

CHAPTER 2

The Punishment of Crime

The punishment of crime is a political act. It represents the use of physical force by the state to control the lives of people the state has defined as criminal. Whether the main purpose of imprisonment is the "rehabilitation" of the criminal, the deterrence of certain kinds of behavior, or simply the vengeful punishment of the wicked, it is a political act, for the organized power of the state is imprisoning the offender.

This notion that all imprisonment is political, whether the prisoner be a rapist, a bank robber, or a draft evader, is alien to American liberal philosophy.¹ In traditional American liberalism the term "political" is limited to reference to individuals who are imprisoned for explicitly political reasons. Thus an individual who is imprisoned for his political beliefs would generally be considered a political prisoner. This would include people who are convicted directly for those beliefs and people

1. Throughout this discussion I will be using the word "liberal" to describe the political perspective of liberalism, not a particular set of public policies or a particular kind of political party. In the American political tradition most "conservatives" still hold a basically liberal political philosophy, in the sense of viewing the world in individualistic rather than class terms, in believing in individual liberties and a pluralistic society, and in feeling that social and political change should be reformist and evolutionary. The specific public policies of both Republicans and Democrats fall easily within the general philosophical framework of this tradition of liberalism.

who are imprisoned under the pretext of some other offense such as "conspiracy to incite to riot." In many cases an individual who is imprisoned for breaking certain grossly unjust laws which are felt to be "political" in nature—such as segregation laws in the American South—would be considered a "political prisoner," especially if he broke the law out of political motives. And in certain circumstances, an individual who is convicted of a common law crime, but is felt to have been denied due process and unjustly convicted—such as a black convicted by an all-white jury of raping a white woman—might be considered a political prisoner. But beyond these rather special circumstances, prisoners are generally not considered "political prisoners" in American political theory.

The liberal distinction between persons who are imprisoned for their political beliefs or who have been unjustly imprisoned and those who have been imprisoned simply for breaking the criminal law is a valid one. But to call the former "political" prisoners and the latter simply "criminals" obscures the meaning of punishment and the political function it plays in society.² It will be the central theme of this chapter that the imprisonment of the criminal is no less political an act than the imprisonment of the political activist.

2. The liberal distinction between the "political" prisoner and the "criminal" prisoner is grounded in the notion of natural law, which plays an important part in liberal political theory. Basically the liberal theorist makes a distinction between two kinds of *positive laws* (i.e., statutes and practices on the books): those which are consonant with *natural law* and those which are not. Laws which are unjust, arbitrary, oppressive, which violate due process and so forth, are seen as "political" laws. They are laws which owe their existence to the particular political realities of the time rather than to the exigencies of eternal natural law, and they sometimes are not considered laws at all. An individual who is imprisoned for breaking natural laws (i.e., just and good laws) is not a political prisoner because he has violated laws which are "natural" rather than "political." An individual who violates those positive laws which go against natural law is a "political prisoner," because the arbitrary power of the political system has made the unjust rule which the individual violated. If the notion of "natural law" is rejected as not being useful in understanding the realities of power and the functioning of the legal system in society, then the liberal use of the term "political prisoner" becomes less meaningful.

Aside from the definitional argument that all imprisonment is political because it is the organized power of the state which is imprisoning the offender, imprisonment can be considered a political act in two other senses: (1) the particular forms that punishment takes and the severity of punishment accorded specific offenses is a matter of political policy and varies considerably among political systems; (2) punishment, as a deterrent to crime, is an essential tool of social control by the political system.

FORMS OF PUNISHMENT

One of the most frequent objections to the conception that all imprisonment is political is the argument that since certain acts are considered crimes in virtually all societies, punishment of these acts cannot be considered "political." This is similar to saying that the levy of taxes should not be considered a political act because all political systems levy taxes of one sort or another. The point is that the extent and types of taxation, and the social interests which it serves, vary considerably from system to system. The same is true of punishment.

Theft is a crime in every political system. Although the details of exactly what constitutes theft differ, every system of law proscribes the seizure of property which legally belongs to someone else. But the sanctions brought to bear show no such homogeneity. In medieval Europe, one of the traditional punishments for theft was the public amputation of the thief's right hand. In eighteenth-century England thieves were executed or transported to the colonies as slaves. In contemporary China, most theft is punished by placing the thief under community surveillance rather than in any penal institution.³ In twentieth-century America, the sanctions for any given category of theft differ considerably from state to state. In Massachusetts a per-

3. See Jerome Alan Cohen, *The Criminal Process in the People's Republic of China, 1949-1963* (Cambridge: Harvard University Press, 1968), for a discussion of the patterns of punishment for theft in China today.

son convicted of first-degree burglary with no prior felony offenses serves an indeterminate sentence of 10 years to life, while in Colorado, the sentence for the same offense is a maximum of 10 years.⁴

This variability in patterns of punishment reflects deliberate political decisions. It is no more natural to put a thief in prison for 10 years than to cut off his hand, hang him, or send him to a rural commune to work. All represent political policy.

Such political decisions do not occur in a vacuum. They reflect the problems and values of the social order. Which crimes receive the harshest punishments and the particular forms these punishments take are bound up with the technology of a particular society, the nature of its social conflicts, and the interests and ideology of the social class most closely controlling political decisions.⁵ In the United States, crimes that are committed by the relatively affluent, such as embezzlement or consumer fraud, are generally punished by some form of probation or even by nonjudicial administrative sanctions. Only rarely does the white-collar criminal end up in prison. The most common punishment for embezzlement, according to Lawrence Zeitlin, is simply being fired, and the most common sanction for tax evasion is a fine administered by the Internal Revenue Service.

Prisons in the United States are primarily used to punish those crimes, such as burglary, robbery, and assault, which are typically committed by the lower classes. The result is that prisons in this country are disproportionately filled with the

4. An indeterminate sentence is a prison term with a specific minimum and a specific maximum, but with no fixed term for a particular offense. The judge does not sentence the convicted felon to a particular number of years, but rather to a range of years. The prisoner will be discharged either at the expiration of the maximum or when the paroling authority grants him a parole. (See pp. 44 ff. in Chapter 3 for a fuller discussion of the indeterminate sentence.)

5. For two studies of the general relationship between social structure and forms of punishment, see George Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Russell and Russell, 1968), and William J. Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems*, 12 (1964), pp. 67-77.

poor and the uneducated (see Tables 1 and 2). Forty-one percent of the general labor force falls into white-collar employment categories (clerical and sales, managers and owners, and professional and technical workers), compared to only 14 percent of the prison population. At the other extreme, 43 percent of the prisoners are manual laborers or service workers, compared to only 17 percent of the total labor force. The same pattern is found for education: 55 percent of the prisoners have an elementary school education or less, compared to only 34 percent of the general population; 45 percent of the general population are high school graduates compared to only 18 percent of the prison population.

Prisoners overwhelmingly tend to be poor. Yet, in terms of economic loss, more crime is committed by the relatively affluent (see Table 3). This is not surprising, since the opportunities for relatively safe, lucrative illegal activity are so much greater for the wealthy than for the poor. According to the task force report entitled "Crime and Its Impact," prepared for the President's Commission on Law Enforcement and the Administration of Justice, the economic losses from various white-collar crimes such as consumer fraud, price fixing, and tax evasion are many times greater than all street crimes combined. Accurate figures on white-collar crime are, of course, extremely difficult to obtain, but the report estimates:

The cost to the public annually of securities frauds, while impossible to quantify with any certainty, is probably in the \$500 million to \$1 billion range. A conservative estimate is that nearly \$500 million is spent annually on worthless or extravagantly misrepresented drugs and therapeutic devices. Fraudulent and deceptive practices in the home repair and improvement field are said to result in \$500 million to \$1 billion losses annually; and in the automobile repair field alone, fraudulent practices have been estimated to cost \$100 million annually. . . .⁶

6. *Crime and Its Impact—An Assessment*, Task Force Report for the President's Commission on Law Enforcement and the Administration of Justice, (Washington, D.C.: U.S. Govt Print. Off., 1967), pp. 103-104.

TABLE 1

COMPARISON OF OCCUPATIONAL EXPERIENCE
IN GENERAL LABOR FORCE AND PRISONERS (1960)

Occupation	Percentage of General Labor Force*	Percentage of Prisoners
Professional and technical workers	10.4	2.2
Managers and owners, including farm	16.3	4.3
Clerical and sales	14.2	7.1
Craftsmen, foremen	20.6	17.6
Operatives	21.2	25.2
Service workers, including household	6.4	11.5
Laborers (except mine), including farm laborers and foremen	10.8	31.9

*All data are for men only; since the prison population is 95 percent male, data for males were used to eliminate the effects of substantial difference between male and female occupational employment patterns.

SOURCE: President's Commission on Law Enforcement and the Administration of Justice, Task Force Report on Corrections, p. 3.

TABLE 2

COMPARISON OF EDUCATIONAL LEVELS
IN GENERAL POPULATION AND PRISONERS (1960)

Years of School Completed (by persons 25-64)	Percentage of General Population	Percentage of Prisoner Population
College 4 years or more	8.4	1.1
1 to 3 years	8.4	4.2
High school 4 years	27.5	12.4
1 to 3 years	20.7	27.6
Elementary 5 to 8 years	28.0	40.3
4 years to none	6.0	14.4

SOURCE: The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report on Corrections, p. 2.

Not all of the crimes that are labeled "white-collar crimes" are committed by the well-to-do. The task force report correctly points out: "Crimes such as employee theft range from pilfering by truck drivers, stock room personnel or retail sales people to embezzlement by top executives. Cheating the government can include failure to report tips or other cash receipts and major tax or government contract frauds."⁷ While this is true, in the present context the important point is that nearly all of the crimes that are committed by the middle class and the rich fall into the general category of white-collar crime, and that the perpetrators of these crimes rarely get sent to prison.

Occasionally, of course, the very rich are imprisoned. In 1960, seven executives involved in the gigantic electrical equipment price-fixing case went to jail for 30 days for their crimes. However, such instances are rare. The President's Commission (1967) reports: "Since that case no anti-trust defendant has been imprisoned. In seven cases since then, involving 45 individual defendants, prison sentences were imposed, but in each case the sentence was suspended."⁸ In 1970 it was reported that the federal government had been overcharged some \$100 million by various defense contractors. These crimes were handled by negotiation; no one was sent to prison.

In 1969, 502 people were convicted of tax fraud amounting to just under \$100 million. This, needless to say, was only a tiny fraction of the people who actually committed the crime. The President's Commission reported: "The exact financial loss to the Government caused by tax fraud is difficult to determine but undoubtedly enormous. Estimates of the amount of reportable income that goes unreported each year range from \$25 to \$40 billion. Some of this is inadver-

7. *Ibid.*, p. 102.

8. *Ibid.*, p. 106.

TABLE 3
THE ECONOMIC COST OF CRIME (1965)

	Annual Economic Cost in Millions of Dollars
WHITE-COLLAR CRIME	
Embezzlement	\$200
Fraud	1,350
Tax fraud	100
Forgery	80
CRIMES OF THE POOR	
Robbery	27
Burglary	251
Auto theft	140
Larceny, \$50 and over	190

SOURCE: Based on data in The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report, *Crime and Its Impact*, pp. 44-49.

tent, but undoubtedly a sizable amount is deliberate, criminal evasion."⁹

Most people caught by the IRS for cheating on their tax returns are simply fined outside the courts, or have their cases handled through other nonjudicial channels. People caught for street crimes rarely are given such leniency. The average individual theft from the government in the 502 tax fraud convictions in 1969 was about \$190,000. The average burglary in that year amounted to \$321; the average auto theft, \$992. Only 95 of the 502 people convicted of tax fraud were sentenced to prison, serving an average term of 9.5 months. Another 91 were sentenced to "split" probation (i.e., probation with a very short prison sentence), and most of the rest to straight probation. Of those people convicted in federal courts for burglary and auto theft, more than 60 percent were sentenced to prison, and the average time served was 28 months and 21 months respectively¹⁰ (see Table 4).

9. *Ibid.*, p. 103.

10. Unfortunately, it was not possible to get data indicating what percentage of people convicted of burglary and auto theft in state courts are sent to prison,

TABLE 4
ALTERNATIVES USED IN SENTENCING
CONVICTED DEFENDANTS IN THE
UNITED STATES DISTRICT COURTS*
(1969)

Offense	Total Convicted Defendants	Percent Imprisoned	Percent Probation	Percent Other	Average Prison Term Served in Months (Releases in 1970)**
Income tax fraud	502	18.9	66.7	14.3	9.5
Larceny	2,283	37.0	61.2	1.9	15
Selective Service Act	900	57.6	41.8	.6	17
Auto theft	3,791	62.6	36.4	1.0	21
Burglary	254	63.4	36.6	-	28
Robbery	961	92.3	7.6	.1	52

*SOURCE: Based on data in *Federal Offenders in the United States District Courts, 1969* the Administrative Office of the U.S. Courts, Washington, D.C., p. 47.

**SOURCE: Federal Bureau of Prisons, *Statistical Report, 1969 and 1970*, p. 140.

There is no intrinsic reason why burglary and auto theft should be considered more serious offenses than tax evasion. All three crimes are nonviolent forms of theft, although burglary, in involving the illegal entry of a building, is sometimes thought of as potentially violent. Certainly auto theft cannot be consid-

but there is no reason to believe that nationally the figures for state courts would be significantly different from those of the federal district courts.

Burglary is a federal crime when it occurs in a bank, in a post office, or on federal property. Such burglary would tend to involve more money than other kinds of burglary. No government publications were found, however, which reported the dollar amount of federal burglary. Auto theft is a federal crime when it involves the transportation of the stolen vehicle across state lines. As with federal burglary, it would be expected that such auto theft would be above the average in value, but again, no figures were found.

ered more violent than tax evasion. In some societies, tax evasion would be considered the more serious since it involves theft from the whole community rather than simply from an individual. And certainly, in the United States, the economic loss from tax fraud is far greater than from burglary and auto theft. Yet burglars and auto thieves are frequently locked up behind bars; tax evaders are generally set free. Burglars and auto thieves are typically poor; tax evaders are typically wealthy.¹¹

One of the consequences of using imprisonment to punish those crimes committed primarily by the poor is that there is a disproportionate number of blacks in American prisons.¹² In the United States in 1960, the average daily population of jails, prisons, and juvenile institutions was approximately 400,000, or approximately one out of every 450 Americans.¹³ The rate, however, is much higher for blacks than for whites, and it is especially high for black men in their twenties (see Table 5). *One out of every 26 black men between the ages of twenty-five*

11. There are, of course, differences between burglary and auto theft on the one hand and tax fraud on the other. Perhaps most importantly, the victim in burglary and auto theft is an *individual*, whereas in tax fraud it is the government. American society in many ways values the rights (especially property rights) of the individual above the rights of the collectivity, and this is one of the reasons why burglary and auto theft are treated more harshly than tax evasion. The important point in the present context is that there is no intrinsic reason why this should be the case. The fact that one kind of crime is dealt with so much more severely than another reflects a political choice which is bound up with the underlying social and economic structure of the society.

12. Another reason there is a disproportionate number of blacks in prison may be that the courts discriminate against blacks in their procedures, in the predispositions of judges and juries to convict blacks of certain crimes, and in sentencing policies. Many black prisoners certainly feel that this is the case.

13. These figures are from the 1960 census because, as of mid-1972, the figures for institution populations from the 1970 census were not yet available. There is no particular reason to believe that they would be significantly different. The figure of 400,000 incarcerated individuals from the 1960 census breaks down to 120,000 people in local jails and workhouses, 230,000 in state and federal prisons, and 50,000 in various kinds of juvenile institutions. If probation and parole are added, well over 1,000,000 Americans are being "corrected" by the state on an average day.

TABLE 5
 INCARCERATION RATES BY RACE, AGE, AND SEX

Number of individuals in prisons and jails in the United States on an average day in 1960, for each 100,000 individuals in the relevant population

Age	Black Men	White Men	Black Women	White Women
under 20	118	66	15	4
20-24	3698	864	199	27
25-34	3876	649	230	21
35-44	2494	404	144	16
45-64	1009	239	55	9
65+	200	53	10	3

SOURCE: These data are based on figures in the special report of the 1960 census, *Inmates of Institutions*, PC (2)-8A, 1963.

and thirty-four was either in jail or in prison on an average day in 1960, compared to one out of 163 white men in the same age group. For black men twenty to twenty-four years of age, one out of 27 were behind bars compared to one out of 116 white men. These rates, of course, vary considerably from state to state. In Alabama, for example, the rate for black men twenty to twenty-four was one out of every 41, for white men, one out of 130; in Mississippi the figures were, respectively, one out of 62 and one out of 180. In California, on the other hand, one out of 22 blacks between the ages of twenty and twenty-four was behind bars on an average day compared to one out of 83 whites, and in New York the figures were one out of 20 blacks compared to one out of 123 whites.¹⁴

14. It is interesting to note that the disproportion of blacks to whites is generally greatest in the northern states. In New York the rate of imprisonment for black men in their early twenties was six times that of whites, whereas in Alabama and Mississippi it was only three times.

In California in 1970 approximately 50,000 people inhabited the state prisons and the county and city jails. Another 100,000 were on probation and 12,000 on parole. No age-race data are available for the parole and probation population. If it is assumed that the age distribution is approximately the same among probationers as among the prison population, then it would be estimated that on an average day approximately one out of seven or eight black men in California between the ages of twenty and twenty-four is in prison, in jail, on parole, or on probation, compared to about one out of every thirty white men in the same age group. This is at any given moment in time. Extrapolating from these daily figures, a conservative estimate is that, *during a given year, one out of every three to four black men in his early twenties spends some time in prison, in jail, on parole, or on probation compared to about one out of every fifteen white men in the same age group.*¹⁵

By the time a black man in America is twenty-five years of age (perhaps even earlier) he has in all probability had some serious encounter with the criminal justice system, and there is

15. This estimate was obtained in the following way. Every year at least 300,000 different people in California spend some time in jail, in prison, on parole, or on probation. Exact figures for the annual jail population were unavailable, but a rough estimate was obtained from a report published by the California Bureau of Criminal Statistics which states: "In the administration of criminal justice, several hundred thousand persons are processed throughout the county jail system, with about 150,000 actually serving sentences." I have taken the low figure of 150,000. The annual population of the state prisons (1968) was about 30,000, and the average parole population about 8,000 (not counting parolees who also spent some time in prison during that year). The total probation population was about 115,000. All of these figures taken together make a total annual correctional system population of just over 300,000 people. This, if anything, is an underestimate. Since no age-race distribution is available for this total annual population, it was necessary to extrapolate from the distribution for the daily prison and jail population. This, of course, introduces a certain margin of error. Still, the figures do indicate the order of magnitude of the black's experience of punishment in the United States. The estimate extrapolating from the daily age-race distribution was that one out of every 3.6 black men between the ages of twenty and twenty-four pass through the system each year.

a good chance he has spent some time behind bars. For most whites, especially affluent whites, the criminal justice system is an abstraction. Except in rare instances, it does not directly impinge on their lives. For young blacks, the repressive arm of the law—arrest, probation, jail, prison—is an immediate reality.

PUNISHMENT AS DETERRENCE

Conceptions vary as to the central function of prisons in society. They are sometimes seen as serving the benevolent function of “rehabilitating” maladjusted individuals, of trying to help the criminal find a better way of life. The disproportionate number of blacks and poor people in prison is taken as an indication that blacks and poor people are simply more in need of such rehabilitation than are whites and the well-to-do. In this perspective, prisons are closer to hospitals than to instruments of political control.

Another image of prisons is that they are instruments of social vengeance, an institutionalization of the ethic “an eye for an eye, a tooth for a tooth.” In this view, prisons express society’s wrath at wrongdoing and expiate the wrong through punishment; but they still are not considered instruments of social control. Even if the central function of prisons is seen simply as physically isolating “dangerous men,” prisons are instruments of social control in only a limited sense: the political power of the state is brought to bear to control the lives of these particular “dangerous men,” the prison population; it is not being used to control the larger community on the outside.

Only when the central function of prisons is seen as *deterrence* does their operation as a political tool of social control become clear. In this conception, the fundamental function of prisons is to create a significant risk factor in the commission of crime. The basic focus of the punishment apparatus is not the specific individuals who happen to end up in prison, but the mass of people on the outside. The convicts within the walls

serve as examples to the general population: “This is what will happen if you violate the law.” As I will argue, prisons in any political system protect the existing social order by threatening people with severe sanctions for breaking certain laws.

Much criticism has been leveled against the deterrence theory of imprisonment. A study entitled “The Deterrent Effects of Criminal Sanctions” by the California Assembly Office of Research indicates that most people were not aware of the specific penalties for various crimes. Additionally, the majority of the subjects stated that internal controls of various sorts were more important than external controls (punishment) in preventing them from committing crimes. The general conclusion of the study was:

One might argue that the best deterrent for crime would be to develop social systems that would strengthen internal sanctions rather than to depend solely upon stiffer penalties or more law enforcement officers. In short, it is man’s view of himself as a lawful and responsible person that will deter crime, not just the legal sanctions applied by strangers in authority positions.¹⁶

Many criminologists feel that the fear of imprisonment has only a marginal deterrent effect because most people simply do not make rational evaluations of risks when they engage in crime. Like the problem of cancer from cigarette smoking or the danger of not wearing safety belts in cars, people can always reason away their fears by saying, “It can’t happen to me.” Thus, it is argued, what prevents people from committing crimes is not so much the external sanctions, the punishments, but the internal controls, the feelings of guilt, the respect for the law.

This is a very narrow conception of the ways in which internal and external sanctions can influence behavior. As discussed in Chapter 1, the ethical considerations involved in the decision

16. “The Deterrent Effects of Criminal Sanctions,” prepared by the California Assembly Office of Research for the Assembly Committee on Criminal Procedure, May, 1968, p. 16.

to commit a crime are not always simple. Often contradictory ethical forces operate within the individual. In certain circumstances, the "internal controls" may contribute to, rather than prevent, criminal activity, particularly in the realm of politically motivated crime. And very importantly, as long as an individual does not need seriously to consider committing a crime, he is likely to feel that it is his own internal controls which prevent him from doing so. A home owner, for example, is likely to claim in moralistic tones that he would never break into a house because it is *wrong*. Fear of punishment, he will say, has nothing to do with it. Only when committing a crime becomes a real possibility does punishment become a relevant issue.

Still, it could be argued that even for the poor and downtrodden the fear of punishment is not an effective deterrent. The fact that each year approximately 30 percent of all young black men have a serious encounter with the criminal justice system could be interpreted as indicating an utter failure of the prison and other forms of punishment as crime deterrents. This, however, assumes that the only issue involved in deterrence is simply whether or not to commit a crime. Of even greater significance is the question of *which crimes an individual commits*. While the threat of punishment may not have much impact on the decision to break the law, there is no question that it has a great impact on *how* the individual chooses to break the law.

The most lucrative places for robbery are big city banks, yet they are robbed much less frequently than gas stations, liquor stores, and individuals. In 1969 the average bank robbery yielded more than \$4,500, while the average highway robbery (i.e., the robbery of an individual on the streets) yielded about \$175. Yet only one-half of one percent of all robberies were bank robberies, while 55 percent were highway robberies.¹⁷ This is hardly because robbers feel any greater ethical proscript-

17. *Crime in the United States—Uniform Crime Reports, 1969*, issued by J. Edgar Hoover, p. 105.

tion against robbing banks. It is simply because banks are heavily guarded and the FBI investigates bank robberies thoroughly. Consequently, an individual is much more likely to get caught, or even killed, trying to rob a bank.¹⁸ The fact that the average robbery results in only \$288 is a tribute to the effectiveness of the system of punishment as a deterrent.¹⁹

The effect of punishment on how a person chooses to break the law can be seen in other forms of theft. A black man is much more conspicuous in a white middle-class suburb than in the ghetto. Residents are much more likely to call the police to report "suspicious behavior" by a "proowler," and he is much more likely to be apprehended while burglarizing a home there. He knows his way around in the ghetto far better; he

18. The possibility of getting killed in the course of a crime may be as important a factor in determining which crime an individual commits as the possibility of getting caught and sent to prison. An unpublished study of police killings of civilians conducted by Paul Tagaki, a professor of criminology at the University of California, and Philip Buell, a public health statistician, indicates that between 1963 and 1968 the police killed 1,805 men and 21 women throughout the United States. Nearly half of these were black. Needless to say, many additional people were seriously wounded by the police. During this same five-year period, a total of 362 policemen were killed by civilians. Thus, for every one policeman "killed in the line of duty," the police kill five civilians.

19. The deterrent function of prisons is reflected in the economics of the prison system. In 1966 the per capita annual cost of confinement for felons in California was about \$2,400. As stated in a special report by the California Assembly Office of Research: "The cost of confining the average 5,200 robbery cases, during 1966 alone was \$12,740,000—more than double the estimated direct cost of all robberies reported in the state in that year. Had all these imprisoned men been in the community, they would each have had to commit 10 'average' robberies during the year in order to inflict property loss equal to the cost of their incarceration for the year. The cost of 36 or 43 months incarceration is likely, in the majority of cases, to exceed the direct costs of the robber's entire crime career" (*The California Prison, Parole and Probation System*, p. 90). If the primary focus of the prison were on the people *inside* the prison—either in terms of their rehabilitation or in terms of simply isolating them from the rest of the community—it would make little sense to spend twice the total amount stolen in robberies each year to punish robbers. On the other hand, if the central function of prison is focused on people *outside* the prison, then this expenditure is more reasonable. If the purpose of prison is to deter people from committing high-risk crimes, then it is rational to spend \$12 million a year imprisoning robbers. It is at least in part because of the state's expenditures of \$12 million to imprison robbers that the average robbery amounts to a mere \$288.

knows people's living patterns; he knows how the police operate. Houses in the suburbs are more likely to be equipped with burglar alarms and good locks than tenements in the slums. Wealthy apartment buildings in the city are frequently guarded by private police. Thus, even though white suburbs and wealthy urban apartments are a far richer field for burglary, the risks of getting caught are greater, and consequently, most burglaries occur in poorer areas of the city. This is one of the great ironies of crime: the poor are more likely to steal from the poor than from the rich because it is easier and safer. It is also easier and safer for the rich and powerful to steal from the poor and powerless—through consumer fraud, price fixing, loan sharking, and indirectly, even through tax evasion.

A variety of data on the victims of crime exists which supports this general conclusion. In a study of the incidence of crime in various police districts in Chicago, one "very low-income Negro district" had 35 times as many serious crimes against persons (robbery included) per 100,000 residents as did a high-income white district, and 2.5 times as many property crimes (see Table 6). The President's Commission on Law Enforcement and the Administration of Justice reported that nonwhites were much more frequently the victims in all offense categories except larceny over \$50 (see Table 7). This single exception is due to the fact that most larcenies are from stores, and most stores, even in the black ghetto, are owned by whites. A similar pattern was found when victimization was broken down by income (see Table 8). It is especially important to note that the reported rate of victimization by burglary for people earning less than \$3,000 was nearly twice that for people earning more than \$10,000, and the reported rate of victimization by robbery was five times greater.

It would be an oversimplification to attribute this greater victimization of the poor entirely to the deterrent effect of the system of punishment. It is also important that it is generally much easier and more convenient for the poor to steal from the

TABLE 6

INCIDENCE OF INDEX CRIMES PER 100,000 RESIDENTS IN FIVE CHICAGO POLICE DISTRICTS (1965)

	High-Income White District	Low-Middle Income White District	Mixed-High- and Low-Income White	Very Low-Income Black District No. 1	Very Low-Income Black District No. 2
Index crimes against persons, including robbery	80	440	338	1,615	2,820
Index crimes against property	1,038	1,750	2,080	2,508	2,630

NOTE: There are two statistical issues which need to be kept in mind in this table. First, robbery, which is a major crime in the ghetto, is included under crimes against persons rather than crimes against property. This contributes to the greater disproportion in crimes against persons compared to crimes against property. Second, crimes, especially property crimes, are reported at a *much lower* rate in the ghetto than in upper-income areas. This is due to a variety of factors, including the antipolice norms of the ghetto, the higher levels of theft insurance in the suburbs, and so on. This lower reporting rate artificially deflates the difference between the rates of property crime in the ghetto and in the high-income white district.

SOURCE: From *Report of the National Advisory Commission on Civil Disorders* (Washington, D.C.: US Govt. Print. Off., 1968), p. 134.

poor. The greater risks of attempting burglaries in the suburbs are reinforced by the greater convenience of stealing from the poor in the slums.²⁰

20. Since residential segregation is itself one reason why it is riskier for a poor black to burglarize a white suburb, it is very difficult to disentangle the two and say whether segregation per se or risk is more important. What we can say is that the two factors reinforce each other and contribute substantially to the concentration of crime in poor areas.

TABLE 7
VICTIMIZATION BY RACE
(Rates per 100,000 population)

Offenses	White	Nonwhite
Forcible rape	22	82
Robbery	58	204
Aggravated assault	186	347
Burglary	822	1,306
Larceny	608	367
Auto theft	164	286
Total	1860	2,592
Respondents	27,484	4,902

SOURCE: *The Challenge of Crime in a Free Society*, (Washington, D.C.: US Govt. Print. Off., 1967), p. 39.

TABLE 8
VICTIMIZATION BY INCOME
(Rates per 100,000 population)

OFFENSES	INCOME			
	\$0 to \$2,999	\$3,000 to \$5,999	\$6,000 to \$9,999	Above \$10,000
Forcible rape	76	49	10	17
Robbery	172	121	48	34
Aggravated assault*	229	316	144	252
Burglary	1,319	1,020	867	790
Larceny over \$50*	420	619	549	925
Auto theft*	153	206	202	219

SOURCE: *The Challenge of Crime in a Free Society*, (Washington, D.C.: US Govt. Print. Off., 1967), p. 38.

*The figures for assault, larceny, and auto theft seem to contradict the generalization that the poor are more frequently the victims of crime than the more affluent. In the case of larceny and auto theft, it is easy to explain the apparent exception: most larcenies occur in stores, and most stores, even in high-crime areas of a city, are owned by the relatively affluent. Similarly, most cars that are worth stealing will be owned by the wealthier segments of the population. The most likely explanation for why assaults should be so high among individuals earning above \$10,000 is that they report assaults at a much higher rate than the poor.

The deterrent effect of punishment also operates in white-collar and business crime, but in a somewhat different way. Rather than influencing the target of crime, the risk of punishment has a regulatory effect on the amount of crime an individual is likely to commit. Embezzlement and tax evasion are good examples. When an employee of a business decides to embezzle funds, he is faced with the choice of how much to embezzle. If too much is embezzled, the chances of getting caught and punished increase considerably; if too little is embezzled, it is not worth the trouble. The result is that the embezzler settles on a level of theft which seems relatively safe to him. Lawrence Zeitlin reports that: "... the evidence indicates that well over 75 per cent of all employees participate to some extent in merchandise shrinkage. . . . The fact remains that in retail establishments internal theft averages out to an unevenly distributed five to eight per cent of the typical employee's salary."²¹ Similarly, in the case of tax evasion, the threat of punishment obviously does not deter many people from cheating on their income tax; but it does keep the level of cheating within tolerable limits. While people will illegally exaggerate their tax deductions, they rarely exaggerate them to the point where they pay no tax at all.

The system of punishment is thus a real deterrent, for crimes of the rich and for crimes of the poor. While the threat of punishment may not be very effective in preventing criminal activity per se, it is a potent force for regulating criminal activity in ways which are less threatening to the social order.

21. Lawrence Zeitlin, "A Little Larceny Can Do a Lot for Employee Morale," *Psychology Today*, June, 1971, p. 24.