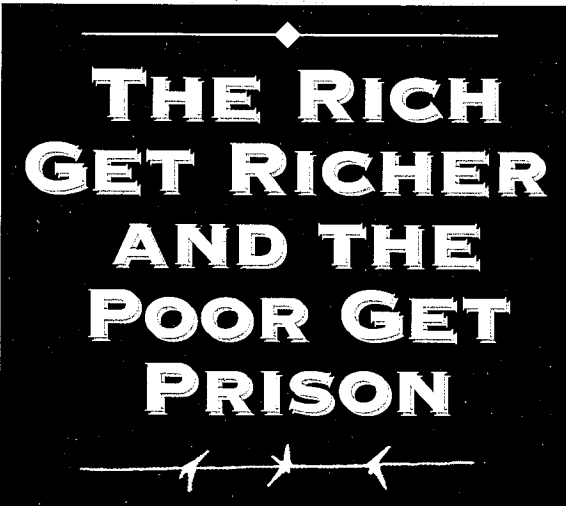


S I X T H E D I T I O N



**THE RICH  
GET RICHER  
AND THE  
POOR GET  
PRISON**

**IDEOLOGY, CLASS,  
AND CRIMINAL JUSTICE**

**JEFFREY REIMAN**

# INTRODUCTION

## Criminal Justice through the Looking Glass, or Winning by Losing

*The inescapable conclusion is that society secretly wants crime, needs crime, and gains definite satisfactions from the present mishandling of it.*

**Karl Menninger**  
*The Crime of Punishment*

A criminal justice system is a mirror in which a whole society can see the darker outlines of its face. Our ideas of justice and evil take on visible form in it, and thus we see ourselves in deep relief. Step through this looking glass to view the American criminal justice system—and ultimately the whole society it reflects—from a radically different angle of vision.

In particular, entertain the idea that the goal of our criminal justice system is not to eliminate crime or to achieve justice, *but to project to the American public a visible image of the threat of crime as a threat from the poor.* To do this, the justice system must maintain the existence of a sizable population of poor criminals. To do this, it must fail in the struggle to eliminate the crimes that poor people commit, or even to reduce their number dramatically. Crime may, of course, occasionally decline, as it has recently—*but not because of criminal justice policies.*

This last statement must be qualified. The recent news of declines in the crime rate has been quickly snatched up by leaders at all levels from the White House to the local police station as an occasion to declare the success of their crime-reduction policies. Later, I shall point to a number of causes of the recent decline, for example, the stabilization of the illegal drug trade and thus the reduction in drug-related violence, which have nothing to do with the success of criminal justice policies. If anything, the stabilization of the illegal drug trade is a sign of the failure of a long-standing justice policy, namely, the so-called war on drugs: Rather than end the drug trade, that trade has become “business as usual.” Nonetheless, I will not go so far as to say that criminal justice policy has made *no* contribution to the drop in crime rates.

In recent years, we have quadrupled our prison population and, in cities such as New York, allowed the police new freedom to stop and search people they suspect. No one can deny that if you lock up enough people, and allow the police greater and greater power to interfere with the liberty and privacy of citizens, you will eventually prevent some crime that might otherwise have taken place. Later, I shall point out just how costly this means of reducing crime is in money for new prisons and prisoners, in its destructive effect on inner-city life, in reduced civil liberties, and in increased complaints of police brutality. I won't deny, however, that these costly means do contribute *in some small measure* to reducing crime. Thus, when I say in this book that criminal justice policy is failing to reduce crime, I mean that it is failing to reduce it in any substantial way—that it is failing to make more than a marginal difference. It is failing nonetheless, because our rates of crime remain high, our crime-reduction strategies do not touch on the social causes of crime, and our citizens remain fearful about criminal victimization, even after the recent declines.

You will rightly demand to know how and why a society such as ours would create a criminal justice system that fails in the fight against crime. A considerable portion of this book is devoted to answering this question. Right now, however, a short explanation of how this upside-down idea of criminal justice is born will best introduce it, and me.

