Crime Control in America
Nothing Succeeds Like Failure

Is it crime and punishment that go hand in hand?
Or does punishment feed the crime that plagues our land?
—ROBERT JOHNSON, A ZOO NEAR YOU

Failure is in the eye of the beholder.
—ANONYMOUS

OVERVIEW

Chapter 1 has three main objectives: 1) to examine the exclusive focus on police and prison as the response to America’s high crime rate, and the limited role they played in causing a decline in crime rates, 2) to review the “excuses” that are made for our high crime rates, and how we choose to have the crime rates we do, and 3) to outline the Pyrrhic defeat theory to explain the continued existence over decades of policies that fail to reduce crime. The subtitle of Chapter 1, “Nothing Succeeds Like Failure,” highlights an important aspect of the larger argument: the criminal justice system is failing even if crime rates are down from all-time highs. “Tough on crime” policies had little to do with the reductions in crime rates, and mass incarceration had some “backfire” effects that promoted crime. Crime rates in the U.S. are still high compared to other developed countries. They are now down to the rates experienced during the 1970s, when crime was seen as an alarming problem. Policies targeting sources of crime (inequality, guns, prison, drug policy), and evidence-based policies about what works to reduce crime, have not been seriously considered. Ultimately, American criminal justice policy makes more sense if we look at the system as wanting to have high crime rates—there are groups for whom “crime pays” and for whom the system’s failure is a success.
In the last 50 years, crime rates have gone up and down, although mostly up until the 1990s, and then down substantially. Current crime rates are still above what they were in the early 1960s, in spite of various “tough on crime” proposals that propelled the U.S. into “the largest prison expansion the world has ever known.” From 1980 to 2000, the U.S. built more prisons than it had in all of its history, creating what has been called an incarceration binge, mass incarceration, hyperincarceration, and a Plague of Prisons. The policies that led to the U.S. having the highest incarceration rate in the world obviously contributed something to lowering crime rates. But the contribution was modest at best, and it came at an enormous financial cost, heightened racial inequality and tensions, and added to a variety of social problems like the breakdown of inner-city communities. And while “getting tough on crime” is no longer the dominant theme in political discussions about criminal justice, the persistence of a failed policy for decades requires examination.

In response to rising crime rates during the 1960s, President Johnson proposed a number of initiatives addressing the causes of crime. These included antipoverty and economic opportunity programs that sought to spread the benefits of America’s successful economy to more citizens. Programs that addressed social inequality were considered to be anticrime programs because they attacked crime’s “root causes.” Johnson declared: “There is something mighty wrong when a candidate for the highest office bemoans violence in the streets but votes against the war on poverty, votes against the Civil Rights Act, and votes against major educational bills that come before him.” President Nixon’s “law and order” campaign explicitly rejected Johnson’s strategy and in his 1970 State of the Union message, Nixon stated: “We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives.” The four years of Carter’s Presidency were an exception to the “tough on crime” agenda (for example, he proposed eliminating penalties for possession of less than one ounce of marijuana). But the “get tough” pattern resumed with Reagan’s election as President in 1980 and continued through the 1990s—when crime rates started to decline—until the financial crisis of 2008.

During the 30 years in which crime rates were increasing, politicians never took responsibility for it. They played to voters’ fears by advocating “law and order” or the many varieties of “getting tough on crime”: more police, harsher sentences, mandatory minimums, three-strikes-and-you’re-out laws (including expanding the number of offenses that count as strikes), and the increased use of capital punishment. When crime rates started to come down, however, politicians jumped to claim credit for the reductions. Franklin Zimring calls this “a version of ‘heads I win, tails you lose,’ in which decreases in crime are evidence that hard-line punishments work, whereas increases are evidence that they are needed.” For example, in his 1994 State of the Union Address, President Bill Clinton told us that

while Americans are more secure from threats from abroad, I think we all know that in many ways we are less secure from threats here
at home. … Violent crime and the fear it provokes are crippling our society, limiting personal freedom and fraying the ties that bind us.\(^8\)

But then the good news began to arrive: A *New York Times* headline in 1996 announced, “A Large Drop in Violent Crime Is Reported.”\(^9\) The article said that President Clinton “asserted that his policies, including putting more police officers on the streets and regulating the sale of handguns and assault rifles, had helped contribute to the decline.”

Less than two weeks later, *U.S. News & World Report* ran a cover article titled “Popgun Politics,” asserting that neither President Clinton nor his opponent in the race for the presidency, Senator Bob Dole, was telling the truth about the crime issue. For example, while Clinton claimed that his policy of putting 100,000 new police on the street “played a big role in [the] recent crime drop,” the magazine reported that “Clinton has won funding for 44,000 officers; [of whom] 20,000 are on the beat so far. Experts say that number could not have reduced crime much.”\(^10\) With officers working in shifts, taking vacations, and so on, it requires at least five officers to provide one officer on the street, around the clock, for a whole year.\(^11\) So those 20,000 probably amount to no more than 4,000 new police on the streets around the clock.

Untroubled by such facts, President Clinton reported, in a 1997 radio address,

> We had a comprehensive plan to fight crime—to put 100,000 new community police officers on the street and tough new penalties on the books. … This approach is working.

> This week the FBI reported that serious crime dropped another three percent last year, dropping for the fifth year in a row, the longest decline in more than 25 years. This is great news.

And how shall we respond to this news? Continues President Clinton: “Now that we’ve finally turned crime on the run, we have to redouble our efforts.”\(^12\)

Then, two years later, in his 1999 State of the Union Address, the president was singing the same tune:

> I propose a 21st Century Crime Bill to deploy the latest technologies and tactics to make our communities even safer. Our balanced budget will help to put up to 50,000 more police on the street in the areas hardest hit by crime, and then to equip them with new tools from crime mapping computers to digital mug shots.\(^13\)

Early in his first term, President George W. Bush noted the decline in crime and added, “[B]ut, unfortunately, American society is still far too violent. The violent crime rate in the United States remains among the highest in the industrialized world.”\(^14\) This speech was in the context of the president’s *Blueprint for New Beginnings*, which included $821 million for prison construction and private prison space,\(^15\) plus $140 million to support additional detention beds.\(^16\) The declining crime rates coupled with the terrorist attacks of September 11, 2001, brought about the opposite of the situation described
by President Clinton above. Americans became more concerned with threats from abroad, so crime became a low-priority issue. But a 2005 statement shows the administration’s call for more of the same in its support for the Gang Deterrence and Community Protection Act: “Aggressive law enforcement and tougher sentencing laws bear a good deal of the responsibility for the precipitous reduction in crime rates, especially for violent crime, over the past decade.” The Department of Justice’s 2006 budget noted the need for $1.2 billion to incarcerate larger numbers of prisoners because of “the aggressive enforcement of the Administration’s law enforcement initiatives, and the resulting detainee population increase.”

As a candidate, Barack Obama did not repudiate the “get tough” policy of the last decades, but called for “a crime policy that’s both tough and smart.” An article in Politico entitled “President Obama backing off strict crime policy” suggests a break with past federal crime policies, and it is significant that the harsh disparity in sentencing between crack and powder cocaine has recently been reduced from 100:1 to 18:1. This change is the first reduction in drug sentences in decades, but the U.S. Sentencing Commission had been advocating for it since 1995. The other initiatives discussed in the article are merely requests for reviews of sentencing practices in general and of child pornography sentences in particular. The results of these reviews may be reduced sentences, but the path from a request for review to recommendations to changes in law is long and uncertain.

Lest anyone believe that thinking about crime has changed since Clinton, Obama’s Attorney General held a press conference to announce that crime was down in the first six months of 2011. His message: “We will continue to support our state, local and tribal partners and to implement the tough, smart policing policies that we know make a difference in the fight against violent crime.” Obama has supported greater levels of funding for the Community Oriented Policing Service (COPS) program started by Clinton to hire police officers, even though a 2005 report by the General Accounting Office found that “between 1993 and 2000, the overall crime rate declined by 26 percent, and the 1.3 percent decline due to COPS amounted to about 5 percent of the overall decline.” As a candidate, Obama said that the United States should “reduce the blind and counterproductive warehousing of non-violent offenders.” But according to a brief by the Justice Policy Institute, the 2010 Department of Justice budget “reduces spending on juvenile justice programs” and “increases spending on prisons, including 1,000 new contract beds (private prison providers) and two new federal prisons” that would add 4,800 new beds.

More generally, the libertarian magazine, Reason, ran a cover story titled “Bummer: Barack Obama turns out to be just another drug warrior,” which claims that (with the exception of crack sentences) Obama’s drug policies “by and large have been remarkably similar to his predecessor’s.” What makes the situation surprising is while holding other political offices before becoming President, Obama said “we can’t incarcerate ourselves out of the drug crisis,” that the war on drugs was “an utter failure,” and he advocated decriminalization of marijuana. According to a 2010 poll, 65 percent of Americans
agree that the War on Drugs has been a failure and 52 percent favor legalization of marijuana. But any shift in priorities that might signal a de-escalation of the drug war, like less enforcement and more treatment, “has not been perceptible in Obama’s drug control budgets” says Reason. Even his policy on medical marijuana “is in some ways even more aggressively intolerant than George W. Bush’s, featuring more frequent raids by the Drug Enforcement Administration (DEA), ruinous IRS audits, and threats of prosecution against, not only dispensaries, but anyone who deals with them.”

So, whether crime is a high-profile issue or a less visible one, the failed policies continue—even under those who seem to understand the problems with these policies. Sadly, state and local politicians have generally followed the direction set by our national leaders in promoting “tough on crime” solutions, at least until the financial crisis of 2008. Substantial declines in state and local budgets precipitated what is likely to be the first sustained reduction in incarceration in decades. States are now scrambling to release nonviolent offenders and overhaul tough laws to reduce the flow of inmates into prison, which testifies to how little these laws contributed to public safety. Indeed, the paradigm shift from “tough on crime” to “smart on crime” is itself an admission that “tough on crime” was not smart.

Further, the sudden rush to embrace evidence-based policies should not obscure the level of irrationality that has been accepted as normal. The plain fact is that virtually no serious student of the crime problem believes we can arrest and imprison our way out of the crime problem, but that has been the predominant policy. Between 1980 and 2009, the number of persons incarcerated in state and federal prisons more than quadrupled, growing from 329,000 to more than 1.5 million. If we add those who are locked up in jails, there are now almost 2.3 million people behind bars in the United States, a number close to the entire population of states such as Utah or Nevada. In 2003, the Bureau of Justice Statistics reported that if 2001 incarceration rates remain unchanged, 11.3 percent of men and 32 percent of black men can expect to serve time in prison during their lifetime!

One troubling aspect of these policies is that the money used to fund the imprisonment boom has been taken from crime prevention, welfare, education, and medical treatment for the poor, thereby weakening programs that reduce crime in the long run. Criminologist William Chambliss writes that California, whose higher education system was once the envy of every other state, now is ‘envied’ by correctional officers and criminal justice employees, who saw an increase of more than 25,000 employees in the Department of Corrections workforce between 1984 and 1994; at the same time, there was a decline of more than 8,000 employees in higher education.

By 2010, California spent 11 percent of its state budget on prisons and 7.5 percent on higher education, leading the then-Governor Schwarzenegger to propose an amendment to the state Constitution requiring it to spend more on higher education than prisons. The Chronicle of Higher Education notes “the
The reform proposal has a difficult road ahead.\textsuperscript{34} The reforms it would mandate are even more far-reaching than the 2011 Supreme Court order to California to release 37,000 inmates to bring the system down to 137.5 percent of capacity, and remedy conditions that the Court found are causing “needless suffering and death.”\textsuperscript{35}

California was—and is—not alone: during the late 1980s and 1990s, spending for New York’s public universities dropped by 29 percent while funding for prisons increased by 76 percent.\textsuperscript{36} A 2008 study by the Pew Charitable Trusts notes that between 1987 and 2007, the amount that states spent on corrections increased by 127 percent (after correcting for inflation) while higher education expenditures increased by 21 percent. At the time of the report, five states spent as much or more on corrections than they did on higher education. The report, titled One in 100 (referring to the number of Americans incarcerated compared to the adult population), finds that “prison costs are blowing holes in state budgets but barely making a dent in recidivism rates.”\textsuperscript{37} And what are the results? Violent crimes have declined since 1992, but crime rates are still very high. For example, in 1992, the FBI reported a violent crime rate of 758 per 100,000 persons in the population. In 2010 the FBI reported a decline in the violent crime rate to 404 per 100,000, just above what it was in 1972 (401 per 100,000).\textsuperscript{38} Says criminologist Elliott Currie, “[T]he recent declines … mainly represent a falling-off from an extraordinary peak.”\textsuperscript{39} And they have come down to rates that existed when far fewer Americans were locked up. In short, the crime reductions for which our leaders are now claiming credit are actually reductions from very, very high crime rates to rates that are merely very high.

For example, in 1999, the Washington Post ran a headline: “Crime Rates Down for the 7th Straight Year,” but the news was not all good. The homicide rate was down to 6 per 100,000 inhabitants, a rate comparable to that in 1967, when it was thought to be a high rate. And while “[y]outh homicide rates are half of what they were five years ago,” they are “twice as high as they were 15 years ago.”\textsuperscript{40} An even less comforting view appeared in another 1999 Washington Post article under the headline “Despite Rhetoric, Violent Crime Climbs”:\textsuperscript{41}

Rosy assessments of the nation’s declining crime rate wrongly focus on the short-term drops from crime peaks early in the decade and ignore the overall rise of violence since the 1960s, according to a new report.

The 30-year update of a landmark study by the National Commission on the Causes and Prevention of Violence found that violent crime in major cities reported to the FBI has risen by 40 percent since 1969.

