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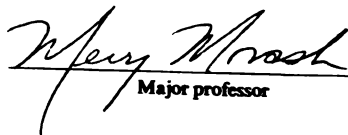
Race, Urbanism, and Court Bureaucratization:  
An Empirical Examination of Conflict-Weberian Theories

**presented by**

Florence Sylvia Ferguson

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**RACE, URBANISM, AND COURT BUREAUCRATIZATION:  
AN EMPIRICAL EXAMINATION OF CONFLICT-  
WEBERIAN THEORIES**

**By**

**Florence Sylvia Ferguson**

**A DISSERTATION**

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for the degree of**

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## **ABSTRACT**

### **RACE, URBANISM, AND COURT BUREAUCRATIZATION: AN EMPIRICAL EXAMINATION OF CONFLICT- WEBERIAN THEORIES**

**By**

**Florence Sylvia Ferguson**

Using a conflict/Weberian-based perspective, this study examined the relationship between race, urbanism, court bureaucracy, and punishment. Conflict theories argue that black offenders receive longer or harsher sentences than whites because they are considered members of a subordinate population that is poor and powerless. In contrast, the Weberian perspective views courts as bureaucracies; as the size of the court increases, it becomes more bureaucratic, and efficiency becomes the most important organizational goal. The purpose of this study was to measure the effects of race, urbanization, and court bureaucratization on a sentence of prison (IN) versus no prison (OUT).

Using a 1983 statewide sample of convicted felons from the State of Pennsylvania, the analysis for this study proceeded from bivariate correlations to logistic regression equations. Race did influence the sentence outcome; however, racial disparity was found among male offenders, not females. These results support conflict theory because they revealed black males were more likely to be

incarcerated than all other offenders. More important, the interactive effects between gender, age, and court size reject the major tenets of Weberian theory because the findings of this study indicate that older male offenders, particularly blacks, were more likely to be incarcerated, even when they were sentenced in urban court jurisdictions.

Finally, this study also revealed extralegal and legal variables were better predictors of the IN/OUT decision than contextual variables. The strong bivariate correlations among the contextual variables made it difficult to determine the extent to which they may have influenced the sentence outcome. Because researchers have recently used contextual variables to explain sentencing practices, it may be too early to conclude whether they are useful in predicting sentence outcomes.

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## CHAPTER I

### INTRODUCTION

The issue of racial discrimination in the criminal justice system has always been of concern to social scientists. The claim of racial and class discrimination is an essential proposition in recent theories on administration of justice (modern conflict theories, radical criminology, social justice perspectives, and labeling theory). Unfortunately, the intensity of that concern has not always been translated into effective and reliable investigative strategies. Although most of us have been led to suspect that discriminatory practices exist, research in this area has yielded inconsistent and even contradictory findings. Several major reviews of this field (e.g., Gibson, 1978; Hagan & Bumiller, 1983; Kleck, 1981; Thomas & Zingraff, 1981) have concluded that numerous methodological flaws (e.g., failure to consider contextual effects, exclusion of relevant variables) may account for many of these inconsistencies (Miethe & Moore, 1986, p. 230).

Within the past decade, two changes in sentencing have been the subject of great concern—the adoption of sentencing guidelines or determinate sentencing and enactment of laws requiring mandatory minimum terms of incarceration for certain offenses or types of offenders. Disenchantment with rehabilitation and the concern

about sentencing disparities due to judicial discretion, coupled with demands for "law and order" in the 1970s, gave rise to a nationwide movement toward determinacy in sentencing. Between 1970 and 1980, 12 states revised their penal codes along these lines, and a number of others were considering similar changes (Cullen, Gilbert, & Cullen, 1983). In 1982, Pennsylvania enacted a sentencing guidelines system to create statewide uniformity and consistency in sentencing. The guidelines have been somewhat successful in reducing disparate sentences (Kramer & Lubitz, 1985); however, as in other states that have implemented such a plan, they have been severely criticized for the increasing racial disproportionality of the prison population (Carroll & Cornell, 1985, pp. 475-476). Thus, it is particularly important to test theories explaining racial bias in states that, like Pennsylvania, have instituted sentencing guidelines.

It has been argued that the greater and increasing black representation among prisoners may result from their differential involvement in crime and/or the processing blacks receive in the criminal justice system (Hindelang, 1978, p. 94). Evidence exists to support both points of view; however, in a controversial article, Blumstein (1982) estimated that at least 80% of the racial disproportionality is due to the different involvement of blacks (and other minorities) in serious crimes. Dehais (1983), on the other hand, argued convincingly that Blumstein's estimate rests on the assumption that the probability of incarceration following arrest does not vary by race. He cited substantial evidence to show that this premise is unwarranted (e.g., Hepburn, 1978; Petersilia, 1983) and that Blumstein underestimated the extent

of the disproportionality to be explained. The disproportionate number of minorities in the criminal justice system and the inconsistent research findings on racial differences have led some researchers to take a different approach in studying the magnitude and direction of differential treatment (Myers & Talarico, 1986, p. 367). To address this problem, more recent studies (Nardulli, 1979; Thomson & Zingraff, 1981) on sentencing have sought to locate different sources of disparity and discrimination in sentencing. In short, research on sentencing has begun to demonstrate a growing awareness of broader structural and contextual variables that determine the kind of treatment offenders receive. It is presumed that the magnitude and direction of unequal treatment can neither be predicted nor understood without identifying the social circumstances under which it is likely to occur (Myers & Talarico, 1986, pp. 367-368).

Unnever and Hembroff (1988) noted that although most studies have modeled the judges' sentencing decisions by taking case and defendant attributes into account,<sup>1</sup> few of these attempts have been guided by any structural- or contextual-based theory of decision-making processes. Thus, researchers have contended that they have not been able to specify exactly what the conditions are that influence the likelihood that judges will or will not discriminate against racial/ethnic minorities. A review of the literature revealed that most studies in the area of

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<sup>1</sup>See Bernstein, Kelly, and Doyle (1977a); Bernstein, Kick, Leung, and Schultz (1977); Chiricos and Waldo (1975); Hagan, Hewitt, and Alwin (1979); Hall and Simkus (1975); LaFree (1985b); Lizotte (1978); Meithe & Moore (1985); Peterson and Hagan (1984); Swigert and Farrell (1977); Thornberry and Christenson (1984); Tiffany, Avichai, and Peters (1975); and Welch, Gruhl, and Spohn (1984a).

criminal justice are dominated by a focus on individual-level case processing—in particular, how "extra-legal" factors such as race, social class, and gender influence court decision making (for reviews see Gottfredson & Gottfredson, 1988; Hagan, 1974; Hagan & Bumiller, 1983). The problem, however, is that the theoretical significance of these studies, especially at the macro-level, has not been well developed (Sampson, 1993). In addition to the theoretical bias in favor of individual-level explanations of criminal case processing, there is little research on the structural context of crime control in general. Liska (1987) argued that most macro-level research in this area has focused on deterrence (i.e., the effect of crime control on crime rates). Only recently have sociologists used collectivities as the unit of analysis and examined how crime control patterns are influenced by social structures (e.g., Liska, 1992; but see contextual studies by Myers & Talarico, 1987; Sampson, 1986). There are excellent ethnographies (e.g., Emerson, 1969) and historical case studies on macrosocial aspects of crime control (e.g., Erikson, 1966), but these "illustrate rather than test sociological perspectives on crime control" (Liska, 1987, p. 68).

Another problem besides the lack of research at the macrosocial level is the argument that criminal justice research lacks theoretical initiative (Hagan, 1989, pp. 116-117). For example, much criminal justice research in the 1970s and 1980s derived its theoretical initiatives either from consensus or conflict theories of society. These broadly framed theories have been described as being useful in stimulating work that concerned the influence of legal (e.g., prior record and seriousness of

offense) and extralegal variables (e.g., race and gender) on criminal justice outcomes. A consensus theory of social relations predicted a powerful role for legal variables, reflecting the influence of broadly shared societal values in the punishment of criminal norm violations. Conversely, a conflict theory of social relations predicted a substantial role for extralegal variables, reflecting the influence of power imbalances in the punishment of crimes that posed threats to existing power relationships.

In essence, while the larger debate that organized discussions of consensus and conflict theories in the social sciences prove useful in stimulating and framing much of the early research on criminal justice operations, the results of these studies have not offered much support for either theory (Hagan, 1989). Whereas consensus theories led researchers to expect the influence of legal variables, such as offense seriousness and prior record, to be strong and persistent, the results of this research found the influence of these variables to be moderate and inconsistent. Whereas conflict theory led researchers to expect the influence of extralegal variables, such as race and class, to be substantial and pervasive, the results of this research found the influence of these variables to be modest and uncertain. The literature reviews in this area of study vary somewhat with regard to these summary statements (e.g., see Wilbanks, 1987; Zatz, 1984), but the larger point nonetheless holds—neither consensus nor conflict theory has generated large-scale empirical support. More specifically, it is concluded that consensus and conflict theories do not provide sufficient attention to the structural relationships that emerge from a joining of

organizational and political forces in the direction of criminal justice decision-making processes.

Using a conflict/Weberian-based perspective, this researcher attempted to develop and test a macro-level framework by examining the relationship among racial composition, urbanization, and court bureaucratization, and the relationship of these three variables to punishment. Rather than viewing each theory as competing against each other, some contemporary researchers have advocated an integration that employs variables from seemingly different causal models. The rationale behind integrating theories is that any pure theoretical statements are partial explanations and, therefore, can be strengthened and enhanced by the integration (Elliott, Ageton, & Carter, 1979; Johnson, 1979). Because integration incorporates the relative strength of each theory, it is also believed to increase its explanatory power (Shoemaker, 1984). Weberian theories suggest that court size and location influence differential treatment, whereas conflict theories propose that in highly bureaucratized courts, sentences will depend on factors not explicitly construed as legally relevant, namely, the relative power and status of the offender. In less bureaucratized courts, a reliance on offender status or power will be relatively less common or absent (Myers & Talarico, 1986, p. 369). A court's context, therefore, strongly influences the ways in which cases are selected, heard, and disposed, while its social structure is consistently associated with differences in rates of crimes, the degree of procedural formality, and the administration of punishment. As a result, where offenders live affects how their cases are disposed and the

severity of the sentences they receive. Consistent with this proposition, Feld (1991) believed that rural judges exercise their discretion in a manner that results in race, gender, and class differences (p. 162).

Of the three variables described, urbanization has been identified in the literature as an important contextual source of unequal treatment. Weber (1947) associated the formal rationalization of social life with urbanization and bureaucratization and argued that abstract rules would supplant more traditional methods of dispute resolution as laws became increasingly rational and functionally specialized. Presumably, urban courts would be more formal and bureaucratized, emphasize rationality and efficiency, and punish on the basis of legally relevant factors such as present offense and prior record. By contrast, rural courts would be less bureaucratized and sentence on the basis of extralegal considerations.

Although there has been a long-standing interest in urbanization and its correlate, bureaucratization, there have only recently been empirical studies of their actual effect on sentencing (Austin, 1981; Hagan, 1977; Kempf & Austin, 1986; Myers & Talarico, 1986, 1987; Pope, 1976; Tepperman, 1986). Hagan found that differential treatment of racial minorities was more pronounced in rural courts than in bureaucratized urban ones. Tepperman reported that rural juvenile courts treated female offenders more leniently than males, but that gender differences declined with urbanization. Austin found that rural criminal courts considered social background factors, while urban courts adhered to a more legalistic model of sentencing. Myers and Talarico reported that urbanization and social context affect

criminal court sentencing, while Kempf and Austin assessed the effect of the urbanization factor on the sentence outcome and concluded that racial disparity in sentencing was revealed more clearly when separate analyses were conducted within levels of urbanization. These studies support Weberian expectations that similarly situated offenders may be treated differently based on their locale and that differential treatment is more prevalent in rural settings and declines with urbanization and bureaucratization. Finally, the research thus far has indicated the need to further explore this area of study because it appears that the urban-bureaucratic factor may be more complex than we have been led to believe.

This study was therefore premised on the proposition that as the level of urbanization increases, the courts become more bureaucratized and less likely to discriminate against offenders regardless of their race, gender, or class. In other words, in bureaucratic courts, most offenders may experience the same criminal processing because efficiency, not individualized justice, becomes the major goal of the organization. No court is exempt from discriminatory or unequal justice; however, this researcher explored the possibility that discrimination and disparity in sentencing may diminish as bureaucratization increases. Because bureaucratization is likely to be greater in the city, where the population is larger and heterogeneous, minorities should experience more lenient treatment when they are sentenced in urban rather than suburban and rural court jurisdictions. The first research question addressed in this study was: What are the effects of race, urbanization, and court



bureaucratization on a sentence of prison versus no prison (e.g., probation or some other sentence alternative such as fines, restitution, and so on)?

The literature revealed that there may be other important contextual characteristics, such as the size of the subordinate population and crime rates, which may be confounded with urbanization. It has been suggested that the differences attributed to urbanization may actually be due to these contextual factors, which, while linked with urbanization, are nonetheless conceptually and empirically distinct phenomena (Myers & Talarico, 1986). The researcher, therefore, attempted to address this methodological shortcoming by including some of the contextual variables that have been omitted from other studies. It is known from previous research that race and other extralegal variables (e.g., gender, age, and so on) have been useful in explaining some of the variation in sentencing. However, the second research question addressed in this study was: To what extent do contextual variables (e.g., percentage black, percentage poor, percentage urban, and so on) predict the probability of an IN sentence (e.g., jail or prison) across counties in the State of Pennsylvania which have not been predicted by individual factors? Will contextual factors be more helpful in providing additional information that has not been obtained from the examination of individual factors? Or are some individual factors more important in some contexts than others? In any event, this researcher examined the relationship between the type of punishment the offender received and the location in which he or she was sentenced. It was assumed that individual-level (race, age, gender) and contextual (percentage black, percentage poor, percentage urban, and so on) variables are inextricably linked; therefore, they

should be considered simultaneously if one wishes to understand sentencing and, by implication, other social responses to crime and punishment.

Finally, in this study, seriousness of offense and prior offenses were considered as control variables. These legalistic variables, which are specified as the influences on decisions in consensus theories, might explain (i.e., make spurious) relationships between the other independent variables and the IN/OUT decision.

## CHAPTER II

### THEORETICAL PERSPECTIVES

Various theoretical perspectives have been used by criminologists to explain the disproportionate number of blacks and minorities in the criminal justice system. These theories all differ in their explanations, and they generally include consensus or conflict perspectives. Borrowing from the work of organizational theorists, some criminologists have recently turned to structural organizational perspectives to explain the decision-making processes of the judiciary. These Weberian models (Chambliss & Seidman, 1971; Reiss, 1974; Tepperman, 1973; Weber, 1946, 1947, 1954) are some of the approaches used by researchers to help understand how discretion is exercised in court bureaucracies. In sum, these theoretical frameworks form the basis of this study and are presented below.