Some years ago, I taught a seminar for graduate students titled "The Philosophy of Punishment and Rehabilitation." Many of the students were already working in the field of corrections as probation officers or prison guards or halfway-house counselors. First we examined the various philosophical justifications for legal punishment, and then we directed our attention to the actual functioning of our correctional system. For much of the semester we talked about the myriad inconsistencies and cruelties and the overall irrationality of the system. We discussed the arbitrariness with which offenders are sentenced to prison and the arbitrariness with which they are treated once there. We discussed the lack of privacy and the deprivation of sources of personal identity and dignity, the ever-present physical violence, as well as the lack of meaningful counseling or job training within prison walls. We discussed the harassment of parolees, the inescapability of the "ex-con" stigma, the refusal of society to let a person finish paying his or her "debt to society," and the nearly total absence of meaningful noncriminal opportunities for the ex-prisoner. We confronted time and again the bald irrationality of a society that builds prisons to prevent crime knowing full well that they do not, and one that does not even seriously try to rid its prisons and postrelease practices of those features that guarantee a high rate of *recidivism*: the return to crime by prison alumni. How could we do so miserably? We are neither an evil nor a stupid nor an impoverished people. How could we continue to bend our energies and spend our hard-earned dollars on cures we know are not working?

Toward the end of the semester I asked the students to imagine that, instead of designing a correctional system to reduce and prevent crime, we had to design one that would maintain a stable and visible "class" of criminals. What would it look like? The response was electrifying. In briefer and somewhat more orderly form, here is a sample of the proposals that emerged in our discussion.

*First.* It would be helpful to have laws on the books against drug use or prostitution or gambling—laws that prohibit acts that have no unwilling victim. This would make many people "criminals" for what they regard as normal behavior and would increase their need to engage in *secondary* crime (the drug addict's need to steal to pay for drugs, the prostitute's need for a pimp because police protection is unavailable, and so on).

*Second.* It would be good to give police, prosecutors, and/or judges broad discretion to decide who got arrested, who got charged, and who got sentenced to prison. This would mean that almost anyone who got as far as prison would know of others who committed the same crime but who either were not arrested or were not charged or were not sentenced to prison. This would assure us that a good portion of the prison population would experience their confinement as arbitrary and unjust and thus respond with rage, which would make them more "antisocial," rather than respond with remorse, which would make them feel more bound by social norms.

*Third.* The prison experience should be not only painful but also demeaning. The pain of loss of liberty might deter future crime. But demeaning and emasculating prisoners by placing them in an enforced childhood characterized by no privacy and no control over their time and actions, as well as by the constant threat of rape or assault, is sure to overcome any deterrent effect by weakening whatever capacities a prisoner had for self-control. Indeed, by humiliating and brutalizing prisoners we can be sure to increase their potential for aggressive violence.<sup>1</sup>

*Fourth.* Prisoners should neither be trained in a marketable skill nor provided with a job after release. Their prison records should stand as a perpetual stigma to discourage employers from hiring them. Otherwise, they might be tempted *not* to return to crime after release.

*Fifth.* Ex-offenders' sense that they will always be different from "decent citizens," that they can never finally settle their debt to society, should be reinforced by the following means. They should be deprived for the rest of their lives of rights, such as the right to vote. They should be harassed by police as "likely suspects" and be subject to the whims of parole officers who can at any time threaten to send them back to prison for things no ordinary citizens could be arrested for, such as going out of town, or drinking, or fraternizing with the "wrong people."

And so on.

In short, *asked to design a system that would maintain and encourage the existence of a stable and visible "class of criminals," we "constructed" the American criminal justice system!*

What is to be made of this? First, it is, of course, only part of the truth. Some steps have been taken to reduce sentencing discretion. And some prison officials do try to treat their inmates with dignity and to respect their privacy and self-determination to the greatest extent possible within an institution dedicated to involuntary confinement. Minimum-security prisons and halfway houses are certainly moves in this direction. Some prisons do provide meaningful job training, and some parole officers are not only fair but go out of their way to help their "clients" find jobs and make it "legally." And plenty of people are arrested for doing things that no society ought to tolerate, such as rape, murder, assault, or armed robbery, and many are in prison who might be preying on their fellow citizens if they were not. *All of this is true.* Complex social practices are just that: *complex.* They are neither all good nor all bad. For all that, though, the "successes" of the system, the "good" prisons, the halfway houses that really help offenders make it, are still the exceptions. They are not even prevalent enough to be called the beginning of the trend of the future. *In the whole, most of the system's practices make more sense if we look at them as ingredients in an attempt to maintain rather than to reduce crime!*