The new study is intended as a counterpoint to the drumbeat of optimistic reports describing the current drop in crime, and it offers a sober reminder that the United States still suffers from a historically high level of violence.\textsuperscript{41}
This 1999 study was conducted by the Milton S. Eisenhower Foundation, an organization devoted to continuing the work of the original 1969 National Commission on the Causes and Prevention of Violence and the 1968 National Advisory Commission on Civil Disorders (Kerner Commission). The foundation study noted the strikingly higher rates of violent crime in the United States compared to other industrialized nations: “In 1995, handguns were used to kill 2 people in New Zealand, 15 in Japan, 30 in Great Britain, 106 in Canada, 213 in Germany, and 9,390 in the United States.”\textsuperscript{42} “The most optimistic view after looking at this,” said foundation president Lynn A. Curtis, who also worked on the 1969 violence report, “is that we are in roughly the same ballpark now in the late 1990s as we were in the late 1960s, when everyone said crime is so bad we need a national commission to study it.”\textsuperscript{43} The difference is that in 1969, there were 197,136 individuals in state and federal prisons, but by 1999 that number had grown over 700 percent to 1,496,629—growth that has cost us billions of dollars, given prison records to huge numbers of nonviolent criminals, and torn up inner-city communities, but that has not made much of a difference in the amount of crime we have.\textsuperscript{44}

Figure 1.1 illustrates these concepts by comparing the violent crime rate and incarceration rate (only of people in prisons—jail inmates are not included). If you look at the graph from 1990 onward, you get the misleading impression that higher incarceration rates led to lower levels of crime. The longer-term view reveals a more complex reality. During most of the
time, crime had an upward trend, while incarceration increased continually. Further, the graph shows that the current crime rate is far off its peak, but down to levels of the early 1970s. At that time, it had been increasing for more than a decade and was the subject of great concern, while that same level of violent crime is now a cause for celebration and complacency. As John DiIulio, President Bush’s first director of the White House Office of Faith-Based and Community Initiatives, recently stated:

America in 2010 is a half-century into massive public and private anticrime investments, tougher criminal sentencing policies, and security-seeking personal life style changes; yet, for all that, nationally, crime is not demonstrably lower today than it was 50 years ago, and in many places it is worse than it was when the national alarm about crime was first sounded. Since crime climbed on to the federal policy agenda in the early 1960s, successive government wars on crime and drugs have sacrificed once-sacred civil liberties. Today, nearly 2.5 million Americans live behind prison gates while tens of millions more live in gated communities.

Understanding the Decline in Crime Rates

Although many Americans are confused about whether crime rates are increasing or decreasing, the overall pattern since 1992 has been declining crime rates. This reduction in crime only constitutes a “success” for the criminal justice system to the extent that the system caused the decline. A review of criminal justice literature, however, shows that prisons and police played a quite limited role in the national crime decline. The drop in crime rates is better explained by noncriminal justice factors, such as the decline in use of crack, an improving economy in the 1990s, and the removal of lead from air starting in the 1970s. In this section, we examine the factors linked to the declining crime rate to assess their importance. We’ll start with the criminal justice response.

PRISONS Putting someone in prison means they are no longer committing crimes in the community, so the growth in prison populations had some effect in reducing crime through incapacitation. But this strategy has some important limitations and side effects. For example, criminologists find that a small minority of offenders commit a disproportionate number of offenses. Identifying and incarcerating them improves public safety. Further increases in incarceration mean locking up people whose offenses and criminal histories are less serious, so there is a sharply diminishing benefit to public safety. Further, as offenders age, their propensity for crime declines. Lengthening prison sentences does not improve public safety and reduce crime rates if prison sentences were (as they are in the U.S.) already long enough to hold offenders until they aged out of serious and violent crime.

Prison also has some negative side effects that counteract some of its public safety benefits (these are also reviewed below in the discussion of prison as a source of crime). For example, prisons function as “schools for
crime,” by deepening an inmate’s ties with other criminals, subjecting them to an environment that undermines personal responsibility and offers little rehabilitation. Ex-cons have reduced job possibilities because of the criminal record, and cynicism about the law and justice may reduce their commitment to obey the law. Prisons not only have criminogenic (crime-producing) effects on individuals, but also have effects on family formation and on community well-being. For example, the children of inmates do less well in school and are more likely to become delinquent; under conditions of mass incarceration, the moving back and forth of offenders between prison and home leads to community disorganization.  

In an article titled “The Limited Importance of Prison Expansion,” William Spelman concludes, “The crime drop would have been 27 percent smaller than it actually was, had the prison build-up never taken place.” Richard Rosenfeld used different methods and concluded that the prison build-up was responsible for about 25 percent of the drop in crime rates. In his detailed analysis, Harvard sociologist Bruce Western concludes that the “increase in the state imprisonment rate between 1993 and 2001 reduced the rate of serious crimes by 2 to 5 percent, about one-tenth of the 1990s crime drop.” Well-known criminologist Franklin Zimring emphasizes the cyclical nature of crime rates and suggests that a “best guess of the impact” of incarceration on crime rates “would range from 10% of the decline at the low end to 27% of the decline at the high end.” The few criminologists who think that the growth in imprisonment is responsible for more of the reduction in crime nevertheless concede that “the expansion of the inmate population certainly incurred exorbitant costs, both in terms of its disastrous impact on the lives of offenders and their families and in terms of the huge expenditure of tax revenue.”

Prison had only a modest effect on crime rates because American jurisdictions have always been highly likely to imprison violent offenders, so the incarceration binge swept up more people with less significant criminal histories. Incarcerating people who are less dangerous means there is less of an impact on public safety. Consider that

the percentage of state prisoners incarcerated for violent offenses has actually declined from 57 percent to 48 percent. From 1980 to 1997, the number of violent offenders doubled, the number of nonviolent offenders tripled, and the number of drug offenders increased eleven-fold. At the end of 2001, there were an estimated 1.2 million nonviolent offenders locked up in America at a cost of more than $24 billion annually.

Further, a large number of those admitted to prison were people who had their parole revoked for technical reasons, not because they were charged with or convicted of a new crime.

Another reason to be skeptical that the imprisonment binge had a significant impact on the crime rate is that the states with the fastest-growing prison populations did not have the greatest crime reductions. The point is made by Newt Gingrich, the former Speaker of the House and architect of the
1994 Republican “Contract with America,” who once proposed legislation calling for life imprisonment for importing more than two ounces of marijuana. He now notes that

Over the past seven years, Florida’s incarceration rate has increased 16 percent, while New York’s decreased 16 percent. Yet the crime rate in New York has fallen twice as much as Florida’s. Put another way, although New York spent less on its prisons, it delivered better public safety.

More comprehensive reviews support the conclusion that there’s no correlation between states that had the greatest growth in incarceration and those that had the greatest declines in crime rates. Noted criminologist Joan Petersilia suggests that 10 to 15 percent of inmates could be safely released. In reviewing the results of the research by a Working Group on the Economics of Crime, Philip J. Cook and Jens Ludwig ask, “What would we give up by reducing average sentence lengths back to 1984 levels? In terms of crime control, the answer may be: not all that much.”

POLICE Another popular theory is that police contributed substantially to the decline in crime rates. In appraising this idea, keep in mind that the GAO found that the policy of hiring 100,000 police officers accounted for 5 percent of the reduction in crime. Remember, too, that the effect of police arresting and taking offenders off the street is accounted for in the discussion of prisons. Thus, the claim to be evaluated is that changes in police strategy—such as policing crime “hot spots,” and aggressive enforcement of gun control laws—lowered crime rates. Research suggests such tactics can make a difference, yet there is not evidence that these tactics were implemented widely enough across the nation to have contributed to a substantial decline in the crime rate.

One place where some experts are willing to credit police tactics with helping to reduce crime is New York City, where murder and felony rates decreased dramatically. Some of the credit for this is said to go to the aggressive policing encouraged by former New York City Police Commissioner William Bratton. This aggressiveness may have helped reduce crime, but it brought with it a 62 percent increase in the number of citizen complaints between 1994 and 1997 to the Civilian Complaint Review Board about police abuse, excessive force, and discourtesy. To “black and Latino leaders who say some of Bratton’s cops carry his aggressive style too far—‘that’s too damn bad,’ says Bratton.”

On the other hand, Elliott Currie points out that many cities in California saw crime reductions when their police engaged in “more positive and community-oriented” activities, and that there are other “cities in which the police have done practically nothing that is new, and still the levels of violent crime have dropped strikingly.” John Conklin, in his book Why Crime Rates Fell, concurs that there is little to support a general link between policing and crime rates.
NONCRIMINAL JUSTICE FACTORS A variety of research attributes the decline in crime rates to factors other than criminal justice policies. Alfred Blumstein argues that the extreme growth in violence during the late 1980s and early 1990s was driven by a “homicide epidemic” made up primarily of murders committed by young men using guns. This was the period in which crack cocaine was introduced into inner cities. Juveniles were recruited into the drug business, in part because older drug dealers were being increasingly incarcerated, and the juveniles were “less vulnerable to the punishments imposed by the increasingly punitive adult criminal justice system.” At the same time there was a large influx of handguns into inner cities, often with higher power and faster action than traditional handguns. The mixture was highly volatile, because young men are not known for their peaceful dispute-resolution skills. Conflicts that previously would have been resolved by fists or knives were now increasingly solved with guns, indeed, often with extremely lethal semiautomatic pistols. During this period, homicide arrests for young men rose dramatically, while those for men 24 years old or older stayed relatively stable.

By 1993, murders started to decline, and so too did homicide arrests of young men. Though Blumstein acknowledges that the imprisonment binge played some role in this decline, he doubts that incarceration played more than a small role. First of all, crime was still rising in the 1980s when the prison population had already been growing for a decade. Second, the juveniles recruited into the drug trade were, on the whole, less likely to face incarceration due to their youth (32 is the median age of state prisoners). And, because these juveniles were frequently replacing less violent, older drug dealers who were incarcerated, the growth in imprisonment actually contributed to the increase in violence. Blumstein observes,

It is somewhat ironic that the growth in violence with handguns was at least partly a consequence of the drug war’s incarceration of many of the older drug sellers. … As older sellers were taken off the street, the drug market turned to younger individuals, particularly inner-city African-Americans. … The reduction in age of the workers in the crack trade entailed a predictable increase in violence, as the inclination to deliberate before acting is simply less developed in the young.

The peak in violent crime was also driven by turf wars between inner-city drug gangs. After enough fighting, more or less stable turf boundaries arise and the rate of violence subsides, not because the police have succeeded, but because the (surviving) drug dealers succeeded in creating a more stable inner-city business. The late James Fyfe, distinguished Professor of Criminology at the John Jay College of Criminal Justice and former New York City Police Captain, commented, “When a new illegal and profitable substance comes along, there is fighting and scratching for control. … Then dealers kill each other off, and the market stabilizes and the amount of violence decreases.” So, while turf wars among drug gangs were a “staple of
the late 1980s and early 1990s … such battles have now largely succumbed to what criminologist James Lynch terms the ‘routinization of the drug trade’.”

Further crime reductions occurred as the popularity of crack cocaine declined, which reduced the profitability of drug markets and the associated violence. Blumstein notes: “As recognition of its deleterious effects became widespread, word spread through the streets that crack was an undesirable drug … diminishing the number of new users”; the reduction in the use of handguns by juveniles, credited to a combination of police pressure and action by community groups trying to clean up their neighborhoods; and the robust economy that “has provided legitimate job opportunities for [many young people], which has created incentives to avoid illegal activities.”

The continued reduction in the use of crack and of methamphetamine may explain some of the recent declines in crime rates. The National Survey on Drug Use and Health reported that from 2006 to 2010, the number of methamphetamine users declined by more than half and cocaine users declined by about 40 percent.

The final noncriminal justice factor to consider is the reduction in lead in the environment starting in the 1970s. Children growing up with lower levels of lead in their bodies are less aggressive and have fewer impulse control problems as teenagers and young adults. The accumulated data linking lead to permanent neurobehavioral disorders (especially through exposure of preschool children) was so strong that in 1974 the Environmental Protection Agency established a timetable for shifting to unleaded gasoline and preventing tons of lead in car exhaust from entering the air.

Environmental and health economist Jessica Reyes argues that “between 1992 and 2002, the phase-out of lead from gasoline was responsible for approximately a 56% decline in violent crime”—and “may cause further declines in the future.” The research of industrial economist David Nevin supports the conclusion that lead reduction was the biggest cause of reductions in crime. He found consistent and strong correlations between lead and violent crime, both in the U.S. and European nations, which switched to unleaded gas at different times. Many people may be surprised that a decades-old regulatory act may have caused more of the decrease in crime rates than a recent criminal justice policy, but “within the field of neurotoxicology, Nevin’s findings are unsurprising, said Ellen Silbergeld, professor of environmental health sciences at Johns Hopkins University,” according to a Washington Post article.

So, while politicians claim credit for the recent declines in crime, the real story appears to be that the enormous growth in our prison population over the last decades, coupled with questionable police tactics, may have contributed in some measure to the decline. But most of the decline can be attributed to factors beyond the criminal justice system, including a shift away from crack, periods of strong economic growth, extension of unemployment benefits during weak economic growth, and the public health initiative to remove lead from the environment. These factors together have contributed to reducing extremely high crime rates to rates that are lower, but high nonetheless.
short, crime is still rampant and, for all their crowing and claiming credit, neither politicians nor criminal justice policy makers have come close to changing this fact. The criminal justice system may win the occasional skirmish, but it is still losing the war against crime.

