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The Rich Get Richer and the Poor Get Prison

BY REIMAN, JEFFREY, *The Rich Get Righer and The Poor Get Prison: Ideology, Class and Criminal Justice, 5th Edition, © 1998, pp. 101–148. Adapted by permission of Pearson Education, Inc., Upper Saddle River, NJ.*

In this excerpt from his 1998 book, Reiman provides compelling evidence that demonstrates the inequities in the criminal justice system. From arrest to convictions to sentencing, the poor are at a serious disadvantage.

For the same criminal behavior, the poor are .l more likely to be arrested; if arrested, they are more likely to be charged; if charged, more likely to be convicted; if convicted, more likely to be sentenced to prison; and if sentenced, more likely to be given longer prison terms than members of the middle and upper classes.[1] In other words, the image of the criminal population one sees in our nation's jails and prisons is distorted by the shape of the criminal justice system itself. It is the face of evil reflected in a carnival mirror, but it is no laughing matter.

The face in the criminal justice carnival mirror is also … very frequently black face. Although blacks do not make up the majority of the inmates in our jails and prisons, they make up a proportion that far outstrips their proportion in the population.[2] Here, too, the image we see is distorted by the processes of the criminal justice system itself. Edwin Sutherland and Donald Cressey write in their widely used textbook *Criminology* that

> Numerous studies have shown that African-Americans are more likely to be arrested, indicted, convicted, and committed to an institution than are whites who commit the same offenses, and many other studies have shown that blacks have a poorer chance than whites to receive probation, a suspended sentence, parole, commutation of a death sentence, or pardon.[3]

Curiously enough, statistics on differential treatment of races are available in greater abundance than are statistics on differential treatment of economic classes. For instance, although the FBI tabulates arrest rates by race (as well as by sex, age, and geographical area), it omits class or income. Similarly, both the President's Crime Commission Report and Sutherland and Cressey's *Criminology* have index entries for race or racial discrimination but none for class or income of offenders. It would seem that both independent and government data gatherers are more willing to own up to America's racism than to its class bias. Nevertheless, it does not pay to look at these as two independent forms of bias. It is my view that, at least as far as criminal justice is concerned, racism is simply one powerful form of economic bias. I use evidence on differential treatment of blacks as evidence of differential treatment of members of the lower classes. There are five reasons:

1. First and foremost, black Americans are disproportionately poor. In 1995, while one out of every eight white Americans received income below the poverty line, three out of every ten black Americans did.[4] The picture is even worse when we shift from income to wealth (property such as a home, land, stocks): In 1991, black households owned one-tenth the median net worth of white households.[5] Unemployment figures give a similarly dismal picture: In 1995, 4.9 percent of white workers were unemployed and 10.4 percent of blacks were. Among those in the crime-prone ages of 16 to 24, 15.6 percent of white youngsters (with no college) and 34.0 (more than one of every three) black youngsters (with no college) were jobless.[6]

2. The factors most likely to keep one out of trouble with the law and out of prison, such as a suburban living room instead of a tenement alley to gamble in or legal counsel able to devote time to one's case instead of an overburdened public defender, are the kinds of things that money can buy regardless of one's race, creed, or national origin. For example, as we shall see, arrests of blacks for illicit drug possession or dealing have sky-rocketed in recent years, rising way out of proportion to drug arrests for whites— though research shows no greater drug use among blacks than among whites. However, drug arrests are most easily made in "disorganized inner-city" areas, where drug sales are more likely to take place out of doors, and dealers are more willing to sell to strangers. Blacks are (proportionately) more likely than whites to live in such inner-city areas and thus more likely than whites to be arrested on drug charges.[7] But one very important reason that blacks are more likely than whites to live in disorganized inner-city areas is that a greater percentage of blacks than whites are poor and unemployed. What might at first look like a straightforward racial disparity turns out to reflect economic status.

3. Blacks who travel the full route of the criminal justice system and end up in jail or prison are close in economic condition to whites who do. In 1978, 53 percent of black jail inmates had pre-arrest incomes below $3,000, compared with 44 percent of whites.[8] 1983, the median pre-arrest income of black jail inmates was $4,067 and that of white jail inmates was $6,312. About half of blacks in jail were unemployed before arrest and 44 percent of whites were.[9] In 1991, 30 percent of whites in the prison population and 38 percent of blacks reported full- or part-time employment during the month before their arrest.[10]

4. Some studies suggest that race works to heighten the effects of economic condition on criminal justice outcomes, so that "being unemployed and black substantially increase[s] the chances of incarceration over those associated

with being either unemployed or black."[11] This means that racism will produce a kind of selective economic bias, making a certain segment of the unemployed even more likely to end up behind bars.

