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# The Past and Future of U.S. Prison Policy

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## *Twenty-Five Years After the Stanford Prison Experiment*

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*In this article, the authors reflect on the lessons of their Stanford Prison Experiment, some 25 years after conducting it. They review the quarter century of change in criminal justice and correctional policies that has transpired since the Stanford Prison Experiment and then develop a series of reform-oriented proposals drawn from this and related studies on the power of social situations and institutional settings that can be applied to the current crisis in American corrections.*

**T**wenty-five years ago, a group of psychologically healthy, normal college students (and several presumably mentally sound experimenters) were temporarily but dramatically transformed in the course of six days spent in a prison-like environment, in research that came to be known as the Stanford Prison Experiment (SPE; Haney, Banks, & Zimbardo, 1973). The outcome of our study was shocking and unexpected to us, our professional colleagues, and the general public. Otherwise emotionally strong college students who were randomly assigned to be mock-prisoners suffered acute psychological trauma and breakdowns. Some of the students begged to be released from the intense pains of less than a week of merely simulated imprisonment, whereas others adapted by becoming blindly obedient to the unjust authority of the guards. The guards, too—who also had been carefully chosen on the basis of their normal-average scores on a variety of personality measures—quickly internalized their randomly assigned role. Many of these seemingly gentle and caring young men, some of whom had described themselves as pacifists or Vietnam War “doves,” soon began mistreating their peers and were indifferent to the obvious suffering that their actions produced. Several of them devised sadistically inventive ways to harass and degrade the prisoners, and none of the less actively cruel mock-guards ever intervened or complained about the abuses they witnessed. Most of the worst prisoner treatment came on the night shifts and other occasions when the guards thought they could avoid the surveillance and interference of the research team. Our planned two-week experiment had to be aborted after only six days because the experience dramatically and painfully transformed most of the participants in ways we did not anticipate, prepare for, or predict.

These shocking results attracted an enormous amount of public and media attention and became the

focus of much academic writing and commentary. For example, in addition to our own analyses of the outcome of the study itself (e.g., Haney et al., 1973; Haney & Zimbardo, 1977; Zimbardo, 1975; Zimbardo, Haney, Banks, & Jaffe, 1974) and the various methodological and ethical issues that it raised (e.g., Haney, 1976; Zimbardo, 1973), the SPE was hailed by former American Psychological Association president George Miller (1980) as an exemplar of the way in which psychological research could and should be “given away” to the public because its important lessons could be readily understood and appreciated by nonprofessionals. On the 25th anniversary of this study, we reflect on its continuing message for contemporary prison policy in light of the quarter century of criminal justice history that has transpired since we concluded the experiment.

When we conceived of the SPE, the discipline of psychology was in the midst of what has been called a “situational revolution.” Our study was one of the “host of celebrated laboratory and field studies” that Ross and Nisbett (1991) referred to as having demonstrated the ways in which “the immediate social situation can overwhelm in importance the type of individual differences in personal traits or dispositions that people normally think of as being determinative of social behavior” (p. xiv). Along with much other research conducted over the past two and one-half decades illustrating the enormous power of situations, the SPE is often cited in textbooks and journal articles as a demonstration of the way in

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which social contexts can influence, alter, shape, and transform human behavior.

Our goal in conducting the SPE was to extend that basic perspective—one emphasizing the potency of social situations—into a relatively unexplored area of social psychology. Specifically, our study represented an experimental demonstration of the extraordinary power of *institutional* environments to influence those who passed through them. In contrast to the companion research of Stanley Milgram (1974) that focused on individual compliance in the face of an authority figure's increasingly extreme and unjust demands, the SPE examined the conformity pressures brought to bear on groups of people functioning within the same institutional setting (see Carr, 1995). Our "institution" rapidly developed sufficient power to bend and twist human behavior in ways that confounded expert predictions and violated the expectations of those who created and participated in it. And, because the unique design of the study allowed us to minimize the role of personality or dispositional variables, the SPE yielded especially clear psychological insights about the nature and dynamics of social and institutional control.

The behavior of prisoners and guards in our simulated environment bore a remarkable similarity to patterns found in actual prisons. As we wrote, "Despite the fact that guards and prisoners were essentially free to engage in any form of interaction . . . the characteristic nature of their encounters tended to be negative, hostile, affrontive and dehumanising" (Haney et al., 1973, p. 80). Specifically, verbal interactions were pervaded by threats, insults, and deindividuating references that were most commonly directed by guards against prisoners. The environment we had fashioned in the basement hallway of Stanford University's Department of Psychology became

so real for the participants that it completely dominated their day-to-day existence (e.g., 90% of prisoners' in-cell conversations focused on "prison"-related topics), dramatically affected their moods and emotional states (e.g., prisoners expressed three times as much negative affect as did guards), and at least temporarily undermined their sense of self (e.g., both groups expressed increasingly more deprecating self-evaluations over time). Behaviorally, guards most often gave commands and engaged in confrontive or aggressive acts toward prisoners, whereas the prisoners initiated increasingly less behavior; failed to support each other more often than not; negatively evaluated each other in ways that were consistent with the guards' views of them; and as the experiment progressed, more frequently expressed intentions to do harm to others (even as they became increasingly more docile and conforming to the whims of the guards). We concluded,