In sum, when we look behind the politicians’ claims to have turned the tide against violence, the fact remains that criminal justice policy is failing to make our lives substantially safer. How are we to comprehend this failure? It appears that our government is failing to fulfill the most fundamental task of governance: keeping our streets and homes safe, assuring us of what the Founding Fathers called “domestic tranquility,” and providing us with the minimum requirement of civilized society. It appears that our new centurions, with all their modern equipment and know-how, are no more able than the old Roman centurions to hold the line against the forces of barbarism and chaos. There are a number of ways in which to respond to this failure. One is to define it out of existence. For example, David Garland, responding to the claim that prisons have failed to reduce crime, contends that, if the prison is “evaluated in terms of its ability to deprive offenders of their liberty in accordance with a court order, to exclude them from society for a period of time, or to inflict mental suffering in ways which satisfy a punitive public … , its only failures would be occasional escapes and unwanted leniencies.” To be sure, if all we ask of prisons is that they be prisons, that is, that they lock some people up for a while under unpleasant conditions, they succeed quite well. It should be clear, however, from the statements we have already cited from politicians defending increased imprisonment that our leaders assert that prisons will make our society safer by reducing crime. We should, then, hold prisons and the rest of the criminal justice system to this test. And when we do, they largely fail.

Another way to come to terms with this failure is to look at the excuses that are offered for it. This we will do—but mainly to show that they do not hold up!

One commonly heard excuse is that we can’t reduce crime because our laws and our courts are too lenient. Translation: We are failing to reduce crime because we are not tough enough. Other excuses point to some feature of modern life, such as urbanization or population growth (particularly the increase in the number of individuals in the crime-prone ages of 15 to 24), and say that this feature is responsible for the growth in crime. Translation: We are failing to reduce crime because it is impossible to reduce crime.

Soon, we shall look at these excuses in greater detail and show that they do not explain our failure to reduce crime, and we will present evidence to support the claim that we could reduce crime and the harm it causes if we wanted to. So the question “How are we to comprehend our failure to reduce crime?” still stares us in the face. Examination of the excuses and of the rapidly growing body of knowledge about policies that are effective in reducing crime suggests that our failure is avoidable. What has to be explained is not why we cannot reduce crime, but why we will not! Oddly enough, this paradoxical result points us in the direction of an answer to our question.
Failure is, after all, in the eye of the beholder. The last runner across the finish line has failed in the race only if he or she wanted to win. If the runner wanted to lose, the “failure” is, in fact, a success. Here lies the key to understanding our criminal justice system. The failure of policies and institutions can serve vested interests and thus amount to success for them!

If we look at the system as “wanting” to reduce crime, it is an abysmal failure that we cannot understand. If we look at it as not wanting to reduce crime, it’s a howling success, and all we need to understand is why the goal of the criminal justice system is to fail to reduce crime. If we can understand this, then the system’s “failure,” as well as its obstinate refusal to implement the policies that could remedy that “failure,” becomes perfectly understandable. In other words, we can make more sense out of criminal justice policy by assuming that its goal is to maintain crime than by assuming that its goal is to reduce crime!

The remainder of this chapter explores the excuses for the failure to reduce crime and offers evidence to back up our assertion that there are policies that could reduce crime that we refuse to implement. We then briefly outline the relationship between the Pyrrhic defeat theory and the criminological theory of Kai Erikson and Émile Durkheim, to which it is akin. The chapter closes with a word on the work of Michel Foucault, whose views run parallel for a while to those defended in this book, before heading off in a different direction.

**THREE EXCUSES THAT WILL NOT WASH, OR HOW WE COULD REDUCE CRIME IF WE WANTED TO**

On July 23, 1965, President Lyndon Johnson signed an executive order establishing the President’s Commission on Law Enforcement and Administration of Justice to investigate the causes and nature of crime, to collect existing knowledge about our criminal justice system, and to make recommendations about how that system might better meet “the challenge of crime in a free society.” The commission presented its report to the president early in 1967, thick with data and recommendations. In the more than 40 years since the report was issued, more and more money has been poured into crime control, with the bleak results already outlined. When the commission wrote, it estimated that more than $4 billion was being spent annually at the national, state, and local levels to pay for police, courts, and correctional facilities in the fight against crime. Since that time, the violent crime rate climbed from 200 per 100,000 in the population in 1965 to 404 in 2010, and the property crime rate went from 2,249 to 2,942 per 100,000. The annual cost to the public of this brand of domestic tranquility was more than $227 billion by 2007, with 2.45 million persons employed by the criminal justice system. BJS states that “if increases in total justice expenditure were limited to the rate of inflation (184%) since 1982, expenditures in 2003 would have been approximately $65.7 billion.” Thus, after adjusting for inflation, public expenditure on criminal justice has roughly tripled since 1965. And this doesn’t even count the more
than $100 billion spent each year on private security or the extra money people spend to live in gated communities.\textsuperscript{78} Dollar for dollar, crime control is hardly an impressive investment—that is, if you think you are investing in crime reduction. (In Chapter 4, we comment on private prisons and the criminal justice-industrial complex that has financial interests in the continued expansion of the criminal justice system.)

Multiplying almost as fast as anticrime dollars are excuses for our failure to reduce crime significantly in the face of increased expenditure, personnel, research, and knowledge. Three excuses have sufficient currency to make them worthy of consideration as well as to set in relief the Pyrrhic defeat thesis, which we propose in their place.

**First Excuse: We’re Too Soft!**

One excuse is that we are too soft on crime.\textsuperscript{79} This view is widespread among laypersons (in 2003, 65 percent of the people polled thought courts were not harsh enough) and conservative critics of criminal justice policy (the late Ernest van den Haag, for example, claimed that “non-punishment is the major ‘social’ cause of crime”).\textsuperscript{80} This view is hard to disprove because, no matter how harsh we are, one can always say we should have been harsher. Nonetheless, the evidence is that U.S. policy has continued to get harsher from the 1970s “law and order” campaigns to the “war on crime,” the “war on drugs,” and other variations on “get tough on crime.” The evidence presented above demonstrated that getting tougher had modest effects in reducing crime—and may have some criminogenic effect.

Further, comparisons across countries do not suggest that the U.S. is soft or lenient in any major respect: not in the range of acts covered by law (especially drug use and prostitution); not in the likelihood of arrest, of being charged, convicted, sentenced to prison; the actual time served in prison; and not in the likelihood of having parole or probation revoked (especially for technical reasons rather than because of a new crime).\textsuperscript{81} At year-end 2009, the U.S. rate of incarceration (in jails and prisons) was 743 per 100,000 in the national population. For the United Kingdom, it was 155, for Germany 87, for Belgium 93, and for Canada (a society much like our own), it was 117 prisoners for every 100,000 persons in the national population.\textsuperscript{82} Before and after the recent declines in crime, we had far greater percentages of our population under lock and key than comparably advanced European nations as well as our neighbor to the north.

Research suggests that our incarceration rates are not so different from those of other countries when compared with our higher crime rates and to the “level of lethal violence in the United States [that] is probably the highest in the Western world.”\textsuperscript{83} While all nations punish violent crime seriously, Oxford’s *Crime and Public Policy* notes there is not moral consensus about whether recreational drug use should be a crime, so “the creation and enforcement of drug laws are seen more as policy decisions rather than as imperatives.”\textsuperscript{84} The U.S. is not unique in criminalizing drug possession and sales, but is more likely to
use incarceration—in some “67 percent of drug cases, followed distantly by the Netherlands at 46 percent and Switzerland (38 percent).” Prison sentences were also longer (an average of 23 months), twice that in the countries with the next longest sentences (England and Wales).\(^85\)

Such policy decisions stand in contrast to Portugal, which in 2001 decriminalized “the possession of all drugs, when deemed for personal use.”\(^86\) In 2003, Canada decriminalized possession of small amounts of marijuana, and started embracing “safe injection centers” for users of harder drugs.\(^87\) In response to a government challenge, Canada’s Supreme Court ruled unanimously that one project, Insite, should remain open: “Insite has saved lives and improved health without increasing the incidence of drug use and crime in the surrounding area. It is supported by the Vancouver police.”\(^88\)

But even if our incarceration rates stand in the same proportion to our overall crime rates as those of other countries, that still indicates that we are no more lenient than other modern nations. Nor, of course, should it be forgotten that we are the only Western industrialized nation that still has the death penalty, let alone (until 2005) the only such nation that executed people who had committed crimes while under the age of 18. At the close of 2010, the state and federal prison systems held 3,158 prisoners under sentence of death and executed 46 individuals that year.\(^89\) On December 2, 2005, North Carolina carried out the 1,000th execution in the United States since the reinstatement of the death penalty by the U.S. Supreme Court in 1976. The United States also makes much more extensive use of the sentence of life without the possibility of parole than other Western nations.\(^90\)

Finally, our incarceration rate doesn’t include those who are currently on probation and parole. When these are added to those in jail or prison, the number of adults under some form of correctional supervision in 2010 was more than 7 million; that is, one of every 31 American adults—3.2 percent of the U.S. adult population—was incarcerated or on probation or parole. This represents almost a quadrupling of the number since 1980, when 1.84 million persons were under correctional supervision.\(^91\) Our high rate of crime and lethal violence has persisted in the face of decades of getting tougher, leading one criminologist to characterize the get-tough approach to crime as a conservative social experiment that has been tested and shown to fail.\(^92\)

**Second Excuse: A Cost of Modern Life**

Another excuse is that crime is an inescapable companion of any complex, populous, industrialized society. As we become more complex, more populous, more industrialized, and particularly more urbanized, we will have more crime as inevitably as we will have more ulcers and more traffic. These are costs of modern life, the benefits of which abound and clearly outweigh the costs. Crime, then, takes its place alongside death and taxes. We can fight, but we cannot win, and we should not tear our hair out about it.

This is less an explanation than a recipe for resignation. Furthermore, it does not account for the fact that other complex, populous, highly industrialized
and technologically advanced nations such as Japan have crime rates that are considerably lower than ours. Japan has slightly less than half the U.S. population crowded onto a landmass less than 1/25 the size of the United States. In 2008, Japan had 1,297 homicides and about 28 violent offenses for every 100,000 inhabitants. That same year, the United States had 16,272 homicides and a violent crime rate of 456 for every 100,000 inhabitants. 93 In 2008, Tokyo, Japan, had a population of 12.9 million people and recorded 179 homicides; that same year, the entire state of Texas had 24.3 million people (almost twice the population of Tokyo) and 1,374 homicides—more than all of Japan. 94 In 2004, when the homicide rate in the United States was 5.6 per 100,000 inhabitants, Japan’s rate was 0.5 per 100,000; Kenya had a rate of 6.7; Switzerland, 2.9; Denmark, 0.8; France, 1.6; and Canada, 2.0. 95 Currie summarizes the international data, stating that “even within the advanced industrial societies, the differences in levels of serious violent crime are extreme.” Using homicide data, which he believes provides the most reliable comparisons, Currie says:

The risks of dying by violence in the United States are more than double those of the next closest advanced industrial country—Canada—and roughly six times the average for the European Union. In the mid-2000s, they were 10 times higher than those in Germany or Austria, and 12 times those in the United Kingdom. … The chances of dying by intentional violence among youth aged 15–29 years in the United States are 10 times those of the Netherlands and Denmark, 16 times those in Norway, and more than 25 times those in Germany. Indeed, the violent death rate for young Americans more closely resembles that of youth in Russia or some Latin American nations than it does the rest of the affluent industrial world. 96

The “costs of modern life,” or urbanization, excuse also fails to account for the striking differences in the crime rates within our own modern, complex, populous, and urbanized nation. Within the United States in 2010, the homicide rate ranged from 1 per 100,000 inhabitants in New Hampshire to 11.2 in Louisiana. 97 In 1968, Time magazine reported that Texas, home of the shoot-out and divorce-by-pistol, leads the U.S. with about 1000 homicides a year, more than 14 other states combined. Houston is the U.S. murder capital: 244 last year, more than in England, which has 45 million more people. 98

By 2010, Texas (with 1,249 homicides) was in second place, ahead of Florida and New York (with 866 and 987, respectively), and behind California (with 1,809); and Houston’s glory as murder capital had clearly faded. Houston reported 269 homicides for 2010, outdone by New York City (with 536), Los Angeles (293), and even Detroit (310). 99

Such variations are not limited to murder. A comparison of violent and property crime rates for Standard Metropolitan Statistical Areas (SMSAs,
areas “made up of a core city with a population of 50,000 or more inhabitants and the surrounding county or counties which share certain metropolitan characteristics”) reveals a striking lack of correlation between crime rate and population size (which we can take as a reasonable, though rough, index of urbanization and the other marks of modernity, such as complexity and industrialization, that are offered as explanations for the intractability of crime). See Table 1.1, in which metropolitan areas of different sizes and similar crime rates are ranked by population.

In other words, classifying crime with death and taxes and saying that it is an inevitable companion of modernity or urbanization will just not explain our failure to reduce it. Even if death and taxes are inevitable (unfortunately, not in that order), some die prematurely and some die suspiciously and some pay too much in taxes and some pay none at all. None of these variations is inevitable or unimportant. So too with crime. Even if crime is inevitable in modern societies, its rates and types vary extensively, and this is neither inevitable nor unimportant. Indeed, the variations in crime rates between modern cities and nations are proof that the extent of crime is not a simple consequence of urbanization. Other factors must explain the differences. These differences suggest that although some crimes may be an unavoidable consequence of urbanization, this in no way excuses our failure to reduce crime at least to the lowest rates reported in modern cities and nations.