#### The Consensus Perspective

Consensus theories of law are said to explain disparities in the sentencing process in terms of differential criminal involvement, viewing criminal law as a set of codified norms equally applied for all law violators. The severity of punishment imposed for crimes varies directly with the importance of the law violated (Durkheim, 1954, 1973). This perspective presumes that sanctions are imposed by the system

of criminal justice primarily in relation to the seriousness of crimes committed, with the most serious and violent offenders receiving the most punitive sanctions. Finally, it is presumed that the administration of criminal justice treats most defendants equally, without regard for their social standing or other personal characteristics (Bridges & Crutchfield, 1988, p. 700).

According to consensus theories, racial differences in imprisonment occur because minority males, particularly black males, violate the law more frequently and commit more serious crimes than members of other racial groups (Blumstein, 1982; Hindelang, 1978; Langan, 1985). The racial distribution of offenders imprisoned is approximately equal to the racial distribution of persons arrested because no significant racial differences exist in treatment of the accused following arrest—that is, at prosecution, conviction, sentencing, or in actual time served in prison. Finally, these theories predict that blacks and other minorities will be imprisoned at disproportionately higher rates than whites in regions where blacks have disproportionately higher rates of arrest for serious and violent crimes than whites (e.g., see Harries, 1980; Webster, 1978).

### Conflict Theory and the Threat of the Subordinate Population

Conflict theories explain criminal punishment in terms of hegemony by dominant social classes, viewing disparity in punishment in terms of economic and political inequality within society. Racial disparity is not only found in imprisonment rates, but there is differential treatment in how criminal cases are processed and

disposed in the legal system. Minorities are more frequently pretrial detainees, more likely to plead guilty, more likely to receive longer sentences upon conviction, and more likely to be incarcerated for crimes than whites who commit similar crimes (Christianson, 1980a, 1980b; Lizotte, 1978; Quinney, 1970, 1974). In the most widely shared explanation, imprisonment and other aspects of the legal process are institutional mechanisms that have integral ties to the economic and political order in society.

Marxist theorists argue that the use of criminal punishment is closely associated with economic stratification. They reason that economic elites use the legal institutions to control and manage society's problem population, typically the chronically unemployed and persons living in extreme poverty. In societies and communities characterized by rigid economic stratification and heavy urban concentration of poor, elites are likely to use the administration of criminal justice to enforce laws that preserve the economic order (Chambliss & Seidman, 1971; Humphries & Greenberg, 1981; Jacobs, 1978; Rusche & Kirchheimer, 1968; Spitzer, 1975, 1981). Criticizing this line of reasoning, Bridges and Crutchfield (1988, pp. 700-701) argued that gross racial differences in imprisonment should be expected in those regions of the country and historical periods where levels of black/white economic inequality among the very poor and black concentrations in central cities are most pronounced. Like the conflict theorists, they predicted that minorities will be imprisoned at disproportionately higher rates than whites in those regions where

blacks are more heavily represented among the very poor and more heavily concentrated in urban areas than whites.

Conflict theorists also have argued that the minority threat is likely to vary in relation to the size of the minority population, with large minority populations substantially more threatening to whites than small populations (Barth & Noel, 1972; Blalock, 1957, 1967; Brown & Fugitt, 1972; Brown & Warner, 1992; Frisbie & Neidert, 1976). Studies that have shown the evidence of threat have revealed a greater fear of crime among people who migrate from cities to smaller communities (Kennedy & Krahn, 1984). Other studies have revealed that some suburban and rural residents migrate from cities not only because of the fear of crime, but for racial/ethnic considerations, including school desegregation (Bosco & Robin, 1974; Dobriner, 1963; Lord & Catan, 1977), and that there is usually greater precaution taken by nonurban residents relative to their awareness of crime in their communities (Boggs, 1971). These findings suggest that discrimination is more likely to be found in communities and regions where the minority population is largest and presents the most serious political threat. If sentence disparity reflects racial disparity, offenders who are sentenced in jurisdictions where minority percentage is high compared to the white population will experience harsh treatment.

In summary, conflict theorists have suggested that racial differences in the sentencing process typically are produced by three aspects of the legal process that afford white defendants less severe punishments than blacks, even among persons

committing similar types of crimes (Bridges & Crutchfield, 1988, p. 702). First, racial discrimination may occur overtly in legal decisions, with judges and other officials often granting white defendants more favorable dispositions than blacks (Davis, 1969; Quinney, 1970). Second, class biases can enter into the legal processing of cases based on economic resources, including contextual factors such as the chronically unemployed and persons living in extreme poverty. Third, racial discrimination in legal processing can also be produced by organizational or institutional aspects of criminal justice that have the unintended effect of ensuring that minority defendants receive less favorable dispositions than whites (Lizotte, 1978; Swigert & Farrell, 1977).

Organizational constraints on courts may also disadvantage minority defendants because court personnel, given organizational limits on the number of persons who can be processed, may unintentionally target minority defendants for processing (Bernstein et al., 1977; Blumberg, 1967; Sudnow, 1965; Swigert & Farrell, 1977). Under conditions of prison crowding, officials may accord highest priority to imprisoning offenders whose behavior conflicts most with the norms enforced by the agencies and who fit traditional stereotypes of serious criminals—that is, violent black offenders—while discretion in sentencing and parole processes may also penalize minorities. In jurisdictions and regions of the country where legal processing is individualized and punishment is discretionary, it is said that officials often set prison terms according to the offender's background and living environment.

As an alternative to the conflict perspective, researchers recently have turned to Weberian models to explain how organizational and contextual factors can be used to explain how courts process cases through the criminal justice system. The influence of these variables on the sentencing process is further explained in the next section on Weberian perspectives and the bureaucratic justice model.

### The Weberian Theoretical Perspective and Bureaucratic Justice

According to the Weberian perspective, courts are viewed as bureaucracies. The bureaucratic justice model argues that courts are bureaucracies and the size and location of the court's jurisdiction (urban, suburban, and rural) will influence the differential treatment of offenders. The larger the court, the more likely it will become bureaucratized. The organizational goal then becomes "efficiency" and not "individualized justice." The literature indicates there may be some misunderstanding about this notion of bureaucratic justice where one is led to believe that "justice" is sacrificed in the name of efficiency. However, in her discussion of bureaucratic justice, Pollock (1994, pp. 138-139) argued that this is not the case.

In the bureaucratic justice model, each individual case is seen as only one of many for the professionals who work in the system. Because each case is part of a workload, decision making takes on a more complicated nature. Each case is not separately tried and judged, but is linked to others and processed as a part of a workload. The bureaucratic system of justice is seen as developing procedures and



policies that, although not intentionally discriminatory, may contribute to a perception of unfairness. For instance, a major element in bureaucratic justice is the presumption of guilt, while the ideal of our justice system is a presumption of innocence. Judges, district attorneys, and even defense attorneys approach each case presuming guilt, and they place a priority on achieving the most expeditious resolution of the case. This is the basic rationale behind plea bargaining, whether recognized or not; the defendant is assumed to be guilty, and the negotiation is to achieve a guilty plea while bargaining for the best possible sentence—the lowest possible is the goal of the defense, while the highest possible is the goal of the prosecutor. Plea bargaining is consistent with the bureaucratic value system because it is the most efficient way of getting the maximum punishment for minimum work.

Descriptions of bureaucratic justice such as the following allow for the fact that efficiency can be tempered with other values and priorities:

The concept of bureaucratic justice . . . provides the most persuasive account of how the participants in the criminal process reconcile legal and bureaucratic forces. "Bureaucratic justice unites the presumption of guilt with the operational morality of fairness." . . . All participants in the criminal process behave as if a person who is arrested is probably guilty. Nevertheless, the coercive thrust of the presumption of guilt is softened somewhat by the operational morality of fairness that leads the participants to make certain that defendants get neither more nor less than is coming to them—that defendants, in other words, get their due. (Scheingold, 1984, p. 158)

Scheingold was referring to the practice of judges, defense attorneys, and prosecutors (hereinafter called the courtroom workgroups) who adapt the system to their personal styles of justice. Moreover, in almost all cases, there may be general

consensus on both sides as to what is fair punishment for any given offender. Instead of describing the justice system as a system that practices the presumption of innocence and takes careful steps to determine guilt, what may be more realistic is to characterize it as a system wherein all participants assume guilt, take superficial steps to arrive at the punishment phase, and operate under a value system that allocates punishment and mercy to offenders according to an informal operating standard of fairness.

This study does not focus on the behaviors of judges, prosecutors, and defense attorneys nor plea bargaining in the sentencing process. However, in courts identified as bureaucracies, this informal operating standard of fairness involves the use of "normal penalties," which may help to explain why sentencing in bureaucratic courts is different when compared with courts that are not bureaucratized. In seeking to produce individualized sentences, courtroom workgroups employ what have been labeled normal penalties (Sudnow, 1965, p. 254). Normal penalties are sentences based on the usual manner in which crimes are committed and the typical backgrounds of the defendants who commit them. The decisions made by courtroom workgroups develop typical sentences of what punishments are appropriate for given crime categories. It is within these normal penalties that individualization is said to occur and that upward and downward adjustments are made. Typical sentences are not used mechanically; rather, they are said to guide sentencing.

Next, sentencing involves a two-stage decision-making process. After conviction, the first decision is made whether to incarcerate or grant probation to the defendant (i.e., the IN/OUT decision). The second stage of the decision is determining how long the sentence should be. This process illustrates how different courtroom workgroups employ varying concepts of normal penalties. From one courtroom to the next, there are important differences in the threshold for granting probation. Once it has been decided that a defendant should be imprisoned, there are important differences in the factors used to determine the length of that sentence. Stated another way, courtroom workgroups tend to look at the same set of general factors in passing sentence; however, there is no uniformity in the relative weights that are assigned these general or individual factors (Neubauer, 1988, pp. 362-364). Therefore, if discrimination does result from bureaucratic justice, this consequence is unintended because the statuses ascribed to offenders are not used as the criteria for sentencing. Efficiency, not individualized justice, becomes the primary goal (Hagan, 1977, p. 598).

Conflict theorists have criticized the bureaucratic justice model, holding opposing views as to whether discrimination is intentional or not. Reiss (1974), for example, addressed the consequences of court bureaucratization, arguing that the discretion given to agents of the law opens the door to unequal treatment, particularly when the limits of discretionary power are unclear. The position presented above, however, suggests something otherwise. In his position, Reiss (1977) did not specifically indicate whether the variability of bureaucratized justice

is differentially targeted at minority-group offenders; however, Chambliss and Seidman (1971) did. These authors began with the assumption that "the tendency and necessity to bureaucratize is far and away the single most important variable in determining the actual day-to-day functioning of the legal system" (p. 468). They argued:

The large number of persons brought before the municipal courts for minor transgressions of the law leads to almost complete automatic sentence for certain types of offenders. Furthermore, even for the more serious offenses the pressure to make the decision expeditiously (which is in large part a carry-over from the heavy burden created by the large number of minor offenders handled) leads to the judges relying heavily on the advice of "specialists"—in this case, probation and parole officers who make presentencing reports on offenders before the court for sentencing. (p. 468)

Under these circumstances, Chambliss and Seidman argued, institutional patterns of discrimination against the poor are inevitable.

Hagan (1977, pp. 598-599) reviewed a variety of studies that offer good reasons why sentencing disparities may or may not occur in urban court bureaucracies. Combined with these conflicting arguments is a consensual view that either outcome is undesirable. Thus, Reiss predicted a variability in bureaucratized justice that Chambliss and Seidman agreed is discriminatory, whereas others (i.e., Tepperman, 1973; Turk, 1976) predicted a uniformity in sentencing that, on one hand, is seen as impersonal, and on the other, deflecting attention from the disadvantaging character of the laws themselves. The apparent irony of this situation is that researchers agree that the consequences of bureaucratization are bad; however, there is disagreement about what these consequences actually are.

Conflict theorists have hypothesized that in highly bureaucratized courts, sentences will depend on factors not explicitly construed as legally relevant—namely, the relative power and status of the offender. In less bureaucratized courts, a reliance on offender power and status will be relatively less common or absent (Myers & Talarico, 1986, p. 369). There is a large and expanding body of literature that has looked for systematic links between the characteristics of offenders and the sentences they receive. Much of this work has included an effort to test the conflict theory of crime. The results of these studies have been inconsistent; whereas a variety of studies have found these relationships to be substantial (Lizotte, 1978; Swigert & Farrell, 1977), others have found them to be contingent on particular circumstances (Hagan, Bernstein, & Albonetti, 1980).

In response to such studies, conflict theorists increasingly concede the point that relationships between extralegal characteristics and court outcomes are neither as large nor consistent as is frequently assumed. Instead, they argue that such findings are actually quite consistent with the perspective which suggests that a discriminatory court system would be more harmful than good for the administration of justice (Turk, 1976). It is argued that "ruling classes have a general interest in promulgating and reproducing the stability of the social order as a whole, and an important way of achieving this is by somehow ensuring that the severity of sanctions ought not significantly be correlated with social class" (Beirne, 1979, p. 378).

### Integrating Theoretical Perspectives

The literature on sentencing reveals that conflict models are the most fully developed perspectives and they have rendered the most substantial empirical support (McCarthy, 1990, pp. 325-326). These perspectives are also more useful because they focus on structural characteristics of sanctions, particularly the extent to which unemployment and large urban populations influence the use of social control (Rusche & Kirchheimer, 1939; Turk, 1969). Although less empirical attention has been devoted to the effect of the economic and social composition of the population, there is also evidence that the level of unemployment, the size of the racial minority, and economically disadvantaged populations may also influence the use of incarceration (Brenner, 1976; Carroll & Doubet, 1983; Greenberg, 1977; Hale, 1988; Inveriaty & McCarthy, 1988; Jacobs, 1978). It is noted that these results have not been achieved invariably; therefore, many questions remain about the extent and nature of the effects of contextual factors and their relationship to sentencing (McCarthy, 1990, p. 326).

The recent integration of conflict theories with Weberian-based perspectives has allowed criminologists to look at contextual variables such as urbanization and its strong correlate, court bureaucratization, and their influence on sentence dispositions. The relationship between sentencing decisions and the type of court environment was specifically considered by Bullock (1961), Eisenstein and Jacobs (1977), Hagan (1979), Austin (1981), Kempf and Austin (1986), and Kramer and Steffensmeier (in press). All five studies questioned the influence of urbanization on

racial disparity in sentencing; however, the evidence on bureaucratization and the relative power of dominant groups is less convincing. For example, Kramer and Steffensmeier, using 1985-1987 Pennsylvania sentencing guidelines data, looked at a contextual factor using percentage Republican and percentage Democratic. Their contention was that communities with a high percentage of voters registered as Republicans signified a more conservative or "law and order" social environment. They also looked at other county contextual factors such as racial mix, caseload, and case mix; however, they found that none of their county contextual variables was noteworthy in explaining dispositional decisions.