The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather the result of an intrinsically pathological situation which could distort and rechannel the behaviour of essentially normal individuals. The abnormality here resided in the psychological nature of the situation and not in those who passed through it. (Haney et al., 1973, p. 90)

In much of the research and writing we have done since then, the SPE has served as an inspiration and intellectual platform from which to extend the conceptual relevance of situational variables into two very different domains. One of us examined the coercive power of legal institutions in general and prisons in particular (e.g., Haney, 1993a, 1997b, 1997c, 1997d, 1998; Haney & Lynch, 1997), as well as the importance of situational factors in explaining and reducing crime (e.g., Haney, 1983, 1994, 1995, 1997a). The other of us explored the dimensions of intrapsychic "psychological prisons" that constrict human experience and undermine human potential (e.g., Brodt & Zimbardo, 1981; Zimbardo, 1977; Zimbardo, Pilkonis, & Norwood, 1975) and the ways in which "mind-altering" social psychological dynamics can distort individual judgment and negatively influence behavior (e.g., Zimbardo, 1979a; Zimbardo & Andersen, 1993). Because the SPE was intended as a critical demonstration of the negative effects of extreme institutional environments, much of the work that grew out of this original study was change-oriented and explored the ways in which social and legal institutions and practices might be transformed to make them more responsive to humane psychological imperatives (e.g., Haney, 1993b; Haney & Pettigrew, 1986; Haney & Zimbardo, 1977; Zimbardo, 1975; Zimbardo et al., 1974).

In this article, we return to the core issue that guided the original study (Haney et al., 1973)—the implications of situational models of behavior for criminal justice institutions. We use the SPE as a point of historical departure to briefly examine the ways in which policies concerning crime and punishment have been transformed over the intervening 25 years. We argue that a series of



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psychological insights derived from the SPE and related studies, and the broad perspective that they advanced, still can contribute to the resolution of many of the critical problems that currently plague correctional policy in the United States.

### **Crime and Punishment a Quarter Century Ago**

The story of how the nature and purpose of imprisonment have been transformed over the past 25 years is very different from the one that we once hoped and expected we would be able to tell. At the time we conducted the SPE—in 1971—there was widespread concern about the fairness and the efficacy of the criminal justice system. Scholars, politicians, and members of the public wondered aloud whether prisons were too harsh, whether they adequately rehabilitated prisoners, and whether there were alternatives to incarceration that would better serve correctional needs and interests. Many states were already alarmed about increased levels of overcrowding. Indeed, in those days, prisons that operated at close to 90% of capacity were thought to be dangerously overcrowded. It was widely understood by legislators and penologists alike that under such conditions, programming resources were stretched too thin, and prison administrators were left with increasingly fewer degrees of freedom with which to respond to interpersonal conflicts and a range of other inmate problems.

Despite these concerns about overcrowding, there was a functional moratorium on prison construction in place in most parts of the country. Whatever else it represented, the moratorium reflected a genuine skepticism at some of the very highest levels of government about the viability of prison as a solution to the crime problem.

Indeed, the report of the National Advisory Commission on Criminal Justice Standards and Goals (1973), published at around the same time we published the results of the SPE, concluded that prisons, juvenile reformatories, and jails had achieved what it characterized as a “shocking record of failure” (p. 597), suggested that these institutions may have been responsible for creating more crime than they prevented, and recommended that the moratorium on prison construction last at least another 10 years.

To be sure, there was a fiscal undercurrent to otherwise humanitarian attempts to avoid the overuse of imprisonment. Prisons are expensive, and without clear evidence that they worked very well, it was difficult to justify building and running more of them (cf. Scull, 1977). But there was also a fair amount of genuine concern among the general public about what was being done to prisoners behind prison walls and what the long-term effects would be (e.g., Mitford, 1973; Yee, 1973). The SPE and its attendant publicity added to that skepticism, but the real challenge came from other deeper currents in the larger society.

The late 1960s saw the beginning of a prisoners’ rights movement that eventually raised the political consciousness of large numbers of prisoners, some of whom became effective spokespersons for their cause (e.g., American Friends Service Committee, 1971; Jackson, 1970; Smith, 1993). Widely publicized, tragic events in several prisons in different parts of the country vividly illustrated how prisoners could be badly mistreated by prison authorities and underscored the potentially serious drawbacks of relying on prisons as the centerpiece in a national strategy of crime control. For example, just a few weeks after the SPE was concluded, prisoners in Attica, New York, held a number of correctional officers hostage in a vain effort to secure more humane treatment. Although national celebrities attempted to peaceably mediate the standoff, an armed assault to retake the prison ended tragically with the deaths of many hostages and prisoners. Subsequent revelations about the use of excessive force and an official cover-up contributed to public skepticism about prisons and doubts about the wisdom and integrity of some of their administrators (e.g., Wicker, 1975).

