subordinate groups, while feminist theories examine gender differences in criminality, the victimization of women by rape, sexual assault, and domestic violence, and the experiences of women professionals and offenders in the criminal justice system.
6. The criminal justice system costs tens of billions of dollars annually, yet scholars question the potential of this system to reduce crime. How police are deployed seems a more important factor regarding their potential for crime reduction than the actual numbers of police. The surge in imprisonment of the last few decades may have accounted for a relatively small drop in crime, but whatever reduction it has achieved has not been cost-effective, and hundreds of thousands of prison inmates are now returning every year to their communities. Several problems also exist in the criminal justice system itself. Police corruption and brutality remain serious concerns, while indigent defendants receive inadequate legal representation or none at all. Despite public perceptions, prisons and jails are squalid places, and rape and other violence are daily concerns.
7. The United States is the only Western democracy to use the death penalty for common criminals. Social science evidence finds that the death penalty does not deter homicide, is racially discriminatory, may involve wrongful convictions, and costs considerably more than life imprisonment.
8. Many proposals for reducing crime derive from sociological evidence. These proposals aim to reduce poverty and improve neighborhood living conditions; to change male socialization patterns; to expand early childhood intervention programs and nutrition services; to improve the nation's schools and schooling; and to reduce the number of prison inmates by placing nonviolent property and drug offenders in community corrections. The funds saved by this last proposal could be used to improve prison and jail rehabilitation programming.

Using What You Know

Suppose you are the Democratic Party Governor of a midsized state and that you are up for reelection in two years. You were a political science major in college but had a sociology minor with a focus in criminal justice. The crime rate in your state has risen slightly since you took office, and there is growing sentiment in the state's major newspapers and from the Republican Party opposition in the state legislature to lengthen prison terms for serious crime and to build two more prisons for the greater number of prisoners that will be expected. Because of your studies in college, you are skeptical that this approach will reduce crime, and you recognize it will cost millions of dollars. But you also realize that your opponents and some members of the news media are beginning to say that you are soft on crime. What do you do?

What You Can Do

To help deal with the problem of crime, you may wish to do any of the following:

1. Volunteer at an agency that helps troubled teenagers.
2. Volunteer with an organization that helps ex-offenders.
3. Work for an organization that provides early childhood intervention services for at-risk children.

CHAPTER OVERVIEW

11: Race and Ethnicity

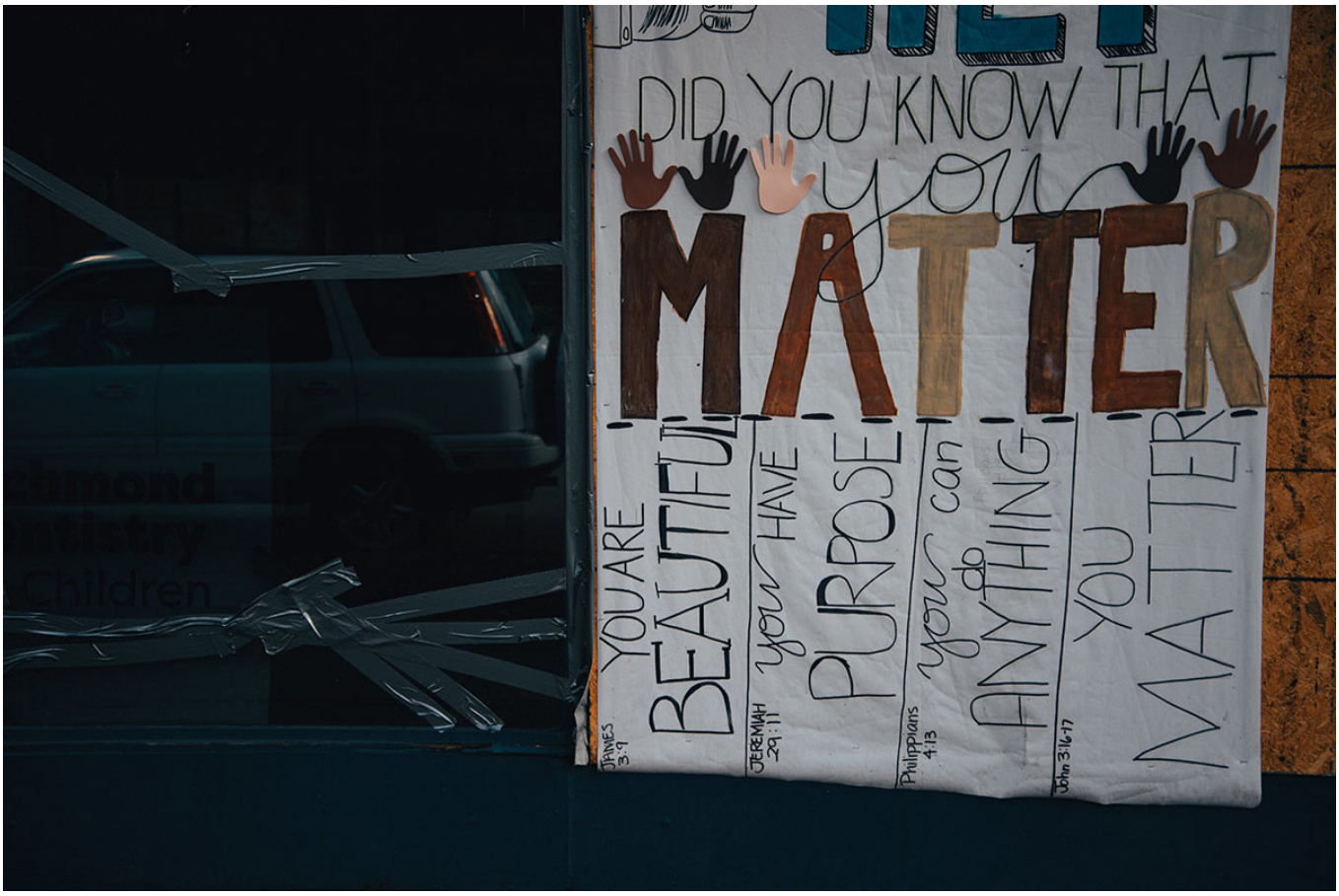


Figure **11.1** The juxtaposition of anger and hope. Over a window broken during protests in Richmond, Virginia, the business owner placed a sign that reads "Did You Know That You Matter. You are beautiful. You have purpose. You can do anything. You matter," and is accompanied with bible verses. (Credit: I threw a guitar a him/flickr)

Trayvon Martin was a seventeen-year-old Black teenager. On the evening of February 26, 2012, he was visiting with his father and his father's fiancée in the Sanford, Florida multi-ethnic gated community where his father's fiancée lived. Trayvon went on foot to buy a snack from a nearby convenience store. As he was returning, George Zimmerman, a White Hispanic man and the community's neighborhood watch program coordinator, noticed him. In light of a recent rash of break-ins, Zimmerman called the police to report a person acting suspiciously, which he had done on many other occasions. During the call, Zimmerman said in reference to suspicious people, "[expletive] punks. Those [expletive], they always get away." The 911 operator told Zimmerman not to follow the teen, as was also stated in the police neighborhood watch guidelines that had been provided to Zimmerman. But Zimmerman did follow the teen, and, soon after, they had a physical confrontation. Several people in the community heard yelling, cries for help, and saw two people on the ground. According to Zimmerman, Martin attacked him, and in the ensuing scuffle, Zimmerman shot and killed Martin (CNN Library 2021).

A public outcry followed Martin's death. There were allegations of **racial profiling**—the use of race alone to determine whether detain or investigate someone. As part of the initial investigation, Zimmerman was extensively interviewed by police, but was released under Florida's "Stand Your Ground" Law, which indicated police could not arrest him for his actions. About six weeks later, Zimmerman was arrested and charged with second-degree murder by a special prosecutor, Angela Corey, who had been appointed by Florida's governor. In the ensuing trial, he was found not guilty (CNN Library 2021).

The shooting, the public response, and the trial that followed offer a snapshot of the sociology of race. Do you think race played a role in Martin's death? Do you think race had an influence on the initial decision not to arrest Zimmerman, or on his later acquittal? Does society fear Black men, leading to racial profiling at an institutional level?

11.1: Racial, Ethnic, and Minority Groups

Learning Objectives

By the end of this section, you should be able to:

- Understand the difference between race and ethnicity
- Define a majority group (dominant group)
- Define a minority group (subordinate group)

While many students first entering a sociology classroom are accustomed to conflating the terms “race,” “ethnicity,” and “minority group,” these three terms have distinct meanings for sociologists. The idea of race refers to superficial physical differences that a particular society considers significant, while ethnicity describes shared culture. And the term "minority groups" describe groups that are subordinate, or that lack power in society regardless of skin color or country of origin. For example, in modern U.S. history, the elderly might be considered a minority group due to a diminished status that results from popular prejudice and discrimination against them. Ten percent of nursing home staff admitted to physically abusing an elderly person in the past year, and 40 percent admitted to committing psychological abuse (World Health Organization 2011). In this chapter we focus on racial and ethnic minorities.

What Is Race?

A human **race** is a grouping of humankind based on shared physical or social qualities that can vary from one society to another.

Historically, the concept of race has changed across cultures and eras, and has eventually become less connected with ancestral and familial ties, and more concerned with superficial physical characteristics. In the past, theorists developed categories of race based on various geographic regions, ethnicities, skin colors, and more. Their labels for racial groups have connoted regions or skin tones, for example.

German physician, zoologist, and anthropologist Johann Friedrich Blumenbach (1752-1840) introduced one of the famous groupings by studying human skulls. Blumenbach divided humans into five races (MacCord 2014):

- Caucasian or White race: people of European, Middle Eastern, and North African origin
- Ethiopian or Black race: people of sub-Saharan Africans origin (sometimes spelled Aethiopian)
- Malayan or Brown race: people of Southeast Asian origin and Pacific Islanders
- Mongolian or Yellow race: people of all East Asian and some Central Asian origin
- American or Red race: people of North American origin or American Indians

Over time, descriptions of race like Blumenbach's have fallen into disuse, and the **social construction of race** is a more accepted way of understanding racial categories. Social science organizations including the American Association of Anthropologists, the American Sociological Association, and the American Psychological Association have all officially rejected explanations of race like those listed above. Research in this school of thought suggests that race is not biologically identifiable and that previous racial categories were based on pseudoscience; they were often used to justify racist practices (Omi and Winant 1994; Graves 2003). For example, some people used to think that genetics of race determined intelligence. While this idea was mostly put to rest in the later 20th Century, it resurged several times in the past 50 years, including the widely read and cited 1994 book, *The Bell Curve*. Researchers have since provided substantial evidence that refutes a biological-racial basis for intelligence, including the widespread closing of IQ gaps as Black people gained more access to education (Dickens 2006). This research and other confirming studies indicate that any generally lower IQ among a racial group was more about *nurture* than *nature*, to put it into the terms of the Socialization chapter.

While many of the historical considerations of race have been corrected in favor of more accurate and sensitive descriptions, some of the older terms remain. For example, it is generally unacceptable and insulting to refer to Asian people or Native American people with color-based terminology, but it is acceptable to refer to White and Black people in that way. In 2020, a number of publications announced that they would begin capitalizing the names of races, though not everyone used the same approach (Seipel 2020). This practice comes nearly a hundred years after sociologist and leader W.E.B. Du Bois drove newsrooms to capitalize "Negro," the widely used term at the time. And, finally, some members of racial groups (or ethnic groups, which are described below) "reclaim" terms previously used to insult them (Rao 2018). These examples are more evidence of the social construction of race, and our evolving relationships among people and groups.

What Is Ethnicity?

Ethnicity is sometimes used interchangeably with race, but they are very different concepts. **Ethnicity** is based on shared culture—the practices, norms, values, and beliefs of a group that might include shared language, religion, and traditions, among other commonalities. Like race, the term ethnicity is difficult to describe and its meaning has changed over time. And as with race, individuals may be identified or self-identify with ethnicities in complex, even contradictory, ways. For example, ethnic groups such as Irish, Italian American, Russian, Jewish, and Serbian might all be groups whose members are predominantly included in the "White" racial category. Ethnicity, like race, continues to be an identification method that individuals and institutions use today—whether through the census, diversity initiatives, nondiscrimination laws, or simply in personal day-to-day relations.

In some cases, ethnicity is incorrectly used as a synonym for national origin, but those constructions are technically different. National origin (itself sometimes confused with nationality) has to do with the geographic and political associations with a person's birthplace or residence. But people from a nation can be of a wide range of ethnicities, often unknown to people outside of the region, which leads to misconceptions. For example, someone in the United States may, with no ill-intent, refer to all Vietnamese people as an ethnic group. But Vietnam is home to 54 formally recognized ethnic groups.

Adding to the complexity: Sometimes, either to build bridges between ethnic groups, promote civil rights, gain recognition, or other reasons, diverse but closely associated ethnic groups may develop a "pan-ethnic" group. For example, the various ethnic groups and national origins of people from Vietnam, Cambodia, Laos, and adjoining nations, who may share cultural, linguistic, or other values, may group themselves together in a collective identity. If they do so, they may not seek to erase their individual ethnicities, but finding the correct description and association can be challenging and depend on context. The large number of people who make up the Asian American community may embrace their collective identity in the context of the United States. However, that embrace may depend on people's ages, and may be expressed differently when speaking to different populations (Park 2008). For example, someone who identifies as Asian American while at home in Houston may not refer to themselves as such when they visit extended family in Japan. In a similar manner, a grouping of people from Mexico, Central America and South America—often referred to as Latinx, Latina, or Latino—may be embraced by some and rejected by others in the group (Martinez 2019).

What Are Minority Groups?

Sociologist Louis Wirth (1945) defined a **minority group** as "any group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination." The term minority connotes discrimination, and in its sociological use, the term **subordinate group** can be used interchangeably with the term minority group, while the term **dominant group** is often substituted for the group that represents rulers or is in the majority who can access power and privilege in a given society. These definitions correlate to the concept that the dominant group is that which holds the most power in a given society, while subordinate groups are those who lack power compared to the dominant group.

Note that being a numerical minority is not a characteristic of being a minority group; sometimes larger groups can be considered minority groups due to their lack of power. It is the lack of power that is the predominant characteristic of a minority, or subordinate group. For example, consider apartheid in South Africa, in which a numerical majority (the Black inhabitants of the country) were exploited and oppressed by the White minority.

According to Charles Wagley and Marvin Harris (1958), a minority group is distinguished by five characteristics: (1) unequal treatment and less power over their lives, (2) distinguishing physical or cultural traits like skin color or language, (3) involuntary membership in the group, (4) awareness of subordination, and (5) high rate of in-group marriage. Additional examples of minority groups might include the LGBTQ community, religious practitioners whose faith is not widely practiced where they live, and people with disabilities.

Scapegoat theory, developed initially from Dollard's (1939) Frustration-Aggression theory, suggests that the dominant group will displace its unfocused aggression onto a subordinate group. History has shown us many examples of the scapegoating of a subordinate group. An example from the last century is the way Adolf Hitler blamed the Jewish population for Germany's social and economic problems. In the United States, recent immigrants have frequently been the scapegoat for the nation's—or an individual's—woes. Many states have enacted laws to disenfranchise immigrants; these laws are popular because they let the dominant group scapegoat a subordinate group.

Figure **11.2** Golfer Tiger Woods has Chinese, Thai, African American, Native American, and Dutch heritage. Individuals with multiple ethnic backgrounds are becoming more common. (Credit: familymwr/flickr)

Prior to the twentieth century, racial intermarriage (referred to as miscegenation) was extremely rare, and in many places, illegal. While the sexual subordination of enslaved people did result in children of mixed race, these children were usually considered Black, and therefore, property. There was no concept of multiple racial identities with the possible exception of the Creole. Creole society developed in the port city of New Orleans, where a mixed-race culture grew from French and African inhabitants. Unlike in other parts of the country, “Creoles of color” had greater social, economic, and educational opportunities than most African Americans.

Increasingly during the modern era, the removal of miscegenation laws and a trend toward equal rights and legal protection against racism have steadily reduced the social stigma attached to racial exogamy (exogamy refers to marriage outside a person’s core social unit). It is now common for the children of racially mixed parents to acknowledge and celebrate their various ethnic identities. Golfer Tiger Woods, for instance, has Chinese, Thai, African American, Native American, and Dutch heritage; he jokingly refers to his ethnicity as “Cablinasian,” a term he coined to combine several of his ethnic backgrounds. While this is the trend, it is not yet evident in all aspects of our society. For example, the U.S. Census only recently added additional categories for

people to identify themselves, such as non-White Hispanic. A growing number of people chose multiple races to describe themselves on the 2020 Census, indicating that individuals have multiple identities.

11.2: Theoretical Perspectives on Race and Ethnicity

Learning Objectives

By the end of this section, you should be able to:

- Describe how major sociological perspectives view race and ethnicity
- Identify examples of culture of prejudice

Theoretical Perspectives on Race and Ethnicity

We can examine race and ethnicity through three major sociological perspectives: functionalism, conflict theory, and symbolic interactionism. As you read through these theories, ask yourself which one makes the most sense and why.

Functionalism

Functionalism emphasizes that all the elements of society have functions that promote solidarity and maintain order and stability in society. Hence, we can observe people from various racial and ethnic backgrounds interacting harmoniously in a state of social balance. Problems arise when one or more racial or ethnic groups experience inequalities and discriminations. This creates tension and conflict resulting in temporary dysfunction of the social system. For example, the killing of a Black man George Floyd by a White police officer in 2020 stirred up protests demanding racial justice and changes in policing in the United States. To restore the society's pre-disturbed state or to seek a new equilibrium, the police department and various parts of the system require changes and compensatory adjustments.

Another way to apply the functionalist perspective to race and ethnicity is to discuss the way racism can contribute positively to the functioning of society by strengthening bonds between in-group members through the ostracism of out-group members. Consider how a community might increase solidarity by refusing to allow outsiders access. On the other hand, Rose (1951) suggested that dysfunctions associated with racism include the failure to take advantage of talent in the subjugated group, and that society must divert from other purposes the time and effort needed to maintain artificially constructed racial boundaries. Consider how much money, time, and effort went toward maintaining separate and unequal educational systems prior to the civil rights movement.

In the view of functionalism, racial and ethnic inequalities must have served an important function in order to exist as long as they have. This concept, sometimes, can be problematic. How can racism and discrimination contribute positively to society? Nash (1964) focused his argument on the way racism is functional for the dominant group, for example, suggesting that racism morally justifies a racially unequal society. Consider the way slave owners justified slavery in the antebellum South, by suggesting Black people were fundamentally inferior to White and preferred slavery to freedom.

Interactionism

For symbolic interactionists, race and ethnicity provide strong symbols as sources of identity. In fact, some interactionists propose that the symbols of race, not race itself, are what lead to racism. Famed Interactionist Herbert Blumer (1958) suggested that racial prejudice is formed through interactions between members of the dominant group: Without these interactions, individuals in the dominant group would not hold racist views. These interactions contribute to an abstract picture of the subordinate group that allows the dominant group to support its view of the subordinate group, and thus maintains the status quo. An example of this might be an individual whose beliefs about a particular group are based on images conveyed in popular media, and those are unquestionably believed because the individual has never personally met a member of that group.

Another way to apply the interactionist perspective is to look at how people define their races and the race of others. Some people who claim a White identity have a greater amount of skin pigmentation than some people who claim a Black identity; how did they come to define themselves as Black or White?

Conflict Theory

Conflict theories are often applied to inequalities of gender, social class, education, race, and ethnicity. A conflict theory perspective of U.S. history would examine the numerous past and current struggles between the White ruling class and racial and ethnic minorities, noting specific conflicts that have arisen when the dominant group perceived a threat from the minority group. In the late nineteenth century, the rising power of Black Americans after the Civil War resulted in draconian Jim Crow laws that severely limited Black political and social power. For example, Vivien Thomas (1910–1985), the Black surgical technician who

helped develop the groundbreaking surgical technique that saves the lives of “blue babies” was classified as a janitor for many years, and paid as such, despite the fact that he was conducting complicated surgical experiments. The years since the Civil War have showed a pattern of attempted disenfranchisement, with gerrymandering and voter suppression efforts aimed at predominantly minority neighborhoods.

Intersection Theory

Feminist sociologist Patricia Hill Collins (1990) further developed **intersection theory**, originally articulated in 1989 by Kimberlé Crenshaw, which suggests we cannot separate the effects of race, class, gender, sexual orientation, and other attributes (Figure 11.4). When we examine race and how it can bring us both advantages and disadvantages, it is important to acknowledge that the way we experience race is shaped, for example, by our gender and class. Multiple layers of disadvantage intersect to create the way we experience race. For example, if we want to understand prejudice, we must understand that the prejudice focused on a White woman because of her gender is very different from the layered prejudice focused on an Asian woman in poverty, who is affected by stereotypes related to being poor, being a woman, and her ethnic status.