This statement calls for an explanation. The one I will offer is that the practices of the criminal justice system keep before the public the *real* threat of crime and the *distorted* image that crime is primarily the work of the poor. The value of this *to those in positions of power* is that it deflects the discontent and potential hostility of Middle America away from the classes above them and toward the classes below them. If this explanation is hard to swallow, it should be noted in its favor that it not only explains the dismal failure of criminal justice policy to make a significant dent in crime but also explains why the criminal justice system functions in a way that is biased against the poor at every stage from arrest to conviction. Indeed, even at the earlier stage, when crimes are defined in law, the system concentrates primarily on the predatory acts of the poor and tends to exclude or deemphasize the equally or more dangerous predatory acts of those who are well off. In sum, I will argue that *the criminal justice system fails to reduce crime substantially while making it look as if crime is the work of the poor.* It does this in a way that conveys the image that the real danger to decent, law-abiding Americans comes from below them, rather than from above them, on the economic ladder. This image sanctifies the status quo with its disparities of wealth, privilege, and opportunity and thus serves the interests of the rich and powerful in America—the very ones who could change criminal justice policy if they were really unhappy with it.

Therefore, it seems appropriate to ask you to look at criminal justice through the looking glass." On the one hand, this suggests a reversal of common expectations. Reverse your expectations about criminal justice and enter-

tain the notion that the system's real goal is the very reverse of its announced goal. On the other hand, the figure of the looking glass suggests the prevalence of image over reality. My argument is that the system functions the way it does *because it maintains a particular image of crime: the image that it is a threat from the poor.* Of course, for this image to be believable there must be a reality to back it up. The system must actually fight crime—or at least some crime—but only enough to keep it from getting out of hand and to keep the struggle against crime vividly and dramatically in the public's view, never enough to substantially reduce or eliminate crime.

I call this outrageous way of looking at criminal justice policy the *Pyrrhic defeat* theory. A "Pyrrhic victory" is a military victory purchased at such a cost in troops and treasure that it amounts to a defeat. The Pyrrhic defeat theory argues that the failure of the criminal justice system yields such benefits to those in positions of power that it amounts to success. In what follows, I will try to explain the failure of the criminal justice system to reduce crime by showing the benefits that accrue to the powerful in America from this failure. I will argue that from the standpoint of those with the power to make criminal justice policy in America: *Nothing succeeds like failure.* I challenge you to keep an open mind and determine for yourself whether the Pyrrhic defeat theory does not make more sense out of criminal justice policy and practice than the old-fashioned idea that the goal of the system is to reduce crime.

The Pyrrhic defeat theory has several components. Above all, it must provide an explanation of *how* the failure to reduce crime substantially could benefit anyone—anyone other than criminals, that is. This is the task of Chapter 4, "To the Vanquished Belong the Spoils: Who Is Winning the Losing War against Crime?" I argue there that the failure to reduce crime substantially broadcasts a potent *ideological* message to the American people, a message that benefits and protects the powerful and privileged in our society by legitimating the present social order with its disparities of wealth and privilege and by diverting public discontent and opposition away from the rich and powerful and onto the poor and powerless.

To provide this benefit, however, not just any failure will do. It is necessary that the failure of the criminal justice system take a particular shape. *It must fail in the fight against crime while making it look as if serious crime and thus the real danger to society is the work of the poor.* The system accomplishes this both by what it does and by what it refuses to do. In Chapter 2, "A Crime by Any Other Name . . .," I argue that the criminal justice system refuses to label and treat as crime a large number of acts that produce as much or more damage to life and limb as the crimes of the poor. In Chapter 3, "... and the Poor Get Prison," I show how, even among the acts treated as crimes, the criminal justice system is biased from start to finish in a way that guarantees that, *for the same crimes*, members of the lower classes are much more likely than members of the middle and upper classes to be arrested, convicted, and imprisoned—thus

providing living “proof” that crime is a threat from the poor. (A statement of the main propositions that form the core of the Pyrrhic defeat theory is found in Chapter 2 in the section titled “Criminal Justice as Creative Art.”)