Legal developments also helped to shape the prevailing national Zeitgeist on crime and punishment. More than a decade before we conducted the SPE, the U.S. Supreme Court had defined the Eighth Amendment’s ban on cruel and unusual punishment as one that drew its meaning from what Chief Justice Warren called “the evolving standards of decency that mark the progress of a maturing society” (*Trop v. Dulles*, 1958, p. 101). It is probably fair to say that most academics and other informed citizens anticipated that these standards were evolving and in such a way that the institution of prison—as the major organ of state-sanctioned punishment in American society—would be scrutinized carefully and honestly in an effort to apply contemporary

humane views, including those that were emerging from the discipline of psychology.

Psychologists Stanley Brodsky, Carl Clements, and Raymond Fowler were engaged in just such a legal effort to reform the Alabama prison system in the early 1970s (*Pugh v. Locke*, 1976; Yackle, 1989). The optimism with which Fowler (1976) wrote about the results of that litigation was characteristic of the time: "The practice of psychology in the nation's correctional systems, long a neglected byway, could gain new significance and visibility as a result [of the court's ruling]" (p. 15). The same sentiments prevailed in a similar effort in which we participated along with psychologist Thomas Hilliard (1976) in litigation that was designed to improve conditions in a special solitary confinement unit at San Quentin (*Spain v. Proconier*, 1976). Along with other psychologists interested in correctional and legal reform, we were confident that psychology and other social scientific disciplines could be put to effective use in the creation and application of evolving standards inside the nation's prisons (see Haney & Zimbardo, 1977).

And then, almost without warning, all of this critical reappraisal and constructive optimism about humane standards and alternatives to incarceration was replaced with something else. The counterrevolution in crime and punishment began slowly and imperceptibly at first and then pushed forward with a consistency of direction and effect that could not be overlooked. It moved so forcefully and seemingly inexorably during the 1980s that it resembled nothing so much as a runaway punishment train, driven by political steam and fueled by media-induced fears of crime. Now, many years after the SPE and that early optimism about psychologically based prison reform, our nation finds itself in the midst of arguably the worst corrections crisis in U.S. history, with every indication that it will get worse before it can possibly get better. For the first time in the 200-year history of imprisonment in the United States, there appear to be no limits on the amount of prison pain the public is willing to inflict in the name of crime control (cf. Haney, 1997b, 1998). Retired judge Lois Forer (1994), in her denunciation of some of these recent trends, warned of the dire consequences of what she called the "rage to punish." But this rage has been indulged so completely that it threatens to override any of the competing concerns for humane justice that once served to make this system more compassionate and fair. The United States has entered what another commentator called the "mean season" of corrections, one in which penal philosophy amounts to little more than devising "creative strategies to make offenders suffer" (Cullen, 1995, p. 340).

### **The Radical Transformation of "Corrections"**

We briefly recount the series of wrenching transformations that laid the groundwork for the mean season of corrections that the nation has now entered—the some 25 years of correctional policy that have transpired since the SPE was conducted. Whatever the social and political

forces that caused these transformations, they collectively altered the correctional landscape of the country. The criminal justice system not only has become increasingly harsh and punitive but also has obscured many of the psychological insights on which the SPE and numerous other empirical studies were based—insights about the power of social situations and contexts to influence and control behavior. Specifically, over a very short period of time, the following series of transformations occurred to radically change the shape and direction of corrections in the United States.

#### ***The Death of Rehabilitation***

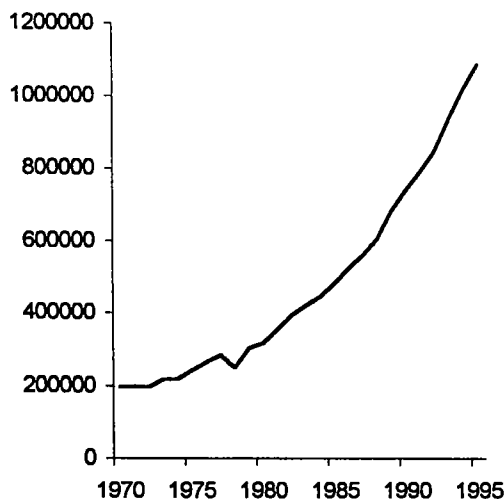
A dramatic shift in correctional philosophy was pivotal to the series of changes that followed. Almost overnight, the concept that had served as the intellectual cornerstone of corrections policy for nearly a century—rehabilitation—was publicly and politically discredited. The country moved abruptly in the mid-1970s from a society that justified putting people in prison on the basis of the belief that their incarceration would somehow facilitate their productive reentry into the free world to one that used imprisonment merely to disable criminal offenders ("incapacitation") or to keep them far away from the rest of society ("containment"). At a more philosophical level, imprisonment was now said to further something called "just desserts"—locking people up for no other reason than they deserved it and for no other purpose than to punish them (e.g., von Hirsch, 1976). In fact, prison punishment soon came to be thought of as its own reward, serving only the goal of inflicting pain.