Kempf and Austin (1986), using 1977 Pennsylvania guidelines data, assessed the effect of the urbanization factor on the sentence outcome. They found that racial disparity in sentencing was revealed more clearly when separate analyses were conducted within levels of urbanization. Kramer and Steffensmeier (in press) argued that while it is possible that the guidelines instituted in Pennsylvania in 1982 may have eliminated the effect of the urbanization factor, the importance of the latter in affecting sentence outcomes as reported in the Kempf and Austin study may have been due to their failure to include adequate statistical controls for offense seriousness and prior record. The research thus far has indicated the need to further explore this area of study because it appears that the urban-bureaucratic factor may be more complex than we have been led to believe.

Another positive characteristic of conflict theories is that they give researchers a realistic perspective on sentencing in a social context which appears to be abstract

in consensus theories. Earlier works on unequal treatment lend strong support for the involvement theory, which argues that minority groups dominate the criminal justice system because they commit the majority of the crimes (Blumstein, 1982; Hindelang, 1978; Langan, 1985). Conflict and stratification theories, on the other hand, suggest that disproportionate numbers of minorities in the criminal justice system exist for reasons beyond the personal lives (e.g., lack of education, unemployment) of offenders. These theories, however, provide a theoretical framework that looks at the social structure where the goal of the socially dominant group is to remain in a relative position of power over subordinate groups. As a result, minorities are arrested, prosecuted, and incarcerated in greater numbers, especially in urban areas where the minority composition is greater.

A question might be raised as to whether this study integrates theoretical perspectives or is testing competing theories. Although conflict theories are based on different assumptions about society than Weberian theories, there may be some broader conflict in the social structure between the classes that the integration of both perspectives can explain. For example, there may be bureaucratic constraints (from the judicial system) that mediate or interact with larger social forces to counterbalance or reduce the inequities of a system that favors those in control. Weberian perspectives argue that as the level of court bureaucratization increases, discrimination and disparity should decrease in place of other organizational goals that take precedence (i.e., efficiency, or in other instances, the power and status of the defendant). However, in their study, Myers and Talarico (1986, p. 387) found



that urbanization emerged in its own right, independently of bureaucratization, as a contextual determinant of differential treatment. In illustrating the importance of one contextual determinant of differential treatment, they encouraged the identification of other contexts (for example, economic inequality, crime rates) that could play similar roles.

Apart from replication, Meyers and Talarico (1986) recommended that the next task for researchers is to discover the intervening mechanisms, such as contextual variables which translate population characteristics and level of urbanization into decisions that, in the aggregate, reveal distinct patterns of differential treatment. It is therefore important that punishment be placed in a broader social context without abandoning those factors that are at the individual level of analysis (such as race). It is believed that these variables—both individual and contextual—are inextricably linked, and they must be considered simultaneously if one wishes to understand sentencing and, by implication, other social control responses to crime.

Conflict and Weberian perspectives are therefore two important theories whose integration should be further examined because they can provide useful information about unequal treatment in the criminal justice system. Kempf and Austin (1986) argued that bureaucratization is likely to be greater in the city and, more important, the size of the urban minority population should give it greater relative power than its nonurban counterpart. This proposition could be used to explain some of the inconsistent findings on race and urbanization. Because most

urban areas have a higher minority composition, one might expect this group to receive differential treatment for a number of reasons. First, minority groups are usually the dominant social group in large urban areas, often referred to as "chocolate cities,"<sup>1</sup> where they have some political leadership. This leadership may be reflected in the manner in which defendants are treated in the criminal justice system, especially where there is a substantial racially mixed police force and court personnel. A racially mixed criminal justice system may reduce or, in some instances, eliminate the racial disparities that might otherwise exist. These contextual factors may explain why black defendants sometimes receive more lenient treatment than their white counterparts when they are sentenced in urban versus suburban and rural areas.

A final contradiction worth noting is that disproportionately longer prison sentences are sometimes imposed on white offenders in urban counties. Several factors are believed to explain this result (Myers & Talarico, 1987, p. 384). Lawsuits alleging discrimination in prison conditions and in sentencing decisions, coupled with sympathy toward the disadvantaged, could foster reverse discrimination. One also cannot rule out the operation of regionally based paternalistic attitudes. For example, it was found that southern judges expected less of blacks and were more tolerant of their criminality. By virtue of membership in a caste that has traditionally

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<sup>1</sup>A "chocolate city" is any city where minority groups are greater in population and in most instances are in political control of the local government. Detroit, Michigan; Washington, D.C.; Atlanta, Georgia; and East St. Louis, Illinois, are cities representing examples of this concept.

considered itself racially and economically superior, judges may hold whites to a higher standard of behavior. Their transgressions may be seen as particularly reprehensible and as warranting relatively more severe punishment (Bernstein et al., 1977). In large cities, social characteristics may not be as important as seriousness of the offense and the defendant's prior record. The organizational goal of most urban courts is to expeditiously dispose cases, and, as Weberian-based perspective suggests, it is in this process that they become more bureaucratized. In major urban areas, the socially dominant group are minorities; this again may therefore explain why differential treatment based on race is not as prevalent as it is in suburban and rural areas.

The integration of conflict-Weberian theories in this study is important because it will be used to examine the process in which individual and contextual factors predict the outcome of a sentence, based on the racial composition of the jurisdiction in which the offender is sentenced, whether the court is bureaucratized, and whether the jurisdiction is located in an urban, a suburban, or a rural area in the State of Pennsylvania.

### Modeling the Sentencing Decision

Borrowing from the ideas of Miethe and Moore (1986), this researcher argues that racial bias in criminal processing may be the artifact of the model selected to detect racial differences. Specifically, although commonly overlooked in past research, it is argued that the selection of a particular analytical model also implies some fundamental assumptions about how race, urbanism, and court

bureaucratization should influence sentencing decisions in the State of Pennsylvania. Using a statewide sample of convicted felons, additive and interactive terms are estimated to determine which variables (e.g., extralegal, legal, and contextual) are the best predictors of sentence outcomes. This study supports the conclusions drawn from similar studies<sup>2</sup> which argue that "additive" or "main effects," commonly used in past research, suppress the nature and magnitude of racial and/or jurisdictional differences. To address this specification error, interactive terms for extralegal (e.g., race, gender, age) variables, and the variable representing the level of urbanization (e.g., court size), were estimated. The findings from these results are discussed later with the implications for this and future studies on disparities in sentencing.

### Hypotheses

The theoretical integration of conflict-Weberian theories described above will allow one to examine the context in which sentencing varies across counties in the State of Pennsylvania. The major thesis of this study was that as courts become more bureaucratized they are less likely to discriminate against offenders regardless of their race or other extralegal factors (e.g., gender and age). In other words, in bureaucratic courts, offenders may experience the same criminal processing as offenders in courts that are not characterized as bureaucratic, because efficiency, not individualized justice, becomes the major goal of the organization. Because

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<sup>2</sup>See reviews by Myers & Talarico (1987), Myers (1986), and Miethe and Moore (1986).

bureaucratization is more likely to be greater in the city, where the size of the subordinate population is larger, blacks sentenced in urban jurisdictions should experience more lenient treatment than when they are judicially processed in suburban and rural court jurisdictions.

The first research question addressed in this study is: What are the effects of racial composition, urbanization, and court bureaucratization on a sentence of prison (IN) versus no prison (OUT)? The context in which one is sentenced may be influenced not only by one's race, but also by the location in which the offender is sentenced.

In this study, a model was developed that looks at the effects of how race and other individual-level factors (e.g., gender, age, prior record, and seriousness of the offense) predict whether an offender is sentenced to prison (IN) versus no prison (OUT). It has been learned from previous research that race and other extralegal (gender and age) and legal (severity, prior record [history], and number of current convictions) factors have been useful in explaining some of the variation in sentencing. However, the second research question raised here is: To what extent do contextual variables (e.g., percentage black, percentage poor, percentage unemployed, and so on) predict the likelihood of a prison versus no-prison sentence which has not been explained by these individual-level factors?

The purpose here was to study the "hidden" and unexplored arena of macrostructural variations in sentencing, especially those decisions that result in a sentence of incarceration versus probation. To test these ideas, this researcher

attempted to develop a theoretical framework that links micro- and macro-level organizational and political forces to help understand the important kinds of variations that occur in sentencing across these social contexts. The researcher assumed that contextual and individual-level (e.g., race, gender, age, severity, prior record, number of current convictions) variables are inextricably linked; therefore, they should be considered simultaneously if one wishes to understand sentencing and, by implication, other social responses to crime and punishment. The reward for meeting this challenge is a clearer explication of the relationships of race and the other predictor variables to sentencing (Myers & Talarico, 1987, p. 387).

In establishing this point, the extralegal (race, gender, and age), legal (prior record, seriousness of the offense, type of offense, and current convictions), and contextual (size of the subordinate population, inequality, and crime rates) variables are described below as they relate to the conflict-Weberian theories of punishment.

### Extralegal Variables

#### Race

The inability to document the claim of discriminatory treatment has been illustrated in previous empirical studies of racial differences in criminal sentencing. Earlier researchers generally concluded that black defendants are victims of disparate treatment. However, although there are numerous exceptions, the bulk of recent evidence now suggests that race and other extralegal factors have little direct effect on sentencing practices once controls are introduced for seriousness of the charge, prior criminal record, and other legally relevant factors (see Hagan,

1974; Hagan & Bumiller, 1983; Hagan et al., 1979; Kleck, 1981; Lizotte, 1978; Spohn et al., 1982; Unnever et al., 1980). Several authors (Bernstein et al., 1970; Carter & Clelland, 1979; Unnever et al., 1980) have noted the claim that racial and class discrimination in criminal sentencing is an essential proposition in various theories on the administration of justice (e.g., labeling theory, conflict theory, and radical criminology). However, empirical research frequently has failed to demonstrate such biases in sentencing decisions. For instance, blacks have been found to be treated with greater harshness in some situations, but with greater lenience in others (Farnworth & Horan, 1980; Kleck, 1981; Peterson & Hagan, 1984). Other researchers have concluded in their reviews that there is little evidence of racial bias, or, if differential treatment does exist, it is transmitted indirectly through various presentence and processing outcomes (Hagan, 1975; Hagan & Bumiller, 1983; Lizotte, 1978; Unnever et al., 1980).

Based on the conflict-Weberian theory of punishment, this study supports the claim that the offender's race influences sentencing due to stereotypical images relating race to the location in a social group that is thought to account for a disproportionate amount of crime (Black, 1976; Burke & Turk, 1975; Chambliss & Liell, 1966; Green, 1961, 1964; Skolnick, 1966; Stinchcombe, 1963; Sutherland, 1949; Willick, Gehlick, & Watts, 1975). Miethe and Moore (1986, p. 231) challenged this "caste-like" specification of race that underlies stratification theories, arguing that in comparison to other blacks and white counterparts, those blacks who are given

the most severe sanctions are single, live in urban areas, have a prior felony record, and commit multiple and serious offenses.

According to the prevailing stereotypes cited above, it is black offenders who are most likely to be viewed as "dangerous" by criminal justice officials. This researcher therefore hypothesized that black offenders, compared to white offenders, will be incarcerated more often and receive more severe sentences when they have a prior record and are sentenced in suburban and rural areas, where they most often are perceived as a threat. Second, race is also believed to have interactive effects with each of the predictor variables used in this study. The challenge, as previously stated, is to predict the forms they will take. Where appropriate, the hypotheses for the relationships between race and these variables are described below.

### Gender and Age

The literature on sentencing shows that, until recently, an adequate explanation for gender differences in the sentencing process eluded scholars because they tried to explain this phenomenon using conflict or labeling theories. Because each theory was developed to explain class or race differences for men, neither sufficed to explain gender differences (Daly, 1989a, p. 137). With regard to race, gender, and sentencing, the race and sentencing literature largely tells about racial differences in sentencing men because women are usually no more than 10% to 15% of court defendants.





Gruhl, Welch, and Spohn (1984) analyzed gender differences and the likelihood of receiving an incarceration sentence for black, white, and Hispanic (presumably Mexican-American) defendants. Adjusting for relevant controls, they found that the average incarceration was lowest for Hispanic women (35%), followed by black women (45%) and white women (47%). Incarceration rates for men were higher and more similar for both black and white men (56%) and Hispanic men (57%). With regard to gender, urbanization, and court bureaucratization, previous research has suggested that there are inter- and intrajurisdictional differences in sentencing that stem from court organizational factors, a state's sentencing policies, and judicial backgrounds (Brosi, 1979; Eisenstein & Jacobs, 1977; Gaylin, 1974; Hogarth, 1971; Levin, 1977; Ryan, Ashman, Sales, & Shane-Dubow, 1980; U.S. Department of Justice, 1984, 1985, 1987a, 1987b). But how such variability might affect gender-based sentencing disparities is not well known (Daly, 1979, pp. 14-15). Pope's (1975) comparison of outcomes in urban and rural courts revealed more favorable sentences for women in urban courts, but it showed no gender differences in rural courts. Gruhl et al. (1981) found that male and female judges exhibited similar conviction and sentencing patterns with one exception—male judges were less likely than female judges to sentence female defendants to prison. Daly (1989b, p. 15) found some interjurisdictional differences in her study, but there was as much judicial variability within each jurisdiction. Both courts served jurisdictions that were neither urban nor rural, but somewhere in between.

Trends characterizing unequal treatment by age (Austin, 1981; Pope, 1976) and gender are less consistent. For example, Tepperman (1973) discovered that gender differences declined as juvenile courts became more urbanized. Pope, on the other hand, found that gender differences for adults increased with urbanization. Finally, Austin's study supported the earlier work of Pope (1976) and Hagan (1977) and found that suburban, compared to urban, courts sentenced older offenders to prison in disproportionate numbers, notwithstanding the absence of correlated legal variables, whereas rural courts sentenced both nonwhite and older offenders to prison in disproportionate numbers notwithstanding the absence of such variables. It was concluded that urban courts adhered to a more legalistic model of sentencing than suburban and especially rural courts.

This researcher examined the relationship among race, gender, and age. Based on the theoretical and empirical implications of conflict theory, black offenders, regardless of their gender or age, are more likely to receive an IN sentence compared to their white counterparts. It was predicted that younger white females, compared to black females, are less likely to be incarcerated, whereas older black male offenders are more likely to receive an IN sentence. With regard to urbanization and court bureaucracy, as the level of urbanization increases, the race, gender, and age of the offender should diminish, because organizational factors, such as efficiency, become more important than individualized factors.

### Legally Relevant Variables

#### Prior Record

Conflict theorists would argue that black offenders are likely to have a history of criminal behavior because they are more likely to be pretrial detainees, more likely to plead guilty, more likely to receive longer sentences upon conviction, and more likely to be incarcerated than whites who commit similar crimes (Christianson, 1980a, 1980b; Lizotte, 1978; Quinney, 1970, 1974). One of the major criticisms of previous research in this area is that much of the research on racial differences in sentencing has failed to control adequately for legally relevant variables, most important, for variables of prior record and seriousness of the offense (see Hagan, 1974; Kleck, 1981). Most of these studies used crude and imprecise measures of prior record and offense severity, or they failed to control simultaneously for both variables.

