

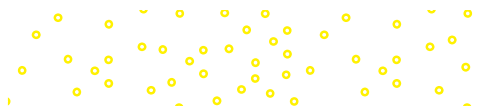
# CJ

REALITIES  
and CHALLENGES

FOURTH EDITION

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# CJ

## REALITIES AND CHALLENGES

4TH EDITION

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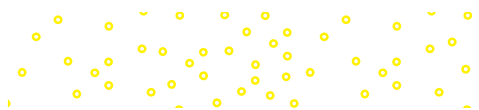
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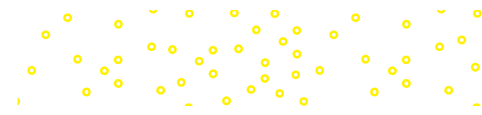
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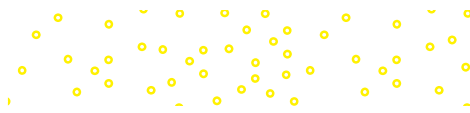
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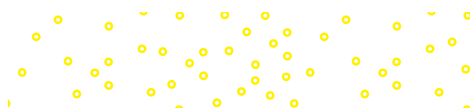
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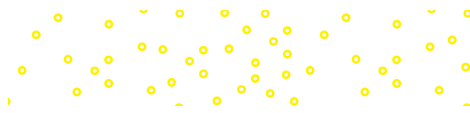
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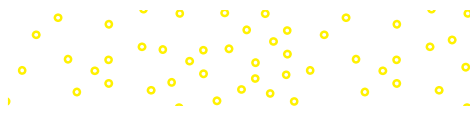
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# A Note from the Author Team

As both practitioners and academics, we have endeavored to write a compelling, contemporary, and fact-based account of vital American institutions. We understand that this course is faculty's first chance to engage students in a meaningful exposure to the ideals of the American criminal justice system. *CJ: Realities and Challenges*, Fourth Edition, translates the passion that we feel in the classroom into a learning program that nourishes students' enthusiasm for the field while dispelling widely held myths.

*CJ: Realities and Challenges*, Fourth Edition, encourages students to think critically about how the American criminal justice system operates in practice. Recognizing the myths and interpreting the facts underlying the system lead to an appreciation of its complexities. Students who succeed in this course will emerge with a realistic understanding of the system and of the opportunities that await them if they should choose to pursue a career in criminal justice.

## OBSERVE → INVESTIGATE → UNDERSTAND

# A Critical Thinking Approach to Criminal Justice

*CJ: Realities and Challenges*, Fourth Edition, takes a critical thinking approach to examining traditional and emerging issues and topics in criminal justice. A three-part framework—Observe, Investigate, Understand—asks students to:

**OBSERVE** the core principles underlying the criminal justice system.

**INVESTIGATE** how these foundational principles are applied in the real world.

**UNDERSTAND** how and why these principles and practices are still evolving.



**6 Policing Operations**

OBSERVE → INVESTIGATE → UNDERSTAND

After reading this chapter, you should be able to:

- Identify the principal policing roles.
- Compare the various policing strategies.
- Describe the different jobs in policing.
- Explain how police departments strive to maximize their resources.
- Identify the factors that shape public opinion about the police.
- Compare the service needs of diverse populations.

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Each chapter opens with a series of learning objectives tied to this framework. These goals are explored in the chapter using vivid examples to reinforce student learning. At the end of each chapter, this same framework is used to recap key concepts and

## OBSERVE → INVESTIGATE → UNDERSTAND

### Review

#### Identify the principal policing roles.

- A major part of the workload of police is maintaining order.
- Police engage in law enforcement when they enforce criminal law and apprehend lawbreakers.
- Service activities are nonenforcement actions performed on an as-needed basis.

#### Compare the various policing strategies.

- In preventive patrol, officers are assigned to randomly drive or walk around an area.
- Problem-oriented policing focuses on discovering the underlying causes of problems and encouraging police to find innovative solutions to solve those problems.
- Community-oriented policing emphasizes reducing crime and disorder by involving residents in the job of policing.
- Aggressive order maintenance entails that police focus on minor public order offenses that affect residents' quality of life.

#### Describe the different jobs in policing.

- The rookie police officer quickly learns the realities of police work while working under the guidance of a training officer.
- Patrol officers are the first individuals to respond to a call for service.
- A follow-up investigation occurs after a patrol officer documents the facts of the crime.
- Police are the primary public safety agency in charge of enforcing traffic laws.

- Communications coordinates the performance of law enforcement activities.

- Custody is the incarceration of parties either accused or convicted of a crime.

- Forensics is the application of scientific knowledge and methods to criminal and civil investigations and legal procedures, including criminal trials.

#### Explain how police departments strive to maximize their resources.

- Departments use geographic information systems (GIS) technology to produce detailed descriptions of crime occurrences and to analyze the relationships between variables such as location and time. This information helps police know how to respond to an incident.

- CompStat is a computerized information system that integrates information from crime maps across the community for department leaders' review. This information helps police administrators decide how to allocate their resources.

- Crime analysis can be helpful in reducing the pool of possible suspects, thereby making investigation more efficient.

#### Identify the factors that shape public opinion about the police.

- High-profile incidents of police brutality affect public opinion about the police.
- Because their experiences with police have not been as positive, racial and ethnic minorities tend to have lower opinions of the police than do Whites.

conclusions. Students revisit chapter-specific learning objectives in Connect Criminal Justice, where all activities are linked specifically to these learning outcomes.

The **OBSERVE → INVESTIGATE → UNDERSTAND** framework helps students make logical connections between the principles and the practices of criminal justice. As a case in point, in Chapter 6, “Policing Operations,” students learn about the varied tactics of community policing, including foot patrol. Reading the opening vignette, students **OBSERVE** the challenge faced by police in upholding the right to free speech while keeping the peace. The chapter narrative then guides students to **INVESTIGATE** effective policing strategies, which may include foot patrol. This discussion leads students to **UNDERSTAND** the difficulties law enforcers face in their efforts to prevent crime, as well as the varied consequences of the strategies they choose to employ. In these ways, the **OBSERVE → INVESTIGATE → UNDERSTAND** pedagogy actively involves students in making connections and exploring ideas that support learning.