#### ***Determinate Sentencing and the Politicizing of Prison Pain***

Almost simultaneously—and, in essence, as a consequence of the abandonment of rehabilitation—many states moved from indeterminate to determinate models of prison sentencing. Because indeterminate sentencing had been devised as a mechanism to allow for the release of prisoners who were rehabilitated early—and the retention of those whose in-prison change took longer—it simply did not fit with the new goals of incarceration. This shift to determinate sentencing did have the intended consequence of removing discretion from the hands of prison administrators and even judges who, studies showed, from time to time abused it (e.g., American Friends Service Committee, 1971). However, it also had the likely unintended consequence of bringing prison sentencing into an openly political arena. Once largely the province of presumably expert judicial decision makers, prison administrators, or parole authorities who operated largely out of the public view, prison sentencing had remained relatively free from at least the most obvious and explicit forms of political influence. They no longer were. Moreover, determinate sentencing and the use of rigid sentencing guidelines or "grids" undermined the role of situation and context in the allocation of punishment (cf. Freed, 1992).

**Figure 1**

Number of Prisoners in the United States, 1970–1995



Note. Jail inmates are not included.

### **The Imprisoning of America**

The moratorium on new prison construction that was in place at the time of the SPE was ended by the confluence of several separate, powerful forces. For one, legislators continued to vie for the mantle of “toughest on crime” by regularly increasing the lengths of prison sentences. Of course, this meant that prisoners were incarcerated for progressively longer periods of time. In addition, the sentencing discretion of judges was almost completely subjugated to the various aforementioned legislative grids, formulas, and guidelines. Moreover, the advent of determinate sentencing meant that prison administrators had no outlets at the other end of this flow of prisoners to relieve population pressures (which, under indeterminate sentencing, had been discretionary). Finally, federal district court judges began to enter judicial orders that prohibited states from, among other things, cramming two and three or more prisoners into one-person (typically six feet by nine feet) cells (e.g., *Burks v. Walsh*, 1978; *Capps v. Atiyeh*, 1980). Eventually even long-time opponents of new prisons agreed that prisoners could no longer be housed in these shockingly inadequate spaces and reluctantly faced the inevitable: Prison construction began on an unprecedented scale across the country.

Although this rapid prison construction briefly eased the overcrowding problem, prisoner populations continued to grow at unprecedented rates (see Figure 1). It soon became clear that even dramatic increases in the number of new prisons could not keep pace. In fact, almost continuously over the past 25 years, penologists have described U.S. prisons as “in crisis” and have characterized each new level of overcrowding as “unprecedented.” As the decade of the 1980s came to a close, the United States was imprisoning more people for longer

periods of time than ever before in our history, far surpassing other industrialized democracies in the use of incarceration as a crime control measure (Mauer, 1992, 1995). As of June 1997, the most recent date for which figures are available, the total number of persons incarcerated in the United States exceeded 1.7 million (Bureau of Justice Statistics, 1998), which continues the upward trend of the previous 11 years, from 1985 to 1996, when the number rose from 744,208 to 1,630,940. Indeed, 10 years ago, long before today’s record rates were attained, one scholar concluded, “It is easily demonstrable that America’s use of prison is excessive to the point of barbarity, with a prison rate several times higher than that of other similarly developed Western countries” (Newman, 1988, p. 346). A year later, a reviewer wrote in the pages of *Contemporary Psychology*:

American prison and jail populations have reached historically high levels. . . . It is noteworthy that, although in several recent years the levels of reported crime declined, the prison and jail populations continued to rise. The desire for punishment seems to have taken on a life of its own. (McConville, 1989, p. 928)

The push to higher rates and lengths of incarceration has only intensified since then. Most state and federal prisons now operate well above their rated capacities, with many overcrowded to nearly twice their design limits. At the start of the 1990s, the United States incarcerated more persons per capita than any other modern nation in the world. The international disparities are most striking when the U.S. incarceration rate is contrasted to those of other nations with which the United States is often compared, such as Japan, The Netherlands, Australia, and the United Kingdom; throughout most of the present decade, the U.S. rates have consistently been between four and eight times as high as those of these other nations (e.g., Christie, 1994; Mauer, 1992, 1995). In fact, rates of incarceration have continued to climb in the United States, reaching the unprecedented levels of more than 500 per 100,000 in 1992 and then 600 per 100,000 in 1996. Although in 1990 the United States incarcerated a higher proportion of its population than any other nation on earth (Mauer, 1992), as of 1995, political and economic upheaval in Russia was associated with an abrupt increase in rate of incarceration, and Russia surpassed the United States. (Additional data on the abrupt growth in the U.S. prison population and international comparisons of incarceration rates can be found in the Appendix, Tables A1 and A2, and Figure A1.)

The increase in U.S. prison populations during these years was not produced by a disproportionate increase in the incarceration of violent offenders. In 1995, only one quarter of persons sentenced to state prisons were convicted of a violent offense, whereas three quarters were sent for property or drug offenses or other nonviolent crimes such as receiving stolen property or immigration violations (Bureau of Justice Statistics, 1996). Nor was the increased use of imprisonment related to increased levels of crime. In fact, according to the National Crime Victimization Survey, conducted by the Bureau of

the Census, a survey of 94,000 U.S. residents found that many fewer of them were the victims of crime during the calendar year 1995–1996, the year our incarceration rate reached an all-time high (Bureau of Justice Statistics, 1997b).