Hagan (1975) and Kleck (1981) were especially concerned about controls for prior record. Kleck claimed that racial differences obtained in capital punishment studies outside the South were due to their failure to control for prior criminal record. He supported this contention, however, by mistakenly stating that Hagan's reanalysis of Nagel's (1969) study showed that "racial effects shrank" (Kleck, 1981, p. 786) when prior record was controlled. Instead, Hagan reported an interaction between race and prior record. The difference between racial groups increased and retained statistical significance for the group with at least one prior conviction, whereas it declined and lost significance for the group with no prior conviction.

Hagan did suggest that stricter controls over the number of previous convictions might eliminate the racial bias found in noncapital cases, but such speculation is a shaky foundation for a conclusion about the effect of controls when empirical evidence shows an interaction effect (Kempf & Austin, 1986, pp. 32-33).

Consistent with earlier research, prior record is a strong predictor of sentence outcome, particularly if the offender is black. Because blacks are more likely to be arrested and convicted of crimes more often than whites, this should increase the probability that they will receive harsher sentences. It was therefore hypothesized that, during the sentencing process, a prior record of felony convictions will increase the probability of an IN sentence because it was assumed that having a prior record suggests the offender is more likely to be involved in future criminal behavior. It is also relied upon to determine sentence severity (Albonetti, 1991).

#### Severity of Convicted Offense (Severity)

The severity of the sanction is a legally relevant variable and, as with prior record, is also considered a strong predictor in determining dispositional decisions. As such, the seriousness of the offense is expected to exert an influence on the sentence outcome. Because it is assumed that blacks are convicted of more serious and violent types of offenses, this group is more likely to be subjected to differential treatment in comparison to their white counterparts committing similar offenses. This is especially true when they are sentenced in suburban and rural areas, where they are perceived as a social threat to those in control. It was therefore predicted

that the more serious the offense, the greater the likelihood the offender will receive an IN sentence.

#### Number of Current Convictions (Convictions)

During the presentencing stage, the offender may have other multiple charges such as possessing a weapon or aggravating circumstances during the commission of a felony, such as in the case of an armed robbery. The offender may have pled guilty and/or been found to be guilty of these additional charges by a jury or bench trial at the time of sentencing, but the sentencing has not been completed. In this study, it was hypothesized that the greater the number of current convictions at the time of sentencing, the more likely the offender will receive a harsher sentence. Multiple convictions also indicate the severity of the crime because, if the crime was not as serious, additional charges may have been plea-bargained away during the initial or preliminary hearing and therefore not considered at the time of sentencing.

#### Contextual Variables

After 50 years of research on whether there are racial or ethnic disparities in sentencing, there is only one generalizable finding: sometimes judges discriminate and sometimes they do not (Unnever & Hembroff, 1988, p. 53). Some authors have suggested that this inconsistent finding is attributable more to the methodological flaws and omissions of the research than to the absence of uniform discrimination

on the part of judges.<sup>3</sup> Although there has been no shortage of attempts to model judges' sentencing decisions by taking case and defendant attributes into account,<sup>4</sup> few of these attempts have been guided by any contextual-based theory or decision-making processes. Thus, researchers have not been able to specify exactly what the conditions are that generate the likelihood that judges will or will not discriminate against minority groups. In short, research on sentencing has begun to demonstrate a growing awareness of broader contextual factors that determine the kind of treatment defendants receive. Several researchers have identified urbanization as an important source of unequal treatment.<sup>5</sup> In some of these studies (Hagan, 1977; Myers & Talarico, 1986; Tepperman, 1973), researchers identified court bureaucratization as a strong correlate of urbanization and distinguished it from urbanization to estimate its unique effect on sentencing.

Although noteworthy for considering the broader context of sentencing, these studies have not definitely specified the relationship between urbanization and punishment. Most notably, it is argued that previous researchers have ignored

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<sup>3</sup>For example, see Hagan and Bumiller (1983); Kleck (1981); Klepper, Nagin, and Tierney (1983); Pruitt and Wilson (1983); Spohn, Gruhl, and Welch (1981), and Unnever (1982) for reviews of these methodological concerns.

<sup>4</sup>See, for example, Bernstein, Kelly, and Doyle (1977); Bernstein, Kick, Leung, and Schultz (1977); Chiricos and Waldo (1975); Hagan (1975); Hagan et al. (1979); Hall and Simkus (1975); LaFree (1985); Lizotte (1978); Miethe and Moore (1985); Peterson and Hagan (1984); Swigert and Farrell (1977); Tiffany et al. (1975); Thornberry and Christenson (1984); and Welch et al. (1984).

<sup>5</sup>See Austin (1981), Hagan (1977), Kempf and Austin (1986), Laub (1983), Miethe and Moore (1986), Myers and Talarico (1986, 1987) and Pope (1976).

important county characteristics (e.g., size of subordinate population, income inequality, percentage minority, percentage unemployed, and crime rates) that may be confounded with urbanization. Thus, the tendency to attribute observed differences to urbanization per se could be misleading. In actuality, it is suggested that these differences could be due to county factors that, although linked with urbanization, are nonetheless conceptually and empirically distinct phenomena (Myers & Talarico, 1986, p. 369).

Urbanization and court bureaucratization are therefore two important variables in their study. Their causal relationship to sentencing, based on the conflict-Weberian perspective, is described below.

#### Urbanization and Structural Variables

Urbanization has generally been regarded as one of the most important correlates of criminality (Kornhauser, 1978). Virtually all criminological theory, to some degree, assumes that urbanism is crucially important. In American sociology, Wirth (1938) argued that impersonal ties, primary group structure, and the normative consensus within urban populations are weakened considerably due to the size, density, and heterogeneity of these populations. The progenitors of modern theory, Thrasher (1927) and Shaw and McKay (1942), developed the idea that social disorganization leads to a breakdown of social-control mechanisms within the urban community, leading, in turn, to gang formation and extensive crime and delinquency. These early notions heavily influenced later theorists (e.g., Cloward & Ohlin, 1960;



Cohen, 1955), who also focused their attention on gang delinquency in the city (Laub, 1983, p. 183).

However, there exists in the literature a direct challenge to this position (see Gordon, 1975, 1976). This challenge, referred to as "compositional theory," questions the importance of urbanization and contends that differences in crime rates across the urban-rural dimension can be attributed to differences in the composition of the populations residing in these areas.<sup>6</sup> In other words, urbanism itself has no major influence relative to that of other variables in accounting for variation in urban-rural crime rates. Research has shown that crime rates are higher in urban than in rural areas (see Harries, 1980; Webster, 1978). In addition, it is known that blacks and other minorities tend to locate in large cities (U.S. Bureau of the Census, 1972). The question arises as to whether there could be a confounding effect between urbanism and race in accounting for variation in urban-rural crime rates. It has been suggested that the social characteristics of the population aggregates be examined (Quinney, 1964, p. 1). Urbanization may also be expected to condition the effect of structural factors on social control. Quinney (1966) argued that law enforcement is more rigid in nonmetropolitan areas as a result of greater conflict between subordinates and dominants in these communities. With regard to sentencing, Hagan (1977), among others (Austin, 1981; Miethe & Moore, 1986; Pope, 1976), found that differential treatment of racial minorities was more pronounced in rural courts.

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<sup>6</sup>For a summary of these theories, see Fischer (1975, 1976).

A court's context, therefore, strongly influences the ways in which cases are selected, heard, and disposed, whereas its social structure is consistently associated with differences in rates of crimes, the degree of procedural formality, and the administration of justice. For instance, urban counties are more heterogeneous, more diverse, and less stable than rural counties, where cases are disposed in a process described as being more formal and due-process oriented. Second, urban courts also sweep a broader, more inclusive net and encompass proportionally more minorities and younger youths than do suburban or rural courts. Finally, the social structure and procedural formality are also associated with more severe sanctions. Some researchers have argued that formal urban courts are believed to sentence similarly charged offenders more severely than do suburban or rural courts. As a result, where offenders live affects how their cases are disposed and the severity of the sentences they receive. Rural judges' exercises of discretion can also result in race, gender, and class differences (Feld, 1991, pp. 157-162).

In most studies, urbanization has been operationalized using social structural variables, which in this study included the size of subordinate groups (e.g., percentage unemployed, percentage black, economic inequality, and percentage poor) and crime rates. The causal relationship between urbanization and these structural variables and dispositional decisions is described below.

#### Size of Subordinate Population

In the literature, two distinct but parallel views have been advanced regarding the relative size of racial minority and economically disadvantaged populations and

the resulting efforts at social control by elites (McCarthy, 1990, p. 328). Both perspectives anticipate that such efforts will increase as the relative size of the subordinate population grows. The first view posits that the dominant elite will respond to the threat posed by a large subordinate population by increasing the use of social control. The second position argues that subordinates are less effective in resisting social control; thus, their powerlessness increases its effective use (Liska & Chamlin, 1984).

Studies of subordinate populations have examined the racial and economic composition of the population using measures such as percentage minority, percentage unemployed, percentage of families below the poverty line (percentage poor), percentage urban, and economic inequality, as measured by the Gini Index (Bailey, 1981; Jacobs, 1978, 1979; Jencks, 1992; Land, 190; Sampson & Wilson, 1993; Wilson, 1987, 1991). At present, it has been noted (Myers & Talarico, 1987, pp. 25-26) that much of the research on subordinate-dominant relations has focused on measures of social control other than confinement, but the results generally have supported the conflict perspective, which found that greater inequality and larger black populations tend to foster a stronger police force (Huff & Stahura, 1980; Jacobs, 1979; Liska, Lawrence, & Benson, 1981), greater use of deadly force (Jacobs & Britt, 1979), larger police expenditures (Jackson & Carroll, 1981; Lizotte, Mercy, & Monkkonen, 1982), higher arrest rates (Liska & Chamlin, 1984; Williams & Drake, 1980), and higher imprisonment rates (Jacobs, 1978; Joubert et al., 1981; but cf. Bailey, 1981; Carroll & Doubet, 1983).

It was therefore hypothesized that as the size of the subordinate population increases, so does the "perceived threat" of minorities (especially blacks), the unemployed, and the poor. As a result, in areas where the racial composition of blacks is high, one can expect to see more intensified social control—more criminalization, more formal processing by the criminal justice system, and increased incarceration—compared with groups that are perceived as less threatening to the status quo (Sampson, 1993, p. 288).

### Unemployment

The relationship between unemployment, crime, and imprisonment has long interested social scientists. The common view of how unemployment influences imprisonment emphasizes the negative consequences of economic deprivation. Unemployment creates a stressful state that renders individuals susceptible to criminal behavior in order to overcome their economic problems (Bonger, 1916; Brenner, 1976). In this view, there is a direct relationship between increased motivation to commit a crime produced by unemployment and resultant criminal behavior. In turn, heightened rates of imprisonment during economic downturns may stem from either a direct reflection of elevated crime rates (Brenner, 1976) or a mechanism whereby social-control authorities remove members of the underclass from the labor market to relieve economic crises (Rusche & Kirchheimer, 1939; Wallace, 1981).

The few studies on how unemployment affects rates of imprisonment have been similarly inconclusive. Although some researchers reported that rates of

imprisonment were invariant over time (Blumstein & Cohen, 1973; Blumstein et al., 1977), others found that imprisonment rates fluctuated inversely with rates of unemployment (Greenberg, 1977; Wallace, 1981), and still others discovered that a direct relationship existed after controlling for changes in the crime rate (Galster & Scatura, 1985). However, numerous problems plagued most of these studies, preventing any definitive conclusions because most researchers have not heeded Radzinowicz's (1939) early cautions that the relationship between economic conditions and crime will probably differ across different social groups, types of crimes, and the state of the administration of justice in question. In addition, most studies of unemployment, crime, and imprisonment have been cross-sectional, an approach that is inherently unsuited for the study of the interrelationships between other variables because of the absence of lagged effects in such models. There may be considerable delay between a period of unemployment and resulting criminal activity (Parker & Horowitz, 1986, pp. 752-753).

Conversely, findings regarding the effect of unemployment on the level of incarceration have been relatively consistent (McCarthy, 1990, p. 327). These studies have varied in methodological sophistication, but it has been found that research in a variety of settings, employing cross-sectional and longitudinal analyses, has shown that increases in prison population do tend to be associated with unemployment (Box & Hale, 1982; Brenner, 1976; Dobbins & Bass, 1958; Grabosky, 1979; Greenberg, 1977; Hale, 1988; Jankovic, 1977; but cf. Parker & Horowitz, 1986; Robinson, Smith, & Wolf, 1974; Stern, 1940; Vogel, 1975; Yeager,

1979). There has been speculation that sentencing practices may account for the effect of unemployment because unemployed offenders tend to receive harsher sentences, but there has been no indication whether this is a result of a desire to confine dangerous offenders who lack the stabilizing community ties of employment, to punish persons who fail to conform sufficiently to maintain a job, or to remove surplus labor from the labor pool. It has been suggested that no researcher has attempted to relate court sentencing practices to incarceration rates, so there is no evidence that prison sentences are more frequently used in the specific jurisdictions suffering from high unemployment rates (McCarthy, 1989, p. 243).

The debate about the effect of unemployment has not been settled, however, because both methodological and conceptual refinements continue to yield new interpretations of the link between unemployment and incarceration. Recent interstate longitudinal research by Galster and Scaturro (1985) used a variety of controls, including law enforcement and correctional expenditures, and disaggregated the incarceration rate to take into account variations in new prison commitments, in returning parolees, and in conditional and unconditional releases. The authors found that the conflict view was supported only in southern states, which are considered to be in an earlier stage of economic development than other parts of the country. On the other hand, Inverarity and McCarthy (1988) employed national data in a 36-year longitudinal analysis of labor markets that varied in level of competitiveness, and concluded that the Rusche-Kirchheimer formulation which

proposes that the modes of labor exploitation and dominant/subordinate relations in a population influence the use of social control.

According to conflict theory, the level of unemployment will have a positive effect on incarceration as the dominant group attempts to control those who are poor and powerless. It was therefore hypothesized that offenders who are sentenced in jurisdictions with high unemployment rates are more likely to receive an IN sentence than those in jurisdictions with lower unemployment rates.

### Crime Rates

The conflict theory proposes that structural characteristics of the population will have direct effects on the use of incarceration apart from variation in the rate of crime. Although a positive relationship between crime and incarceration rates might be regarded as nothing more than a passive response to an increased volume of activity in the criminal justice system, empirical support for this association has been described as somewhat weak (McCarthy, 1990, pp. 321, 326). Longitudinal and cross-sectional studies of the influence of crime rates on levels of incarceration have yielded inconsistent results. Some researchers have concluded that no relationship exists between crime rates and incarceration (Blumstein & Cohen, 1973; Blumstein, Cohen, & Nagel, 1977). Other studies have produced positive correlations (Carroll & Doubet, 1983; Joubert, 1981; McGuire & Sheehan, 1983), whereas still other research has yielded negative correlations (Bailey, 1981; Biles, 1979; Rutherford, 1977).

