



JEFFREY REIMAN AND PAUL LEIGHTON

THE RICH GET RICHER AND THE POOR GET PRISON

Thinking Critically About
Class and Criminal Justice

Twelfth Edition

ROUTLEDGE



THE RICH GET RICHER AND THE POOR GET PRISON

For 40 years, this classic text has taken the issue of economic inequality seriously and asked: Why are our prisons filled with the poor? Why aren't the tools of the criminal justice system being used to protect Americans from predatory business practices and to punish well-off people who cause widespread harm?

This new edition continues to engage readers in important exercises of critical thinking: Why has the U.S. relied so heavily on tough crime policies despite evidence of their limited effectiveness, and how much of the decline in crime rates can be attributed to them? Why does the U.S. have such a high crime rate compared to other developed nations, and what could we do about it? Are the morally blameworthy harms of the rich and poor equally translated into criminal laws that protect the public from harms on the streets and harms from the suites? How much class bias is present in the criminal justice system – both when the rich and poor engage in the same act, and when the rich use their leadership of corporations to perpetrate mass victimization?

The Rich Get Richer and the Poor Get Prison shows readers that much of what goes on in the criminal justice system violates citizens' sense of basic fairness. It presents extensive evidence from mainstream data that the criminal justice system does not function in the way it says it does nor in the way that readers believe it should. The authors develop a theoretical perspective from which readers might understand these failures and evaluate them morally—and they do it in a short text written in plain language.

Readers who are not convinced about the larger theoretical perspective will still have engaged in extensive critical thinking to identify their own taken-for-granted assumptions about crime and criminal justice, as well as uncover the effects of power on social practices. This engagement helps readers develop their own worldview.

New to this edition:

- Presents recent data comparing the harms due to criminal activity with the harms of dangerous—but not criminal—corporate actions
- Updates statistics on crime, victimization, incarceration, wealth, and discrimination
- Increased material for thinking critically about criminal justice and criminology
- Increased discussion of the criminality of middle- and upper-class youth
- Increased coverage of role of criminal justice fines and fees in generating revenue for government, and how algorithms reproduce class bias while seeming objective
- Streamlined and condensed prose for greater clarity.

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Twelfth Edition

THE RICH GET RICHER AND THE POOR GET PRISON

THINKING CRITICALLY ABOUT CLASS AND
CRIMINAL JUSTICE

Jeffrey Reiman
and Paul Leighton

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*For Sue
and
For Sala and Aiko*



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PREFACE TO THE TWELFTH EDITION

For 40 years now, *The Rich Get Richer and the Poor Get Prison* has been taking the issue of economic inequality seriously and asking: Why are our prisons filled with the poor? Why aren't the tools of the criminal justice system being used to protect Americans from predatory business practices and to punish those well-off people who cause widespread harm?

The answer offered by *The Rich Get Richer and the Poor Get Prison* is that our criminal justice system is designed to use its weapons against the poor, while ignoring or treating gently the rich who prey upon the public. *The Rich Get Richer* invites readers to look at the American criminal justice system as if it were aimed, not at protecting us against crime, but at keeping before our eyes—in our courts, prisons, news, screens, and criminology books—a large criminal population consisting primarily of poor people. This serves the interests of the rich and powerful by broadcasting the message that the real danger to most Americans comes from people below them on the economic ladder rather than from above. Looking at the criminal justice system this way makes more sense of the criminal justice policy than accepting the idea that the system is really aimed at protecting our lives and limbs and possessions. All of this is summed up by saying that *the rich get richer and the poor get prison*.

Supporting the thesis that the criminal justice system is aimed at maintaining a large visible population of poor criminals requires defending two main claims: first, that the system could reduce our high crime rates but fails to do so, and second, that the system is biased against the poor at every stage. This second claim means that *for the same crimes*, the poor are more likely than the well-off to get arrested and, if arrested, more likely to be charged and, if charged, more likely to be convicted and, if convicted, more likely to be sentenced to prison and, if sentenced to prison, more likely to receive a long sentence. But it means even more: The bias against the poor starts earlier, at the point at which legislators decide what is to be a crime in the first place. Many of the ways in which the well-off harm the public (deadly pollution, unsafe working conditions and financial predation) are not even defined as crimes, *though they do more damage to life and limb or take more money from people's pockets than the acts that are treated as crimes*.