### **The Racialization of Prison Pain**

The aggregate statistics describing the extraordinary punitiveness of the U.S. criminal justice system mask an important fact: The pains of imprisonment have been inflicted disproportionately on minorities, especially Black men. Indeed, for many years, the rate of incarceration of White men in the United States compared favorably with those in most Western European nations, including countries regarded as the most progressive and least punitive (e.g., Dunbaugh, 1979). Although in recent years the rate of incarceration for Whites in the United States has also increased and no longer compares favorably with other Western European nations, it still does not begin to approximate the rate for African Americans. Thus, although they represent less than 6% of the general U.S. population, African American men constitute 48% of those confined to state prisons. Statistics collected at the beginning of this decade indicated that Blacks were more than six times more likely to be imprisoned than their White counterparts (Mauer, 1992). By 1995, that disproportion had grown to seven and one-half times (Bureau of Justice Statistics, 1996). In fact, the United States incarcerates African American men at a rate that is approximately four times the rate of incarceration of Black men in South Africa (King, 1993).

All races and ethnic groups and both sexes are being negatively affected by the increases in the incarcerated population, but the racial comparisons are most telling. The rate of incarceration for White men almost doubled between 1985 and 1995, growing from a rate of 528 per 100,000 in 1985 to a rate of 919 per 100,000 in 1995. The impact of incarceration on African American men, Hispanics, and women of all racial and ethnic groups is greater than that for White men, with African American men being the most profoundly affected. The number of African American men who are incarcerated rose from a rate of 3,544 per 100,000 in 1985 to an astonishing rate of 6,926 per 100,000 in 1995. Also, between 1985 and 1995, the number of Hispanic prisoners rose by an average of 12% annually (Mumola & Beck, 1997). (Additional data on some of the disparities in imprisonment between Whites and Blacks in the United States can be found in the Appendix, Tables A3 and A4, and Figure A2.)

### **The Overincarceration of Drug Offenders**

The increasingly disproportionate number of African American men who are being sent to prison seems to be related to the dramatic increase in the number of persons incarcerated for drug-related offenses, combined with the greater tendency to imprison Black drug offenders as compared with their White counterparts. Thus, although Blacks and Whites use drugs at approximately the same rate (Bureau of Justice Statistics, 1991), African Ameri-

cans were arrested for drug offenses during the so-called war on drugs at a much higher rate than were Whites (Blumstein, 1993). The most recent data show that between 1985 and 1995, the number of African Americans incarcerated in state prisons due to drug violations (which were their only or their most serious offense) rose 707% (see Table 1). In contrast, the number of Whites incarcerated in state prisons for drug offenses (as their only or most serious offense) underwent a 306% change. In 1986, for example, only 7% of Black prison inmates in the United States had been convicted of drug crimes, compared with 8% of Whites. By 1991, however, the Black percentage had more than tripled to 25%, whereas the percentage of White inmates incarcerated for drug crimes had increased by only half to 12% (Tonry, 1995). In the federal prison system, the numbers of African Americans incarcerated for drug violations are shockingly high: Fully 64% of male and 71% of female Black prisoners incarcerated in federal institutions in 1995 had been sent there for drug offenses (Bureau of Justice Statistics, 1996).

According to a historical report done for the Bureau of Justice Statistics (Cahalan, 1986), the offense distribution of federal and state prisoners—a measure of the types of crimes for which people are incarcerated—remained stable from 1910 to 1984. The classification of some offenses changed. For example, robbery is now included in the category of violent crime rather than being classified with property crimes, as it was in the past. Public order offenses, also called morals charges, used to include vagrancy, liquor law violations, and drug offenses. Drug offenses are no longer classified with public order crimes. Of course, not only have drug offenses been elevated to the status of their own crime category in national statistical compilations and their own especially severe legislated penalties, but there is also a “Drug Czar” in the executive branch and a large federal

**Table 1**  
*Change in Estimated Number of Sentenced Prisoners, by Most Serious Offense and Race, Between 1985 and 1995*

Most serious offense	Total % change, 1985–1995	White % change, 1985–1995	Black % change, 1985–1995
Total	119	109	132
Violent offenses	86	92	83
Property offenses	69	74	65
Drug offenses	478	306	707
Public-order offenses <sup>a</sup>	187	162	229
Other/unspecified <sup>b</sup>	–6	–72	64

Note. Adapted from *Prisoners in 1996* (Bureau of Justice Statistics Bulletin NCJ 164619, p. 10), by C. J. Mumola and A. J. Beck, 1997, Rockville, MD: Bureau of Justice Statistics. In the public domain.

<sup>a</sup> Includes weapons, drunk driving, escape, court offenses, obstruction, commercialized vice, morals and decency charges, liquor law violations, and other public-order offenses. <sup>b</sup> Includes juvenile offenses and unspecified felonies.

agency devoted exclusively to enforcing laws against drug-related crimes.