# Probing the Myths and the Realities of Criminal Justice

Another main goal of this text is to erase rampant misconceptions about the criminal justice system. We created the **MYTH/REALITY** feature to reinforce the text's real-world basis. Integrated throughout the chapters, **MYTH/REALITY** selections challenge students to reflect critically on their own beliefs and to develop an understanding of the way the system actually works. Each entry is connected to a broader discussion that uses supporting data to explain a key principle. Among the persistent myths we investigate are:

- Older adults are more likely to be victimized than people in any other age group. (Chapter 2, “Types of Crime”)
- Police must always read suspects their *Miranda rights*. (Chapter 7, “Legal and Special Issues in Policing”)
- Drug offenders are treated leniently by the criminal justice system. (Chapter 10, “Sentencing”)
- Juvenile crime rates are skyrocketing. (Chapter 15, “Juvenile Justice”)

OBSERVE → INVESTIGATE → UNDERSTAND

## Reality-Relevant Special Features That Reinforce the Text's Framework

*CJ: Realities and Challenges*, Fourth Edition, offers an array of special-feature boxes that highlight and reinforce the *Observe, Investigate, Understand* framework:

- **Matters of Ethics** explores moral dilemmas and problems that may arise in various criminal justice scenarios and settings; see, for

example, Chapter 8's selection, "Expert Witnesses: The Good, the Bad, and the Criminal," and Chapter 11's example, "Making Money on Prisoners."

- **A Case in Point** links key text concepts to actual events and cases.
- **A Global View** compares American justice to international justice.
- **Disconnects** explores the gap between the intent of policies and law and their application in the real world.



### Culture Conflict in Charlottesville, Virginia

On August 11, 2017, hundreds of white nationalists went to Charlottesville, Virginia, to exert their rights to express their feelings about the planned removal of a statue of Confederate general Robert E. Lee. Their demonstration became known as the "Unite the Right" rally, which was believed to be one of the largest gatherings of white nationalists in at least a decade. Many white nationalists had their hands taped ready to do street fighting. They also carried torches and chanted racist slogans and some had pistols and long guns. As the white nationalists marched through the University of Virginia emotions ran high and violent clashes broke out with counter-protesters that included local residents, civil rights leaders, members of church groups, onlookers, and members of anti-fascist groups. Many of these persons carried shields, sticks, and clubs. Both groups sprayed chemicals at each other and hurled rocks and bottles. Chaos continued in Charlottesville through August 12, 2017 when the authorities forced the rally to disband and demanded both sides disperse. Nonetheless, an enraged white nationalist plunged a car into a crowd of counter-protesters causing the death of a young woman named Heather Heyer. Ultimately, the death toll became three when a police helicopter monitoring the event crashed and two state troopers were killed. The Charlottesville tragedy illustrates that sometimes culture conflict can result in major clashes of cultural norms and values resulting in culture wars, violence, and death.



Chip Somodevilla/Getty Images

#### OBSERVE → INVESTIGATE → UNDERSTAND

- How is American society the victim of the Charlottesville tragedy?
- Why does culture conflict sometimes result in culture wars?
- What are some ways in which culture conflict can lead to positive outcomes?
- What are some other cases where culture conflict has resulted in law violation?

**SOURCES:** Joe Helm, "Recounting a Day of Rage, Hate, Violence and Death," *The Washington Post*, August 14, 2017. [https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm\\_term=.865ac8de488e](https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.865ac8de488e) (retrieved January 16, 2019); *The Guardian*, "White Supremacist Members Arrested on Riot Charges Tied to Charlottesville," October 24, 2018. <https://www.theguardian.com/us-news/2018/oct/24/white-supremacist-members-arrested-charlottesville-riot> (retrieved January 16, 2019).

## Matters of Ethics



### Making Money on Prisoners

The fact that private prisons are a lucrative business has led to charges of corruption in several states. For example, in 2010 the New Mexico corrections secretary refused to penalize a private prison contractor for understaffing prisons it operated—a violation of its contract with the state. New Mexico lost more than \$18 million in penalties due to this lack of contract enforcement. The state saved money, but at the expense of adequately staffing the prison. It turns out that the corrections secretary in New Mexico was a former employee of and a warden for the same private prison corporation. Furthermore, the prison corporation had been accused of unfair political activity by contributing to the campaign of a candidate for sheriff while using unregistered lobbyists to secure a lease renewal of a jail it operated.

In another case, a private prison company took advantage of the small town of Hardin, Montana. It convinced the town to sell \$27 million in bonds for the construction of a facility that was built but never used. The bonds have since gone into default.

President Trump's 2018 policy of separating family members seeking asylum in the United States drew increased attention to immigrant detention centers. Many such detention centers are run by private companies such as CoreCivic and GEO group. While 9 percent of prisoners are held in private prisons, up to 73 percent of immigrants are held in private facilities. The argument for private prisons is that they can provide the same functions at a lower cost, but studies question the veracity of that claim. Given Trump's stated promise to imprison as many illegal immigrants as possible, the assumption is that the numbers of people seeking refugee status in the United States will continue to increase the private prison populations.

#### OBSERVE → INVESTIGATE → UNDERSTAND

- Construct a compelling argument for barring current or former employees of private prison corporations who assume political office from developing contracts with private prison corporations.
- Should states be allowed to contract with private corporations to incarcerate prisoners? Why or why not?
- What concerns arise when families seeking asylum are held in detention centers run by private companies?

**SOURCES:** Trip Jennings, "No Penalties for Understaffed Private Prisons," *New Mexico Independent*, September 2, 2010; Trip Jennings, "Corrections Secretary's Previous Work for Private Prison Operator Highlighted," *New Mexico Independent*, September 7, 2010; Trip Jennings, "N.M. Could Have Repeatedly Fined Private Prisons for Low Staffing Levels," *New Mexico Independent*, September 10, 2010; Trip Jennings, "Corrections Gave Up \$18 Million in Uncollected Penalties," *New Mexico Independent*, September 15, 2010; *East County Magazine*, "Private Prison Group Uses Unregistered Lobbyists while Giving Money to Sheriff Gore," [www.eastcountymagazine.org/node/3463](http://www.eastcountymagazine.org/node/3463) (retrieved December 31, 2019); Matthew Reischer, "Private Prison Developer Behind Montana Fiasco Involved in Construction of NM Private Prisons," *New Mexico Independent*, October 12, 2009; Clyde Haberman, "For Private Prisons, Detaining Immigrants Is Big Business," *The New York Times*, October 1, 2018.