But what of the first claim, namely, that the system could reduce our high crime rates but fails to do so? In the period since 1980, we have seen an enormous increase in the number of Americans behind bars and, since 1990, significant drops in our crime rates. Research shows that only a small fraction of this reduction is due to criminal justice policies. The thesis of *The Rich Get Richer* requires only that the criminal justice system fails to prevent enough crime so that there remains before our eyes a large population of poor criminals. And that is as much the case today as it was when the book was first written. Though crime is down from its peak, there is still plenty of it—much more

than in developed countries similar to the United States—and our citizens are still afraid of it. And our prisons are jammed full of people who are far poorer, and far more likely to have been unemployed or underemployed before entering prison, than their counterparts in the larger population.

Moreover, the criminal justice system—by which we always mean the whole system from lawmakers to law enforcers—continues not to implement programs that could alleviate the disabilities of poverty and dramatically reduce our high crime rates. And, as this book documents in detail, little has been done to make the harmful noncriminal acts of the well-off into crimes or to reduce the bias against poor people caught up in the system. In short, though the system has had some success in reducing crime, it is still failing in the way that the thesis of *The Rich Get Richer* asserts: We are still confronted with the specter of a large and scary population of poor criminals. And the criminal justice system still fails to protect us from the well-off by *not* treating their harmful acts as crimes. For all the changes of recent years, *the rich are still getting richer, and the poor are still getting prison.*

In revising the book for the twelfth edition, we have mainly tried to show the truth of this statement by bringing statistics comparing criminal and noncriminal harms (such as those caused by preventable occupational and environmental hazards) up to date, and by incorporating the results of the relevant research that has appeared since the last edition. As always, we have tried to introduce these updates with as little violation of the original edition's style and argument as possible.

This edition reports findings of studies published as recently as 2019. However, where we compare the relative danger of criminal versus noncriminal harms, we generally use figures for 2017, the latest year for which there are adequate statistics on both types of harm. When new statistics were not available, we have, where it seemed plausible, assumed that earlier statistics reflect continuing trends and enable projections from the past into the present. In all cases, we have kept our assumptions and estimates extremely conservative in order to keep the argument on the firmest ground. In addition to new studies and data, we also continue to report some of the most striking of the older studies. This shows how deep-seated the bias in our system is, and that the findings of recent studies are not aberrations or about merely passing phenomena.

The prefaces to the last six editions noted the declining number of articles in scholarly sociology and criminology journals reporting on the relationship between economic status and arrest, conviction, and sentencing. This point bears repeating for this edition. When the first edition of *The Rich Get Richer and the Poor Get Prison* appeared in 1979, there were many such studies, largely stimulated by President Johnson's establishment in 1965 of the President's Commission on Law Enforcement and the Administration of Justice. These studies consistently showed the presence of significant bias against lower-class suspects at every stage of criminal justice processing, from arrest on. With each subsequent edition of *The Rich Get Richer*, the number of new studies on this topic has decreased and dwindled to a trickle.

The studies that do exist show the bias to be alive and well. Furthermore, this is also our twelfth effort to find a comprehensive estimate of the total amount and cost of white-collar crime in the United States. It is striking that, while we are inundated with statistics on “common” crimes, there is no public or private agency that regularly measures the full extent of white-collar crime in all its varieties and issues a regular (not to mention annual) report. Most of the statistics that do exist are collected by corporations and trade organizations only to show how they are victimized by employees, consumers, and regular people; but corporations and trade organizations do not collect statistics on their own transgressions—and exceedingly few sources document the cost of the crimes of the powerful. So insurance fraud is insured people defrauding insurers, while the wrongful denial of claims by insurers is absent; “workplace theft” means employee theft, while wage theft is not mentioned; and the same can be said for mortgage fraud, credit card fraud, and many other areas. We hope that this text can help spur more research on economic bias in criminal justice, more awareness of the crimes of the powerful, and better measurement of the full extent of white-collar crime.