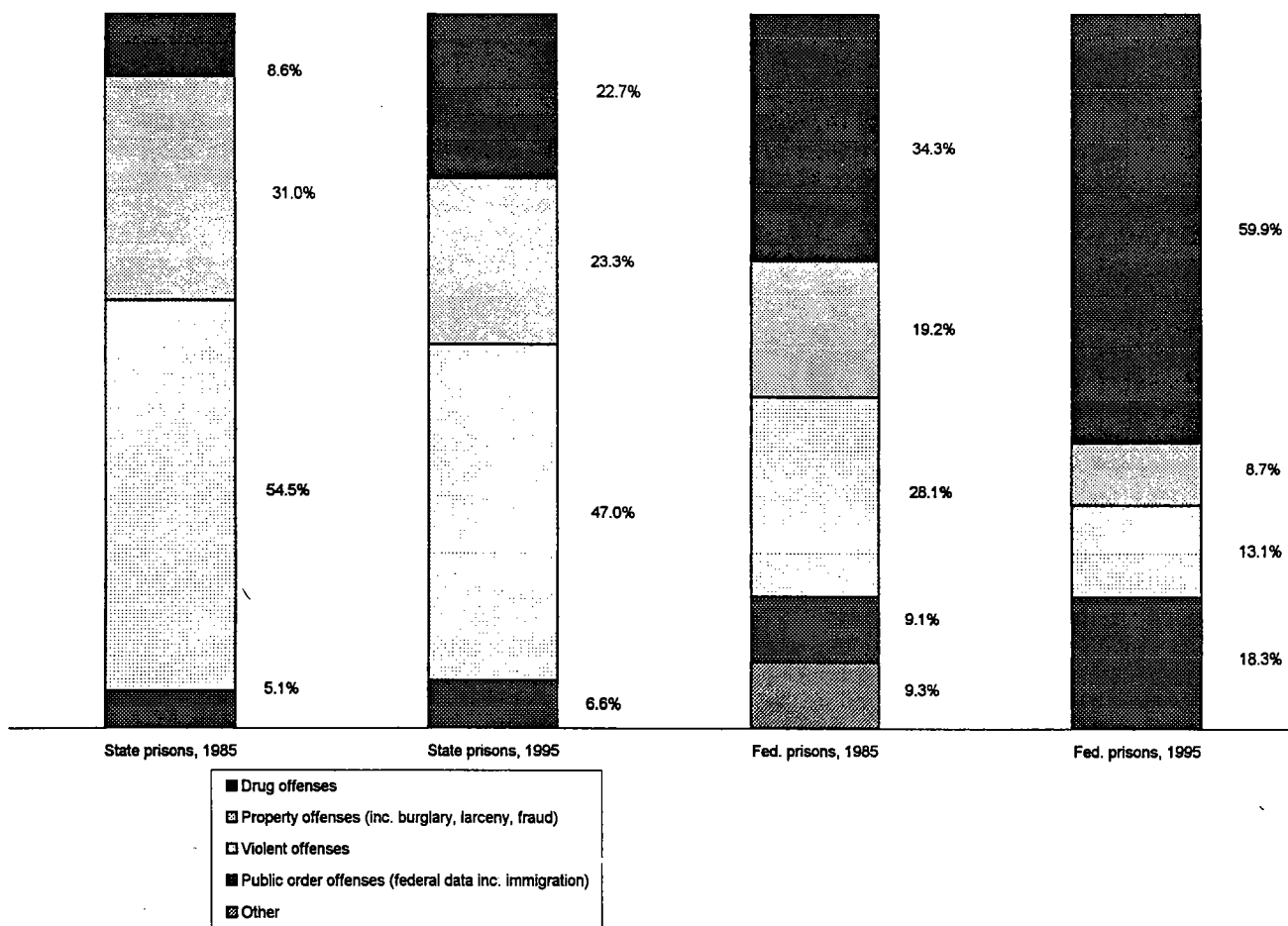
As we noted, the types and proportions of offenses for which people were incarcerated in the United States were highly consistent for the 75 years prior to 1984. For most of the 20th century, the U.S. prison population consisted of around 60–70% offenders against property, 13–24% offenders against persons (now called violent crime), around 20% public order–morals violations (which included drug offenses), and 10% other types of offenders (Cahalan, 1986).

However, these distributions have changed dramatically during the past 10 to 15 years. The federal government is now willing to incarcerate people for a wider range of criminal violations, and both state and federal prisoners remain incarcerated for longer periods of time. The number of violent offenders who are incarcerated has risen but not as steeply as the number of drug offenders who are now sent to prison. In 1995, 23% of state

prisoners were incarcerated for drug offenses in contrast to 9% of drug offenders in state prisons in 1986. In fact, the proportion of drug offenders in the state prison population nearly tripled by 1990, when it reached 21%, and has remained at close to that level since then. The proportion of federal prisoners held for drug violations doubled during the past 10 years. In 1985, 34% of federal prisoners were incarcerated for drug violations. By 1995, the proportion had risen to 60%. (See Figure 2.)

