

UNIVERSITY OF CALIFORNIA, SAN DIEGO



3 1822 03054 2070

EIGHTH EDITION

THE RICH GET RICHER AND THE POOR GET PRISON

Ideology, Class, and Criminal Justice

JEFFREY REIMAN

American University



Boston ■ New York ■ San Francisco

New Mexico ■ Montreal ■ Toronto ■ London ■ Madrid ■ Munich ■ Paris

Hong Kong ■ Singapore ■ Tokyo ■ Cape Town ■ Sydney

Executive Editor: *Dave Repetto*
Editorial Assistant: *Liz DiMenno*
Marketing Manager: *Kelly May*
Production Supervisor: *Karen Mason*
Manufacturing Buyer: *Megan Cochran*
Cover Administrator: *Joel Gendron*
Editorial Production Service and Electronic Composition: *WestWords, Inc.*

For related titles and support materials, visit our online catalog at
www.ablongman.com.

Copyright © 2007, 2004, 2001, 1998, 1995, 1990, 1984, 1979 by Jeffrey H. Reiman.

All rights reserved. No part of the material protected by this copyright notice may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without written permission from the copyright owner.

To obtain permission(s) to use material from this work, please submit a written request to Allyn and Bacon, Permissions Department, 75 Arlington Street, Boston, MA 02116, or fax your request to 617-848-7320.

Between the time website information is gathered and then published, some sites may have closed. Also, the transcription of URLs can result in typographical errors. The publishers would appreciate being notified of any problems with URLs so that they may be corrected in subsequent editions.

Library of Congress Cataloging-in-Publication Data

Reiman, Jeffrey H.

The rich get richer and the poor get prison : ideology, class, and criminal justice / Jeffrey Reiman. -- 8th ed.

p. cm.

Includes bibliographical references and index.

ISBN 0-205-46172-7

1. Criminal justice, Administration of--United States. 2. Social classes--United States. 3. United States--Social policy. I. Title.

HV9950.R46 2007

364.973--dc22

2006045718

Printed in the United States of America

10 9 8 7 6 5 4 3 2 1 11 10 09 08 07 06

INTRODUCTION

Criminal Justice through the Looking Glass, or Winning by Losing

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

—Karl Menninger, *The Crime of Punishment*¹

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

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

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

In recent years, we have quadrupled our prison population and, in cities such as New York, allowed the police new freedom to stop and search people they suspect. No one can deny that if you lock up enough people, and allow the police greater and greater power to interfere with the liberty and

privacy of citizens, you will eventually prevent some crime that might otherwise have taken place. Later, I shall point out just how costly and inefficient this means of reducing crime is, in money for new prisons, in its destructive effect on inner-city life, in reduced civil liberties, and in increased complaints of police brutality. I don't deny, however, that these costly means do contribute *in some small measure* to reducing crime. Thus, when I say in this book that criminal justice policy is failing, I mean that it is failing to eliminate our high crime rates. We continue to see a large population of poor criminals in our prisons and our courts, while our crime-reduction strategies do not touch on the social causes of crime. Moreover, our citizens remain fearful about criminal victimization, even after the recent declines. I will document this failure in Chapter 1, "Crime Control in America: Nothing Succeeds like Failure."

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

Nearly 30 years ago, I taught a seminar for graduate students titled "The Philosophy of Punishment and Rehabilitation." Many of the students were already working in the field of corrections as probation officers, prison guards, or halfway-house counselors. Together we examined the various philosophical justifications for legal punishment, and then we directed our attention to the actual functioning of our correctional system. For much of the semester, we talked about the myriad inconsistencies and cruelties and the overall irrationality of the system. We discussed the arbitrariness with which offenders are sentenced to prison and the arbitrariness with which they are treated once there. We discussed the lack of privacy and the deprivation of sources of personal identity and dignity, the ever-present physical violence, as well as the lack of meaningful counseling or job training within prison walls. We discussed the harassment of parolees, the inescapability of the "ex-con" stigma, the refusal of society to let a person finish paying his or her "debt to society," and the absence of meaningful noncriminal opportunities for the ex-prisoner. We confronted time and again the bald irrationality of a society that builds prisons to prevent crime knowing full well that they do not, and one that does not seriously try to rid its prisons and postrelease practices of those features that guarantee a high rate of *recidivism*, the return to crime by prison alumni. How could we fail so miserably? We are neither an evil nor a stupid nor an impoverished people. How could we continue to bend our energies and spend our hard-earned tax dollars on cures we know are not working?

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

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

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

Third. The prison experience should be not only painful but also demeaning. The pain of loss of liberty might deter future crime. But demeaning and emasculating prisoners by placing them in an enforced childhood characterized by no privacy and no control over their time and actions, as well as by the constant threat of rape or assault, is sure to overcome any deterrent effect by weakening whatever capacities a prisoner had for self-control. Indeed, by humiliating and brutalizing prisoners, we can be sure to increase their potential for aggressive violence.²

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

Fifth. Ex-offenders’ sense that they will always be different from “decent citizens,” that they can never finally settle their debt to society, should be reinforced by the following means. They should be deprived for the rest of their lives of rights, such as the right to vote.³ They should be harassed by police as “likely suspects” and be subject to the whims of parole officers who can at any time threaten to send them back to prison for things no ordinary citizens could be arrested for, such as going out of town, or drinking, or fraternizing with the “wrong people.”

And so on.

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

What is to be made of this? First, it is, of course, only part of the truth. Some steps have been taken to reduce sentencing discretion. And some prison

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

This statement calls for an explanation. The one I will offer is that the practices of the criminal justice system keep before the public the *real* threat of crime and the *distorted* image that crime is primarily the work of the poor. The value of this *to those in positions of power* is that it deflects the discontent and potential hostility of Middle America away from the classes above them and toward the classes below them. If this explanation is hard to swallow, it should be noted in its favor that it not only explains the dismal failure of criminal justice policy to protect us against crime but also explains why the criminal justice system functions in a way that is biased against the poor at every stage from arrest to conviction. Indeed, even at an earlier stage, when crimes are defined in law, the system concentrates primarily on the predatory acts of the poor and tends to exclude or deemphasize the equally or more dangerous predatory acts of those who are well off.

In sum, I will argue that *the criminal justice system fails in the fight against crime while making it look as if crime is the work of the poor.* This conveys the image that the real danger to decent, law-abiding Americans comes from below them, rather than from above them, on the economic ladder. This image sanctifies the status quo with its disparities of wealth, privilege, and opportunity, and thus serves the interests of the rich and powerful in America—the very ones who could change criminal justice policy if they were really unhappy with it.

Therefore, it seems appropriate to ask you to look at criminal justice "through the looking glass." On the one hand, this suggests a reversal of common expectations. Reverse your expectations about criminal justice and entertain the notion that the system's real goal is the very reverse of its announced goal. On the other hand, the figure of the looking glass suggests the prevalence of image over reality. My argument is that the system functions the way it does *because it maintains a particular image of crime: the image*

that it is a threat from the poor. Of course, for this image to be believable, there must be a reality to back it up. The system must actually fight crime—or at least some crime—but only enough to keep it from getting out of hand and to keep the struggle against crime vividly and dramatically in the public's view, never enough to substantially reduce or eliminate crime.

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

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

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

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

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

In the concluding chapter, I present an argument that the conditions described in Chapters 1, 2, and 3 (whether or not one accepts my explanation for them in Chapter 4) undermine the essential moral difference between criminal justice and crime itself. In this chapter, called "*Criminal Justice or Criminal Justice*," I make some recommendations for reform of the system. These are not offered as ways to "improve" the system but as the minimal conditions necessary to establish the moral superiority of that system to crime itself.

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

The Pyrrhic defeat theory is a child of the marriage of several ideas from Western social theory. Although this is discussed at greater length in what follows, it will serve clarity to indicate from the start the parents and the grandparents of this child. The idea that crime serves important functions for a society comes from Émile Durkheim. The notion that public policy can be best understood as serving the interests of the rich and powerful in a society stems from Karl Marx. From Kai Erikson is derived the notion that the institutions designed to fight crime instead contribute to its existence. From Richard Quinney comes the concept of the "reality" of crime as *created* in the process that runs from the definition of some acts as "criminal" in the law to the treatment of some persons as "criminals" by the agents of the law. The Pyrrhic defeat theory combines these ideas into the view that the failure of criminal justice policy becomes intelligible when we see that it creates the "reality" of crime as the work of the poor and thus projects an image that serves the interests of the rich and powerful in American society.

Though the Pyrrhic defeat theory draws on the ideas just mentioned, it changes them in the process. For example, the theory veers away from traditional Marxist accounts of legal institutions insofar as such accounts generally emphasize the *repressive function* of the criminal justice system, whereas my view emphasizes its *ideological function*. Marxists tend to see the criminal justice system as serving the powerful by *successfully* repressing the poor. My view is that the system serves the powerful by its *failure* to reduce crime, not by its success. Needless to add, insofar as the system fails in some respects and succeeds in others, these approaches are not necessarily incompatible. Nevertheless, in looking at the ideological rather than the repressive function of criminal justice, I will focus primarily on the image its *failure* conveys rather than on what it actually *succeeds* in repressing.⁴

Having located the Pyrrhic defeat theory in its family tree, I wish to say a word about the relationship between crime and economics. It is my view that the social order (shaped decisively by the economic system) bears responsibility for most of the crime that troubles us. This is true for all classes in the society, because a competitive economy that refuses to guarantee its members a decent living places pressures on all members to enhance their economic position by whatever means available. It degrades and humiliates the poor while encouraging the greed of the well off.⁵ Nevertheless, these economic pressures work with particular harshness on the poor because their condition of extreme need and their relative lack of access to opportunities for lawful economic advancement vastly intensify for them the pressures toward crime that exist at all levels of our society.

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

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

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

ABBREVIATIONS USED IN THE NOTES

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

Sourcebook—2003 Kathleen Maguire and Ann L. Pastore, eds., *Sourcebook of Criminal Justice Statistics—2003*, U.S. Department of Justice, Bureau of Justice Statistics (Washington, DC: U.S. Government Printing Office, 2003). References to other editions of this annual publication will be indicated by *Sourcebook*, followed by the year in the title. Other editions may have different editors. The *Sourcebook* can be accessed online at www.albany.edu/sourcebook/.

StatAbst—2004–5 U.S. Census Bureau, *Statistical Abstract of the United States: 2004–5*, 124th ed. (Washington, DC: U.S. Government Printing Office, 2004). References to other editions of this annual publication will be indicated by *StatAbst*, followed by the year in the title. *StatAbst—2004–5* is available online at www.census.gov/prod/www/statistical-abstract.html.

UCR—2004 U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports for the United States: 2004* (Washington, DC: U.S. Government Printing Office, 2005). References to other editions of this annual report will be indicated by *UCR*, followed by the year for which the statistics are reported. In general, these reports are published in the fall of the year following the year they cover. The Federal Bureau of Investigation can be accessed online at www.fbi.gov.

BJS Bureau of Justice Statistics, a source of many reports cited in this book. The Bureau of Justice Statistics is an agency of the U.S. Department of Justice. It is part of the Justice Department's Office of Justice Programs, which also includes the Bureau of Justice Assistance, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Reports of the Bureau of Justice Statistics are published by the U.S. Government Printing Office in Washington, DC, normally in the year following the year in the title of the report. The Bureau of Justice Statistics can be accessed online at www.ojp.usdoj.gov/bjs.

NCJRS The National Criminal Justice Reference Service is a clearinghouse for government publications from several agencies dealing with crime and criminal justice. The National Criminal Justice Reference Service can be accessed online at www.ncjrs.org.

NOTES

1. Karl Menninger, *The Crime of Punishment* (New York: Viking, 1968).
2. Consider the following:

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

3. Almost 5 million American citizens are currently deprived of the right to vote because they have been convicted of a felony. See Jeffrey Reiman, "Liberal and Republican Arguments against the Disenfranchisement of Felons," *Criminal Justice Ethics* 24, no. 1 (Winter-Spring 2005): pp. 3–18.

4. To these remarks should be added the recognition that, since the 1960s, a new generation of Marxist theorists, primarily French, has begun to look specifically at the ideological functions performed by the institutions of the state. Most noteworthy in this respect is the work of Louis Althusser and Nicos Poulantzas. See, especially, Louis Althusser, "Ideology and Ideological State Apparatuses," in his *Lenin and Philosophy and Other Essays* (London: New Left Books, 1971), pp. 121–73; and Nicos Poulantzas, *Fascism and Dictatorship* (London: New Left Books, 1974), pp. 299–309. These writers refer to the pioneering insights of Antonio Gramsci into the ideological functions of state institutions. See Quintin Hoare and Geoffrey Nowell-Smith, eds., *Selections from the Prison Notebooks of Antonio Gramsci* (London: Lawrence and Wishart, 1971); and Carl Boggs, *Gramsci's Marxism* (London: Pluto Press, 1976). For other broadly Marxian analyses of the relationship between the state and ideology, see Ralph

Miliband, *The State in Capitalist Society* (New York: Basic Books, 1969), pp. 179–264; and Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975). A contemporary writer who takes seriously the ideological message of criminal justice practices is David Garland. See his *Punishment and Modern Society* (Chicago: University of Chicago Press, 1990), esp. ch. 11, “Punishment as a Cultural Agent,” pp. 249–76.

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

A CRIME BY ANY OTHER NAME . . .

If one individual inflicts a bodily injury upon another which leads to the death of the person attacked we call it manslaughter; on the other hand, if the attacker knows beforehand that the blow will be fatal we call it murder. Murder has also been committed if society places hundreds of workers in such a position that they inevitably come to premature and unnatural ends. Their death is as violent as if they had been stabbed or shot. . . . Murder has been committed if society knows perfectly well that thousands of workers cannot avoid being sacrificed so long as these conditions are allowed to continue. Murder of this sort is just as culpable as the murder committed by an individual.

—Frederick Engels, *The Condition of the Working Class in England*

WHAT'S IN A NAME?

If it takes you an hour to read this chapter, by the time you reach the last page, two of your fellow citizens will have been murdered. During that same time, more than six Americans will die as a result of unhealthy or unsafe conditions in the workplace! Although these work-related deaths could have been prevented, they are not called murders. Why not? Doesn't a crime by any other name still cause misery and suffering? What's in a name?

The fact is that the label "crime" is not used in America to name all or the worst of the actions that cause misery and suffering to Americans. It is reserved primarily for the dangerous actions of the poor.

In the February 21, 1993, edition of *The New York Times*, an article appeared with the headline "Company in Mine Deaths Set to Pay Big Fine." It reported an agreement by the owners of a Kentucky mine to pay a fine for safety misconduct that may have led to "the worst American mining accident in nearly a decade." Ten workers died in a methane explosion, and the company pleaded guilty to "a pattern of safety misconduct" that included falsifying reports of methane levels and requiring miners to work under

unsupported roofs. The company was fined \$3.75 million. The acting foreman at the mine was the only individual charged by the federal government, and for his cooperation with the investigation, prosecutors were recommending that he receive the minimum sentence: probation to six months in prison. The company's president expressed regret for the tragedy that occurred, and the U.S. attorney said he hoped the case "sent a clear message that violations of Federal safety and health regulations that endanger the lives of our citizens will not be tolerated."¹ Compare this with the story of Colin Ferguson, who prompted an editorial in *The New York Times* of December 10, 1993, with the headline "Mass Murder on the 5:33."² A few days earlier, Colin had boarded a commuter train in Garden City, Long Island, and methodically shot passengers with a 9mm pistol, killing 5 and wounding 18. Colin Ferguson was surely a murderer, maybe a mass murderer. My question is, why wasn't the death of the miners also murder? Why weren't those responsible for subjecting ten miners to deadly conditions also "mass murderers"? Why do ten dead miners amount to an "accident" and a "tragedy," and five dead commuters a "mass murder"? "Murder" suggests a murderer, whereas "accident" and "tragedy" suggest the work of impersonal forces. But the charge against the company that owned the mine said that they "repeatedly exposed the mine's work crews to danger and that such conditions were frequently concealed from Federal inspectors responsible for enforcing the Mine Safety Act." And the acting foreman admitted to falsifying records of methane levels only two months before the fatal blast. Someone was responsible for the conditions that led to the death of ten miners. Is that person not a murderer, perhaps even a *mass murderer*?

These questions are at this point rhetorical. My aim is not to discuss this case but rather to point to the blinders we wear when we look at such an "accident." There was an investigation. One person, the acting foreman, was held responsible for falsifying records. He was to be sentenced to six months in prison (at most). The company was fined. But no one was tried for *murder*. No one was thought of as a murderer. *Why not?* Would the miners not be safer if such people were treated as murderers? Might they not still be alive? Will a president of the United States address the Yale Law School and recommend mandatory prison sentences for such people? Will he mean these people when he says,

These relatively few, persistent criminals who cause so much misery and fear are really the core of the problem. The rest of the American people have a right to protection from their violence[?]³

Didn't those miners have a right to protection from the violence that took their lives? *And if not, why not?*

Once we are ready to ask this question seriously, we are in a position to see that the reality of crime—that is, the acts we label crime, the acts we think

of as crime, and the actors and actions we treat as criminal—is *created*: It is an image shaped by decisions as to *what* will be called crime and *who* will be treated as a criminal.

THE CARNIVAL MIRROR

It is sometimes coyly observed that the quickest and cheapest way to eliminate crime would be to throw out all the criminal laws. There is a sliver of truth to this view. Without criminal laws, there would indeed be no “crimes.” There would, however, still be dangerous acts. This is why we cannot solve our crime problem quite so simply. The criminal law *labels* some acts “crimes.” In doing this, it identifies those acts as so dangerous that we must use the extreme methods of criminal justice to protect ourselves against them. This does not mean that criminal law *creates* crime—it simply “mirrors” real dangers that threaten us. What is true of the criminal law is true of the whole justice system. If police did not arrest or prosecutors charge or juries convict, there would be no “criminals.” This does not mean that police or prosecutors or juries create criminals, any more than legislators do. They *react* to real dangers in society. The criminal justice system—from lawmakers to law enforcers—is just a mirror of the real dangers that lurk in our midst. *Or so we are told.*

How accurate is this mirror? We need to answer this in order to know whether or how well the criminal justice system is protecting us against the real threats to our well-being. The more accurate a mirror is, the more the image it shows is created by the reality it reflects. The more misshapen a mirror is, the more the distorted image it shows is created by the mirror, not by the reality reflected. It is in this sense that I will argue that the image of crime is *created*: The American criminal justice system is a mirror that shows a distorted image of the dangers that threaten us—an image created more by the shape of the mirror than by the reality reflected. What do we see when we look in the criminal justice mirror?