Matthew Brown, Flickr/RF Images

## DIS Connects

### Complicated Justice

Sometimes who deserves incarceration instead of fines, restitution, or probation is not only contested in the courts but also in the media. On January 29, 2019, Jussie Smollett, a star of the popular show *Empire*, reported that he was targeted in a racialized and homophobic manner. Smollett said he was victimized in a way that included a noose around his neck and physical injuries. The incident reportedly happened in Chicago and immediately received national attention. As the story unfolded, it became less clear that the facts of that early morning were exactly as Smollett reported.

The Chicago police contended that Smollett's story was not corroborated by the evidence they uncovered. The police forwarded to the district attorney's office that Smollett had conspired with two brothers.



Terrence Antonio James/Chicago Tribune/TNS/Alamy

Abimbola Osundairo and Olabinjo Osundairo, to fake the attack. The district attorney's office on March 26, 2019, however, decided to drop the 16 charges of disorderly conduct related to alleged false reporting against Smollett. The district attorney's office dropped the charges in exchange for giving up his \$10,000 bail bond and for his already served community service. One explanation from the district attorney's office was that a conviction was likely to be difficult.

The mayor of Chicago, Rahm Emmanuel, and the Chicago Police Department did not agree with the prosecutor's decision. They publicly stated such immediately and followed up in April 2019 with a civil suit to reimburse the city for the costs of the investigation. According to the police department, Smollett cost them \$130,000 for the investigation that they consider fraudulent. For his part, Smollett maintains that he was a victim and that any notion that he conspired in his victimization is inaccurate.

This chain of events led some to question whether Smollett was dealt with in a way that "regular" people would have experienced. Was Smollett case influenced by his celebrity status? When we have opposing understanding of facts how is the justice system supposed to sort through these differing contentions?

#### OBSERVE → INVESTIGATE → UNDERSTAND

- Do celebrities receive different justice than people who are not celebrities?
- How does media coverage affect how justice is meted out?
- How can we create a system that minimizes the influence of celebrity?

**SOURCE:** Mitch Smith, "Chicago Sues Jussie Smollett, Seeking Costs of Police Investigation into Attack Claim," *New York Times*, April 11, 2019.

- **Real Careers** profiles recent graduates who have chosen a career in criminal justice.
- **Real Crime Tech** illuminates the ways in which technology is currently used in a range of criminal justice situations and settings.
- **Race, Class, Gender** traces the experiences of people who historically have been left behind in the process of criminal justice.
- **What about the Victim?** reminds us that the criminal justice story is also about the victim.



# An Author Team That's Connected to the Real World

*CJ: Realities and Challenges*, Fourth Edition, provides a uniquely interdisciplinary view of criminal justice not found in any other text. As both academics and practitioners with diverse backgrounds in law enforcement, the courts, corrections, and victim services, we provide a comprehensive, contemporary, and realistic perspective on these vital institutions.

We wrote this text using a highly collaborative process. To ensure that each branch of the criminal justice system was thoroughly represented, we organized our research, writing, and editing efforts as a peer review circle. Each chapter was the product of an ongoing, iterative review by the entire author team. The result of this synergistic effort is a unified voice providing a balanced, insightful point of view that is informed by the experience of the entire author team and has been affirmed by the feedback of course instructors.

We encourage students to read this text much in the spirit in which it was created: to have an open mind, think critically, engage in discussion, and exploit the wide knowledge and practical experience represented by the author team. Our collective experience demonstrates the need for collaboration in addressing the complexity of the criminal justice system.

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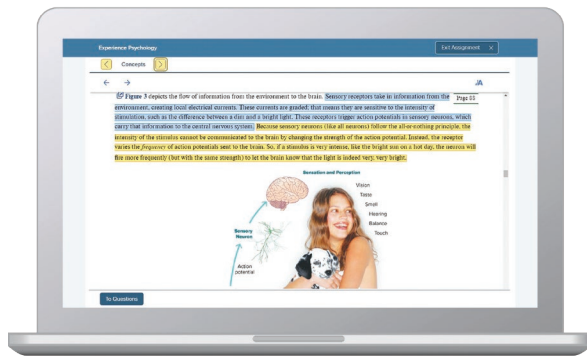
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# The Learning Support System for *CJ: Realities and Challenges*

The fourth edition of *CJ: Realities and Challenges* is available online with Connect, McGraw-Hill integrated assignment and assessment platform. Online tools make managing assignments easier for instructors—and make learning and studying more motivating for students.

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- **Instructor's Manual.** Provides a comprehensive guide to teaching the introductory course using *CJ: Realities and Challenges*, including chapter guides that feature learning objectives, chapter previews and reviews, detailed outlines, lecture summaries, additional lecture ideas, and class discussion topics.
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# Chapter-by-Chapter Changes

## **PART 1:** **CRIME, LAW, AND THE CRIMINAL JUSTICE SYSTEM**

### **Chapter 1: What Is the Criminal Justice System?**

- New Realities and Challenges vignette, “The Role of the Criminal Justice System in the U.S. Democracy”
- Updated discussion of changing views on marijuana use and trends toward decriminalization
- Updated Disconnects box, “Evolution of Marijuana Laws”
- Updated discussion of tough-on-crime politics
- New Race, Class, Gender box, “Muslim Travel Ban”
- Completely revised discussion in “Challenges to Criminal Justice Today”

### **Chapter 2: Types of Crime**

- New Realities and Challenges vignette, “The Changing Definition of Domestic Violence”
- Updated A Case in Point box, “Atlanta’s Program to Interrupt Violence through Outreach and Treatment”
- Updated Real Crime Tech box, “Emerging Drug-Testing Technologies”
- Updated Race, Class, Gender box, “Gender and Crime”
- Updated crime statistics
- Updated material on immigration offenses

### **Chapter 3: Causes of Crime**

- New Realities and Challenges vignette, “A Case of Folie à Deux?—‘Madness of Two’”
- New Real Crime Tech box, “Reconstructing Faces from DNA: DNA Phenotyping”
- Updated Matters of Ethics box, “Revising the *DSM*: A Process on Trial in the Court of Professional Opinion”
- Updated and expanded discussion of mental disorders
- New Race, Class, Gender box, “Interrupting Gun Violence”
- New A Case in Point box, “Social Conflict: Yellow Vests’ Protests in France”
- New What about the Victim? box, “Culture Conflict in Charlottesville, Virginia”

### **Chapter 4: Criminal Law and Defenses**

- New A Global View box, “What Happens When Crime Crosses Borders?”
- New Matters of Ethics box, “When Is Breaking the Law Necessary?”