From reviewers’ comments, we are happy to learn that the book continues to be used both by teachers who agree with its thesis and by those who do not. This is as it should be. *The Rich Get Richer* is meant to stimulate thought. Over the years, reviewers have made numerous recommendations, many of which we have adopted and have improved the book. Some of the recommendations—to discuss epistemology and scientific method, to present evidence conflicting with our theory alongside evidence that supports it, to provide detailed proposals for solving some of the problems that the book identifies in the criminal justice system, to call for the overthrow of the capitalist system, and so on—we have resisted because following them would detract from the aim of the book. *The Rich Get Richer* is not meant to be a complete survey of the criminal justice system and certainly not a complete survey of American social problems, and it is not meant to be a complete recipe for fixing either. It is also not meant to be a balanced presentation of conservative and progressive views. The goal of *The Rich Get Richer* is more limited and more focused: *It is meant to show readers that much that goes on in the criminal justice system violates their own sense of basic fairness, to present evidence that the system does not function in the way it says it does or in the way that readers believe it should, and then to sketch a whole theoretical perspective from which they might understand these failures and evaluate them morally—and to do it all in a short and relatively inexpensive book written in plain language.*

Readers who are not convinced about the larger theoretical perspective will still have engaged in extensive critical thinking to identify their own taken-for-granted assumptions about crime and criminal justice, as well as uncover the effects of power on social practices. This engagement helps readers develop their own worldview.

Although we have resisted changing the basic structure of this text, we have added new discussions of many important events and authors, as well as many features to make the text more usable: Chapter overviews at the start of each

chapter help prepare readers by highlighting the key points they will encounter. A summary at the end of the chapter helps reinforce the main points. The study questions at the end of each chapter require the student to recall what he or she has read and to think critically about it. The questions can be used by instructors for the purpose of testing and review, and by students as a way of making sure they have covered and thought about the most important issues in each chapter.

We also appreciate the need for supplementary materials. They can be found:

- In Appendixes I and II of this book
- In an anthology of readings, *The Rich Get Richer: A Reader*, edited by Jeffrey Reiman and Paul Leighton (Boston: Pearson Education, Inc., 2010)
- At the author-maintained website, www.paulsjusticepage.com/reiman.htm.

Appendix I to this book is a short essay by Jeffrey Reiman titled “The Marxian Critique of Criminal Justice.” It is for those who want a larger theoretical context in which to place the thesis of *The Rich Get Richer*. The essay covers ground from a general statement of Marxian theories of capitalism, ideology, and law to a Marxian theory of criminal justice—and the ethical judgments about crime and criminals to which that theory leads. This a handy way of introducing readers to Marxian theory and its relation to criminal law and criminology. The essay addresses some of the same issues discussed in the main text of *The Rich Get Richer* and thus offers an alternative theoretical framework for understanding those issues. Although this alternative framework is compatible with that developed in the main text, the argument of *The Rich Get Richer* stands alone without it.

Appendix II, also authored by Jeffrey Reiman, is titled “Between Philosophy and Criminology.” Like the first appendix, the second appendix is separate from the argument of the main text but extends it in important ways. Unlike the first appendix, however, “Between Philosophy and Criminology” is a very personal statement in that it aims to stitch together the disparate parts of Reiman’s intellectual life as a professional philosopher interested in criminal justice. He argues in it that criminology has a special need for philosophical reflection that other social sciences may not have, and he goes on to spell out the philosophical framework within which *The Rich Get Richer* stands.

In addition, an author-maintained website managed by Paul Leighton can be accessed at www.paulsjusticepage.com/reiman.htm. It contains chapter outlines and summaries with links to additional related resources, as well as Internet-based exercises for students. Several articles that we have written about corporate crime are available there.

Because we have revised rather than rewritten *The Rich Get Richer*, we are indebted to those who helped with the original edition. They are thanked in the section “Acknowledgments for the First Edition.” Starting with the ninth edition, Paul Leighton joined Jeffrey Reiman as co-author of *The Rich Get Richer and the Poor Get Prison*. Paul has assisted with the revisions of *The Rich Get Richer* since its fourth edition.

We appreciate the dedicated work of Heather Mooney, a doctoral student at Wayne State University. As with the eleventh edition, she had the challenging task of helping update the statistics and conducting numerous literature reviews about topics in a variety of disciplines for the twelfth edition. She found helpful studies, wrote thoughtful summaries, fact checked, helped with manuscript preparation, and was a great sounding board for what appears (and does not appear) in this revision. Heather did all this efficiently, thoroughly, graciously, and with excellent judgment.