On the morning of September 16, 1975, *The Washington Post* carried an article in its local news section headlined “Arrest Data Reveal Profile of a Suspect.” The article reported the results of a study of crime in Prince George’s County, a suburb of Washington, D.C. It read in part as follows:

The typical suspect in serious crime in Prince George’s County is a black male, aged 14 to 19, who lives in the area inside the Capital Beltway where more than half of the county’s 64,371 reported crimes were committed in 1974. [The study] presents a picture of persons, basically youths, committing a crime once every eight minutes in Prince George’s County.⁴

This report is hardly a surprise. The portrait it paints of “the typical suspect in serious crime” is probably a pretty good rendering of the image

lurking in the back of the minds of most Americans who fear crime. Furthermore, although the crime rate in Prince George's County is somewhat above the national average and its black population somewhat above that of the average suburban county, the portrait generally fits the national picture presented in the FBI's *Uniform Crime Reports* for the same year, 1974. In Prince George's County, "youths between the ages of 14 and 19 were accused of committing nearly half [45.5 percent] of all 1974 crimes."⁵ For the nation in 1974, the FBI reported that persons in this age group accounted for 39.5 percent of arrests for the FBI Index crimes (criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft).⁶ These youths were male and disproportionately black. In Prince George's County, males "represented three of every four serious crime defendants."⁷ In the nation in 1974, of 1,289,524 persons arrested for FBI Index crimes, 1,043,155, or more than 80 percent, were males.⁸ In Prince George's County, where blacks made up approximately 25 percent of the population, "blacks were accused of 58 percent of all serious crimes."⁹ In the nation, where blacks made up 11.4 percent of the population in 1974, they accounted for 34.2 percent of arrests for Index crimes.¹⁰

This was the *Typical Criminal* in 1974; but little has changed since. In his 1993 book, *How to Stop Crime*, retired Police Chief Anthony Bouza writes, "Street crime is mostly a black and poor young man's game."¹¹ And listen to the sad words of the Reverend Jesse Jackson: "There is nothing more painful to me at this stage of my life than to walk down the street and hear footsteps and start thinking about robbery—and then look around and see someone white and feel relieved."¹² In 2005, William Bennett, President Reagan's secretary of education (1985–1988) and the first President Bush's "drug czar" (1989–1990), commented, "I do know that it's true that if you wanted to reduce crime, you could—if that were your sole purpose—you could abort every black baby in this country, and your crime rate would go down."¹³ In *The Color of Crime*, Kathryn Russell speaks of the "criminalblackman."¹⁴ Marjorie Zatz characterizes this notion as follows: "The 'criminalblackman' is a composite of white fears of black men's criminality. It may become so strong and so widespread that it allows for racial hoaxes, in which a white offender blames an African American, usually male, for the offense in question and is readily believed by criminal justice agents and/or the general public."¹⁵

Let us look more closely at the face in today's criminal justice mirror, and we shall see much the same *Typical Criminal*.

He is, first of all, a *he*. Of 10 million persons arrested for crimes in 2004, 76 percent were males. Of persons arrested for violent crimes, 82 percent were men. Second, he is *young*. Nearly half (45 percent) of men arrested for all crimes were under the age of 25; and the same is true of violent crimes. Third, he is predominantly *urban*. Cities with populations over 250,000 had a rate of 322 arrests for violent crimes per 100,000 inhabitants, while cities with populations under 10,000 had 165 such arrests per 100,000 inhabitants;

arrests for property crimes were 735 per 100,000 in big cities, compared with 613 for smaller ones. "Half of all homicides occur in the 63 largest cities, which house only 16 percent of the population."¹⁶ Fourth, he is disproportionately *black*: Blacks are arrested for Index crimes at a rate more than twice that of their percentage in the national population. In 2004, with blacks representing 13 percent of the nation's population, they made up 27 percent of all crime arrests.¹⁷ Finally, he is *poor*: Almost one-third (29 percent) of 2002 jail inmates were unemployed (without full- or part-time work) prior to being arrested, an unemployment rate considerably higher than that of adults in the general population, and almost half (45 percent) reported prearrest incomes below \$7,200 a year.¹⁸ As the President's Commission reported nearly 40 years ago, "The offender at the end of the road in prison is likely to be a member of the lowest social and economic groups in the country."¹⁹

This is the Typical Criminal feared by most law-abiding Americans. Poor, young, urban, (disproportionately) black males make up the core of the enemy forces in the crime war. They are the heart of a vicious, unorganized guerrilla army, threatening the lives, limbs, and possessions of the law-abiding members of society, necessitating recourse to the ultimate weapons of force and detention in our common defense.

How do we know who the criminals are who so seriously endanger us that we must stop them with force and lock them in prisons? "From the arrest records, probation reports, and prison statistics," the President's Commission on Law Enforcement and Administration of Justice, authors of *The Challenge of Crime in a Free Society*, tells us, the "'portrait' of the offender emerges."²⁰ *These sources are not merely objective readings taken at different stages in the criminal justice process: Each of them represents human decisions.* "Prison statistics" and "probation reports" reflect *decisions* of juries on who gets convicted and decisions of judges on who gets probation or prison and for how long. "Arrest records" reflect decisions about which crimes to investigate and which suspects to take into custody. All these decisions rest on the most fundamental of all decisions: the *decisions* of legislators as to which acts shall be labeled "crimes" in the first place.

The reality of crime as the target of our criminal justice system and as perceived by the general populace is not a simple objective threat to which the system reacts: *It is a reality that takes shape as it is filtered through a series of human decisions running the full gamut of the criminal justice system*—from the lawmakers who determine what behavior shall be in the province of criminal justice to the law enforcers who decide which individuals will be brought within that province. And it doesn't end with the criminal justice system as such, because the media—particularly television and daily newspapers—contribute as well to the image that people have of crime in our society.²¹ Here, too, human decisions are fundamental. The news media do not simply report the facts. There are too many facts out there. A selection must be made. People working in the news media must choose which facts are *news*, and they must choose how to represent those facts.

Note that by emphasizing the role of "human decisions," I do not mean to suggest that the reality of crime is voluntarily and intentionally "created" by individual "decision makers." Their decisions are themselves shaped by the social system, much as a child's decision to become an engineer rather than a samurai warrior is shaped by the social system in which he or she grows up. Thus, to have a full explanation of how the reality of crime is created, we have to understand how our society is structured in a way that leads people to make the decisions they do. In other words, these decisions are part of the social phenomena to be explained, they are not the explanation.

For the present, however, I emphasize the role of the decisions themselves for the following reasons: First, they are conspicuous points in the social process, relatively easy to spot and verify empirically. Second, because they are decisions aimed at protecting us from the dangers in our midst, we can compare the decisions with the real dangers and determine whether they are accurately responding to the real dangers. Third, because the reality of crime—the real actions labeled crimes, the real individuals identified as criminals, and the real faces we watch in the news as they travel from arrest to court to prison—results from these decisions, we can determine whether that reality corresponds to the real dangers in our society. Where that reality does correspond to the real dangers, we can say that the reality of crime simply reflects the real dangers in society. Where the reality of crime does not correspond to the real dangers, we can say that it is a reality *created* by those decisions. Then we can investigate the role played by the social system in encouraging, reinforcing, and otherwise shaping those decisions.

It is to capture this way of looking at the relation between the reality of crime and the real dangers "out there" in society that I refer to the criminal justice system as a "mirror." Whom and what we see in this mirror are functions of the decisions about who and what is criminal. Our poor, young, urban, black male, who is so well represented in arrest records and prison populations, appears not simply because of the threat he poses to the rest of society. As dangerous as he may be, he would not appear in the criminal justice mirror *if* it had not been decided that the acts he performs should be labeled "crimes," *if* it had not been decided that he should be arrested for those crimes, *if* he had had access to a lawyer who could persuade a jury to acquit him and a judge to expunge his arrest record, and *if* it had not been decided that he is the type of individual and his the type of crime that warrant imprisonment. *The shape of the reality we see in the criminal justice mirror is the outcome of all these decisions.* We want to know how accurately the reality we see in this mirror reflects the real dangers that threaten us in society.

It is not my view that this reality is created out of nothing. The mugger, the rapist, the murderer, the burglar, and the robber all pose a definite threat to our well-being, and they ought to be dealt with in ways that effectively reduce that threat to the minimum level possible (without making the criminal justice system itself a threat to our lives and liberties). Of central importance, however, is that the threat posed by the Typical Criminal is not the

greatest threat to which we are exposed. The acts of the Typical Criminal are not the only acts that endanger us, nor are they the acts that endanger us the most. As I shall show in this chapter, we have as great and sometimes even a greater chance of being killed or disabled by an occupational injury or disease, by unnecessary surgery, or by shoddy medical services than by aggravated assault or even homicide! Yet even though these threats to our well-being are graver than that posed by our poor young criminals, they do not show up in the FBI's Index of serious crimes. The individuals responsible for them do not turn up in arrest records or prison statistics. *They never become part of the reality reflected in the criminal-justice-mirror, although the danger they pose is at least as great and often greater than the danger posed by those who do!*

Similarly, the general public loses more money *by far* (as I show below) from price fixing and monopolistic practices and from consumer deception and embezzlement than from all the property crimes in the FBI's Index combined. Yet these far more costly acts are either not criminal, or, if technically criminal, not prosecuted, or, if prosecuted, not punished, or if punished, only mildly. In any event, although the individuals responsible for these acts take more money out of the ordinary citizen's pocket than our Typical Criminal, they rarely show up in arrest statistics and almost never in prison populations. *Their faces rarely appear in the criminal justice mirror, although the danger they pose is at least as great and often greater than that of those who do.*

The inescapable conclusion is that the criminal justice system does not simply *reflect* the reality of crime; it has a hand in *creating* the reality we see.

The criminal justice system is like a mirror in which society can see the face of the evil in its midst. Because the system deals with some evils and not with others, because it treats some minor evils as grave and treats some of the gravest evils as minor; the image it throws back is distorted, like the image in a carnival mirror. Thus, the image cast back is false, not because it is invented out of thin air but because the proportions of the real are distorted: Large becomes small, and small large; grave becomes minor, and minor grave. Like a carnival mirror, although nothing is reflected that does not exist in the world, the image is more a creation of the mirror than a picture of the world.

If criminal justice really gives us a carnival-mirror image of "crime," we are doubly deceived. First, we are led to believe that the criminal justice system is protecting us against the gravest threats to our well-being when, in fact, the system is protecting us against only some threats and not necessarily the gravest ones. We are deceived about how much protection we are receiving, and thus are left vulnerable. The second deception is just the other side of this one. If people believe that the carnival mirror is a true mirror—that is, if they believe the criminal justice system simply reacts to the gravest threats to their well-being—they come to believe that whatever is the target of the criminal justice system must be the greatest threat to their well-being. In other words, if people believe that the most drastic of society's weapons are wielded by the criminal justice system *in reaction to* the gravest dangers to

society, they will believe the reverse as well: that those actions that call forth the most drastic of society's weapons *must be* those that pose the gravest dangers to society.

A strange alchemy takes place when people accept uncritically the legitimacy of their institutions: What *needs* justification becomes *proof* of justification. People come to believe that prisoners must be criminals *because* they are in prison and that the inmates of insane asylums must be *crazy* because they are in insane asylums.²² The criminal justice system's use of extreme measures—such as force and imprisonment—is thought to be justified by the extreme gravity of the dangers it combats. By this alchemy, these extreme measures become *proof* of the extreme gravity of those dangers, and the first deception, which merely misleads the public about how much protection the criminal justice system is actually providing, is transformed into the second, which deceives the public into believing that the acts and actors that are the targets of the criminal justice system pose the gravest threats to its well-being. Thus, the system may not only fail to protect us from dangers as great as or greater than those listed in the FBI Crime Index; it may also do still greater damage by creating the false security of the belief that only the acts on the FBI Index really threaten us and require control.

In the following discussion, I describe how and why the criminal justice carnival mirror distorts the image it creates.

CRIMINAL JUSTICE AS CREATIVE ART

The Pyrrhic defeat explanation for the "failure" of criminal justice in America holds that criminal justice *fails* (or, what amounts to the same thing, high crime rates are allowed to persist) in order to project a particular *image* of crime. In Chapter 1, I described the failure to adopt policies that could eliminate our high crime rates. It is the task of this chapter and the next to prove that the reality of crime is *created* and that it is created in a way that promotes a particular *image* of crime: *the image that serious crime—and therefore the greatest danger to society—is the work of the poor.*

The notion that the reality of crime is created is derived from Richard Quinney's theory of the *social reality of crime*.²³ Here as elsewhere, however, an idea that contributes to the Pyrrhic defeat theory is transformed along the way. Because I understand the idea that the social reality of crime is created in a way different from its meaning for Quinney, it will help in presenting my view to compare it with Quinney's.

Quinney maintains that crime has a "social reality" rather than an objective reality. What he means can be explained with an example. Wherein lies the reality of money? Certainly not in the "objective" characteristics of green printed paper. It exists rather in the "social" meaning attributed to that paper and the pattern of "social" behavior that is a consequence of that

meaning. If people did not act as if that green printed paper had value, it would be just green paper, not real money. The reality of a crime as a *crime* does not lie simply in the objective characteristics of an action. It lies in the "social" meaning attached to that action and the pattern of "social" behavior—particularly the behavior of criminal justice officials—that is a product of that meaning. I think Quinney is right in this. When I speak of the reality of crime, I am referring to much more than physical actions such as stabbing or shooting. I mean as well the reality that a society gives those physical actions by labeling them and treating them as criminal.

Quinney further maintains that this reality of crime is *created*. By this, he means that crime is a definition of behavior applied by lawmakers and other criminal justice decision makers. "Crime," Quinney writes,

is a definition of behavior that is conferred on some persons by others. Agents of the law (legislators, police, prosecutors, and judges), representing segments of a politically organized society, are responsible for formulating and administering criminal laws. Persons and behaviors, therefore, become criminal because of the formulation and application of criminal definitions. Thus, crime is created.²⁴

This is *not* what I have in mind when I say that the reality of crime is created. Here is the difference. Quinney's position amounts to this: Crimes are established by the criminal law, and the criminal law is a human creation; ergo, crime is created. This is true, but it does not take us very far. After all, who can deny that crime is created *in this sense*? Only someone who has been hypnotized into forgetting that law books are written by lawmakers could deny that "crime" is a label that human beings apply to certain actions. What is controversial, however, is whether the label is applied appropriately. "Crime," after all, is not merely a sound—it is a word with a generally accepted meaning. Roughly speaking, it means at least "an intentional action that is harmful to society." (Of course, "crime" has a technical definition, namely, "an act prohibited by a criminal law." The point of prohibiting an act by the criminal law is to protect society from an injurious act. Thus, though any act prohibited by criminal law is rightly labeled a crime in the technical sense, not every act so prohibited is rightly prohibited, and thus not every act labeled "crime" is labeled appropriately. To determine whether the label "crime" is applied appropriately, we must use the more general definition.) The label is applied appropriately when it is used to identify all, or at least the worst, acts that are harmful to society. The label is applied inappropriately when it is attached to harmless acts or when it is not attached to seriously harmful acts. When I argue that the reality of crime is created, I mean that the label "crime" has not been applied appropriately.

One might ask why the inappropriate use of the label "crime" is a reason for saying that crime is created. My answer is this: By calling something *created*, we call attention to the fact that human actors are responsible for it.

By calling crime created, I point to human actors *rather than objective dangers* as determining the shape that the reality of crime takes in our society. If the label "crime" is applied consistently to the most dangerous or harmful acts, then it is misleading to point to the fact that human decision makers are responsible for how the label is applied because their decisions are dictated by compelling objective reasons. Rather than creating a reality, their decisions trace a reality that already exists. On the other hand, if the label is not applied appropriately, it is sensible to assume that it is applied for reasons that lie with the decision makers and not in the realm of objective dangers. This means that when the label "crime" is applied inappropriately, it is essential to call attention to the fact that human actors are responsible for it. Thus, it is precisely when the label "crime" is applied inappropriately that it is important to point out that the reality of crime is *created*.

By calling crime created, I want to emphasize the human responsibility for the shape of crime, not in the trivial sense that humans write the criminal law, *but rather to call attention to the fact that decisions as to what to label and treat as crime are not compelled by objective dangers, and thus that, to understand the reality of crime, we must look to the social processes that shape those decisions.*

By calling crime created, I suggest that our picture of crime—the portrait that emerges from arrest statistics, prison populations, politicians' speeches, news media, and fictionalized presentations, the portrait that in turn influences lawmakers and criminal justice policy makers—is not a photograph of the real dangers that threaten us. Its features are not simply traced from the real dangers in the social world. Instead, it is a piece of creative art. It is a picture in which some dangers are portrayed, and others omitted. Because it cannot be explained as a straight reflection of real dangers, we must look elsewhere to understand the shape it takes.

This argument, which will occupy us in this chapter and the next, leads to *five hypotheses* about the way in which the public's image of crime is created. To demonstrate that the reality of crime is created, and that the criminal justice system is a carnival mirror that gives us a distorted image of the dangers that threaten us, I will try to prove that, at each of the crucial decision-making points in criminal justice, the decisions made do not reflect the real and most serious dangers we face. The five hypotheses are as follows.

1. **Of the decisions of legislators:** That the definitions of crime in the criminal law do not reflect the only or the most dangerous of antisocial behaviors
2. **Of the decisions of police and prosecutors:** That the decisions on whom to arrest or charge do not reflect the only or the most dangerous behaviors legally defined as "criminal"
3. **Of the decisions of juries and judges:** That criminal convictions do not reflect the only or the most dangerous individuals among those arrested and charged

4. **Of the decisions of sentencing judges:** That sentencing decisions do not reflect the goal of protecting society from only or the most dangerous of those convicted by meting out punishments proportionate to the harmfulness of the crime committed
5. **Of all these decisions taken together:** That what criminal justice policy decisions (in hypotheses 1 through 4) do reflect is the implicit identification of crime with the dangerous acts of the poor, an identification amplified by media representations of crime

The Pyrrhic defeat theory is composed of these five hypotheses, *plus* the proposition that the criminal justice system is failing in avoidable ways to eliminate our high crime rates (argued in Chapter 1), *plus* the *historical inertia* explanation of how this failure is generated and left uncorrected because of the ideological benefits it produces (argued in Chapter 4). Note that the fifth hypothesis goes beyond the criminal justice system to point to the role of the media. That is, while the structure of criminal justice practice enables it to create an image of crime as the work of the poor, the media serve as the conveyor of that image to the wider public. Moreover, this conveyor adds a twist of its own, not merely conveying an accurate picture of the whole of criminal justice practice with its biases, but actually magnifying those biases. So, we shall see that the media portray crime—in reality and in fiction—in ways that overrepresent the types of crimes committed by poor people (whether they are committed by poor or rich folks) and that obscure the social factors that lead to crime in reality (argued in this chapter and in Chapter 4). Finally, I tie this theory of how and why the criminal justice system functions as it does together with the *historical inertia* explanation: That is, I will try to show how the decisions that create the biased image of crime are caused by historical forces and left unchanged because the particular distribution of costs and benefits to which those decisions give rise serves to make the system self-reinforcing.

A CRIME BY ANY OTHER NAME . . .

Think of a crime, any crime. Picture the first “crime” that comes into your mind. What do you see? The odds are you are not imagining a mining company executive sitting at his desk, calculating the costs of proper safety precautions, and deciding not to invest in them. Probably what you do see with your mind’s eye is one person attacking another physically or robbing something from another via the threat of physical attack. Look more closely. What does the attacker look like? It’s a safe bet he (and it is a *he*, of course) is not wearing a suit and tie. In fact, my hunch is that you—like me, like almost anyone else in America—picture a young, tough, lower-class male when the thought of crime first pops into your head. You (we) picture someone like the

Typical Criminal described above. The crime itself is one in which the Typical Criminal sets out to attack or rob some specific person.

This last point is important. It indicates that we have a mental image not only of the Typical Criminal but also of the *Typical Crime*. If the Typical Criminal is a young, lower-class male, the Typical Crime is *one-on-one harm*—where “harm” means physical injury, loss of something valuable, or both. If you have any doubts that this is the Typical Crime, look at any random sample of police or private eye shows on television. How often do you see the officers on the TV show *COPS* investigate consumer fraud or failure to remove occupational hazards? When *Law & Order* detectives Green and Fontana happen to track down a well-heeled criminal, it is almost always for violent crimes such as murder. A study of TV crime shows by the Media Institute in Washington, D.C., indicates that, while the fictional criminals portrayed on television are on average both older and wealthier than the real criminals who figure in the FBI *Uniform Crime Reports*, “TV crimes are almost 12 times as likely to be violent as crimes committed in the real world.”²⁵ A review of several decades of research confirms that violent crimes are overrepresented on TV news and fictional crime shows, and that “young people, black people, and people of low socioeconomic status are underrepresented as offenders or victims in television programs”—exactly opposite from the real world, in which nonviolent property crimes far outnumber violent crimes, and young, poor, and black folks predominate as offenders and victims.²⁶

Notice, then, that TV crime shows focus on the crimes typically committed by poor people, but they do not present these as uniquely committed by poor people. Rather than contradict the Pyrrhic defeat theory, this combination confirms it in a powerful way. The result is that TV crime shows broadcast the double-edged message that the one-on-one crimes of the poor are the typical crimes that rich and poor criminals commit and thus they are not caused uniquely by the pressures of poverty; *and* that the criminal justice system pursues rich and poor alike—thus, when the criminal justice system happens mainly to pounce on the poor in real life, it is not from any class bias.²⁷ In other words, what is most important about the televised portrayals of crime is the *kinds* of crimes that are shown, not *who* is typically shown to be guilty. By overrepresenting violent one-on-one crimes, television confirms the commonsense view that these are the crimes that threaten us. Then, since in the real world those crimes are disproportionately committed by poor people, that is enough to create the image that it is the poor who pose the greatest danger to law-abiding Americans.

In addition to the steady diet of fictionalized TV violence and crime, there has been an increase in the graphic display of crime on many TV news programs. Crimes reported on TV news are also far more frequently violent than real crimes are.²⁸ An article in *The Washingtonian* says that the word around two prominent local TV news programs is “If it bleeds, it leads.”²⁹

The Center for Media and Public Affairs reports a dramatic increase in homicide coverage on evening news programs starting in 1993, just as homicide rates were falling significantly. Other researchers found that news programs were highly selective in the homicides they reported. The murders that were chosen for coverage tended to be committed by strangers in neighborhoods where average household income was over \$25,000 a year, while we know that most murders occur between people known to each other and take place in low-income neighborhoods. The effect is to magnify the risk of lower-class crime to middle-class individuals. Is it any wonder that that fear of crime has persisted even as crime rates have gone down sharply?³⁰

What's more, a new breed of nonfictional "tabloid" TV show has appeared in which viewers are shown films of actual violent crimes—blood, screams, and all—or reenactments of actual violent crimes, sometimes using the actual victims playing themselves! Among these are *COPS* and *America's Most Wanted*. *The Wall Street Journal*, reporting on the phenomenon of tabloid TV, informs us, "Television has gone tabloid. The seamy underside of life is being bared in a new rash of true-crime series and contrived-confrontation talk shows."³¹ Here, too, the focus is on crimes of one-on-one violence, rather than, say, deadly industrial pollution.

It is important to identify this model-of-the-Typical Crime because it functions like a set of blinders. It keeps us from calling a mine disaster a mass murder even if ten men are killed, even if someone is responsible for the unsafe conditions in which they worked and died. One study of newspaper reporting of a food-processing plant fire, in which 25 workers were killed and criminal charges were ultimately brought, concludes that "the newspapers showed little consciousness that corporate violence might be seen as a crime."³² I contend that this is due to our fixation on the model of the Typical Crime. This particular piece of mental furniture so blocks our view that it keeps us from using the criminal justice system to protect ourselves from the greatest threats to our persons and possessions.

What keeps a mine disaster from being a mass murder in our eyes is that it is not a one-on-one harm. What is important in one-on-one harm is not the numbers but the *desire of someone (or ones) to harm someone (or ones) else*. An attack by a gang on one or more persons or an attack by one individual on several fits the model of one-on-one harm; that is, for each person harmed, there is at least one individual who wanted to harm that person. Once he selects his victim, the rapist, the mugger, or the murderer all want the person they have selected to suffer. A mine executive, on the other hand, does not want his employees to be harmed. He would truly prefer that there be no accident, and no injured or dead miners. What he does want is something legitimate. It is what he has been hired to get: maximum profits at minimum costs. If he cuts corners to save a buck, he is just doing his job. If ten men die because he cut corners on safety, we may think him crude or callous, but not a murderer. He is, at most, responsible for *indirect harm*, not one-on-one

harm. For this, he may even be criminally indictable for violating safety regulations, but not for murder. The ten men are dead as an unwanted consequence of his (perhaps overzealous or undercautious) pursuit of a legitimate goal. So, unlike the Typical Criminal, he has not committed the Typical Crime, or so we generally believe. As a result, ten men are dead who might be alive now if cutting corners of the kind that leads to loss of life, whether suffering is specifically aimed at or not, were treated as murder.

This is my point. Because we accept the belief—encouraged by our politicians' statements about crime and by the media's portrayal of crime—that the model for crime is one person specifically trying to harm another, we accept a legal system that leaves us unprotected against much greater dangers to our lives and well-being than those threatened by the Typical Criminal. Before developing this point further, let us anticipate and deal with some likely objections. Defenders of the present legal order are likely to respond to my argument at this point with irritation. Because this will surely turn to outrage in a few pages, let's talk to them now, while the possibility of rational communication still exists.

The "Defenders of the Present Legal Order" (I'll call them "the Defenders" for short) are neither foolish nor evil people. They are not racists, nor are they oblivious to the need for reform in the criminal justice system to make it more even-handed and for reform in the larger society to make equal opportunity a reality for all Americans. Their response to my argument at this point is that the criminal justice system *should* occupy itself with one-on-one harm. Harms of the sort exemplified in the "mine tragedy" are really *not* murders and are better dealt with through stricter government enforcement of safety regulations. The Defenders admit that this enforcement has been rather lax and recommend that it be improved. Basically, though, they think this division of labor is right because it fits our ordinary moral sensibilities.

The Defenders maintain that, according to our common moral notions, someone who tries to do another harm and does is really more evil than someone who jeopardizes others while pursuing legitimate goals but doesn't aim to harm anyone. The one who jeopardizes others in this way doesn't want to hurt them. He or she doesn't have the goal of hurting someone in the way that a mugger or a rapist does. Moreover, being directly and purposely harmed by another person, the Defenders believe, is terrifying in a way that being harmed indirectly and impersonally, say, by a safety hazard, is not, even if the resultant injury is the same in both cases. And we should be tolerant of the one responsible for lax safety measures because he or she is pursuing a legitimate goal—that is, his or her dangerous action occurs as part of a productive activity, something that ultimately adds to social wealth and thus benefits everyone—whereas doers of one-on-one harm benefit no one but themselves. Thus, the latter are rightfully in the province of the criminal justice system with its drastic weapons, and the former are appropriately dealt with by the milder forms of regulation (or, perhaps, treated legally as responsible for *torts*).³³

Further, the Defenders insist, the crimes targeted by the criminal justice system are imposed on their victims totally against their will, whereas the victims of occupational hazards chose to accept their risky jobs and thus have, in some degree, consented to subject themselves to the dangers. Where dangers are consented to, the appropriate response is not blame but requiring improved safety, and this is most efficiently done by regulation rather than with the guilt-seeking methods of criminal justice.

In sum, the Defenders make four objections: (1) Someone who purposely tries to harm another is really more evil than someone who harms another without aiming to, even if the degree of harm is the same; (2) being harmed directly by another person is more terrifying than being harmed indirectly and impersonally, as by a safety hazard, even if the degree of harm is the same; (3) someone who harms another in the course of an illegitimate and purely self-interested action is more evil than someone who harms another as a consequence of a legitimate and socially productive endeavor; (4) the harms of typical crimes are imposed on their victims against their wills, whereas harms such as those due to occupational hazards are consented to by workers when they agree to a job.

All four of these objections are said to reflect our common moral beliefs, which are a fair standard for a legal system to match. Together they are said to show that the typical criminal does something worse than the one responsible for an occupational hazard and thus deserves the special treatment provided by the criminal justice system. Some or all of these objections may have already occurred to the reader. Thus, it is important to respond to the Defenders. For the sake of clarity, I shall number the paragraphs in which I start to take up each objection in turn.

1. Defenders' first objection: Someone who purposely tries to harm another is really more evil than someone who harms another without aiming to, even if the degree of harm is the same. Thus, the typical criminal is rightly subject to criminal justice, while the cost-cutting executive who endangers his workers is rightly subject to noncriminal safety regulations.

Response: The Defenders' first objection confuses intention with aim or purpose, and it is intention that brings us properly within the reach of the criminal law. It is true that a mugger aims to harm his victim in a way that a corporate executive who maintains an unsafe workplace does not. But the corporate executive acts intentionally nonetheless, and that's what makes his actions appropriately subject to criminal law. What we intend is not just what we want to make happen but what we do on purpose knowing what is likely to happen as the normal result of what we have done. As criminal law theorist Hyman Gross points out, "What really matters here is whether conduct of a particular degree of dangerousness was done intentionally."³⁴ Whether the actor wants or aims for that conduct to harm someone is a different

matter, which is relevant to the actor's *degree* of culpability (not to whether he or she is culpable at all).

Here's an example (adapted from one given by Gross) to help understand the legally recognized degrees of culpability: Suppose a construction worker digs a trench in a neighborhood where children regularly play, and leaves the trench uncovered. One rainy day, children are killed while playing in the trench when its walls cave in on them. If the construction worker dug the trench and left it uncovered in order to kill the children, then their deaths were caused *purposely*. But suppose that the trench was dug and left uncovered not in order to harm the children, but knowing that children played in the area. Then, their deaths were brought about *knowingly*. If digging the ditch and leaving it uncovered were done without knowledge that children played in the area, but without making sure that they did not, then their deaths were brought about *recklessly*. Finally, if the trench was dug and left uncovered without knowledge that children played in the area and some, but inadequate, precautions were taken to make sure no children were there, then their deaths were brought about *negligently*.³⁵

How does this apply to the executive who imposes dangerous conditions on his workers, conditions that, as in the mine explosion, finally do lead to death? The first thing to note is that the difference between *purposely*, *knowingly*, *recklessly*, or *negligently* causing death is a difference within the range of intentional (and thus to some degree legally culpable) action. What is done *recklessly* or *negligently* is still done intentionally. Second, culpability decreases as we go from *purposely* to *knowingly* to *recklessly* to *negligently* killing because, according to Gross, the outcome is increasingly due to chance and not to the actor; that is, the one who kills on purpose leaves less to chance that the killing will occur than the one who kills *knowingly* (the one who kills on purpose will take precautions against the failure of his killing, while the one who kills *knowingly* won't), and likewise the one who kills *recklessly* leaves wholly to chance whether there is a victim at all. And the one who kills *negligently* reduces this chance, but insufficiently.

The kernel of truth in the Defenders' first objection is that the common street mugger harms on purpose, while the executive harms only *knowingly* or *recklessly* or *negligently*. This does not justify refusing to treat the executive killer as a criminal, however, because we have criminal laws against *reckless* or even *negligent* harming. Thus the kid-glove treatment meted out to those responsible for occupational hazards and the like is no simple reflection of our ordinary moral sensibilities, as the Defenders claim. Moreover, don't be confused into thinking that, because all workplaces have some safety measures, all workplace deaths are at most due to negligence. To the extent that precautions are not taken against particular dangers (such as leaking methane), deaths due to those dangers are—by Gross's standard—caused *recklessly* or even *knowingly* (because the executive knows that potential victims are in harm's way from the danger he fails to reduce). Nancy Frank concludes from a review of state homicide statutes that "a large

number of states recognize unintended deaths caused by extreme recklessness as murder."³⁶

There is more to be said. Remember that Gross attributes the difference in degrees of culpability to the greater role left to chance as we descend from purposely to knowingly to recklessly to negligently harming. In this light, it is important to note that the executive (say, the mine owner) imposes danger on a larger number of individuals than the typical criminal typically does. So, while the typical criminal purposely harms a particular individual, the executive knowingly subjects a large number of workers to a risk of harm. As the risk becomes greater and the number of workers increases, it becomes increasingly likely that one or more workers will be harmed. This means that the gap between the executive and the typical criminal shrinks. By not harming workers purposely, the executive leaves more to chance; but by subjecting large numbers to risk, he leaves it less and less to chance that *someone* will be harmed, and, thus, he rolls back his moral advantage over the typical criminal. If you keep your workers in mines or factories with high levels of toxic gases or chemicals, you start to approach 100 percent likelihood that at least one of them will be harmed as a result. That means that the culpability of the executive approaches that of the typical criminal.

A different way to make the Defenders' first objection is to say that the executive has failed to protect his workers, while the typical criminal has acted positively to harm his victim. In general, we think it is worse to harm someone than to fail to prevent their being harmed (perhaps you should feed starving people on the other side of town or of the world, but few people will think you are a murderer if you don't and the starving die). But in at least some cases, we are responsible for the harm that results from our failure to act (for example, parents are responsible when they fail to provide for their children). Some philosophers go further and hold that we are responsible for all the foreseeable effects of what we do, including the foreseeable effects of failing to act in certain ways.³⁷ Although this view supports the position for which I am arguing here, I think it goes too far. It entails that we are murderers every time we are doing anything other than saving lives, which surely goes way beyond our ordinary moral beliefs. My view is that in most cases, we are responsible only for the foreseeable effects likely to be caused by our action, and are not responsible for those caused by our inaction. We are responsible, however, for the effects of our inaction in at least one special type of case: when we have a special obligation to aid people. This covers the parent who causes his child's death by failing to feed him, the doctor who causes her patient's death by failing to care for her, and the coal mine owner who causes his employees' death by failing to take legally mandated safety precautions. It may also cover the society that fails to rectify harm-producing injustices in its midst. This is another way in which the moral difference between the safety-cutting executive and the typical criminal shrinks away.

Further on this first objection, I think the Defenders overestimate the importance of specifically trying to do evil in our moral estimate of people.

The mugger who aims to hurt someone is no doubt an ugly character, but so too is the well-heeled executive who calmly and callously chooses to put others at risk. Most murders, we know, are committed in the heat of some passion such as rage or jealousy. Two lovers or neighbors or relatives find themselves in a heated argument. One (often it is a matter of chance *which* one) picks up a weapon and strikes the other a fatal blow. Such a person is clearly a murderer and rightly subject to punishment by the criminal justice system. Is this person more evil than the executive who, knowing the risks, calmly chooses not to pay for safety equipment?

The one who kills in a heated argument kills from passion. What she does she probably would not do in a cooler moment. She is likely to feel "she was not herself." The one she killed was someone she knew, a specific person who at the time seemed to her to be the embodiment of all that frustrated her, someone whose very existence made life unbearable. I do not mean to suggest that this is true of all killers, although there is reason to believe that it is true of many. Nor do I mean to suggest that such a state of mind justifies murder. What it does do, however, is suggest that the killer's action, arising out of anger at a particular individual, does not show general disdain for the lives of her fellows. Here is where she is different from our mine executive. Our mine executive wanted to harm no one in particular, but *he knew his acts were likely to harm someone*. Once someone is harmed, the victim is someone in particular. Nor can our executive claim that "he was not himself." His act is done not out of passion but out of cool reckoning. It is precisely here that his evil shows. In his willingness to jeopardize the lives of unspecified others who pose him no real or imaginary threat in order to make a few dollars, he shows his general disdain for all his fellow human beings. Can it really be said that he is less evil than one who kills from passion? The Model Penal Code includes within the definition of murder any death caused by "extreme indifference to human life."³⁸ Is our executive not a murderer by this definition?

It's worth noting that, in answering the Defenders here, I have portrayed harms from occupational hazards in their best light. They are not, however, all just matters of well-intentioned but excessive risk taking. Consider, for example, the Manville (formerly Johns Manville) asbestos case. It is predicted that 240,000 Americans working now or who previously worked with asbestos will die from asbestos-related cancer over a period of 30 years. But documents made public during congressional hearings in 1979 show "that Manville and other companies within the asbestos industry covered up and failed to warn millions of Americans of the dangers associated with the fireproof, indestructible insulating fiber."³⁹ An article in the *American Journal of Public Health* attributes thousands of deaths to the cover-up.⁴⁰ Later in this chapter I document similar intentional cover-ups, such as the falsification of reports on coal-dust levels in mines, which leads to crippling and often fatal black lung disease. Surely someone who knowingly subjects others to risks and tries to hide those risks from them is culpable in a high degree.

2. Defenders' second objection: Being harmed directly by another person is more terrifying than being harmed indirectly and impersonally, as by a safety hazard, even if the degree of harm is the same.

Response: I think the Defenders are largely right in believing that direct personal assault is terrifying in a way that indirect impersonal harm is not. I say "largely right" here because deaths from some safety hazards—slowly suffocating to death in a collapsed mine, or living in fear of an occupational cancer's spreading and becoming fatal—may well be as terrifying as or more terrifying than some direct personal assaults. Nonetheless, even granting the Defenders their general point that direct assault is usually more terrifying than indirect harm, it does not follow that indirect harms should be treated as noncriminal regulatory matters. This difference in terrifyingness is no stranger to the criminal justice system. Prosecutors, judges, and juries constantly have to consider how terrifying an attack is in determining what to charge and what to convict offenders for. This is why we allow gradations in charges of homicide or assault and allow particularly grave sentences for particularly grave attacks. In short, the difference the Defenders are pointing to here might justify treating a one-on-one murder as graver than murder due to lax safety measures, but it doesn't justify treating one as a grave crime and the other as a mere regulatory (or very minor criminal) matter. After all, although it is worse to be injured with terror than without, it is still the injury that constitutes the worst part of violent crime. Given the choice, seriously injured victims of crime would surely rather have been terrorized and not injured than injured and not terrorized. If that is so, then the worst part of violent crime is still shared by the indirect harms that the Defenders would relegate to regulation.

3. Defenders' third objection: Someone who harms another in the course of an illegitimate and purely self-interested action is more evil than someone who harms another as a consequence of a legitimate and socially productive endeavor.

Response: There is also something to the Defenders' claim that indirect harms, such as ones that result from lax safety measures, are part of legitimate productive activities, whereas one-on-one crimes generally are not. No doubt, we must tolerate the risks that are necessary ingredients of productive activity (unless those risks are so great as to outweigh the gains of the productive activity). But this doesn't imply we shouldn't identify the risks that are excessive and use the law to protect innocent people from them. If those risks are great enough, the fact that they may further a productive or otherwise legitimate activity is no reason against making them crimes if that's

what's necessary to protect workers. A person can commit a crime to further an otherwise legitimate endeavor and it is still a crime. If a manager threatens to assault his workers if they don't work faster, the fact that getting them to work faster is a legitimate goal for a manager doesn't make the manager's act any less criminal. If acts that endanger others ought to be crimes, then the fact that the acts are means to legitimate aims doesn't change the fact that they ought to be crimes.

4. Defenders' fourth objection: The harms of typical crimes are imposed on their victims against their wills, whereas harms such as those due to occupational hazards are consented to by workers when they agree to a job.

Response: Cases like the Manville asbestos case show that the Defenders overestimate the reality of the "free consent" with which workers take on the risks of their jobs. You can consent to a risk only if you know about it, and often the risks are concealed. Moreover, the Defenders overestimate generally the degree to which workers freely consent to the conditions of their jobs. Although no one is forced at gunpoint to accept a particular job, virtually everyone is forced by the requirements of necessity to take some job. Moreover, workers can choose jobs only where there are openings, which means they cannot simply pick their place of employment at will. At best, workers can choose among the dangers present at various worksites, but rarely can they choose to face no danger at all. For nonwhites and women, the choices are further narrowed by discriminatory hiring and long-standing occupational segregation (funneling women into nursing or food-processing jobs and blacks into janitorial and other menial occupations), not to mention subtle and not-so-subtle practices that keep nonwhites and women from advancing within their occupations. Consequently, for all intents and purposes, most workers *must* face the dangers of the jobs that are available to them. What's more, remember that, while here we have been focusing on harms due to occupational hazards, much of the indirect harm that I shall document in what follows is done not to workers but, for example, to hospital patients (subjected to careless medical care) or to neighbors of industrial sites (breathing dangerous concentrations of pollutants). And these victims surely don't consent to these risks.

Finally, recall that the basis of all the Defenders' objections is that the idea that one-on-one harms are more evil than indirect harms is part of our common moral beliefs, and that this makes it appropriate to treat the former with the criminal justice system and the latter with milder regulatory measures. Here I think the Defenders err by overlooking the role of legal institutions in shaping our ordinary moral beliefs. Many who defend the criminal justice system do so precisely because of its function in educating the public

about the difference between right and wrong. The great historian of English law, Sir James Fitzjames Stephens, held that a

great part of the general detestation of crime which happily prevails amongst the decent part of the community in all civilized countries arises from the fact that the commission of offences is associated in all such communities with the solemn and deliberate infliction of punishment wherever crime is proved.⁴¹

One cannot simply appeal to ordinary moral beliefs to defend the criminal law because the criminal law has already had a hand in shaping ordinary moral beliefs. At least one observer has argued that making narcotics use a crime at the beginning of the twentieth century *caused* a change in the public's ordinary moral notions about drug addiction, which prior to that time had been viewed as a medical problem.⁴² It is probably safe to say that, in our own time, civil rights legislation has sharpened the public's moral condemnation of racial discrimination. Hence, we might speculate that if the criminal justice system began to prosecute—and if the media began to portray—those who inflict *indirect harm* as serious criminals, our ordinary moral notions would change on this point as well.

I think this disposes of the Defenders for the time being. We are left with the conclusion that there is no moral basis for treating *one-on-one harm* as criminal and *indirect harm* as merely a regulatory affair, (or only as a tort). What matters, then, is whether the purpose of the criminal justice system will be served by including, in the category of serious crime, actions that are predictably likely to produce serious harm, yet that are done in pursuit of otherwise legitimate goals and without the desire to harm anyone.

What is the purpose of the criminal justice system? No esoteric answer is required. Norval Morris and Gordon Hawkins write that “the prime function of the criminal law is to protect our persons and our property.”⁴³ *The Challenge of Crime in a Free Society*, the report of the President's Commission on Law Enforcement and Administration of Justice, tells us that “any criminal justice system is an apparatus society uses to enforce the standards of conduct necessary to protect individuals and the community.”⁴⁴ Whatever else we think a criminal justice system should accomplish, I doubt if anyone would deny that its central purpose is to protect us against the most serious threats to our well-being. *This purpose is seriously undermined by taking one-on-one harm as the model of crime.* Excluding harm caused without the desire to harm someone in particular prevents the criminal justice system from protecting our persons and our property from dangers at least as great as those posed by one-on-one harm. This is so because, as I will show, a large number of actions that are not labeled *criminal* lead to loss of life, limb, and possessions on a scale comparable to those actions that are represented in the FBI Crime Index. A crime by any other name still causes misery and suffering.

In the remainder of this chapter, I identify some acts that are *crimes by other names*: acts that cause harm and suffering comparable to that caused by acts called crimes. My purpose is to confirm the first hypothesis: that the definitions of crime in the criminal law do not reflect the only or the most dangerous behaviors in our society. To do this, we will need some measure of the harm and suffering caused by crimes with which we can compare the harm and suffering caused by noncrimes. Our measure need not be too refined because my point can be made if I can show that there are some acts that we do not treat as crimes but that cause harm *roughly comparable* to that caused by acts we do treat as crimes. For that, it is not necessary to compare the harm caused by noncriminal acts with the harm caused by *all* crimes. I need only show that the harm produced by some type of noncriminal act is comparable to the harm produced by *any* serious crime. Because the harms caused by noncriminal acts fall into the categories of death, bodily injury (including the disabling effects of disease), and property loss, I will compare the harms done by noncriminal acts with the injuries caused by the crimes of murder, aggravated assault, and theft.

In order to compare the harms produced by both criminal and noncriminal acts, I will generally use statistics for 2003, the most recent year for which there are ample statistics from both categories. Where figures for 2003 are not available, I will use the most recent figures that are available unless there is reason to think that significant changes have occurred in the interim. According to the FBI's *Uniform Crime Reports*, in 2003 there were 16,503 murders and nonnegligent manslaughters and 857,921 aggravated assaults. "Murder and nonnegligent manslaughter" includes all "willful (nonnegligent) killing of one human being by another." "Aggravated assault" is defined as an "attack by one person on another for the purpose of inflicting severe or aggravated bodily injury."⁴⁵ Thus, as measures of the harm done by crime in 2003, we can say that serious crimes led to roughly 16,500 deaths and 850,000 instances of serious bodily injury short of death a year. As a measure of monetary loss due to property crime, we can use \$17 billion, the figure the FBI estimates to be the total lost due to property crime in 2003.⁴⁶ Whatever the shortcomings of these reported crime statistics, they are the statistics on which public policy has traditionally been based.⁴⁷ Thus, I will consider any actions that lead to loss of life, physical harm, and property loss comparable to the figures in the UCR as actions that pose grave dangers to the community comparable to the threats posed by crimes. They are surely precisely the kinds of harmful actions from which a criminal justice system whose purpose is to protect our persons and property ought to protect us, but *they are crimes by other names*.

In making this case, the following sections review a number of research reports, both historical and contemporary. The continued inclusion of older reports—sometimes seen as "outdated"—is meant to underscore that these harms are neither new nor recently discovered. The harms are not transient, but ongoing, and the inclusion of findings reported over several

decades should bolster confidence in the validity of sometimes scarce contemporary research.

Work May Be Dangerous to Your Health

When the *President's Report on Occupational Safety and Health*⁴⁸ was published in 1972, the government estimated the number of job-related illnesses at 390,000 per year and the number of annual deaths from industrial disease at 100,000. Since that time, numerous studies have documented the alarmingly high incidence of disease, injury, and death due to hazards in the workplace and the fact that much or most of this carnage is the consequence of the refusal of management to pay for safety measures, of government to enforce safety standards, and sometimes of management's willful defiance of existing law.⁴⁹

For 2003, the U.S. Department of Labor's Bureau of Labor Statistics (BLS) reports 4.4 million workplace injuries and illnesses, about half of which (2.3 million) resulted in lost workdays or restricted duties at work. BLS also indicates "269,500 newly reported cases of [nonfatal] occupational illnesses in private industry."⁵⁰

Complete data on occupational fatalities are difficult to come by. BLS says about its data on fatal occupational diseases that

[i]t is difficult to compile a complete count of fatal occupational diseases because the latency period [the delay between contracting a fatal disease on the job and the appearance of symptoms, and from these to death] for many of these conditions may span years. In addition, there is some difficulty in linking illnesses to work exposures. Data presented are incomplete, therefore, and do not represent all deaths that result from occupational diseases.⁵¹

Moreover, the Occupational Safety and Health Administration (OSHA) relies on employer reporting for its figures, and there are many incentives for underreporting. Writing in the journal *Occupational Hazards*, Robert Reid states that

OSHA concedes that many factors—including insurance rates and supervisor evaluations based on safety performance—are incentives to underreport. And the agency acknowledges that recordkeeping violations have increased more than 27 percent since 1984, with most of the violations recorded for not maintaining the injuries and illnesses log examined by compliance officers and used for BLS' annual survey.⁵²

A study by the National Institute for Occupational Safety and Health (NIOSH) concludes that "there may be several thousand more workplace deaths each year than employers report."⁵³

For these reasons, we must look elsewhere for accurate figures. In testimony before the Senate Committee on Labor and Human Resources, Dr. Philip Landrigan, director of the Division of Environmental and Occupa-

tional Medicine at the Mount Sinai School of Medicine in New York City, stated,

Recent data indicate that occupationally related exposures are responsible each year in New York State for 5,000 to 7,000 deaths and for 35,000 new cases of illness (not including work-related injuries). These deaths due to occupational disease include 3,700 deaths from cancer. . . .

Crude national estimates of the burden of occupational disease in the United States may be developed by multiplying the New York State data by a factor of 10. New York State contains slightly less than 10 percent of the nation's workforce, and it includes a broad mix of employment in the manufacturing, service and agricultural sectors. Thus, it may be calculated that occupational disease is responsible each year in the United States for 50,000 to 70,000 deaths, and for approximately 350,000 new cases of illness.⁵⁴

Landrigan's estimates of deaths from occupational disease are corroborated by a study reported by the National Safe Workplace Institute, which estimates that the number of occupational disease deaths is between 47,377 and 95,479. Mark Cullen, director of the occupational medicine program at the Yale University School of Medicine, praised this study as "a very balanced, very comprehensive overview of occupational health."⁵⁵

In a 1997 article in the AMA journal *Archives of Internal Medicine*, researchers at San Jose State University in California aggregated the national and large regional data sets collected by BLS, the National Council on Compensation Insurance, the National Center for Health Statistics, the Health Care Financing Administration, and other government agencies and private firms, and came up with an estimate, for 1992, of 60,300 deaths from occupational illness.⁵⁶

Dr. Samuel Epstein, professor emeritus of environmental and occupational medicine at the University of Illinois School of Public Health, and chairman of the Cancer Prevention Coalition, states, "Over 10 percent of adult cancer deaths result from occupational exposures, which are also a recognized cause of cancer in children: parents exposed to carcinogens on the job often expose their unborn children to the same cancer-causing chemicals."⁵⁷ With current estimates of annual cancer deaths running above 570,000, this translates into approximately 57,000 adult deaths a year from occupationally caused cancer alone. A 1999 report estimates approximately 55,000 annual deaths from occupational disease, though noting that the number may be as high as 94,000.⁵⁸

In light of these various estimates, we can hardly be overestimating the actual death toll if we take the conservative route and set it at 50,000 deaths a year resulting from occupational disease.

As for nonfatal occupational illness, BLS reports 269,500 new cases for 2003, and the San Jose State University researchers estimate 862,200 cases (based on data from 1992). These illnesses are of varying severity. Because I

want to compare these occupational harms with those resulting from aggravated assault, I shall stay on the conservative side here, too, as with deaths from occupational diseases, and say that there are annually in the United States approximately 250,000 job-related serious illnesses. This is a conservative figure in light of the San Jose State University researchers' estimate of 862,200 cases, as well as the likelihood of underreporting. Note also that these figures don't include the effects of workers' exposure to occupational illnesses on the health of their families.⁵⁹ Taken together with 50,000 deaths from occupational diseases, how does this compare with the threat posed by crime?

Before jumping to any conclusions, note that the risk of occupational disease and death falls only on members of the labor force, whereas the risk of crime falls on the whole population, from infants to the elderly. Because the civilian labor force is about half (50.6 percent) of the total population (146,500,000 in 2003 out of a total civilian population of 289,558,000),⁶⁰ to get a true picture of the *relative* threat posed by occupational diseases compared with that posed by crimes, we should multiply the crime statistics by half (0.5) when comparing them with the figures for occupational disease and death. Using the crime figures for 2003 (cited earlier in this chapter), we note that the *comparable* figures would be:

	OCCUPATIONAL DISEASE	CRIME (X 0.5)
Death	50,000	8,250
Other physical harm	250,000	425,000

If it is argued that this paints an inaccurate picture because so many crimes go unreported, my answer is this: First of all, homicides are by far the most completely reported of crimes. For obvious reasons, the general underreporting of crimes is not equal among crimes. It is easier to avoid reporting a rape or a mugging than a corpse. Second, although not the best, aggravated assaults are among the better-reported crimes. Estimates from the Justice Department's National Crime Victimization Survey indicate that 57 percent of aggravated assaults were reported to the police in 2002, compared with 33 percent of thefts.⁶¹ On the other hand, we should expect more, not less, underreporting of industrial than criminal victims because diseases and deaths are likely to cost firms money in the form of workdays lost and insurance premiums raised, occupational diseases are frequently first seen by company physicians who have an incentive to diagnose complaints as either malingering or not job related, and many occupationally caused diseases do not show symptoms or lead to death until after the employee has left the job.

In sum, both occupational and criminal harms are underreported, though there is reason to believe that the underreporting is worse for occupational than for criminal harms. Those who doubt this should bear in mind

that I have accepted the statistics on criminal harms as reported, while I have reduced substantially the reported estimates for occupational harms. However one may quibble with figures presented here, I think it is fair to say that, if anything, they understate the extent of occupational harm compared with criminal harm.

Note further that the estimates in the last chart are *only* for occupational diseases and deaths from those diseases. They do not include death and disability from work-related injuries. Here, too, the statistics are gruesome. The San Jose State University researchers estimated 6,500 job-related deaths from injuries in 1992.⁶² BLS's *National Census of Fatal Occupational Injuries* reports 4,928 workplace fatalities in 2003 (not counting work-related homicides).⁶³ I will use the lower of these figures. Added to the previous figure, this brings the number of occupation-related deaths to 54,928 a year.

The BLS reported that, in 2003, there were 4.4 million recordable cases of nonfatal injuries and illnesses. A recordable case involves days away from work, medical treatment other than first aid, loss of consciousness, restriction of work or motion, transfer to another job, or "cancer, chronic irreversible disease, a fracture or cracked bone, or a punctured eardrum."⁶⁴ Of these, BLS says that 2.3 million entailed lost workdays, restricted activities on the job, or both. To make sure that we are counting more serious harms, I will use this figure of 2.3 million. Note that this figure includes physical harms from both disease and injury. Thus it replaces our previous figure of 250,000.

If, on the basis of these additional figures, we recalculated our table comparing occupational harms from both disease and accident with criminal harms, it would look like this:

	OCCUPATIONAL DISEASE AND INJURY	CRIME (X 0.5)
Death	54,928	8,250
Other physical harm	2,300,000	425,000

Can there be any doubt that workers are more likely to stay alive and healthy in the face of the danger from the underworld than from the work-world? If any doubt lingers, consider this: Lest we falter in the struggle against crime, the FBI includes in its annual *Uniform Crime Reports* several "crime clocks," which illustrate graphically the extent of the criminal menace. For 2003, the crime clock shows a murder occurring every 31.8 minutes.⁶⁵ If a similar clock were constructed for occupational deaths—using the conservative estimate of 54,928 cited above, and remembering that this clock ticks for only that half of the population that is in the labor force—this clock would show an occupational death about every 10 minutes! In other words, in about the time it takes for two murders on the crime clock, more than six workers have died *just from trying to make a living*.

To say that some of these workers died from accidents due to their own carelessness is about as helpful as saying that some of those who died at the hands of murderers deserved it. It overlooks the fact that, when workers are careless, it is not because they love to live dangerously. They have production quotas to meet, quotas that they themselves do not set. If quotas were set with an eye to keeping work at a safe pace rather than keeping the production-to-wages ratio as high as possible, it might be more reasonable to expect workers to take the time to be careful. Beyond this, we should bear in mind that the vast majority of occupational deaths result from disease, not accident, and disease is generally a function of conditions outside a worker's control.

Examples of such conditions are the level of coal dust in the air ("260,000 miners receive benefits for [black lung] disease, and perhaps as many as 4,000 retired miners die from the illness or its complications each year"; about 10,000 currently working miners "have X-ray evidence of the beginnings of the crippling and often fatal disease"),⁶⁶ or textile dust (some 100,000 American cotton textile workers presently suffer breathing impairments caused by acute byssinosis, or brown lung, and another 35,000 former mill workers are totally disabled with chronic brown lung),⁶⁷ or asbestos fibers (it has been estimated that, under the lenient asbestos standard promulgated by OSHA in 1972, anywhere from 18,400 and 598,000 deaths from lung cancer would result from exposure to asbestos),⁶⁸ or coal tars ("workers who had been employed five or more years in the coke ovens died of lung cancer at a rate three and a half times that for all steelworkers"; coke oven workers develop cancer of the scrotum at a rate five times that of the general population).⁶⁹ According to the National Academy of Sciences, there are more than 1 million repetitive motion injuries annually.⁷⁰ Repetitive strain disease "is, by all accounts, the fastest-growing health hazard in the U.S. workplace, reportedly afflicting about 1,000 keyboard operators, assembly-line workers, meat processors, grocery check-out clerks, secretaries and other employees everyday. . . . OSHA officials argue that . . . carpal tunnel problems lead the list in average time lost from work (at a median of 30 days per case), well above amputations (24 days) and fractures (20)."⁷¹

To blame the workers for occupational disabilities and deaths is to ignore the history of governmental attempts to compel industrial firms to meet safety standards that would keep dangers (such as chemicals or fibers or dust particles in the air) that are outside the worker's control down to a safe level. This has been a continual struggle, with firms using everything from their own "independent" research institutes to more direct and often questionable forms of political pressure to influence government in the direction of loose standards and lax enforcement. So far, industry has been winning because OSHA has been given neither the personnel nor the mandate to fulfill its purpose. It is so understaffed that, in 1973, when 1,500 federal sky marshals guarded the nation's airplanes from hijackers, only 500 OSHA

inspectors toured the nation's workplaces. As of 2003, there are some 7.2 million worksites in the United States, and federal OSHA's 1,100 inspectors carried out some 40,000 inspections, while its state counterparts carried out some 58,000.⁷² Currently, OSHA reports 51,666 "serious" violations for which fines were issued totalling \$54,526,440, an average fine of \$1,055 per *serious* violation. OSHA defines a serious violation as one "where there is substantial probability that death or serious physical harm could result and the employer knew, or should have known, of the hazard."⁷³ The problem does not lie with OSHA alone, but starts with the legislators who decided in 1970 that causing the death of an employee by willfully violating safety laws was a misdemeanor. As noted by a recent *New York Times* investigation: "The maximum sentence, six months in jail, is half the maximum for harassing a wild burro on federal lands." Although Congress has rarely voted down tougher sentences for street crime, it has rejected every attempt to get tougher with those who willfully (and sometimes repeatedly) violate safety laws, in spite of evidence that stricter laws could save lives. On top of lax laws, OSHA discourages prosecutions and criminal referrals to such an extent that a 1988 congressional report noted, "A company official who willfully and recklessly violates federal OSHA laws stands a greater chance of winning a state lottery than being criminally charged."⁷⁴

Is a person who kills another in a bar brawl a greater threat to society than a business executive who refuses to cut into his profits to make his plant a safe place to work? By any measure of death and suffering, the latter is by far a greater danger than the former. However, because he wishes his workers no harm, and because he is only indirectly responsible for death and disability while pursuing legitimate economic goals, his acts are not labelled "crimes." Once we free our imagination from the blinders of the one-on-one model of crime, can there be any doubt that the criminal justice system does *not* protect us from the gravest threats to life and limb? It seeks to protect us when danger comes from a young, lower-class male in the inner city. When a threat comes from an upper-class business executive in an office, the criminal justice system looks the other way. This is in the face of growing evidence that for every two American citizens murdered by thugs, more than six American workers are killed by the recklessness of their bosses and the indifference of their government.

Health Care May Be Dangerous to Your Health

A recent article in *The Journal of the American Medical Association* estimates that there are 225,000 deaths a year due to medical treatment, making medical treatment "the third leading cause of death in the United States, after deaths from heart disease and cancer."⁷⁵ Hospital infections alone were said to cause about 1,500 preventable deaths in Pennsylvania during 2004. Since Pennsylvania has about 4 percent of the U.S. population, the

Pennsylvania data suggest that hospital infections may cause some 37,500 preventable deaths nationwide, more than double the number of homicides reported by the FBI.⁷⁶ Estimates from the Centers for Disease Control and other studies put the numbers at 90,000 to 100,000 deaths,⁷⁷ deaths that could have been prevented by following established hygiene protocols. And this is only the beginning.

On July 15, 1975, Dr. Sidney Wolfe, of Ralph Nader's Public Interest Health Research Group, testified before the House Commerce Oversight and Investigations Subcommittee that there "were 3.2 million cases of unnecessary surgery performed each year in the United States." These unneeded operations, Wolfe added, "cost close to \$5 billion a year and kill as many as 16,000 Americans."⁷⁸ Wolfe's estimates of unnecessary surgery were based on studies comparing the operations performed and surgery recommended by doctors who are paid for the operations they do with those performed and recommended by salaried doctors who receive no extra income from surgery.

The figure accepted by Dr. George A. Silver, professor of public health at the Yale University School of Medicine, is 15,000 deaths a year "attributable to unnecessary surgery."⁷⁹ Silver places the annual cost of excess surgery at \$4.8 billion.⁸⁰ In an article on an experimental program by Blue Cross and Blue Shield aimed at curbing unnecessary surgery, *Newsweek* reported that

a Congressional committee earlier this year [1976] estimated that more than 2 million of the elective operations performed in 1974 were not only unnecessary—but also killed about 12,000 patients and cost nearly \$4 billion.⁸¹

Because the number of surgical operations performed in the United States rose from 16.7 million in 1975 to 27.6 million in 2002,⁸² there is reason to believe that at least somewhere between (the congressional committee's estimate of) 12,000 and (Dr. Wolfe's estimate of) 16,000 people a year still die from unnecessary surgery. In 2003, the FBI reported that 1,816 murders (in which the weapon is known) were committed with a "cutting or stabbing instrument."⁸³ Obviously, the FBI does not include the scalpel as a cutting or stabbing instrument. If it did, it would have had to report that between 13,816 and 17,816 persons were killed by "cutting or stabbing" in 2003, depending on whether you take Congress's figure or Wolfe's. No matter how you slice it, the scalpel may be more dangerous than the switchblade.

This is only a fraction of the problem. A report issued on November 29, 1999, by the National Academy of Sciences's Institute of Medicine (IOM) stated that up to "98,000 hospitalized Americans die every year and 1 million more are injured as a result of preventable medical errors that cost the nation

an estimated \$29 billion a year."⁸⁴ The report goes on to predict that, if a "centralized system for keeping tabs on medical errors" were put in place, "the number of deaths from medical mistakes could be cut in half within five years."⁸⁵ However, due to resistance by doctors and hospitals to mandatory reporting of errors and to other recommendations in the IOM report, no significant progress has been made. "As a result, experts contend, it's doubtful that patients checking into most of America's 5,200 hospitals [in 2002] are any less likely to be killed or injured than they were on November 29, 1999, when the report was issued."⁸⁶ Indeed, things may be worse. "Operations on the wrong body part or the wrong patient have increased according to the Joint Commission on the Accreditation of Healthcare Organizations, which inspects hospitals."⁸⁷ Bear in mind as well that "[t]he IOM considered only errors committed in hospitals, and not in other medical settings where they undoubtedly abound: clinics, outpatient surgery centers and doctors' offices."⁸⁸ Recall the example of digging a trench: "Suppose that the trench was dug and left uncovered, knowing that children played in the area. Then, their deaths were brought about *knowingly*." *Knowingly* was the second degree of culpability, right below *purposely*—and is more culpable than *recklessly* or *negligently*. Suppose that preventable and deadly potential hospital errors were identified but left unprevented, knowing that vulnerable patients would be in the area. Didn't the doctors and hospitals who resisted correcting previously identified dangerous practices bring about 98,000 deaths *knowingly*?

While it is at it, the FBI should probably add the hypodermic needle and the prescription drug to the list of potential murder weapons. Silver points out that these are also death-dealing instruments:

Of the 6 billion doses of antibiotic medicines administered each year by injection or prescription, it is estimated that 22 percent are unnecessary. Of the doses given, 10,000 result in fatal or near-fatal reactions. Somewhere between 2,000 and 10,000 deaths probably would not have occurred if the drugs, meant for the patient's benefit, had not been given.⁸⁹

These estimates are supported by the Harvard Medical Practice Study. Its authors write that, of the 1.3 million medical injuries (which they estimated on the basis of hospital records for 1984), 19 percent (247,000) were related to medications, and 14 percent of these (34,580) resulted in permanent injury or death.⁹⁰ Another report estimates that, in part due to faulty warning labels on prescription drugs, "100,000 hospital patients die [annually] of adverse reactions to medication and 2.2 million are injured."⁹¹ Further, "experts have estimated that more than one million serious drug errors occur annually in hospitals alone." One drug that has figured frequently in cases of deadly overdoses is potassium chloride, which, in low doses, restores electrolyte

balance and, in high doses, stops the heart instantly. Potassium chloride is the drug used by states that administer the death penalty by lethal injection!⁹²

If someone had the temerity to publish a *Uniform Crime Reports* that really portrayed the way Americans are murdered, the FBI's statistics on the *type* of weapon used in murder would have to be changed for 2003, from those shown in Table 2.1 to something like those shown in Table 2.2.

The figures shown in Table 2.2 would give American citizens a much more honest picture of what threatens them. Nonetheless, we are not likely to see such a table published by the criminal justice system, perhaps because it would also give American citizens a more honest picture of *who* threatens them.

We should not leave this topic without noting that, aside from the other losses it imposes, unnecessary surgery was estimated to have cost between \$4 billion and \$5 billion in 1974. The price of medical care has increased about sevenfold between 1974 and 2000. Thus, assuming that the same number of unneeded operations was performed in 2003, the cost of unnecessary surgery would be between \$28 and \$35 billion. To this we should add the unnecessary 22 percent of the 6 billion doses of medication administered. Even at an extremely conservative estimate of \$3 a dose, this adds about \$4 billion. In short, assuming that earlier trends have continued, there is reason to believe that unnecessary surgery and medication cost the public between \$28 and \$34 billion annually, far outstripping the \$17 billion taken by the thieves that concern the FBI.⁹³ This gives us yet another way in which we are robbed of more money by practices that are not treated as criminal than by practices that are.

TABLE 2.1 How Americans Are Murdered, 2003

TOTAL MURDERS WHERE WEAPON IS KNOWN	FIREARMS	KNIFE OR OTHER CUTTING INSTRUMENT	OTHER WEAPON: BLUNT OBJECTS, ARSON, STRANGULATION, POISON, etc.	PERSONAL WEAPONS: HANDS, FISTS, etc.
14,408*	9,638	1,816	2,008	946

*This figure is lower than the number of murders and nonnegligent manslaughters used elsewhere in the text, due to the fact that the FBI lacks data on the weapons used in roughly one-sixth of the homicides it reports. "Other Weapon" represents all the other categories in the UCR's Table 2.9 that are not reported separately here, including the category "Other Weapon/Not Stated."

Source: UCR-2003, Table 2.9, p. 19.

TABLE 2.2 How Americans Are Really Murdered, 2003

TOTAL MURDERS WHERE WEAPON IS KNOWN	OCCUPATIONAL HAZARD OR DISEASE	FIREARMS	KNIFE OR OTHER CUTTING INSTRUMENT, INCLUDING SCALPEL	OTHER WEAPON: BLUNT OBJECTS, POISON, STRANGULATION, PRESCRIPTION DRUG, OTHER MEDICAL TREATMENT, etc.	PERSONAL WEAPONS: HANDS, FISTS, etc.
133,336*	54,928	9,638	13,816	53,008	946

*These figures represent the relevant figures in Table 2.1 plus the most conservative figures for the relevant categories discussed in the text. Note in particular that, under the category "Other Weapon," I have included the low estimate of the number of people who die from unnecessary prescription drugs (2,000) according to Dr. Silver, plus the 50 percent of the 98,000 hospital deaths due to error that the IOM predicted could have been prevented within five years of their report (49,000).

Waging Chemical Warfare against America

One in four Americans can expect to contract cancer during his or her lifetime. The American Cancer Society estimated that 420,000 Americans would die of cancer in 1981. The Society's estimate for 2005 is 570,280 deaths from cancer, with more than 1.3 million new cases diagnosed that year.⁹⁴ "A 1978 report issued by the President's Council on Environmental Quality (CEQ) unequivocally states that 'most researchers agree that 70 to 90 percent of cancers are caused by environmental influences and are hence theoretically preventable.'"⁹⁵ This means that a concerted national effort could result in saving 350,000 or more lives a year and reducing each individual's chances of getting cancer in his or her lifetime from 1 in 4 to 1 in 12 or fewer. If you think this would require a massive effort in terms of money and personnel, you are right. How much of an effort, though, would the nation make to stop a foreign invader who was killing 1,500 people a day and bent on slaughtering one-quarter of the present population? And how has the "cancer establishment"—the publicly funded National Cancer Institute (NCI) and the private American Cancer Society (ACS)—responded? A group of experts writes,

The cancer establishment's funding for primary prevention is trivial. While the NCI has made wildly varying estimates for prevention research—up to 50 percent of its budget—independent estimates are closer to 2.5 percent. . . . The ACS's "Environmental Research" funding is less than 0.1 percent of revenues.

The cancer establishment conducts minimal research on avoidable exposures to a wide range of occupational and environmental industrial

carcinogens, including nationwide cancer clusters in the vicinity of nuclear power plants, petrochemical industries, and Superfund hazardous waste sites that are disproportionately located in ethnic and low-socioeconomic communities, and exposures to ionizing radiation and persistent organic pollutants contaminating the entire environment: air, water, soil, the workplace, and consumer products.⁹⁶

Chemical warfare is being waged against us on three fronts:

- pollution
- cigarette smoking
- food additives

Not only are we losing on all three fronts, but it also looks as if we do not even have the will to fight. A 2002 article in *The Washington Post* reports that “the Bush administration has begun a broad restructuring of the scientific advisory committees that guide federal policy in areas such as patient rights and public health, eliminating some committees that were coming to conclusions at odds with the president’s views.” One committee, “which had been assessing the effects of environmental chemicals on human health[,] has been told that nearly all of its members will be replaced—in several instances by people with links to the industries that make those chemicals. One new member is a California scientist who helped defend Pacific Gas and Electric Co. against the real-life Erin Brockovitch.”⁹⁷

The evidence linking *air pollution* and cancer, as well as other serious and often fatal diseases, has been accumulating rapidly in recent years. In 1993, *The Journal of the American Medical Association* reported research that found “‘robust’ associations between premature mortality and air pollution levels.”⁹⁸ They estimate that pollutants cause about 2 percent of all cancer deaths (at least 10,000 a year).⁹⁹ In 2002, the same journal published a study that concludes “that people living in the most heavily polluted metropolitan areas have a 12 percent higher risk of dying of lung cancer than people in the least polluted areas.”¹⁰⁰

During 1975, the epidemiological branch of the National Cancer Institute did a massive county-by-county analysis of cancer in the United States, mapping the “cancer hotspots” in the nation. The result was summed up by Dr. Glenn Paulson, assistant commissioner of science in the New Jersey Department of Environmental Protection: “If you know where the chemical industry is, you know where the cancer hotspots are.”¹⁰¹ What distinguishes these findings from the material on occupational hazards discussed above is that NCI investigators found higher death rates for *all* those living in the cancer hotspots, not just the workers in the offending plants.

Another study by two NCI researchers found that in *all* U.S. counties with smelters, the incidence of lung cancer is above the national average.

"The researchers found high lung cancer death rates not only in men—who are often exposed to arsenic on their jobs inside smelters—but also among women, who generally never went inside smelters and were not previously believed to have been exposed to arsenic." Explanation: "neighborhood air pollution from industrial sources of inorganic arsenic."¹⁰²

New Jersey, however, took the prize for having the highest cancer death rate in the nation. NCI investigators found that "19 of New Jersey's 21 counties rank in the top 10 percent of all counties in the nation for cancer death rates." Salem County, home of E. I. Du Pont de Nemours and Company's Chambers Works, which has been manufacturing chemicals since 1919, "has the highest bladder cancer death rate in the nation—8.7 deaths per 100,000 persons."¹⁰³

Pollution kills in other ways than by causing lung cancer. A 1996 study by the Natural Resources Defense Council (NRDC) concludes,

Every year, some 64,000 people may die prematurely from cardiopulmonary causes linked to particulate air pollution. . . . Tens of thousands of these deaths could be averted each year if the Environmental Protection Agency set stringent health standards for fine-particle pollution.