### Third Excuse: Blame It on the Kids!

A third excuse takes the form of attributing crime to young people, particularly young men between the ages of 14 and 25. This explanation goes as follows: Young people in our society, especially males, find themselves

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**TABLE 1.1 Metropolitan Areas by Population and FBI Crime Rates, 2010**

<table>
<thead>
<tr>
<th>City</th>
<th>Population</th>
<th>Violent Crime Rate (Per 100,000 People)</th>
<th>Property Crime Rate (Per 100,000 People)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td>11,678,308</td>
<td>496</td>
<td>1,659</td>
</tr>
<tr>
<td>Houston, TX</td>
<td>5,978,213</td>
<td>620</td>
<td>3,944</td>
</tr>
<tr>
<td>Phoenix, AZ</td>
<td>4,229,275</td>
<td>371</td>
<td>3,535</td>
</tr>
<tr>
<td>Denver, CO</td>
<td>2,555,601</td>
<td>337</td>
<td>2,771</td>
</tr>
<tr>
<td>Boston, MA</td>
<td>1,908,436</td>
<td>565</td>
<td>2,409</td>
</tr>
<tr>
<td>Memphis, TN</td>
<td>1,313,722</td>
<td>1,007</td>
<td>4,625</td>
</tr>
<tr>
<td>Fresno, CA</td>
<td>926,736</td>
<td>537</td>
<td>4,251</td>
</tr>
<tr>
<td>Wichita, KS</td>
<td>621,313</td>
<td>582</td>
<td>3,799</td>
</tr>
<tr>
<td>Anchorage, AK</td>
<td>313,181</td>
<td>813</td>
<td>3,506</td>
</tr>
<tr>
<td>Farmington, NM</td>
<td>126,955</td>
<td>646</td>
<td>2,193</td>
</tr>
</tbody>
</table>

*Source: UCR–2010, Table 6.*
emerging from the security of childhood into the frightening chaos of adult responsibility. Little is or can be done by the adult society to ease the transition by providing meaningful outlets for the newly bursting youthful energy aroused in still immature and irresponsible youngsters. Hence, these youngsters both mimic the power of manhood and attack the society that frightens and ignores them by resorting to violent crime. Add to this several rapid increases in the population of this age group (such as the “baby boom”), and we have another explanation that amounts to a recipe for resignation: We can no more expect to reduce crime than we can hope to eradicate adolescence. We can fight crime, but it will be with us until we figure out a way for people to get from childhood to adulthood without passing through their teens.

Youngsters do show up disproportionately in crime statistics. In 1975, *Time* reported that “forty-four percent of the nation’s murderers are 25 or younger, and 10 percent are under 18. Of those arrested for street crimes, excluding murder, fully 75 percent are under 25 and 45 percent are under 18.” In 2010, persons between the ages of 15 and 24 constituted 14 percent of the nation’s population. They represented 39 percent of those arrested for all crimes. However, there are problems with attributing crime to youth. The most important is that crime rates have grown faster than either the absolute number of young people or their percentage of the population. See Table 1.2, which compares national crime rates over the past 40 years with the percentage of the population represented by people aged 14 to 24.

<table>
<thead>
<tr>
<th>Year</th>
<th>Violent Crime Rate (Per 100,000 Persons)</th>
<th>Property Crime Rate (Per 100,000 Persons)</th>
<th>14–24 Year Olds (% of Population)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>161</td>
<td>1,726</td>
<td>15.1</td>
</tr>
<tr>
<td>1970</td>
<td>364</td>
<td>3,621</td>
<td>19.9</td>
</tr>
<tr>
<td>1975</td>
<td>488</td>
<td>4,811</td>
<td>20.8</td>
</tr>
<tr>
<td>1980</td>
<td>597</td>
<td>5,353</td>
<td>20.4</td>
</tr>
<tr>
<td>1985</td>
<td>558</td>
<td>4,666</td>
<td>18.2</td>
</tr>
<tr>
<td>1990</td>
<td>730</td>
<td>5,073</td>
<td>16.2</td>
</tr>
<tr>
<td>1995</td>
<td>685</td>
<td>4,591</td>
<td>15.2</td>
</tr>
<tr>
<td>2000</td>
<td>507</td>
<td>3,618</td>
<td>15.4</td>
</tr>
<tr>
<td>2005</td>
<td>469</td>
<td>3,430</td>
<td>15.6</td>
</tr>
<tr>
<td>2010</td>
<td>404</td>
<td>2,942</td>
<td>14</td>
</tr>
</tbody>
</table>

Notice that, while there is some correlation between the rise and fall of crime rates and percentage of young people in the population, there are also important divergences: The percentage of young people in the population in 2000 was about what it was in 1960, yet the crime rate in 2000 was almost four times higher than that of 1960. Obviously, this growth in crime cannot be attributed to youth. The same can be said of the years 1970 and 1975, when young people’s percentage in the population grew slightly, and crime rates soared. Or compare 1980 and 1990, when the youth percentage dropped more than 4 points and the violent crime rate grew significantly. In that same period, the number of 15 to 24 year olds decreased absolutely by 5,660,000, while the absolute number of Index crimes rose by over 1 million. Similar discrepancies show up when the National Crime Victimization Survey (NCVS) is used.

What’s more, the period of decline in the youth population coincided with an increase in serious crime in New York City; and even when crime rates went down recently, they never returned to the levels of the 1940s, when the percentage of young people aged 16 to 24 was about 14, roughly comparable to what it is now.

We do not deny that a large number of crimes are committed by young people. The facts suggest, however, that although the number of youngsters in the populace has an important effect on crime rates, it cannot fully explain them or explain them away. That young people have higher rates of crime than older folks does not mean that young people always have the same rate of crime. When this group declined, crime went down, but not in proportion to the decline in the youth population. When this group was growing, the crime rates were growing faster. If crime increases faster (or decreases more slowly) than the youth population, that increase (or decrease) cannot be explained by the increase (or decrease) in youths. If the crime rate of 15–24 year olds changes, then this certainly is not explained by their youth. Something other than their youth or their numbers must explain why they are committing more crimes than people their age did in other periods.

In any case, the greater likelihood of young people committing crime provides no excuse for failing to reduce the growth of crime at least to the rate at which the number of young people is growing (or shrinking). So another excuse for our failure fails to excuse. To get an idea of what criminal justice policy truly aimed at reducing crime might look like, let’s look at the known sources of crime and the promising crime-prevention programs.

**KNOWN SOURCES OF CRIME**

Currie notes that the amount of crime and violence in a country is “strongly influenced by social policy and can be substantially mitigated, or exacerbated, by it.” The level of crime in a society “represents a social and political choice—not simply an individual one, or even a reflection of abstract, impersonal forces operating pristinely above deliberate human intervention. In short, to a significant extent, we make the world of violence that surrounds us.”
We agree and argue that if the United States were serious about crime reduction, much more support would be given to policies that address the known sources of crime. Note that we say sources rather than causes because pathways to crime are less direct and more complicated than simple cause and effect. We know that poverty, slums, and unemployment are sources of street crime. We know that they breed alienation from social institutions, and that they reduce the likely rewards of going straight. But, we know as well that many, if not most, poor, unemployed slum dwellers do not engage in street crime. Yet, to say that this means we do not know that poverty and the other conditions discussed below are sources of violent crime is like saying that we do not know that a bullet in the head is deadly because some people survive or because we do not fully understand the physiological process that links the wound with the termination of life.

Poverty and Inequality

Those youngsters who figure so prominently in arrest statistics are not drawn equally from all economic strata. Although there is much reported and even more unreported crime among middle-class youngsters, the disturbing level of violent crime attributed to this age group is largely the work of poor inner-city youth. This is the group at the lowest end of the economic spectrum: unemployment hovers around 25 percent, with underemployment (the percentage of persons either jobless or with part-time, low-wage jobs) still higher. This is a group with no realistic chance (for any but a rare individual) to enter college or amass sufficient capital (legally) to start a business or to get into the high-wage, skilled job markets. We know that poverty is a source of crime, and yet we do virtually nothing to improve the life chances of the vast majority of the inner-city poor. They are as poor as ever and are facing cuts in welfare and other services.

That poverty is a source of crime is not refuted by the large and growing amount of white-collar crime that we shall document later. In fact, poverty contributes to crime by creating need, while, at the other end of the spectrum, wealth can contribute to crime by unleashing greed. Criminologist John Braithwaite argues that economic inequality itself worsens crimes of the poor and of the well-off. It increases the opportunities for crimes by the well-off and reduces the likelihood they will be held accountable to the criminal law. At the same time, inequality increases the humiliation of the poor who are surrounded by visions of “the good life” and feel responsible for their failure to attain it. And inequality has worsened in recent years.

The gap between rich and poor worsened during the 1980s and 1990s. In 1970, the poorest fifth of the nation’s families received 5.5 percent of the aggregate income, and the richest fifth received 41.6 percent. By 2010, the share of the poorest fifth had declined to 3.3 percent, while that of the richest fifth had risen to 50.2 percent. In the period from 1980 to 2010, the share of the top 5 percent rose from 14.6 to 21.3 percent. By 2010, the number of Americans officially defined as being in poverty was 46.2 million (about 1 in
8 Americans), up from 30.1 million in 1990, and from 25.2 million in 1980.\textsuperscript{107} (According to the Census Bureau, the 2010 number is “the largest number in the 52 years for which poverty estimates have been published.”)\textsuperscript{108} By 2010, 22 percent of American children were living in poverty, and in 2009 about 36 percent of black children and 33 percent of Latino children lived in families below the poverty level, compared with 12 percent of white children.\textsuperscript{109}

These long-standing trends have worsened because of the 2008 financial crisis, which was the result of an aggressive policy of financial deregulation. The developments are also the predictable outcome of policies that cut services to the poor while reducing the taxes of the wealthy. In 1982, a group of 34 prominent economists sharply criticized then-President Reagan’s economic policy as “extremely regressive in its impact on our society, redistributing wealth and power from the middle class and the poor to the rich, and shifting more of the tax burden away from business and onto low- and middle-income consumers.”\textsuperscript{110} At the same time, a study released by the Urban Institute concluded that “the Reagan administration’s policies are not only aiding upper-income families at the expense of the working poor, but also are widening the gulf between affluent and poorer regions of the country.”\textsuperscript{111} The study maintained that the combined effect of the administration’s tax and social service spending cuts was “to penalize working families near the poverty line who receive some federal benefits ... creating ‘major work disincentives’.”

The tax cuts enacted by President George W. Bush had much the same effect because 25 percent of the benefits went to those with incomes in the top 1 percent, and nearly 50 percent of the benefits went to those with incomes in the top 10 percent. Using data from the Congressional Budget Office, the nonpartisan Center on Budget and Policy Priorities noted that between 1979 and 2001,

- the average after-tax income of the top one percent of households rose by a stunning $409,000, or 139 percent, after adjusting for inflation. This dwarfed the $6,300, or 17 percent, average increase among the middle fifth of the population, over this 22-year period, and the $1,100, or 8 percent, increase among the bottom fifth of the population.\textsuperscript{112}

Furthermore, as unemployment has gone up and down over the past decades, unemployment at the bottom of society remains strikingly worse than the national average. For example, over the past 45 years, black unemployment has remained slightly more than twice the rate of white unemployment. In 1967, when 3.4 percent of white workers were unemployed, 7.4 percent of black workers were jobless. By 2011, 8 percent of white workers were unemployed compared to 16.7 percent of blacks. Among those in the crime-prone ages of 16 to 19, 12 percent of white youngsters and 46.5 percent (almost one in every two) of black youngsters were jobless.\textsuperscript{113}

Another place in which poverty and inequality are in evidence in America is in the distribution of wealth, that is, the value of people’s total
Edward Wolff writes that the equalizing trends of the 1930s–1970s reversed sharply in the 1980s. The gap between the haves and have-nots is greater now than at any time since 1929. The sharp increase in inequality since the late 1970s has made wealth distribution in the United States more unequal than in what used to be perceived as the class-ridden societies of northwestern Europe.  

In 2007, the most recent year for which data are available, the wealthiest 1 percent of American families owned 33.8 percent of total American wealth, and those immediately below them in the top 10 percent of the population owned another 37.7 percent of the wealth. The poorest 50 percent owned 2.5 percent of the wealth. These figures are on the conservative side because the survey on which they are based does not (for reasons related to sampling) include the Forbes 400, the wealthiest 400 Americans. In 2007, making that list required wealth of at least $1.3 billion. Together, these 400 people had almost 2.3 percent of all wealth.

This conclusion is supported by research on income mobility, which is an important factor in determining class mobility and wealth. An economist with the Federal Reserve Bank of Chicago notes that “income mobility has declined in the last 20 years.” The article, “The American Dream gains a harder edge,” notes that most Americans do not believe mobility has declined, “but academic studies suggest that income mobility in the U.S. is no better than in France or Britain.” The New York Times series on class noted the same phenomenon and aptly summarized the research as: “Mobility happens, just not as rapidly as was once thought.”

In his important book, Justice as Fairness, John Rawls—the late Harvard moral and political philosopher called by some “the John Stuart Mill of the twentieth century”—discusses a form of society that he calls “welfare-state capitalism.” In welfare-state capitalism, there is considerable inequality in wealth and income and only a minimum “safety net” for the poor—enough to make sure that their basic needs are satisfied, but no more than that. Rawls writes that in a capitalist welfare state, “there may develop a discouraged and depressed underclass many of whose members are chronically dependent on welfare. This underclass feels left out and does not participate in the public political culture.”

Can there be any doubt that Rawls is describing the United States here? Is there any wonder why a society that does no more than provide for the most basic needs of its poorest members (when it even does that much!) also finds that those individuals commit crimes? Rawls’s analysis shows us that economic inequality may result in crime, not simply from need, but by producing an impoverished class that feels “left out” of society and thus does not develop allegiance to its major institutions.

Writes Todd Clear, professor of criminal justice at Rutgers University, “Let’s start investing in things that really reduce crime: good schools, jobs and a future for young parents and their children.” Why don’t we?
Prison

We know that prison produces more criminals than it cures. As far back as 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended building no new adult prisons because “the prison, the reformatory and jail have achieved only a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it.” Instead, the U.S. built a record number of prisons, and currently more than 70 percent of the inmates in the nation’s prisons or jails are not there for the first time. The last time the Bureau of Justice Statistics did a major study, it found that 67.5 percent of inmates released in 1994, were rearrested within three years, “almost exclusively for a felony or serious misdemeanor” and almost 52 percent were back in prison. A study by the Pew Charitable Trusts followed inmates released in 1999 and 2004 for three years. It used slightly different methodology than the BJS study, but concluded “that recidivism rates have been largely stable.” The finding is to be expected given the continued emphasis on warehousing inmates rather than offering meaningful rehabilitation and helping them reintegrate into society. Indeed, prisons seem to do everything but give inmates the skills they will need to make it on the outside. Prison inmates are denied autonomy and privacy and are subjected to indignities and acts of violence as regular features of their confinement, all of which is heightened by overcrowding. As of the last day of 2010, 20 state prison systems were operating above the most generous measure of their reported capacity; the federal prison system was operating at 36 percent above capacity. A study of prisons in four Midwestern states found that about one-fifth of male inmates reported “a pressured or forced sex incident while incarcerated. About nine percent of male inmates reported that they had been raped.”