5. Finally, it is my belief that the economic powers that be in America have sufficient power to end or drastically reduce racist bias in the criminal justice system. To the extent that they allow it to exist, it is not unreasonable to assume that it furthers their economic interests.

For all these reasons, racism will be treated here as either a form of economic bias or a tool that achieves the same end.

In the remainder of this [selection], I show how the criminal justice system functions to *weed out the wealthy* (meaning both middle-and upper-class offenders) at each stage of the process and thus produces a distorted image of the crime problem. Before entering into this discussion, three points are worth noting:

First, it is not my view that the poor are all innocent victims persecuted by the evil rich. The poor do commit crimes, and my own assumption is that the vast majority of the poor who are confined in our prisons are guilty of the crimes for which they were sentenced. In addition, there is good evidence that the poor do commit a greater portion of the crimes against person and property listed in the FBI Index than the middle- and upper-classes do, relative to their numbers in the national population. What I have already tried to prove is that the crimes in the FBI Index are not the only acts that threaten us nor are they the acts that threaten us the most. What I will try to prove in what follows is that the poor are arrested and punished by the criminal justice system much more frequently than their contribution to the crime problem would warrant—thus the criminals who populate our prisons as well as the public's imagination are disproportionately poor.

Second, the following discussion has been divided into three sections that correspond to the major criminal justice decision points.… As always, such classifications are a bit neater than reality, and so they should not be taken as rigid compartments. Many of the distorting processes operate at all criminal justice decision points. So, for example, while I will primarily discuss the light-handed treatment of white-collar criminals in the section on charging and sentencing, it is also true that white-collar criminals are less likely to be arrested or convicted than are blue-collar criminals. The section in which a given issue is treated is a reflection of the point in the criminal justice process at which the disparities are the most striking. Suffice it to say, however, that the disparities between the treatment of the poor and the nonpoor are to be found at all points of the process.

Third, it must be borne in mind that the movement from arrest to sentencing is a funnelling process, so that discrimination that occurs at any early stage shapes the population that reaches later stages. Thus, for example, some recent studies find little economic bias in sentence length for people convicted of similar crimes.[12] When reading such studies, one should remember that the population that reaches the point of sentencing has already been subject to whatever discrimination exists at earlier stages. If, for example, among people with similar offenses and records, poor people are more likely to be charged and more likely to be convicted, then even if the sentencing of convicted criminals is evenhanded, it will reproduce the discrimination that occurred before.

Arrest and Charging

The problem with most official records of who commits crime is that they are really statistics on who gets arrested and convicted. If, as I will show, the police are more likely to arrest some people than others, these official statistics may tell us more about police than about criminals. In any event, they give us little reliable data about those who commit crime and do not get caught. Some social scientists, suspicious of the bias built into official records, have tried to devise other methods of determining who has committed a crime. Most often, these methods involve an interview or questionnaire in which the respondent is assured of anonymity and asked to reveal whether he or she has committed any offenses for which he or she could be arrested and convicted. Techniques to check reliability of these self-reports also have been devised however, if their reliability is still in doubt, common sense would dictate that they would understate rather than overstate the number of individuals who have committed crimes and never come to official notice. In light of this, the conclusions of these studies are rather astounding. It would seem that crime is the national pastime. The President's Crime Commission conducted a survey of 10,000 households and discovered that "91 percent of all Americans have violated laws that could have subjected them to a term of imprisonment at one time in their lives."[13]

A number of other studies support the conclusion that serious criminal behavior is widespread among middle- and upper-class individuals, although these individuals are rarely, if ever, arrested. Some of the studies show that there are no significant differences between economic classes in the incidence of criminal behavior.[14] The authors of a recent review of literature on class and delinquency conclude that "Research published since 1978, using both official and self-reported data suggests … that there is no pervasive relationship between SES [socioeconomic status] and delinquency."[15] This conclusion is echoed by Jensen and Thompson, who argue that

> The safest conclusion concerning class structure and delinquency is the same one that has been proposed for several decades: class, no matter how defined, contributes little to explaining variation of self-reports of common delinquency.[16]

Others conclude that while lower-class individuals do commit more than their share of crime, arrest records overstate their share and understate that of the middle and upper classes.[17] Still other studies suggest that some forms of serious crime— forms usually associated with lower-class youth— show up *more frequently* among higher-class persons than among lower.[18] For instance, Empey and Erikson interviewed 180 white males aged 15 to 17 who were drawn from different economic strata. They found that "virtually all respondents reported having committed not one but a variety of different offenses" Although youngsters from the middle classes constituted 55 percent of the group interviewed, they admitted to 67 percent of the instances of breaking and entering, 70 percent of the instances of property destruction, and an astounding 87 percent of all armed robberies admitted to by the entire sample.[19] Williams and Gold studied a national sample of 847 males and females between the ages of 13 and 16.[20] Of these, 88 percent admitted to at least one delinquent offense.