- Updated Race, Class, Gender box, “LGBTQ+ Youth and Survival Sex”

## **PART 2:** **LAW ENFORCEMENT**

### **Chapter 5: Overview of Policing**

- New Realities and Challenges vignette, “The Power of Community Partnerships,” addressing the opioid crisis
- Updated numbers of federal officers
- New Real Crime Tech box, “Camera Surveillance and Facial Recognition Interface”
- New Race, Class, Gender box, “Why Do People Want to Abolish ICE?”
- New What about the Victim? box, “The Value of Procedural Justice in Increasing Police Empathy in Interactions with Victims and Citizens”
- Results of a recent study on agency consolidation
- Updated Global View box, “India’s Growing Reliance on the Security Industry”

### **Chapter 6: Policing Operations**

- New Realities and Challenges vignette, “Violence Erupts in Charlottesville”
- New A Case in Point box, “Problem-Oriented Policing in Action: The Pinellas County Sheriff’s Office’s Safe Harbor for the Homeless”
- New Real Crime Tech box, “Flagging In-Progress Crimes”
- New Disconnects box, “Repairing the Disconnect in Emergency Communications”
- New text material on drones and law enforcement
- Text update of more favorable views of law enforcement
- New A Global View box, “Public Perception of the Police in Belgium”

### **Chapter 7: Legal and Special Issues in Policing**

- New Realities and Challenges vignette, “Managing Use of Force”
- New Matters of Ethics box, “Interrogating Minors”
- New Real Crime Tech box, “Use of Force Training in a Simulator Environment”
- New text material on changes to drug enforcement strategies
- New text material on gangs
- New What about the Victim? box, “The ‘Elephant in the Room’: Officer Suicide”
- New A Case in Point box, “*Plumhoff v. Rickard* (2014)”

## **PART 3:** **ADJUDICATION**

### **Chapter 8: The Courts**

- New Realities and Challenges vignette, “A Complicated Journey through the Courts”
- Updated statistics on court processes
- New Race, Class, Gender box, “Judicial Diversity”
- Updated Real Crime Tech box, “Freeing Wrongfully Convicted Persons”
- New What about the Victim? box, “The Role of the Victim Advocate on a College Campus”

### **Chapter 9: Pretrial and Trial**

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- New A Case in Point box, “The Right to Claim Innocence”
- New What about the Victim? box, “Victims’ Rights and the Courts”

### **Chapter 10: Sentencing**

- New text details updating the discussion of the revised USSC sentencing guidelines
- Updated text discussion of controversies and court challenges over lethal injections—and the effect on executions
- Updated and expanded discussion on capital punishment
- Updated A Global View box, “United Nations Resolution on a Death Penalty Moratorium”
- Updated Race, Class, Gender box, “Exonerating the Innocent”

## **PART 4:** **CORRECTIONS**

### **Chapter 11: Overview of Corrections**

- Updated Myth/Reality features
- Updated statistics, figures, and textual material throughout
- In-depth updated coverage of Public Safety Realignment Policy and mass incarceration
- Updated What about the Victim? box, “Implications for Victims of California’s Realignment Policy”
- Updated coverage of California’s Public Safety Realignment Policy and women prisoners
- Updated discussion of inmate race and gender differences
- Updated discussion of private and faith-based prisons
- Updated coverage of correctional populations in the United States
- Updated coverage of state prison inmates
- New material on the Trump Administration’s Bipartisan Criminal Justice Reform Act of 2018 (First Step Act)

- New Matters of Ethics box, “Making Money on Prisoners,” on immigration detention centers at the border and private prisons
- Updated A Global View box, “The Legacy of Penal Transportation and Isla Maria Madre Federal Prison”
- Updated Race, Class, Gender box, “Treating Women in Prisons . . . as Second-Class Citizens of the System”

### **Chapter 12: Jails and Prisons**

- New A Global View box, “Incarceration *For* Punishment in Contrast to Incarceration *As* Punishment: Prisons around the World That Defy Hard Time”
- Updated statistics, figures, charts, boxes, and textual material throughout
- Inclusion of discussion of the Criminal Justice Reform Act of 2018 (First Step Act)
- Updated Real Crime Tech box, “Personal Communication Technology and Prisons,” on voice-print technology in prisons and jails
- Updated Disconnects box, “Diving for Rehabilitation
- Updated jail and prison statistics throughout
- Updated coverage of the shift away from the policy of mass incarceration and “get tough” sentencing practices
- Updated coverage of how mass incarceration affects people of color
- Updated A Case in Point box, “The National Emotional Literacy Program for Prisoners”
- Updated coverage of transgender inmates
- Updated coverage on AIDS and ill inmates
- Updated discussion of prisoner rights
- Updated discussion of rapidly rising number of women in U.S. prisons

### **Chapter 13: Community Corrections**

- Updated statistics, figures, charts, boxes, and textual material
- New Disconnects box, “Complicated Justice,” on the Jussie Smollett case
- Updated A Case in Point box on the Jaycee Dugard case
- Updated Real Crime Tech box, “Probation Kiosks”
- Updated sections on probation and parole
- Updated coverage of how Public Safety Realignment policy affects probation, parole, and community corrections
- Updated coverage on the relationship between doing away with policies of mass incarceration and community-based corrections
- Updated Matters of Ethics box, “Relationships between Correctional Personnel and Offenders”



## **PART 5: SPECIAL ISSUES**

### **Chapter 14: Understanding and Helping Victims**

- Updated social forces leading to the victims' rights movement
- New Race, Class, Gender box, "Hate and Violence in the United States"
- Updated crime statistics
- New text on the U.S. Census of Domestic Violence Services
- Updated Disconnects box, "When Victims Are Revictimized"
- Updated perspectives on victim assistance for older adults
- New A Case in Point box, "School Shootings in the United States"

### **Chapter 15: Juvenile Justice**

- New Realities and Challenges vignette, "Alternatives for Juveniles"
- Updated discussion and analysis of measuring juvenile crime