The predictable result, as delineated by Robert Johnson and Hans Toch in The Pains of Imprisonment, “is that the prison’s survivors become tougher, more pugnacious, and less able to feel for themselves and others, while its nonsurvivors become weaker, more susceptible, and less able to control their lives.” Prisoners are thus bereft of both training and capacity to handle daily problems in competent and socially constructive ways, inside or outside of prison. The organization Just Detention International (formerly Stop Prison Rape) reports, “Upon release, male prisoner rape survivors may bring with them emotional scars and learned violent behavior that continue the cycle of harm. Feelings of rage can be suppressed until release, when survivors may engage in violent, antisocial behavior.” According to a Human Rights Watch report titled “No Escape: Male Rape in U.S. Prisons,” “the only way to avoid the repetition of sexual abuse, many prisoners assert, is to strike back violently.” The report quotes a victim of prison rape saying, “People start to treat you right, once you become deadly.” In this way, prison makes inmates a greater harm to society than they were when they entered.

Once on the outside, burdened with the stigma of a prison record and rarely trained in a marketable skill, they find few opportunities for
noncriminal employment open to them. Nor does this affect all groups in America alike. According to Michael Tonry, author of Malign Neglect: Race, Crime and Punishment in America, “By affecting so many young black men, American criminal laws have further undermined the black family and made it harder for black men to get an education and find good jobs.” In his 2007 Presidential address to the American Society of Criminology, Professor Tonry went further: “If its aims were to reduce black men’s chances of earning a decent living, or being successfully married and a good father, or being socialized into prosocial values, it is hard to know how the criminal justice system could do those things better.”\(^{130}\) In addition, a study by the Sentencing Project indicates that the enormous number of African–American men who have been convicted of felonies and, therefore, deprived of their right to vote, is “having a profound [negative!] impact on the black community’s ability to participate in the political process.”\(^{131}\)

Because so much of the recent increase in imprisonment has been of inner-city black men who were involved in families and who had at least part-time legitimate employment at the time of their arrest and incarceration, social scientists are beginning to study the ways in which massive imprisonment is undermining the family and other community institutions, depriving children of male role models and women of potential husbands and support. Criminologists have found evidence suggesting that massive imprisonment may weaken inner-city institutions of informal social control and thus lead to more crime in the long run. Others argue that high levels of incarceration can weaken its stigma and thus the deterrent value of imprisonment; and incarceration can strengthen ties between prison gangs and offenders on the street.\(^{132}\)

Can we honestly act as if we do not know that our prison system (including our failure to ensure a meaningful post-release noncriminal alternative for the ex-con) is a source of crime? Should we really pretend, then, that we do not know why ex-cons turn to crime? Recidivism does not happen because ex-cons miss their alma mater. In fact, if prisons are supposed to deter people from crime, one would expect that ex-prisoners would be the most deterred, because the deprivations of prison\(^ {133}\) are more real to them than to the rest of us. Recidivism is thus a doubly poignant testimony to the job that prison does in preparing its graduates for crime, yet we do little to change the nature of prisons or to provide real services to ex-convicts.

In his 2004 State of the Union Address, President Bush seemed to indicate that he understood at least a small part of the recidivism problem when he discussed the 600,000 inmates released back into society each year. He said, “We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit more crimes and return to prison.” The Second Chance Act finally became law in April of 2008, with authorized expenditures of $400 million over four years. When divided into the 2,400,000 inmates who would be released over that period, that amounts to about $167 per inmate. The 2012 budget for the Department of Justice reduced funding for this act from $100 million a year to $63 million,\(^ {134}\) at a time when more inmates are being released from prison because of cost-saving measures. That is hardly
enough to ensure that America is “the land of the second chance—and when the gates of the prison open, the path ahead should lead to a better life.”

**Guns**

Most people know the expression “Guns don’t kill people, people kill people.” But guns make it much easier to kill people, so the huge stock of civilian guns (especially handguns) is a source of a firearm homicide rate in the United States that Oxford’s *Crime and Public Policy* says is “extraordinarily high by the standards of other industrialized countries.” And, because the fatality rate for robberies using a gun is three times higher than for robberies with knives, and ten times higher than for robberies with other weapons, countries like Italy and Australia that have robbery rates comparable to the United States’ have far fewer robberies that end up as homicides.

Speaking about the extraordinary spate of deadly violence that we had in the late 1980s and early 1990s, Garen Wintemute puts it bluntly: “the entire increase in homicide in the United States through 1993 was attributable to firearm homicide.” Increasingly, this was due to highly lethal semiautomatic pistols (during the same period, the percentage of homicides with regular revolvers declined significantly). Hospitals reported an increase in gunshot wounds per victim and in the size of bullets removed. This phenomenon is closely linked to trends in handgun production. Starting in the late 1980s, American gun manufacturers started producing “high capacity, medium-caliber semiautomatic pistols that were also very inexpensive.” Almost all were produced “by a small group of manufacturers in Southern California.”

A study by the nonpartisan National Research Council suggests that by 1999, the civilian gun stock was 258 million, with about 43 percent of households owning at least one. Researchers from Harvard’s School of Public Health estimated the number of privately owned firearms to be between 218 and 281 million. They note that “researchers have estimated about 25 guns per 100 people in countries such as Canada, New Zealand, Germany, France and Sweden. On the basis of current estimates from our survey, the U.S. has 93 guns per 100 people.”

The President’s Crime Commission reported that, in 1965, “5,600 murders, 34,700 aggravated assaults and the vast majority of the 68,400 armed robberies were committed by means of firearms. All but 10 of 278 law enforcement officers murdered during the period 1960–65 were killed with firearms.” The commission concluded that

more than one-half of all willful homicides and armed robberies, and almost one-fifth of all aggravated assaults, involve use of firearms. As long as there is no effective gun-control legislation, violent crimes and the injuries they inflict will be harder to reduce than they might otherwise be.

The situation has worsened since the commission’s warning. The FBI states, “In 1975, 66 percent of murders of persons (aged 15 to 19) were attributable
to guns, while in 1992 the figure rose to 85 percent. This increase supports the theory that today’s high-school-aged youths are exposed to an environment that includes guns.” The Office of Juvenile Justice reports, “By 1997, the homicide rate for 15- to 24-year-olds was 15.2 per 100,000, which is higher than the combined total homicide rate of eleven industrialized nations,” and goes on to point out, “Firearms were the weapons of choice in nearly two-thirds of all murders.” And, in 2001, then-President Bush noted, “In America, a teenager today is more likely to die from a gunshot than from all natural causes of death combined.”

The Centers for Disease Control report that in 2009, 31,228 deaths resulted from firearms—including suicides and accidents—and “for at least the 40 years prior to 2004, the two leading causes of injury death were MVT [motor vehicle traffic] deaths and firearms.” Guns also take a grave and worsening toll among our children. According to a report from the Children’s Defense Fund, nearly 100,000 children were killed by guns between 1979 and 2003.

In the face of facts like these—indeed, in the face of his own nearly fatal shooting by a would-be assassin—then-President Reagan refused to support any legislative attempts to control the sale of handguns. His successor, President George H. W. Bush, followed suit. On Thanksgiving Day 1993, Bush’s successor, Bill Clinton, signed into law the so-called Brady Bill, which went only so far as imposing a five-day waiting period for gun purchases to enable checks to see whether would-be gun purchasers have criminal records (states that do instant background checks are not required to have a waiting or “cooling off” period). The Brady Law leaves it to the states to enforce the waiting period and to get their police to make a “reasonable effort” to conduct the background checks. However, the bill provided no sanctions for states that did not comply, and it left it effectively up to the states to provide funding for the checks and to determine what is a “reasonable effort.” From 1994, when the Brady Law went into effect, until 2003, over 1.1 million applications for firearms have been rejected, but as Blumstein notes, “it is not known how many of those customers eventually bought guns from an unregulated source.” Moreover, while the Brady Law prohibits sales of guns to individuals with prior felony convictions, it does not apply to private sellers (only to dealers). And, the sad fact is that, as different studies show, between half and three-quarters of those arrested for crimes involving weapons had no prior felony conviction.

Moreover, many states continue to have lax gun laws with predictable effects. A 2008 Washington Post report stated that: “States with lax gun laws had higher rates of handgun killings, fatal shootings of police officers, and sales of weapons that were used in crimes in other states, according to a study underwritten by a group of more than 300 U.S. mayors”; and, further, that “[n]early all guns recovered in crimes are initially sold legally.” The Supreme Court’s decision in Heller (interpreting the Second Amendment to confer an individual right to own guns) makes regulation more difficult. But it is unlikely to prohibit universal background checks on gun purchasers or bans on assault weapons.
guns that can fire rapidly, and hold large amounts of ammunition). Can we believe that our leaders sincerely want to cut down on violent crime and the injuries it produces when they oppose even as much as registering guns or licensing gun owners, much less actually restricting the sale and movement of guns as a matter of national policy? (Many people wrongly believe that universal registration and licensing exist, when in fact only a few states require this.)

Can we really believe that if guns were less readily available, violent criminals would simply switch to other weapons to commit the same number of crimes and do the same amount of damage? Is there a weapon other than the handgun that works as quickly, that allows its user so safe a distance, or that makes the criminal’s physical strength (or speed or courage, for that matter) irrelevant? Could a bank robber hold a row of tellers at bay with a switchblade? Studies indicate that, if gun users switched to the next deadliest weapon—the knife—and attempted the same number of crimes, we could still expect two-thirds fewer fatalities because the fatality rate of the knife is roughly one-third that of the gun. In other words, if guns were eliminated and the number of crimes held steady, we could expect to save as many as two out of every three persons who are now the victims of firearm homicide.

Drugs

The United States has an enormous drug abuse and addiction problem. There is considerable evidence, however, that our attempts to cure it are worse than the disease itself. Most people associate drugs with crime because addicts steal. But addicts steal because the cost of drugs is high. This high cost is related to the drugs being illegal, because everyone in the distribution chain needs to profit enough to compensate for the risk of being caught and locked up. Much of the violence surrounding the drug trade is also related to drugs being illegal, because then the drug trade is in the hands of gangs and organized crime, and their disputes are not resolved through free markets or the legal system. In response, the U.S. has engaged in a Drug War that has cost billions, incarcerated millions, and is responsible for little change in drug usage. Moreover, the criminalization of drugs undercuts public health efforts to deal with drug addiction. Paul Goldstein provides a useful categorization of the relationship between drugs and crime:

- **Pharmacological/psychological consequences**: Criminal activity is caused by the chemical properties of the drug acting on the person’s brain.
- **Economic/compulsive crimes**: Criminal activity is caused by drug users committing crimes to get money to support their habit.
- **Systemic crime**: Criminal activity like violence and corruption are a regular part of doing business in the illicit drug trade because there is no regulation and formal dispute-resolution mechanisms are unavailable.

About the pharmacological consequences of drugs, says Alfred Blumstein, the drug “that has the strongest pharmacological effect is alcohol. ... Heroin
is a downer, so heroin doesn’t do much. And there hasn’t been shown to be much pharmacological effect of the other serious drugs on crime, not anything comparable to that of alcohol, which has been shown to be a strong stimulator of violence.”  

PCP tends to be one of the only other drugs to have a pharmacological link to violence. High doses of cocaine and methamphetamine can lead to some psychoses that include paranoia and delusion, which can lead to violence.

Further, many health effects are related less to pharmacology than to the criminalization of drugs. There is little evidence, for example, proving that heroin is a dangerous drug. James Q. Wilson, a defender of the prohibition of heroin and other drugs, admits that “there are apparently no specific pathologies—serious illnesses or physiological deterioration—that are known to result from heroin use per se.”  

Prior to 1914, when anyone could go into a drugstore and purchase heroin and other opiates the way we buy aspirin today, hundreds of thousands of upstanding, law-abiding citizens were hooked.  

But opiate addiction is not in itself a cause of crime. If anything, it is a pacifier. There is, writes Arnold Trebach, “nothing in the pharmacology, or physical and psychological impact, of the drug that would propel a user to crime.” On the basis of available scientific evidence, there is every reason to suspect that we do our bodies more irreversible damage by smoking cigarettes and drinking liquor than by using heroin. Most of the physical damage associated with heroin use is probably attributable to the trauma of withdrawal, a product not so much of heroin as of its occasional unobtainability. Health problems, including HIV/AIDS and hepatitis, are partly related to the criminalization of drugs, which hinders public health efforts like the distribution of clean needles to addicts.

THC, the active ingredient in marijuana, “is a very safe drug” according to The Science of Marijuana. The 1988 Surgeon General’s Report lists tobacco as a more dangerous drug than marijuana. According to the findings and conclusions of Francis Young, administrative law judge for the Drug Enforcement Administration, “despite [its 5,000-year-] long history of use and the extraordinarily high numbers of social smokers, there are simply no credible medical reports to suggest that consuming marijuana has caused a single death” and no amount of marijuana that a person could possibly eat or smoke would constitute a lethal dose. By contrast, aspirin overdoses cause hundreds of deaths a year. 

A Police Foundation review in 2000 concluded that: “By any of the major criteria of harm—mortality, morbidity, toxicity, addictive-ness and relationship with crime—cannabis is less harmful than any of the other major illicit drugs, or than alcohol or tobacco.”