We also appreciate the thoughts of Adrienne McCarthy, a doctoral student at Kansas State University, for discussions and research that added to Chapter 4. She also did a careful read of the book and other work necessary to compile the helpful index for this edition. Elizabeth Bradshaw, of Central Michigan University, graciously reviewed several draft chapters. We are also indebted to Shigeru (Simon) Miyao, who translated the ninth edition of *The Rich Get Richer* into Japanese. Mr. Miyao's translation has been a gift to us, and the exchanges we had with him substantially improved the tenth edition—many of these improvements are carried forward into this new edition. The work of several past research assistants also still lives on in this edition, so we thank Dana Radatz, Seyed Mirmajlessi, Rachel (Songer) Stark, Carrie Buist, Donna (Killingbeck) Selman, and Bernard Demczuk. We also thank Karen Hanson, our former editor at Allyn & Bacon, for her good counsel and hard work over many editions.

Both Jeffrey and Paul thank their universities—American University and Eastern Michigan University, respectively—for providing them with the supportive and lively intellectual environments that have made this work possible and enjoyable over the years.

Jeffrey dedicates the book to his wife, friend, partner, and colleague, Sue Headlee, who continues to delight, encourage, inspire, and astonish him as she has for more than 40 years. Paul dedicates this book to his daughters Sala and Aiko, who further inspire him to work toward a less violent society.

*Jeffrey Reiman
and Paul Leighton*



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ACKNOWLEDGMENTS FOR THE FIRST EDITION

This book is the product of seven years of teaching in the School of Justice (formerly, the Center for the Administration of Justice), a multidisciplinary criminal justice education program at American University in Washington, DC. I have had the benefit of the school's lively and diverse faculty and student body. And, although they will surely not agree with all that I have to say, I have drawn heavily on what I have learned from my colleagues over the years and stand in their debt. In addition, more than is ordinarily recognized, a teacher receives guidance from students as they test, confirm, reject, and expand what they learn in class in the light of their own experience. Here, too, I am deeply indebted. My thanks go to the hundreds of students who have shared some part of their world with me as they passed through American University, and in particular to three students whose encouragement, loyalty, and wisdom are very much a part of the development of the ideas in this book: Elizabeth Crimi, Bernard Demczuk, and Lloyd Raines.

I express my gratitude to American University for providing me with a summer research grant that enabled me to devote full time to the book in the summer of 1976, when most of the actual writing was done. I am also grateful to Bernard Demczuk, who was my research assistant during the academic year 1975 to 1976 and who gathered much of the research data. I owe thanks as well to Cathy Sacks for ably and carefully typing the final manuscript.

Drafts of the manuscript for this book were read in whole or in part by (or to) Bernard Demczuk, Sue Hollis, Richard Myren, Lloyd Raines, Phillip Scribner, I. F. Stone, and John Wildeman. I am grateful for their many comments, and I incorporate many of their recommendations in the final version. I have made my mistakes in spite of them.

Finally, for teaching me about artichokes, the meaning of history, and countless other mysteries, this book is dedicated to Sue Headlee.


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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*¹

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 credible image of the threat of crime as a threat from the poor*. To accomplish this, the justice system must present us with a sizable population of poor criminals. To do that, 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 *largely because of factors other than criminal justice policies*.

These last two statements must be explained. The news of declines in the crime rate was 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 “tough-on-crime” policies. But critical thinkers will rightly ask why crime did not start to decline until 20 years after the U.S. started getting tough – and why crime and incarceration have both generally fallen in the last decade. We believe criminal justice policy had a very modest effect, while there are a rich variety of factors outside the system that have contributed to the declines from the early 1990s.

2 Introduction

In recent years, America has quadrupled its prison population and allowed the police wide discretion to stop and search people. 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, we shall point out just how costly and inefficient this means of reducing crime is—in money for new prisons, in its destructive effect on inner-city life, and in increased complaints of police brutality. To be sure, these costly means do contribute *in some small measure* to reducing crime. Thus, when we say in this book that the criminal justice system is failing, our point is that it is failing to eliminate our high crime rates. We continue to see a large population of poor criminals in our prisons and courts, while our crime-reduction strategies do not touch on the social causes of crime. Moreover, our citizens remain fearful about criminal victimization even after the recent declines, and America's crime rate is still far above those of other industrial democracies around the world. We document this failure in Chapter 1, "Crime Control in America: Nothing Succeeds like Failure."

The reader should keep in mind that when we speak of the *criminal justice system*, we mean more than the familiar institutions of police, courts, and prisons. We mean the entire system that connects the decisions of lawmakers about what acts are criminal to the decisions of police about whom to arrest, all the way to the decisions of judges, juries, and parole boards about who will be in prison to pay for these acts.