*One caution is in order:* The argument in Chapters 1 through 4 is not a conspiracy theory.” It is the task of social analysis to find patterns in social behavior and then explain them. Naturally, when we find patterns, particularly patterns that serve some people’s interests, we are inclined to think of these patterns as *intended* by those whose interests are served, as somehow brought about *because* they serve those interests. This way of thinking is generally called a “conspiracy theory.” Later I will say more about the shortcomings of this way of thinking, and I will explain in detail how the Pyrrhic defeat theory differs from it. For the present, however, note that although I speak of the criminal justice system as “not wanting” to reduce crime and of the failure to reduce crime significantly as resulting in benefits to the rich and powerful in our society, *I am not maintaining that the rich and powerful intentionally make the system fail to gather up the resulting benefits.* My view is rather that the system has grown up piecemeal over time and usually with the best of intentions. The unplanned and unintended overall result is a system that not only fails to really reduce crime but does so in a way that serves the interests of the rich and powerful. One consequence of this fact is that those who could change the system feel no need to do so. And thus it keeps on rolling along.

Our criminal justice system is characterized by beliefs about what is criminal, and beliefs about how to deal with crime, that predate industrial society. Rather than being anyone’s conscious plan, the system reflects attitudes so deeply embedded in tradition as to appear natural. To understand why it persists even though it fails to protect us, all that is necessary is to recognize that, on the one hand, those who are the most victimized by crime are not those in positions to make and implement policy. Crime falls more frequently and more harshly on the poor than on the better off (see Chapter 4). On the other hand, there are enough benefits to the wealthy from the identification of crime with the poor and the system’s failure to reduce crime (see Chapter 4, the section “The Poverty of Criminals and the Crime of Poverty”) that those with the power to make profound changes in the system feel no compulsion nor see any incentive to make them. In short, the criminal justice system came into existence in an earlier epoch and persists in the present because, even though it is failing—indeed because of the way it fails—it generates no effective demand for change. When I speak of the criminal justice system as “designed to fail,” I mean no more than this. I call this explanation of the existence and persistence of our failing criminal justice system the *historical inertia* explanation. In Chapter 4, I shall spell out this explanation in greater detail.

In the concluding chapter, I present an argument that the conditions described in Chapters 1, 2, and 3 (whether or not one accepts my explanation for them in Chapter 4) undermine the essential moral difference between criminal

justice and crime itself. In this chapter, called “Criminal Justice or Criminal Justice,” I make some recommendations for reform of the system. However, these are not offered as ways to “improve” the system but as the minimal conditions necessary to establish the moral superiority of that system to crime itself.

It will prevent confusion later if the reader remembers that when I speak of the criminal justice system, I mean more than the familiar institutions of police, courts, and prisons. I mean the entire system that runs from the decisions of lawmakers about what acts are criminal all the way to the decisions of judges and parole boards about who will be in prison to pay for these acts.

I claim no particular originality for the Pyrrhic defeat theory. It is a child of the marriage of several ideas from Western social theory. Although this is discussed at greater length in what follows, it will serve clarity to indicate from the start the parents and the grandparents of this child. The idea that crime serves important functions for a society comes from Émile Durkheim. The notion that public policy can be best understood as serving the interests of the rich and powerful in a society stems from Karl Marx. From Kai Erikson is derived the notion that the institutions designed to fight crime instead contribute to its existence. From Richard Quinney comes the concept of the “reality” of crime as *created* in the process that runs from the definition of some acts as “criminal” in the law to the treatment of some persons as “criminals” by the agents of the law. The Pyrrhic defeat theory combines these ideas into the view that the failure of criminal justice policy becomes intelligible when we see that it creates the “reality” of crime as the work of the poor and thus projects an image that serves the interests of the rich and powerful in American society.