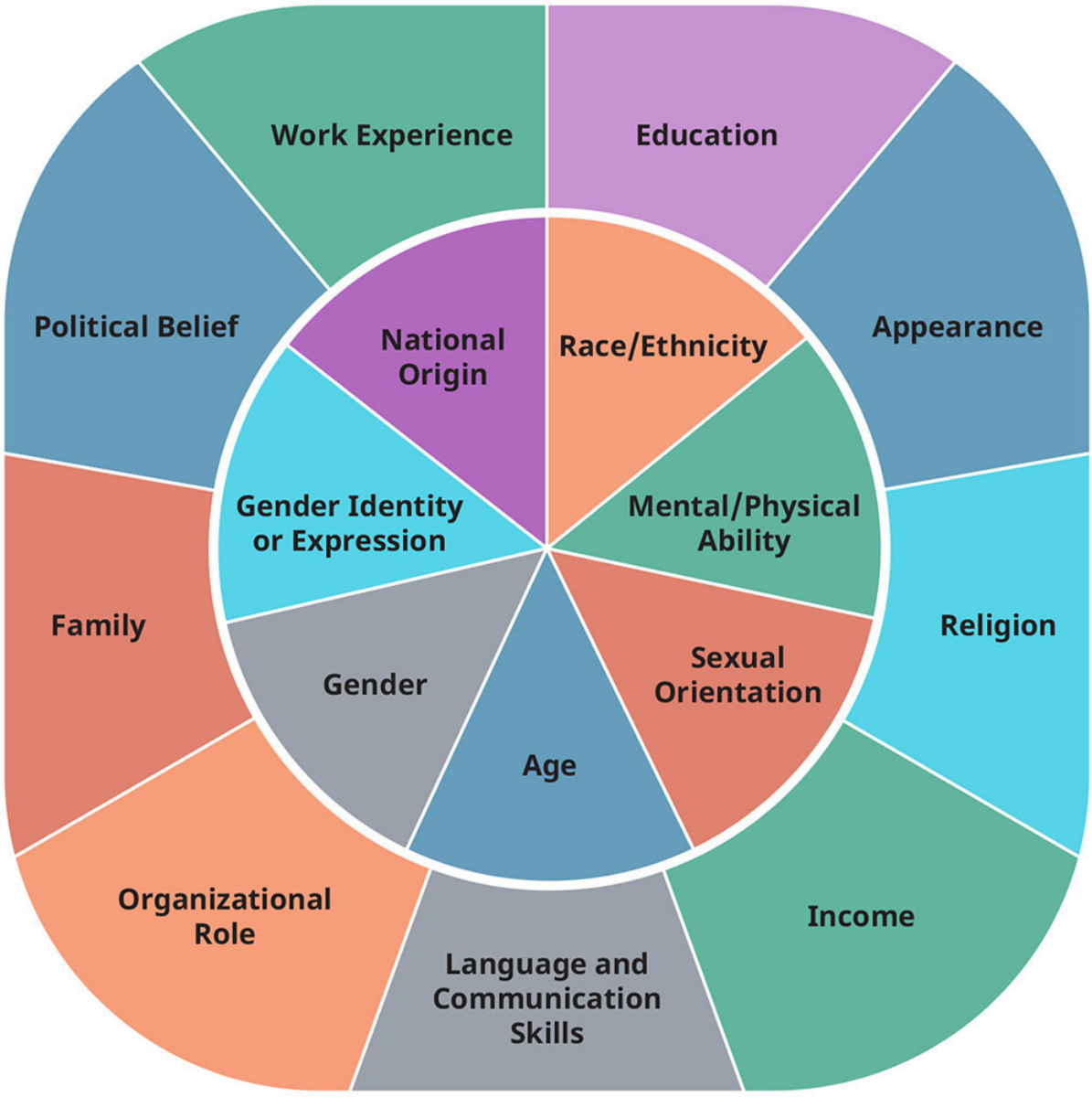


Figure **11.3** Our identities are formed by dozens of factors, sometimes represented in intersection wheels. Consider the subset of identity elements represented here. Generally, the outer ring contains elements that may change relatively often, while the elements

in the inner circle are often considered more permanent. (There are certainly exceptions.) How does each contribute to who you are, and how would possible change alter your self-defined identity?

Culture of Prejudice

Culture of prejudice refers to the theory that prejudice is embedded in our culture. We grow up surrounded by images of stereotypes and casual expressions of racism and prejudice. Consider the casually racist imagery on grocery store shelves or the stereotypes that fill popular movies and advertisements. It is easy to see how someone living in the Northeastern United States, who may know no Mexican Americans personally, might gain a stereotyped impression from such sources as Speedy Gonzalez or Taco Bell's talking Chihuahua. Because we are all exposed to these images and thoughts, it is impossible to know to what extent they have influenced our thought processes.

11.3: Prejudice, Discrimination, and Racism

Learning Objectives

By the end of this section, you should be able to:

- Explain the difference between stereotypes, prejudice, discrimination, and racism
- Identify different types of discrimination
- View racial tension through a sociological lens

It is important to learn about stereotypes before discussing the terms prejudice, discrimination, and racism that are often used interchangeably in everyday conversation. **Stereotypes** are oversimplified generalizations about groups of people. Stereotypes can be based on race, ethnicity, age, gender, sexual orientation—almost any characteristic. They may be positive (usually about one's own group) but are often negative (usually toward other groups, such as when members of a dominant racial group suggest that a subordinate racial group is stupid or lazy). In either case, the stereotype is a generalization that doesn't take individual differences into account.

Where do stereotypes come from? In fact, new stereotypes are rarely created; rather, they are recycled from subordinate groups that have assimilated into society and are reused to describe newly subordinate groups. For example, many stereotypes that are currently used to characterize new immigrants were used earlier in American history to characterize Irish and Eastern European immigrants.

Prejudice

Prejudice refers to the beliefs, thoughts, feelings, and attitudes someone holds about a group. A prejudice is not based on personal experience; instead, it is a prejudgment, originating outside actual experience. Recall from the chapter on Crime and Deviance that the criminalization of marijuana was based on anti-immigrant sentiment; proponents used fictional, fear-instilling stories of "reefer madness" and rampant immoral and illegal activities among Spanish-speaking people to justify new laws and harsh treatment of marijuana users. Many people who supported criminalizing marijuana had never met any of the new immigrants who were rumored to use it; the ideas were based in prejudice.

While prejudice is based in beliefs outside of experience, experience can lead people to feel that their prejudice is confirmed or justified. This is a type of confirmation bias. For example, if someone is taught to believe that a certain ethnic group has negative attributes, every negative act committed someone in that group can be seen as confirming the prejudice. Even a minor social offense committed by a member of the ethnic group, like crossing the street outside the crosswalk or talking too loudly on a bus, could confirm the prejudice.

While prejudice often originates outside experience, it isn't instinctive. Prejudice—as well as the stereotypes that lead to it and the discrimination that stems from it—is most often taught and learned. The teaching arrives in many forms, from direct instruction or indoctrination, to observation and socialization. Movies, books, charismatic speakers, and even a desire to impress others can all support the development of prejudices.

Figure **11.4** Stereotypes and prejudices are persistent and apply to almost every category of people. They are also subject to confirmation bias, in which any bit of supporting evidence gives a person more confidence in their belief. For example, if you think older people are bad drivers, every time you see an accident involving an older driver, it's likely to increase your confidence in your stereotype. Even if you hear the statistics that younger drivers cause more accidents than older drivers, the fulfillment of your stereotype is difficult to overcome. (Credit: Chris Freser/flickr)

Discrimination

While prejudice refers to biased thinking, **discrimination** consists of actions against a group of people. Discrimination can be based on race, ethnicity, age, religion, health, and other categories. For example, discrimination based on race or ethnicity can take many forms, from unfair housing practices such as redlining to biased hiring systems. Overt discrimination has long been part of U.S. history. In the late nineteenth century, it was not uncommon for business owners to hang signs that read, "Help Wanted: No Irish Need Apply." And southern Jim Crow laws, with their "Whites Only" signs, exemplified overt discrimination that is not tolerated today.

Discrimination also manifests in different ways. The scenarios above are examples of individual discrimination, but other types exist. Institutional discrimination occurs when a societal system has developed with embedded disenfranchisement of a group, such as the U.S. military's historical nonacceptance of minority sexualities (the "don't ask, don't tell" policy reflected this norm).

While the form and severity of discrimination vary significantly, they are considered forms of oppression. Institutional discrimination can also include the promotion of a group's status, such in the case of privilege, which is the benefits people receive simply by being part of the dominant group.

Most people have some level of privilege, whether it has to do with health, ability, race, or gender. When discussing race, the focus is often on **White privilege**, which are the benefits people receive by being a White person or being perceived to be a White person. Most White people are willing to admit that non-White people live with a set of disadvantages due to the color of their skin. But until they gain a good degree of self-awareness, few people are willing to acknowledge the benefits they themselves receive by being a part of the dominant group. Why not? Some may feel it lessens their accomplishments, others may feel a degree of guilt, and still others may feel that admitting to privilege makes them seem like a bad or mean person. But White (or other dominant) privilege is an institutional condition, not a personal one. It exists whether the person asks for it or not. In fact, a pioneering thinker on the topic, Peggy McIntosh, noted that she didn't recognize privilege because, in fact, it was not based in meanness. Instead, it was an "invisible weightless knapsack full of special provisions" that she didn't ask for, yet from which she still benefitted (McIntosh 1989). As the reference indicates, McIntosh's first major publication about White privilege was released in 1989; many people have only become familiar with the term in recent years.

Prejudice and discrimination can overlap and intersect in many ways. To illustrate, here are four examples of how prejudice and discrimination can occur. Unprejudiced nondiscriminators are open-minded, tolerant, and accepting individuals. Unprejudiced discriminators might be those who unthinkingly practice sexism in their workplace by not considering women or gender nonconforming people for certain positions that have traditionally been held by men. Prejudiced nondiscriminators are those who hold racist beliefs but don't act on them, such as a racist store owner who serves minority customers. Prejudiced discriminators include those who actively make disparaging remarks about others or who perpetuate hate crimes.

Racism

Racism is a stronger type of prejudice and discrimination used to justify inequalities against individuals by maintaining that one racial category is somehow superior or inferior to others; it is a set of practices used by a racial dominant group to maximize advantages for itself by disadvantaging racial minority groups. Such practices have affected wealth gap, employment, housing discrimination, government surveillance, incarceration, drug arrests, immigration arrests, infant mortality and much more (Race Forward 2021).

Broadly, individuals belonging to minority groups experience both individual racism and systemic racism during their lifetime. While reading the following some of the common forms of racism, ask yourself, “Am I a part of this racism?” “How can I contribute to stop racism?”

- **Individual or Interpersonal Racism** refers to prejudice and discrimination executed by individuals consciously and unconsciously that occurs between individuals. Examples include telling a racist joke and believing in the superiority of White people.
- **Systemic Racism**, also called **structural racism or institutional racism**, is systems and structures that have procedures or processes that disadvantages racial minority groups. Systemic racism occurs in organizations as discriminatory treatments and unfair policies based on race that result in inequitable outcomes for White people over people of color. For example, a school system where students of color are distributed into underfunded schools and out of the higher-resourced schools.
- **Racial Profiling** is a type of systemic racism that involves the singling out of racial minorities for differential treatment, usually harsher treatment. The disparate treatment of racial minorities by law enforcement officials is a common example of racial profiling in the United States. For example, a study on the Driver's License Privilege to All Minnesota Residents from 2008 to 2010 found that the percentage of Latinos arrested was disproportionally high (Feist 2013). Similarly, the disproportionate number of Black men arrested, charged, and convicted of crimes reflect racial profiling.
- **Historical Racism** is economic inequality or social disparity caused by past racism. For example, African-Americans have had their opportunities in wealth, education and employment adversely affected due to the mistreatment of their ancestors during the slavery and post-slavery period (Wilson 2012).
- **Cultural Racism** occurs when the assumption of inferiority of one or more races is built into the culture of a society. For example, the European culture is considered supposedly more mature, evolved and rational than other cultures (Blaut 1992). A study showed that White and Asian American students with high GPAs experience greater social acceptance while Black and Native American students with high GPAs are rejected by their peers (Fuller-Rowell and Doan 2010).
- **Colorism** is a form of racism, in which someone believes one type of skin tone is superior or inferior to another within a racial group. For example, if an employer believes a Black employee with a darker skin tone is less capable than a Black employee with lighter skin tone, that is colorism. Studies suggest that darker skinned African Americans experience more discrimination than lighter skinned African Americans (Herring, Keith, and Horton 2004; Klonoff and Landrine 2000).
- **Color-Avoidance Racism** (sometimes referred to as "colorblind racism") is an avoidance of racial language by European-Americans that the racism is no longer an issue. The U.S. cultural narrative that typically focuses on individual racism fails to recognize systemic racism. It has arisen since the post-Civil Rights era and supports racism while avoiding any reference to race (Bonilla-Silva (2015).

How to Be an Antiracist

Almost all mainstream voices in the United States oppose racism. Despite this, racism is prevalent in several forms. For example, when a newspaper uses people's race to identify individuals accused of a crime, it may enhance stereotypes of a certain minority. Another example of racist practices is **racial steering**, in which real estate agents direct prospective homeowners toward or away from certain neighborhoods based on their race.

Racist attitudes and beliefs are often more insidious and harder to pin down than specific racist practices. They become more complex due to implicit bias (also referred to as unconscious bias) which is the process of associating stereotypes or attitudes

towards categories of people without conscious awareness – which can result in unfair actions and decisions that are at odds with one's conscious beliefs about fairness and equality (Osta and Vasquez 2021). For example, in schools we often see "honors" and "gifted" classes quickly filled with White students while the majority of Black and Latino students are placed in the lower track classes. As a result, our mind consciously and unconsciously starts to associate Black and Latino students with being less intelligent, less capable. Osta and Vasquez (2021) argue that placing the student of color into a lower and less rigorous track, we reproduce the inequity and the vicious cycle of structural racism and implicit bias continues.

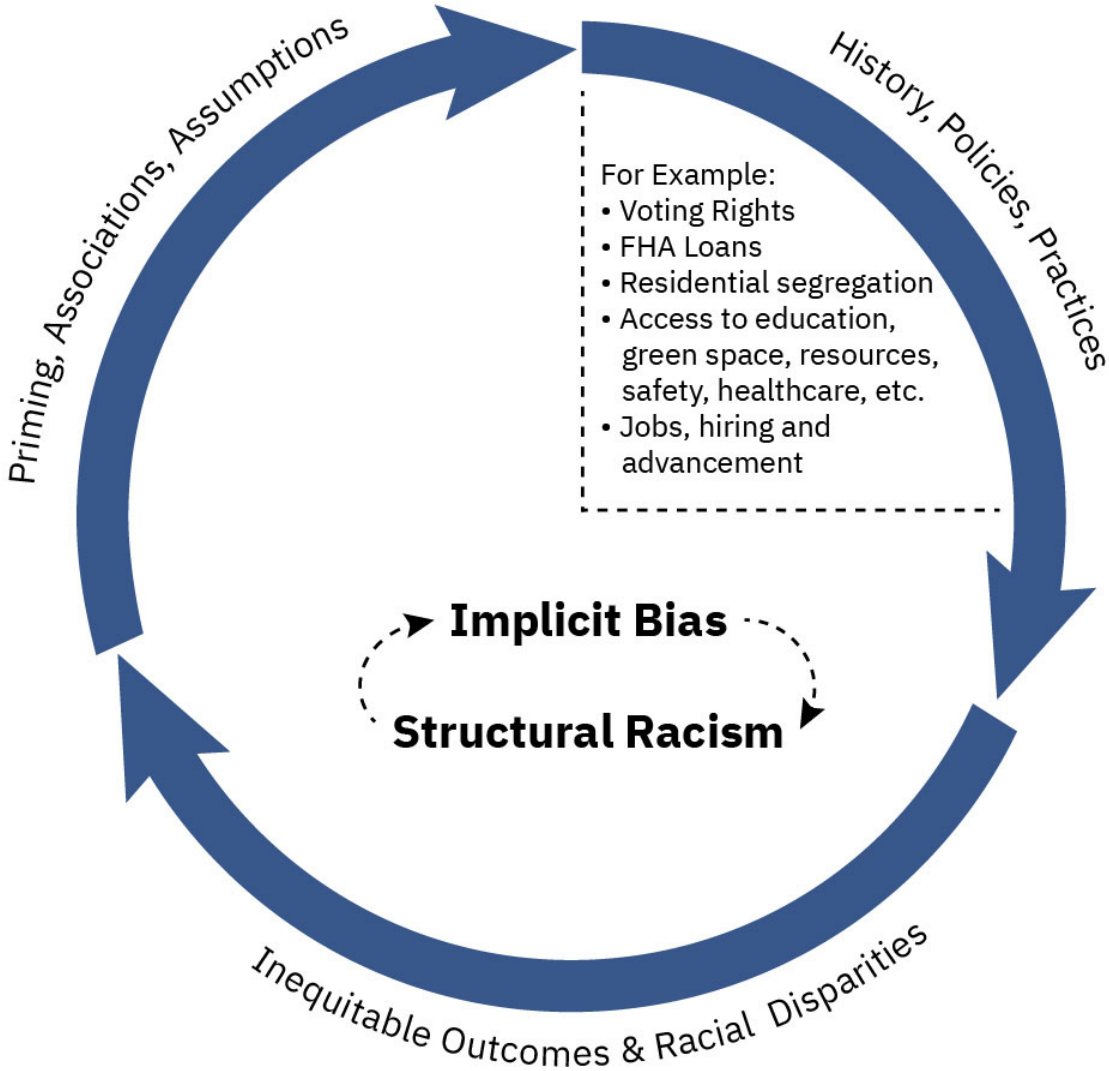


Figure **11.5** Implicit Bias and Structural Racialization (Osta and Vasquez 2021)

If everyone becomes antiracist, breaking the vicious cycle of structural racism and implicit bias may not be far away. To be antiracist is a radical choice in the face of history, requiring a radical reorientation of our consciousness (Kendi 2019). Proponents of anti-racism indicate that we must work collaboratively within ourselves, our institutions, and our networks to challenge racism at local, national and global levels. The practice of anti-racism is everyone's ongoing work that everyone should pursue at least the following (Carter and Snyder 2020):

- Understand and own the racist ideas in which we have been socialized and the racist biases that these ideas have created within each of us.
- Identify racist policies, practices, and procedures and replace them with antiracist policies, practices, and procedures.

Anti-racism need not be confrontational in the sense of engaging in direct arguments with people, feeling terrible about your privilege, or denying your own needs or success. In fact, many people who are a part of a minority acknowledge the need for allies from the dominant group (Melaku 2020). Understanding and owning the racist ideas, and recognizing your own privilege, is a good and brave thing.

We cannot erase racism simply by enacting laws to abolish it, because it is embedded in our complex reality that relates to educational, economic, criminal, political, and other social systems. Importantly, everyone can become antiracist by making conscious choices daily. Being racist or antiracist is not about who you are; it is about what you do (Carter and Snyder 2020).

What does it mean to you to be an "anti-racist"? How do see the recent events or protests in your community, country or somewhere else? Are they making any desired changes?

BIG PICTURE

Racial Tensions in the United States

The death of Michael Brown in Ferguson, Missouri on August 9, 2014 illustrates racial tensions in the United States as well as the overlap between prejudice, discrimination, and institutional racism. On that day, Brown, a young unarmed Black man, was killed by a White police officer named Darren Wilson. During the incident, Wilson directed Brown and his friend to walk on the sidewalk instead of in the street. While eyewitness accounts vary, they agree that an altercation occurred between Wilson and Brown. Wilson's version has him shooting Brown in self-defense after Brown assaulted him, while Dorian Johnson, a friend of Brown also present at the time, claimed that Brown first ran away, then turned with his hands in the air to surrender, after which Wilson shot him repeatedly (Nobles and Bosman 2014). Three autopsies independently confirmed that Brown was shot six times (Lowery and Fears 2014).

The shooting focused attention on a number of race-related tensions in the United States. First, members of the predominantly Black community viewed Brown's death as the result of a White police officer racially profiling a Black man (Nobles and Bosman 2014). In the days after, it was revealed that only three members of the town's fifty-three-member police force were Black (Nobles and Bosman 2014). The national dialogue shifted during the next few weeks, with some commentators pointing to a nationwide **sedimentation of racial inequality** and identifying redlining in Ferguson as a cause of the unbalanced racial composition in the community, in local political establishments, and in the police force (Bouie 2014). **Redlining** is the practice of routinely refusing mortgages for households and businesses located in predominately minority communities, while sedimentation of racial inequality describes the intergenerational impact of both practical and legalized racism that limits the abilities of Black people to accumulate wealth.

Ferguson's racial imbalance may explain in part why, even though in 2010 only about 63 percent of its population was Black, in 2013 Black people were detained in 86 percent of stops, 92 percent of searches, and 93 percent of arrests (Missouri Attorney General's Office 2014). In addition, **de facto segregation** in Ferguson's schools, a race-based wealth gap, urban sprawl, and a Black unemployment rate three times that of the White unemployment rate worsened existing racial tensions in Ferguson while also reflecting nationwide racial inequalities (Bouie 2014).

This situation has not much changed in the United States. After Michael Brown, dozens of unarmed Black people have been shot and killed by police. Studies find no change to the racial disparity in the use of deadly force by police (Belli 2020). Do you think that racial tension can be reduced by stopping police action against racial minorities? What types of policies and practices are important to reduce racial tension? Who are responsible? Why?

11.4: Intergroup Relationships

Learning Objectives

By the end of this section, you should be able to:

- Explain different intergroup relations in terms of their relative levels of tolerance
- Give historical and/or contemporary examples of each type of intergroup relation

Intergroup relations (relationships between different groups of people) range along a spectrum between tolerance and intolerance. The most tolerant form of intergroup relations is pluralism, in which no distinction is made between minority and majority groups, but instead there's equal standing. At the other end of the continuum are amalgamation, expulsion, and even genocide—stark examples of intolerant intergroup relations.