We note in passing that these three interrelated trends—the extraordinary increase in the numbers of persons in prison, the disproportionate incarceration of minorities, and the high percentage of persons incarcerated for drug offenses—reflect a consistent disregard of context and situation in the criminal justice policies of the past 25 years. The unprecedented use of imprisonment per se manifests a policy choice to incarcerate individual lawbreakers instead of targeting the criminogenic social conditions and risk factors that have con-

**Figure 2**  
Distribution of Offenses: State and Federal Prisons, 1985 and 1995



Note. Fed = federal; inc. = including.



tributed to their criminality. Sentencing models that ignore situation and context inevitably lead to higher rates of incarceration among groups of citizens who confront race-based poverty and deprivation and other social ills that are related to discrimination. The failure to address the differential opportunity structure that leads young minority group members into certain kinds of drug-related activities and the conscious decision to target those activities for criminal prosecution and incarceration, rather than to attempt to improve the life chances of the urban Black underclass, reflect dispositional—and discriminatory—views of crime control.

Moreover, excessive and disproportionate use of imprisonment ignores the secondary effects that harsh criminal justice policies eventually will have on the social contexts and communities from which minority citizens come. Remarkably, as the present decade began, there were more young Black men (between the ages of 20 and 29) under the control of the nation's criminal justice system (including probation and parole supervision) than the total number in college (Mauer, 1990). Thus, one scholar has predicted that "imprisonment will become the most significant factor contributing to the dissolution and breakdown of African American families during the decade of the 1990s" (King, 1993, p. 145), and another has concluded that "crime control policies are a major contributor to the disruption of the family, the prevalence of single parent families, and children raised without a father in the ghetto, and the 'inability of people to get the jobs still available'" (Chambliss, 1994, p. 183).

### **The Rise of the "Supermax" Prison**

In addition to becoming dangerously overcrowded and populated by a disproportionate number of minority citizens and drug offenders over the past 25 years, many U.S. prisons also now lack meaningful work, training, education, treatment, and counseling programs for the prisoners who are confined in them. Plagued by increasingly intolerable living conditions where prisoners serve long sentences that they now have no hope of having reduced through "good time" credits, due to laws imposed by state legislatures, many prison officials have turned to punitive policies of within-prison segregation in the hope of maintaining institutional control (e.g., Christie, 1994; Haney, 1993a; Haney & Lynch, 1997; Perkinson, 1994). Indeed, a penal philosophy of sorts has emerged in which prison systems use long-term solitary confinement in so-called supermax prisons as a proactive policy of inmate management. Criticized as the "Marionization" of U.S. prisons, after the notorious federal penitentiary in Marion, Illinois, where the policy seems to have originated (Amnesty International, 1987; Olivero & Roberts, 1990), one commentator referred to the "accelerating movement toward housing prisoners officially categorized as violent or disruptive in separate, free-standing facilities where they are locked in their cells approximately 23 hours per day" (Immarigeon, 1992, p. 1). They are ineligible for prison jobs, vocational training programs, and, in many states, education.

Thus, in the 25 years since the SPE was conducted, the country has witnessed the emergence of a genuinely new penal form—supermax prisons that feature state-of-the-art, ultra secure, long-term segregated confinement supposedly reserved for the criminal justice system's most troublesome or incorrigible offenders. Human Rights Watch (1997) described the basic routine imposed in such units: Prisoners "are removed from general population and housed in conditions of extreme social isolation, limited environmental stimulation, reduced privileges and service, scant recreational, vocational or educational opportunities, and extraordinary control over their every movement" (p. 14). (See also Haney, 1993a, 1997d, and Haney and Lynch, 1997, for discussions of the psychological effects of these special conditions of confinement.) By 1991, these prisons imposing extreme segregation and isolation were functioning in some 36 states, with many others in the planning stages (e.g., "Editorial," 1991). A newly opened, highly restrictive, modern "control unit" apparently committed the federal penitentiary system to the use of this penal form for some time to come (Dowker & Good, 1992; Perkinson, 1994). Thus, by 1997 Human Rights Watch expressed concern over what it called "the national trend toward supermaximum security prisons" (p. 13), noting that in addition to the 57 units currently in operation, construction programs already underway "would increase the nationwide supermax capacity by nearly 25 percent" (p. 14).

A constitutional challenge to conditions in California's supermax—one that many legal observers viewed as a test case on the constitutionality of these "prisons of the future"—resulted in a strongly worded opinion in which the federal court condemned certain of its features, suggesting that the prison, in the judge's words, inflicted "stark sterility and unremitting monotony" (*Madrid v. Gomez*, 1995, p. 1229) on prisoners and exposed them to overall conditions that "may press the outer bounds of what most humans can psychologically tolerate" (p. 1267) but left the basic regimen of segregation and isolation largely intact.

Here, too, the importance of context and situation has been ignored. Widespread prison management problems and gang-related infractions are best understood in systematic terms, as at least in large part the products of worsening overall institutional conditions. Viewing them instead as caused exclusively by "problem prisoners" who require nothing more than isolated and segregated confinement ignores the role of compelling situational forces that help to account for their behavior. It also overlooks the capacity of deteriorated prison conditions to continue to generate new replacements who will assume the roles of those prisoners who have been taken to segregation. Finally, the continued use of high levels of punitive isolation, despite evidence of significant psychological trauma and psychiatric risk (e.g., Grassian, 1983; Haney, 1997d; Haney & Lynch, 1997), reflects a legal failure to fully appreciate the costs of these potentially harmful social contexts—both in terms of immediate pain and emotional damage as well as their long-



term effects on post-segregation and even post-release behavior.