- Updated statistics on juvenile crime
- Updated Matters of Ethics box, "Police in the Schools"
- New Race, Class, Gender box, "Victimization of Female Delinquents"
- Updated juvenile corrections statistics
- Updated Disconnects box, "Punishing Truancy"

### **Chapter 16: Evolving Challenges in Criminal Justice**

- New Realities and Challenges vignette, "The Rise of Far-Right Extremism"
- New coverage of ransomware
- Updated information on the extent of cybercrime
- New What about the Victim? box, "Victimization in the Wake of Cybercrimes"
- New Real Crime Tech box, "Drones as Terrorist Weapons"
- Updated terrorism prevention strategies
- New Matters of Ethics box, "Airport Screening Protocols and Privacy Concerns"
- Updated hate crime statistics
- Extended discussion of immigrant victims

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“The Masters text is a comprehensive collection of information presented in an easy to read manner. The pictorial display presented in the text highlights and supplements the written material in [a] student-friendly way. And, the text incorporates information about the victim throughout the material, which is a pleasant rarity in a textbook.”  
—Lisa A. Hoston, Allegany College of Maryland

“This is a thorough and highly relevant textbook that will encourage students to further their pursuit of criminal justice as a field of academic study.”  
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# Dedications

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–Ruth Masters

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–John Dussich

CJ

REALITIES  
AND CHALLENGES

4TH EDITION



# 1 What Is the Criminal Justice System?



## OBSERVE → INVESTIGATE → UNDERSTAND

After reading this chapter, you should be able to:

- Illustrate how social norms help us define crime.
- Define crime and explain how it is classified.
- Describe the consequences of crime for the offender and the victim.
- Outline the basic structure of the criminal justice system.
- Describe key models of the workings of the criminal justice system.
- Describe how criminal justice is influenced by public opinion, the media, politics, and policy.
- Review the challenges to the criminal justice system today.

# Realities and Challenges

## The Role of the Criminal Justice System in the U.S. Democracy

In today's America the news and other forms of media often contain debates about strains upon our democratic institutions. Some say our society is divisive politically, socially, and culturally to an extent it has never been before. As a result, it is important to ask the following question: How and in what ways does the criminal justice system contribute to the stability and functionality of a democratic society? As you will learn by reading this book law enforcement, the judiciary, corrections, and victims services are major components of the wider criminal justice system that have positive roles to play in keeping society free from chaos and harm. This is not meant to imply the criminal justice system is perfect and does not need improvement but rather each part of the criminal justice system reflects and carries out American values, provides checks and balances, and offers truth to power for other institutions and those persons in power who might seek to undermine the foundations and institutions of democracy. One example of how different components of the criminal justice system operate to ensure democratic ideals is that, in addition to providing for public safety and preventing crime, law enforcement agencies pursue cases that those with political power might work to undermine. The courts by their rulings and adherence to the sacred principle of the rule of law provide checks and balances against overreach by the executive and legislative branches of government. Corrections provides rehabilitation and treatment for those who commit crimes and are addicted, and protects citizens by incarcerating those who might harm them. Recently corrections is providing reparation to those who have been victims of sentencing disparities. Victims services advocate for victim-oriented legislation and provide rights backed by law and programs to bring justice and restoration for those who have suffered from crime events. You will learn more as you read this book and we encourage you to consider the positive aspects of the criminal justice system and aspects that might need revision. We also challenge you to think about the role the criminal justice system plays in a vital democracy. Chapter 1 sets the foundation for the rest of the book by defining laws and crime, and sanctions; providing different views of crime; describing the structure and realities of the broader criminal justice system; discussing how the fear of crime, media coverage, and politics shape our ideas about crime; and introducing major challenges to the criminal justice system in the twenty-first century.

Police, detectives, victim advocates, judges, lawyers, prosecutors, jurors, correctional officers, parole officers—these are the people with whom the suspect, the victim, and the victim's family deal when interacting with the criminal justice system. It is a complex and sometimes lumbering machine, as it tackles the job of taking criminals off the street, ensuring a fair trial, supporting victims, protecting society, and punishing and attempting to rehabilitate offenders.

Of course, there are challenges to match the complexity. Have the police followed proper procedures? Has the victim been treated fairly, and does the individual understand his or her rights? Have the prosecutors shared all the relevant evidence with the defending lawyers? Was the jury trial fair? What role did the victim and/or the victim's family play in the criminal justice process? Were due process rights protected? Was the sentencing appropriate for the offense? Has the offender been mistreated in prison? Are there opportunities to rehabilitate? Has parole been granted (or denied) in a fair manner? There are many points at which justice may be either served or derailed.

We hope that this book will help you learn to think critically about the realities and challenges of the world of criminal justice. We want to help you interpret facts and recognize myths about the criminal justice system so you will understand and appreciate its complexities. We hope you come to understand how the roles of offenders, protectors, and victims are interwoven in a system dedicated to detecting those who violate the rules, determining their guilt, and carrying out an appropriate punishment. We begin in this chapter with a brief

exploration of the nature of rules whose violations constitute crime and an introduction to how the criminal justice system is structured and works.

## THE RULES THAT BIND: NORMS AND LAWS

### MYTH/REALITY

**MYTH:** Some behaviors are so wrong that they are crimes in all societies.

**REALITY:** It is not the nature of an act that makes that act a crime; it is the nature of society that defines a particular act as a crime in that society.