Even those who conclude "that more lower status youngsters commit delinquent acts more frequently than do higher status youngsters"[21] also recognize that lower class youth are significantly overrepresented in official records. Gold writes that "about five times more lowest than highest status boys appear in the official records; if records were complete and unselective, we estimate that the ratio would be closer to 1.5:1."[22] The simple fact is that for the same offense, *a poor person is more likely to be arrested and, if arrested charged, than a middle- or upper-class person.*[23]

This means, first of all, that poor people are more likely to come to the attention of the police. Furthermore, even when apprehended, the police are more likely to formally charge a poor person and release a higher-class person *for the same offense*. Gold writes that

> boys who live in poorer parts of town and are apprehended by police for delinquency are four to five times more likely to appear in some official record than boys from wealthier sections who commit the same kinds of offenses. These same data show that, at each stage in the legal process from charging a boy with an offense to some sort of disposition in court, boys from different socioeconomic backgrounds are treated differently, so that those eventually incarcerated in public institutions, that site of most of the research on delinquency, are selectively poorer boys.[24]

From a study of self-reported delinquent behavior, Gold finds that when individuals were apprehended, "if the offender came from a higher status family, police were more likely to handle the matter themselves without referring it to the court."[25]

Terence Thornberry reached a similar conclusion in his study of 3,475 delinquent boys in Philadelphia. Thornberry found that among boys arrested *for equally serious offenses* and who had *similar prior offense records*, police were more likely to refer to lower-class youths than the more affluent ones to juvenile court. The police were more likely to deal with the wealthier youngsters informally, for example, by holding them in the station house until their parents came rather than instituting formal procedures. Of those referred to juvenile court, Thornberry found further that for *equally serious offenses* and with *similar prior records*, the poorer youngsters were more likely to be institutionalized than were the affluent ones. The wealthier youths were more likely to receive probation than the poorer ones. As might he expected, Thornberry found the same relationships when corn paring the treatment of black and white youths apprehended for equally serious offenses.[26]

Recent studies continue to show similar effects. For example, Sampson found that, for the same crimes, juveniles in lower-class neighborhoods were more likely to have some police record than those in better-off neighborhoods. Again, for similar crimes, lower-class juveniles were more likely to be referred to court than better-off juveniles. If you think these differences are not so important because they are true only of young offenders, remember that this group accounts for much of the crime problem. Moreover, other studies not limited to the young tend to show the same economic bias. McCarthy found that, in metropolitan areas, for similar suspected crimes, unemployed people were more likely to be arrested than employed.[27]

As I indicated above, racial bias is but another form in which the bias against the poor works. And blacks are more likely to be suspected or arrested than whites. A. 1988 *Harvard Law Review* overview of studies on race and the criminal process concludes that "most studies … reveal what many police officers freely admit: that police use race as an independently significant, if not determinative, factor in deciding whom to follow, detain, search, or arrest."[28] A 1994 study of juvenile detention decisions found that African-American and Hispanic youths were more likely to be detained at each decision point, even after controlling for the influence of offense seriousness and social factors (e.g., single-parent home). Decisions by both police and the courts to detain a youngster were highly influenced by race."[29] The study states that, "[n]ot only were there direct effects of race, but indirectly, socioeconomic status was related to detention, thus putting youth of color again at risk for differential treatment."[30] Reporting the results of University of Missouri criminologist Kimberly Kempf's study of juvenile justice in fourteen Pennsylvania counties, Jerome Miller says that "Black teenagers were more likely to be detained, to be handled formally, to be waived to adult court, and to be adjudicated delinquent."[31] And the greater likelihood of arrest that minorities face is matched by a greater likelihood of being charged with a serious offense. For example, Huizinga and Elliott report that:

"Minorities appear to be at greater risk for being charged with more serious offenses than whites when involved in comparable levels of delinquent behavior."[32] Bear in mind that once an individual has a criminal record, it becomes harder for that person to get employment thus increasing the likelihood of future criminal involvement and more serious criminal charges.