Trebach points out that, although federal authorities documented 2,177 deaths from the most popular illicit drugs in 1985, between 400,000 and 500,000 people died from alcohol and tobacco during the same year. A 2007 study of Florida autopsies found that “cocaine, heroin and all methamphetamines caused 989 deaths, while legal opioids—strong painkillers in brand name drugs like Vicodin and OxyContin—caused 2,328.” No deaths were attributed to marijuana. Doug Bandow, a senior advisor to President Reagan and
a Cato Institute Fellow, found that all illicit drugs combined accounted for about 5,000 deaths, “most of which” are “caused by the effects of prohibition” rather than the drug’s pharmacology.  

Some argue that the evil of drugs (especially heroin and crack) is that they are *addicting*, because this is a bad thing even if the addicting substance is not itself harmful. It is hard to deny that the image of a person enslaved to a chemical is ugly and repugnant to our sense, that the dignity of human beings lies in their capacity to control their destinies. More questionable, however, is whether this is, in the case of adults, anybody’s business but their own. Even so, suppose we agree that addiction is an evil worthy of prevention. Isn’t imprisoning someone as punishment for using a potentially addictive substance an irrational way to express concern about the enslavement of addiction—especially when, instead, we could offer treatment? And, doesn’t that make us hypocrites given our inconsistent policies about all our other addictions? What about cigarette smoking, which, unlike heroin, contributes to cancer and heart disease? Nicotine’s addictiveness—according to former Surgeon General C. Everett Koop—is similar to that of heroin, and *more addicting than cocaine*, more likely to addict the new user, and more difficult to quit once addicted. What about the roughly 15 million alcoholics in the nation working their way through their livers and into their graves?  

Former Washington, D.C., Police Chief Maurice Turner helps explain the economic crimes associated with drugs:  

If you see an addict going through withdrawal, he’s in some kind of damn pain. … When they get pretty well strung out, they have about a $100- to $120-a-day habit. When they get that type of habit, they’re going to have to steal approximately six times that much [because fences don’t pay list price].  

Professor Blumstein agrees that “you need money to buy drugs, so the higher the price of the drug, the greater the incentive to commit the crime.” The high price of drugs is due to their being illegal; there is nothing about heroin itself that makes it extremely costly. The heroin for which an addict pays $100 or more a day could be produced legally at a cost of a few cents for a day’s supply. However, once sale or possession of heroin is made a serious criminal offense, a number of consequences follow. First, the prices go up because those who supply it face grave penalties, and those who want it, want it bad. Second, because the supply (and the quality) of the drug fluctuates depending on how vigorously the agents of the law try to prevent it, addicts live in constant uncertainty about the next fix, and must devote much of their wit and energy to getting it and to getting enough money to pay for it. They do not, then, fit easily into the routines of a nine-to-five job, even if they could get one that would pay enough to support their habits. Finally, all the difficulties of securing the drug add up to an incentive to be not merely a user but a dealer as well, because this both brings in money and makes one’s own supply more certain. Addicts thus have an incentive to find and encourage new addicts, which they would not have if drugs were legally and cheaply available.
If we add to this the fact that overall drug use has remained widespread, and possibly even increased, in spite of all our law enforcement efforts, can we doubt that the cure is a source of crime? The result is a recipe for large-scale and continual robbery and burglary, which would not exist if the drugs were available legally. A study by Anglin and Speckart of the relationship between narcotics use and crime concludes that there is “strong evidence that there is a strong causal relationship, at least in the United States, between addiction to narcotics and property crime levels.”\(^{173}\)

Do a little arithmetic. Making some conservative assumptions, suppose that there are half a million addicts with $100-a-day habits. Suppose that they fill their habits only 250 days a year (sometimes they’re in jail or in the hospital). Suppose that they have to steal for half their drug needs, and that they must steal three times the dollar value of what they need because they must convert their booty into cash through a fence. (These conservative assumptions are similar to those made in a report of the U.S. Department of Health, Education, and Welfare, titled *Social Cost of Drug Abuse*, estimating the amount of theft in which heroin addicts had to engage to support their habits in 1974.)\(^{174}\) If you have done your arithmetic, you have seen that our half-million addicts need to steal $18,750,000,000 a year to support their habits. This is more than the $15.7 billion that the FBI estimates as the loss due to property crimes during 2010,\(^{175}\) and it doesn’t even take into consideration theft by those addicted to other drugs, such as crack cocaine.

The Bureau of Justice Statistics reports that, in 2004, roughly one of every six prisoners—17 percent of state inmates, 18 percent of federal inmates—said that they had committed their current offense in order to get money for drugs.\(^{176}\) With jail inmates, “around a quarter of property and drug offenders said they committed their offense to get money for drugs, compared to under a tenth of violent and public-order offenders.”\(^{177}\) Because heroin doesn’t produce crime through its pharmacological effects, and because it is so costly only because it’s illegal, it is not the “disease” of heroin addiction but its “cure” that leads to property crime. It is our steadfast refusal to provide heroin through legal sources that, for a significant number of the hundreds of thousands of heroin addicts in the United States, translates a physical need for a drug into a physical need to steal billions of dollars worth of property a year.

Against this conclusion, it is sometimes countered that studies show that a large proportion of criminal heroin addicts were criminals before they were addicts. But, Anglin and Speckart state that “while involvement in property crime activities generally precedes the addiction career, after addiction occurs the highly elevated property crime levels demonstrated by addicts appear to be regulated by similarly high narcotics use levels.”\(^{178}\) Thus, even for addicts who already were criminals, heroin addiction increases the amount they need to steal and works to make them virtually immune to attempts to wean them from a life of crime or prostitution. Consequently, even if all heroin addicts were criminals before they were addicts, the illegality of heroin would still be a source of crime because of the increased pressure it places on the addict to steal a lot and to steal often. Much the same reasoning applies to other illegal addictive drugs.
Finally, much of the violence associated with drugs falls under Goldstein’s third category: systemic crime. We have already seen the link between the crack trade and the murder epidemic of the late 1980s and early 1990s.\textsuperscript{179} The large quantities of cash generated by drug dealers and the relatively low salaries of police officers create temptations for corruption. A \textit{New York Times} report during the height of the crack cocaine’s popularity noted that “researchers say there are now more than 100 cases each year in state and Federal courts in which law enforcement officials are charged or implicated in drug corruption.”\textsuperscript{180} Says William Green, assistant commissioner for internal affairs at the U.S. Customs Service, “The money that’s being offered by the drug dealers is so big it is just hard to visualize.”\textsuperscript{181} The Mollen Commission report on police corruption in New York City found “willful blindness” to corruption throughout the police department, resulting in networks of rogue officers who dealt in drugs and preyed on black and Hispanic neighborhoods.\textsuperscript{182}

A General Accounting Office review found that drug-related corruption was more likely to involve multiple officers rather than a lone offender, and their review of “drug-related police corruption found on-duty officers engaged in serious criminal activities, such as (1) conducting unconstitutional searches and seizures; (2) stealing money and/or drugs from drug dealers; (3) selling stolen drugs; (4) protecting drug operations; (5) providing false testimony; and (6) submitting false crime reports.”\textsuperscript{183} Add to this the corruption of border control agents and some military officials involved in interdiction campaigns.

Having learned nothing from our experience with heroin, we have applied, with predictable results, the same policy to cocaine and crack that failed with heroin. The price per pure gram of cocaine and of heroin has generally gone down between 1980 and the present, which means that for all the hoopla of the war on drugs, not to mention the enormous increase in the number of persons sent to prison for drug offenses, there is a plentiful supply. In spite of three U.S.-led international drug wars since 1971, worldwide illicit opium production rose from 990 tons in 1971 to 4,200 tons in 1989, and a U.N. report states that “in 2007, global opium production reached its highest point since 1990, at 8,800 metric tons.”\textsuperscript{184} This is evidence of a long history of failure and largely futile attempts to pressure foreign countries to reduce domestic production of narcotic substances. Even when such pressure works, it serves only to push production elsewhere. And when the pressure lets up, it’s back to business as usual.

According to the Office of National Drug Control Policy (ONDCP), during the decade of the 1990s, “heroin users consumed 14 metric tons at the beginning and end of the decade,” while “cocaine users consumed somewhere between 270 and 450 metric tons of pure cocaine each year.”\textsuperscript{185} The \textit{Washington Post}, reviewing a 2008 U.N. study, noted that in Colombia, the “amount of land devoted to production of coca, the leaf used to make cocaine, has grown at a dramatic pace” despite an eight-year eradication program costing $5 billion. U.S. production estimates show “nearly as much” acreage in 2006 as when the program started in 2001.\textsuperscript{186} U.N. estimates of total world cocaine manufacture increased from 774 metric tons in 1990 to 994 in 2007.\textsuperscript{187} Likewise, attempts to use the U.S. Coast Guard and Navy to interdict cocaine coming into the United
States by sea have failed to put a dent in the traffic. After all, America has over 88,000 miles of coastline.\textsuperscript{188} In response to the drug czar’s claim that we “are disrupting the production and flow of cocaine,” a \textit{New York Times} editorial titled “Not Winning the War on Drugs” noted that “while seizures are up, so are shipments.”\textsuperscript{189} The \textit{Wall Street Journal} reports that a kilogram of cocaine that cost between $55,000 and $65,000 in 1981, cost between $20,000 and $40,000 in 1987.\textsuperscript{190} The National Narcotics Intelligence Consumers’ Committee reports cocaine prices as low as $10,500 per kilogram in 1994.\textsuperscript{191} In a summary of these trends, a 2004 ONDCP report indicated that “powder cocaine prices have declined by roughly 80 percent since 1981,” and “purity-adjusted prices were at or near all-time lows in 2003.”\textsuperscript{192} Although prices have increased from the extreme low point in the last several years, the \textit{New York Times} reports that experts say this is “mostly the result of a strong Euro and fast-growing demand in Europe.”\textsuperscript{193} All of this testifies to the general failure of our costly “war on drugs” to make these drugs harder to obtain—a conclusion endorsed by the conservative American Enterprise Institute in a 2005 book on drug policy.\textsuperscript{194}

In 1988, the \textit{National Law Journal} surveyed 181 chief prosecutors or their top drug deputies throughout the United States and reported that “nearly two-thirds of the country’s top state and local prosecutors say they are having little to no impact in the fight against illegal narcotics.”\textsuperscript{195} The American Enterprise Institute study stated that “on the whole, then, there is now less reason than ever to believe that current policies are an efficient and effective response to the problem of illicit drugs.”\textsuperscript{196} This failing drug war cost federal, state, and local governments approximately $33 billion in 1999, up nearly $5 billion from 1994.\textsuperscript{197} The National Drug Control Budget alone was $25.9 billion for fiscal year 2010.\textsuperscript{198}

In sum, we have an antidrug policy that is failing at its own goals and succeeding only in adding to crime. First, there are the heroin and crack addicts, who must steal to support their habits. Then, there are the drug merchants who—due to the illegality of drugs—have fabulous financial incentives to provide illicit substances to a willing body of consumers. This in turn contributes to the high rate of inner-city murders and other violence as drug gangs battle for the enormous sums of money available. Next, there are the law enforcement officials who, after risking their lives for low salaries, are corrupted by irresistible amounts of money. Finally, there are the otherwise law-abiding citizens who are made criminals because they use cocaine, a drug less harmful than tobacco, and those who are made criminals because they use marijuana, a drug that is safer than alcohol and less deadly than aspirin.

Much of the recent dramatic growth in our prison population (documented above) is the result of the hardening of drug enforcement policy starting in the Reagan years and continuing into the present: In 1968 there were 162,000 drug arrests nationwide, the number climbing to more than 1.6 million in 2010, and the Bureau of Justice Statistics reports that half of federal inmates were serving sentences for drug violations in 2010.\textsuperscript{199} The absolute numbers are even more striking. In 2010, federal prisons held 97,472 drug offenders, compared to 30,470 in 1990.\textsuperscript{200} On the state level, there were less than 20,000 drug
offenders in state prisons in 1990, but by 2009, there were 242,200. Because numerous studies show that arrested drug dealers in inner-city neighborhoods are quickly replaced, it was apparent from the start that this policy would have little success in reducing the availability of illicit drugs. What it does succeed in is leaving inner-city youths with criminal records that reduce their chances of getting a legitimate job. All this is occurring at a time when there is increasing evidence that we are wasting money on the “war on drugs” and would be better off decriminalizing drugs, taxing their production and sale, and expanding treatment and public health initiatives. Because that would be far less costly than the “war,” this would leave over money to fight a more effective war against muggers and rapists rather than recreational drug users. Evidence from the 11 states that decriminalized marijuana possession in the 1970s suggests that decriminalization does not lead to increased use. President Clinton’s former Surgeon General, Joycelyn Elders, recommended that we study seriously the possibility of decriminalizing drugs as a means to reducing violence, noting that “other countries had decriminalized drug use and had reduced their crime rates without increasing the use of narcotics.” For example, in 2001 Portugal eliminated criminal penalties for all drugs in amounts for personal use. Possession for personal use can still trigger a hearing before the Commission for the Dissuasion of Drug Addiction, a three-person tribunal that discourages drug use and encourages addicts to get treatment. An evaluation, published in the British Journal of Criminology, found reductions in problematic drug use and states that Portugal’s experience demonstrates that—contrary to some predictions—decriminalization does not inevitably lead to rises in drug use. It can reduce the burden upon the criminal justice system. It can further contribute to social and health benefits. Moreover, such effects can be observed when decriminalizing all illicit drugs. This is important, as decriminalization is commonly restricted to cannabis alone.