In the most polluted cities, lives are shortened by an average of one to two years. Los Angeles tops the list with an estimated 5,873 early deaths, followed by New York (4,024), Chicago (3,479), Philadelphia (2,599) and Detroit (2,123).¹⁰⁴

This chemical war is not limited to the air. The National Cancer Institute has identified as carcinogens or suspected carcinogens 23 of the chemicals commonly found in our drinking water.¹⁰⁵ Moreover, according to one observer, we are now facing a "new plague—toxic exposure." Of the extent of contamination, he says that

this country generates between 255 million and 275 million metric tons of hazardous waste annually, of which as much as 90 percent is improperly disposed of. . . . The Office of Technology Assessment estimates that there are some 600,000 contaminated sites in the country, of which 888 sites have been designated or proposed by the Environmental Protection Agency for priority cleanup under the Superfund program.¹⁰⁶

Studies have borne out the correlation between nearness to toxic wastes and above-average cancer mortality rates, as well as the positive correlation between residential poverty and nearness to toxic wastes.¹⁰⁷ Other studies indicate that race is an even more important determinant of the location of toxic waste dumps. Writes Robert Bullard,

Toxic time bombs are not randomly scattered across the urban landscape. . . . The Commission for Racial Justice's landmark study, *Toxic Wastes and Race in the United States*, found race to be the most important factor

(i.e., more important than income, home ownership rate, and property values) in the location of abandoned toxic waste sites. . . . [T]hree out of five African Americans live in communities with abandoned toxic waste sites.¹⁰⁸

As it did with OSHA, the Reagan administration instituted a general slowing down of enforcement of EPA regulations. Reagan tried to cut the EPA's enforcement budget by 45 percent during his first two years in office. By 1983, the EPA's regional offices were staffed at levels substantially lower than needed to enforce the law effectively, according to the agency's own studies. The president also signaled his tolerant attitude toward environmental hazards in his appointments to top-level posts at the EPA of such people as Anne Burford, "who fiercely opposed any legislation regulating hazardous-waste disposal."¹⁰⁹ President Bush Sr. followed suit. The EPA's research and development staff, whose work provides the scientific basis for such regulations, was reduced by nearly 25 percent between 1981 and 1992.¹¹⁰ The EPA Superfund spearheads cleanups of large-scale toxic waste with money collected from polluters and from taxes on certain businesses. But increasingly, companies that have toxic waste responsibilities use bankruptcy to escape them and the taxes expired in 1995, so "Superfund's current budget is lower than at any time since 1988."¹¹¹

So the chemical war goes on. No one can deny that we know the enemy. No one can deny that we know the toll it is taking. Indeed, we can compute the number of deaths that result every day that we refuse to mount an offensive. Yet we still refuse. Thus, for the time being, the only advice we can offer someone who values his or her life is "If you must breathe our air, don't inhale."

The evidence linking *cigarette smoking* and cancer is overwhelming and need not be repeated here. The American Cancer Society simply notes, "Smoking remains the most preventable cause of death in our society."¹¹² Cigarettes are widely estimated to cause 30 percent of all cancer deaths,¹¹³ and 87 percent of lung cancers, which according to the surgeon general translate into 125,000 deaths each year between 1995 and 1999.¹¹⁴ Cigarettes are also blamed for other lung diseases such as emphysema, they play a substantial role in heart disease, and their addictive nature is now well established.

Tobacco continues to kill an estimated 440,000 Americans a year and costs taxpayers \$18 billion annually. Some estimates go as high 600,000 to 700,000 annual deaths due to smoking, with total annual costs estimated at \$150 billion.¹¹⁵ According to the National Cancer Institute, current and former smokers are responsible over their lifetimes for half a trillion dollars in excess health care costs. Tobacco use costs Medicare \$10 billion annually, and Medicaid about \$13 billion.¹¹⁶

This is enough to expose the hypocrisy of running a full-scale war against heroin (which produces no degenerative disease) while allowing

cigarette sales and advertising to flourish. It also should be enough to underscore the point that, once again, there are threats to our lives much greater than criminal homicide. Indeed, not only does our government fail to protect us against this threat, but it also promotes it! The government provided a price-support program for the tobacco industry (making up the difference when market price fell below a target price) from 1933 to 1982, and in 1986 it wrote off \$1.1 billion in loans that it had made to tobacco farmers.¹¹⁷ Moreover, the Reagan administration first supported and then, under intense lobbying pressure from the tobacco industry, withdrew its support for more and stronger warnings on cigarettes.¹¹⁸ The former president is not the only offender here. The U.S. Congress has turned down more than 1,000 proposed tobacco control bills since 1964, the year of the first Surgeon General's Report on the dangers of tobacco. This may be related to the enormous generosity of the tobacco industry. Common Cause reports, "Since 1995, tobacco interests have given more than \$32 million in political donations to state and federal candidates and political parties." The Phillip Morris Companies alone gave over \$10,000,000 between 1995 and 2000. Common Cause adds that "analysis of recent tobacco-related votes in Congress shows a strong correlation between the amount that Members received and how they voted."¹¹⁹

If you think that tobacco harms only people who knowingly decide to take the risk, consider the following. In 1995, *The Journal of the American Medical Association* devoted a special issue to the so-called Brown and Williamson Documents, several thousand pages of internal documents from the Brown and Williamson Tobacco Corporation and BAT Industries (formerly British American Tobacco Company). Brown and Williamson (B&W) is the third-largest cigarette maker in the United States. It is a wholly owned subsidiary of BAT, the world's second-largest private producer of cigarettes. An editorial in this issue states that "[t]he documents show . . . that executives at B&W knew early on that tobacco use was harmful and that nicotine was addictive . . . that the industry decided to conceal the truth from the public . . . that despite their knowledge to the contrary, the industry's public position was (and continues to be) that the link between smoking and ill health was not proven . . . and that nicotine was not addictive." The editorial concludes that "the evidence is unequivocal—the U.S. public has been duped by the tobacco industry."¹²⁰

Moreover, the cigarette industry intentionally targets young people—who are not always capable of assessing the consequences of their choices—with its ads, and it is successful. Some 2.6 million youngsters between the ages of 12 and 18 are smokers.¹²¹ A 2001 report indicates that smoking among American teenagers increased 73 percent over the previous ten years.¹²²

In addition, the Environmental Protection Agency has released data on the dangers of "secondhand" tobacco smoke (which nonsmokers breathe when smoking is going on around them). They report that each year, second-hand smoke causes 3,000 lung cancer deaths, contributes to 150,000 to 300,000 respiratory infections in babies, exacerbates the asthmatic symptoms

of 400,000 to 1,000,000 children with the disease, and triggers 8,000 to 26,000 new cases of asthma in children who don't yet have the disease.¹²³ A 1993 issue of *The Journal of the American Medical Association* reported that tobacco contributes to 10 percent of infant deaths.¹²⁴

Let's be clear: I do not advocate making cigarette smoking illegal on the model of our failed attempts to make drugs like heroin illegal. Restrictions on advertising aimed at youngsters, as well as measures to protect nonsmokers from secondhand smoke, and perhaps higher insurance premiums for those who choose to smoke, seem reasonable, however.

The average American consumes *one pound* of chemical food additives per year.¹²⁵ Speaking on the floor of the U.S. Senate in 1972, Senator Gaylord Nelson said,

People are finally waking up to the fact that the average American daily diet is substantially adulterated with unnecessary and poisonous chemicals and frequently filled with neutral, nonnutritious substances. We are being chemically medicated against our will and cheated of food value by low nutrition foods.¹²⁶

A hard look at the chemicals we eat and at the federal agency empowered to protect us against eating dangerous chemicals reveals the recklessness with which we are being "medicated against our will." Beatrice Hunter has taken such a hard look and reports her findings in a book aptly titled *The Mirage of Safety*, a catalog of the possible dangers that lurk in the foods we eat. More than this, however, it is a description of how the Food and Drug Administration, through a combination of lax enforcement and uncritical acceptance of the results of the food industry's own "scientific" research, has allowed a situation to exist in which the American public is the real guinea pig for nearly 3,000 food additives. As a result, we are subjected to chemicals strongly suspected of producing cancer,¹²⁷ gallbladder ailments,¹²⁸ hyperkinesis in children,¹²⁹ and allergies;¹³⁰ to others that inhibit "mammalian cell growth" and "may adversely affect the rate of DNA, RNA, and protein synthesis";¹³¹ and to still others that are capable of crossing the placental barrier between mother and fetus and are suspected causes of birth defects and congenital diseases.¹³²

The food additives are, of course, only some of the dangerous chemicals that we eat. During the 1980s, American farmers normally used about 800 million pounds of the active ingredients in pesticides per year.¹³³ In 1993, *The New York Times* reported that farmers now use 1 billion pounds of chemicals on crops each year.¹³⁴ Dr. Landrigan of the Mount Sinai School of Medicine, writing in a 1992 issue of *The American Journal of Public Health*, points to

recent data from the US Environmental Protection Agency (EPA) showing that infants and young children are permitted to have dietary exposures to potentially carcinogenic and neurotoxic pesticides that exceed published standards by a factor of more than 1000.¹³⁵

Landrigan also estimates that between 3 and 4 million American preschool children have dangerously elevated blood-lead levels, which could result in long-term neuropsychological impairment.

To call government and industry practices reckless is mild in view of the fact that, in spite of the growth in knowledge about the prevention and cure of cancer, "between 1950 and 1988, for U.S. Whites, age-adjusted incidence of cancer rose by 43.5 percent."¹³⁶

Based on the knowledge we have, there can be no doubt that air pollution, tobacco, and food additives amount to a chemical war that makes the crime wave look like a football scrimmage. Even with the most conservative estimates, it is clear that *the death toll in this war is far higher than the number of people killed by criminal homicide!*

Poverty Kills

We are long past the day when we could believe that poverty was caused by forces outside human control. Poverty is "caused" by lack of money, which means that once a society reaches a level of prosperity at which many enjoy a relatively high standard of living, then poverty can be eliminated or at least reduced significantly by transferring some of what the "haves" have to the "have-nots." In other words, regardless of what caused poverty in the past, what causes it to continue in the present is the refusal of those who have more to share with those who have less. Now you may think these remarks trite or naïve. They are not offered as an argument for redistribution of income, although I think such a redistribution is long overdue. These remarks are presented to make a much simpler point, which is that poverty exists in a wealthy society like ours *because we allow it to exist*. Therefore, we¹³⁷ share responsibility for poverty and for its consequences.

The poverty for which we are responsible "remains," in the words of *Business Week*, "stubbornly high." Moreover, it has particularly nasty features. For example, it affects blacks and children at a rate higher than the national average. Whereas 10.8 percent of white Americans were below the poverty level in 2004, 24.7 percent of black Americans were. Among children in 2002, about 13 percent of white children live in poverty, while nearly 32 percent of black children do.¹³⁸ A study published by the Urban Institute ranked the United States highest in child poverty among eight industrialized nations studied. The other nations were Switzerland, Sweden, Norway, Germany, Canada, the United Kingdom, and Australia. Moreover, the Urban Institute estimates that 2.3 million Americans experience homelessness each year, including 1 million children who are also exposed to interruptions in, or lack of, education each year.¹³⁹ Of the homeless, some 25 to 40 percent work, which means that at least half a million working Americans cannot afford shelter.¹⁴⁰

We are prone to think that the consequences of poverty are fairly straightforward: Less money means fewer things. So poor people have fewer clothes or cars or appliances, go to the theater less often, and live in smaller homes with less or cheaper furniture. This is true and sad, but perhaps not intolerable. In addition, however, one of the things poor people have less of is *good health*. Less money means less nutritious food, less heat in winter, less fresh air in summer, less distance from other sick people or from unhealthy work or dumping sites, less knowledge about illness or medicine, fewer doctor visits, fewer dental visits, less preventive health care, and (in the United States at least) less first-quality medical attention when all these other deprivations take their toll and a poor person finds him- or herself seriously ill. The result is that the poor suffer more from poor health and die earlier than do those who are well-off. Poverty robs them of their days while they are alive and kills them before their time. A prosperous society that allows poverty in its midst is a party to murder.

A review of more than 30 historical and contemporary studies of the relationship of economic class to life expectancy affirms the conclusion that "class influences one's chances of staying alive. Almost without exception, the evidence shows that classes differ on mortality rates."¹⁴¹ An article in the November 10, 1993, issue of *The Journal of the American Medical Association* confirms the existence of this cost of poverty:

People who are poor have higher mortality rates for heart disease, diabetes mellitus, high blood pressure, lung cancer, neural tube defects, injuries, and low birth weight, as well as lower survival rates from breast cancer and heart attacks.¹⁴²

A July 30, 1998, news release from the U.S. Department of Health and Human Services confirms the continued "strong relationship between socioeconomic status and health in the United States for every race and ethnic group studied."¹⁴³ A 2005 *Washington Post* article headlined "Race Gap Persists in Health Care, Three Studies Say" reports on a study by a Harvard School of Public Health researcher published in *The New England Journal of Medicine*. The researcher is quoted as commenting, "We have known for 20 years that we have a problem in our health care system: blacks and whites do not receive equal care. We hoped all the attention paid to this topic would result in some improvement. What we found is that we have not made much progress."¹⁴⁴

Interestingly, the poor have higher mortality rates even in countries such as Canada and Great Britain, which guarantee access to medical care. The difference can be attributed in large measure to the other disabilities of poverty, such as lower education levels and less healthy work and residential environments. A study of lower respiratory illness in infants found its incidence correlated directly to socioeconomic status (SES), with

lower-SES infants showing greater incidence than middle-SES infants and more than twice that of higher-SES infants. A large portion of the difference was attributed to the unhealthy environmental conditions in which poor infants grow up.¹⁴⁵

Another indication of the correlation between low income and poor health is found in statistics on the number of days of reduced activity due to illness or injury suffered by members of different income groups. In 1995, persons from families earning less than \$10,000 a year suffered an average of 30 such days, persons from families earning from \$10,000 to \$19,999 suffered 21 days, persons from families earning between \$20,000 and \$34,999 suffered 15 days, and persons from families earning \$35,000 and above suffered 10.6 days of reduced activity.¹⁴⁶

Here, too, things have gotten worse rather than better recently. The number of poor Americans continues to grow each year. By 2004 it was 37 million, up from 30.1 million in 1990 and from 25.2 million in 1980.¹⁴⁷ In 2004, the Census Department records 45.8 million people without health insurance coverage (and that doesn't include those who are inadequately covered).¹⁴⁸ The percentage of the poor covered by Medicaid has gone from 65 percent to less than 40 percent. Hardest hit have been poor women and their children, many of whom have been removed from Medicaid coverage because income eligibility rules have not kept up with inflation. "In 1986, the average state income cutoff for Medicaid was 48 percent of the federal poverty level, compared to 71 percent in 1975."¹⁴⁹ Estimates indicate that only one-third of those who lose Medicaid benefits get private insurance; the rest do without. Moreover, the percent of nonelderly Americans doing without has grown in the past decade: It was 14.8 percent of the population in 1987, 17.3 percent in 1993, and 18.3 percent in 1997. According to the National Academy of Sciences, lack of health insurance results in some 18,000 premature deaths a year because people without insurance don't get the health care they need.¹⁵⁰ Sadly, inadequate health insurance also often leads to poverty because "the leading cause of personal bankruptcy in the United States is unpaid medical bills."¹⁵¹

A comparison of the health and mortality of blacks and whites in America yields further insight into the relationship of health and mortality to economic class. In 2004, one of every four blacks lived below the poverty line, as compared with one of every ten whites. In 2001, black infant mortality (during the first year of life) was 14 per 1,000 live births, compared with 5.7 per 1,000 for whites.¹⁵² In short, black mothers lost their babies within the first year of life more than twice as often as white mothers did. In the face of this persistent disparity, the Reagan administration reduced funding for maternal and child health programs by more than 25 percent and attempted to reduce support for immunization programs for American children.¹⁵³ In 1987, only 48 percent of American one year olds had received the standard

immunizations, and every Western European nation was at least ten percentage points higher, with France and the United Kingdom in the 80s.¹⁵⁴

Numerous studies have suggested that allocation of health services is marked by racial bias. A 1992 study of patients under Medicare said that older whites are 3.5 times more likely than older blacks to get bypass surgery for blocked arteries. Black kidney patients are 45 percent less likely than whites to get transplants, according to a 1991 New York State Health Department study. There is evidence also of discrimination against Hispanic patients and women.¹⁵⁵ A study of surgery rates in Maryland hospitals by race and income of patients asserts, "The more discretionary the procedure, the lower is the relative incidence among Blacks."¹⁵⁶ Other studies confirm that health care delivery in the United States remains segregated by race and class.¹⁵⁷ A 2004 study in *The American Journal of Public Health* found that almost 900,000 deaths could have been prevented during the decade of the 1990s if African Americans received the same care as whites.¹⁵⁸

Cancer survival statistics show a similar picture. Between 2000 and 2005, 55.2 percent of blacks diagnosed with cancer were still alive five years after the diagnosis, compared with 65.5 percent of whites. This disparity has been noted since at least the early 1970s.¹⁵⁹ One important cause of this difference is that "white patients tended to have higher percentages of cancers diagnosed while localized,"¹⁶⁰ that is, earlier in their development. This means, at a minimum, that at least some of the difference turns out to be due to such things as better access to medical care, higher levels of education about the early-warning signs of cancer, and so on, all of which correlate strongly with higher income levels. Data reported in the journal *Science* suggest that "blacks get more cancer not because they're black, but because they're poor."¹⁶¹ A study of the stage at which women had breast cancer diagnosed found that white and black women living in areas characterized by lower average income and educational attainment were diagnosed later than those in areas marked by higher income and educational attainment. Within the same areas, black women were diagnosed later than whites, except in the areas of highest income and education, where the black disadvantage disappeared.¹⁶² "And while black women show a lower incidence of breast cancer than white women, they nevertheless die from it more often."¹⁶³

Life expectancy figures paint the most tragic picture of all. For 2001, life expectancy among blacks born that year was 72.2 years, whereas among whites it was 77.5 years.¹⁶⁴ That this difference cannot be attributed wholly to genetic factors is borne out by a "study of the relative contribution of various risk factors and income levels to mortality among blacks" reported recently in *The Journal of the American Medical Association*. The study "estimated that 38 percent of excess [of black over white] mortality could be accounted for by family income."¹⁶⁵ A stronger conclusion is reached by a study reported in a 1992 issue of *The American Journal of Public Health*, whose authors concluded, "In no instance were Black-White differences in all-cause

or coronary mortality significantly different when socioeconomic status was controlled."¹⁶⁶

In short, *poverty hurts, injures, and kills—just like crime*. A society that could remedy its poverty but does not is an accomplice in crime.