Pluralism

Pluralism is represented by the ideal of the United States as a "salad bowl": a great mixture of different cultures where each culture retains its own identity and yet adds to the flavor of the whole. True pluralism is characterized by mutual respect on the part of all cultures, both dominant and subordinate, creating a multicultural environment of acceptance. In reality, true pluralism is a difficult goal to reach. In the United States, the mutual respect required by pluralism is often missing, and the nation's past model of a melting pot posits a society where cultural differences aren't embraced as much as erased.

Assimilation

Assimilation describes the process by which a minority individual or group gives up its own identity by taking on the characteristics of the dominant culture. In the United States, which has a history of welcoming and absorbing immigrants from different lands, assimilation has been a function of immigration.

Figure **11.6** For many immigrants to the United States, the Statue of Liberty is a symbol of freedom and a new life. Unfortunately, they often encounter prejudice and discrimination. (Credit: Mark Heard/flickr)

Most people in the United States have immigrant ancestors. In relatively recent history, between 1890 and 1920, the United States became home to around 24 million immigrants. In the decades since then, further waves of immigrants have come to these shores and have eventually been absorbed into U.S. culture, sometimes after facing extended periods of prejudice and discrimination. Assimilation may lead to the loss of the minority group's cultural identity as they become absorbed into the dominant culture, but assimilation has minimal to no impact on the majority group's cultural identity.

Some groups may keep only symbolic gestures of their original ethnicity. For instance, many Irish Americans may celebrate Saint Patrick's Day, many Hindu Americans enjoy a Diwali festival, and many Mexican Americans may celebrate *Cinco de Mayo* (a May 5 acknowledgment of the Mexican victory over the French Empire at the Battle of Puebla). However, for the rest of the year, other aspects of their originating culture may be forgotten.

Assimilation is antithetical to the "salad bowl" created by pluralism; rather than maintaining their own cultural flavor, subordinate cultures give up their own traditions in order to conform to their new environment. Sociologists measure the degree to which immigrants have assimilated to a new culture with four benchmarks: socioeconomic status, spatial concentration, language assimilation, and intermarriage. When faced with racial and ethnic discrimination, it can be difficult for new immigrants to fully

assimilate. Language assimilation, in particular, can be a formidable barrier, limiting employment and educational options and therefore constraining growth in socioeconomic status.

Amalgamation

Amalgamation is the process by which a minority group and a majority group combine to form a new group. Amalgamation creates the classic “melting pot” analogy; unlike the “salad bowl,” in which each culture retains its individuality, the “melting pot” ideal sees the combination of cultures that results in a new culture entirely.

Amalgamationin the form of miscegenation is achieved through intermarriage between races. In the United States, antimiscegenation laws, which criminalized interracial marriage, flourished in the South during the Jim Crow era. It wasn’t until 1967’s *Loving v. Virginia* that the last antimiscegenation law was struck from the books, making these laws unconstitutional.

Genocide

Genocide, the deliberate annihilation of a targeted (usually subordinate) group, is the most toxic intergroup relationship. Historically, we can see that genocide has included both the intent to exterminate a group and the function of exterminating of a group, intentional or not.

Possibly the most well-known case of genocide is Hitler’s attempt to exterminate the Jewish people in the first part of the twentieth century. Also known as the Holocaust, the explicit goal of Hitler’s “Final Solution” was the eradication of European Jewish people, as well as the destruction of other minority groups such as Catholics, people with disabilities, and LGBTQ people. With forced emigration, concentration camps, and mass executions in gas chambers, Hitler’s Nazi regime was responsible for the deaths of 12 million people, 6 million of whom were Jewish. Hitler’s intent was clear, and the high Jewish death toll certainly indicates that Hitler and his regime committed genocide. But how do we understand genocide that is not so overt and deliberate?

The treatment of the Native Americans by the European colonizers is an example of genocide committed against indigenous people. Some historians estimate that Native American populations dwindled from approximately 12 million people in the year 1500 to barely 237,000 by the year 1900 (Lewy 2004). European settlers coerced American Indians off their own lands, often causing thousands of deaths in forced removals, such as occurred in the Cherokee or Potawatomi Trail of Tears. Settlers also enslaved Native Americans and forced them to give up their religious and cultural practices. But the major cause of Native American death was neither slavery nor war nor forced removal: it was the introduction of European diseases and Native American lack of immunity to them. Smallpox, diphtheria, and measles flourished among indigenous American tribes who had no exposure to the diseases and no ability to fight them. Quite simply, these diseases decimated the tribes. The use of diseases as weapon was most likely unintentional in some cases and intentional in others. For example, during the Seven Years War, the British gave smallpox-infected blankets to the Native tribes in order to "reduce them," and this and similar practices likely continued throughout the centuries-long assault on the Native American people.

Genocide is not a just a historical concept; it is practiced even in the twenty- first century. For example, ethnic and geographic conflicts in the Darfur region of Sudan have led to hundreds of thousands of deaths. As part of an ongoing land conflict, the Sudanese government and their state-sponsored Janjaweed militia have led a campaign of killing, forced displacement, and systematic rape of Darfuri people. Although a treaty was signed in 2011, the peace is fragile.

Expulsion

Expulsion refers to a subordinate group being forced, by a dominant group, to leave a certain area or country. As seen in the examples of the Trail of Tears and the Holocaust, expulsion can be a factor in genocide. However, it can also stand on its own as a destructive group interaction. Expulsion has often occurred historically with an ethnic or racial basis. In the United States, President Franklin D. Roosevelt issued Executive Order 9066 in 1942, after the Japanese government’s attack on Pearl Harbor. The Order authorized the establishment of internment camps for anyone with as little as one-eighth Japanese ancestry (i.e., one great-grandparent who was Japanese). Over 120,000 legal Japanese residents and Japanese U.S. citizens, many of them children, were held in these camps for up to four years, despite the fact that there was never any evidence of collusion or espionage. (In fact, many Japanese Americans continued to demonstrate their loyalty to the United States by serving in the U.S. military during the War.) In the 1990s, the U.S. executive branch issued a formal apology for this expulsion; reparation efforts continue today.

Segregation

Segregation refers to the physical separation of two groups, particularly in residence, but also in workplace and social functions. It is important to distinguish between *de jure* segregation (segregation that is enforced by law) and *de facto* segregation (segregation that occurs without laws but because of other factors). A stark example of *de jure* segregation is the apartheid movement of South Africa, which existed from 1948 to 1994. Under apartheid, Black South Africans were stripped of their civil rights and forcibly relocated to areas that segregated them physically from their White compatriots. Only after decades of degradation, violent uprisings, and international advocacy was apartheid finally abolished.

De jure segregation occurred in the United States for many years after the Civil War. During this time, many former Confederate states passed Jim Crow laws that required segregated facilities for Black and White people. These laws were codified in 1896's landmark Supreme Court case *Plessy v. Ferguson*, which stated that "separate but equal" facilities were constitutional. For the next five decades, Black people were subjected to legalized discrimination, forced to live, work, and go to school in separate—but *unequal*—facilities. It wasn't until 1954 and the *Brown v. Board of Education* case that the Supreme Court declared that "separate educational facilities are inherently unequal," thus ending *de jure* segregation in the United States.

Figure **11.7** In the "Jim Crow" South, it was legal to have "separate but equal" facilities for Black people and White people. (Credit: Library of Congress/Wikimedia Commons)

De facto segregation, however, cannot be abolished by any court mandate. Few institutions desegregated as a result of *Brown*; in fact, government and even military intervention was necessary to enforce the ruling, and it took the Civil Rights Act and other laws to formalize the equality. Segregation is still alive and well in the United States, with different racial or ethnic groups often segregated by neighborhood, borough, or parish. Sociologists use segregation indices to measure racial segregation of different races in different areas. The indices employ a scale from zero to 100, where zero is the most integrated and 100 is the least. In the New York metropolitan area, for instance, the Black-White segregation index was seventy-nine for the years 2005–2009. This means that 79 percent of either Black or White people would have to move in order for each neighborhood to have the same racial balance as the whole metro region (Population Studies Center 2010).

11.5: Race and Ethnicity in the United States

Learning Objectives

By the end of this section, you should be able to:

- Compare and contrast the different experiences of various ethnic groups in the United States
- Apply theories of intergroup relations, race, and ethnicity to different subordinate groups

When colonists came to the New World, they found a land that did not need "discovering" since it was already inhabited. While the first wave of immigrants came from Western Europe, eventually the bulk of people entering North America were from Northern Europe, then Eastern Europe, then Latin America and Asia. And let us not forget the forced immigration of enslaved Africans. Most of these groups underwent a period of disenfranchisement in which they were relegated to the bottom of the social hierarchy before they managed (for those who could) to achieve social mobility. Because of this achievement, the U.S. is still a "dream destination" for millions of people living in other countries. Many thousands of people, including children, arrive here every year both documented and undocumented. Most Americans welcome and support new immigrants wholeheartedly. For example, the Development, Relief, and Education for Alien Minors (DREAM) Act introduced in 2001 provides a means for undocumented immigrants who arrived in the U.S. as children to gain a pathway to permanent legal status. Similarly, the Deferred Action for Childhood Arrivals (DACA) introduced in 2012 gives young undocumented immigrants a work permit and protection from deportation (Georgetown Law 2021). Today, the U.S. society is multicultural, multiracial and multiethnic that is composed of people from several national origins.

The U.S. Census Bureau collects racial data in accordance with guidelines provided by the U.S. Office of Management and Budget (OMB 2016). These data are based on self-identification; generally reflect a social definition of race recognized in this country that include racial and national origin or sociocultural groups. People may choose to report more than one race to indicate their racial mixture, such as "American Indian" and "White." People who identify their origin as Hispanic, Latino, or Spanish may be of any race. OMB requires five minimum categories: White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander. The U.S. Census Bureau's QuickFacts as of July 1, 2019 showed that over 328 million people representing various racial groups were living in the U.S. (Table 11.1).

Population estimates, July 1, 2019, (V2019)	328,239,523
Race and Hispanic Origin	**Percentage (%)**
White alone	76.3
Black or African American alone	13.4
American Indian and Alaska Native alone	1.3
Asian alone	5.9
Native Hawaiian and Other Pacific Islander alone	0.2
Two or More Races	2.8
Hispanic or Latino	18.5
White alone, not Hispanic or Latino	60.1

Table 11.1 Percentage of Race and Hispanic Origin Population 2019 (Table courtesy of U.S. Census Bureau)

To clarify the terminology in the table, note that the U.S. Census Bureau defines racial groups as follows:

- White – A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- Black or African American – A person having origins in any of the Black racial groups of Africa.
- American Indian or Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.
- Asian – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

- Native Hawaiian or Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Information on race is required for many Federal programs and is critical in making policy decisions, particularly for civil rights including racial justice. States use these data to meet legislative redistricting principles. Race data also are used to promote equal employment opportunities and to assess racial disparities in health and environmental risks that demonstrates the extent to which this multiculturality is embraced. The many manifestations of multiculturalism carry significant political repercussions. The sections below will describe how several groups became part of U.S. society, discuss the history of intergroup relations for each faction, and assess each group's status today.

Native Americans

Native Americans are Indigenous peoples, the only nonimmigrant people in the United States. According to the National Congress of American Indians, Native Americans are "All Native people of the United States and its trust territories (i.e., American Indians, Alaska Natives, Native Hawaiians, Chamorros, and American Samoans), as well as persons from Canadian First Nations and Indigenous communities in Mexico and Central and South America who are U.S. residents (NCAI 2020, p. 11)." Native Americans once numbered in the millions but by 2010 made up only 0.9 percent of U.S. populace; see above (U.S. Census 2010). Currently, about 2.9 million people identify themselves as Native American alone, while an additional 2.3 million identify themselves as Native American mixed with another ethnic group (Norris, Vines, and Hoeffel 2012).

SOCIOLOGY IN THE REAL WORLD

Sports Teams with Native American Names

Figure **11.8** Many Native Americans (and others) believe sports teams with names like the Indians, Braves, and Warriors perpetuate unwelcome stereotypes. The Not Your Mascot protest was one of many directed at the then Washington Redskins, which eventually changed its name. (Credit: Fibonacci Blue/fickr)

The sports world abounds with team names like the Indians, the Warriors, the Braves, and even the Savages and Redskins. These names arise from historically prejudiced views of Native Americans as fierce, brave, and strong: attributes that would be beneficial to a sports team, but are not necessarily beneficial to people in the United States who should be seen as more than that.

Since the civil rights movement of the 1960s, the National Congress of American Indians (NCAI) has been campaigning against the use of such mascots, asserting that the "warrior savage myth . . . reinforces the racist view that Indians are uncivilized and uneducated and it has been used to justify policies of forced assimilation and destruction of Indian culture" (NCAI Resolution #TUL-05-087 2005). The campaign has met with limited success. While some teams have changed their names, hundreds of professional, college, and K–12 school teams still have names derived from this stereotype. Another group, American Indian Cultural Support (AICS), is especially concerned with the use of such names at K–12 schools, influencing children when they should be gaining a fuller and more realistic understanding of Native Americans than such stereotypes supply.

After years of pressure and with a wider sense of social justice and cultural sensitivity, the Washington

Football Team removed their offensive name before the 2020 season, and the Cleveland Major League Baseball team announced it would change its name after the 2021 season.

What do you think about such names? Should they be allowed or banned? What argument would a symbolic interactionist make on this topic?

History of Intergroup Relations

Native American culture prior to European settlement is referred to as Pre-Columbian: that is, prior to the coming of Christopher Columbus in 1492. Mistakenly believing that he had landed in the East Indies, Columbus named the indigenous people "Indians," a name that has persisted for centuries despite being a geographical misnomer and one used to blanket hundreds of sovereign tribal nations (NCAI 2020).

The history of intergroup relations between European colonists and Native Americans is a brutal one. As discussed in the section on genocide, the effect of European settlement of the Americans was to nearly destroy the indigenous population. And although Native Americans' lack of immunity to European diseases caused the most deaths, overt mistreatment and massacres of Native Americans by Europeans were devastating as well.

From the first Spanish colonists to the French, English, and Dutch who followed, European settlers took what land they wanted and expanded across the continent at will. If indigenous people tried to retain their stewardship of the land, Europeans fought them off with superior weapons. Europeans' domination of the Americas was indeed a conquest; one scholar points out that Native Americans are the only minority group in the United States whose subordination occurred purely through conquest by the dominant group (Marger 1993).

After the establishment of the United States government, discrimination against Native Americans was codified and formalized in a series of laws intended to subjugate them and keep them from gaining any power. Some of the most impactful laws are as follows:

- The Indian Removal Act of 1830 forced the relocation of any Native tribes east of the Mississippi River to lands west of the river.
- The Indian Appropriation Acts funded further removals and declared that no Indian tribe could be recognized as an independent nation, tribe, or power with which the U.S. government would have to make treaties. This made it even easier for the U.S. government to take land it wanted.
- The Dawes Act of 1887 reversed the policy of isolating Native Americans on reservations, instead forcing them onto individual properties that were intermingled with White settlers, thereby reducing their capacity for power as a group.

Native American culture was further eroded by the establishment of boarding schools in the late nineteenth century. These schools, run by both Christian missionaries and the United States government, had the express purpose of "civilizing" Native American children and assimilating them into White society. The boarding schools were located off-reservation to ensure that children were separated from their families and culture. Schools forced children to cut their hair, speak English, and practice Christianity. Physical and sexual abuses were rampant for decades; only in 1987 did the Bureau of Indian Affairs issue a policy on sexual abuse in boarding schools. Some scholars argue that many of the problems that Native Americans face today result from almost a century of mistreatment at these boarding schools.

Current Status

The eradication of Native American culture continued until the 1960s, when Native Americans were able to participate in and benefit from the civil rights movement. The Indian Civil Rights Act of 1968 guaranteed Indian tribes most of the rights of the United States Bill of Rights. New laws like the Indian Self-Determination Act of 1975 and the Education Assistance Act of the

same year recognized tribal governments and gave them more power. Indian boarding schools have dwindled to only a few, and Native American cultural groups are striving to preserve and maintain old traditions to keep them from being lost forever. Today, Native Americans are citizens of three sovereigns: their tribal nations, the United States, and the state in which they reside (NCAI 2020).

However, Native Americans (some of whom wish to be called American Indians so as to avoid the "savage" connotations of the term "native") still suffer the effects of centuries of degradation. Long-term poverty, inadequate education, cultural dislocation, and high rates of unemployment contribute to Native American populations falling to the bottom of the economic spectrum. Native Americans also suffer disproportionately with lower life expectancies than most groups in the United States.

African Americans

As discussed in the section on race, the term African American can be a misnomer for many individuals. Many people with dark skin may have their more recent roots in Europe or the Caribbean, seeing themselves as Dominican American or Dutch American, for example. Further, actual immigrants from Africa may feel that they have more of a claim to the term African American than those who are many generations removed from ancestors who originally came to this country.

The U.S. Census Bureau (2019) estimates that at least 13.4 percent of the United States' population is Black.

How and Why They Came

African Americans are the exemplar minority group in the United States whose ancestors did not come here by choice. A Dutch sea captain brought the first Africans to the Virginia colony of Jamestown in 1619 and sold them as indentured servants. (Indentured servants are people who are committed to work for a certain period of time, typically without formal pay). This was not an uncommon practice for either Black or White people, and indentured servants were in high demand. For the next century, Black and White indentured servants worked side by side. But the growing agricultural economy demanded greater and cheaper labor, and by 1705, Virginia passed the slave codes declaring that any foreign-born non-Christian could be enslaved, and that enslaved people were considered property.

The next 150 years saw the rise of U.S. slavery, with Black Africans being kidnapped from their own lands and shipped to the New World on the trans-Atlantic journey known as the Middle Passage. Once in the Americas, the Black population grew until U.S.-born Black people outnumbered those born in Africa. But colonial (and later, U.S.) slave codes declared that the child of an enslaved person was also an enslaved person, so the slave class was created. By 1808, the slave trade was internal in the United States, with enslaved people being bought and sold across state lines like livestock.

History of Intergroup Relations

There is no starker illustration of the dominant-subordinate group relationship than that of slavery. In order to justify their severely discriminatory behavior, slaveholders and their supporters viewed Black people as innately inferior. Enslaved people were denied even the most basic rights of citizenship, a crucial factor for slaveholders and their supporters. Slavery poses an excellent example of conflict theory's perspective on race relations; the dominant group needed complete control over the subordinate group in order to maintain its power. Whippings, executions, rapes, and denial of schooling and health care were widely practiced.

Slavery eventually became an issue over which the nation divided into geographically and ideologically distinct factions, leading to the Civil War. And while the abolition of slavery on moral grounds was certainly a catalyst to war, it was not the only driving force. Students of U.S. history will know that the institution of slavery was crucial to the Southern economy, whose production of crops like rice, cotton, and tobacco relied on the virtually limitless and cheap labor that slavery provided. In contrast, the North didn't benefit economically from slavery, resulting in an economic disparity tied to racial/political issues.

A century later, the civil rights movement was characterized by boycotts, marches, sit-ins, and freedom rides: demonstrations by a subordinate group and their supporters that would no longer willingly submit to domination. The major blow to America's formally institutionalized racism was the Civil Rights Act of 1964. This Act, which is still important today, banned discrimination based on race, color, religion, sex, or national origin.

Current Status

Although government-sponsored, formalized discrimination against African Americans has been outlawed, true equality does not yet exist. The National Urban League's *2020 Equality Index* reports that Black people's overall equality level with White people has been generally improving. Measuring standards of civic engagement, economics, education, and others, Black people had an equality level of 71 percent in 2010 and had an equality level of 74 percent in 2020. The *Index*, which has been published since

2005, notes a growing trend of increased inequality with White people, especially in the areas of unemployment, insurance coverage, and incarceration. Black people also trail White people considerably in the areas of economics, health, and education (National Urban League 2020).

To what degree do racism and prejudice contribute to this continued inequality? The answer is complex. 2008 saw the election of this country's first African American president: Barack Obama. Despite being popularly identified as Black, we should note that President Obama is of a mixed background that is equally White, and although all presidents have been publicly mocked at times (Gerald Ford was depicted as a klutz, Bill Clinton as someone who could not control his libido), a startling percentage of the critiques of Obama were based on his race. In a number of other chapters, we discuss racial disparities in healthcare, education, incarceration, and other areas.

Although Black people have come a long way from slavery, the echoes of centuries of disempowerment are still evident.

SOCIOLOGY IN THE REAL WORLD

Black People Are Still Seeking Racial Justice

Figure **11.9** This gathering at the site of George Floyd's death took place five days after he was killed. The location, at Chicago Avenue and 38th Street in Minneapolis, became a memorial. (Credit: Fibbonacci Blue/flickr)

In 2020, racial justice movements expanded their protests against incidents of police brutality and all racially motivated violence against Black people. Black Lives Matter (BLM), an organization founded in 2013 in response to the acquittal of George Zimmerman, was a core part of the movement to protest the killings of George Floyd, Breonna Taylor and other Black victims of police violence. Millions of people from all racial backgrounds participated in the movement directly or indirectly, demanding justice for the victims and their families, redistributing police department funding to drive more holistic and community-driven law enforcement, addressing systemic racism, and introducing new laws to punish police officers who kill innocent people.

The racial justice movement has been able to achieve some these demands. For example, Minneapolis City Council unanimously approved $27 million settlement to the family of George Floyd in March 2021, the largest pre-trial settlement in a wrongful death case ever for the life of a Black person(Shapiro and Lloyd, 2021). $500,000 from the settlement amount is intended to enhance the business district in the area where Floyd died. Floyd, a 46-year-old Black man, was arrested and murdered in Minneapolis on May 25, 2020. Do you think such settlement is adequate to provide justice for the victims, their families and communities affected by the horrific racism? What else should be done more? How can you contribute to bring desired changes?