You will rightly demand to know how and why a society such as ours would tolerate 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 was born will best introduce it.

Some 45 years ago, Jeffrey Reiman taught a seminar for graduate students titled "The Philosophy of Punishment and Rehabilitation." Many of the students were law-enforcement officers or working in the field of corrections. Together the class examined the various philosophical justifications for legal punishment and then directed its attention to the actual functioning of our correctional system. For much of the semester, the class discussed the myriad inconsistencies and cruelties and the overall irrationality of the system. It discussed the arbitrariness with which offenders are sentenced to prison and the arbitrariness with which they are treated once there. It discussed the lack of privacy, the deprivation of sources of personal identity and dignity, and the ever-present physical violence, as well as the lack of meaningful counseling or job training within prison walls. It 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 absence of meaningful noncriminal opportunities for the ex-prisoner. Time and again the class confronted the bald irrationality of a society that builds prisons to prevent crime, knowing full well that they do not, and that does not seriously try to rid its prisons and post-release

practices of those features that guarantee a high rate of *recidivism*, the return to crime by prison alumni. How could we fail 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 tax dollars on cures we know are not working?

Toward the end of the semester, the students were asked to imagine that, instead of designing a criminal justice system to reduce and prevent crime, they were to design one that would maintain a stable and visible “class” of criminals. What would it look like? The response was electrifying. Here is a sample of the proposals that emerged in the discussion:

1. It would be helpful to have laws on the books against drug use, prostitution, and 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).
2. 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 were not arrested or not charged or not sentenced to prison. That 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.
3. 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.²
4. 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.
5. 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.³ They should be harassed by police as “likely suspects” and be subject to the whims of parole officers, who can at any time 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.

4 Introduction

In short, *when asked to design a system that would maintain and encourage the existence of a stable and visible "class of criminals," the students "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 arbitrary exercises of discretion in arrests and sentencing. 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. A few prisons do provide meaningful job training, and some parole officers not only are fair but also 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 rarely either all good or all bad. Nonetheless, the "successes" of the system, the "good" prisons and 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. *On 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 reduce crime!*

This statement calls for an explanation. The one we 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 protect us against 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 an 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, we will argue that *the criminal justice system fails in the fight against crime while making it look as if crime is the work of the poor.* 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, we 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 entertain 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. Our 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.

We 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 a victory. In what follows, we 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. From the standpoint of those with the power to make criminal justice policy in America, *nothing succeeds like failure*. We challenge you to keep an open mind and determine for yourself whether the Pyrrhic defeat theory does not make more sense of criminal justice policy and practice than the old-fashioned idea that the goal of the system is to reduce crime substantially.

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?” which argues 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 are the work of the poor*. The system accomplishes this both by what it does and by what it refuses to do. Chapter 2, “A Crime by Any Other Name,” argues that the criminal justice system refuses to label and treat as crime a large number of acts of the rich that produce as much or more damage to life and limb than the crimes of the poor. Chapter 3, “... and the Poor Get Prison,” shows 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 “The Carnival Mirror: Criminal Justice as Creative Art.”)

ONE CAUTION IS IN ORDER The argument 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 into being *because* they serve those interests. This way of thinking is generally called a *conspiracy theory*. Later we will say more about the shortcomings of this way of thinking and explain in detail how the Pyrrhic defeat theory differs from it. For the present, however, note that although we 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, *we are not maintaining that the rich and powerful intentionally make the system fail to gather up the resulting benefits*. Our 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 substantially reduce crime but also does so in a way that serves the interests of the rich and powerful. One consequence of this fact is that those who have the power to make dramatic changes to the system and society it serves 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 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, it is necessary 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. 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, that those with the power to make profound changes in the system feel no compulsion or 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 we speak of the criminal justice system as "designed to fail," we mean no more than this. We call this explanation of the existence and persistence of our failing criminal justice system the *historical inertia* explanation, which Chapter 4 spells out in greater detail.

The concluding chapter presents an argument that the conditions described in Chapters 1, 2, and 3 (whether or not one accepts our explanation for them in Chapter 4) undermine the essential moral difference between criminal justice and crime itself. This chapter, called "*Criminal Justice or Criminal Justice*," makes some recommendations for reform of the system. 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.

The Pyrrhic defeat theory is a child of the marriage of several ideas from Western social theory. Although this is discussed at greater length in what