The relationship between crime rates and incarceration is important; however, there is evidence that methodological flaws may explain at least some of the inconsistencies in research findings. Whereas most researchers have concluded that the level of crime has no effect on rates of incarceration, high and increasing rates of crime have resulted in sentencing reforms (i.e., determinate and mandatory sentencing policies) (Carroll & Cornell, 1985, p. 478). There is a general consensus that urbanization influences crime rates (Bureau of Justice Statistics, 1986; Krohn, 1978; Shelly, 1981), but the implications for social control are understood less clearly (Myers & Talarico, 1987). Urbanization can be expected to increase the number of people subject to sanctions because it influences the crime rates and fosters greater reliance on formal means of social control (Berk, Rauma, Messinger, & Cooley, 1981; Liska & Chamlin, 1984). Measures of urbanization thus are used frequently as control variables in conflict analysis.

In her recent study on crime rates and jail/prison confinement, McCarthy (1990, pp. 331-332) found that all structural variables were positively correlated with both jail and prison confinement; not unexpectedly, crime rates were also significantly correlated with incarceration rates. Rates of jail and prison confinement were also highly correlated; this relationship showed that counties that made greater use of one form of confinement sanction tended to make similarly great use of the alternative form. Finally, results of the regression analysis showed that structural factors had a significant direct effect on the use of confinement apart from the effect of crime rates, but the effects were not uniform and varied with the type of



confinement under consideration. Because of the continuing expectation that crime does influence the use of incarceration in some way, crime rates are also used routinely as control variables in efforts to assess the effect of other factors on confinement patterns (Myers & Talarico, 1987).

Sampson (1985), in his study on urban homicide, argued that the higher individual-level prevalence of offending among blacks than whites has important consequences for aggregate analysis. Quite simply, a positive relationship between percentage black and the aggregate crime rates across areas was expected, due only to the effects of differing composition. This result was also expected because high offending rates for blacks as compared to whites tended to induce a positive correlation between percentage black and crime rates; that is, the larger the black composition, the higher the aggregate crime can be expected. The use of the aggregate crime rates thus has important implications for an ecological inquiry into the effects of race on crime. The most important issue is that, in the presence of large between-group differences, the aggregate rate obscures contextual and compositional effects. Kornhauser (1978, p. 104) raised a number of research questions in this area, such as: How do we know that area differences in crime (and delinquency) rates result from the aggregate characteristics of communities rather than the characteristics of individuals selectively aggregated into communities? How do we even know that there are any differences at all once their differing composition is taken into account? In the case of race and crime, ecological inquiry suggests

that one solution is analysis of the effects of city racial composition on the criminal behavior of blacks and whites.

This contextual approach is consistent with the basic goal of contemporary urban economy as reviewed by Berry and Kasarda (1977, p. 13), who argued that a fundamental assumption of the ecological approach is that social systems exist as entities *sui generis* and exhibit structural properties that can be examined apart from the personal characteristics of their individual members. As such, one would contend that there is little doubt that racial composition represents a structural or macrosocial property of residential environment. The experience of growing up black in a predominantly white community is certainly different from that of growing up in a predominantly black community. An entire class of sociological theory is built around the effects of social structure on inter-group relations (see Blalock, 1967; Blau, 1977).

Consequently, an exact test of aggregate-level effects of racial composition and other structural factors requires that established correlates of criminal behavior be taken into account. As Hindelang's (1978, 1981) research showed, there are extremely strong differentials in offending, not only by race, but by gender and age as well. As Hindelang (1981, p. 472) noted, the variability in criminality explained by these characteristics is so great that it is incumbent on sociological researchers to take them into account. This does not imply that one must construct or call upon extant social theory to explain demographic correlates such as age (see Hirschi &

Gottfredson, 1983), but rather that one not attribute to social structure what may simply be manifestations of individual-level differences.

In short, Sampson (1985) suggested that only by controlling for individual-level characteristics such as race, by which aggregate units differ in their composition, will one be in a position to isolate contextual effects reasonably. Unfortunately, few studies in criminology have been conducted within a contextual framework. This has been largely because of the difficulties in collecting data on both individual and aggregate characteristics across a sample of areas that vary on key variables.

Although the literature on crime rates and sentencing is inconclusive, this writer proposed that the level of crime will have a positive effect on incarceration (e.g., IN sentence) rates. In other words, offenders who are sentenced in jurisdictions with high levels of crime are more likely to be sentenced IN than those who are not.

### Court Bureaucratization

Court bureaucratization has been identified as a strong correlate of the urbanization factor. It is only recently that researchers have begun to examine the relationship between these two variables, and the findings from these studies have documented significant urban-rural differences in sentencing. Hagan (1977), among others (Austin, 1981; Meithe & Moore, 1986; Pope, 1976), found that racial discrimination was more pronounced in rural courts, whereas Kempf and Austin (1986) found that it was more pronounced in urban courts. They concluded that

racial disparity is revealed more clearly when separate analyses are conducted within levels of urbanization. Finally, there is some evidence (Austin, 1981) that social background factors are more important in rural courts, whereas legally relevant factors, such as prior record, play more prominent roles in urban courts.

Little has been written to demonstrate that the size or scale of an enterprise is itself sufficient to explain the emergence of a bureaucratic organization, even where the conformity of a subordinate population is not problematic. Bureaucratization of decision making in a large organization (in this case, courts) emerges in opposition to norms of "individualized" treatment, as a response to the scale of operation and the potential for conflict among decision makers. With such bureaucratization, large courts become more like one another in their decisions; their responsiveness to ascribed differences among clients, especially differences in race and gender, decreases; and techniques of expediting the flow of clients are perfected, without noticeable benefit to the recipients of organizational services.

Within a legal system that is normatively antagonistic to the standardization of decision making, one finds an association between court size and the degree of court bureaucratization that may be interpreted as cause and effect. For instance, large courts, which are typically found in urban areas, are somewhat larger than medium-sized courts, which are usually found in suburban areas; likewise, medium-sized courts are larger than small courts, which are characteristic of rural areas. There is some reason to expect, then, that the scale and nature of court activities will be qualitatively different in the largest courts, and not merely quantitatively different

along a monotonic size continuum from small (i.e., rural) to large (urban). Stated differently, one may expect that once a court passes a certain level of size or activity, it may become more unlike smaller courts than one would have predicted from a comparison of small and medium-sized courts alone (Tepperman, 1973, pp. 346-351).

The theory of court bureaucratization proposes that a primary characteristic of bureaucratized decision making is "standardization." If urban court systems are bureaucratized, decision making should be more consistent over time than decision making in rural court systems. Similarly, one should expect to find that bureaucratized courts are more like one another than are nonbureaucratized courts. Because the courts ideally are expected to treat offenders as unique individuals without respect to race, gender, or class, it would be a difficult, if not impossible, task to "match" offenders in different courts to assess whether the court treatment of similar offenders is identical or divergent.<sup>7</sup>

In sum, the available research conveys the impression that ostensibly similar offenders are treated differently, depending on whether they are sentenced in urban or rural courts. Although there are exceptions, most findings have supported Weberian expectations about the consequences of bureaucratization. Differential treatment appears to characterize rural courts, and it declines with urbanization and subsequent court bureaucratization (Myers & Talarico, 1986, p. 369). This

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<sup>7</sup>Because Tepperman (1973) did not have the data to judge whether the same kinds of cases were customarily treated in the same way in large as contrasted with small courts, he cautioned readers on the validity of this proposition.

researcher hypothesized that individual differences in sentencing (e.g., such as one's race and gender) and the differential treatment of offenders should disappear in urban courts, which are most often characterized as bureaucratized courts. It is believed that, in these courts, most offenders experience the same criminal processing because efficiency, not the status of the offender, becomes the major goal of the organization. One should expect, then, to see differential treatment in suburban and rural areas, where not only the status of the offender is considered at sentencing, but also the size of the black population in the court's jurisdiction, which, according to conflict theory, is perceived as threatening and must be socially controlled.

## CHAPTER III

### METHODOLOGY

#### Data

In this study, the sentencing guidelines data for 1983, totaling 10,596 cases, were analyzed. The purpose of Pennsylvania sentencing guidelines, which affect any offender convicted of a felony or serious misdemeanor after July 21, 1982, was to establish sentencing standards in which the severity of the convicted offense and the offender's criminal history are the major determinants of sentencing decisions (Kramer & Scirica, 1986). Guidelines sentences are established for each combination of offense severity/criminal history in the form of a sentencing matrix. Also under the guidelines, dispositional or durational departures from presumptive sentences are permissible, but the judge must justify any departure from the guidelines with written statements outlining the circumstances behind the departure (Kramer & Steffensmeier, in press). Although it is a fairly rigorous and system-crafted sentencing system, the specific structure and scope of the Pennsylvania guidelines, nonetheless, affords ample opportunity for the intrusion of sentencing (Tonry, 1980).

The data for this study consisted of a statewide sample of convicted felons in the State of Pennsylvania, based on a monitoring system developed by a

commission. Each sentence given for a separate criminal transaction must be reported to the commission. There are 67 counties and 59 judicial districts in the State of Pennsylvania. As viable political and social entities, counties vary markedly in demographic, political, economic, and social composition. Typically (in previous research), the significance of the race of the offender being sentenced is assumed, for example, apart from the place where the sentencing occurred. An analysis of sentencing across all these counties not only permitted an assessment of contextual factors, but the large number of cases ( $N = 10,596$ ) permitted the systematic use of statistical controls. The data provided sentencing information on a large number of cases, detailed information on prior record and offense severity, and information on a number of other variables that might affect sentencing outcomes. The data base has been described as unique because it includes the richest information in the country for analyzing sentence decisions (Kramer & Steffensmeier, in press).

### Variables and Measurement

#### Dependent Variable

The dependent variable in this study was the IN/OUT decision. Sentencing is thought of as a two-stage process involving two decisions. The first decision is whether to imprison (IN decision, which also includes jail) or not to imprison (OUT decision, which includes probation or some other sentence alternative, such as fines, restitution, or community service). The second decision concerns sentence length; however, the IN/OUT decision was the focus of this study. The dependent variable was a dichotomous variable and was measured using 1 = IN (prison/jail) and 0 =



OUT (probation or some other sentence alternative, such as fines, restitution, or community service). (See Table 1 for a description of variables used in this study.)

Table 1: Description of variables, coding, and summary measures.

Independent Variables	Codes
Race	Binary: Coded 1 = black, 0 = white
Gender	Binary: Coded 1 = male, 0 = female
Age	Binary: Coded 1 = older (> 25 years), 0 = younger ( $\leq$ 25 years)
Prior record	Criminal history score: 7-category ordinal scale with a range of 0 to 6
Severity	Severity of convicted offense: 10-category ordinal scale with a range of 0 to 9
Convictions	Number of current convictions at time of sentencing, with range of 0 to 9
Percent black	% of county population that is black
Percent unemployed	% of county population that is unemployed with civilian labor force
Percent poor	% of county population living below the poverty line
Percent urban	% of county population living in urban areas
Crime rates	No. of crimes known to police/100,000 persons
Court size	Continuous variable: Coded 0 = small, 1 = medium, 2 = large
Court jurisdiction	Continuous variable: Coded 0 = rural, 1 = suburban, 2 = urban
Dependent Variable	Codes
IN/OUT decision	Binary: Coded 1 = IN, 0 = OUT

### **Independent Variables**

The independent variables in this study included extralegal variables or the defendant's social attributes (e.g., race, gender, and age), legal variables (severity, prior record, number of current convictions [convictions]), and county contextual variables (e.g., percentage black, percentage poor, percentage unemployed, percentage urban, and crime rates). Most of the extralegal variables were coded as dummy variables. Two dummy variables were used to measure the defendant's race: (1 = black, 0 = white). Gender was also dichotomized and coded as 1 = male and 0 = female. Age was a dichotomous variable and was coded as 0 = younger ( $\leq 25$  years) and 1 = older ( $> 25$  years).

The legal variables included prior record, measured using a weighted seven-category ordinal scale developed by the Pennsylvania Sentencing Commission. These criminal-history scores measure the number and severity of the defendant's past convictions. All felonies, as well as misdemeanors punishable by at least one year, are included. Misdemeanors (punishable up to five years in Pennsylvania) may total no more than two points on the criminal-history score, whereas felonies add one, two, or three points each, depending on their severity. Severity of the convicted offense was measured using a 10-point scale developed by the Pennsylvania Sentencing Commission. The scale of offense severity ranged from 1 (minor theft) to 10 (murder in the third degree). The ranking of the misdemeanors/felonies on this scale is consistent with the rankings of offenses on most other scales of seriousness (e.g., burglary-1 vs. burglary-2). In essence, the

10-point severity scale ranks each statutory offense on the scale and, for certain offenses such as burglary, subdivides the statutory classification into multiple ranks, depending on the specific circumstances of the crime (Kramer & Scirica, 1986). Finally, the number of convictions (convictions) was another interval-level variable, ranging from one to nine convictions, and it equaled the number of convictions the offender had at the time of sentencing.

The two county contextual variables in this study were urbanization and court bureaucratization. Urbanization was operationalized using five structural variables: percentage black, percentage poor, percentage unemployed, percentage urban, and crime rates. The information for these variables was obtained from the 1983 City and County Databook. To disentangle the effects of urbanization from those of court bureaucratization, two aspects of court bureaucratization were considered. They included court size and the location of the court (e.g., court jurisdiction) where the offender was sentenced. Initially, court size was computed using the number of probation officers/county, number of caseloads/county, and number of presentence reports/county. This variable was computed by first taking an average of the number of probation officers, caseloads, and presentence investigation reports per county. Because the means for each of these variables were disproportionate, these scores were standardized before they were combined to create the court size variable.<sup>1</sup>

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<sup>1</sup>It was suggested that court size be measured using the number of probation officers rather than judges. The latter was found to be an inaccurate measure because it was redundant with the urbanization factor (Hagan, 1973; Myer & Talarico, 1986; Tepperman, 1973). This study revealed that court size may also be confounded with the urbanization factor (e.g., percentage black, percentage poor,

Court size was a continuous variable and was coded as 2 = large urban courts, 1 = medium suburban courts, and 0 = small rural courts. Court jurisdiction is a measure based on the 1980 Census Bureau computation of the percentage of the county population classified as urban, suburban, and rural.<sup>2</sup> In this study, this variable was also continuous and was coded as 2 = urban jurisdictions (including Philadelphia, Allegheny, and Pittsburgh counties), 1 = suburban jurisdictions including Bucks, Montgomery, Delaware, and Westmoreland counties), and 0 = rural counties (including all other remaining counties).