Former Baltimore Mayor Kurt Schmoke has called for consideration of decriminalization, and so has Jerry Wilson, former chief of police of Washington, D.C. (where 42 percent of murders were drug-related in 1990). A draft of a report commissioned by the American Medical Association recommended legalization of marijuana and decriminalization of other illicit drugs. The report was shelved when some doctors “expressed outrage at its recommendation.” A more recent call for decriminalization is from the Global Commission on Drug Policy, whose members include: the former Presidents of Mexico, Colombia, Brazil, and Switzerland; a former Secretary General of the United Nations, a former U.S. Secretary of State; the Prime Minister of Greece; and a former Chair of the U.S. Federal Reserve and economic advisor to President Obama. They state that “the global war on drugs has failed, with devastating consequences for individuals and societies.” They suggest ending the criminalization of drugs, experimenting with models of legal regulation that “undermine the power of organized crime” and “offer health and treatment services to those in need.”
Some form of decriminalization of marijuana, heroin, and cocaine would reduce the criminalization of otherwise law-abiding users; it would drive down the price of drugs, which would reduce the need for addicts to steal, and reduce as well the incentives to drug traffickers and smugglers to ply their trades and to find new users; and it would free up personnel and resources for a more effective war against the crimes that people fear most.

In the face of all this, it is hard not to share the frustration expressed by Norval Morris, former dean of the University of Chicago Law School: “It is trite but it remains true that the main causes of crime are social and economic. The question arises whether people really care. The solutions are so obvious. It’s almost as if America wished for a high crime rate.” If this is so, then the system’s failure is only in the eye of the victim: For those in control, it is a roaring success!

WHAT WORKS TO REDUCE CRIME

Surveying the programs that might contribute to reducing crime, criminologist Elliot Currie concludes that “four priorities seem especially critical: preventing child abuse and neglect, enhancing children’s intellectual and social development, providing support and guidance to vulnerable adolescents, and working extensively with juvenile offenders.” About these programs, Currie observes that “the best of them work, and they work remarkably well given how limited and underfunded they usually are.” A study titled *Diverting Children from a Life of Crime: Measuring Costs and Benefits*, issued in June 1996 by the Rand Corporation, concluded:

Programs that try to steer the young from wrongdoing—the training of parents whose children often misbehave, for example, or incentives to graduate from high school—are far more cost-effective in preventing crime over the long term than are mandatory sentences that imprison repeat adult offenders for long periods.

A more recent report from the Rand Corporation, titled *Investing in Our Children: What We Know and Don’t Know about the Costs and Benefits of Early Childhood Interventions*, reached a similar conclusion. Evaluating nine programs in which early interventions were targeted at disadvantaged children, the study concludes that such programs lead to decreased criminal activity and save taxpayer dollars at the same time. Similar results were found for Head Start programs: “At age 27, those who participated [in Head Start programs as children] had lower arrest rates, higher education rates, earned more money, [and] were more likely to be homeowners and less likely to receive social services.”

The National Treatment Improvement Evaluation Study (NTIES), “the largest study of its kind, which followed more than 5,300 clients in programs funded by the federal Center for Substance Abuse Treatment,” concludes that drug and alcohol treatment programs significantly reduced substance use, crime, and homelessness. ... Use of most illicit
substances in the year after treatment entry declined about 50 per-
cent compared with the year before. ... Arrest rates fell substan-
tially in the sample—from 48 percent to 17 percent.\textsuperscript{213}

And a study by the Rand Corporation Drug Policy Research Center, titled \textit{Controlling Cocaine: Supply versus Demand Programs}, found that “[t]reatment is seven times more cost-effective than domestic drug enforcement in reducing cocaine use and 15 times more cost-effective in reducing the social costs of crime and lost productivity.”\textsuperscript{214} The study also concluded that “treatment is the most effective way to reduce violent crime.”\textsuperscript{215}

A review of more than 500 crime-prevention program evaluations yielded a list of what works. Among the programs that appear effective in reducing crime, the report lists family therapy and parent training for delin-
quent and at-risk adolescents; teaching of social competency skills in schools, and coaching of high-risk youth in “thinking skills”; vocational training for older male ex-offenders; extra police patrols in high-crime hot spots; moni-
toring of high-risk repeat offenders by specialized police forces as well as incarceration; rehabilitation programs with risk-focused treatments for convicted offenders; and therapeutic community treatment for drug-using offenders in prisons.\textsuperscript{216}

In 2007, the journal \textit{Criminology and Public Policy} devoted an entire issue to “taking stock” of the field, “not to offer innovative or new policies,” but “a complete issue devoted to noted scholars taking the position that we now have enough knowledge about some aspect of crime and justice that a policy is advised.” The titles of some of the published papers include “Build the Capacity of Communities to Address Crime,” “Restore Rationality to Sentencing Policy,” “Make Rehabilitation Corrections’ Guiding Paradigm,” “Target Juvenile Needs to Reduce Delinquency,” “Save Children From a Life of Crime,” and “Protect Individual Punishment Decisions from Mandatory Penalties.”\textsuperscript{217}

In short, there is a growing body of knowledge showing that early child-
hood intervention, drug treatment, and numerous other programs can work to reduce crime. As Professor Blumstein observed, “If you intervene early, you not only save the costs of incarceration, you also save the costs of crime and gain the benefits of an individual who is a taxpaying contributor to the economy.”\textsuperscript{218} But, as Peter Greenwood, author of the Rand Corporation Study, \textit{Diverting Children from a Life of Crime}, says, “The big policy question is, who will act on this?”\textsuperscript{219}

\section*{FAILING TO REDUCE CRIME: ERIKSON, DURKHEIM, AND FOUCAULT}

As the Introduction noted, we contend that the criminal justice 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 dra-
matically in the public’s view, though never enough to substantially reduce or eliminate crime. We call this 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 (see Chapter 4).

**Erickson, Durkheim and the Benefits of Deviance**

The Pyrrhic defeat theory draws heavily upon Kai T. Erikson’s suggestion in his book, *Wayward Puritans*, that societies derive benefit from the existence of crime, and thus there is reason to believe that social institutions work to maintain rather than to eliminate crime. Thus, it will serve to clarify our view if we compare it with Erikson’s.

Professor Erikson’s theory is based on the view of crime that finds expression in one of the classic works of sociological theory, *The Division of Labor in Society*, by Émile Durkheim. Writing toward the end of the nineteenth century, Durkheim had suggested that crime (and by extension other forms of deviance) may actually perform a needed service to society by drawing people together in a common posture of anger and indignation. The deviant individual violates rules of conduct which the rest of the community holds in high respect; and when these people come together to express their outrage over the offense and to bear witness against the offender, they develop a tighter bond of solidarity than existed earlier.  

The solidarity that holds a community together, in this view, is a function of the intensity with which the members of the community share a living sense of the group’s cultural identity, of the boundary between acceptable and unacceptable behavior that gives the group its distinctive character. It is necessary, then, for the existence of a community as a community that its members learn and constantly relearn the location of its “boundaries.” Erikson writes that these boundaries are learned in dramatic confrontations with policing agents whose special business it is to guard the cultural integrity of the community. Whether these confrontations take the form of criminal trials, excommunication hearings, courts-martial, or even case conferences, they act as boundary-maintaining devices in the sense that they demonstrate to whatever audience is concerned where the line is drawn between behavior that belongs in the special universe of the group and behavior that does not.

In brief, this means not only that a community makes good use of unacceptable behavior but also that it positively needs unacceptable behavior. Not only does unacceptable behavior cast in relief the terrain of behavior acceptable to the community; it also reinforces the intensity with which the members of the community identify that terrain as their shared territory. On this view,
deviant behavior is an ingredient in the glue that holds a community together. “This,” Erikson continues,

raises a delicate theoretical issue. If we grant that human groups often derive benefit from deviant behavior, can we then assume that they are organized in such a way as to promote this resource? Can we assume, in other words, that forces operate in the social structure to recruit offenders and to commit them to long periods of service in the deviant ranks? …

Looking at the matter from a long-range historical perspective, it is fair to conclude that prisons have done a conspicuously poor job of reforming the convicts placed in their custody; but the very consistency of this failure may have a peculiar logic of its own. Perhaps we find it difficult to change the worst of our penal practices because we expect the prison to harden the inmate’s commitment to deviant forms of behavior and draw him more deeply into the deviant ranks.²²²

Drawing on Durkheim’s recognition that societies benefit from the existence of deviants, Erikson entertains the view that societies have institutions whose unannounced function is to recruit and maintain a reliable supply of deviants. Modified for our purposes, Erikson’s view would become the hypothesis that the American criminal justice system fails to reduce crime because a visible criminal population is essential to maintaining the “boundaries” that mark the cultural identity of American society and to maintaining the solidarity among those who share that identity. In other words, in its failure, the criminal justice system succeeds in providing some of the cement necessary to hold American society together as a society.

As we said in the Introduction, this idea is one of several that contribute to the Pyrrhic defeat theory, but the idea is also transformed in the process. Here, then, we aim to acknowledge the debt to the Durkheim–Erikson thesis and to state the difference between it and the view that we will defend. The debt is to the insight that societies may promote behavior that they seem to desire to stamp out, and that failure to eliminate deviance may be a success of some sort.

The difference, on the other hand, is this: Both Durkheim and Erikson jump from the general proposition that the failure to eliminate deviance promotes social solidarity to the specific conclusion that the form in which this failure occurs in a particular society can be explained by the contribution the failure makes to promoting consensus on shared beliefs and thus feelings of social solidarity. This is a “jump” because it leaves out the important question of how a social group forms its particular consensus around one set of shared beliefs rather than another; that is, Durkheim and Erikson implicitly assume that a consensus already exists (at least virtually) and that deviance is promoted to manifest and reinforce it. This leads to the view that social institutions reflect beliefs already in people’s heads, already largely and spontaneously shared by all of them.

In our view, even if it is granted that societies work to strengthen feelings of social solidarity, the set of beliefs about the world around which those
feelings will crystallize are by no means already in people’s heads and spontaneously shared. A consensus is made, not born, although, again, we do not mean that it is made intentionally. It is created, not just reflected, by social institutions. Thus, the failure to stamp out deviance does not simply reinforce a consensus that already exists; it is part of the process by which a very particular consensus is created. In developing the Pyrrhic defeat theory, we try to show how the failure of criminal justice works to create and reinforce a very particular set of beliefs about the world, about what is dangerous and what is not, and about who is a threat and who is not. This does not merely shore up general feelings of social solidarity; it allows those feelings to be attached to a social order characterized by striking disparities of wealth, power, and privilege, and by considerable injustice.

A Word About Foucault

Michel Foucault is another thinker who has suggested that the failure of the criminal justice system—prisons in particular—serves a function for society. His view of this failure and its function is, at points, close to the one for which we argue here, but there are differences as well. In his book, Discipline and Punish, Foucault notes that complaints about the failure of prisons to curb crime, indeed their tendency to increase crime by promoting recidivism, have accompanied the prison throughout its history—so much so that Foucault asks, “Is not the supposed failure part of the functioning of the prison?” In response, Foucault writes that the prison “has succeeded extremely well ... in producing delinquents, in an apparently marginal, but in fact centrally supervised milieu; in producing the delinquent as a pathologized subject.” That is, the prison regime transforms the offender from a lawbreaker into a delinquent in need of correction, an abnormal individual in need of treatment. And this development licenses a permanent policing of the potentially troublesome classes.

Foucault suggests that the new prison regime that emerged in France in the nineteenth century was a response to a “new threat” posed by peasants and workers against the “new system of the legal exploitation of labour,” by which he means capitalism. This is a class-based explanation of the new prison regime, in which criminality gets identified “almost exclusively [with] a certain social class ... the bottom rank of the social order.” Among the advantages produced by this prison regime and the policing that accompanies it are the maintenance of illegality at a sufficiently low level so that it does not pose a general threat to the social order, and the weakening of the poorer classes—from whom both the delinquents and their victims tend to come—by dividing the poor against themselves. Moreover, says Foucault, “[d]elinquency, controlled illegality, is an agent for the illegality of the dominant groups.” Here he has in mind the profits to be made from drugs and prostitution, alongside a general toleration of the “delinquency of wealth.” This much is generally in accord with the thesis of The Rich Get Richer, which argues that the failure of the criminal justice system to significantly reduce
crime, as well as the identification of crime with the harmful acts of poor people, serves the interests of the rich and powerful by creating the general belief that the greatest threat to the well-being of ordinary folks comes from the poor rather than from the rich.\textsuperscript{230}

But Foucault goes further. He contends that delinquency, “with the generalized policing that it authorizes, constitutes a means of perpetual surveillance of the population: an apparatus that makes it possible to supervise, through the delinquents themselves, the whole social field.”\textsuperscript{231} For Foucault, then, the prison is part of a “general tactics of subjection” that amount to a system of permanent social surveillance. Stretching from the “Panopticon” model of a prison, in which a single guard can watch a large number of inmates without himself being seen, to the emergence of a “scientific” criminological establishment that observes and studies delinquents, and from there to the modern medical-psychological establishment that keeps records on just about everyone, ubiquitous surveillance works to make people feel observed and thus makes them into the agents of their own normalizing discipline. Thus, the prison spreads out into a “carceral archipelago,” a whole system of institutions and practices, including the disciplines such as psychology and medicine, aimed at “normalization.”\textsuperscript{232}

In sum, writes Foucault,

> the normalizing power has spread. Borne along by the omnipresence of the mechanisms of discipline, basing itself on all the carceral apparatuses, it has become one of the major functions of our society. The judges of normality are everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the ‘social-worker’-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements.\textsuperscript{233}

With this, Foucault has left criminal justice behind and presented a theory of the nature of modern society generally. Also left behind is the class structure of the exercise of power that was present in the origins of the prison system as Foucault described it. Now, power is everywhere, exercised by everyone on him or herself and on everyone else.\textsuperscript{234} No doubt, this captures something of the flavor of modern life, in which people at all levels of society are subjected to myriad pressures to be “normal,” from the tsks-tsks of teachers and doctors to the self-help books and advice columns that offer to make us better earners and better lovers and better parents. The judges of normality are, indeed, everywhere.