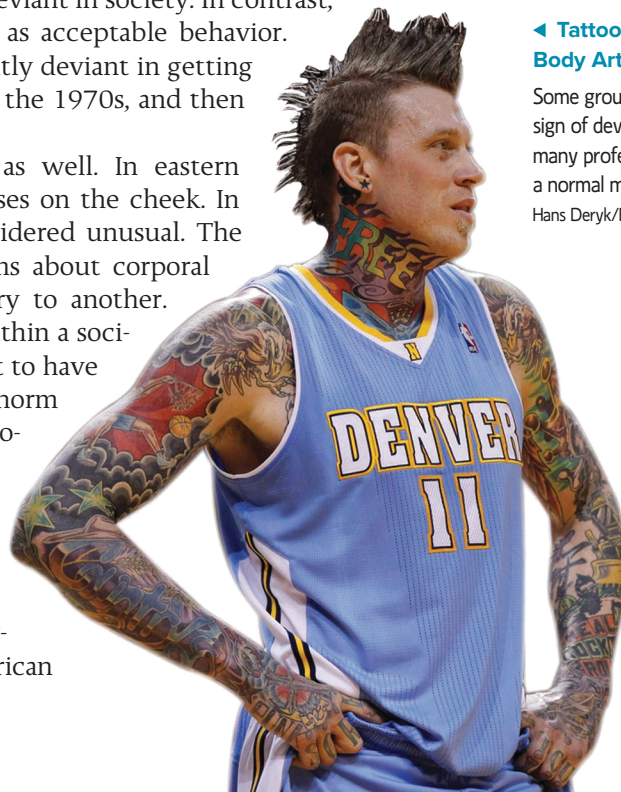
A **norm** is a rule that makes clear what behavior is appropriate and expected in a particular situation. If, for example, it is the norm to arrive at meetings on time, being late violates the norm. The term *abnormal* connotes **deviance**, the violation of a norm. (The prefix “ab” means “away from,” so *abnormal* means “away from the norm.”) No behavior is inherently deviant—that is, deviant solely by virtue of its nature. Rather, whether a particular act is considered deviant depends on many factors, including context, place, time, and the individual(s) judging it.

Let’s consider how a behavior’s deviance depends on the context in which it occurs. For example, if you were to spit on 42nd Street in New York City, people might frown at you, but you would not be arrested. But if you were to spit in the subway, you would be violating a formal regulation of the New York City Transit Authority and could face criminal prosecution in a municipal court. The fact that each week 7 million people pass through the close quarters of the subway system makes hygiene a factor in determining what is deviant in that situation.

Our ideas of deviance also change over time. For example, before the 1970s, being divorced conferred the status of deviant in society. In contrast, today’s social norms recognize divorce as acceptable behavior. In other words, there is nothing inherently deviant in getting divorced: Society found it deviant until the 1970s, and then our attitudes changed.

Norms vary from place to place as well. In eastern Europe, men greet other men with kisses on the cheek. In the United States this behavior is considered unusual. The “A Global View” box shows how norms about corporal punishment can vary from one country to another. Norms also vary from group to group within a society. While some may consider it deviant to have tattoos covering one’s body, it is the norm within many gangs and among many professional athletes.

A **social norm** specifies how people are expected to behave. Social norms are informal rules that are not written but that we nonetheless know and follow. We learn them from parents, peers, and teachers. In North American



## Preview

THE RULES THAT BIND: NORMS AND LAWS

WHAT IS CRIME?

THE CONSEQUENCES OF CRIME

THE STRUCTURE OF THE CRIMINAL JUSTICE SYSTEM

HOW CRIMINAL JUSTICE WORKS: THE REALITIES

INFLUENCES ON CRIMINAL JUSTICE

CHALLENGES TO CRIMINAL JUSTICE TODAY

SUMMARY

REVIEW

KEY TERMS

STUDY QUESTIONS

CRITICAL THINKING QUESTIONS

### norm

A rule that makes clear what behavior is appropriate and expected in a particular situation.

### deviance

The violation of a norm.

### social norm

A rule that specifies how people are expected to behave.

### ◀ Tattoos: Sign of Deviance or Body Art?

Some groups may consider tattoos a sign of deviance; for others, including many professional athletes, tattoos are a normal means of expression.

Hans Deryk/Reuters/Landov



## A Global View

### How U.S. Legal Norms Differ from Those in Singapore: The Case of Michael Fay

The focus of this case is not so much on the crime as it is on the punishment. On March 3, 1994, Michael Peter Fay, a St. Louis, Missouri, teenager living in Singapore, was sentenced to four months in jail, a fine of 3,500 Singapore dollars (about 2,214 U.S. dollars at the time), and six strokes of a rattan cane for the crimes of theft and vandalism. Norms differ regarding the appropriateness of the type of corporal punishment known as caning between the United States and Singapore. To understand the context of these crimes and their punishment, it is relevant to know that the Singapore government had been trying to cope with a rash of vandalisms leading up to this case. About six months earlier, car vandalism emerged as a noticeable new problem and was reported in one of the local newspapers. Cars parked near apartments were being damaged with hot tar, paint remover, red spray paint, and hatchets; and some taxi drivers reported having their tires slashed. In

both countries vandalism and theft are usually considered nonviolent crimes and are considered as misdemeanors. The exception to this rule is when the property damaged or stolen has high value (in the United States if it exceeds \$500), in which case it can be considered as a felony. In Singapore it is quite normal for the criminal courts to issue sentences of caning; this punishment is unheard of in the United States. Ironically, 19 U.S. states do permit corporal punishment to be used to “discipline” children and to be administered by parents and/or teachers. In Singapore this form of punishment may only be used on males. President Clinton considered Michael Fay’s punishment so inappropriate that he interceded and appealed to the president of Singapore, who, out of deference to the U.S. president, reduced the number of strokes from six to four. The caning was carried out on May 5, 1994, and the rest of the sentence was completed after four months. In the United States, the typical forms of punishment for vandalism can include fines, probation, community service, restitution, and/or jail sentence.



▲ Michael Fay

Roslan Rahman/AFP/Getty Images

#### OBSERVE → INVESTIGATE → UNDERSTAND

- Should the Singapore court have taken into account that the offender had been socialized in a different culture? Explain.
- When living in a foreign country, should a guest from the United States be held to a higher standard? What are your reasons?
- Was it appropriate for the president of the United States to intervene? What might have been the consequences either way? What message did his intervention send to other Americans living in foreign countries?

**SOURCES:** “U.S. Student Tells of Pain of His Caning in Singapore,” *New York Times*, June 26, 1994. <http://www.nytimes.com/1994/06/26/us/us-student-tells-of-pain-of-his-caning-in-singapore.html> (retrieved May 15, 2015); Alejandro Reyes, “Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate about Crime and Punishment,” *Asiaweek*, Hong Kong, May 25, 1994. <http://www.corpun.com/awfay9405.htm> (retrieved May 16, 2015); Valerie Strauss, “19 States Still Allow Corporal Punishment in School,” *Washington Post*, September 18, 2014. <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/09/18/19-states-still-allow-corporal-punishment-in-school/> (retrieved May 18, 2015).

society, informal social norms include waiting your turn in line to purchase tickets at a movie theater and not eating mashed potatoes with your fingers.