Crime rates was another county contextual variable, measured using rates (per 100,000) of violent (e.g., murder, forcible rape, robbery, and aggravated assault) and nonviolent (i.e., property—burglary, automobile theft) crimes. The source for these data was the 1983 City and County Databook.

### Data-Analysis Procedures

The analysis for this study proceeded from bivariate correlations to logistic regression equations. The bivariate correlations were examined to assess the

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and percentage urban), and that using probation officers as a measure of court size may not be any different from using number of judges.

<sup>2</sup>This variable was based on the Census Bureau computation of the percentage of counties' population classified as urban, suburban, and rural. The values were arrived at in the following way: counties with 33% or less of their population classified as urban by the Census Bureau were labeled as rural; counties with a population ranging between 34% and 67% classified as urban were labeled as suburban; and the remaining counties, those with 68% or more of their population classified as urban were designated as urban (Austin, 1981).

strength of the associations between the independent and the dependent variables.<sup>3</sup> Because the dependent variable representing the IN/OUT decision was binary coded (1 = IN, 0 = OUT), logistic regression was used as the multivariate procedure.

Using the standardized parameter estimate, the analysis first assessed the additive and interactive effects of extralegal (race, gender, age), legal (prior record, severity, number of current convictions), and contextual (percentage black, percentage poor, percentage urban, percentage unemployed, crime rates, court size, and court jurisdictions) variables on the IN/OUT decision. Because the contextual variables were highly correlated, court size was selected to represent all of the contextual variables and used as the predictor variable in the logistic regression model.

Using a stepwise procedure, an additive equation consisting of all variables (e.g., extralegal, legal, and contextual) was entered into the regression model. Next, interactive equations that included some of the independent variables and the product terms<sup>4</sup> were then entered into the model. The variables that did not meet the significance level for entry into the model were dropped. The procedure continued to add all other variables, one at a time, and any variable deleted at one

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<sup>3</sup>The magnitudes of the correlation coefficients were measured on a scale where .70-1.00 was considered a strong relationship, .40-.69 was considered a moderate relationship, and .10-.39 was considered a weak relationship.

<sup>4</sup>The interactive terms for this analysis included (a) black x gender, (b) age x gender, (c) black x age, (d) black x age x gender, (e) gender x court size, (f) age x court size.

step was still eligible for reinclusion at a later step. The process terminated either when new variables were entered or when the one to be entered was the one dropped at the previous step. In this study, the significance level for staying in the model was set at  $p \leq .05$ . It was predicted that the direction and magnitude of these variables would depend on the offender's race, the size of the court, and its location. In short, these three variables were believed to operate as significant determinants of the extent and magnitude of differential treatment at the time of sentencing.

Next, the choice of any analytical procedure depends on its ability to address two problems the data can pose: sample-selection bias and collinearity (Myers & Talarico, 1986, pp. 374-375). In this study, there were some limitations of the data that restricted the generalizability of the results. First, it contained only convicted felons. Individuals who had all charges dropped or were acquitted on all counts were excluded. If the cases do become more sociologically homogeneous in later stages of processing, this suppression of social variation is expected to limit the explanatory power of social characteristics (Miethe & Moore, 1986, p. 221; Zatz & Hagan, 1985, pp. 104-105). Next, if there is differential attrition by race through earlier stages of processing, sample-selection bias would limit substantive inferences about the population of felony cases (Berk, 1983). The problem of sample-selection bias was not addressed in this study; however, it is mentioned as one of the shortcomings of this analysis.



In the next chapter, the findings from this study are presented. Chapter V includes a summary, discussion, conclusions, and recommendations for future studies on sentencing.



## CHAPTER IV

### PRESENTATION AND ANALYSIS OF FINDINGS

#### Descriptive Statistics for the State of Pennsylvania and Urban, Suburban, and Rural Court Jurisdictions

The descriptive statistics for the State of Pennsylvania and urban, suburban, and rural court jurisdictions from which the sample was taken are shown in Table 2. In the State of Pennsylvania, offenders classified as urban residents comprised 21% of the statewide sample, whereas 26% were suburban and 53% were rural (Census Bureau, 1980). On the average, blacks made up 8% of the total population, and whereas they were virtually nonexistent in some counties, they comprised 37% of the population in others. Across counties, the percentage of unemployed ranged from 3% to 11% of the population, while the average crime rate was 384 felony offenses per 100,000 residents. In urban jurisdictions ( $n = 2,219$ ), 88% of the convicted offenders were males, whereas 12% were females. With regard to race, surprisingly, blacks comprised 37% of this population, while whites made up 63% of the total offender population. The mean score for the severity variable was 4.44, with a standard deviation of 1.80. The average prior record score was 1.44, with a standard deviation of 2.05, while the average number of current convictions was

Table 2. Descriptive statistics for the State of Pennsylvania and urban, suburban, and rural court jurisdictions.

Variable	Statewide (N = 10,596)		Urban (n = 2,219)		Suburban (n = 2,752)		Rural (n = 5,625)	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD
% Black	73.60	--	37.10	--	76.60	--	80.20	--
% White	26.40	--	62.90	--	23.40	--	19.20	--
% Male	88.50	--	87.70	--	88.00	--	88.20	--
% Female	11.50	--	12.30	--	12.00	--	11.80	--
Age	27.40	8.79	27.10	8.49	27.60	8.59	27.50	9.00
Severity	3.69	1.93	4.44	1.80	3.68	1.88	3.37	1.92
Prior record	1.32	1.99	1.44	2.05	1.21	1.95	1.32	1.03
Convictions	1.33	0.77	1.36	0.76	1.42	0.82	1.27	0.75
% minority	10.40	12.80	29.90	15.50	6.40	2.57	4.58	4.43
% unemployed	4.85	1.07	4.58	0.36	4.26	0.78	5.25	1.21
% poor	9.60	4.51	15.50	5.52	5.76	1.04	9.16	2.19
% urban	69.70	26.50	98.10	2.18	85.60	8.72	50.70	21.90
Crime rates/100,000	384.50	129.40	514.60	96.17	421.20	59.10	315.20	118.60
Court size	0.64	0.93	1.43	0.94	0.36	0.11	0.14	0.09

1.36. Minorities comprised 30% of the urban population, while 5% were unemployed and 16% were poor. The average crime rate in urban jurisdictions was 515 felony offenses per 100,000 residents. Finally, the average court size was 1.43, which is a standardized score reflecting the number of probation officers, the caseload size, and the number of presentence investigation reports.

In suburban jurisdictions ( $n = 2,752$ ), males also comprised 88% of the statewide sample of convicted offenders, while females made up the remaining 12%. Racially, blacks comprised 77% of the convicted offenders, while 23% were white. In suburban areas, the average age of the offender was 27.6 years old, with ages ranging from 17 to 75 years. The mean score for the severity variable was 3.68, while the mean score for those with a prior record was 1.21. Most offenders in this jurisdiction had at least one current conviction at the time of sentencing. In suburban areas, 6% of the population were minorities, while 4% were unemployed and 6% were classified as poor. Finally, the average crime rate in suburban areas was 421 felony crimes per 100,000 residents, and the average size for suburban courts was .36.

The rural jurisdictions had the largest number of convicted offenders ( $n = 5,625$ ). Females comprised 12% of this sample, while males made up the remaining 88%. Eighty percent of the offenders in rural areas were black, while 20% were white. The average age of convicted offenders was 27.4 years. The average offense severity score was 3.37, while the prior record score was 1.32, and the number of current convictions was 1.27. In rural areas, 51% of the population was

classified as urban, and minorities comprised 4.6% of this population, while 5.3% were unemployed and 9% were poor. The average crime rate was much lower in rural areas, having a mean score of 315 felony offenses per 100,000 residents. Finally, the average court size for rural jurisdictions was .14.

### Descriptive Statistics for Extralegal, Legal, and Contextual Variables

Table 3 ( $N = 9,943$ ) contains the descriptive statistics<sup>1</sup> for extralegal and legal variables that were expected to influence the sentence outcome for the additive and interactive equations. These variables include race, gender, age (i.e., extralegal variables) and offense gravity score, prior record score, and number of current convictions (i.e., legal variables). Eighty-eight percent of the statewide sample of convicted offenders in this study were males, while the remaining 12% were females. With regard to race, of the 9,943 cases, 72% were black and 28% were white. Fifty-three percent of the offenders were sentenced IN (state prison/jail), while 47% of them were sentenced OUT (probation, restitution, fines, community service). To predict the relationship between age and the IN/OUT decision, age was dichotomized (see Table 1) to distinguish older offenders (coded 1 = > 25 years) from younger offenders (coded 0 ≤ 25 years). Within the range of 0 to 1, the mean score for age was .445. The descriptive statistics in Table 2, however, indicate the mean age for all court jurisdictions. As indicated, the mean age for offenders

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<sup>1</sup>This sample size is smaller than the sample size reported in Table 2 because it omits the "other" race category ( $N = 653$ ); it only includes black and white offenders for purposes of this study.

sentenced in the State of Pennsylvania was 27.4, with ages ranging from 16 to 82 years. The offense gravity score was measured using a 10-point scale. This scale ranked each statutory offense and assessed the offense type and circumstances of the crime. The average gravity score for a given crime was 3.68, with a standard deviation of 1.93. The offender's prior record score was measured using a 6-point scale, and the typical offender had at least one prior record and one current conviction at the time he or she was sentenced.

Table 3: Descriptive statistics for extralegal, legal, and contextual variables and the IN/OUT decision (N = 9,943).

Variable	Mean	SD	Range
IN/OUT	.534	.499	0-1
Age	.445	.497	0-1
Gender	.881	.323	0-1
Black	.718	.449	0-1
Severity	3.680	1.930	0-9
Prior record	1.340	2.010	0-6
Convictions	1.320	.766	1-9
% black	8.260	11.510	0-38
% unemployed	4.880	1.080	3-11
% poor	9.620	4.470	4-20
% urban	69.290	26.890	0-100
Crime rates	381.360	129.800	136-720
Court size	.637	.930	0-2
Court jurisdiction	.681	.800	0-2

The contextual variables describe the characteristics of the county or jurisdiction where the sentencing court is located. In this study, the descriptive statistics for the contextual variables revealed that, on the average, blacks comprised 8% of the sample across counties, while 9.6% of the sample were classified as poor, and 4.8% were unemployed. The average crime rate was 381 per 100,000 residents, while the mean score for the court size was .63 and the mean score for court jurisdiction was .68.

#### Relationship Between Extralegal Variables and the IN/OUT Decision

Table 4 shows the results of the bivariate analysis, showing the correlation matrix for extralegal, legal, and contextual variables and their relationship to the IN/OUT decision. The correlations were relatively low among the extralegal (age, gender, black) and legal (severity, prior record, convictions) variables. The largest correlations were prior record and age ( $r = .156$ ), severity and black ( $r = -.145$ ), and prior record and gender ( $r = .122$ ). These correlations indicate that a criminal history was positively associated with older male offenders, while the severity of the offense was negatively related to black offenders. Also, women were somewhat more likely to have a prior record.

In assessing extralegal and legal variables with contextual variables, the offender's race and severity of the offense were the only variables that were significantly related to all of the contextual variables. Being black was negatively related to percentage black in the jurisdiction, size, percentage urban, crime rate,

Table 4. Correlation matrix for extralegal, legal, and contextual variables and the IN/OUT decision.

	IN/OUT	Age	Gender	Black	White	Severity	Prior Record	Convictions	% Black	% Unemployed	% Poor	Size	% Urban	Crime Rates	Court Jurisdiction
IN/OUT	1.000														
Age	-.023*	1.000													
Gender	.107*	-.074*	1.000												
Black	-.103*	-.002	.043*	1.000											
White	.103*	.002	-.043*	-1.000	1.000										
Severity	.284*	-.089*	.070*	-.145*	.145*	1.000									
Prior record	.370*	.156*	.122*	-.075*	.075*	.096*	1.000								
Convictions	.041*	-.032*	-.016	-.021*	.021*	.114*	-.007	1.000							
% black	.050*	-.030*	.018	-.501*	.501*	.219*	.020*	.033*	1.000						
Unemployed	.054*	.011	.010	.229*	-.229*	-.058*	.005	-.094*	-.325*	1.000					
Poor	.122*	-.040*	.029*	.325*	.325*	.176*	.013	-.018	.810*	.041*	1.000				
Size	.023*	-.030*	.020*	-.475*	.475*	.231*	.013	.032*	.960*	-.269*	.791*	1.000			
% urban	-.099*	.014	-.017	-.408*	.408*	.160*	.042*	.073*	.585*	-.517*	.127*	.589*	1.000		
Crime rates	-.023*	-.007	-.012	-.436*	.436*	.167*	.033*	.079*	.743*	-.597*	.373*	.743*	.742*	1.000	
Court jurisdiction	-.092*	.008	.015	-.426*	.426*	.214*	.016	.055*	.703*	-.313*	.393*	.795*	.760*	.623*	1.000

\*p ≤ .05.

and urban court jurisdiction. It was positively related to percentage poor in the jurisdiction and size of the court. These correlations indicate moderate strength of relationships.

There were positive relationships of severity to court size ( $r = .231$ ), percentage black ( $r = .219$ ), and court jurisdiction ( $r = .214$ ). The correlations between the contextual variables and the other extralegal (age, gender) and legal (prior record, convictions) variables were either weak, virtually nonexistent, or insignificant. Finally, in assessing the relationship between extralegal and legal variables and the sentence outcome, they were all significantly related to the IN/OUT decision; however, some of these correlations were relatively low. Prior record had the strongest relationship to the IN/OUT decision ( $r = .370$ ), followed by the severity of the offense ( $r = .284$ ). These other variables were also either weakly (black,  $r = .103$ ; gender,  $r = .107$ ) or virtually unrelated (age,  $r = -.023$ ).

#### Relationships Between Contextual Variables and the IN/OUT Decision

The correlations among county contextual variables and the association of these variables with the IN/OUT decision are shown in Table 4. The correlations were relatively high among the contextual variables (percentage black, percentage unemployed, percentage urban, percentage poor, crime rates, court size, and court jurisdiction); therefore, a problem of multicollinearity became apparent. An examination of these variables revealed that the strongest correlation was between court size and percentage black ( $r = .960$ ). The next strongest correlations were



between percentage poor and percentage black ( $r = .810$ ), followed by court jurisdiction and court size ( $r = .795$ ) and court jurisdiction and percentage urban ( $r = .760$ ). Finally, crime rate was strongly correlated with percentage black ( $r = .743$ ), percentage urban ( $r = .623$ ), and court jurisdiction ( $r = .623$ ). Ironically, percentage unemployed was the only variable that was negatively related to crime rate ( $r = -.597$ ), whereas crime rate was moderately related to percentage poor ( $r = .373$ ).