SUMMARY

The criminal justice system does not protect us against the gravest threats to life, limb, or possessions. Its definitions of crime are not simply a reflection of the objective dangers that threaten us. The workplace, the medical profession, the air we breathe, and the poverty we refuse to rectify lead to far more human suffering, result in far more death and disability, and take far more dollars from our pockets than the murders, aggravated assaults, and thefts, reported annually by the FBI. What is more, this human suffering is preventable. A government really intent on protecting our well-being would treat many of these harmful behaviors as criminal, and turn the massive powers of the state against their perpetrators in the way that they are turned against the perpetrators of the so-called common crimes. But it does not. A government really intent on protecting us would enforce work safety regulations, police the medical profession, require that clean-air standards be met, and devote sufficient resources to the poor to alleviate the major disabilities of poverty. But it does not. Instead we hear a lot of cant about law and order and a lot of rant about crime in the streets. It is as if our leaders were not only refusing to protect us from the major threats to our well-being but also trying to cover up this refusal by diverting our attention to crime, as if this were the only real threat.

As we have seen, the criminal justice system is a carnival mirror that presents a distorted image of what threatens us. The distortions do not end with the definitions of crime. As we will see in what follows, new distortions enter at every level of the system, so that, in the end, when we look in our prisons to see who really threatens us, virtually all we see are poor people. By that time, most of the well-to-do people who endanger us have been discreetly weeded out of the system. As we watch this process unfold in the next chapter, we should bear in mind the conclusion of the present chapter: All the mechanisms by which the criminal justice system comes down more frequently and more harshly on the poor criminal than on the well-off criminal take place after most of the dangerous acts of the well-to-do have been excluded from the definition of crime itself. The bias against the poor within the criminal justice system is all the more striking when we recognize that the door to that system is shaped in a way that excludes in advance the most dangerous acts of the well-to-do. Demonstrating this has been the purpose of the present chapter.

STUDY QUESTIONS

1. What should be our definition of the term "crime"? Why does it matter what we call things? Should there be an overlap between the acts we label crimes and the acts we think are morally wrong?
2. Quickly—without thinking about it—picture to yourself a criminal. Describe what you see. Where did this picture come from? Are there people in our society who pose a greater danger to you than the individual you pictured? Why or why not?
3. What is meant by likening the criminal justice system to a "carnival mirror"?
4. Do you think a business executive who refuses to invest in safety precautions with the result that several workers die is morally better than, equal to, or worse than a mugger who kills his victim after robbing him? What if the executive knowingly violated a safety regulation? What if the mugger was high on drugs? Explain your response.
5. What is meant by speaking of criminal justice as "creative art"? How does the view presented here differ from that of Quinney?
6. Give examples of social practices that are more dangerous to your well-being than common crime. How should these practices be dealt with?

A companion website to this book, with a chapter outline and summary, links to additional information, and Internet-based exercises, is available at "Rich Get Richer," www.paulsjusticepage.com.

ADDITIONAL READINGS

- Barlett, Donald, and James Steele. *Critical Condition: How Health Care in America Became Big Business and Bad Medicine*. New York: Doubleday, 2004.
- Glantz, Stanton, et al. *The Cigarette Papers*. Berkeley: University of California Press, 1996. (The original documents on which this book is based can be found at www.library.ucsf.edu/tobacco/.)
- Hills, Stuart, ed. *Corporate Violence: Injury and Death for Profit*. Totowa, N.J.: Rowman & Littlefield, 1987.
- Kennedy, Robert. *Crimes against Nature*. New York: Harper Perennial, 2004.
- Lofgren, Don. *Dangerous Premises: An Insider's View of OSHA Enforcement*. Ithaca, N.Y.: ILR Press/Cornell University, 1989.
- Messner, Steven, and Richard Rosenfeld. *Crime and the American Dream*, 3rd ed. Belmont, Calif.: Wadsworth, 2000.
- Pearce, Frank, and Lauren Snider. *Corporate Crime: Contemporary Debates*. Toronto: University of Toronto Press, 1995.
- Quinney, Richard. *The Social Reality of Crime*. Boston: Little, Brown, 1970.
- Robinson, James. *Toil and Toxics: Workplace Struggles and Political Strategies for Occupational Health*. Berkeley: University of California Press, 1991.
- Winslow, George. *Capital Crimes*. New York: Monthly Review Press, 1999.

NOTES

1. "Company in Mine Deaths Set to Pay Big Fine," *The New York Times*, February 21, 1993, p. A19.
2. "Mass Murder on the 5:33," *The New York Times*, December 10, 1993, p. A34.
3. Gerald R. Ford, "To Insure Domestic Tranquility: Mandatory Sentence for Convicted Felons," speech delivered at the Yale Law School Sesquicentennial Convocation, New Haven, Conn., April 25, 1975, in *Vital Speeches of the Day* 41, no. 15 (May 15, 1975): p. 451.
4. "Arrest Data Reveal Profile of Suspect," *The Washington Post*, September 16, 1975, p. C1.
5. *Ibid.*; see also Maryland-National Capital Parks and Planning Commission, *Crime Analysis 1975: Prince George's County* (August 1975), p. 86.
6. UCR-1974, p. 186.
7. Maryland-National Capital Parks and Planning Commission, *Crime Analysis 1975*, p. 3.
8. See UCR-1974, p. 190.
9. "Arrest Data Reveal Profile of Suspect," p. C1; and Maryland-National Capital Parks and Planning Commission, *Crime Analysis 1975*, p. 86.
10. UCR-1974, p. 190.
11. Anthony Bouza, *How to Stop Crime* (New York: Plenum, 1993), p. 57.
12. Quoted in George Will, "A Measure of Morality," *The Washington Post*, December 16, 1993, p. A25.
13. Brian Faler, "Bennett under Fire for Remark on Crime and Black Abortions," *The Washington Post*, September 30, 2005, A05.
14. Kathryn Russell, *The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment, and Other Macroaggressions* (New York: New York University Press, 1998), p. 3; cited in Marjorie S. Zatz, "The Convergence of Ethnicity, Gender, and Class on Court Decisionmaking: Looking toward the 21st Century," in NIJ, *Criminal Justice 2000, volume 3: Policies, Processes, and Decisions of the Criminal Justice System*, NCJ 182410, p. 507.
15. Zatz, "The Convergence of Ethnicity, Gender, and Class on Court Decisionmaking," p. 509.
16. Lawrence W. Sherman, "Reducing Gun Violence: What Works, What Doesn't, What's Promising," NIJ *Perspectives on Crime and Justice: 1999-2000 Lecture Series*, March 2001, NCJ 184245, p. 75.
17. UCR-2004, Table 31, p. 282, Table 39, pp. 292-93, Table 42, p. 297, Table 43, p. 298; and *StatAbst-2004-5*, Table 13, p. 14. New census procedures allow for counting of multiple races, so those who identify as black only are 12.7 percent; those who identify as black and some other race are 13.3 percent.
18. BJS, *Profile of Jail Inmates 2002*, July 2004, NCJ 201932.
19. *Challenge*, p. 44; see also p. 160.
20. *Ibid.*
21. "Mass news representations in the 'information age' have become the most significant communication by which the average person comes to know the world outside his or her immediate experience"; Gregg Barak, *Media, Process and the Social Construction of Crime* (New York: Garland, 1994), p. 3.
22. This transformation has been noted by Erving Goffman in his sensitive description of total institutions, *Asylums* (Garden City, N.Y.: Doubleday, 1961):

The interpretative scheme of the total institution automatically begins to operate as soon as the inmate enters, the staff having the notion that entrance is prima facie evidence that one must be the kind of person the institution was set up to handle. A man in a political prison must be traitorous; a man in a prison must be a law-breaker; a man in a mental hospital must be sick. If not traitorous, criminal, or sick, why else would he be here? (p. 84)

So, too, a person who calls forth the society's most drastic weapons of defense must pose the gravest danger to its well-being. Why else the reaction? The point is put well and tersely by D. Chapman: "There is a circular pattern in thinking: we are hostile to wicked people, wicked people are punished, punished people are wicked, we are hostile to punished people because they are wicked" ("The Stereotype of the Criminal and the Social Consequences," *International Journal of Criminology and Penology* 1 [1973]: p. 16).

23. Richard Quinney, *The Social Reality of Crime* (Boston: Little, Brown, 1970). In his later work, for example, *Critique of Legal Order: Crime Control in Capitalist Society* (Boston: Little, Brown, 1973), and *Class, State & Crime* (New York: McKay, 1977), Quinney moves clearly into a Marxist problematic and his conclusions dovetail with many in this book. In my own view, however, Quinney has not yet accomplished a satisfactory synthesis between the "social reality" theory and his later Marxism. Elsewhere, I have examined Quinney's theory from the standpoint of moral philosophy. See Jeffrey H. Reiman, "Doing Justice to Criminology: Reflections on the Implications for Criminology of Recent Developments in the Philosophy of Justice," in Marc Riedel and Duncan Chappell, eds., *Issues in Criminal Justice: Planning and Evaluation* (New York: Praeger, 1976), pp. 134–42.

24. Quinney, *Social Reality of Crime*, p. 15.

25. *The Washington Post*, January 11, 1983, p. C10.

26. Lydia Voigt et al., *Criminology and Justice* (New York: McGraw-Hill, 1994), pp. 11–15; the quotation is on p. 15.

27. This answers Graeme Newman, who observes that most criminals on TV are white and wonders what the "ruling class" or conservatives "have to gain by denying the criminality of Blacks." Graeme R. Newman, "Popular Culture and Criminal Justice: A Preliminary Analysis," *Journal of Criminal Justice* 18 (1990): pp. 261–74.

28. Newman, "Popular Culture and Criminal Justice," pp. 263–64.

29. Barbara Matusow, "If It Bleeds, It Leads," *Washingtonian*, January 1988, p. 102.

30. Victor Kappeler, Mark Blumberg, and Gary Potter, *Mythology of Crime and Criminal Justice*, 3rd ed. (Prospect Heights, Ill: Waveland, 2000), pp. 41–42.

31. "Titillating Channels: TV Is Going Tabloid as Shows Seek Sleaze and Find Profits, Too," *The Wall Street Journal*, May 18, 1988, p. 1.

32. John P. Wright, Francis T. Cullen, and Michael B. Blankenship, "The Social Construction of Corporate Violence: Media Coverage of the Imperial Food Products Fire," *Crime & Delinquency* 41, no. 1 (January 1995): p. 32. I discuss this case in Chapter 3.

33. Another way to put the Defenders' claim here is that one-on-one harms are appropriately "crimes," while indirect harms are appropriately "torts." *Torts* are noncriminal harms that justify civil suits for damages, but not criminal prosecution and punishment. Since our dispute with the Defenders is about whether indirect harms *should* be crimes, these legal labels cannot resolve our dispute. They may, however, give readers familiar with legal terminology a different way of understanding what is at stake: The Defenders think that indirect harms are rightly treated as torts, while I think that many of them should count as crimes, and serious ones at that.

34. Hyman Gross, *A Theory of Criminal Justice* (New York: Oxford University Press, 1979), p. 78. See generally Chapter 3, "Culpability, Intention, Motive," which I have drawn on in making the argument of this and the following two paragraphs.

35. I owe this example, modeled on one by Hyman Gross, to Andrew W. Austin of the University of Wisconsin–Green Bay.

36. Nancy Frank, "Unintended Murder and Corporate Risk-Taking: Defining the Concept of Justifiability," *Journal of Criminal Justice* 16 (1988): p. 18.

37. For example, see John Harris, "The Marxist Conception of Violence," *Philosophy & Public Affairs* 3, no. 2 (Winter 1974): pp. 192–220; Jonathan Glover, *Causing Death and Saving Lives* (Hammondsworth, UK: Penguin, 1977), pp. 92–112; and James Rachels, *The End of Life* (Oxford: Oxford University Press, 1986), pp. 106–50.

38. *Model Penal Code*, final draft (Philadelphia: American Law Institute, 1962).
39. Russell Mokhiber, *Corporate Crime and Violence: Big Business Power and the Abuse of Public Trust* (San Francisco: Sierra Club, 1988), pp. 278, 285.
40. David E. Lilienfeld, "The Silence: The Asbestos Industry and Early Occupational Cancer Research—A Case Study," *American Journal of Public Health* 81, no. 6 (June 1991), p. 791. This article shows how early the asbestos industry knew of the link between asbestos and cancer and how hard they tried to suppress this information. See also Paul Brodeur, *Outrageous Misconduct: The Asbestos Industry on Trial* (New York: Pantheon, 1985).
41. Sir James Fitzjames Stephen, from his *History of the Criminal Law of England* 2 (1883), excerpted in Abraham S. Goldstein and Joseph Goldstein, eds., *Crime, Law and Society* (New York: Free Press, 1971), p. 21.
42. Troy Duster, *The Legislation of Morality: Law, Drugs and Moral Judgment* (New York: Free Press, 1970), pp. 3–76.
43. Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: University of Chicago Press, 1970), p. 2.
44. Challenge, p. 7.
45. UCR–2003, pp. 15, 37.
46. UCR–2003, p. 42.
47. See Willard Oliver, "The Power to Persuade: Presidential Influence over Congress on Crime Control Policy" *Criminal Justice Review* 28, no. 1 (2003). The author finds UCR reported crime "to have the most impact on congressional committees and subcommittees initiating hearings on crime and drugs" (p. 125), and this factor remains significant across several variations in model specifications.
48. White House, *President's Report on Occupational Safety and Health* (Washington, D.C.: U.S. Government Printing Office, 1972).
49. "James Messerschmidt, in a comprehensive review of research studies on job-related accidents, determined that somewhere between 35 and 57 percent of those accidents occurred because of direct safety violations by the employer. Laura Shill Schraeger and James Short Jr. found 30 percent of industrial accidents resulted from safety violations and another 20 percent resulted from unsafe working conditions." Kappeler et al., *Mythology of Crime and Criminal Justice*, p. 104. See James Messerschmidt, *Capitalism, Patriarchy, and Crime: Toward a Socialist Feminist Criminology* (Totowa, N.J.: Rowman & Littlefield, 1986); and Laura Shill Schraeger and James Short, "Toward a Sociology of Organizational Crime," *Social Problems* 25 (April 1978): pp. 407–19. See also Joseph A. Page and Mary-Win O'Brien, *Bitter Wages: Ralph Nader's Study Group Report on Disease and Injury on the Job* (New York: Grossman, 1973); Rachel Scott, *Muscle and Blood* (New York: Dutton, 1974); Jeanne M. Stellman and Susan M. Daum, *Work Is Dangerous to Your Health* (New York: Vintage, 1973); Fran Lynn, "The Dust in Willie's Lungs," *Nation* 222, no. 7 (February 21, 1976): pp. 209–12; and Joel Swartz, "Silent Killers at Work," *Crime and Social Justice* 3 (Summer 1975): pp. 15–20.
50. BLS, "Workplace Injury and Illness in 2003," December 14, 2004, p. 1, 2, 4, www.bls.gov/iif/home.htm. Note that this "survey excludes the self-employed; farms with fewer than 11 employees . . . [and] federal [and state] government agencies."
51. BLS, *National Census of Fatal Occupational Injuries, 1991–93*, app. C.
52. Robert Reid, "How Accurate Are Safety and Health Statistics?" *Occupational Hazards* (March 1987): p. 49.
53. "Is OSHA Falling Down on the Job?" *The New York Times*, August 2, 1987, pp. A1, A6.
54. Philip Landrigan, testimony before the Senate Committee on Labor and Human Resources, April 18, 1988, p. 2. For cancer deaths, see *StatAbst*–1988, p. 77, Table 117, and p. 80, Table 120.
55. "Safety Group Cites Fatalities Linked to Work," *The Wall Street Journal*, August 31, 1990, p. B8; and Sally Squires, "Study Traces More Deaths to Working than Driving," *The Washington Post*, August 31, 1990, p. A7.

56. J. P. Leigh, S. B. Markowitz, M. Fahs, C. Shin, and P. J. Landrigan, "Occupational Injury and Illness in the United States: Estimates of Costs, and Morbidity, and Mortality," *Archives of Internal Medicine* 157, no. 14 (July 1997): pp. 1557–68.

57. Cancer Prevention Coalition, "U.S. National Cancer Institute," www.preventcancer.com/losing/nci/why_prevent.htm.

58. J. Paul Leigh and John Robbins, "Occupational Disease and Workers, Compensation: Coverage, Costs and Consequences," *The Milbank Quarterly* 82, no. 4 (2004): p. 694.

59. NIOSH, "Worker Health Chartbook, 2000: Nonfatal Illness," April 2002. See also NIOSH, "Protecting Workers' Families: A Research Agenda," May 2002.

60. *StatAbst*—2004–2005, Table 2, p. 7, Table 570, p. 371.

61. *Sourcebook*—2003, Table 3.33, p. 207 (figures rounded to nearest whole percentage point).

62. J. P. Leigh et al., "Occupational Injury and Illness in the United States"; see note 53, above.

63. BLS, *National Census of Fatal Occupational Injuries in 2003*, p. 1 (BLS reports a total of 5,559 workplace fatalities, of which 631 are homicides.)

64. BJS, *Workplace Injuries and Illnesses in 2003*. Definitions from BLS, "Occupational Health and Safety Definitions," www.bls.gov/iif/oshdef.htm#occupinjury.

65. UCR—2003, p. 7.

66. Philip J. Hilts, "U.S. Fines Mine Companies for False Air Tests," *The New York Times*, April 5, 1991, p. A12. The fines, by the way, amounted to a total of \$5 million distributed among 500 mining companies found to have tampered with the coal-dust samples used to test for the risk of black lung disease.

67. Joan Claybrook and the Staff of Public Citizen, *Retreat from Safety: Reagan's Attack on America's Health* (New York: Pantheon, 1984), p. 83. Chronic brown lung is a severely disabling occupational respiratory disease. See also Page and O'Brien, *Bitter Wages*, p. 18.

68. Claybrook, *Retreat from Safety*, p. 97. See also Page and O'Brien, *Bitter Wages*, p. 23; and Scott, *Muscle and Blood*, p. 196.

69. Scott, *Muscle and Blood*, pp. 45–46; cf. Page and O'Brien, *Bitter Wages*, p. 25.

70. Cindy Skrzycki, "Alarm over a Sheepish Non-rule," *The Washington Post*, October 29, 2002, p. E1.

71. Curt Suplee, "House to Consider 'Ergo Rider' Restraints on OSHA," *The Washington Post*, July 11, 1996, p. A4.

72. "OSHA Facts," December 2004, www.osha.gov/as/opa/oshafacts.html.

73. "OSHA Facts."

74. Barstow, David. "When Workers Die: U.S. Rarely Seeks Charges for Deaths in Workplace" *The New York Times*, December 22, 2003, A1, <http://reclaimdemocracy.org>. Barstow found 1,242 cases of deaths related to willful violations between 1982 and 2002, but OSHA declined prosecution in 93 percent of the cases. Recently, "OSHA began to accede to employer demands that it replace the word 'willful' with 'unclassified' in citations involving workplace deaths."

75. Barbara Starfield, MD, MPH, "Is US Health Really the Best in the World?" *Journal of the American Medical Association* 284, no. 4 (July 26, 2000): <http://jama.ama-assn.org/issues/v284/full/jco00061.html>.

76. Ceci Connolly, "Data Show Scourge of Hospital Infections," *The Washington Post*, July 13, 2005, p. A1 (citing a report by the Pennsylvania Health Care Cost Containment Council and an interview with its executive director).

77. Betsy McCaughey, "Hospital Infection Fact Sheet," <http://hospitalinfectionrates.org>; see also "Coming Clean," *The New York Times*, June 6, 2005, p. A19.

78. *The Washington Post*, July 16, 1975, p. A3.

79. George A. Silver, "The Medical Insurance Disease," *Nation* 222, no. 12 (March 27, 1976): p. 369.

80. *Ibid.*, p. 371.

81. *Newsweek*, March 29, 1976, p. 67. Lest anyone think this is a new problem, compare this passage written in a popular magazine over 40 years ago:

*In an editorial on medical abuse, the Journal of the Medical Association of Georgia referred to "surgeons who paradoxically are often cast in the role of the supreme hero by the patient and family and at the same time may be doing the greatest amount of harm to the individual." Unnecessary operations on women, stemming from the combination of a trusting patient and a split fee, have been so deplored by honest doctors that the phrase "rape of the pelvis" has been used to describe them. The American College of Surgeons, impassioned foe of fee-splitting, has denounced unnecessary hysterectomies, uterine suspensions, Caesarian sections. (Howard Whitman, "Why Some Doctors Should Be in Jail," *Colliers*, October 30, 1953, p. 24)*

82. *StatAbst*—2004-5, Table 160, p. 113.

83. *UCR*—2003, Table 2.9, p. 19.

84. Sandra G. Boodman, "No End to Errors," *The Washington Post Health*, December 3, 2002, p. F1. The original report was L. Kohn, J. Corrigan, and M. Donaldson, eds., *To Err Is Human: Building a Safer Health System* (Washington, D.C.: National Academy Press, 1999).

85. Rick Weiss, "Medical Errors Blamed for Many Deaths: As Many as 98,000 a Year in U.S. Linked to Mistakes," *The Washington Post*, November 30, 1999, p. A1.

86. Boodman, "No End to Errors," p. F1.

87. *Ibid.*, p. F6.

88. *Ibid.*, p. F6.

89. Silver, "The Medical Insurance Disease," p. 369. Silver's estimates are extremely conservative. Some studies suggest that between 30,000 and 160,000 individuals die as a result of drugs prescribed by their doctors. See Boyce Rensberger, "Thousands a Year Killed by Faulty Prescriptions," *The New York Times*, January 28, 1976, pp. A1, A17. If we assume with Silver that at least 20 percent are unnecessary, this puts the annual death toll from unnecessary prescriptions at between 6,000 and 32,000 persons. For an in-depth look at the recklessness with which prescription drugs are put on the market and the laxness with which the Food and Drug Administration exercises its mandate to protect the public, see the series of eight articles by Morton Mintz, "The Medicine Business," *The Washington Post*, June 27–30, July 1–4, 1976.

90. Paul Weiler, Howard Hiatt, Joseph Newhouse, William Johnson, Troyen Brennan, and Lucian Leape, *A Measure of Malpractice: Medical Injury, Malpractice Litigation and Patient Compensation* (Cambridge, Mass.: Harvard University Press, 1993), p. 54. The data given here come from the Harvard Medical Practice Study. See also Christine Russell, "Human Error: Avoidable Mistakes Kill 100,000 Patients a Year," *The Washington Post Health*, February 18, 1992, p. 7.

91. Sheryl Gay Stohberg, "Faulty Warning Labels Add to Risk in Prescription Drugs," *The New York Times*, June 4, 1999, p. A27.

92. Boodman, "No End to Errors," p. F6.

93. The rate of increase of medical costs is calculated from *StatAbst*—1995, Table 167, p. 117, and *StatAbst*—2004-5, Table 124, p. 97. Note that the assumption that the number of unnecessary operations and prescriptions has remained the same between 1974 and 2003 is a conservative assumption in that it effectively assumes that the rate of these practices relative to the population has declined because population has increased in the period.

94. American Cancer Society, "Cancer Facts & Figures 2005," p. 1, www.cancer.org.

95. Lewis Regenstein, *America the Poisoned* (Washington, D.C.: Acropolis Books, 1982), pp. 246–47; American Cancer Society, *United States Cancer Statistics: 1999 Incidence*; and National Institutes of Health, *NCI 1995 Budget Estimate*, September 1993, p. 3.

96. Samuel S. Epstein, Nicholas A. Ashford, Brent Blackwelder, Barry Castleman, Gary Cohen, Edward Goldsmith, Anthony Mazzocchi, and Quentin D. Young, "The Crisis in U.S. and International Cancer Policy," *International Journal of Health Services* 32, no. 4 (2002): p. 693.

97. Rick Weiss, "HHS Seeks Science Advice to Match Bush Views," *The Washington Post*, September 17, 2002, p. A1.

98. Paul Cotton, "'Best Data Yet' Say Air Pollution Kills below Levels Currently Considered Safe," *Journal of the American Medical Association* 269, no. 24 (June 23–30, 1993): p. 3087.

99. J. Michael McGinnis and William H. Foege, "Actual Causes of Death in the United States," *Journal of the American Medical Association* 270, no. 18 (November 10, 1993): p. 2209.

100. Cited in Eric Pianin, "Study Ties Pollution, Risk of Lung Cancer," *The Washington Post*, March 6, 2002, p. A1.

101. Quoted in Stuart Auerbach, "N.J.'s Chemical Belt Takes Its Toll: \$4 Billion Industry Tied to Nation's Highest Cancer Death Rate," *The Washington Post*, February 8, 1976, p. A1.

102. Bill Richards, "Arsenic: A Dark Cloud over 'Big Sky Country,'" *The Washington Post*, February 3, 1976, pp. A1, A5.

103. Quotations in this paragraph are from Auerbach, "N.J.'s Chemical Belt Takes Its Toll," p. A1.

104. "Air and Atmosphere at NRDC: Danger in the Air," www.nrdc.org/find/aibresum.htm.

105. Toxic Substances Strategy Committee, Council on Environmental Quality, *Toxic Chemicals and Public Protection: A Report to the President*, Washington, D.C., May 1980, p. 6; quoted by Regenstein, *America the Poisoned*, p. 184. See also p. 170 in Regenstein.

106. Michael Edelstein, *Contaminated Communities: The Social and Psychological Impacts of Residential Toxic Exposure* (Boulder, Colo.: Westview Press, 1988), p. 3.

107. Jay M. Gould, *Quality of Life in American Neighborhoods: Levels of Affluence, Toxic Waste, and Cancer Mortality in Residential Zip Code Areas* (Boulder, Colo.: Westview Press, 1986), pp. 22 and 28.

108. Robert Bullard, "Environmental Justice for All," in *Unequal Protection: Environmental Justice and Communities of Color*, ed. Robert Bullard (San Francisco: Sierra Club Books, 1994), p. 17.

109. Joan Claybrook, *Retreat from Safety*, pp. 117–29.

110. Walter A. Rosenbaum, "The Clenched Fist and the Open Hand: Into the 1990s at EPA," in N. Vig and M. Kraft, eds., *Environmental Policy in the 1990s: Toward a New Agenda* (Washington, D.C.: CQ Press, a division of Congressional Quarterly Inc., 1994), p. 132.

111. Juliet Eilperin, "Lack of Funds Delaying Toxic Waste Cleanups," *The Washington Post*, July 28, 2004, p. A6.

112. American Cancer Society, "Cancer Facts and Figures 2005," p. 40.

113. Edward Sondik, "Progress in Cancer Prevention and Control," in *Unnatural Causes: Three Leading Killer Diseases in America*, ed. Russell Maulitz (New Brunswick, N.J.: Rutgers University Press, 1988, 1989), p. 117; and CNN, "Second-hand Smoke Price Tag: \$10 Billion" August 17, 2005, http://money.cnn.com/2005/08/17/news/economy/secondhand_smoke/index.html.

114. Rebecca Perl, "30 Years after the Surgeon General's Report, Cigarettes Still Kill More than 1,000 Americans a Day . . . and Make Money for More than Just the Tobacco Companies," *The Washington Post Health*, January 11, 1994, p. 11. U.S. Department of Health and Human Services, *The Health Consequences of Smoking: A Report of the Surgeon General* (Atlanta: Centers for Disease Control and Prevention, 2004), p. 858, www.cdc.gov/tobacco/sgr/sgr_2004/.

115. U.S. Department of Health and Human Services, *The Health Consequences of Smoking*, p. 861 (440,000 yearly deaths since 1995). See also David Simon, *Elite Deviance* (Boston: Allyn & Bacon, 1999), p. 140; McGinnis and Foege, "Actual Causes of Death in the United States," p. 2207; and Perl, "30 Years after the Surgeon General's Report," p. 11.

116. *Scientific Priorities for Cancer Research: NCI's Extraordinary Opportunities: Research on Tobacco and Tobacco-Related Cancers*, <http://2001.cancer.gov/tobacco.htm>.

117. "The Price of Tobacco: The Basics," *The New York Times*, March 23, 1993, p. A14.

118. Robbins, "Can Reagan Be Indicted?" p. 12.

119. Common Cause, the Campaign for Tobacco-Free Kids, the American Heart Association, and the American Lung Association, "Buying Influence, Selling Death: How Big Tobacco's Campaign Contributions Harm Public Health," March 14, 2001, pp. 1, 2; www.commoncause.org.

120. Dr. James S. Todd et al., "The Brown and Williamson Documents: Where Do We Go From Here?" *Journal of the American Medical Association* 274, no. 3 (July 19, 1995): pp. 256, 258.
121. "U.S. Urged to Escalate Tobacco War," *The Washington Post*, January 12, 2002, p. A17.
122. *Scientific Priorities for Cancer Research*; see note 116.
123. Geoffrey Cowley, "Poison at Home and at Work: A New Report Calls Secondhand Smoke a Killer," *Newsweek*, June 29, 1992, p. 55.
124. McGinnis and Foege, "Actual Causes of Death in the United States," p. 2208.
125. Hunter, *The Mirage of Safety*, p. 4.
126. Quoted in *ibid.*, p. 2.
127. *Ibid.*, pp. 40–41, 64–65, 85, 148–51, *inter alia*.
128. *Ibid.*, p. 119.
129. *Ibid.*, pp. 123–24.
130. *Ibid.*, pp. 127–40.
131. *Ibid.*, pp. 102–3.
132. *Ibid.*, pp. 162–76.
133. Public Voice for Food and Health Policy, *A Blueprint for Pesticide Policy* (Washington, D.C.: Public Voice for Food and Health Policy, 1989), p. 22.
134. "Pesticide Plan Could Uproot U.S. Farming," *The New York Times*, October 10, 1993, p. A6.
135. Philip Landrigan, "Commentary: Environmental Disease—A Preventable Epidemic," *American Journal of Public Health* 82, no. 7 (July 1992): p. 942.
136. Landrigan, "Commentary," p. 942.
137. At the very least, "we" includes all those who earn considerably above the median income for the nation (around \$44,436 for a household in 2004) and who resist, or who vote for candidates who resist, moves to redistribute income significantly.
138. Karen Pennar, "The Rich Are Richer—and America May Be the Poorer," *Business Week*, November 18, 1991, pp. 85–88. Carmen DeNavas-Walt, Bernadette Proctor, and Cheryl Hill Lee, U.S. Census Bureau, *Income, Poverty & Health Insurance Coverage in the United States: 2004*, Current Population Reports, P60-229 (Washington, D.C.: U.S. Government Printing Office, 2005), p. 10; and *StatAbst—2004–5*, Table 684 (Children in Poverty), p. 452.
139. The Urban Institute, *A New Look at Homelessness in America*, February 1, 2000, www.urban.org/url.cfm?ID=900302.
140. National Law Center on Homelessness and Poverty, "Homelessness in America: Fact Sheet," June 1996; www.nlchp.org.
141. Aaron Antonovsky, "Class and the Chance for Life," in *Inequality and Justice*, ed. Lee Rainwater (Chicago: Aldine, 1974), p. 177.
142. McGinnis and Foege, "Actual Causes of Death in the United States," p. 2211.
143. *HHS News*, "Health in America Tied to Income and Education," July 30, 1998, www.cdc.gov/nchs/releases/98news/98news/huspr98.htm. See also R. Wilkinson, *Unhealth Societies: The Afflictions of Inequality* (London: Routledge, 1996).
144. Rob Stein, "Race Gap Persists in Health Care, Three Studies Say," *The Washington Post* August 18, 2005, p. A1.
145. Peter A. Margolis et al., "Lower Respiratory Illness in Infants and Low Socioeconomic Status," *American Journal of Public Health* 82, no. 8 (August 1992): p. 1119.
146. *StatAbst—1998*, p. 144, Table 220.
147. *Income, Poverty & Health Insurance Coverage in the United States: 2004*, p. 9; *StatAbst—1996*, p. 48, Table 49.
148. *Income, Poverty & Health Insurance Coverage in the United States: 2004*, p. 16.
149. David Stipp, "The Tattered Safety Net"; see also Dan Goodgame, "Ready to Operate," *Time*, September 20, 1993, p. 55.
150. Ceci Connolly, "Study: Uninsured Don't Get Needed Health Care: Delayed Diagnoses, Premature Deaths Result," *The Washington Post*, May 22, 2002, p. A3.

151. Malcolm Gladwell, "The Moral-Hazard Myth: The Bad Idea Behind Our Failed Health Care System" *The New Yorker*, August 29, 2005, <http://newyorker.com>.
152. *Income, Poverty & Health Insurance Coverage in the United States: 2004*, p. 10; and *StatAbst—2004–5*, p. 78, Table 100.
153. Robbins, "Can Reagan Be Indicted?" pp. 12–13. See also "Infant Mortality Down; Race Disparity Widens," *The Washington Post*, March 12, 1993, p. A11.
154. United Nations Development Programme, *Human Development Report 1990* (New York: Oxford University Press, 1990), p. 147.
155. Sonia Nazario, "Curing Doctors of Bedside Bias," *International Herald Tribune*, December 23, 1993, p. 8.
156. Alan M. Gittelsohn et al., "Income, Race, and Surgery in Maryland," *American Journal of Public Health* 81, no. 11 (November 1991): p. 1435.
157. See Jane Perkins, "Race Discrimination in America's Health Care System," *Clearinghouse Review* 27, no. 4 (1993): p. 371.
158. January Payne, "Dying for Basic Care," *The Washington Post*, December 21, 2004, p. HE1. The report itself notes that "socioeconomic conditions represent a more pertinent cause of disparities than race."
159. *StatAbst—2004–5*, p. 127, Table 191.
160. National Institutes of Health, *Cancer Patient Survival Experience*, June 1980, pp. 4–5.
161. Ann Gibbons, "Does War on Cancer Equal War on Poverty?" *Science* 253 (July 19, 1991): p. 260.
162. Barbara L. Wells and John W. Horm, "Stage at Diagnosis in Breast Cancer: Race and Socioeconomic Factors," *American Journal of Public Health* 82, no. 10 (October 1992): p. 1383.
163. Gibbons, "Does War on Cancer Equal War on Poverty?" p. 260.
164. *StatAbst—2004–5*, p. 71, Table 92. Although the difference between white and black life expectancy has generally shrunk in recent times, this tendency is by no means uniform: "Since 1984, life expectancy increased each year for white males; for white females, it increased for 3 of the 5 years; for black females, for only 2 of five years; and for black males, life expectancy decreased for 4 of the 5 years, and remained unchanged for one year" (*Vital Statistics of the United States, 1989, vol. 2, Mortality*, pt. A, sec. 6, p. 3). Richard Allen Williams reports that "there is no reason why the life span of the White should differ from that of the Black," in his *Textbook of Black-Related Diseases* (New York: McGraw-Hill, 1975), p. 2.
165. McGinnis and Foege, "Actual Causes of Death in the United States," p. 2211.
166. Julian E. Keil et al., "Does Equal Socioeconomic Status in Black and White Men Mean Equal Risk of Mortality?" *American Journal of Public Health* 82, no. 8 (August 1992): p. 1133.