Formal social norms, also called *legal norms*, are formally written. Formal norms forbid theft and assault, for instance. Although not all deviance from norms constitutes a crime, the violation of formal norms, or *laws*, sets the criminal justice system in motion. In fact, informal social norms can evolve into legal norms. Because it is laws that determine what crimes are, we need to take a closer look at how these legal norms come about.

### WHAT IS CRIME?

What constitutes crime? The answer is not as obvious as it may seem. Certainly, a crime is an act that breaks a law. But this description, though concise, does not help us understand the complexity of classifying criminal behavior. As we will see in this section, it is common to distinguish between two broad categories of crime: *mala in se* and *mala prohibita* crimes.



#### ▲ Violating a Legal Norm

Spitting in the subway is a crime that violates a formal regulation of the New York City Transit Authority. steinphoto/iStock/Getty

## MYTH/REALITY

**MYTH:** People are either criminal or not.

**REALITY:** Virtually all people commit crimes at some point in their life. Whether we consider them criminals depends largely on what offenses they commit.<sup>1</sup>

### Can Crimes Be Inherently Wrong?

A crime is referred to as *mala in se* if it is categorized, as its Latin name suggests, as an “evil unto itself,” a behavior that is morally wrong. This definition implies that a given behavior would be wrong in any context, even if there were no law against it. However, just as there is no such thing as an inherently deviant act, there is no such thing as an inherently criminal act. Society creates crime in the same way it creates deviance—by labeling specific behaviors as such.

Because no behavior is criminal until society makes it so, distinguishing a category of crime as *mala in se* can be confusing. We discuss this category of crime here because it is a term often used by researchers and practitioners in the field of criminal justice.

Traditionally, *mala in se* offenses are seen as a violation of a basic universal social value. On the surface, it may seem reasonable to identify an act such as forcible rape as violating some universal code of morality. But no universal social code of justice exists. For example, historically the victim of a sexual assault was not considered the woman herself but rather her husband, father, or brother. The “What about the Victim?” box illustrates that the definition of sexual assault crimes is influenced not only by time period but also by the understanding of the victim and the relationship to the perpetrator.

### Crimes Prohibited by Law

*Mala prohibita* crimes, also known as **statutory crimes**, are acts that are criminal because they are prohibited by law. *Mala prohibita* crimes reflect public opinion at a particular moment in time. As standards of social tolerance change, so do the behaviors included in this category.

Laws against adultery provide a case in point. Historically, when a married person had consensual sexual relations with someone outside the marriage, the punishment could be death. Under some laws today, such as strict Islamic law (known as *Shariah*), adulterers can still be executed. Although adultery remains

## What about the Victim?

### “No Means No” . . . at Least in Some States



Rehulian Yevhen/Getty Images

Depending upon the legal jurisdiction, the element of force is no longer necessary to be convicted of forcible rape. Two state jurisdictions have changed their rape laws in this regard. In January 2003, the California Supreme Court decided that 16-year-old John Z. raped 17-year-old Laura T. when, at a party in

2000, he continued to have sexual intercourse with her for 1–2 minutes over her objections. In fact, they had engaged in intercourse for approximately 10 minutes, during which time Laura repeatedly told him she had to go home while physically struggling to stop him. John’s response was “to give [him] a minute.” The court held that even though Laura initially consented to intercourse, John’s failure to stop when she withdrew her consent—after penetration—constituted rape. By 2004, courts in eight states, including California, had extended the interpretation of their rape laws. No longer is the use of force, violence, or threat of harm to the victim required to convict for rape.

Illinois went a step further. After the John Z. decision, the state legislature passed the “No Means No” Act later in the same year. This legislation added a section to the Illinois rape statute that recognizes an individual’s legal right to withdraw consent to intercourse at any point after giving that consent. This development made Illinois the first state to pass a law explicitly protecting the rights of women in this regard. As Matthew Lyon (2004) notes in his discussion of how definitions of rape are evolving over time, cases like that of John Z., legislative initiatives like that of Illinois, and media coverage of cases like the accusation of rape against basketball phenomenon Kobe Bryant are likely to prompt other state legislatures to consider similar statutes.

Now, in the “Post-Weinstein era,” more rape victims’ statements are believed. Most states today are shying away from trying to only determine if the sex act was unwanted; 8 states are in that category, 28 states use “sex without consent” when specific “power unbalances or victim characteristics exist,” and 46 states accept that rape has occurred only when there was no consent and when “an additional element of force is present.”

### OBSERVE → INVESTIGATE → UNDERSTAND

- Although the California court rejected John Z.’s “primal urge” claim—that is, the idea that he just could not stop himself—what do you think about the argument that once a male has begun to have consensual intercourse, it is not reasonable to expect that he can “just stop”? What is a reasonable time for a partner to stop after a woman removes her consent?
- What if a woman is too drunk to give consent?

**SOURCES:** *People v. John Z.*, 60 P3d 183, 184 (Cal. 2003); Matthew R. Lyon, “No Means No? Withdrawal of Consent during Intercourse and the Continuing Evolution of the Definition of Rape,” *Journal of Criminal Law and Criminology* 95 (2004): 277–314; Kari Hong, “A New Mens Rea for Rape: More Convictions and Less Punishment,” *American Criminal Law Review*, 55, no. 22 (2018): 259–332.

***mala in se***

A behavior categorized as morally wrong (“evil in itself”).

***mala prohibita***

A statutory crime that reflects public opinion at a moment in time.

**statutory crime**

An act that is criminal because it is prohibited by law.

**consensus perspective**

A view of crime that sees laws as the product of social agreement or consensus about what criminal behavior is.

**conflict perspective**

A view of crime as one outcome of a struggle among different groups competing for resources in their society.

illegal in many countries today, penalties are relatively minor and are rarely enforced. Currently in the United States more than 20 states have laws prohibiting adultery. While prosecutions are rare, legal penalties range from a \$10 fine to life in prison.

What motivates a society to criminalize some behaviors and not others? Two predominant points of view about how crimes become defined capture the essence of this divergence: the consensus perspective and the conflict perspective.