The correlations between the contextual variables and the IN/OUT decision were not as strong as their relationship with the extralegal and legal variables. The contextual variable most strongly related with the IN/OUT decision was percentage poor ( $r = .122$ ). The other variables (e.g., percentage black, percentage unemployed, court size, percentage urban, crime rates, and court jurisdiction) had low or virtually no relationship with the IN/OUT decision.

In summary, the bivariate analysis revealed several important findings. First, although there were weak or virtually no relationships between some of the extralegal and legal variables, the race of the offender and severity of the offense were the only two variables that were significantly related to all of the contextual variables. Extralegal and legal variables had stronger correlations with the IN/OUT decision than did contextual variables, with prior record and severity emerging as the variables with the strongest associations. Second, the bivariate analysis revealed a problem of multicollinearity among the contextual variables. To address this problem, court size was selected and used as a proxy to represent all of the contextual variables used in this study, except percentage unemployed. The

bivariate analysis revealed percentage unemployed was the only variable with moderate or weak associations with extralegal, legal, and contextual variables. Therefore, in the remainder of this dissertation, court size means a bureaucratic, large urban court, in an area with high percentages of crime, black populations, and the poor.

In the next section, using a stepwise procedure, the independent variables and interactive terms are entered into the logistic regression model, and the relationships between these variables and the IN/OUT decision are reported. The analysis of the logistic regression model should provide further explanations of how the independent variables in this study influenced sentence outcomes in the State of Pennsylvania.

#### Results of the Logistic Regression Model on the Effects of Extralegal, Legal, and Contextual Variables and the IN/OUT Decision

The logistic regression results for this analysis are presented in Table 5.<sup>2</sup> Using a stepwise procedure, four main effect variables and four interactive terms were entered into the logistic regression model. The analysis revealed that gender,

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<sup>2</sup>The results of logistic regression analysis can fall within three categories. These values can take on values between -1, 0, and +1, which means the standardized parameter estimates can have a negative effect, no effect, or a positive effect on the sentence outcome. In this study, higher or lower values are reported for both the IN and OUT decisions. The results with negative values are associated with the likelihood of an OUT (e.g., probation, restitution, fines, and so on) sentence, whereas those with positive values increase the likelihood of an IN (jail or prison) sentence.

prior record, and severity were the extralegal and legal variables that influenced the sentence outcome, whereas court size and percentage unemployed were the contextual variables that influenced the sentence outcome. The three interactive terms that influenced the IN/OUT sentence included black x gender, age x size, and gender x size.

Table 5: Results of the logistic regression model for extralegal, legal, and contextual variables and interaction terms for the IN/OUT decision.

Variable	Standardized Parameter Estimate	Standard Error	p-Value
Prior record	-.569	.018	.0001
Severity	-.366	.014	.0001
Gender	-.205	.121	.0001
Age x size	.197	.002	.0001
Gender x size	.174	.063	.0001
Black x gender	.162	.070	.0001
Percentage unemployed	.066	.028	.0001
Court size	-.053	.009	.0012

df = 1

p ≤ .05

Gender (SPE = -.205) was the only extralegal variable that had a direct effect on the IN/OUT sentence, and as expected, the negative standardized parameter estimate indicated that female offenders were less likely to be incarcerated as compared to their male counterparts. Contrary to what was predicted, the black and

age variables did not meet the significance level ( $p \leq .05$ ) to enter the logistic regression model. As predicted, prior record and severity had a direct effect on the IN/OUT decision. In the logistic regression model, prior record ( $SPE = -.569$ ) had the strongest effect, followed by severity ( $SPE = -.366$ ). However, the magnitude and direction of the standardized parameter estimates for these variables were negative, which means that, contrary to what was predicted, offenders having a prior record and those who have committed a serious offense (e.g., severity) may or may not be incarcerated for the crime or crimes they commit. Convictions was another legal variable that was expected to be a significant predictor of an IN sentence; however, it did not enter the logistic regression model. This finding comes as no surprise because the bivariate correlation analysis (see Table 4) revealed that it was virtually unrelated to all of the other variables except the severity variable ( $r = .114$ ).

Court size and percentage unemployed were the two contextual variables that influenced the IN/OUT decision. As previously noted, the correlations among the contextual variables were high. Therefore, court size was selected and used as a proxy to represent all of the contextual variables (e.g., percentage black, percentage poor, percentage urban, crime rates, and court jurisdiction) except percentage unemployed. The standardized parameter estimate for court size ( $SPE = -.053$ ) had a negative effect on the IN/OUT decision, and as predicted, being sentenced in a large urban court increased the probability of an OUT sentence. Conversely, the standardized parameter estimate for percentage unemployed ( $SPE = .066$ ) had a

positive effect on the sentence outcome, and as expected, it increased the probability of an IN sentence.

The interactive terms that influenced the IN/OUT decision included age x size, gender x size, and black x gender. Conversely, the magnitude and direction of the standardized parameter estimates for age x size ( $SPE = .197$ ) and gender x size ( $SPE = .174$ ) indicate that older males, regardless of their race, are more likely to be incarcerated when they are sentenced in large urban courts. On the other hand, the interactive effect between black x gender ( $SPE = .162$ ) supported the expectation that if the offender is a black male, there is a greater chance he may be incarcerated, despite the court jurisdiction where he was sentenced.

In Chapter V the results of these findings are discussed. Also, a summary of the study, conclusions, and recommendations for future research are presented.

## CHAPTER V

### SUMMARY, DISCUSSION, CONCLUSIONS, AND RECOMMENDATIONS

#### Summary and Discussion

Using a conflict/Weberian-based perspective, this researcher examined the relationship between race, urbanization, court bureaucracy, and punishment. The conflict perspective argues that minority offenders receive longer or harsher sentences than whites because they are considered members of a subordinate population that is poor and powerless. The subordinate population is socially controlled by a dominant group that has the economic and political power to ensure that laws are created to protect them from certain criminal violations, while sentencing other groups more severely. In contrast, the Weberian perspective views courts as bureaucracies; as the size of the court increases, it becomes more bureaucratic, and efficiency becomes the most important organizational goal. In this study, conflict and Weberian theories were integrated because, when separate, they provide only a partial explanation of theoretical statements; however, when they are integrated, their explanatory power increases.

Two research questions were addressed in the study. First, what are the effects of race, urbanization, and court bureaucratization on a sentence of IN (prison/ jail) versus OUT (a no-prison decision, which is probation or some other sentence

alternative, such as fines, restitution, and so on)? From previous research, it is known that extralegal (e.g., race, gender, and age) and legal (e.g., severity, prior record, and convictions) variables have been useful in explaining some of the variation in sentencing. However, the second research question is: To what extent do contextual variables (e.g., bureaucratic courts and the jurisdiction where bureaucratic courts are found in Pennsylvania) predict the likelihood of an IN sentence (e.g., jail or prison) across counties in the State of Pennsylvania that have not been predicted by extralegal and legal factors?

The analyses for this study proceeded from bivariate correlations to logistic regression. The bivariate correlation matrix was then examined to assess the strength of the associations between the independent and dependent variables. Because the dependent variable representing the IN/OUT decision was binary coded (0 = IN, 1 = OUT), logistic regression was used in the multivariate analysis. The Statistical Analytical System (SAS) was employed to run the logistic regression model. Using the standardized parameter estimate, the additive and interactive effects of extralegal, legal, and contextual variables were examined to ascertain their significance with regard to the IN/OUT decision. A stepwise procedure was used to enter the variables into the model, and those that did not meet the significance level ( $p \leq .05$ ) for entry into the model were dropped.

The first research question looked at the influence of extralegal and legal variables and their relationship to the IN/OUT decision. All of the extralegal variables appeared in the regression model; however, gender was the only variable

that had a direct effect on the IN/OUT sentence. This researcher examined the relationship between race, gender, and age, and based on the theoretical and empirical implications of conflict theory, it was predicted that females would be treated more leniently than males. On the other hand, it was expected that black offenders, regardless of their gender or age, would be incarcerated more often compared to white offenders. The results of this study support the conflict theory, and females were treated more leniently and were less likely to be incarcerated than male offenders. The interactive effects between black and gender further support conflict expectations, and it appears that males, particularly blacks, are more likely to be given an IN sentence than white offenders. Gender also had interactive effects with age and court size, and as predicted, the results revealed that older males are more likely to be sentenced IN than their younger counterparts. Thus, in the State of Pennsylvania, if the offender is an older black male, the probability of incarceration is greater, particularly when he is sentenced in an urban jurisdiction.

Severity and prior record were the strongest predictors of the IN/OUT decision. However, the magnitude and direction of the standardized parameter estimates indicated that these variables increased the probability of an OUT sentence. This finding is contrary to what was predicted because these two variables are known in the sentencing literature to increase, not decrease, the probability of incarceration. There are several explanations for this finding. First, the bivariate correlation analysis (see Table 4) revealed that, when alone, prior record and severity were positively related to the IN decision. However, once other



variables are considered (e.g., race, gender, age, court size, and jurisdiction), prior record and severity are less influential. In other words, offenders who are sentenced in urban courts may or may not get the sentence they deserve because factors other than prior record and severity are considered.

Next, in this study, the dependent variable, IN and OUT, was not clearly defined. An IN sentence was defined as a jail or prison sentence, whereas OUT was defined as probation or some other sentence alternative such as fines, restitution, or community service. Despite these definitions, the IN/OUT decision still does not reveal the severity or harshness of the sentence outcome. For example, an offender sentenced in one jurisdiction may receive a six-month jail sentence (IN), whereas an offender in another jurisdiction is given a three-year probation sentence (OUT). In the former case, the offender was incarcerated; however, based on the length of the sentence, one might view the jail term as less severe than the probation sentence. In the latter case, the offender was given probation; however, one might view the term of probation as a harsher sentence, even though he or she was not incarcerated. In other words, in some cases an IN sentence may be a better penalty, particularly if the offender accepted it as part of a sentence bargain. Finally, the data used in this study were collected shortly after sentencing guidelines were implemented in the State of Pennsylvania. Therefore, it may have been too early to assess whether they are serving the purpose they were intended to serve. The purpose of sentencing guidelines is to reduce disparity in sentencing among similarly situated offenders who commit similar offenses. Sentencing guidelines also are

intended to ensure that sentencing is based on legal factors, not extralegal factors such as race, gender, or age. If this is true, then the Pennsylvania sentencing guidelines are not serving this purpose, and this is reflected in the logistic regression analysis. As reported, black, gender, and age did have a positive effect on the IN/OUT decision, whereas prior record and severity did not.

The number of current convictions was the only legal variable that did not appear in the logistic regression model. This finding comes as no surprise because the correlations between convictions and all of the other variables, including the IN/OUT decision, were either weak or virtually nonexistent. Convictions was described as additional or multiple criminal charges the offender incurs for which sentencing has not been complete. Although the analysis does not reflect this, multiple convictions (e.g., weapon possession, aggravating circumstances) may also signify the severity of the crime because if the crime was not serious, these additional criminal charges may have been plea bargained away during the initial or preliminary hearing. It may be possible that convictions may have the same influence on the IN/OUT decision as the severity variable, and if this is true, this may be why severity was retained in the regression model whereas convictions was not.

The second research question was: To what extent do contextual variables predict the probability of an IN/OUT decision that was not predicted by extralegal and legal variables? The multicollinearity among the contextual variables made it difficult to study the effects of these variables; therefore, they did not predict the probability of an IN/OUT sentence as well as the extralegal and legal variables. To

address the problem of multicollinearity, court size was selected and used as a proxy to represent large urban courts, located in jurisdictions with a high population of minorities and the poor.

As expected, court size did influence the IN/OUT decision. However, offenders who were sentenced in urban court jurisdictions are more likely to be sentenced to prison if they are older black males. This finding supports conflict theory, but it is not clear whether it supports Weberian expectations. Conflict theorists criticize the bureaucratic model holding opposing views as to whether this discrimination is intentional or not. Reiss (1974), for example, addressed the consequences of court bureaucratization, arguing that discretion given to agents of the law opens the door to unequal treatment when the limits of discretionary power are unclear. Reiss in his position, however, did not specifically indicate whether the variability of bureaucratized justice is differently targeted at minority group offenders; whereas Chambliss and Seidman (1971) did. They argued that the large numbers of persons brought before municipal courts for minor transgressions of the law lead to almost complete automatic sentences for certain types of offenders. Under these circumstances, Chambliss and Seidman argued that institutionalized patterns of discrimination against blacks and the poor are inevitable. If this is the case for minor offenses, then one could expect more discriminatory practices among minority offenders for serious offenses.

Weberian theories view courts as bureaucracies, and the size and location of the court's jurisdiction are expected to influence the differential treatment of

offenders. As the level of urbanization increases, courts become more bureaucratic, and efficiency, or some other form of standardized decision making, becomes the most important goal. Therefore, offenders who are sentenced in large urban courts, with a high concentration of minorities and the poor, should be sentenced on legal (e.g., severity and prior record) and not extralegal (e.g., race, gender, age) factors. The results of this study failed to support Weberian theory because it appears that, despite the implementation of sentencing guidelines, race was a determinant for the probability of a prison sentence.

### Conclusion

The first research question concerned the effects of extralegal and legal variables on the IN/OUT decision. As predicted, race did influence the sentence outcome; however, the effect was small. More important, the study findings revealed that older offenders, particularly black males, are more likely to be incarcerated despite the fact that in 1982 the State of Pennsylvania implemented sentencing guidelines to eliminate racial disparity in sentencing. This finding is further supported by the positive interactive effects of gender and age, and the negative effects of severity and prior record. The standardized parameter estimates for these legal variables revealed that they decreased, not increased, the probability of incarceration.

The study findings also revealed that extralegal and legal variables were better predictors of the IN/OUT decision than were contextual variables. The contextual variables did not influence the IN/OUT decision as expected; however,

the high correlations among these variables made it difficult to determine the extent to which they did make a difference. These findings suggest that more research is needed to determine whether, in fact, contextual variables are or can be reliable predictors of the IN/OUT decision. Researchers have only begun to look at contextual variables and their relationship with individual-level variables (e.g., extralegal and legal). It has been their contention that individual and contextual variables are inextricably linked. Therefore, it has been suggested that they be considered simultaneously if one wishes to understand sentencing and, by implication, other social responses to crime and punishment.

Because this is a recent inception, it may be too early to conclude they are not useful in predicting sentence outcomes. For example, Myers and Talarico (1987), in their study of Georgia sentencing patterns, found that county contextual variables played an important role in sentencing, whereas Kramer and Steffensmeier (in press), using the same sentencing data used in this study, found that none of their county contextual variables were noteworthy in explaining sentence outcomes. They attributed these findings to the possibility the guidelines that were instituted in Pennsylvania in 1982 may have eliminated the urbanization factor, while Myers and Talarico believed they may have been attributed to the different political and social contexts between Georgia and Pennsylvania. Finally, these differences may reflect the differences between the two analyses and the statistical controls for severity and prior record.