### **The Retreat of the Supreme Court**

The final component in the transformation of U.S. prison policy during this 25-year period came from the U.S. Supreme Court, as the Justices significantly narrowed their role in examining and correcting unconstitutionally cruel prison conditions as well as drastically redefining the legal standards that they applied in such cases. Ironically, the early constitutional review of conditions of confinement at the start of this historical period had begun on an encouraging note. Indeed, it was one of the things that helped fuel the early optimism about “evolving standards” to which we earlier referred. For example, in 1974, just three years after the SPE, the Supreme Court announced that “there is no iron curtain drawn between the Constitution and the prisons of this country” (*Wolff v. McDonnell*, 1974, pp. 556–567). Given the Warren Court’s legacy of protecting powerless persons who confronted potent situations and adverse structural conditions, and the Court’s legal realist tendencies to look carefully at the specific circumstances under which abuses occurred (e.g., Haney, 1991), hopes were raised in many quarters that a majority of the Justices would carefully evaluate the nation’s worst prison environments, acknowledge their harmful psychological effects, and order badly needed reform.

However, a sharp right turn away from the possibility and promise of the Warren Court’s view became evident at the start of the 1980s. The first time the Court fully evaluated the totality of conditions in a particular prison, it reached a very discouraging result. Justice Powell’s majority opinion proclaimed that “the Constitution does not mandate comfortable prisons, and prisons . . . which house persons convicted of serious crimes cannot be free of discomfort” (*Rhodes v. Chapman*, 1981, p. 349). None of the Justices attempted to define the degree of acceptable discomfort that could be inflicted under the Constitution. However, Powell used several phrases that were actually taken from death penalty cases to provide a sense of just how painful imprisonment could become before beginning to qualify as “cruel and unusual”: Punishment that stopped just short of involving “the unnecessary and wanton infliction of pain” (p. 345, citing *Gregg v. Georgia*, 1976, p. 173) would not be prohibited, pains of imprisonment that were not “grossly disproportionate to the severity of the crime” (p. 345, citing *Coker v. Georgia*, 1977, p. 592) would be allowed, and harm that was not “totally without penological justification” (p. 345, citing *Gregg v. Georgia*, p. 183) also would be acceptable (*italics added*).

The Supreme Court thus set a largely unsympathetic tone for Eighth Amendment prison cases and established a noninterventionist stance from which it has rarely ever wavered. Often turning a blind eye to the realities of prison life and the potentially debilitating psychological effects on persons housed in badly overcrowded, poorly run, and increasingly dangerous prisons, the Court devel-

oped several constitutional doctrines that both limited the liability of prison officials and further undermined the legal relevance of a careful situational analysis of imprisonment. For example, in one pivotal case, the Court decided that the notion that “overall prison conditions” somehow could produce a cruel and unusual living environment—a view that not only was psychologically straightforward but also had guided numerous lower court decisions in which overall conditions of confinement in particular prisons were found unconstitutional—was simply “too amorphous” to abide any longer (*Wilson v. Seiter*, 1991, p. 304).

In the same case, the Court decisively shifted its Eighth Amendment inquiry from the conditions themselves to the thought processes of the officials responsible for creating and maintaining them. Justice Scalia wrote for the majority that Eighth Amendment claims concerning conduct that did not purport to be punishment required an inquiry into prison officials’ state of mind—in this case, their “deliberate indifference” (*Wilson v. Seiter*, 1991). Justice Scalia also had rejected a distinction between short-term deprivations and “continuing” or “systemic” problems of the sort that might have made state of mind less relevant. The argument here had been that evidence of systemic problems would obviate the need to demonstrate state of mind on the part of officials who had presumably known about and tolerated them as part of the correctional status quo. Scalia said instead that although the long duration of a cruel condition might make it easier to establish knowledge and, hence, intent, it would not eliminate the intent requirement.

Prison litigators and legal commentators criticized the decision as having established a constitutional hurdle for conditions of confinement claims that was “virtually insurmountable” and speculated that the impossibly high threshold “reflects recent changes in public attitudes towards crime and allocation of scarce public resources” (Hall, 1993, p. 208). Finally, in 1994, the Court seemed to raise the hurdle to a literally insurmountable level by explicitly embracing the criminal law concept of “subjective recklessness” as the Eighth Amendment test for deliberate indifference (*Farmer v. Brennan*, 1994). In so doing, the Court shunned the federal government’s concern that the new standard meant that that triers of fact would first have to find that “prison officials acted like criminals” before finding them liable (*Farmer v. Brennan*, 1994, p. 1980).

This series of most recent cases has prompted commentators to speculate that the Supreme Court is “headed toward a new hands-off doctrine in correctional law” (Robbins, 1993, p. 169) that would require lower courts “to defer to the internal actions and decisions of prison officials” (Hall, 1993, p. 223). Yet, the narrow logic of these opinions suggests that the Justices intend to keep not only their hands off the faltering prison system but their eyes averted from the realities of prison life as well. It is difficult to avoid the conclusion that the Court’s refusal to examine the intricacies of day-to-day existence in those maximum security prisons whose deteriorated