For reasons mentioned earlier, a disproportionately large percentage of the casualties in the recent War on Drugs are poor inner-city minority males. Michael Tonry writes that, "according to National Institute on Drug Abuse (1991) surveys of Americans' drug use, [Blacks] are not more likely than Whites ever to have used most drugs of abuse. Nonetheless, the … number of drug arrests of Blacks more than doubled between 1985 and 1989, whereas White drug arrests increased only by 27 percent."[33] A study conducted by the Sentencing Project, based mainly on Justice Department statistics, indicates that "Blacks make up 12 percent of the United States' population and constitute 13 percent of all monthly drug users…, but represent 35 percent of those arrested for drug possession, 55 percent of those convicted of drug possession and 74 percent of those sentenced to prison for drug possession."[34]

Numerous studies of police use of deadly force show that blacks are considerably more likely than whites or Hispanics to be shot by the police. For example, using data from Memphis, Tennessee, covering the years from 1969 through 1974, James Fyfe found that blacks were 10 times more likely than whites to have been shot at unsuccessfully by police, 18 times more likely to have been wounded, and 5 times more likely to have been killed."[35] A nation that has watched the brutal treatment meted out to Rodney King by California police officers will not find this surprising. Does anyone think this would have happened if King were a white man?

Any number of reasons can be offered to account for the differences in police treatment of poor versus well-off citizens. Some argue that they relied that the poor have less privacy.[36] What others can do in their living rooms or backyards the poor do on the street. Others argue that a police officers decision to book a poor youth and release a middle-class youth reflects either the officer's judgment that the higher-class youngster's family will be more likely and more able to discipline him or her than the lower-class youngster's, or differences in the degree to which poor and middle-class complainants demand arrest. Others argue that police training and police work condition police officers to be suspicious of certain kinds of people, such as lower-class youth, blacks, Mexicans, and so on,[37] a thus more likely to detect their criminality. Still others hold that police mainly arrest those with the least political clout,[38] those who are least able to focus public attention on police practices or bring political influence to bear, and these happen to be the members of the lowest social and economic classes.

Regardless of which view one takes, and probably all have some truth in them, one conclusion is inescapable. One of the reasons 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" is that the police officers who guard the access to the road to prison make sure that more poor people make the trip than well-to-do people.

Likewise for prosecutors. A recent study of prosecutors' decisions shows that lower-class individuals are more likely to have charges pressed against them than upper-class individuals.[39] Racial discrimination also characterizes prosecutors' decisions to charge. *The Harvard Law Review* overview of studies on race and the criminal process asserts, "Statistical studies indicate that prosecutors are more likely to pursue full prosecution, file more severe charges, and seek more stringent penalties in cases involving minority defendants than in cases involving nonminority defendants."[40] One study of whites, blacks, and Hispanics arrested in Los Angeles on suspicion of having committed a felony found that, among defendants with equally serious charges and prior records, 59 percent of whites had their charges dropped at the initial screening, compared with 40 percent of blacks and 37 percent of Hispanics.[41]

The *weeding out of the wealthy* starts at the very entrance to the criminal justice system: The decision about whom to investigate, arrest, or charge is not made simply on the basis of the offense committed or the danger posed. It is a decision distorted by a systematic economic bias that works to the disadvantage of the poor.

This economic bias is a two-edged sword. Not only are the poor arrested and charged out of proportion to their numbers for the kinds of crimes poor people generally commit—burglary, robbery, assault, and so forth—but when we reach the kinds of crimes poor people almost never have the opportunity to commit, such as antitrust violations, industrial safety violations, embezzlement, and serious tax evasion, the criminal justice system shows an increasingly benign and merciful lace. The more likely that a crime is the type committed by middle and upper class people, the less likely that it will be treated as a criminal offense. When it comes to crime in the streets, where the perpetrator is apt to be poor, he or she is even more likely to be arrested and formally charged. When it comes to crime in the suites, where the offender is apt to be affluent, the system is most likely to deal with the crime non-criminally, that is, by civil litigation or informal settlement. Where it does choose to proceed criminally, as we will see in the section on sentencing, it rarely goes beyond a slap on the wrist. Not only is the main entry to the road to prison held wide open to the poor but the access routes for the wealthy are largely sealed off. Once again, we should not be surprised at whom we find in our prisons.

Conviction

Between arrest and imprisonment lies the crucial process that determines guilt or innocence. Studies of individuals accused of similar offenses and with similar prior records show that the poor defendant is more likely to be adjudicated guilty than is the wealthier defendant.[42] In the adjudication process the only thing that *should* count is whether the accused is guilty and whether the prosecution can prove it beyond a reasonable doubt. Unfortunately, at least two other factors that are irrelevant to the question of guilt or innocence significantly affect the outcome: One is the ability of the accused to be free on bail prior to trial; and the second is access to legal counsel able to devote adequate time and energy to the case. Because both bail and high-quality legal counsel cost money, it should come as no surprise that here as elsewhere the poor do poorly.