Asian Americans

Asian Americans represent a great diversity of cultures and backgrounds. The experience of a Japanese American whose family has been in the United States for three generations will be drastically different from a Laotian American who has only been in the United States for a few years. This section primarily discusses Chinese, Japanese, Korean, and Vietnamese immigrants and shows the differences between their experiences. The most recent estimate from the U.S. Census Bureau (2019) suggest about 5.9 percent of the population identify themselves as Asian.

How and Why They Came

The national and ethnic diversity of Asian American immigration history is reflected in the variety of their experiences in joining U.S. society. Asian immigrants have come to the United States in waves, at different times, and for different reasons.

The first Asian immigrants to come to the United States in the mid-nineteenth century were Chinese. These immigrants were primarily men whose intention was to work for several years in order to earn incomes to support their families in China. Their main destination was the American West, where the Gold Rush was drawing people with its lure of abundant money. The construction of the Transcontinental Railroad was underway at this time, and the Central Pacific section hired thousands of migrant Chinese men to complete the laying of rails across the rugged Sierra Nevada mountain range. Chinese men also engaged in other manual labor like mining and agricultural work. The work was grueling and underpaid, but like many immigrants, they persevered.

Japanese immigration began in the 1880s, on the heels of the Chinese Exclusion Act of 1882. Many Japanese immigrants came to Hawaii to participate in the sugar industry; others came to the mainland, especially to California. Unlike the Chinese, however, the Japanese had a strong government that negotiated with the U.S. government to ensure the well-being of their immigrants. Japanese men were able to bring their wives and families to the United States, and were thus able to produce second- and third-generation Japanese Americans more quickly than their Chinese counterparts.

The most recent large-scale Asian immigration came from Korea and Vietnam and largely took place during the second half of the twentieth century. While Korean immigration has been fairly gradual, Vietnamese immigration occurred primarily post-1975, after the fall of Saigon and the establishment of restrictive communist policies in Vietnam. Whereas many Asian immigrants came to the United States to seek better economic opportunities, Vietnamese immigrants came as political refugees, seeking asylum from harsh conditions in their homeland. The Refugee Act of 1980 helped them to find a place to settle in the United States.

Figure **11.10** Thirty-five Vietnamese refugees wait to be taken aboard the amphibious USS *Blue Ridge (LCC-19)*. They are being rescued from a thirty-five-foot fishing boat 350 miles northeast of Cam Ranh Bay, Vietnam, after spending eight days at sea. (Credit: U.S. Navy/Wikimedia Commons)

History of Intergroup Relations

Chinese immigration came to an abrupt end with the Chinese Exclusion Act of 1882. This act was a result of anti-Chinese sentiment burgeoned by a depressed economy and loss of jobs. White workers blamed Chinese migrants for taking jobs, and the passage of the Act meant the number of Chinese workers decreased. Chinese men did not have the funds to return to China or to bring their families to the United States, so they remained physically and culturally segregated in the Chinatowns of large cities. Later legislation, the Immigration Act of 1924, further curtailed Chinese immigration. The Act included the race-based National Origins Act, which was aimed at keeping U.S. ethnic stock as undiluted as possible by reducing “undesirable” immigrants. It was not until after the Immigration and Nationality Act of 1965 that Chinese immigration again increased, and many Chinese families were reunited.

Although Japanese Americans have deep, long-reaching roots in the United States, their history here has not always been smooth. The California Alien Land Law of 1913 was aimed at them and other Asian immigrants, and it prohibited immigrants from owning land. An even uglier action was the Japanese internment camps of World War II, discussed earlier as an illustration of expulsion.

Current Status

Asian Americans certainly have been subject to their share of racial prejudice, despite the seemingly positive stereotype as the model minority. The **model minority** stereotype is applied to a minority group that is seen as reaching significant educational, professional, and socioeconomic levels without challenging the existing establishment.

This stereotype is typically applied to Asian groups in the United States, and it can result in unrealistic expectations by putting a stigma on members of this group that do not meet the expectations. Stereotyping all Asians as smart and capable can also lead to a lack of much-needed government assistance and to educational and professional discrimination.

SOCIOLOGY IN THE REAL WORLD

Hate Crimes Against Asian Americans

Figure **11.11** In response to widespread attacks against Asian people, partly linked to incorrect associations regarding Asian people and the COVID-19 pandemic, groups around the country and world held Stop Asian Hate rallies like this one in Canada. (Credit: GoToVan/flickr)

Asian Americans across the United States experienced a significant increase in hate crimes, harassment and discrimination tied to the spread of the COVID-19 pandemic. Community trackers recorded more than 3,000 anti-Asian attacks nationwide during 2020 in comparison to about 100 such incidents recorded annually in the prior years (Abdollah 2021). Asian American leaders have been urging community members to report any criminal incidents, demanding local law enforcement agencies for greater enforcement of existing hate-crime laws.

Many Asian Americans feel their communities have long been ignored by mainstream politics, media and entertainment although they are considered as a “model minority.” Recently, Asian American journalists are sharing their own stories of discrimination on social media and a growing chorus of federal lawmakers are demanding actions. Do you think you can do something to stop violence against Asian Americans? Can any of your actions not only help Asian Americans but also wider people in the United States?

White Americans

White Americans are the dominant racial group in the United States. According to the U.S. Census Bureau (2019), 76.3 percent of U.S. adults currently identify themselves as White alone. In this section, we will focus on German, Irish, Italian, and Eastern European immigrants.

Why They Came

White ethnic Europeans formed the second and third great waves of immigration, from the early nineteenth century to the mid-twentieth century. They joined a newly minted United States that was primarily made up of White Protestants from England. While most immigrants came searching for a better life, their experiences were not all the same.

The first major influx of European immigrants came from Germany and Ireland, starting in the 1820s. Germans came both for economic opportunity and to escape political unrest and military conscription, especially after the Revolutions of 1848. Many German immigrants of this period were political refugees: liberals who wanted to escape from an oppressive government. They were well-off enough to make their way inland, and they formed heavily German enclaves in the Midwest that exist to this day.

The Irish immigrants of the same time period were not always as well off financially, especially after the Irish Potato Famine of 1845. Irish immigrants settled mainly in the cities of the East Coast, where they were employed as laborers and where they faced significant discrimination.

German and Irish immigration continued into the late 19th century and earlier 20th century, at which point the numbers for Southern and Eastern European immigrants started growing as well. Italians, mainly from the Southern part of the country, began arriving in large numbers in the 1890s. Eastern European immigrants—people from Russia, Poland, Bulgaria, and Austria-Hungary—started arriving around the same time. Many of these Eastern Europeans were peasants forced into a hardscrabble existence in their native lands; political unrest, land shortages, and crop failures drove them to seek better opportunities in the United States. The Eastern European immigration wave also included Jewish people escaping pogroms (anti-Jewish massacres) of Eastern Europe and the Pale of Settlement in what was then Poland and Russia.

History of Intergroup Relations

In a broad sense, German immigrants were not victimized to the same degree as many of the other subordinate groups this section discusses. While they may not have been welcomed with open arms, they were able to settle in enclaves and establish roots. A notable exception to this was during the lead up to World War I and through World War II, when anti-German sentiment was virulent.

Irish immigrants, many of whom were very poor, were more of an underclass than the Germans. In Ireland, the English had oppressed the Irish for centuries, eradicating their language and culture and discriminating against their religion (Catholicism). Although the Irish had a larger population than the English, they were a subordinate group. This dynamic reached into the New World, where Anglo-Americans saw Irish immigrants as a race apart: dirty, lacking ambition, and suitable for only the most menial jobs. In fact, Irish immigrants were subject to criticism identical to that with which the dominant group characterized African Americans. By necessity, Irish immigrants formed tight communities segregated from their Anglo neighbors.

The later wave of immigrants from Southern and Eastern Europe was also subject to intense discrimination and prejudice. In particular, the dominant group—which now included second- and third-generation Germans and Irish—saw Italian immigrants as the dregs of Europe and worried about the purity of the American race (Myers 2007). Italian immigrants lived in segregated slums in Northeastern cities, and in some cases were even victims of violence and lynching similar to what African Americans endured. They undertook physical labor at lower pay than other workers, often doing the dangerous work that other laborers were reluctant to take on, such as earth moving and construction.

Current Status

German Americans are the largest group among White ethnic Americans in the country. For many years, German Americans endeavored to maintain a strong cultural identity, but they are now culturally assimilated into the dominant culture.

There are now more Irish Americans in the United States than there are Irish in Ireland. One of the country's largest cultural groups, Irish Americans have slowly achieved acceptance and assimilation into the dominant group.

Myers (2007) states that Italian Americans' cultural assimilation is "almost complete, but with remnants of ethnicity." The presence of "Little Italy" neighborhoods—originally segregated slums where Italians congregated in the nineteenth century—exist today. While tourists flock to the saints' festivals in Little Italies, most Italian Americans have moved to the suburbs at the same rate as

other White groups. Italian Americans also became more accepted after World War II, partly because of other, newer migrating groups and partly because of their significant contribution to the war effort, which saw over 500,000 Italian Americans join the military and fight against the Axis powers, which included Italy itself.

As you will see in the Religion chapter, Jewish people were also a core immigrant group to the United States. They often resided in tight-knit neighborhoods in a similar way to Italian people. Jewish identity is interesting and varied, in that many Jewish people consider themselves as members of a collective ethnic group as well as a religion, and many Jewish people feel connected by their ancestry as well as their religion. In fact, much of the data around the number of Jewish Americans is presented with caveats about different definitions and identifications of what it means to be Jewish (Lipka 2013).

As we have seen, there is no minority group that fits easily in a category or that can be described simply. While sociologists believe that individual experiences can often be understood in light of their social characteristics (such as race, class, or gender), we must balance this perspective with awareness that no two individuals' experiences are alike. Making generalizations can lead to stereotypes and prejudice. The same is true for White ethnic Americans, who come from diverse backgrounds and have had a great variety of experiences.

SOCIAL POLICY AND DEBATE

Thinking about White Ethnic Americans: Arab Americans

(a) (b)

Figure **11.12** The Islamic Center of America in Dearborn, Michigan is the largest mosque, or Islamic religious place of worship, in the United States. Muslim women and girls often wear head coverings, which sometimes makes them a target of harassment. (Credit A: Ryan Ready/flickr; B: U.S. Department of Agriculture/flickr)

The first Arab immigrants came to this country in the late nineteenth and early twentieth centuries. They were predominantly Syrian, Lebanese, and Jordanian Christians, and they came to escape persecution and to make a better life. These early immigrants and their descendants, who were more likely to think of themselves as Syrian or Lebanese than Arab, represent almost half of the Arab American population today (Myers 2007). Restrictive immigration policies from the 1920s until 1965 curtailed immigration, but Arab immigration since 1965 has been steady. Immigrants from this time period have been more likely to be Muslim and more highly educated, escaping political unrest and looking for better opportunities.

The United States was deeply affected by the terrorist attacks of September 11, 2001 and racial profiling has proceeded against Arab Americans since then. Particularly when engaged in air travel, being young and Arab-looking is enough to warrant a special search or detainment. This Islamophobia (irrational fear of or hatred against Muslims) does not show signs of abating. Arab Americans represent all religious practices, despite the stereotype that all Arabic people practice Islam. Geographically, the Arab region comprises the Middle East and parts of North Africa (MENA). People whose ancestry lies in that area or who speak primarily Arabic may consider themselves Arabs.

> The U.S. Census has struggled with the issue of Arab identity. The 2020 Census, as in previous years, did not offer a (MENA) category under the question of race. The US government rejected a push by Arab American advocates and organizations to add the new category, meaning that people stemming from the Arab region will be counted as "white" (Harb 2018). Do you think an addition of MENA category is appropriate to reduce prejudice and discrimination against Arab Americans? What other categories should be added to promote racial justice in the United States?

Hispanic Americans

The U.S. Census Bureau uses two ethnicities in collecting and reporting data: “Hispanic or Latino” and “Not Hispanic or Latino." Hispanic or Latino is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. Hispanic Americans have a wide range of backgrounds and nationalities.

The segment of the U.S. population that self-identifies as Hispanic in 2019 was recently estimated at 18.5 percent of the total (U.S. Census Bureau 2019). According to the 2010 U.S. Census, about 75 percent of the respondents who identify as Hispanic report being of Mexican, Puerto Rican, or Cuban origin. Remember that the U.S. Census allows people to report as being more than one ethnicity.

Not only are there wide differences among the different origins that make up the Hispanic American population, but there are also different names for the group itself. Hence, there have been some disagreements over whether Hispanic or Latino is the correct term for a group this diverse, and whether it would be better for people to refer to themselves as being of their origin specifically, for example, Mexican American or Dominican American. This section will compare the experiences of Mexican Americans and Cuban Americans.

How and Why They Came

Mexican Americans form the largest Hispanic subgroup and also the oldest. Mexican migration to the United States started in the early 1900s in response to the need for inexpensive agricultural labor. Mexican migration was often circular; workers would stay for a few years and then go back to Mexico with more money than they could have made in their country of origin. The length of Mexico’s shared border with the United States has made immigration easier than for many other immigrant groups.

Cuban Americans are the second-largest Hispanic subgroup, and their history is quite different from that of Mexican Americans. The main wave of Cuban immigration to the United States started after Fidel Castro came to power in 1959 and reached its crest with the Mariel boatlift in 1980. Castro’s Cuban Revolution ushered in an era of communism that continues to this day. To avoid having their assets seized by the government, many wealthy and educated Cubans migrated north, generally to the Miami area.

History of Intergroup Relations

For several decades, Mexican workers crossed the long border into the United States, both "documented" and "undocumented" to work in the fields that provided produce for the developing United States. Western growers needed a steady supply of labor, and the 1940s and 1950s saw the official federal Bracero Program (*bracero* is Spanish for *strong-arm*) that offered protection to Mexican guest workers. Interestingly, 1954 also saw the enactment of “Operation Wetback,” which deported thousands of illegal Mexican workers. From these examples, we can see the U.S. treatment of immigration from Mexico has been ambivalent at best.

Sociologist Douglas Massey (2006) suggests that although the average standard of living than in Mexico may be lower in the United States, it is not so low as to make permanent migration the goal of most Mexicans. However, the strengthening of the border that began with 1986’s Immigration Reform and Control Act has made one-way migration the rule for most Mexicans. Massey argues that the rise of illegal one-way immigration of Mexicans is a direct outcome of the law that was intended to reduce it.

Cuban Americans, perhaps because of their relative wealth and education level at the time of immigration, have fared better than many immigrants. Further, because they were fleeing a Communist country, they were given refugee status and offered protection and social services. The Cuban Migration Agreement of 1995 has curtailed legal immigration from Cuba, leading many Cubans to try to immigrate illegally by boat. According to a 2009 report from the Congressional Research Service, the U.S. government applies a “wet foot/dry foot” policy toward Cuban immigrants; Cubans who are intercepted while still at sea will be returned to Cuba, while those who reach the shore will be permitted to stay in the United States.

Current Status

Mexican Americans, especially those who are here undocumented, are at the center of a national debate about immigration. Myers (2007) observes that no other minority group (except the Chinese) has immigrated to the United States in such an environment of

legal dispute. He notes that in some years, three times as many Mexican immigrants may have entered the United States undocumented as those who arrived documented. It should be noted that this is due to enormous disparity of economic opportunity on two sides of an open border, not because of any inherent inclination to break laws. In his report, “Measuring Immigrant Assimilation in the United States,” Jacob Vigdor (2008) states that Mexican immigrants experience relatively low rates of economic and civic assimilation. He further suggests that “the slow rates of economic and civic assimilation set Mexicans apart from other immigrants, and may reflect the fact that the large numbers of Mexican immigrants residing in the United States undocumented have few opportunities to advance themselves along these dimensions.”

By contrast, Cuban Americans are often seen as a model minority group within the larger Hispanic group. Many Cubans had higher socioeconomic status when they arrived in this country, and their anti-Communist agenda has made them welcome refugees to this country. In south Florida, especially, Cuban Americans are active in local politics and professional life. As with Asian Americans, however, being a model minority can mask the issue of powerlessness that these minority groups face in U.S. society.

SOCIAL POLICY AND DEBATE

Arizona’s Senate Bill 1070

Figure **11.13** Protesters in Arizona dispute the harsh new anti-immigration law. (Credit: rprathap/flickr)

As both legal and illegal immigrants, and with high population numbers, Mexican Americans are often the target of stereotyping, racism, and discrimination. A harsh example of this is in Arizona, where a stringent immigration law—known as SB 1070 (for Senate Bill 1070)—caused a nationwide controversy. Formally titled "Support Our Law Enforcement and Safe Neighborhoods Act, the law requires that during a lawful stop, detention, or arrest, Arizona police officers must establish the immigration status of anyone they suspect may be here illegally. The law makes it a crime for individuals to fail to have documents confirming their legal status, and it gives police officers the right to detain people they suspect may be in the country illegally.

To many, the most troublesome aspect of this law is the latitude it affords police officers in terms of whose citizenship they may question. Having “reasonable suspicion that the person is an alien who is unlawfully present in the United States” is reason enough to demand immigration papers (Senate Bill 1070 2010). Critics say this law will encourage racial profiling (the illegal practice of law enforcement using race as a basis for suspecting someone of a crime), making it hazardous to be caught

> "Driving While Brown," a takeoff on the legal term Driving While Intoxicated (DWI) or the slang reference of "Driving While Black." Driving While Brown refers to the likelihood of getting pulled over just for being nonWhite.
>
> SB 1070 has been the subject of many lawsuits, from parties as diverse as Arizona police officers, the American Civil Liberties Union, and even the federal government, which is suing on the basis of Arizona contradicting federal immigration laws (ACLU 2011). The future of SB 1070 is uncertain, but many other states have tried or are trying to pass similar measures. Do you think such measures are appropriate?

11.6: Key Terms

amalgamation
the process by which a minority group and a majority group combine to form a new group

antiracist
a person who opposes racism and acts for racial justice

assimilation
the process by which a minority individual or group takes on the characteristics of the dominant culture

colorism
the belief that one type of skin tone is superior or inferior to another within a racial group

culture of prejudice
the theory that prejudice is embedded in our culture

discrimination
prejudiced action against a group of people

dominant group
a group of people who have more power in a society than any of the subordinate groups

ethnicity
shared culture, which may include heritage, language, religion, and more

expulsion
the act of a dominant group forcing a subordinate group to leave a certain area or even the country

genocide
the deliberate annihilation of a targeted (usually subordinate) group

intersection theory
theory that suggests we cannot separate the effects of race, class, gender, sexual orientation, and other attributes

minority group
any group of people who are singled out from the others for differential and unequal treatment

model minority
the stereotype applied to a minority group that is seen as reaching higher educational, professional, and socioeconomic levels without protest against the majority establishment

pluralism
the ideal of the United States as a “salad bowl:” a mixture of different cultures where each culture retains its own identity and yet adds to the “flavor” of the whole

prejudice
biased thought based on flawed assumptions about a group of people

racial profiling
the use by law enforcement of race alone to determine whether to stop and detain someone

racial steering
the act of real estate agents directing prospective homeowners toward or away from certain neighborhoods based on their race

racism

a set of attitudes, beliefs, and practices that are used to justify the belief that one racial category is somehow superior or inferior to others

redlining

the practice of routinely refusing mortgages for households and business located in predominately minority communities

scapegoat theory

a theory that suggests that the dominant group will displace its unfocused aggression onto a subordinate group

sedimentation of racial inequality

the intergenerational impact of de facto and de jure racism that limits the abilities of Black people to accumulate wealth

segregation

the physical separation of two groups, particularly in residence, but also in workplace and social functions

social construction of race

the school of thought that race is not biologically identifiable

stereotypes

oversimplified ideas about groups of people

subordinate group

a group of people who have less power than the dominant group

systemic racism

racism embedded in social institutions; also referred to as institutional racism and structural racism

White privilege

the societal privilege that benefits White people, or those perceived to be White, over non-White people in some societies, including the United States

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11.7: Section Summary

11.1 Racial, Ethnic, and Minority Groups

Race is fundamentally a social construct. Ethnicity is a term that describes shared culture and national origin. Minority groups are defined by their lack of power.

11.2 Theoretical Perspectives on Race and Ethnicity

Functionalist views of race study the role dominant and subordinate groups play to create a stable social structure. Conflict theorists examine power disparities and struggles between various racial and ethnic groups. Interactionists see race and ethnicity as important sources of individual identity and social symbolism. The concept of culture of prejudice recognizes that all people are subject to stereotypes that are ingrained in their culture.

11.3 Prejudice, Discrimination, and Racism

Stereotypes are oversimplified ideas about groups of people. Prejudice refers to thoughts and feelings, while discrimination refers to actions. Racism is both prejudice and discrimination due to the belief that one race is inherently superior or inferior to other races. Antiracists fight against the systems of racism by employing antiracist policies and practices in institutions and communities.

11.4 Intergroup Relationships

Intergroup relations range from a tolerant approach of pluralism to intolerance as severe as genocide. In pluralism, groups retain their own identity. In assimilation, groups conform to the identity of the dominant group. In amalgamation, groups combine to form a new group identity.

11.5 Race and Ethnicity in the United States

The history of the U.S. people contains an infinite variety of experiences that sociologist understand follow patterns. From the indigenous people who first inhabited these lands to the waves of immigrants over the past 500 years, migration is an experience with many shared characteristics. Most groups have experienced various degrees of prejudice and discrimination as they have gone through the process of assimilation.

11.8: Section Quiz

11.1 Racial, Ethnic, and Minority Groups

1.

The racial term “African American” can refer to:

a. a Black person living in the United States
b. people whose ancestors came to the United States through the slave trade
c. a White person who originated in Africa and now lives in the United States
d. any of the above

2.

What is the one defining feature of a minority group?

a. Self-definition
b. Numerical minority
c. Lack of power
d. Strong cultural identity

3.

Ethnicity describes shared:

a. beliefs
b. language
c. religion
d. any of the above

4.

Which of the following is an example of a numerical majority being treated as a subordinate group?

a. Jewish people in Germany
b. Creoles in New Orleans
c. White people in Brazil
d. Black people under apartheid in South Africa

5.

Scapegoat theory shows that:

a. subordinate groups blame dominant groups for their problems
b. dominant groups blame subordinate groups for their problems
c. some people are predisposed to prejudice
d. all of the above

11.2 Theoretical Perspectives on Race and Ethnicity

6.

As a White person in the United States, being reasonably sure that you will be dealing with authority figures of the same race as you is a result of:

a. intersection theory
b. conflict theory
c. White privilege
d. scapegoating theory

7.

Speedy Gonzalez is an example of:

a. intersection theory
b. stereotyping

c. interactionist view
d. culture of prejudice

11.3 Prejudice, Discrimination, and Racism

8.

Stereotypes can be based on:

a. race
b. ethnicity
c. gender
d. all of the above

9.

What is discrimination?

a. Biased thoughts against an individual or group
b. Biased actions against an individual or group
c. Belief that a race different from yours is inferior
d. Another word for stereotyping

10.

Which of the following is the best explanation of racism as a social fact?

a. It needs to be eradicated by laws.
b. It is like a magic pill.
c. It does not need the actions of individuals to continue.
d. None of the above

11.4 Intergroup Relationships

11.

Which intergroup relation displays the least tolerance?

a. Segregation
b. Assimilation
c. Genocide
d. Expulsion

12.

What doctrine justified legal segregation in the South?

a. Jim Crow
b. *Plessy v. Ferguson*
c. *De jure*
d. Separate but equal

13.

What intergroup relationship is represented by the “salad bowl” metaphor?

a. Assimilation
b. Pluralism
c. Amalgamation
d. Segregation

14.

Amalgamation is represented by the _____ metaphor.

a. melting pot
b. Statue of Liberty

c. salad bowl
d. separate but equal

11.5 Race and Ethnicity in the United States

15.

What makes Native Americans unique as a subordinate group in the United States?

a. They are the only group that experienced expulsion.
b. They are the only group that was segregated.
c. They are the only group that was enslaved.
d. They are the only group that is indigenous to the United States.

16.

Which subordinate group is often referred to as the “model minority?”

a. African Americans
b. Asian Americans
c. White ethnic Americans
d. Native Americans

17.

Which federal act or program was designed to allow more Hispanic American immigration, not block it?

a. The Bracero Program
b. Immigration Reform and Control Act
c. Operation Wetback
d. SB 1070

18.

Many Arab Americans face _____, especially after 9/11.

a. racism
b. segregation
c. Islamophobia
d. prejudice

19.

Why did most White ethnic Americans come to the United States?

a. For a better life
b. To escape oppression
c. Because they were forced out of their own countries
d. a and b only

11.9: Short Answer

11.1 Racial, Ethnic, and Minority Groups

1.

Why do you think the term “minority” has persisted when the word “subordinate” is more descriptive?

2.

How do you describe your ethnicity? Do you include your family’s country of origin? Do you consider yourself multiethnic? How does your ethnicity compare to that of the people you spend most of your time with?

11.2 Theoretical Perspectives on Race and Ethnicity

3.

How do redlining and racial steering contribute to institutionalized racism?

4.

Give an example of stereotyping that you see in everyday life. Explain what would need to happen for this to be eliminated.

11.3 Prejudice, Discrimination, and Racism

5.

Give three examples of White privilege. Do you know people who have experienced this? From what perspective?

6.

What is the worst example of culture of prejudice you can think of? What are your reasons for thinking it is the worst?

11.4 Intergroup Relationships

7.

Do you believe immigration laws should foster an approach of pluralism, assimilation, or amalgamation? Which perspective do you think is most supported by current U.S. immigration policies?

8.

Which intergroup relation do you think is the most beneficial to the subordinate group? To society as a whole? Why?

11.5 Race and Ethnicity in the United States

9.

In your opinion, which group had the easiest time coming to this country? Which group had the hardest time? Why?

10.

Which group has made the most socioeconomic gains? Why do you think that group has had more success than others have?

11.10: Further Research

11.1 Racial, Ethnic, and Minority Groups

Explore aspects of race and ethnicity at PBS's site, "What Is Race?".

11.2 Theoretical Perspectives on Race and Ethnicity

Are you aware of your own or others' privilege? Watch this TED Talk on White privilege to explore the concept.

11.3 Prejudice, Discrimination, and Racism

How far should First Amendment rights extend? Read more about the subject at the First Amendment Center.

Learn more about institutional racism at the Southern Poverty Law Center's website.

Learn more about how prejudice develops by watching the short documentary "Eye of the Storm"

11.4 Intergroup Relationships

So you think you know your own assumptions? Check and find out with the Implicit Association Test

What do you know about the treatment of Australia's aboriginal population? Find out more by viewing the feature-length documentary *Our Generation*.

11.5 Race and Ethnicity in the United States

Are people interested in reclaiming their ethnic identities? Read the article *The White Ethnic Revival* and decide.

What is the current racial composition of the United States? Review up-to-the minute statistics at the United States Census Bureau.

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CHAPTER OVERVIEW

12: Gender, Sex, and Sexuality

Figure **12.1** New opportunities, laws, and attitudes have opened the door for people to take on roles that are not traditionally associated with their gender. But despite this progress, many people are misunderstood or mistreated based on gender.

Imagine that there's a fire in a building nearby. As you watch the flames and smoke pour out of windows, you also watch firefighters run inside. Minutes go by and more people arrive--crowds, news trucks, ambulances. Firefighters working the hoses start pointing to a top-floor window, where a lone member of their crew emerges half-pulling, half-carrying a victim of the fire. Behind them, through the window, you can see the fire in the background, flames that the firefighter must have pushed through to get to the victim. Eventually, others reach them with large ladders, and they bring the nearly unconscious victim down to the street.

Close up, you can see the heroic firefighter is covered in dirt and soot. A large gash is visible in their suit, and they're immediately given medical attention. As the EMTs pull off the firefighters' helmet, you're surprised to see features you identify as a woman's. You had just assumed the person was a man, but you were incorrect.

You wouldn't be alone. For centuries, nearly all firefighters had been men. As a child, saying fireman and firemen may have been perfectly appropriate, because all the people you met in the profession were, in fact, men. But as with many professions that were formerly almost exclusively gender-specific, firefighting has become more integrated.

What does that mean for the people in those professions? They must endure physical challenges, overcome stereotypes about any physical limitations, and likely deal with a culture built over a long time to appeal to and serve the needs of men. As they train, firefighters may be yelled at and undergo levels of punishment for not achieving the necessary standards. Does the dynamic of those interactions change when a man in a superior position is for the first time giving orders and issuing reprimands to people of another gender? Should they be able to treat women the same way they treated men? What would be equal in that situation?

Consider another profession. What would you think about if you witnessed a young woman being pepper sprayed by a man? Is she fulfilling the role society may assume for her? Does it matter that the person spraying her is a man, and that he has a degree of

control over her?

Military police and security personnel are required to be pepper sprayed at least once during their training. The logic goes: They may have to utilize this deterrent against other people, and so they should have experienced it. While there are no guarantees that the future enforcement officer will use the substances judiciously, having experienced the painful effects of pepper spray is deemed more likely to produce a level of empathy and restraint.

But is this what she signed up for? Assuming that these military personnel have undergone some level of training prior to this event—they've invested their lives and others have invested in them—could she turn back? How would her peers react? How would her family and others react?

Saving someone from a burning building takes a degree of courage and ability that is very rare, regardless of gender. Voluntary pepper spraying is an extreme situation, again regardless of gender. But gender plays a role in how we see the people involved in both situations. Gender and sexuality are among the most powerful and impactful elements of people's identities, and drive the way they see the world and the way the world sees them. People of different genders go through difficult circumstances and events based partly on their role in society—a role that they do not often define for themselves. And when people express, identify, or outwardly display signs that they do not fit in a societies, established categories, they may face exclusion and discrimination.

12.1: Sex, Gender, Identity, and Expression

Learning Objectives

By the end of this section, you should be able to:

- Define and differentiate between sex and gender
- Define and discuss what is meant by gender identity
- Distinguish the meanings of different sexual orientations, gender identities, and gender expressions

Figure **12.2** While the biological differences between males and females are fairly straightforward, the social and cultural aspects of being a man or woman can be complicated. (Credit: Mapbox Uncharted ERG /flickr)

When filling out a document such as a job application or school registration form, you are often asked to provide your name, address, phone number, birth date, and sex or gender. But have you ever been asked to provide your sex *and* your gender? Like most people, you may not have realized that sex and gender are not the same. However, sociologists and most other social scientists view them as conceptually distinct. **Sex** refers to physical or physiological differences between males and females, including both primary sex characteristics (the reproductive system) and secondary characteristics such as height and muscularity. **Gender** refers to behaviors, personal traits, and social positions that society attributes to being female or male.

A person's sex, as determined by their biology, does not always correspond with their gender. Therefore, the terms *sex* and *gender* are not interchangeable. A baby who is born with male genitalia will most likely be identified as male. As a child or adult, however, they may identify with the feminine aspects of culture. Since the term *sex* refers to biological or physical distinctions, characteristics of sex will not vary significantly between different human societies. Generally, persons of the female sex, regardless of culture, will eventually menstruate and develop breasts that can lactate. Characteristics of gender, on the other hand, may vary greatly between different societies. For example, in U.S. culture, it is considered feminine (or a trait of the female gender) to wear a dress or skirt. However, in many Middle Eastern, Asian, and African cultures, sarongs, robes, or gowns are considered masculine. The kilt worn by a Scottish man does not make him appear feminine in that culture.

The dichotomous or binary view of gender (the notion that someone is either male or female) is specific to certain cultures and is not universal. In some cultures gender is viewed as fluid. In the past, some anthropologists used the term *berdache* to refer to individuals who occasionally or permanently dressed and lived as a different gender. The practice has been noted among certain Native American tribes (Jacobs, Thomas, and Lang 1997). Samoan culture accepts what Samoans refer to as a "third gender." *Fa'afafine*, which translates as "the way of the woman," is a term used to describe individuals who are born biologically male but embody both masculine and feminine traits. Fa'afafines are considered an important part of Samoan culture. Individuals from other cultures may mislabel their sexuality because fa'afafines have a varied sexual life that may include men and women (Poasa 1992).

SOCIAL POLICY AND DEBATE

The Legalese of Sex and Gender

The terms *sex* and *gender* have not always been differentiated in the English language. It was not until the 1950s that U.S. and British psychologists and other professionals formally began distinguishing between sex and gender. Since then, professionals have increasingly used the term gender (Moi 2005). By the end of the twenty-first century, expanding the proper usage of the term *gender* to everyday language became more challenging—particularly where legal language is concerned. In an effort to clarify usage of the terms *sex* and *gender*, U.S. Supreme Court Justice Antonin Scalia wrote in a 1994 briefing, "The word gender has acquired the new and useful connotation of cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes. That is to say, gender is to sex as feminine is to female and masculine is to male" (*J.E.B. v. Alabama*, 144 S. Ct. 1436 [1994]). Supreme Court Justice Ruth Bader Ginsburg had a different take, however. She freely swapped them in her briefings so as to avoid having the word "sex" pop up too often. Ginsburg decided on this approach earlier in her career while she was arguing before the Supreme court; her Columbia Law School secretary suggested it to Ginsburg, saying that when "those nine men" (the Supreme Court justices), "hear that word and their first association is not the way you want them to be thinking" (Block 2020).

More recently, the word "sex" was a key element of the landmark Supreme Court case affirming that the Civil Rights Act's workplace protections applied to LGBTQ people. Throughout the case documents and discussions, the term and its meanings are discussed extensively. In his decision statement, Justice Neil Gorsuch wrote, "It is impossible to discriminate against a person for being homosexual or transgender without discriminating ... based on sex" (Supreme Court 2020). Dissenting justices and commentators felt that Gorsuch and the other justices in the majority were recalibrating the original usage of the term. The arguments about the language itself, which occupy much of the Court's writings on the matter, are further evidence of the evolving nature of the words, as well as their significance.

Sexuality and Sexual Orientation

A person's **sexuality** is their capacity to experience sexual feelings and attraction. Studying sexual attitudes and practices is a particularly interesting field of sociology because sexual behavior and attitudes about sexual behavior have cultural and societal influences and impacts. As you will see in the Relationships, Marriage, and Family chapter, each society interprets sexuality and sexual activity in different ways, with different attitudes about premarital sex, the age of sexual consent, homosexuality, masturbation, and other sexual behaviors (Widmer 1998).

A person's **sexual orientation** is their physical, mental, emotional, and sexual attraction to a particular sex (male and/or female). Sexual orientation is typically divided into several categories: *heterosexuality*, the attraction to individuals of the other sex; *homosexuality*, the attraction to individuals of the same sex; *bisexuality*, the attraction to individuals of either sex; *asexuality*, a lack of sexual attraction or desire for sexual contact; *pansexuality*, an attraction to people regardless of sex, gender, gender identity, or gender expression; *omnisexuality*, an attraction to people of all sexes, genders, gender identities, and gender expressions that considers the person's gender, and *queer*, an umbrella term used to describe sexual orientation, gender identity or gender expression. Other categories may not refer to a sexual attraction, but rather a romantic one. For example, an *aromantic* person does not experience romantic attraction; this is different from asexuality, which refers to a lack of sexual attraction. And some sexual orientations do not refer to gender in their description, though those who identify as having that orientation may feel attraction to a certain gender. For example, *demisexual* refers to someone who feels a sexual attraction to someone only after they form an emotional bond; the term itself doesn't distinguish among gender identities, but the person may feel attraction based on gender (PFLAG 2021). It is important to acknowledge and understand that many of these orientations exist on on a spectrum, and there may be no specific term to describe how an individual feels. Some terms have been developed to address this—such as *graysexual* or *grayromantic*—but their usage is a personal choice (Asexual Visibility and Education Network 2021).

People who are attracted to others of a different gender are typically referred to as "straight," and people attracted to others of the same gender are typically referred to as "gay" for men and "lesbian" for women. As discussed, above, however, there are many more sexual and romantic orientations, so the term "gay," for example, should not be used to describe all of them. Proper terminology includes the acronyms LGBT and LGBTQ, which stands for “Lesbian, Gay, Bisexual, Transgender” (and “Queer” or “Questioning” when the Q is added). In other cases, people and organizations may add "I" to represent Intersex people (described below), and "A" for Asexual or Aromantic people (or sometimes for "Allies"), as well as one "P" to describe Pansexual people and sometimes another "P" to describe Polysexual people. Finally, some people and organizations add a plus sign (+) to represent other possible identities or orientations. Sexuality and gender terminology are constantly changing, and may mean different things to different people; they are not universal, and each individual defines them for themselves (UC Davis LGBTQIA Resource Center 2020). Finally, a person who does not fully understand all of these terms can still be supportive of people who have those orientations or others; in fact, advocacy and support organizations indicate it is much better to admit you don't know something than to make assumptions or apply an incorrect label to someone (GLAAD 2021).

While the descriptions above are evidence of a vast degree of diversity, the United States and many other countries are heteronormative societies, meaning many people assume **heterosexual** orientation is biologically determined and is the default or normal type of orientation. While awareness and acceptance of different sexual orientations and identities seems to be increasing, the influence of a heteronormative society can lead LGBTQ people to be treated like "others," even by people who do not deliberately seek to cause them harm. This can lead to significant distress (Boyer 2020). Causes of these heteronormative behaviors and expectations are tied to implicit biases; they can be especially harmful for children and young adults (Tompkins 2017).

There is not a wealth of research describing exactly when people become aware of their sexual orientation. According to current scientific understanding, individuals are usually aware of their sexual orientation between middle childhood and early adolescence (American Psychological Association 2008). They do not have to participate in sexual activity to be aware of these emotional, romantic, and physical attractions; people can be celibate and still recognize their sexual orientation, and may have very different experiences of discovering and accepting their sexual orientation. Some studies have shown that a percentage of people may start to have feelings related to attraction or orientation at ages nine or ten, even if these feelings are not sexual (Calzo 2018). At the point of puberty, some may be able to announce their sexual orientation, while others may be unready or unwilling to make their sexual orientation or identity known since it goes against society’s historical norms (APA 2008). And finally, some people recognize their true sexual orientation later in life—in their 30s, 40s, and beyond.

There is no scientific consensus regarding the exact reasons why an individual holds a specific sexual orientation. Research has been conducted to study the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, but there has been no evidence that links sexual orientation to one factor (APA 2008). Alfred Kinsey was among the first to conceptualize sexuality as a continuum rather than a strict dichotomy of gay or straight. He created a six-point rating scale that ranges from exclusively heterosexual to exclusively homosexual. See the figure below. In his 1948 work *Sexual Behavior in the Human Male*, Kinsey writes, “Males do not represent two discrete populations, heterosexual and homosexual. The world is not to be divided into sheep and goats … The living world is a continuum in each and every one of its aspects” (Kinsey 1948). Many of Kinsey's specific research findings have been criticized or discredited, but his influence on future research is widely accepted.

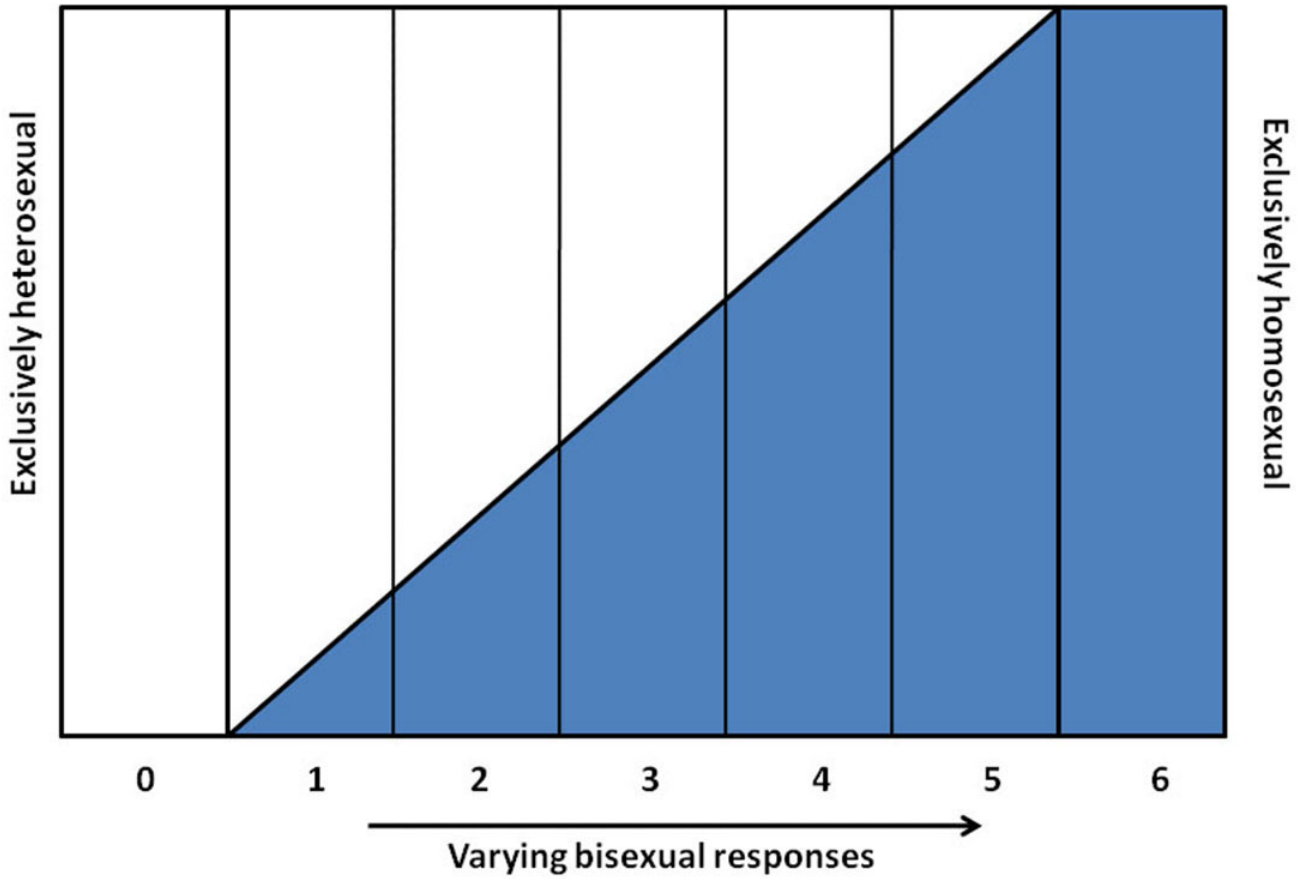

Figure **12.3** The Kinsey scale was one of the first attempts to frame the diversity of human sexual orientation.