Finally, this researcher sought to integrate conflict-Weberian theories to develop and test a macro-level framework by examining the relationship among racial composition, urbanization, and court bureaucratization, and their relationship to punishment. Rather than viewing each theory as competing against each other, some contemporary researchers have advocated integration, which should incorporate the relative strength of each theory. Weberian theory argues that court size and location influence differential treatment, whereas conflict theory proposes that, in highly bureaucratized courts, sentences will depend on factors not explicitly construed as legally relevant, namely, the race of the offender. A court's context, therefore, is strongly believed to influence the ways in which cases are disposed, whereas its social structure is consistently associated with the administration of punishment. As a result, where offenders live affects how their cases are disposed and the severity of the sentences they receive.

The study findings supported the major tenets of conflict theory; however, they rejected the propositions of the Weberian theory. In the State of Pennsylvania, black offenders who were sentenced in urban court jurisdictions were more likely to be given an IN sentence. It was expected that in urban courts, characterized as bureaucratic organizations, legal, not extralegal, factors would influence the IN/OUT decision because efficiency, or some other form of routine decision making, would take precedence. This was certainly not the case in this study, and the negative standardized parameter estimates for severity and prior record only confirmed the finding that extralegal variables (e.g., race, gender, and age) had a greater effect.

Whether bureaucratized or not, does this mean justice is sacrificed for efficiency? Some participants in the criminal justice process would argue it does not. According to Weberian theories, the concept of bureaucratic justice provides the most persuasive account of how the judicial decision makers reconcile legal and bureaucratic forces. Bureaucratic justice is said to unite the presumption of guilt with the operational morality of fairness, and the participants in this process make certain offenders get neither more nor less than what is coming to them. In other words, they get what they deserve (Scheingold, 1984, p. 158).

Although it appears race played a minor role in the sentencing decisions in the State of Pennsylvania, the results of this study indicated there is still a disproportionate number of minorities in the criminal justice system throughout the United States. Conflict theorists argue whether this is true (or not) is another issue and one worth exploring in another study. However, it appears that race influenced the IN/OUT decision despite the inconsistent finding on urban courts, which might suggest something different.

### Recommendations for Future Studies

Because the limitations of this statewide sample restrict the generalizations that could be made to other studies, the results of this research are nonetheless suggestive of several other substantive inferences and are briefly stated. First is the problem of multicollinearity between the contextual variables. The confounding effects of these variables made it impossible to determine the extent to which they influenced sentence outcomes. This problem might be resolved by disaggregating

the data by county and analyzing the sentence outcomes in fewer counties to determine whether it would be an improvement of fit over the model used in this study. Should we abandon the use of contextual variables in favor of extralegal and legal variables? Probably not. Contextual variables may not be as useful in predicting sentence outcomes as individual-level (extralegal and legal) variables. However, researchers must develop some method or procedures to reduce or even eliminate the problems that are associated with this approach.

Another limitation of this study is sample-selection bias which restricts the generalizability of the results. This bias can occur when analyzing a subsample of the population from which some observations have been excluded in a systematic manner (e.g., those offenders who were acquitted or their cases were not judicially processed). Its extent varies by sample and can be corrected only by modeling all previous selection decisions. It is recommended that future studies on sentencing address this methodological concern by using the Heckman technique (1974, 1975). This procedure makes it possible to correct bias partially by using this two-stage estimation procedure (see Berk, 1983, for a discussion on how this technique is accomplished). This procedure not only provides information about the two decisions—type and length of sentence—but it allows us to combine this information in a meaningful way. Unfortunately, this problem has been noted repeatedly in criminal justice research. However, it has not been easily remedied and will persist unless researchers address this methodological concern.



The recommendations listed below are philosophical and focus on some larger problems, which are the myths that perpetuate the inconsistencies found in research on crime and sentencing. One recommendation is that we focus on other critical issues, one being how we define and measure crime. If we are inaccurately measuring factors that predict criminal behavior, it does not matter how sophisticated our analytical tools are, if the data we are gathering are biased from the start. We can first begin by assessing the laws that are rather arbitrary about the kinds of phenomena that are regarded as crime and which have generally expanded and contracted, depending on the interests of dominant groups in a social struggle for power. How crime is defined is based on politics, and the critical issue here is whether there is a socially unacceptable and generally unknown bias in including or excluding certain actions or inactions of others.<sup>1</sup> There is considerable evidence indicating that there is.<sup>2</sup>

According to the 1982 Crime in the United States, there were 21,012 murders and nonnegligent manslaughters. These murders represented only a fraction of those killed intentionally or negligently. Conservative estimates indicate that each year at least 10,000 lives are lost to unnecessary surgeries, 20,000 to errors in prescribing drugs, 20,000 to doctors spreading diseases in hospitals, 100,000 to

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<sup>1</sup>This discussion on the myth of crime, criminals, and crime-control policies is taken from an article in the text on Justice, Crime, and Ethics entitled "Crime, Criminals, and Crime Control Policy Myths" by Robert M. Bohm, pp. 327-345.

<sup>2</sup>See Pepinsky and Jesilow (1984), Simon and Eitzen (1982), Reiman and Headlee (1981, p. 43), Reiman (1979), Quinney (1979, p. 62), Liberman (1974), Mintz and Cohen (1971, pp. 25-26), and American Friends Service Committee (1971).

industrial diseases in hospitals, 14,000 to industrial accidents, 200,000 to environmentally caused cancer, and an unknown number from lethal industrial products (Pepinsky & Jesilow, 1984; Reiman, 1979; Simon & Eitzen, 1982). Yet few of these actions or inactions are defined legally as murder or manslaughter. One reason is the myth that "white-collar crime" is nonviolent.

Because there is this illusion that white-collar crime is not violent, it is measured differently from "street-level crime." This misconception also contributes to the skewed measurement of minorities, who are inaccurately identified as the "dangerous class" of offenders when this, in fact, is not true. We can begin to correct this problem by taking white-collar and corporate crime more seriously, prosecuting offenders who commit these crimes, and including these offenses in the Uniform Crime Reports. It has been suggested that another problem with criminal definitions that contribute to the myths and inaccurate data collection on statistics measuring crime is the presumption that all laws are enforced and/or enforced fairly. Just as there is a socially unacceptable and generally unknown bias in the definition of crime, there is a similar bias in the enforcement of the law.

One reason so few white-collar crimes are brought to light, for example, is the inadequate enforcement mechanism. It has been suggested that regulatory agencies, whose purpose is to prevent white-collar crime, really do not serve this purpose. Although there is little doubt that there would be more white-collar crime if regulatory agencies did not exist, it is not at all clear how much white-collar crime is prevented by their existence. In any event, it is suggested that this myth can be

sustained only by ignoring the history of efforts at federal regulation of corporate crime. Humphries and Greenberg (1981) argued that "regulatory agencies were the Progressive Era's solution to the problem of controlling business in a manner that did not legitimize capitalism by tarnishing capitalists with the stigma of criminality" (p. 326). Similarly, Pearce (1976, p. 88) maintained that the state intentionally created agencies responsive to the interest of big business (also see Pepinsky & Jesilow, 1984, pp. 66-79). Furthermore, it has been argued that, although the prosecution of corporate crime has increased dramatically in recent years, it may well be merely a symbolic effort to vindicate the myth that the state is neutral and to reinforce that the law is applied uniformly to all persons (Pearce, 1976, p. 90).

Finally, Bohm (1994, p. 330) argued that the myth that crime is increasing and that crime is an inevitable concomitant of complex, populous, and industrialized societies is another critical issue that should be addressed. The myth that crime is increasing also is perpetuated by the Uniform Crime Reports, which researchers rely on to explain crime and criminal behavior. In comparing the data from the Uniform Crime Reports with the findings of the Census Bureau's National Crime Reports from 1973 to 1980, one finds a major discrepancy. The Uniform Crime Reports show a substantial increase in the crime rate during this period, whereas the Census Bureau statistics indicate no increase in the proportion of victims reporting the same crimes. In some cases, the Census Bureau reported slight decreases (Paez & Dodge, 1982). Therefore, a careful examination of the historical record provides no basis for the belief that street crime, the type of crime most people fear and are led to believe is

committed by those who are minorities and poor, is rising. The truth is that people today are in no greater danger of being robbed or physically hurt than they were 150 years ago (Pepinsky & Jesilow, 1984, p. 22; see also Ferdinand, 1977, p. 353).

The myth that crime is an urban problem was advanced in Crime and Modernization: The Impact of Industrialization and Urbanization by Shelly (1981), who argued that when comparing crime statistics cross-culturally (cf. Sutherland & Cressey, 1974, p. 25), there are at least four other problems with his proposition. First, it fails to account for the great variation in crime rates of different complex, populous, and industrialized societies. For example, the crime rates of Japan and West Germany are much lower than those of the United States (Martin & Conger, 1980; Reiman, 1979, p. 20; also see Clinard, 1978; Stack, 1984, especially Appendix 1). Second, the proposition fails to account for the great variation in crime rates within modern, complex, populous, and urbanized nations. For example, according to the 1984 Uniform Crime Report, the homicide rate in the United States varied from a low of 1.0 in New Hampshire to a high of 13.1 in Texas (per 100,000 persons). Third, the proposition fails to account for the lack of correlation between a city's crime rate and its population and population density. According to the 1984 Uniform Crime Report, for example, the city with the highest homicide rate was Gary, Indiana. The three most populated cities in the United States—New York, Los Angeles, and Chicago—were not found among the top 10 cities with the highest homicide rates (also see Reiman, 1979, pp. 21-23, especially Table 1). A fourth

problem with Shelly's proposition is that the claim of inevitability in the social sciences is always tenuous and suspect (Bohn, 1994, p. 330).

The myths and the problem of inaccurately defining crime therefore lead to the popular belief that some groups, particularly minorities, are not as law-abiding as other groups (Pepinsky & Jesilow, 1984, p. 47). Evidence indicates, however, that more than 90% of all Americans have committed some crime for which they could be incarcerated (Silver, 1968; Wallerstein & Wyle, 1947). This observation, however, does not deny that crime may be more concentrated in some groups, but only that it is unlikely to be absent in others. Criminologists are aware of these facts; however, they continue to conduct research that attributes criminality to the involvement theory, which argues that minorities, blacks in particular, violate the law more frequently and commit more serious crimes than other racial groups (Blumstein, 1982; Hindeland, 1978; Langan, 1985).

Because the crimes of some people (e.g., physicians or corporate executives) are not easily detected, or there is not as much effort exerted in detecting them as there is for street-level crimes, these problems are believed to sustain another myth—that most crime is committed by poor, young males between the ages of 15 and 24 (Pepinsky & Jesilow, 1984; Reiman, 1979). As noted, if law enforcement agencies were able or willing to detect all crimes, the statistics that report the incidence of crime would be more evenly distributed among the rich and poor and all age groups, even though it may remain more highly concentrated in some groups. With regard to age discrimination, an additional problem with the myth is that the crime rate is

growing much faster than either the absolute number of young people or their percentage of the population (Reiman, 1979, p. 24).

What effect do these myths have on crime-control policies (e.g., determinate, mandatory sentencing, and the implementation of sentencing guidelines) in the State of Pennsylvania and other states that have established such sentencing reforms? These myths about crime and criminals often form the basis of crime-control policies initiated by the now-dominant "politically conservative," "law and order" ideology in the United States. Based largely on this ideology, crime prevention and enforcement resources recently have been expended on some of the following priorities: mandatory sentencing, habitual-criminal statutes, increased numbers of police officers, more effective police officers, changes in the Miranda warning, preventive detention, changes in plea bargaining, changes in the exclusionary rules, and so on. Whereas each of these policies is intended to accomplish one or more bureaucratic goals (e.g., crime reduction, cost-effectiveness, or greater efficiency), one is likely to have a significant effect on the harm and suffering experienced by the vast majority of the American public. They do not adequately address the fundamental social structural elements of the crime problem (cf. Bohm, 1982; Pepinsky & Jesilow, 1984; Walker, 1985).

A final myth of crime-control policy to be considered is that eliminating injustices from the criminal justice system will reduce the level of serious crime. Eliminating injustices from the criminal justice system is certainly a worthwhile pursuit; however, it has been argued that it is unlikely to have an appreciable effect

on serious crime. The causes of most crime are believed to be found in general social arrangements and not in the operation of the criminal justice system (Bohm, 1982; Walker, 1985, p. 206).

Criminologists therefore have a responsibility to address these major concerns before they can properly explain the reasons we have an overrepresentation of minorities in the criminal justice system. By resolving this issue, we may resolve the problems we have in reaching consistent and conclusive results on racial disparity in sentencing. In his discussion of crime-control policy myths, Bohm (1994) argued that academic criminologists and criminal justice officials are members of the public and are partly to blame for perpetuating these myths because they should and often do know better. He further argued that we are in the best position to dispel these myths and inaccuracies; however, there are several reasons why we do not. The first reason is that many academic criminologists find it in both their short- and long-term interest to perpetuate these inaccuracies for interests that may be cognitive or other members of the general public who have internalized the myths as part of their social "reality." To challenge the myths would be, for many, to undermine long-established and fundamental conceptions of society. For many academic criminologists, what has been considered here as myth simply makes sense or attunes with preconceived ideas. To question the myths might create cognitive dissonance.

Other academic criminologists perpetuate myths because it is in their structural interests to do so. Platt (1975, pp. 106-107) suggested that this is

because of academic repression and cooptation. Bohm's (1994) impression was that prestigious university appointments and promotions in general typically go to those academics whose work does not fundamentally challenge myths supportive of the status quo. It appears, then, that prestigious journals rarely publish articles that radically deviate from an accepted, often myth-laden perspective (although this may reflect considerations other than ideology). Similarly, major research grants generally seem to be available to academics whose proposals do not fundamentally undermine privileged positions or deviate from preconceived, often myth-laden wisdom. Whether or not myths are perpetuated because of academic repression and cooptation, academic life is believed to generally be more pleasant for those who do not make waves.

Finally, Bohm (1994, p. 340) argued that criminal justice officials perpetuate myths and inaccuracies about crime and the criminal justice system for employment advancement, which often depends on a responsiveness to the interests of political and economic elites. Administrators, in particular, generally are either elected to their positions or appointed to them by political electees. Because political election or appointment often depends on the support of political and economic elites, those who would dispel myths that serve interests of political and economic elites are not likely to find support forthcoming. In the case of police officers, the myth of increasing crime rates, described earlier, is used to justify larger budgets for more police officers and higher pay (Pepinsky & Jesilow, 1984, pp. 16-17, 30). Third, as was the case with the general public, myths and inaccuracies about crime and the



criminal justice system also provide order to the potentially chaotic role of the law enforcement and judicial systems. They allow these criminal justice officials to believe that they can do the job (i.e., prevent or control crime). Finally, as was the case for the general public, myths and inaccuracies provide criminal justice officials with the basis of solidarity, common purpose, and collective unity in the face of a hostile and potentially threatening environment.

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