Being released on bail is Important in several respects. First and foremost is that those not released on hail are kept in jail like individuals who have been found guilty. They are thus punished while they are still legally innocent. "On June 30, 1995, an estimated 44 percent of the nation's adult jail inmates had been convicted on their current charge. An estimated 223,000 adult jail inmates were serving a sentence, awaiting sentencing, or serving time in jail [or a probation or parole violation. Between 1985 and 1995 the number of convicted inmates rose by nearly 100,000—up from 13,409. During the same period, the number of convicted jail inmates, including those on trial or awaiting arraignment or trial, doubled (from 127,059 to an estimated 284,100)."[43] Beyond the obvious ugliness of punishing people before they are found guilty, confined defendants suffer from other disabilities. Specifically, they cannot actively aid in their own defense by seeking out witnesses and evidence. Several studies have shown that among defendants accused of the same offenses those who make bail are more likely to be acquitted than those who do not.[44] In a recent study of unemployment and punishment, Chiricos and Bales found that 'after the effects of other factors [seriousness of crime, prior record, etc.] were controlled, an unemployed defendant was 3.2 times more like to be incarcerated before trial than his employed counter-part."[45]

Furthermore, because the time spent in jail prior to adjudication of guilt may count as part of the sentence if one is found guilty, the accused are often placed in a ticklish position. Let us say the accused believes he or she is innocent, and let us say also that he or she has been in the slammer for two months awaiting trial. Along comes the prosecutor to offer a deal: If you plead guilty to such-and-such (usually a lesser offense than has been charged, say, possession of burglar's tools instead of burglary), the prosecutor promises to ask the judge to sentence you to two months. In other words, plead guilty and walk out of jail today (free, but with a criminal record that will make finding a job hard and insure a stiffer sentence next time around)—or maintain your innocence,

stay in jail until trial, and then be tried for the full charge instead of the lesser offense! In fact, not only does the prosecutor threaten to prosecute for the full charge, but this is often accompanied by the implied but very real threat to press for the most severe penalty as well—for taking up the court's time.

Plea bargaining such as this is an everyday occurrence in the criminal justice system. Contrary to the Perry Mason image, the vast majority of criminal convictions in the United States are reached without a trial. It is estimated that between 70 and 95 percent of convictions are the result of a negotiated plea,[46] that is, a bargain in which the accused agrees to plead guilty (usually to a lesser offense than he or she is charged with or to one offense out of many he or she is charged with) in return for an informal promise of leniency from the prosecutor with the tacit consent of the judge. If you were the jailed defendant offered a deal like this, how would you choose? Suppose you were a poor black man not likely to be able to retain F. Lee Bailey or Edward Bennett Williams for your defense.

The advantages of access to adequate legal counsel during the adjudicative process are obvious but still worthy of mention. In 1963, the U.S. Supreme Court handed down the landmark *Gideon v. Wainwright* decision, holding that the states must provide legal counsel to the indigent in all felony cases. As a result, no person accused of a serious crime need face his or her accuser without a lawyer. However, the Supreme Court has not held that the Constitution entitles individuals to lawyers able to devote equal time and resources to their cases. Even though *Gideon* represents significant progress in making good on the constitutional promise of equal treatment before the law, we still are left with two transmission belts of justice: one for the poor and one for the affluent. There is an emerging body of case law on the right to effective assistance of counsel;[47] however, this is yet to have any serious impact on the assembly-line legal aid handed out to the poor.

Indigent defendants, those who cannot afford to retain their own lawyers, will be defended either by a public defender or by a private attorney assigned by the court. Because the public defender is a salaried attorney with a case load much larger than that of a private criminal lawyer,[48] and because court-assigned private attorneys are paid a fixed fee that is much lower than they charge their regular clients, neither is able or motivated to devote much time to the indigent defendant's defense. Both are strongly motivated to bring their cases to a close quickly by negotiating a plea of guilty. Because the public defender works in day-today contact with the prosecutor and the judge, the pressures on him or her to negotiate a plea as quickly as possible, instead of rocking the boat by threatening to go to trial,[49] are even greater than those that work on court-assigned counsel. In an essay aptly titled "Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender," Jonathan Casper reports the perceptions of this process from the standpoint of the defendants: