

BIAS, PROBABILITY, AND PRISON POPULATIONS:  
A FUTURE FOR AFFIRMATIVE ACTION ?

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ABSTRACT

By analogy, the principles of affirmative action, as recently applied by the courts to eliminate gender, age, race, and social class discrimination in education and jobs, are invoked to correct bias in the social selection of prison inmates. Prisoners in the United States are disproportionately male, Black, young, lowly educated, unemployed and of low income prior to arrest, and, if employed, in blue-collar occupations. A scenario of the near future is given in which, the courts, using a probability argument to assess discrimination, order prison systems to initiate affirmative action programs in the case of race and social class. More whites and middle and upper class persons must be sent to prison to correct the existing disproportionality. Largely through the redeployment of law enforcement officials to focus on white-collar and corporate crime, the program is successful. The results include a reduction of lower-class crimes, especially those representing political acts, shorter prison sentences for most offenders, more humane prison conditions, and an increase in the people's judgments that the criminal processing system is fair.

Who goes to prison? The answer is well known. Compared with the general adult population, the American prison population is disproportionately male, Black, young, poorly educated, unemployed or of low income prior to arrest, and, if employed, in blue-collar occupations. The extent to which this is so should give us pause.

Recently, I compared the percentages of the inmates of state correctional facilities in the United States on the above characteristics with the percentages of the comparable adult population. What I found was that 97 percent of the inmates were male compared with 47.5 percent of the general adult population; 47 percent were black compared with 9.5 percent of all adult males; 75.5 percent were under age 34 compared with 37.5 percent of adult males; 63 percent of the inmates did not complete high school compared with 44.7 percent of adult males. Compared with all adult males over three and one half times as many of the inmates were unemployed and seeking work before their arrest. 63.9 percent of the inmates made less than \$5,999 per year before their arrest compared with 46.7 percent of adult males, and 83.8 percent of the inmates were in blue collar occupations compared with 60.7 percent of the adult males.<sup>1</sup>

The probabilities of getting these differences by chance are so small as to be inconceivable. To say that the characteristics of the inmates could not occur by chance alone one out of a million times, for example, would correspond to

a probability of 10<sup>-6</sup>. In fact, the probabilities of getting these differences by chance are incomprehensibly smaller than one out of a million. They are smaller than 10<sup>-200,000</sup>.

Since court decisions have stated that proportionality can be used as prima facie evidence of discrimination, we have what may be an ideal situation for the application of the principle of affirmative action.<sup>2</sup> If government can require educational and business institutions to incorporate people on the basis of their membership in specified groups that have been systematically excluded in the past, government can also require penal institutions to do the same thing. The fact that most people want education and better jobs and don't want to go to prison only means that the affirmative action process must work in reverse. Members of groups underrepresented in prison must be sent there more often while members of groups now overrepresented in prison must be allowed to leave or be admitted at lower rates of entry.

But what if men actually commit more crimes than women, blacks more than whites, young more than old people, the less educated more than highly educated persons, the unemployed more than the employed, low income more than high income earners, and people in low prestige occupations more than people in high prestige occupations? And what if the crime rate of each of these groups equals its rate of incarceration? People in prison would then be representative, not of the general adult population, but of the population of criminals. Thus, from this logic, wouldn't one conclude that the existing distributions of prisoners by gender, age, race, and indicators of social class were fair and that no remedial action was necessary? The answer may be in the negative from at least two different perspectives:

The first is that affirmative action using general population characteristics--or some measure of the field of eligible persons, such as the percentage in the labor force for women--as guidelines may be coming, even if the current prison population is representative of the total criminal population. By analogy, under some current affirmative action programs we are not asked if some genders or races, for example, have larger proportions of uniquely intelligent, talented, or motivated people than others and to set our goals regarding their "correct" proportions in jobs or schools accordingly. We are asked sometimes to use a rough approximation to the general adult population. For example, a personnel manager for a major West Coast industry told me that when picking someone for promotion, his instructions were not to select the next most qualified person for the job regardless of gender or race. Rather, he was told to pass over more qualified white males, if they

were overrepresented at that job level, and to run down the list of eligibles to select the next woman, Chicano, Puerto Rican, American Indian, or Black who was merely qualified, if members of such groups were underrepresented at that job level. This is logically no different than passing over Blacks, who are already overrepresented in prison, even though they have committed more serious crimes, and running down the list to the first White who has committed a crime, even though a minor one, and selecting the White to go to prison instead of a Black because Whites are underrepresented in prison. In either case we are trying to fill quotas, whatever the disclaimers or euphemisms we use. We would not be giving rewards commensurate with achievement in the example of the job promotion or fitting severity of punishment to the seriousness of the crime in the case of selecting someone to go to prison under this system.

In other words, although it may be unfair in the minds of some people, the legal precedents already exist for the application of proportionate representation using general population statistics or some part thereof as a guideline for judging the right--that is, fair--percentage of a group at some specified social position in the society.<sup>3</sup>

Still assuming that the characteristics of the prison population at present are distributed roughly as are those of the criminal population, one can find a second, and more convincing, argument for using the general adult population or some related criterion as a proper guideline for selecting prisoners. It is simply this: in a society that is dedicated to equality of opportunity as a basic value and a right of all its members, it is manifestly unfair that members of different groups are forced to live under conditions so different that some people do not have an equal opportunity to learn to be law-abiding.

Society, so this argument goes, causes crime. It does so differentially, however, by discriminating against some groups by giving them more opportunities to commit crimes and more favorable beliefs and values toward committing criminal acts. Blacks, for example, who are raised in urban ghettos, surrounded by pimps, prostitutes, illegal gambling, hard drugs, and negative attitudes toward repressive police actions are disadvantaged in their opportunity to become law-abiding compared to their white counterparts in the suburbs. They often become bitter and resentful by what they perceive to be their victimization by society and they are socialized into criminal definitions of the situation.

The same can be said of Hispanics and some other minority groups, the less educated, the unemployed, the low income earners, and persons in the lower-rungs of the occupational structure. On the face of it, they have more need to commit crimes-crimes against property because, if they accept the American goal of monetary success, they are less able to achieve it by legitimate means and crimes against persons because, given their relative deprivations, they have more reason to be angry and discontented over their economic and social circumstances. Such anger, often free-floating and unfocused since its root causes are so distant and disguised, may be discharged on those targets that happen to be

nearby. Furthermore, minority populations have--and this is the key--a greater chance of having sustained and systematic social contact with criminal codes, values and practices. They are victims of un-equal opportunity.

Even gender and age can be included under such logic. If women have been kept from crime because they have been overly protected, shunted into the home and second-class jobs outside of it, taught to submit their egos and talents to male dominance and to avoid overt aggressive behavior, then men can claim that men have been deprived of these shields against criminal behavior. If women demand an end to sexism in society and an equal place with men throughout the occupational structure from college president, corporation executive, and airline pilot to policeperson, fireperson, and soldier, then men can demand that women take an equal place, too, in the prison cell.

If younger persons commit more crimes than older persons, then there is, one can argue, something wrong with the process of socialization into society. The society has failed in the supervision and training of its youth, in the teaching and reinforcement of the fundamental values that support noncriminal ways of life. The young are disadvantaged compared to the old in their opportunity to know and understand the principles and rewards of law-abiding behavior.

In each of the above cases members of disadvantaged groups have a claim for compensatory action, that is, for "reverse discrimination," to use a controversial term, to make up for past deprivations. They have been subjected to unequal and inadequate opportunities to learn definitions of the situation, beliefs, values, expectations, and behaviors that support law-abiding acts. They have been subjected to unequal and powerful pressures to engage in criminal behavior. Until equality of opportunity to be law abiding genuinely exists throughout all layers of the society, then such compensatory action will be justified based upon a comparison of characteristics of the prison population with those of the general adult population.

But there is a third response. The assumptions may be, and often certainly are, wrong. What if, in fact, crime rates for different subgroups were equal even though their rates of incarceration were, as I have shown, wildly different? That is, what if women committed <sup>As many</sup> as many crimes as men, whites as black, old as young adults, and members of higher social classes as many as members of lower social classes? Then, obviously, the use of the general adult population as a standard to assess the justice of the characteristics of the prison population would be validated on different grounds. Then the incredible disproportionality we find in prison populations must result from bias in the criminal processing system itself. The facts largely support this assumption. Most systematic variations of crime by major subgroups of society are in the types of crime committed not in rates of total crime per population.

I use the term, criminal "processing" system, rather than criminal "justice" system deliberately, both because I want to make the degree of its justice problematic and because of simple

descriptive accuracy. The components of the system include the commission of a crime, report to the police, investigation, arrest, booking, initial appearance, preliminary hearing, arraignment, trial, sentencing, fine, probation, jail or penitentiary, parole, revocation of parole, and, finally, if not before, some way out of the system. At every point in this process selection takes place. Some crimes are reported to the police, some are not. Some crimes are investigated, some are not. Some apprehended suspects are arrested, some are not. Some people are sent to prison, some are not. For example, in 1973 in Minnesota there were 137,000 crimes reported, 85,000 arrests, 25,000 convictions, 23,500 convicted persons handled without prison sentences, and only 1,500 persons --or one percent of reported crimes--sent to prison (Bronstein, 1978:143).

The criminal processing system may contain less injustice or selective bias based on gender, age, race, and social class today than many people believe, if the type of crime committed is controlled. Yet there is bias.

For example, take the case of gender. Women constitute 52.5 percent of the American adult population and about 40 percent of the labor force, each a possible criterion to assess their underrepresentation in prison. Is the percentage of criminals who are women really only three percent, as their representation in prison would imply, or is it larger, closer to their percentages in the labor force or in the general population?

Working backward from parole to crimes committed, we can compare the percentages of women at several stages in the process:

10 percent of adult parolees in 1976 were women;

3 percent of state prisoners were women in 1974;

11 percent of all persons convicted were women;

14 percent of adults on probation were women in 1976;

16 percent of all arrests in 1975 were of women;

23 percent of persons committing crimes reported to police were women (estimate);

29 percent of all persons committing crimes were women (estimate).<sup>4</sup>

If the estimates are correct, then women were not represented in the criminal population proportionately to their occurrence either in the labor force or in the general adult population. But neither were they represented in prison proportionately to their occurrence in the criminal population, the percentages being three to 29. Furthermore, research has shown that many judges generally treat women less harshly than they do men, although there are some exceptions (Simon, 1975. Steffensmeier and Coff, 1981).

The rates of arrests for persons between ages 18 and 34 are lower than the rates at which such

persons are put in prison. For example, in 1975 about 68 percent of the persons arrested were aged 18-34, while about 76 percent of the prisoners were in that age group. Some selective process is at work even after arrest, it appears, to divert older persons from the road to prison (Gottfredson et al., 1978:485).

When it comes to social class and race, the evidence supporting the contention of bias in the criminal processing system is greater. Leonard Beeghley (1978) summarized current knowledge relating race and class to criminal justice. Citing the President's Commission on Law Enforcement and the Administration of Justice, he points out that 91 percent of all adults admitted committing crimes. Further, he concludes that there is "no evidence that disproportionate amounts of criminal behavior occur at one status level or another" (p. 146). Rather, adults of all socio-economic status levels commit crimes. The difference is in the type of crime committed.

I assume that much of the treatment Blacks (and other minority groups) receive is because they are overrepresented in the lower and working classes, although some, no doubt, results from racial bias. Statistics by race supply some grounds for believing that Blacks are discriminated against in the criminal processing system. In 1975 33 percent of persons arrested for serious crimes were Black, yet we have seen that relatively more Blacks, 47 percent, go to state prisons. Compared to Whites, Blacks are less likely to make bail, less likely to have a private attorney, more likely to be convicted, and, if convicted, more likely to receive longer sentences (Beeghley, 1978:255-56). And, when we compare race with respect to the extreme punishment, death, we find that of the 3,859 persons executed in the United States between 1930 and 1975 for the commission of capital crimes 53.5 percent were black (Shover, 1979:81).<sup>6</sup>

Yet by far the greatest systematic bias in selecting who goes to prison comes at the very beginning of the process. The nation has deployed its law enforcement officials differentially to deal with certain types of ordinary or traditional crimes, rather than the crimes of corporations and other criminal acts of the middle and upper classes. Who goes to prison depends primarily on the types of crimes at which we aim our efforts of crime control.

As awareness of these facts grows, one possible societal reaction with which Americans have already had considerable experience is affirmative action. The following account is a scenario of how it might work.

1985

By 1985, the Supreme Court has given the various criminal processing systems in the United States one year to file affirmative action plans to eliminate the racial and social class biases presently existing within the population of incarcerated persons and others under their supervision and control because of criminal activity. Guidelines have been set down, based upon the 1980 U.S. census, giving specific targets of proportional representation for population distributions of race, education, employment status, occupation, and income within the

jail, probationary, prison, parolee, and other supervised populations of criminals. No action is yet taken on gender or age.

Some of the following considerations led to such an affirmative action order:

1. Blacks and other persons of lower socioeconomic class are so overrepresented in jails, prisons, and among the wards of other correctional agencies that no conclusions other than systematic discrimination--intentional or not--at some stages in the criminal processing system or, more important, the differential focus of law enforcement efforts on crimes of the lower classes can explain the facts.
  2. Credit card fraud, credit purchases without intention to pay, bankruptcy fraud, home improvement loan fraud, violation of Federal Reserve Board regulations regarding margin requirements in stock purchases, commercial bribery or kickbacks, income tax evasion, fee splitting by doctors or lawyers, embezzlement, putting unqualified relatives on government payrolls, "sweetheart contracts" entered into by union officials, false travel expenses or per diem claims, antitrust violations, misrepresenting credit terms, collusion between physicians and pharmacists to cause writing of unnecessary prescriptions, housing code violations by landlords, deceptive advertising, willful manufacture and sale of harmful products--from drugs to cars, providing unsafe working conditions, commercial espionage, medical or health fraud, pollution, personal improvement schemes (diploma mills, modeling schools, etc), phony accident rings, money order swindles and other crimes of middle and upper class persons became publicly recognized as far more costly in dollars than crimes of lower or working class persons (Beeghley, 1978: 195).
- Although we do not know for sure what the financial costs of corporate and other white-collar crimes are, some informed estimates place the annual financial loss at an incredibly high amount of hundreds of billions of dollars. The largest robbery in American history of \$4 million from the Lufthansa airport warehouse in New York does not come close, nor does the largest known welfare fraud of \$240,000. The average loss from traditional crimes, for example, in 1978 of \$434 in a robbery, \$526 in a burglary, and \$219 in larceny, pales into insignificance by comparison (Clinard and Yeager, 1980).
3. Crimes of corporate executives and other middle or upper class persons are more damaging to society, more serious, and more frightening than the crimes of lower or working class persons in total effect. The social costs of fear of physical harm that result from ordinary crime, of course, should not be discounted. Yet, as Marshall Clinard and Peter Yeager (1980) point out, the crimes of corporations also produce injuries and deaths--sometimes on a large scale. They have resulted in health hazards, damage to the physical environment,
  - erosion of the moral base of society, and the destruction of "public confidence in business and in the capitalist system as a whole." Moreover, such crimes tend to be systematic and coldly calculated rather than the impulsive and regrettable act of a moment of passion.
  4. Consumer groups, representing victims of corporate crime--e.g. persons injured and relatives of persons killed in automobiles--defectively designed, bank depositors whose funds were stolen by illegal computer transfers, parents of drug-induced deformed children, and others--have demanded not only restitution and punitive compensation, but also prosecution against the criminals responsible. They have demanded that the responsible executives be sent to prison and that the corporation be punished by fines that hurt.
  5. There has been a growing belief among blacks and lower-class groups, both criminal and noncriminal alike, that the criminal processing system has been an instrument of political repression, that it has worked to maintain an unjust system of inequality throughout the society, and that criminal behavior may be the only way to produce social change toward a more just society.
- In short, the moral order of society, the legitimacy of the state, and the general belief in the justice of the major institutions of American society were deteriorating. The application of an affirmative action program, the Supreme Court Justices believe, may restore order, legitimacy, and a sense of justice.
- If middle and upper class persons are to take their "proper" place in prison, then the agents of the criminal processing system must redirect their efforts toward the investigation, apprehension, prosecution, conviction, and detention of middle and upper class criminals. Organized and white-collar crime must become targets of the law on an equal basis with ordinary crime. Plans are drawn up, law enforcement agencies enlarged and mobilized, police, prosecutors, and judges resocialized in a series of training programs, the public informed, and new police units composed of accountants and lawyers created. Middle and upper class crimes increasingly are the object of police activity and the agenda of criminal courts. I asked a police chief of a major American city if this could be done. He said, "Yes, of course. We've been integrating our police department through affirmative action. We could do the same to the criminals we pursue."
- 1990/2000
- By 1990 changes in the characteristics of prisoners can already be seen. By 2000, though still somewhat overrepresented, Blacks, the unemployed, the uneducated, the lower-prestige occupations, and lower income groups constitute significantly lower percentages of the prison populations than they did in 1980. The shift in the criminal processing system toward vigorous investigation of middle and upper class crimes is having a decided effect on the differential rates of incarceration of different groups.

Yet street crimes have not increased, because law enforcement agencies have continued, in fact expanded, their efforts to control ordinary crime. The successful investigation and prosecution of corporate and other white-collar ~~crimes~~ have resulted in tremendous dollar savings, not ~~only~~ only to consumers but also to government. For every tax dollar spent on expanding and maintaining forces for fighting white-collar crimes, four dollars have been recovered. By 1990 the savings have reached \$40 billion per year, enough to pay for additional law enforcement efforts directed at all types of crimes and also to reduce taxes for ordinary citizens.

Moreover, with the expansion of law enforcement efforts aimed at crimes of the middle and upper classes, the lower and working classes, both black and white, no longer view "law and order" as a slogan of their political repression and have begun to renew their faith and trust in American society, just as American blacks have done in the 1960s toward government as a result of civil rights legislation. The result has been an erosion of the belief among some members of these groups that crime is acceptable as a legitimate way of coping with an unjust society. The climate of opinion in such groups is not only overwhelmingly opposed to crime, as it always was, but also it is actively and aggressively anti-crime.

The public exposure of the costs of corporate and other white-collar crime in human lives, money, and disillusionment and the public humiliation of such criminals resulting from their being caught and labeled as criminals have led to the creation of middle and upper class organizations dedicated to prevention of such crimes and a reaffirmation of the anti-crime moral order, anti-white collar crime being the primary focus of their attention. Furthermore, churches and schools spend an increasing amount of time teaching the immorality and anti-social implications of such acts and combatting the unconscionable materialism that motivates them. Thus, even though the rates of arrest and incarceration for white-collar crimes ~~will~~ have gone up since affirmative action programs went into effect, the actual occurrence of such crimes ~~will~~ <sup>was</sup> ~~begin~~ decreasing as early as 1990.

Because middle and upper class criminals are generally older than lower class criminals, the age distribution of prisoners in 2000 is more like that of the general adult population than it was in 1980. Also, because women continue their move toward equality of occupation, in the 1980s and 1990s, the sex distribution of prisoners is more like that of the general population as well. Yet it is now believed that perfect equality of the sexes in penitentiaries may never be achieved, because certain qualities of aggressiveness, nurturance, and dependence that may relate to criminal activity are not equally distributed among women and men, probably as a result of early childhood expectations and training.

Significantly, an unanticipated consequence of the affirmative action program--is that as middle and upper class persons go to prison and learn what prison life is like, they have come to support the reforms that experts have proposed for decades. They learned, as sociologist Donald R. Cressey (1973: 118) has said, that

prison per se does nothing to people "except hurt them" and that, generally speaking, the organization of prison life does little to reform criminal attitudes. They learned, not unlike the Watergate criminals, that prison life is an overly harsh and often unnecessary punishment. As former White House aide John Ehrlichman (1978) said, after doing his time in the relatively comfortable circumstances of a "country club" prison, there should be some alternative service to the community rather than incarceration. He said, "You can get tagged as a nut if you keep talking about prison reform, but there are a lot of safe people in jail . . . people who could make a contribution. We had all this human resource not being used." In short, prison reform gets much needed political clout.

Other things happen as larger proportions of middle and upper class criminals fill the prisons. The subcultures of the inmate community are transformed. Middle-class values of civility come to dominate the prison subcultures. Prisoners' beliefs and values come to be characterized by advocacy of human rights, a common concern of all types of criminals. Prisoner subcultures coalesce on the unifying demand of an "even break" from the system and, with the many lawyers among them (once white-collar criminals are incarcerated), the prisoners begin effective, but peaceful, organizing and negotiating with prison and other officials to bring it about. As a result, prison life becomes more humane and provides more services ~~now provided~~ to inmates, continuing a trend noted in the 1970s.

Despite the influx of white-collar criminals into the prison population, overcrowding in prisons by 2000 is considerably less than in 1980 and no new prisons, with the exception of a few minimal security institutions, have been or need to be built. The entire prison system has moved toward shorter sentences. As Yale sociologist Stanton Wheeler (n.d.) has argued, four months of actual time served may be long enough. The communicative functions of the legal sanction have been accomplished and a person's life circumstances have been seriously disrupted.

Another consequence of affirmative action is that it is now generally agreed that there are some men and women who must remain in prison a long time--perhaps their entire lives, because they have proven their dangerousness to others and an unwillingness--or inability--to change. It is also conceded, however, that the number of such dangerous criminals is not large, probably constituting about 10 percent of the total number of prisoners (Rosett and Cressey, 1976:183).

In a twenty-year review of prison affirmative action programs, it was noted that its success was at least in part due to the readiness of the American public to accept vigorous criminal law enforcement against middle and upper class crimes. For example, in a 1975 survey of adults in the Greater New Haven Metropolitan area that I conducted, I found that almost 90 percent of the respondents thought it was unfair that rich people who can pay their fines can stay out of jail while poor people may have to go to jail for the same crime (Bell and Robinson, 1978: 247).

In a 1976 national survey of the United States, Gottfredson et al. (1978) found that 40 percent of the respondents noticed a letdown in the ethical and moral practices of businessmen in large corporations and 44 percent noticed such a letdown among elected officials; 56 percent of the total American public had heard or read something about business or corporate actions that broke the law or tried to get around it; 63 percent had heard or read about U.S. companies making illegal political campaign contributions and 84 percent though such illegal contributions were a serious offense; 60 percent thought payments to foreign officials to obtain business in their countries were unethical. And in a study of the seriousness of various crimes, many white-collar crimes were judged by 60,000 individuals as serious--or more serious--than many ordinary crimes such as burglary and robbery.

Such a future history, as that given above, may not be highly probable, since it involves some contradictions with current penal practices and appears to run against present public fears about street crimes. Moreover, a range of alternative scenarios is conceivable, such as on the one hand a simple extension of present practices, which is always an easy solution to the problem of prediction, and on the other hand a repressive reaction that would embark us on a wave of costly prison construction and a civil war of law enforcement against crimes committed by lower-class whites and minorities, possibly turning such crimes into revolutionary acts in the eyes of some people and its punishment into political victimization.

In conclusion, when I delivered this paper at a meeting of the Advisory Committee of the National Institute of Law Enforcement and Criminal Justice, a corrections official turned to me and said, "I really liked your paper. It shows how ridiculous the whole idea of affirmative action is anyway"

Perhaps so. Yet we can identify a long-term trend toward the expansion of human rights in the world, at least from the Age of Enlightenment and the American and French Revolutions. In fact, we can view important aspects of history up to the present as a series of interrelated democratic and egalitarian trends resulting in the spread of human rights--first civil and political, then economic, social, and cultural;--as repeated redefinitions of society itself to incorporate more and more people, especially those defined as "lower" socioeconomically and racially; and as expansions of the social situations and institutions where the principles of liberty and equality should apply to all people, from voting to sports, to jobs, to selection of a marriage partner (Bell, 1974; Palmer, 1959 and 1964).

It was during the democratic revolution of the 18th century that the idea of the "mere" restriction of freedom as punishment for a crime was invented. Only after freedom and liberty were established as basic rights was it possible to believe that taking away such rights, that is imprisonment--rather than torture, corporal punishments, disfigurement, or exile--was sufficient punishment for criminals (Cressey, 1973). The civil rights movement and the principle of affirmative action of the 20th century can be

viewed as direct continuations of the democratic revolution, and they may bring another wave of transformation to our ideas of what a prison should be.

Already the signs can be seen. In their book about the Attica prison riot, A Bill of No Rights, Herman Badillo and Milton Haynes (1972: 174) remind us that we ". . . must recognize--and make inescapably clear to our corrections departments--that a man's human and civil rights do not end when the prison doors shut behind him, that a man does not become subhuman upon conviction of a crime." Today, we are witnessing explosive change in the legal rights of convicted offenders and an astronomical growth of inmate's suits, class actions, injunctions, and declaratory judgments. Prisoners have demanded the right to be free from cruel and unusual punishment; to the minimal conditions to sustain life; the right of access to law libraries and courts; freedoms of religion, of expression, to vote, and from racial discrimination; self-governance; to be paid prevailing wages in prison industries; to end mail censorship; to have a furlough program; to have grievance mechanisms; and to access to an ombudsman. Rebellious prisoners of the 1970s were motivated in part by the inhumanity and injustice of their treatment (Kerper and Kerper, 1974).

By 1980, courts had issued orders to clean up problems in the prisons of over a third of the 50 states and court challenges to prisons were underway in an additional fourth of the states. Furthermore, the entire penal systems of states such as Alabama, Arkansas, Florida, Mississippi, New Hampshire, Oklahoma, Rhode Island and Tennessee had been ruled unconstitutional.

Today, the democratic and egalitarian revolutions have arrived in prison. By the year 2000, affirmative action programs, along the lines summarized here, to establish equality of opportunity and fairness in selecting who should go to prison may be the norm. And the prison quotas may be filled by white, middle-aged corporation executives and other persons of higher social status who have committed crimes that will no longer be tolerated by society.

One way for this scenario to become self-defeating is for corporate executives, in their growing awareness that corporate and other white-collar crimes have become America's number one problem, to clean up their act themselves now. If they don't, they may find that it will be done for them at much greater cost to them, as the criminal processing system is made more fair.

#### FOOTNOTES

\*This essay is a revised version of a paper written for a project on the future of corrections for the University Research Corporation which was funded by the National Institute of Law Enforcement and Criminal Justice. For comments on the earlier version, I wish to thank my colleagues, Professors Francis J. Anscombe, Kai T. Erikson, and Albert J. Reiss, Jr., Yale University, and Professor Henry A. Walker, Stanford University. The views expressed in the essay are my own.

(1) These figures were computed from Gottfredson et al. (1978) and from Department of Commerce (1973). Since 97 percent of the inmates were found to be male as a result of the comparison with the general adult population including both men and women, I made subsequent comparisons of inmates only with the general adult male population. When possible, I defined adults as 18 years of age or older. Because of the way data were given in the sources, however, it was 14 years or older for employment status and income and 16 years or older for occupation. For inmates, employment was measured during the month prior to arrest and income and occupation were measured for inmates who had held a full-time job after December 1968 or who had been employed during most of the month prior to their arrest.

(2) The courts are still struggling with the idea of proportionality and one current provision in some cases is whether the intention to discriminate existed. However, the underlying probability argument as an indicator of bias runs through both court decisions and the actions of government enforcement agencies that establish or request "guidelines" of compliance with equal-opportunity laws in institutional plans and in measures of "progress" based on percentages of particular groups in schools or on the job. Robinson (1950) shows that the Supreme Court gave legal arguments for the use of probability theory to evaluate the community representativeness of a jury as early as 1940.

(3) An official U.S. Army report recently used identical logic to describe the overrepresentation of blacks receiving punishment and the underrepresentation of blacks in 18 fields such as communications, signal intelligence, law enforcement, and electronic warfare equipment maintenance. Blacks, the report said, in fiscal year 1977 (ending September 30) comprised 26.4 percent of the Army's enlisted force compared to 51 percent of the Army's prison population. To the Army's credit the difference, though great, is less than in the case of the data reported here comparing state prisons to the general civilian population (The New Haven Register, 1978:3).

(4) These estimates are arbitrary, having been arrived at by averaging the differences between parolees and prisoners, prisoners and probationers, and probationers and arrestees and, then, adding the average, first, to the percentage of arrestees who are women and, second, to the percentage of crimes reported to police committed by women (Glick and Netro, 1977). The data are from U.S. department of Justice (1978: vii and 35) and Gottfredson et al. (1978:486).

(5) Juveniles, of course, seldom end up in prison but are diverted to other agencies. Thus, at the very youngest ages--that is, before adulthood--younger people are treated less harshly than are persons a few years older. Among adults, however, age works in the opposite direction, with younger adults being more likely to end up in prison than are older adults.

(6) The amount of discretion involved in selecting who goes to prison is rather startling. Banfield (1974:202) gives data for the United States showing that of all serious crimes committed in 1968 (9,000,000 = 100 percent), only

50 percent were even reported to the police, 12 percent resulted in an arrest, 6 percent in a conviction, and a mere 1.5 percent in imprisonment. Moreover, "... crime rates and rates of imprisonment move over time independently of one another. The use of prison, it seems, responds to a variety of pressures in society other than the rate of crime" (Morris, 1974:12-13). Given this large discretionary element, we might expect considerable bias by social class and race on the part of the police and courts. Actually, with the type of crime controlled there is less such bias than the differential incarceration of such groups suggests (Akers, 1977; Baily, 1981; Dannefer and Schutt, 1982; Hagen et al., 1980; Jacobs, 1978 and 1981; and Tittle et al., 1978). The chief cause of the differential rates of incarceration by class and race is the fact that our law enforcement agencies concentrate their efforts more on crimes more likely to be committed by individuals from the lower classes and minority groups than on crimes typical of middle and upper class individuals.

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Postscript 2015: In 1978 the National Institute of Law Enforcement and Criminal Justice, Washington D.C. asked several futurists, including myself and James A. Dator, to consider the future of corrections in the United States, especially, the future of prison populations. If our collective advice had been heeded, the United States would not have experienced a quadrupling of the prison population since that time to reach well over two million incarcerated individuals. I have based this article on my contribution to the report, since the racial bias I report has remained relevant. Thankfully, finally, as I write this PS, genuine prison reform in the USA seems to be on the way. Perhaps, in a decade or so we Americans will no longer incarcerate a larger percentage of our people than nearly every other country in the world and the racial bias will be eliminated. We may hope that our criminal "processing" system will, indeed, become a criminal "justice" system.