Though the Pyrrhic defeat theory draws on the ideas just mentioned, it changes them in the process. For example, the theory veers away from traditional Marxist accounts of legal institutions insofar as such accounts generally emphasize the *repressive* function of the criminal justice system, whereas my view emphasizes its *ideological* function. On the whole, Marxists see the criminal justice system as serving the powerful by *successfully* repressing the poor. My view is that the system serves the powerful by its *failure* to reduce crime, not by its success. Needless to add, insofar as the system fails in some respects and succeeds in others, these approaches are not necessarily incompatible. Nevertheless, in looking at the ideological rather than the repressive function of criminal justice, I will focus primarily on the image its *failure* conveys rather than on what it actually *succeeds* in repressing.<sup>2</sup>

Having located the Pyrrhic defeat theory in its family tree, I wish to say a word about the relationship between crime and economics. It is my view that the social order (shaped decisively by the economic system) bears responsibility for most of the crime that troubles us. This is true of all classes in the society, because a competitive economy that refuses to guarantee its members a decent living places pressures on all members to enhance their economic position by whatever means available. It degrades and humiliates the poor while encouraging

the greed of the well off.<sup>3</sup> Nevertheless, these economic pressures work with particular harshness on the poor because their condition of extreme need and their relative lack of access to opportunities for lawful economic advancement only intensify for them the pressures toward crime that exist at all levels of our society.

These views lead to others that, if not taken in their proper context, may strike you as paradoxical. Evidence will be presented showing that there is a considerable amount of crime in our society at all socioeconomic levels. At the same time, it will be argued that poverty is a *source* of crime—I say “source” rather than “cause” because the link between poverty and crime is not like a physical relationship between cause and effect. Most poor people do not commit serious crimes. Nevertheless, there is evidence suggesting that the particular pressures of poverty lead poor people to commit a higher proportion of the crimes that people fear (such as homicide, burglary, and assault) than their number in the population. There is no contradiction between this and the recognition that those who are well off commit many more crimes than is generally known, both the crimes widely feared and those not widely feared (such as white-collar crimes). There is no contradiction here, because, as will be shown, the poor are arrested far more frequently than those who are well off even when they have committed the same crimes; and the well-to-do are only rarely arrested for white-collar crimes. Thus, if arrest records were brought in line with the real incidence of crime, it is likely that those who are well off would appear in the records far more than they do at present, even though the poor would still probably appear in numbers greater than their proportion of the population in arrests for the crimes people fear. In addition to this, I will argue that those who are well off commit dangerous acts that are not defined as crimes and yet that are as or more harmful than the crimes people fear. Thus, if we had an accurate picture of who is really dangerous to society, there is reason to believe that those who are well off would receive still greater representation. On this basis, the following propositions will be put forth, which may appear contradictory if these various levels of analysis are not kept distinct.

1. Society fails to protect people from the crimes they fear by refusing to alleviate the poverty that breeds them (among other things, documented in Chapter 1).
2. The criminal justice system fails to protect people from the most serious dangers by failing to define the dangerous acts of those who are well off as crimes (documented in Chapter 2) and by failing to enforce the law vigorously against the well-to-do when they commit acts that are defined as crimes (documented in Chapter 3).
3. By virtue of these and other failures, the criminal justice system succeeds in creating the image that crime is almost exclusively the work of the poor, an image that serves the interests of the powerful (argued in Chapter 4).

The view that the social order is responsible for crime does not mean that individuals are wholly blameless for their criminal acts or that we ought not have a criminal justice system able to protect us against them. To borrow an analogy from Ernest van den Haag, it would be foolhardy to refuse to fight a fire because its causes were suspect. The fact that society produces criminals is no reason to avoid facing the realization that these criminals are dangerous and must be dealt with. Also, although blaming society for crime may require that we tone down our blame of individual criminals, it does not require that we eliminate blame entirely or deny that they are responsible for their crimes. This is particularly important to remember because so many of the victims of the crimes of the poor are poor themselves. To point to the unique social pressures that lead the poor to prey on one another is to point to a mitigating, not an excusing, factor. Even the victims of exploitation and oppression have moral obligations not to harm those who do not exploit them or who share their oppression.

## Abbreviations Used in the Notes

**Challenge** *The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice* (Washington, D.C.: U.S. Government Printing Office, February 1967).

**Sourcebook—1998** Kathleen Maguire and Ann L. Pastore, eds., *Sourcebook of Criminal Justice Statistics—1998*. U.S. Department of Justice, Bureau of Justice Statistics (Washington, D.C.: U.S. Government Printing Office, 1999). References to other editions of this annual publication will be indicated by *Sourcebook*, followed by the year in the title. Other editions may have different editors. The *Sourcebook* can be reached online at [www.albany.edu/sourcebook/](http://www.albany.edu/sourcebook/).

**StatAbst—1998** U.S. Bureau of the Census, *Statistical Abstract of the United States: 1998*, 118th ed. (Washington, D.C.: U.S. Government Printing Office, 1998). References to other editions of this annual publication will be indicated by *StatAbst*, followed by the year in the title.

**UCR—1998** U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports for the United States: 1998* (Washington, D.C.: U.S. Government Printing Office, 1999). References to other editions of this annual report will be indicated by *UCR* followed by the year for which the statistics are reported. In general, these reports are published in the fall of the year following the year they cover. The Federal Bureau of Investigation can be reached online at [www.fbi.gov](http://www.fbi.gov).

**BJS** Bureau of Justice Statistics, a source of many reports cited in this book. The Bureau of Justice Statistics is an agency of the U.S. Department of Justice. It is part of the Justice Department's Office of Justice Programs,

which also includes the Bureau of Justice Assistance, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Reports of the Bureau of Justice Statistics are published by the U.S. Government Printing Office in Washington, D.C., normally in the year following the year in the title of the report. The Bureau of Justice Statistics can be reached online at [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs).

**NCJRS** The National Criminal Justice Reference Service is a clearinghouse for government publications from several agencies dealing with crime and criminal justice. The National Criminal Justice Reference Service can be reached on line at [www.ncjrs.org](http://www.ncjrs.org).

## Notes to the Introduction

1. I recently came upon the following account:

*Dr. Meredith Bombar, a social psychologist and...associate professor of psychology at Elmira College, notes that it would be difficult intentionally to shape a more effective breeding ground for aggression than that which already exists in the average prison. In personal correspondence, Dr. Bombar writes, "When I teach Social Psychology class, I spend a week or so going over the social/learned causes of aggression (e.g., provocation, modeling, punishment, extreme frustration, roles and social norms calling for aggression, physical discomfort, crowding, presence of guns and other objects associated with aggression, etc.). After the students have digested that, I ask them to imagine a horrible fantasy world which would put together all of these known social/environmental causes of aggression. What would it be? A typical prison." Lee Griffith, *The Fall of the Prison: Biblical Perspectives on Prison Abolition* (Grand Rapids: Eerdmans, 1993), p. 65n.*

2. To these remarks should be added the recognition that since the 1960s, a new generation of Marxist theorists, primarily French, has begun to look specifically at the ideological functions performed by the institutions of the state. Most noteworthy in this respect is the work of Louis Althusser and Nicos Poulantzas. See, especially, Louis Althusser, "Ideology and Ideological State Apparatuses," in *Lenin and Philosophy and Other Essays* (London: New Left Books, 1971), pp. 121–73; and Nicos Poulantzas, *Fascism and Dictatorship* (London: New Left Books, 1974), pp. 299–309. These writers refer to the pioneering insights of Antonio Gramsci into the ideological functions of state institutions. See Quintin Hoare and Geoffrey Nowell-Smith, eds., *Selections from the Prison Notebooks of Antonio Gramsci* (London: Lawrence and Wishart, 1971); and Carl Boggs, *Gramsci's Marxism* (London: Pluto Press, 1976). For other contemporary analyses of the relationship between the state and ideology, see Ralph Miliband, *The State in Capitalist Society* (New York: Basic Books, 1969), pp. 179–264; and Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975). The Frankfurt School of social theory, of which Jürgen Habermas and Herbert Marcuse are probably the best-known representatives, is distin-

guished by the application of Marxism as well as Freudian theory to the analysis of ideology. See Martin Jay, *The Dialectical Imagination: The Frankfurt School of Social Theory, 1930–1950* (Boston: Little Brown, 1973).

3. See, for example, John Braithwaite, "Poverty, Power, and White-Collar Crime: Sutherland and the Paradoxes of Criminological Theory," in Kip Schlegel and David Weisburd, eds., *White-Collar Crime Revisited* (Boston: Northeastern University Press, 1992), pp. 78–107.