Later scholarship by Eve Kosofsky Sedgwick expanded on Kinsey's notions. She coined the term "homosocial" to oppose "homosexual," describing nonsexual same-sex relations. Sedgwick recognized that in U.S. culture, males are subject to a clear divide between the two sides of this continuum, whereas females enjoy more fluidity. This can be illustrated by the way women in the United States can express homosocial feelings (nonsexual regard for people of the same sex) through hugging, handholding, and physical closeness. In contrast, U.S. males refrain from these expressions since they violate the heteronormative expectation that male sexual attraction should be exclusively for females. Research suggests that it is easier for women violate these norms than men, because men are subject to more social disapproval for being physically close to other men (Sedgwick 1985).

Because of the deeply personal nature of sexual orientation, as well as the societal biases against certain orientations, many people may question their sexual orientation before fully accepting it themselves. In a similar way, parents may question their children's sexual orientation based on certain behaviors. Simply viewing the many web pages and discussion forums dedicated to people expressing their questions makes it very clear that sexual orientation is not always clear. Feelings of guilt, responsibility, rejection, and simple uncertainty can make the process and growth very challenging. For example, a woman married to a man who recognizes that she is asexual, or a man married to a woman who recognizes that he is attracted to men, may both have extreme difficulty coming to terms with their sexuality, as well as disclosing it to others. At younger ages, similarly challenging barriers and difficulties exist. For example, adolescence can be a difficult and uncertain time overall, and feelings of different or changing orientation or nonconformity can only add to the challenges (Mills-Koonce 2018).

Gender Roles

As we grow, we learn how to behave from those around us. In this socialization process, children are introduced to certain roles that are typically linked to their biological sex. The term **gender role** refers to society's concept of how men and women are expected to look and how they should behave. These roles are based on norms, or standards, created by society. In U.S. culture, masculine roles are usually associated with strength, aggression, and dominance, while feminine roles are usually associated with

passivity, nurturing, and subordination. Role learning starts with socialization at birth. Even today, our society is quick to outfit male infants in blue and girls in pink, even applying these color-coded gender labels while a baby is in the womb.

One way children learn gender roles is through play. Parents typically supply boys with trucks, toy guns, and superhero paraphernalia, which are active toys that promote motor skills, aggression, and solitary play. Daughters are often given dolls and dress-up apparel that foster nurturing, social proximity, and role play. Studies have shown that children will most likely choose to play with “gender appropriate” toys (or same-gender toys) even when cross-gender toys are available because parents give children positive feedback (in the form of praise, involvement, and physical closeness) for gender normative behavior (Caldera, Huston, and O’Brien 1998). As discussed in the Socialization chapter, some parents and experts become concerned about young people becoming too attached to these stereotypical gender roles.

Figure **12.4** Childhood activities and instruction, like this father-daughter duck-hunting trip, can influence people's lifelong views on gender roles. (Credit: Tim Miller, USFWS Midwest Region/flickr)

The drive to adhere to masculine and feminine gender roles continues later in life, in a tendency sometimes referred to as "occupational sorting" (Gerdeman 2019). Men tend to outnumber women in professions such as law enforcement, the military, and politics. Women tend to outnumber men in care-related occupations such as childcare, healthcare (even though the term “doctor” still conjures the image of a man), and social work. These occupational roles are examples of typical U.S. male and female behavior, derived from our culture’s traditions. Adherence to these roles demonstrates fulfillment of social expectations but not necessarily personal preference (Diamond 2002); sometimes, people work in a profession because of societal pressure and/or the opportunities afforded to them based on their gender.

Historically, women have had difficulty shedding the expectation that they cannot be a "good mother" and a "good worker" at the same time, which results in fewer opportunities and lower levels of pay (Ogden 2019). Generally, men do not share this difficulty: Since the assumed role of a men as a fathers does not seem to conflict with their perceived work role, men who are fathers (or who are expected to become fathers) do not face the same barriers to employment or promotion (González 2019). This is sometimes

referred to as the "motherhood penalty" versus the "fatherhood premium," and is prevalent in many higher income countries (Bygren 2017). These concepts and their financial and societal implications will be revisited later in the chapter.

Gender Identity

U.S. society allows for some level of flexibility when it comes to acting out gender roles. To a certain extent, men can assume some feminine roles and women can assume some masculine roles without interfering with their gender identity. **Gender identity** is a person’s deeply held internal perception of one's gender.

Transgender people's sex assigned at birth and their gender identity are not necessarily the same. A transgender woman is a person who was assigned male at birth but who identifies and/or lives as a woman; a transgender man was assigned female at birth but lives as a man. While determining the size of the transgender population is difficult, it is estimated that 1.4 million adults (Herman 2016) and 2 percent of high school students in the U.S. identify as transgender (Johns 2019). The term "transgender" does not indicate sexual orientation or a particular gender expression, and we should avoid making assumptions about people's sexual orientation based on knowledge about their gender identity (GLAAD 2021).

Figure **12.5** Actress Laverne Cox is the first openly transgender person to play a transgender character on a major show. She won a producing Emmy and was nominated four times for the Best Actress Emmy. She is also an advocate for LGBTQ issues outside of her career, such as in this "Ain't I a Woman?" speaking tour. (Credit: modification of work by "KOMUnews_Flickr"/Flickr)

Some transgender individuals may undertake a process of transition, in which they move from living in a way that is more aligned with the sex assigned at birth to living in a way that is aligned with their gender identity. Transitioning may take the form of social, legal or medical aspects of someone's life, but not everyone undertakes any or all types of transition. Social transition may involve the person's presentation, name, pronouns, and relationships. Legal transition can include changing their gender on government or other official documents, changing their legal name, and so on. Some people may undergo a physical or medical transition, in

which they change their outward, physical, or sexual characteristics in order for their physical being to better align with their gender identity (UCSF Transgender Care 2019). Not all transgender individuals choose to alter their bodies: many will maintain their original anatomy but may present themselves to society as another gender. This is typically done by adopting the dress, hairstyle, mannerisms, or other characteristic typically assigned to another gender. It is important to note that people who cross-dress, or wear clothing that is traditionally assigned to a gender different from their biological sex, are not necessarily transgender. Cross-dressing is typically a form of self-expression or personal style, and it does not indicate a person's gender identity or that they are transgender (TSER 2021).

Figure **12.6** The most widely known transgender pride flag was designed by transgender woman and U.S. Navy veteran Monica Helms. Other designers have different interpretation of the transgender flag, and other groups within the LGBTQ community have their own flags and symbols. Interestingly, Gilbert Baker, the designer of the first widely adopted pride flag, made a point to avoid trademark or other limits on the flag, so that it could be reinterpreted and reused by others. (Credit: crudmucosa/flickr)

There is no single, conclusive explanation for why people are transgender. Transgender expressions and experiences are so diverse that it is difficult to identify their origin. Some hypotheses suggest biological factors such as genetics or prenatal hormone levels as well as social and cultural factors such as childhood and adulthood experiences. Most experts believe that all of these factors contribute to a person’s gender identity (APA 2008).

Intersex is a general term used to describe people whose sex traits, reproductive anatomy, hormones, or chromosomes are different from the usual two ways human bodies develop. Some intersex traits are recognized at birth, while others are not recognizable until puberty or later in life (interACT 2021). While some intersex people have physically recognizable features that are described by specific medical terms, intersex people and newborns are healthy. Most in the medical and intersex community reject unnecessary surgeries intended to make a baby conform to a specific gender assignment; medical ethicists indicate that any surgery to alter intersex characteristics or traits—if desired—should be delayed until an individual can decide for themselves (Behrens 2021). If a physical trait or medical condition prohibits a baby from urinating or performing another bodily function (which is very rare), then a medical procedure such as surgery will be needed; in other cases, hormonal issues related to intersex characteristics may require

medical intervention. Intersex and transgender are not interchangeable terms; many transgender people have no intersex traits, and many intersex people do not consider themselves transgender. Some intersex people believe that intersex people should be included within the LGBTQ community, while others do not (Koyama n.d.).

Those who identify with the sex they were assigned at birth are often referred to as *cisgender*, utilizing the Latin prefix "cis," which means "on the same side." (The prefix "trans" means "across.") Because they are in the majority and do not have a potential component to transition, many cisgender people do not self-identify as such. As with transgender people, the term or usage of cisgender does not indicate a person's sexual orientation, gender, or gender expression (TSER 2021). And as many societies are heteronormative, they are also *cisnormative*, which is the assumption or expectation that everyone is cisgender, and that anything other than cisgender is not normal.

The language of sexuality, sexual orientation, gender identity, and gender expression is continually changing and evolving. In order to get an overview of some of the most commonly used terms, explore the Trans Student Educational Resources Online Glossary: http://openstax.org/r/tsero

When individuals do not feel comfortable identifying with the gender associated with their biological sex, then they may experience gender dysphoria. **Gender dysphoria** is a diagnostic category in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) that describes individuals who do not identify as the gender that most people would assume they are. This dysphoria must persist for at least six months and result in significant distress or dysfunction to meet DSM-5 diagnostic criteria. In order for children to be assigned this diagnostic category, they must verbalize their desire to become the other gender. It is important to note that not all transgender people experience gender dysphoria, and that its diagnostic categorization is not universally accepted. For example, in 2019, the World Health Organization reclassified “gender identity disorder” as “gender incongruence,” and categorized it under sexual health rather than a mental disorder. However, health and mental health professionals indicate that the presence of the diagnostic category does assist in supporting those who need treatment or help.

People become aware that they may be transgender at different ages. Even if someone does not have a full (or even partial) understanding of gender terminology and its implications, they can still develop an awareness that their gender assigned at birth does not align with their gender identity. Society, particularly in the United States, has been reluctant to accept transgender identities at any age, but we have particular difficulty accepting those identities in children. Many people feel that children are too young to understand their feelings, and that they may "grow out of it." And it is true that some children who verbalize their identification or desire to live as another gender may ultimately decide to live in alignment with their assigned gender. But if a child consistently describes themselves as a gender (or as both genders) and/or expresses themselves as that gender over a long period of time, their feelings cannot be attributed to going through a "phase" (Mayo Clinic 2021).

Some children, like many transgender people, may feel pressure to conform to social norms, which may lead them to suppress or hide their identity. Experts find evidence of gender dysphoria—the long-term distress associated with gender identification—in children as young as seven (Zaliznyak 2020). Again, most children have a limited understanding of the social and societal impacts of being transgender, but they can feel strongly that they are not aligned with their assigned sex. And considering that many transgender people do not come out or begin to transition until much later in life—well into their twenties—they may live for a long time under that distress.

Discrimination Against LGBTQ people

Recall from the chapter on Crime and Deviance that the FBI's hate crime data indicates that crimes against LGBTQ people have been increasing, and that those crimes account for nearly one in five hate crimes committed in the United States (FBI 2020). While the disbanding of anti-LGBTQ laws in the United States has reduced government or law enforcement oppression or abuse, it has not eliminated it. In other countries, however, LGBTQ people can face even more danger. Reports from the United Nations, Human Rights Watch, and the International Lesbian, Gay, Trans, and Intersex Association (ILGA) indicate that many countries impose penalties for same-sex relationships, gender noncomformity, and other acts deemed opposed to the cultural or religious observances of the nation. As of 2020, six United Nations members imposed the death penalty for consensual same-sex acts, and another 61 countries penalized same sex acts, through jail time, corporal punishment (such as lashing), or other measures. These countries include prominent United States allies such as the United Arab Emirates and Saudi Arabia (both of which can legally impose the death penalty for same-sex acts). Some nearby nations criminalize same-sex relations: Barbados can impose lifetime imprisonment for same-sex acts, and Jamaica, St. Kitts and Nevis, and Saint Lucia have lesser penalties, though Saint Lucia's government indicates it does not enforce those laws (ILGA 2020). Even when the government criminal code does not formalize anti-LGBTQ penalties, local ordinances or government agents may have wide discretion. For example, many people fleeing Central American countries do so as a result of anti-LGBTQ violence, sometimes at the hands of police (Human Rights Watch 2020).

Such severe treatment at the hands of the government is no longer the case in the United States. But until the 1960s and 1970s, every state in the country criminalized same-sex acts, which allowed the military to dishonorably discharge gay veterans (stripping them of all benefits) and law enforcement agencies to investigate and detain people suspected of same-sex acts. Police regularly raided bars and clubs simply for allowing gay and lesbian people to dance together. Public decency laws allowed police to arrest people if they did not wear clothing aligning with the typical dress for their biological sex. Criminalization of same-sex acts began to unravel at the state level in the 1960's and 1970s, and was fully invalidated in a 2003 Supreme Court decision.

Hate crimes and anti-LGBTQ legislation are overt types of discrimination, but LGBTQ people are also treated differently from straight and cisgender people in schools, housing, and in healthcare. This can have effects on mental health, employment and financial opportunities, and relationships. For example, more than half of LGBTQ adults and 70 percent of those who are transgender or gender nonconforming report experiencing discrimination from a health care professional; this leads to delays or reluctance in seeking care or preventative visits, which has negative health outcomes (American Heart Association 2020). Similarly, elderly LGBTQ people are far less likely to come out to healthcare professionals than are straight or cisgender people, which may also lead to healthcare issues at an age that is typically highly reliant on medical care (Foglia 2014).

Much of this discrimination is based on stereotypes and misinformation. Some is based on **heterosexism**, which Herek (1990) suggests is both an ideology and a set of institutional practices that privilege straight people and heterosexuality over other sexual orientations. Much like racism and sexism, heterosexism is a systematic disadvantage embedded in our social institutions, offering power to those who conform to heterosexual orientation while simultaneously disadvantaging those who do not. *Homophobia*, an extreme or irrational aversion to gay, lesbian, bisexual, or all LGBTQ people, which often manifests as prejudice and bias. *Transphobia* is a fear, hatred, or dislike of transgender people, and/or prejudice and discrimination against them by individuals or institutions.

Fighting discrimination and being an ally

Figure **12.7** Hashtags, pride parades, and other activism are important elements of supporting LGBTQ people, but most experts and advocates agree that some of the most important steps are ones taken internally to better educate ourselves, and on interpersonal levels with friends, coworkers, and family members. (Credit: Lars Verket/flickr)

Major policies to prevent discrimination based on sexual orientation have not come into effect until recent years. In 2011, President Obama overturned “don’t ask, don’t tell,” a controversial policy that required gay and lesbian people in the US military to keep their sexuality undisclosed. In 2015, the Supreme Court ruled in the case of *Obgerfell vs. Hodges* that the right to civil marriage was guaranteed to same-sex couples. And, as discussed above, in the landmark 2020 Supreme Court decision added sexual orientation and gender identity as categories protected from employment discrimination by the Civil Rights Act. At the same time, laws passed in several states permit some level of discrimination against same-sex couples and other LGBTQ people based on a person's individual religious beliefs or prejudices.

Supporting LGTBQ people requires effort to better understand them without making assumptions. Understand people by listening, respecting them, and by remembering that every person—LGBTQ or otherwise— is different. Being gay, lesbian, bisexual, transgender, queer, intersex, or asexual is not a choice, but the way a person expresses or reveals that reality is their choice. Your experience or knowledge of other LGBTQ people (even your own experience if you are LGBTQ) cannot dictate how another person feels or acts. Finally, as discussed in the Race and Ethnicity chapter, intersectionality means that people are defined by more than their gender identity and sexual orientation. People from different age groups, races, abilities, and experiences within the LGTBQ community have different perspectives and needs.

While each individual has their own perspective, respecting their feelings and protecting their equality and wellbeing does have some common elements. These include referring to a person as they would like to be referred to, including the avoidance of abbreviations or slang terms unless you are sure they accept them. For example, many people and organizations (including those referenced in this chapter) use the abbreviation "trans" to represent transgender people, but a non-transgender person should not use that abbreviation unless they know the person or subject is comfortable with it. Respect also includes people's right to privacy: One person should never out a person to someone else or assume that someone is publicly out. LGBTQ allies can support everyone's rights to be equal and empowered members of society, including within organizations, institutions, and even individual classrooms.

Supporting others may require a change in mindset and practice. For example, if a transgender person wants to be referred to by a different name, or use different pronouns, it might take some getting used to, especially if you have spent years referring to the person by another name or by other pronouns. However, making the change is worthwhile and not overly onerous.

You can learn more about being an ally through campus, government, and organizational resources like the Human Rights Campaign's guide https://www.hrc.org/resources/being-an-lgbtq-ally

Language is an important part of culture, and it has been evolving to better include and describe people who are not gender-binary. In many languages, including English, pronouns are gendered. That is, pronouns are intended to identify the gender of the individual being referenced. English has traditionally been binary, providing only “he/him/his,” for male subjects and “she/her/hers,” for female subjects.

This binary system excludes those who identify as neither male nor female. The word “they,” which was used for hundreds of years as a singular pronoun, is more inclusive. As a result, in fact, Merriam Webster selected this use of “they” as Word of the Year for 2019. “They” and other pronouns are now used to reference those who do not identify as male or female on the spectrum of gender identities.

Gender inclusive language has impacts beyond personal references. In biology, anatomy, and healthcare, for example, people commonly refer to organs or processes with gender associations. However, more accurate and inclusive language avoids such associations. For example, *women* do not produce eggs; *ovaries* produce eggs. *Men* are not more likely to be color-blind; those with *XY chromosomes* are more likely to be color blind (Gender Inclusive Biology 2019).

Beyond the language of gender, the language of society and culture itself can be either a barrier or an opening to inclusivity. Societal norms are important sociological concepts, and behaviors outside of those norms can lead to exclusion. By disassociating gender identity, gender expression, and sexual orientation from the concept of norms, we can begin to eliminate the implicit and explicit biases regarding those realities. In everyday terms, this can take the form of avoiding references to what is normal or not normal in regard to sexuality or gender (Canadian Public Health Association 2019).

12.2: Gender and Gender Inequality

Learning Objectives

By the end of this section, you should be able to:

- Explain the influence of socialization on gender roles in the United States
- Explain the stratification of gender in major American institutions
- Provide examples of gender inequality in the United States
- Describe the rise of feminism in the United States
- Describe gender from the view of each sociological perspective

Figure **12.8** Traditional images of U.S. gender roles reinforce the idea that women should be subordinate to men. (Credit: Sport Suburban/flickr)

Gender and Socialization

The phrase “boys will be boys” is often used to justify behavior such as pushing, shoving, or other forms of aggression from young boys. The phrase implies that such behavior is unchangeable and something that is part of a boy’s nature. Aggressive behavior, when it does not inflict significant harm, is often accepted from boys and men because it is congruent with the cultural script for masculinity. The “script” written by society is in some ways similar to a script written by a playwright. Just as a playwright expects actors to adhere to a prescribed script, society expects women and men to behave according to the expectations of their respective gender roles. Scripts are generally learned through a process known as socialization, which teaches people to behave according to social norms.

Socialization

Children learn at a young age that there are distinct expectations for boys and girls. Cross-cultural studies reveal that children are aware of gender roles by age two or three. At four or five, most children are firmly entrenched in culturally appropriate gender roles (Kane 1996). Children acquire these roles through socialization, a process in which people learn to behave in a particular way as dictated by societal values, beliefs, and attitudes. For example, society often views riding a motorcycle as a masculine activity and, therefore, considers it to be part of the male gender role. Attitudes such as this are typically based on stereotypes, oversimplified notions about members of a group. Gender stereotyping involves overgeneralizing about the attitudes, traits, or behavior patterns of women or men. For example, women may be thought of as too timid or weak to ride a motorcycle.

Figure **12.9** Although our society may have a stereotype that associates motorcycles with men, women make up a sizable portion of the biker community. (Credit: Robert Couse-Baker/flickr)

Gender stereotypes form the basis of sexism. **Sexism** refers to prejudiced beliefs that value one sex over another. It varies in its level of severity. In parts of the world where women are strongly undervalued, young girls may not be given the same access to nutrition, healthcare, and education as boys. Further, they will grow up believing they deserve to be treated differently from boys (UNICEF 2011; Thorne 1993). While it is illegal in the United States when practiced as discrimination, unequal treatment of women continues to pervade social life. It should be noted that discrimination based on sex occurs at both the micro- and macro-levels. Many sociologists focus on discrimination that is built into the social structure; this type of discrimination is known as institutional discrimination (Pincus 2008).

Gender socialization occurs through four major agents of socialization: family, education, peer groups, and mass media. Each agent reinforces gender roles by creating and maintaining normative expectations for gender-specific behavior. Exposure also occurs

through secondary agents such as religion and the workplace. Repeated exposure to these agents over time leads men and women into a false sense that they are acting naturally rather than following a socially constructed role.

Family is the first agent of socialization. There is considerable evidence that parents socialize sons and daughters differently. Generally speaking, girls are given more latitude to step outside of their prescribed gender role (Coltrane and Adams 2004; Kimmel 2000; Raffaelli and Ontai 2004). However, differential socialization typically results in greater privileges afforded to sons. For instance, boys are allowed more autonomy and independence at an earlier age than daughters. They may be given fewer restrictions on appropriate clothing, dating habits, or curfew. Sons are also often free from performing domestic duties such as cleaning or cooking and other household tasks that are considered feminine. Daughters are limited by their expectation to be passive and nurturing, generally obedient, and to assume many of the domestic responsibilities.

Even when parents set gender equality as a goal, there may be underlying indications of inequality. For example, boys may be asked to take out the garbage or perform other tasks that require strength or toughness, while girls may be asked to fold laundry or perform duties that require neatness and care. It has been found that fathers are firmer in their expectations for gender conformity than are mothers, and their expectations are stronger for sons than they are for daughters (Kimmel 2000). This is true in many types of activities, including preference for toys, play styles, discipline, chores, and personal achievements. As a result, boys tend to be particularly attuned to their father's disapproval when engaging in an activity that might be considered feminine, like dancing or singing (Coltraine and Adams 2008). Parental socialization and normative expectations also vary along lines of social class, race, and ethnicity. African American families, for instance, are more likely than Caucasians to model an egalitarian role structure for their children (Staples and Boulin Johnson 2004).

The reinforcement of gender roles and stereotypes continues once a child reaches school age. Until very recently, schools were rather explicit in their efforts to stratify boys and girls. The first step toward stratification was segregation. Girls were encouraged to take home economics or humanities courses and boys to take math and science.

Studies suggest that gender socialization still occurs in schools today, perhaps in less obvious forms (Lips 2004). Teachers may not even realize they are acting in ways that reproduce gender differentiated behavior patterns. Yet any time they ask students to arrange their seats or line up according to gender, teachers may be asserting that boys and girls should be treated differently (Thorne 1993).

Even in levels as low as kindergarten, schools subtly convey messages to girls indicating that they are less intelligent or less important than boys. For example, in a study of teacher responses to male and female students, data indicated that teachers praised male students far more than female students. Teachers interrupted girls more often and gave boys more opportunities to expand on their ideas (Sadker and Sadker 1994). Further, in social as well as academic situations, teachers have traditionally treated boys and girls in opposite ways, reinforcing a sense of competition rather than collaboration (Thorne 1993). Boys are also permitted a greater degree of freedom to break rules or commit minor acts of deviance, whereas girls are expected to follow rules carefully and adopt an obedient role (Ready 2001).

Mimicking the actions of significant others is the first step in the development of a separate sense of self (Mead 1934). Like adults, children become agents who actively facilitate and apply normative gender expectations to those around them. When children do not conform to the appropriate gender role, they may face negative sanctions such as being criticized or marginalized by their peers. Though many of these sanctions are informal, they can be quite severe. For example, a girl who wishes to take karate class instead of dance lessons may be called a "tomboy" and face difficulty gaining acceptance from both male and female peer groups (Ready 2001). Boys, especially, are subject to intense ridicule for gender nonconformity (Coltrane and Adams 2004; Kimmel 2000).

Mass media serves as another significant agent of gender socialization. In television and movies, women tend to have less significant roles and are often portrayed as wives or mothers. When women are given a lead role, it often falls into one of two extremes: a wholesome, saint-like figure or a malevolent, hypersexual figure (Etaugh and Bridges 2003). This same inequality is pervasive in children's movies (Smith 2008). Research indicates that in the ten top-grossing G-rated movies released between 1991 and 2013, nine out of ten characters were male (Smith 2008).

Television commercials and other forms of advertising also reinforce inequality and gender-based stereotypes. Women are almost exclusively present in ads promoting cooking, cleaning, or childcare-related products (Davis 1993). Think about the last time you saw a man star in a dishwasher or laundry detergent commercial. In general, women are underrepresented in roles that involve leadership, intelligence, or a balanced psyche. Of particular concern is the depiction of women in ways that are dehumanizing,

especially in music videos. Even in mainstream advertising, however, themes intermingling violence and sexuality are quite common (Kilbourne 2000).

Social Stratification and Inequality

Stratification refers to a system in which groups of people experience unequal access to basic, yet highly valuable, social resources. There is a long history of gender stratification in the United States. When looking to the past, it would appear that society has made great strides in terms of abolishing some of the most blatant forms of gender inequality (see timeline below) but underlying effects of male dominance still permeate many aspects of society.

- Before 1809—Women could not execute a will
- Before 1840—Women were not allowed to own or control property
- Before 1920—Women were not permitted to vote
- Before 1963—Employers could legally pay a woman less than a man for the same work
- Before 1973—Women did not have the right to a safe and legal abortion (Imbornoni 2009)

The Pay Gap

Despite making up nearly half (49.8 percent) of payroll employment, men vastly outnumber women in authoritative, powerful, and, therefore, high-earning jobs (U.S. Census Bureau 2010). Even when a woman's employment status is equal to a man's, she will generally make only 81 cents for every dollar made by her male counterpart (Payscale 2020). Women in the paid labor force also still do the majority of the unpaid work at home. On an average day, 84 percent of women (compared to 67 percent of men) spend time doing household management activities (U.S. Census Bureau 2011). This double duty keeps working women in a subordinate role in the family structure (Hochschild and Machung 1989).

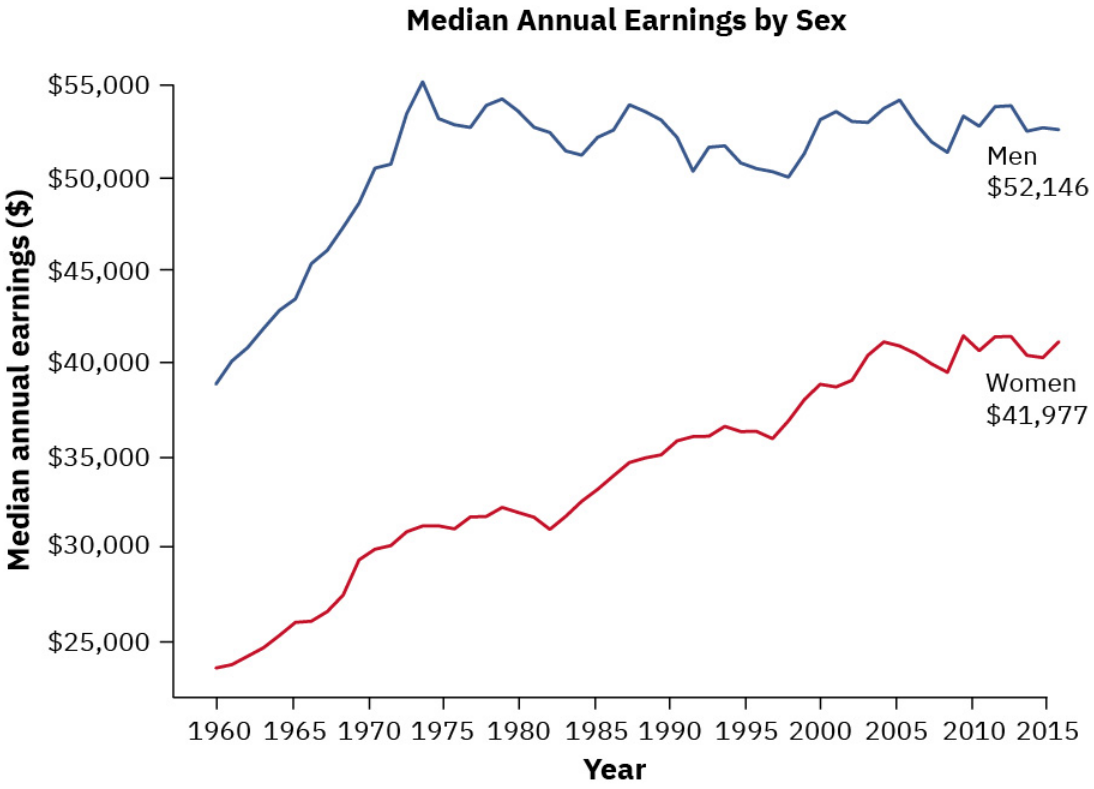

Figure **12.10** In 2017 men's overall median earnings were $52,146 and women's were $41,977. This means that women earned 80.1% of what men earned in the United States. (Credit: Women's Bureau, U.S. Department of Labor)

Gender stratification through the division of labor is not exclusive to the United States. According to George Murdock's classic work, *Outline of World Cultures* (1954), all societies classify work by gender. When a pattern appears in all societies, it is called a cultural universal. While the phenomenon of assigning work by gender is universal, its specifics are not. The same task is not assigned to either men or women worldwide. But the way each task's associated gender is valued is notable. In Murdock's examination of the division of labor among 324 societies around the world, he found that in nearly all cases the jobs assigned to

men were given greater prestige (Murdock and White 1968). Even if the job types were very similar and the differences slight, men's work was still considered more vital.

Figure **12.11** In some cultures, women do all of the household chores with no help from men, as doing housework is a sign of weakness, considered by society as a feminine trait. (Credit: Evil Erin/flickr)

Part of the gender pay gap can be attributed to unique barriers faced by women regarding work experience and promotion opportunities. A mother of young children is more likely to drop out of the labor force for several years or work on a reduced schedule than is the father. As a result, women in their 30s and 40s are likely, on average, to have less job experience than men. This effect becomes more evident when considering the pay rates of two groups of women: those who did *not* leave the workforce and those who did: In the United States, childless women with the same education and experience levels as men are typically paid with closer (but not exact) parity to men. However, women with families and children are paid less: Mothers are recommended a 7.9 percent lower starting salary than non-mothers, which is 8.6 percent lower than men (Correll 2007).

This evidence points to levels of discrimination that go beyond behaviors by individual companies or organizations. As discussed earlier in the gender roles section, many of these gaps are rooted in America's social patterns of discrimination, which involve the roles that different genders play in child-rearing, rather than individual discrimination by employers in hiring and salary decisions. On the other hand, legal and ethical practices demand that organizations do their part to promote more equity among all genders.

The Glass Ceiling

The idea that women are unable to reach the executive suite is known as the glass ceiling. It is an invisible barrier that women encounter when trying to win jobs in the highest level of business. At the beginning of 2021, for example, a record 41 of the world's largest 500 companies were run by women. While a vast improvement over the number twenty years earlier – where only two of the companies were run by women – these 41 chief executives still only represent eight percent of those large companies (Newcomb 2020).

Why do women have a more difficult time reaching the top of a company? One idea is that there is still a stereotype in the United States that women aren't aggressive enough to handle the boardroom or that they tend to seek jobs and work with other women (Reiners 2019). Other issues stem from the gender biases based on gender roles and motherhood discussed above.

Another idea is that women lack mentors, executives who take an interest and get them into the right meetings and introduce them to the right people to succeed (Murrell & Blake-Beard 2017).

Women in Politics

One of the most important places for women to help other women is in politics. Historically in the United States, like many other institutions, political representation has been mostly made up of White men. By not having women in government, their issues are

being decided by people who don't share their perspective. The number of women elected to serve in Congress has increased over the years, but does not yet accurately reflect the general population. For example, in 2018, the population of the United States was 49 percent male and 51 percent female, but the population of Congress was 78.8 percent male and 21.2 percent female (Manning 2018). Over the years, the number of women in the federal government has increased, but until it accurately reflects the population, there will be inequalities in our laws.

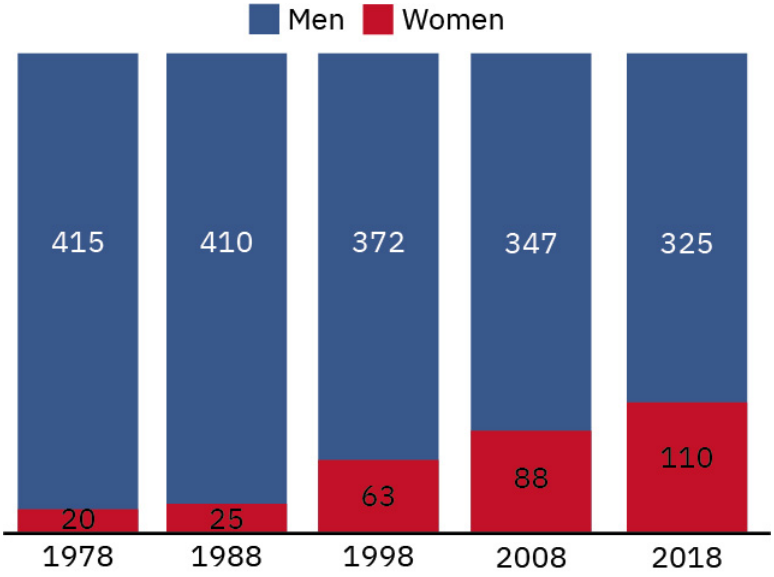

Figure **12.12** Breakdown of Congressional Membership by Gender. 2021 saw a record number of women in Congress, with 120 women serving in the House and 24 serving in the Senate. Gender representation has been steadily increasing over time, but is not close to being equal. (Credit: Based on data from Center for American Women in Politics, Rutgers University)

Movements for Change: Feminism

One of the underlying issues that continues to plague women in the United States is **misogyny**. This is the hatred of or, aversion to, or prejudice against women. Over the years misogyny has evolved as an ideology that men are superior to women in all aspects of life. There have been multiple movements to try and fight this prejudice.

In 1963, writer and feminist Betty Friedan published *The Feminine Mystique* in which she contested the post-World War II belief that it was women's sole destiny to marry and bear children. Friedan's book began to raise the consciousness of many women who agreed that homemaking in the suburbs sapped them of their individualism and left them unsatisfied. In 1966, the National Organization for Women (NOW) formed and proceeded to set an agenda for the *feminist movement*. Framed by a statement of purpose written by Friedan, the agenda began by proclaiming NOW's goal to make possible women's participation in all aspects of American life and to gain for them all the rights enjoyed by men.

Feminists engaged in protests and actions designed to bring awareness and change. For example, the New York Radical Women demonstrated at the 1968 Miss America Pageant in Atlantic City to bring attention to the contest's—and society's—exploitation of women. The protestors tossed instruments of women's oppression, including high-heeled shoes, curlers, girdles, and bras, into a "freedom trash can." News accounts incorrectly described the protest as a "bra burning," which at the time was a way to demean and trivialize the issue of women's rights (Gay 2018).

Other protests gave women a more significant voice in a male-dominated social, political, and entertainment climate. For decades, *Ladies Home Journal* had been a highly influential women's magazine, managed and edited almost entirely by men. Men even wrote the advice columns and beauty articles. In 1970, protesters held a sit-in at the magazine's offices, demanding that the company hire a woman editor-in-chief, add women and non-White writers at fair pay, and expand the publication's focus.

Feminists were concerned with far more than protests, however. In the 1970s, they opened battered women's shelters and successfully fought for protection from employment discrimination for pregnant women, reform of rape laws (such as the abolition of laws requiring a witness to corroborate a woman's report of rape), criminalization of domestic violence, and funding for schools that sought to counter sexist stereotypes of women. In 1973, the U.S. Supreme Court in *Roe v. Wade* invalidated a number of state

laws under which abortions obtained during the first three months of pregnancy were illegal. This made a nontherapeutic abortion a legal medical procedure nationwide.

Gloria Steinem had pushed through gender barriers to take on serious journalism subjects, and had emerged as a prominent advocate for women's rights. Through her work, Steinem met Dorothy Pittman-Hughes, who had founded New York City's first shelter for domestic violence victims as well as the city's Agency for Child Development. Together they founded *Ms*. Magazine, which avoided articles on homemaking and fashion in favor of pieces on women's rights and empowerment. *Ms*. showcased powerful and accomplished women such as Shirley Chisholm and Sissy Farenthold, and was among the first publications to bring domestic violence, sexual harassment, and body image issues to the national conversation (Pogrebrin 2011).

Many advances in women's rights were the result of women's greater engagement in politics. For example, Patsy Mink, the first Asian American woman elected to Congress, was the co-author of the Education Amendments Act of 1972, Title IX of which prohibits sex discrimination in education. Mink had been interested in fighting discrimination in education since her youth, when she opposed racial segregation in campus housing while a student at the University of Nebraska. She went to law school after being denied admission to medical school because of her gender. Like Mink, many other women sought and won political office, many with the help of the National Women's Political Caucus (NWPC). In 1971, the NWPC was formed by Bella Abzug, Gloria Steinem, Shirley Chisholm, and other leading feminists to encourage women's participation in political parties, elect women to office, and raise money for their campaign.

Figure **12.13** "Unbought and Unbossed": Shirley Chisholm was the first Black United States Congresswoman, the co-founder of the Congressional Black Caucus, and a candidate for a major-party Presidential nomination.

Shirley Chisholm personally took up the mantle of women's involvement in politics. Born of immigrant parents, she earned degrees from Brooklyn College and Columbia University, and began a career in early childhood education and advocacy. In the 1950's she joined various political action groups, worked on election campaigns, and pushed for housing and economic reforms. After leaving one organization over its refusal to involve women in the decision-making process, she sought to increase gender and racial diversity within political and activist organizations throughout New York City. In 1968, she became the first Black woman elected to Congress. Refusing to take the quiet role expected of new Representatives, she immediately began sponsoring bills and initiatives. She spoke out against the Vietnam War, and fought for programs such as Head Start and the national school lunch program, which was eventually signed into law after Chisholm led an effort to override a presidential veto. Chisholm would eventually undertake a groundbreaking presidential run in 1972, and is viewed as paving the way for other women, and especially women of color, achieving political and social prominence (Emmrich 2019).

Theoretical Perspectives on Gender

Sociological theories help sociologists to develop questions and interpret data. For example, a sociologist studying why middle-school girls are more likely than their male counterparts to fall behind grade-level expectations in math and science might use a feminist perspective to frame her research. Another scholar might proceed from the conflict perspective to investigate why women are underrepresented in political office, and an interactionist might examine how the symbols of femininity interact with symbols of political authority to affect how women in Congress are treated by their male counterparts in meetings.

Structural Functionalism

Structural functionalism has provided one of the most important perspectives of sociological research in the twentieth century and has been a major influence on research in the social sciences, including gender studies. Viewing the family as the most integral component of society, assumptions about gender roles within marriage assume a prominent place in this perspective.

Functionalists argue that gender roles were established well before the pre-industrial era when men typically took care of responsibilities outside of the home, such as hunting, and women typically took care of the domestic responsibilities in or around the home. These roles were considered functional because women were often limited by the physical restraints of pregnancy and nursing and unable to leave the home for long periods of time. Once established, these roles were passed on to subsequent generations since they served as an effective means of keeping the family system functioning properly.

When changes occurred in the social and economic climate of the United States during World War II, changes in the family structure also occurred. Many women had to assume the role of breadwinner (or modern hunter-gatherer) alongside their domestic role in order to stabilize a rapidly changing society. When the men returned from war and wanted to reclaim their jobs, society fell back into a state of imbalance, as many women did not want to forfeit their wage-earning positions (Hawke 2007).

Conflict Theory

According to conflict theory, society is a struggle for dominance among social groups (like women versus men) that compete for scarce resources. When sociologists examine gender from this perspective, we can view men as the dominant group and women as the subordinate group. According to conflict theory, social problems are created when dominant groups exploit or oppress subordinate groups. Consider the Women's Suffrage Movement or the debate over women's "right to choose" their reproductive futures. It is difficult for women to rise above men, as dominant group members create the rules for success and opportunity in society (Farrington and Chertok 1993).

Friedrich Engels, a German sociologist, studied family structure and gender roles. Engels suggested that the same owner-worker relationship seen in the labor force is also seen in the household, with women assuming the role of the proletariat. This is due to women's dependence on men for the attainment of wages, which is even worse for women who are entirely dependent upon their spouses for economic support. Contemporary conflict theorists suggest that when women become wage earners, they can gain power in the family structure and create more democratic arrangements in the home, although they may still carry the majority of the domestic burden, as noted earlier (Rismanand and Johnson-Sumerford 1998).

Feminist Theory

Feminist theory is a type of conflict theory that examines inequalities in gender-related issues. It uses the conflict approach to examine the maintenance of gender roles and inequalities. Radical feminism, in particular, considers the role of the family in perpetuating male dominance. In patriarchal societies, men's contributions are seen as more valuable than those of women. Patriarchal perspectives and arrangements are widespread and taken for granted. As a result, women's viewpoints tend to be silenced or marginalized to the point of being discredited or considered invalid.

Sanday's study of the Indonesian Minangkabau (2004) revealed that in societies some consider to be matriarchies (where women comprise the dominant group), women and men tend to work cooperatively rather than competitively regardless of whether a job is considered feminine by U.S. standards. The men, however, do not experience the sense of bifurcated consciousness under this social structure that modern U.S. females encounter (Sanday 2004).

Symbolic Interactionism

Symbolic interactionism aims to understand human behavior by analyzing the critical role of symbols in human interaction. This is certainly relevant to the discussion of masculinity and femininity. Imagine that you walk into a bank hoping to get a small loan for school, a home, or a small business venture. If you meet with a male loan officer, you may state your case logically by listing all the hard numbers that make you a qualified applicant as a means of appealing to the analytical characteristics associated with

masculinity. If you meet with a female loan officer, you may make an emotional appeal by stating your good intentions as a means of appealing to the caring characteristics associated with femininity.

Because the meanings attached to symbols are socially created and not natural, and fluid, not static, we act and react to symbols based on the current assigned meaning. The word *gay*, for example, once meant “cheerful,” but by the 1960s it carried the primary meaning of “homosexual.” In transition, it was even known to mean “careless” or “bright and showing” (Oxford American Dictionary 2010). Furthermore, the word *gay* (as it refers to a person), carried a somewhat negative and unfavorable meaning fifty years ago, but it has since gained more neutral and even positive connotations. When people perform tasks or possess characteristics based on the gender role assigned to them, they are said to be **doing gender**. This notion is based on the work of West and Zimmerman (1987). Whether we are expressing our masculinity or femininity, West and Zimmerman argue, we are always "doing gender." Thus, gender is something we do or perform, not something we are.

In other words, both gender and sexuality are socially constructed. The **social construction of sexuality** refers to the way in which socially created definitions about the cultural appropriateness of sex-linked behavior shape the way people see and experience sexuality. This is in marked contrast to theories of sex, gender, and sexuality that link male and female behavior to **biological determinism**, or the belief that men and women behave differently due to differences in their biology.

SOCIOLOGICAL RESEARCH

Being Male, Being Female, and Being Healthy

In 1971, Broverman and Broverman conducted a groundbreaking study on the traits mental health workers ascribed to males and females. When asked to name the characteristics of a female, the list featured words such as unaggressive, gentle, emotional, tactful, less logical, not ambitious, dependent, passive, and neat. The list of male characteristics featured words such as aggressive, rough, unemotional, blunt, logical, direct, active, and sloppy (Seem and Clark 2006). Later, when asked to describe the characteristics of a healthy person (not gender specific), the list was nearly identical to that of a male.