But this account also mystifies the exercise of power. Rather than operating along a class axis that might be eliminated, and to serve interests that might be identified and critiqued, power now seems its own goal, a universal fact of modern life, driven by no particular interest beyond that of discipline—“the policing of normality” as an end in itself.\textsuperscript{235} The enemy is everywhere and nowhere in particular, so there is no clear target for resistance. Not only is the
class structure of the exercise of power—particularly criminal justice power—flattened out here, the moral status of the exercise is obscured as well. Absent from Foucault’s analysis is attention to the difference between those forms of discipline that are necessary for the freedom of each to coexist peacefully with the freedom of the rest and those forms of discipline that simply serve the interests of the rich and powerful. So there is no clear guidance about what should be resisted. The analysis in *The Rich Get Richer* will strive to keep the class nature of the criminal justice system in view, while recognizing the importance of distinguishing between those exercises of power that are necessary for the protection of freedom and those that simply serve the interests of the wealthy.

**Summary**

This chapter has tried to establish the first part of the Pyrrhic defeat theory, namely, that the war on crime is a failure and an avoidable one: The American criminal justice system—the entire process from lawmaking to law enforcing—has failed to eliminate the high rates of crime that characterize our society and threaten our citizens. Over the last several decades, crime has generally risen, although in recent years it has declined. Numerous causes—economic and social—have contributed to this, such that serious observers agree that criminal justice policy and practice cannot be credited with more than a fraction of the recent declines. At the same time, however, neither should it be thought on this basis that public policy cannot reduce the crime we have. Crime is not a simple and unavoidable consequence of either the number of youngsters in our populace or the degree of urbanization of our society. Moreover, there are a number of policies, we have good reason to believe would succeed in reducing crime—effective gun control, decriminalization of illicit drugs, amelioration of poverty, prevention of child abuse and neglect, and early intervention with at-risk youngsters—that we refuse to implement on any significant scale. The Pyrrhic defeat theory shares with the Durkheim–Erikson view of the functional nature of crime, the idea that societies may promote behavior that they seem to want to eliminate. However, it differs from their view in insisting that the failure to stamp out crime doesn’t simply reflect an existing consensus but contributes to creating one, one that is functional for only a certain part of our society. This chapter concluded by discussing Foucault’s claim that the failure of the prison is part of a larger structure of disciplinary surveillance that pervades modern society. His account of the beginnings of this regime parallels the class analysis for which we shall argue. However, as he develops his theory, Foucault leaves class structure behind and thus mystifies the nature of the power exercised in the criminal justice system. Readers interested in the relationship between the theory presented in *The Rich Get Richer* and Marxism, should consult Appendix I.
Study Questions

1. What does Zimring mean when he compares crime policy to “a version of ‘heads I win, tails you lose’”? What evidence do the authors present to support this view?

2. What are some of the criminal justice factors involved in the declining crime rate, and how much impact did they have?

3. What are the noncriminal justice factors involved in the declining crime rate and how does each contribute?

4. What excuses have been given for our inability to reduce the amount of crime we have? How do you evaluate these excuses?

5. What causes crime? How, and why, do the authors distinguish a “cause” from a “source” of crime? What do the authors say are sources of crime? Be sure to explain how they link each source with higher crime rates.

6. Do you think we “make the world of violence that surrounds us” as Currie says? If not, why is it beyond our ability to influence? If so, what could we do to reduce the amount of crime? To what extent are these solutions within the criminal justice system, or do noncriminal-justice policies have a greater impact on crime?

7. What does it mean to say that “the criminal justice system is ‘designed to fail’” and “crime is functional for a society”? How does the Pyrrhic defeat theory differ on this from the Durkheim–Erikson theory?

8. List the costs and benefits of our current war on drugs. Is it worth it? Do you think that legalizing all or some illicit drugs would reduce crime? If so, would you agree to legalization?

Additional Resources

Jeffrey Reiman & Paul Leighton, eds., *The Rich Get Richer and the Poor Get Prison: A Reader* (Boston: Pearson, 2010). This volume is a collection of accessible articles that were either used as reference material for *The Rich Get Richer* or provide lively complementary examples or analysis. The reader is divided into sections that parallel the chapters of *The Rich Get Richer*, and each section of the reader opens with a substantial introduction, written by the editors, that provides article summaries, context, and linkages to *The Rich Get Richer*.

The authors also maintain a companion website to the text at [http://www.paulsjusticepage.com/reiman.htm](http://www.paulsjusticepage.com/reiman.htm)

Notes


15. Private prisons are for-profit companies that build and/or manage prisons. They are part of a larger criminal justice-industrial complex that has a vested interest in crime and discussed more in Chapter 4.
18. Office of Management and Budget, *Fiscal Year 2006: Department of Justice*, [www.whitehouse.gov/omb/budget/fy2006/justice.html](http://www.whitehouse.gov/omb/budget/fy2006/justice.html). The document does find that federal funding to continue support for the 100,000 police was cut because an assessment rated the program as “Results Not Demonstrated.”
20. Federal laws required a mandatory five-year sentence for crimes involving 500 grams (about a pound) of powder cocaine or 5 grams (about one-sixth of an ounce) of crack cocaine. See Chapter 3 for more discussion.


27. Ibid.


29. Sullum, Bummer: Barack Obama turns out to be just another drug warrior, 2011.

30. Sourcebook, Table 6.28.2009.


38. UCR–2010, Table 1 and Sourcebook, Table 3.106.2009.


42. Quoted in ibid.

43. Quoted in ibid.


68. Blumstein, “Why Is Crime Falling—or Is It?” pp. 12, 17–18, 24. An improving economy helped reduce crime rates, but the financial crisis and recession have not caused crime rates to increase because people who are unemployed or have reduced income shift gradually to crime as their economic resources become depleted. Congress has extended unemployment benefits and people have savings


74. Challenge, p. 35.

75. Sourcebook 2003, Table 3.106; and UCR–2010, Table 1.


78. For 1990, expenditure on private security was $52 billion, and the number of people employed in some form of private security work was “more than 1.5 million people, outnumbering police officers by a 2:1 margin. The latest figures show that this ratio is now about 3:1, with more than $100 billion, dwarfing law enforcement expenditures [on police] of around $40 billion.” Randall Shelden, Controlling the Dangerous Classes (Boston: Allyn & Bacon, 2001), p. 280.


82. International Centre for Prison Studies, http://www.prisonstudies.org/info/worldbrief/wpb_stats.php. Figures for the UK are from 2011 and do not include juveniles or those held in Immigration Detention Centers; Germany from 2011; Belgium from 2010; and Canada from 2009.


85. Ibid.

86. Caitlin E. Hughes and Alex Steven, “What Can We Learn From The Portuguese Decriminalization Of Illicit Drugs?” British Journal of Criminology 50, no. 6 (2010): 1001.


89. BJS, Capital Punishment, 21009—Statistical Tables, NCJ 236510, December 2011, p. 1.

90. Michael Tonry, “Crime and Human Rights—How Political Paranoia, Protestant Fundamentalism, and Constitutional Obsolescence Combined to Devastate Black America,” Criminology 46, no. 1 (2008): 6–7. He notes that in Europe, the longest sentence for a single offense, even murder, is 14 years. A German Court struck down life sentences without parole, and Tonry explains their reasoning as being that “hope for the future and belief in the possibility of a better life is a basic human right” so there must be meaningful review of the need for continued incarceration after the passage of not more than 14 years.


93. See “Crime Cases Known To The Police, Cases Cleared Up And Arrestees By Type Of Crime (1990–2008),” Japan Statistical Yearbook 2011, edited by the Statistical Research and Training Institute, and published by the Statistics Bureau, both under the Ministry of Internal Affairs and Communications, Chart 25-1, p. 775. http://www.stat.go.jp/english/data/nenkan/index.htm. Crime totals were based on the sum for homicide, robbery, rape, and “bodily injury” (which translates to aggravated assault) to make them comparable with UCR categories for violent crime. Population for 2008 was 127,692,000 from Chart 2.1 of the yearbook. (Thanks to Satoko Motohara for help clarifying the meanings of the categories.) UCR–2008, Table 1.


97. UCR–2007, Table 4.


99. UCR–2010, Table 5 and Table 6.

100. Time, June 30, 1975, p. 11.

101. StatAbst—2011, Table 8, p. 12; and UCR–2010, computed from Table 38.

102. UCR–1990, p. 50, Table 1; UCR–1985, p. 41, Table 1; and StatAbst—1992, p. 14, Table 12.

104. Research reviewed by Conklin also notes that in Japan and Scotland, there was no correlation between the proportion of young males and homicide rates between 1901 and 1970. Conklin, Why Crime Rates Fell, p. 155.


117. John Rawls, Justice as Fairness, p. 146. Note that Rawls is not using the term underclass in the technical sense in which it is used in some sociological literature. For him, it simply refers to the economically worst-off group in a society, and emphasizes their likely sense of exclusion.


124. “Warehousing” is a particular style of incarceration. It means putting people in prison only to keep them off the street and without an effort to rehabilitate them. See John Irwin, The Warehouse Prison (Oxford: Oxford University Press, 2007).
125. BJS, Prisoners in 2010, Appendix Table 23.
133. The “deprivations of prison” refers to what Sykes described in his book Society of Captives: deprivation of freedom (secluded from outside world); deprivation of autonomy (reduced to child like status because of few decisions); deprivations of goods and services (in a materialistic world, your worth depends on what you have); deprivation of security; and deprivation of heterosexual relations. (Princeton: Princeton University Press, 1958)
142. *Challenge*, p. 239.
143. UCR—1995, p. 36.
145. Bush, “Remarks by the President on Project Safe Neighborhoods.”
149. “Whenever there is a crime involving a firearm, there are various groups, some of them quite persuasive in their logic, that think you can ban certain kinds of guns, and I am not in that mode” (George H. W. Bush, quoted in George Will, “Playing with Guns,” *Newsweek*, March 27, 1989, p. 78).
162. Leslie Iverson, *The Science of Marijuana*, 2nd ed. (Oxford: Oxford University Press, 2008), p. 58. Further, “although there have been many rumors that the long-term use of marijuana leads to irreversible damage to higher brain functions, the results of numerous scientific studies have failed to confirm this” p. 167.


169. Surgeon General C. Everett Koop quoted, and reports on the relative addictiveness of cigarettes and cocaine, in Bandow, War on Drugs or War on America? p. 249.


171. Quoted in Doug Bandow, War on Drugs or War on America? p. 250.


181. Ibid.


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185. Ibid., p. 18.


188. Bandow, “War on Drugs or War on America?” p. 244; and BJS, Drugs, Crime, and the Justice System, December 1992, p. 44.


199. Bandow, War on Drugs or War on America? p. 243; and McCoy and Block, “U.S. Narcotics Policy,” p. 6. UCR 2010, Table 29; and BJS, Prisoners in 2010, p. 1.

200. BJS, Prisoners in 2001, p. 14; and BJS, Prisoners in 2010, Appendix Table 18.

201. BJS, Prisoners in 2010, Table 16B.


204. Hughes and Stevens, “What Can We Learn From The Portuguese Decriminalization Of Illicit Drugs?” p. 1016.


globalcommissionondrugs.org/.


211. Peter W. Greenwood, “Costs and Benefits of Early Childhood Intervention,”
OJJDP Fact Sheet no. 94, February (Washington, D.C.: U.S. Department of Justice,


213. “Federally Funded Drug and Alcohol Programs Found Effective in Reducing Drug


What’s Promising,” *NIJ Research in Brief*, NIJ171676, July (Washington, D.C.:
National Institute of Justice, 1988).


219. Ibid. For an extensive list of promising programs aimed at reducing crime, see
Donziger, *The Real War on Crime*, app. B.

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221. Ibid., p. 11.

222. Ibid., pp. 13–15 (emphasis added).

223. Garland suggests that this is true of Erikson’s study even if Erikson does not
highlight this aspect. Garland writes that Erikson’s study

> is a description of the deep social and religious tensions within [Puritan] community. …
> In this context, it becomes clear that the exercise of criminal punishments … was also
> the forceful imposition of a particular framework of politico-religious authority on a
> society riven by factions and deep tensions. (Garland, *Punishment and Modern Society*, p. 79)

224. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheri-

225. Ibid., p. 277.

226. Ibid., p. 274.

227. Ibid., p. 275.

228. Ibid., p. 279.

229. Ibid., p. 288.

230. Foucault writes that the system includes an attempt to shape “the common
perception of delinquents: to present them as close by, everywhere present and
everywhere to be feared” (ibid., p. 286).

231. Ibid., p. 281.

232. Ibid., pp. 296–97.

233. Ibid., p. 304.

234. “Foucault’s description of Western liberal democracy as a society of surveillance,
disciplined from end to end, is deliberately reminiscent of … totalitarianism”
235. According to Nicos Poulantzas,

Now, for Foucault, the power relation never has any other basis than itself: it becomes a pure ‘situation’ in which power is always immanent; and the question what power and power to do what appears as a mere obstacle. This leads Foucault into a particular logical impasse from which there is no possible escape. … For if power is always already there, if every power situation is immanent in itself, why should there ever be resistance? From where would resistance come, and how would it be even possible? (Nicos Poulantzas, *State, Power, Socialism*, trans. P. Camiller [London: NLB, 1978], p. 149)

236. According to David Garland,

Foucault’s vision of power may be a positive conception in the sense that power moulds, trains, builds up, and creates subjects, but it also involves a thoroughly negative evaluation. Foucault writes as someone who is absolutely ‘against’ power. His critique is not of one form of power in favour of another but is rather an attack upon power itself. … [However, t]here is an important sense in which discipline can create freedom as well as control. As Foucault’s own subsequent work shows, discipline is necessary to the development of self-control. (Garland, *Punishment and Modern Society*, p. 174)