### Consensus and Conflict Perspectives

The **consensus perspective** of crime views laws as the product of social agreement or consensus about what criminal behavior is. According to this view, criminals are individuals whose behavior expresses values and beliefs at odds with those of mainstream society. For example, they rob banks while most of us work for a living. Laws, as the product of social consensus, promote solidarity: “We’re all together on this.” In this perspective, murder is a crime because it violates a consensus belief in the sanctity of life. We agree that killing is wrong, so we criminalize this act. Those who subscribe to the consensus perspective believe that defining some behaviors as criminal is necessary (or functional) because it is in everyone’s interest to control those who deviate.

The **conflict perspective**, on the other hand, views the definition of crime as one outcome of a struggle among different groups competing for resources in society. The people who own and control society’s resources (land, power, money) are able to influence those who determine what laws are passed. Rather than looking at individual wrongdoers to understand crime, the conflict perspective looks at the process that determines who is a criminal and who is not. It asks, for example, why we apply more law enforcement resources to the bank robber than to the stockbroker who steals millions of dollars through insider trading on Wall Street.

The conflict perspective holds that laws are influenced and created by those who control the political and economic power within the society. The unequal distribution of resources in society generates competition, and hence conflict, among the groups vying for power. The “Disconnects” box illustrates how powerful corporate interests may have aided, if not been largely responsible for, passage of laws prohibiting marijuana use. An overview of marijuana’s long and complicated history reveals that nothing about the nature of the act itself makes marijuana use a crime. But whether laws against it are consensus or conflict based is a matter of debate. Let’s consider both sides.

Is using marijuana illegal because society agrees it should be (consensus model)? The fact is that public views on the use of marijuana have changed over time. A Gallup Poll conducted in 2018 revealed 66 percent<sup>2</sup> of Americans support the legalization of marijuana (and a 2018 Quinnipiac Poll found 93 percent of American voters supported medically prescribed marijuana).<sup>3</sup> In contrast, only about 20 percent favored its legalization in the early 1970s.<sup>4</sup> Accordingly, and consistent with the position that consensus drives legislation, a number of states are introducing initiatives toward the decriminalization of marijuana use.

Alternatively, is marijuana use illegal because powerful interests are served by making it so (conflict model)? For example, it is conceivable that profits related to particular drugs produced by the pharmaceutical industry could be threatened by the legalization of marijuana use. A third possibility may be that marijuana laws are the result of both consensus and conflict—to varying degrees at different points in time.

## Evolution of Marijuana Laws

The evolution of marijuana laws illustrates that laws are mere social constructions that change as we and our social landscape change.

In the United States from the mid-1800s until 1937, marijuana was largely a medicinal drug legally available by prescription. Few knew it as a recreational drug beyond people living in the Mexican American communities close to the Mexican border. But growing anti-Mexican sentiment in various regions of the country spread fears of Mexicans' bringing their "loco weed" into the United States and fueled the call for marijuana prohibition. Legislation proposed to control marijuana use cited its alleged harmful effects and reflected the views of authorities like the commissioner of the Federal Bureau of Narcotics, Harry Anslinger, who testified before Congress that "marijuana is an addictive drug that produces in its users insanity, criminality, and death." Such claims made it appear that marijuana laws would be for the good of the whole society—reflecting a consensus view. Remarkably, however, the American Medical Association went on record in those same 1937 congressional hearings to note that there was no medical evidence to support the contention that the drug

was harmful. It is unlikely the medical profession would offer the same testimony today. For example, the National Institute on Drug Abuse links long-term marijuana use to addiction and symptoms of serious mental disorder, and smoking marijuana frequently leads to the same respiratory problems experienced by tobacco smokers. Such research is only likely to increase as more states decriminalize marijuana use for medicinal or recreational purposes.

But back in 1937, a conflict view was at work as well. Powerful corporate interests joined the crusade against marijuana when they recognized that hemp—the source plant for the drug—could be used to make textiles and paper, thereby posing a threat to already established U.S. industries. Fears of the economic potential of the hemp plant—not its psychoactive properties—largely stimulated calls for passage of the Marijuana Tax Act of 1937. Under this law, anyone who imported, distributed, or sold marijuana was required to register with the Internal Revenue Service and to pay a prohibitive tax. Although the act did not outlaw marijuana, it sought to severely curtail its use. Similarly, opposition to the legalization of marijuana for medicinal and/or recreational use today has been alleged to come from, among other sources, the pharmaceutical industry and alcohol companies—both of which stand to lose profit if marijuana is accepted as an alternative to existing products.

Public support for decriminalizing marijuana use has been increasing since the 1990s. A 2018 poll found a majority of U.S. voters (63 percent versus 33 percent) agree with the legalization of marijuana for recreational use, and it is legal for medicinal purposes in at least 33 states. And while its use—recreational or otherwise—continues to be prohibited under federal law, individual states are making moves toward decriminalization. In 2012, Colorado and Washington became the first states to legalize and regulate the possession of an ounce or less of marijuana by adults over 21. Since then at least eight more states and Washington, D.C. have passed similar legislation. It remains to be seen whether the federal government will enforce federal law in these jurisdictions.



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### OBSERVE → INVESTIGATE → UNDERSTAND

- In what ways have the laws against marijuana reflected a consensus perspective? In what ways have they represented a conflict perspective?
- What might make the campaign against marijuana different from campaigns against other recreational drugs, such as cocaine?
- Do you think a tax is a better way to control marijuana use than a law against it? State your reasons.

**SOURCES:** John Galliher, David Keys, and Michael Elsner, "Lindesmith v. Anslinger: An Early Government Victory in the Failed War on Drugs," *Journal of Criminal Law and Criminology* 88 (Winter 1988): 66; Richard Bonnie and Charles Whitehead, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* (New York: Lindesmith Center, 1999); National Institute on Drug Abuse, "NIDA InfoFacts: Marijuana," revised June 2018, National Institute on Drug Abuse, Bethesda, MD. <http://drugabuse.gov/PDF/InfoFacts/Marijuana.pdf> (retrieved December 18, 2010); Quinnipiac University Poll, "Support for Marijuana Hits New High," April 26, 2018. <https://poll.qu.edu/national/release-detail?ReleaseID=2539>.

The conflict perspective is well illustrated in the case of vagrancy laws in England.<sup>5</sup> Vagrancy laws were passed in the fourteenth century to prevent peasants from leaving the employ of wealthy landowners to seek independent work in neighboring towns. Because it took time to develop a trade