This study uncovered the general assumption that being female is associated with being somewhat unhealthy or not of sound mind. This concept seems extremely dated, but in 2006, Seem and Clark replicated the study and found similar results. Again, the characteristics associated with a healthy male were very similar to that of a healthy (genderless) adult. The list of characteristics associated with being female broadened somewhat but did not show significant change from the original study (Seem and Clark 2006). This interpretation of feminine characteristic may help us one day better understand gender disparities in certain illnesses, such as why one in eight women can be expected to develop clinical depression in her lifetime (National Institute of Mental Health 1999). Perhaps these diagnoses are not just a reflection of women’s health, but also a reflection of society’s labeling of female characteristics, or the result of institutionalized sexism.

12.3: Sexuality

Learning Objectives

By the end of this section, you should be able to:

- Differentiate among attitudes associated with sex and sexuality
- Describe sex education issues in the United States
- Discuss theoretical perspectives on sex and sexuality

Figure **12.14** Sexual practices can differ greatly among groups. Recent trends include the finding that married couples have sex more frequently than do singles and that 27 percent of married couples in their 30s have sex at least twice a week (NSSHB 2010). (Credit: epSos.de/flickr)

Sexual Attitudes and Practices

In the area of sexuality, sociologists focus their attention on sexual attitudes and practices, not on physiology or anatomy. As mentioned earlier, **sexuality** is viewed as a person's capacity for sexual feelings. Studying sexual attitudes and practices is a particularly interesting field of sociology because sexual behavior is a cultural universal. Throughout time and place, the vast majority of human beings have participated in sexual relationships (Broude 2003). Each society, however, interprets sexuality and sexual activity in different ways. At the same time, sociologists have learned that certain norms are shared among most societies. The incest taboo is present in every society, though which relative is deemed unacceptable for sex varies widely from culture to culture. For example, sometimes the relatives of the father are considered acceptable sexual partners for a woman while the relatives of the mother are not. Likewise, societies generally have norms that reinforce their accepted social system of sexuality.

What is considered "normal" in terms of sexual behavior is based on the mores and values of the society. Societies that value monogamy, for example, would likely oppose extramarital sex. Individuals are socialized to sexual attitudes by their family,

education system, peers, media, and religion. Historically, religion has been the greatest influence on sexual behavior in most societies, but in more recent years, peers and the media have emerged as two of the strongest influences, particularly among U.S. teens (Potard, Courtois, and Rusch 2008). Let us take a closer look at sexual attitudes in the United States and around the world.

Sexuality around the World

Cross-national research on sexual attitudes in industrialized nations reveals that normative standards differ across the world. For example, several studies have shown that Scandinavian students are more tolerant of premarital sex than are U.S. students (Grose 2007). A study of 37 countries reported that non-Western societies—like China, Iran, and India—valued chastity highly in a potential mate, while Western European countries—such as France, the Netherlands, and Sweden—placed little value on prior sexual experiences (Buss 1989).

Even among Western cultures, attitudes can differ. For example, according to a 33,590-person survey across 24 countries, 89 percent of Swedes responded that there is nothing wrong with premarital sex, while only 42 percent of Irish responded this way. From the same study, 93 percent of Filipinos responded that sex before age 16 is always wrong or almost always wrong, while only 75 percent of Russians responded this way (Widmer, Treas, and Newcomb 1998). Sexual attitudes can also vary within a country. For instance, 45 percent of Spaniards responded that homosexuality is always wrong, while 42 percent responded that it is never wrong; only 13 percent responded somewhere in the middle (Widmer, Treas, and Newcomb 1998).

Of industrialized nations, several European nations are is thought to be the most liberal when it comes to attitudes about sex, including sexual practices and sexual openness. Sweden, for example, has very few regulations on sexual images in the media, and sex education, which starts around age six, is a compulsory part of Swedish school curricula. Switzerland, Belgium, Iceland, Denmark, and The Netherlands have similar policies. Their more open approach to sex has helped countries avoid some of the major social problems associated with sex. For example, rates of teen pregnancy and sexually transmitted disease are among the world's lowest in Switzerland and the Netherlands – lower than other European countries and far lower than the United States (Grose 2007 and Dutch News 2017). It would appear that these approaches are models for the benefits of sexual freedom and frankness. However, implementing their ideals and policies regarding sexuality in other, more politically conservative, nations would likely be met with resistance.

Sexuality in the United States

The United States prides itself on being the land of the "free," but it is rather restrictive when it comes to its citizens' general attitudes about sex compared to other industrialized nations. In an international survey, 25 percent of U.S. respondents stated that premarital sex is always wrong, while the average among the 24 countries surveyed was 17 percent, with less than ten percent of respondents from France, Germany, and Spain saying premarital sex was unacceptable (Chamie 2018). Similar discrepancies were found in questions about the condemnation of sex before the age of 16, extramarital sex, and homosexuality, with total disapproval of these acts being 12, 13, and 11 percent higher, respectively, in the United States, than the study's average (Widmer, Treas, and Newcomb 1998). U.S. culture is particularly restrictive in its attitudes about sex when it comes to women and sexuality.

It is widely believed that men are more sexual than are women. In fact, there was a popular notion that men think about sex every seven seconds. Research, however, suggests that men think about sex an average of 19 times per day, which is closer to once an hour, compared to 10 times per day for women (Fisher, Moore, and Pittenger 2011).

Belief that men have—or have the right to—more sexual urges than women creates a double standard. Ira Reiss, a pioneer researcher in the field of sexual studies, defined the *double standard* as prohibiting premarital sexual intercourse for women but allowing it for men (Reiss 1960). This standard has evolved into allowing women to engage in premarital sex only within committed love relationships, but allowing men to engage in sexual relationships with as many partners as they wish without condition (Milhausen and Herold 1999). Due to this double standard, a woman is likely to have fewer sexual partners in her life time than a man. According to a Centers for Disease Control and Prevention (CDC) survey, the average thirty-five-year-old woman has had three opposite-sex sexual partners while the average thirty-five-year-old man has had twice as many (Centers for Disease Control 2011).

The future of a society's sexual attitudes may be somewhat predicted by the values and beliefs that a country's youth expresses about sex and sexuality. Data from the most recent National Survey of Family Growth reveals that 70 percent of boys and 78 percent of girls ages fifteen to nineteen said they "agree" or "strongly agree" that "it's okay for an unmarried female to have a child" (National Survey of Family Growth 2013). In a separate survey, 65 percent of teens stated that they "strongly agreed" or "somewhat agreed" that although waiting until marriage for sex is a nice idea, it's not realistic (NBC News 2005). This does not mean that today's youth have given up traditional sexual values such as monogamy. Nearly all college men (98.9 percent) and

women (99.2 percent) who participated in a 2002 study on sexual attitudes stated they wished to settle down with one mutually exclusive sexual partner at some point in their lives, ideally within the next five years (Pedersen et al. 2002).

Sex Education

One of the biggest controversies regarding sexual attitudes is sexual education in U.S. classrooms. Unlike many other countries, sex education is not required in all public school curricula in the United States. The heart of the controversy is not about whether sex education should be taught in school (studies have shown that only seven percent of U.S. adults oppose sex education in schools); it is about the *type* of sex education that should be taught.

Much of the debate is over the issue of abstinence as compared to a comprehensive sex education program. Abstinence-only programs focus on avoiding sex until marriage and/or delaying it as long as possible. So they do not focus on other types of prevention of unwanted pregnancies and sexually transmitted infections. As a result, according to the Sexuality and Information Council of the United States, only 38 percent of high schools and 14 percent of middle schools across the country teach all 19 topics identified as critical for sex education by the Centers for Disease Control and Prevention (Janfaza 2020).

Research suggests that while government officials may still be debating about the content of sexual education in public schools, the majority of U.S. adults are not. Two-thirds (67 percent) of Americans say education about safer sexual practices is more effective than abstinence-only education in terms of reducing unintended pregnancies. A slightly higher percentage—69 percent—say that emphasizing safer sexual practices and contraception in sexuality education is a better way to reduce the spread of STIs than is emphasizing abstinence (Davis 2018).

Even with these clear majorities in favor of comprehensive education, the Federal government offers roughly $85 million per year to communities that will drive abstinence-only sex education (Columbia Public Health 2017 a). The results, as stated earlier, are relatively clear: the United States has nearly four times the rate of teenage pregnancy than a country like Germany, which has a comprehensive sex education program.

In a similar educational issue not necessarily related to sexuality, researchers and public health advocates find that young girls feel underprepared for puberty. Ages of first menstruation (menarche) and breast development are continually declining in the United States, but education about these changes typically doesn't begin until middle school, which is generally too late. Young people indicate concerns about misinformation and discomfort during the informaal conversations about the topics with friends, sisters, or mothers (Columbia Public Health 2017 b)

Sociological Perspectives on Sex and Sexuality

Sociologists representing all three major theoretical perspectives study the role sexuality plays in social life today. Scholars recognize that sexuality continues to be an important and defining social location and that the manner in which sexuality is constructed has a significant effect on perceptions, interactions, and outcomes.

Structural Functionalism

When it comes to sexuality, functionalists stress the importance of regulating sexual behavior to ensure marital cohesion and family stability. Since functionalists identify the family unit as the most integral component in society, they maintain a strict focus on it at all times and argue in favor of social arrangements that promote and ensure family preservation.

Functionalists such as Talcott Parsons (1955) have long argued that the regulation of sexual activity is an important function of the family. Social norms surrounding family life have, traditionally, encouraged sexual activity within the family unit (marriage) and have discouraged activity outside of it (premarital and extramarital sex). From a functionalist point of view, the purpose of encouraging sexual activity in the confines of marriage is to intensify the bond between spouses and to ensure that procreation occurs within a stable, legally recognized relationship. This structure gives offspring the best possible chance for appropriate socialization and the provision of basic resources.

In this context, the functionalist perspective does not take into account the increasing legal acceptance of same-sex marriage, or the rise in LGBTQ couples who choose to bear and raise children through a variety of available resources.

Conflict Theory

From a conflict theory perspective, sexuality is another area in which power differentials are present and where dominant groups actively work to promote their worldview as well as their economic interests.

For conflict theorists, there were two key dimensions to the debate over marriage equality—one ideological and the other economic. Dominant groups wish for their worldview—which embraces traditional marriage and the nuclear family—to win out over what they see as the intrusion of a secular, individually driven worldview. On the other hand, many LGBTQ activists argue that legal marriage is a fundamental right that cannot be denied based on sexual orientation and that, historically, there already exists a precedent for changes to marriage laws: the 1960s legalization of formerly forbidden interracial marriages is one example.

From an economic perspective, activists in favor of same-sex marriage point out that legal marriage brings with it certain entitlements, many of which are financial in nature, like Social Security benefits and medical insurance (Solmonese 2008). Denial of these benefits to same-sex couples is wrong, they argue. Conflict theory suggests that as long as people struggle over these social and financial resources, there will be some degree of conflict.

Symbolic Interactionism

Interactionists focus on the meanings associated with sexuality and with sexual orientation. Since femininity is devalued in U.S. society, those who adopt such traits are subject to ridicule; this is especially true for boys or men. Just as masculinity is the symbolic norm, so too has heterosexuality come to signify normalcy. Prior to 1973, the American Psychological Association (APA) defined homosexuality as an abnormal or deviant disorder. Interactionist labeling theory recognizes the impact this has made. Before 1973, the APA was powerful in shaping social attitudes toward homosexuality by defining it as pathological. Today, the APA cites no association between sexual orientation and psychopathology and sees homosexuality as a normal aspect of human sexuality (APA 2008).

Recall Cooley's "looking-glass self," which suggests that self develops as a result of our interpretation and evaluation of the responses of others (Cooley 1902). Constant exposure to derogatory labels, jokes, and pervasive homophobia would lead to a negative self-image, or worse, self-hate. The CDC reports that homosexual youths (as referred to in the study) who experience high levels of social rejection are six times more likely to have high levels of depression and eight times more likely to have attempted suicide (CDC 2011).

Queer Theory

Queer Theory is an interdisciplinary approach to sexuality studies that identifies Western society's rigid splitting of gender into specific roles and questions the manner in which we have been taught to think about sexual orientation. According to Jagose (1996), Queer [Theory] focuses on mismatches between anatomical sex, gender identity, and sexual orientation, not just division into male/female or homosexual/hetereosexual. By calling their discipline "queer," scholars reject the effects of labeling; instead, they embraced the word "queer" and reclaimed it for their own purposes. The perspective highlights the need for a more flexible and fluid conceptualization of sexuality—one that allows for change, negotiation, and freedom. This mirrors other oppressive schemas in our culture, especially those surrounding gender and race (Black versus White, man versus woman).

Queer theorist Eve Kosofsky Sedgwick argued against U.S. society's monolithic definition of sexuality and its reduction to a single factor: the sex of someone's desired partner. Sedgwick identified dozens of other ways in which people's sexualities were different, such as:

- Even identical genital acts mean very different things to different people.
- Sexuality makes up a large share of the self-perceived identity of some people, a small share of others'.
- Some people spend a lot of time thinking about sex, others little.
- Some people like to have a lot of sex, others little or none.
- Many people have their richest mental/emotional involvement with sexual acts that they don't do, or don't even want to do.
- Some people like spontaneous sexual scenes, others like highly scripted ones, others like spontaneous-sounding ones that are nonetheless totally predictable.
- Some people experience their sexuality as deeply embedded in a matrix of gender meanings and gender differentials. Others do not (Sedgwick 1990).

Thus, theorists utilizing queer theory strive to question the ways society perceives and experiences sex, gender, and sexuality, opening the door to new scholarly understanding.

Throughout this chapter we have examined the complexities of gender, sex, and sexuality. Differentiating between sex, gender, and sexual orientation is an important first step to a deeper understanding and critical analysis of these issues. Understanding the sociology of sex, gender, and sexuality will help to build awareness of the inequalities experienced by people outside the dominant groups.

12.4: Key Terms

biological determinism
the belief that men and women behave differently due to inherent sex differences related to their biology

doing gender
the performance of tasks based upon the gender assigned to us by society and, in turn, ourselves

DOMA
Defense of Marriage Act, a 1996 U.S. law explicitly limiting the definition of “marriage” to a union between one man and one woman and allowing each individual state to recognize or deny same-sex marriages performed in other states

double standard
the concept that prohibits premarital sexual intercourse for women but allows it for men

gender
a term that refers to social or cultural distinctions of behaviors that are considered male or female

gender dysphoria
a condition listed in the DSM-5 in which people whose gender at birth is contrary to the one they identify with. This condition replaces "gender identity disorder"

gender identity
a person’s deeply held internal perception of one's gender

gender role
society’s concept of how men and women should behave

glass ceiling
an invisible barrier that women encounter when trying to win jobs in the highest level of business

heterosexism
an ideology and a set of institutional practices that privilege straight people and heterosexuality over other sexual orientations

homophobia
an extreme or irrational aversion to gay, lesbian, bisexual, or all LGBTQ people, which often manifests as prejudice and bias

intersex
people born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

misogyny
the hatred of or, aversion to, or prejudice against women

pay gap
the difference in earnings between men and women

sex
a term that denotes the presence of physical or physiological differences between males and females

sexism
the prejudiced belief that one sex should be valued over another

sexual orientation
a person’s physical, mental, emotional, and sexual attraction to a particular sex (male or female)

sexuality

a person’s capacity for sexual feelings

social construction of sexuality

socially created definitions about the cultural appropriateness of sex-linked behavior which shape how people see and experience sexuality

transgender

an adjective that describes individuals who identify with the behaviors and characteristics that are other than their biological sex

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12.5: Section Summary

12.1 Sex, Gender, Identity, and Expression

The terms “sex” and “gender” refer to two different identifiers. Sex denotes biological characteristics differentiating males and females, while gender denotes social and cultural characteristics of masculine and feminine behavior. Sex and gender are not always synchronous. Individuals who strongly identify with the opposing gender are considered transgender.

12.2 Gender and Gender Inequality

Children become aware of gender roles in their earliest years, and they come to understand and perform these roles through socialization, which occurs through four major agents: family, education, peer groups, and mass media. Socialization into narrowly prescribed gender roles results in the stratification of men and women. The impacts of discrimination and inequality have deep implications for economics, social mobility, and political power. The feminist movement undertook protests, improvement programs, and political focus in order to improve equality and the lives of women. Each sociological perspective offers a valuable view for understanding how and why gender inequality occurs in our society.

12.3 Sexuality

When studying sex and sexuality, sociologists focus their attention on sexual attitudes and practices, not on physiology or anatomy. Norms regarding gender and sexuality vary across cultures. In general, the United States tends to be fairly conservative in its sexual attitudes. As a result, programs such as sex education are often limited or selective in what topics they cover.

12.6: Section Quiz

12.1 Sex, Gender, Identity, and Expression

1.

The terms “masculine” and “feminine” refer to a person’s _____.

a. sex
b. gender
c. both sex and gender
d. none of the above

2.

The term _____ refers to society's concept of how men and women are expected to act and how they should behave.

a. gender role
b. gender bias
c. sexual orientation
d. sexual attitudes

3.

Research indicates that individuals are aware of their sexual orientation _____.

a. at infancy
b. in early adolescence
c. in early adulthood
d. in late adulthood

12.2 Gender and Gender Inequality

4.

Which of the following is the best example of a gender stereotype?

a. Women are typically shorter than men.
b. Men do not live as long as women.
c. Women tend to be overly emotional, while men tend to be levelheaded.
d. Men hold more high-earning, leadership jobs than women.

5.

Which of the following is the best example of the role peers play as an agent of socialization for school-aged children?

a. Children can act however they wish around their peers because children are unaware of gender roles.
b. Peers serve as a support system for children who wish to act outside of their assigned gender roles.
c. Peers tend to reinforce gender roles by criticizing and marginalizing those who behave outside of their assigned roles.
d. None of the above

6.

To which theoretical perspective does the following statement most likely apply: Women continue to assume the responsibility in the household along with a paid occupation because it keeps the household running smoothly, i.e., at a state of balance?

a. Conflict theory
b. Functionalism
c. Feminist theory
d. Symbolic interactionism

7.

Only women are affected by gender stratification.

a. True
b. False

8.

According to the symbolic interactionist perspective, we “do gender”:

a. during half of our activities
b. only when they apply to our biological sex
c. only if we are actively following gender roles
d. all of the time, in everything we do

9.

Misogyny is:

a. A certain kind if spa treatment
b. One’s biological sex
c. How we know our gender roles
d. the hatred of or, aversion to, or prejudice against women

10.

Which of the following factors can affect the pay gap?

a. having children
b. lower education level
c. being married
d. all of the above

11.

The idea that gender inequality comes from the division of labor fits with which Sociological theory?

a. Symbolic Interactionism
b. Functionalism
c. Conflict Theory
d. Feminist Theory

12.

Prior to the 19th Amendment being ratified, women were not considered a legal person on their own.

a. True
b. False

13.

In the 115th Congress of the United States, what percentage of the elected officials were women?

a. 10.5%
b. 21.2%
c. 30.4%
d. 50%

12.3 Sexuality

14.

Of these, which country is thought to be the most liberal in its attitudes toward sex?

a. United States
b. Sweden
c. Mexico
d. Ireland

15.

Compared to most Western societies, U.S. sexual attitudes are considered _____.

a. conservative

b. liberal
c. permissive
d. free

16.

Sociologists associate sexuality with _____.

a. a person's capacity for personal attachment
b. sexual maturation
c. biological factors
d. a person’s capacity for sexual feelings

17.

According to national surveys, most U.S. parents support which type of sex education program in school?

a. Abstinence only
b. Abstinence plus sexual safety
c. Sexual safety without promoting abstinence
d. No sex education

18.

Which theoretical perspective stresses the importance of regulating sexual behavior to ensure marital cohesion and family stability?

a. Functionalism
b. Conflict theory
c. Symbolic interactionalism
d. Queer theory

12.7: Short Answer

12.1 Sex, Gender, Identity, and Expression

1.

Why do sociologists find it important to differentiate between sex and gender? What importance does the differentiation have in modern society?

2.

How is children's play influenced by gender roles? Think back to your childhood. How "gendered" were the toys and activities available to you? Do you remember gender expectations being conveyed through the approval or disapproval of your playtime choices?

12.2 Gender and Gender Inequality

3.

In what way do parents treat sons and daughters differently? How do sons and daughters typically respond to this treatment?

4.

What can be done to lessen the effects of gender stratification in the workplace? How does gender stratification harm both men and women?

5.

Why is it important to have women in political roles?

6.

What can be done to narrow the pay gap for women?

12.3 Sexuality

7.

Identify three examples of how U.S. society is heteronormative.

8.

Consider the types of derogatory labeling that sociologists study and explain how these might apply to discrimination on the basis of sexual orientation.

12.8: Further Research

12.1 Sex, Gender, Identity, and Expression

To learn about what organizations are doing to improve diversity and social justice education for young people, review Learning For Justice's educational materials.

For more information on gender identity and advocacy for transgender individuals see the Global Action for Trans Equality web site.

Visit The Trevor Project website for more information on suicide prevention and crisis intervention for LGBTQ (lesbian, gay, bisexual, transgender, queer, and questioning) young people.

12.2 Gender and Gender Inequality

Learn more about Women's Rights movements in the United States.

12.3 Sexuality

To learn about different approaches to sex education, visit Advocates for Youth.

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