Racial and Class Biases in the Criminal Justice System: A Radical Conflict Interpretation

Mansoor Moaddel
Western Michigan University

Follow this and additional works at: http://scholarworks.wmich.edu/masters_theses

Part of the Criminology Commons

Recommended Citation
http://scholarworks.wmich.edu/masters_theses/2045

This Masters Thesis-Open Access is brought to you for free and open access by the Graduate College at ScholarWorks at WMU. It has been accepted for inclusion in Master’s Theses by an authorized administrator of ScholarWorks at WMU. For more information, please contact maira.bundza@wmich.edu.
RACIAL AND CLASS BIASES IN THE CRIMINAL JUSTICE SYSTEM: A RADICAL CONFLICT INTERPRETATION

by

Mansoor Moaddel

A Thesis Submitted to the Faculty of The Graduate College in partial fulfillment of the Degree of Master of Arts in Sociology

Western Michigan University Kalamazoo, Michigan April 1979
ACKNOWLEDGMENTS

I would like to thank many individuals and organizations who furnished data, information and assisted me in the research and writing of this thesis. It would be impossible to include all their names, but the following deserve specific mention. I wish to thank Mrs. Edith Wilimovsky for her careful reading and typing of the final draft of this thesis. I am gratefully indebted to all the personnel of the Kalamazoo County circuit courts who were extremely cooperative and sincere in providing me with the information which forms the core of this thesis.

My greatest gratitude goes to Professors Paul C. Friday, Jerome G. Manis, and James C. Petersen, whose guidance, patience, and encouragement were extremely valuable in the completion of this thesis. The financial benefits of a research assistantship, and the intellectual training from the faculty in the Department of Sociology, have made graduate study a pleasure and a privilege in a country that is not my own. Finally, it deserves mentioning that gratitude in no way divorces me from the sole responsibility for what is written here.

Mansoor Moaddel
INFORMATION TO USERS

This was produced from a copy of a document sent to us for microfilming. While the most advanced technological means to photograph and reproduce this document have been used, the quality is heavily dependent upon the quality of the material submitted.

The following explanation of techniques is provided to help you understand markings or notations which may appear on this reproduction.

1. The sign or “target” for pages apparently lacking from the document photographed is “Missing Page(s)”. If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting through an image and duplicating adjacent pages to assure you of complete continuity.

2. When an image on the film is obliterated with a round black mark it is an indication that the film inspector noticed either blurred copy because of movement during exposure, or duplicate copy. Unless we meant to delete copyrighted materials that should not have been filmed, you will find a good image of the page in the adjacent frame.

3. When a map, drawing or chart, etc., is part of the material being photographed the photographer has followed a definite method in “sectioning” the material. It is customary to begin filming at the upper left hand corner of a large sheet and to continue from left to right in equal sections with small overlaps. If necessary, sectioning is continued again—beginning below the first row and continuing on until complete.

4. For any illustrations that cannot be reproduced satisfactorily by xerography, photographic prints can be purchased at additional cost and tipped into your xerographic copy. Requests can be made to our Dissertations Customer Services Department.

5. Some pages in any document may have indistinct print. In all cases we have filmed the best available copy.
MOADDEL, MANSOOR
RACIAL AND CLASS BIASES IN THE CRIMINAL JUSTICE SYSTEM: A RADICAL CONFLICT INTERPRETATION.

WESTERN MICHIGAN UNIVERSITY, M.A., 1979
TABLE OF CONTENTS

CHAPTER                          PAGE

INTRODUCTION ............................ 1

The Problem ............................ 1

The Weakness of Traditional Criminology ....... 5

I  CONFLICT THEORY AND CRIME ........... 10

Introduction ............................ 10

Two Major Trends in Conflict Criminology .... 11

The Liberal Conflict Criminology .......... 14

Radical Conflict Criminology .......... 30

II CONFLICT CRIMINOLOGY AND RACIAL AND CLASS
BIASES IN THE CRIMINAL JUSTICE SYSTEM .... 39

Prior Empirical Studies ........ 45

III METHODOLOGY AND STUDY DESIGN ....... 60

Statement of the Hypothesis ........ 60

Variables of Study ................. 61

Control Variables ................. 62

Sources of Data ................. 62

Measurement and Coding ........ 66

IV OBSERVATION AND FINDINGS ........ 69

The General Characteristics of the Data .... 69

Control Variables ................. 70

A - Legal Variables ................. 70

1. Seriousness of the offense .... 70

2. Number of prior convictions .... 73
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>B - Nonlegal Variables</td>
<td>75</td>
</tr>
<tr>
<td>1. Age</td>
<td>75</td>
</tr>
<tr>
<td>2. Employment status</td>
<td>76</td>
</tr>
<tr>
<td>3. Marital status</td>
<td>77</td>
</tr>
<tr>
<td>4. Sex</td>
<td>78</td>
</tr>
<tr>
<td>Testing the Hypotheses</td>
<td>79</td>
</tr>
<tr>
<td>1. Race and disposition</td>
<td>79</td>
</tr>
<tr>
<td>2. Class and disposition</td>
<td>83</td>
</tr>
<tr>
<td>3. Income</td>
<td>84</td>
</tr>
<tr>
<td>SUMMARY AND CONCLUSION</td>
<td>92</td>
</tr>
<tr>
<td>Selected References</td>
<td>98</td>
</tr>
</tbody>
</table>
INTRODUCTION

The Problem

The American Criminal Justice System has been the object of numerous investigations especially in terms of the way in which it deals with clients. Of central importance has been the highly controversial subject of whether racial and class biases exist in the system. Does the criminal justice system treat criminals equally irrespective of their social positions? If not, what factors other than legal factors affect the decision of the social control agencies? What kind of conclusion could be drawn from the existence or nonexistence of racial and class biases in the criminal justice system?

In the analysis of the criminal justice system, its functions and its operation, the above questions have a central position. This is so because, depending on the empirical findings, the answers may confirm or reject some of the propositions drawn from the two main models in criminology; the consensus model, and the conflict model.

According to the consensus model, the criminal justice system is the institutionalized collective morality of people in society. It is established to perform an integrative function for society at large by controlling, preventing, and deterring the disturber of the system. The advocates of this model maintain that the criminal justice system tries to treat, rehabilitate, and resocialize the criminals in order to clear the "social evils" from the system. Since the criminal justice system is motivated by the collective morality, as suggested
by the consensus oriented criminologists, it treats the criminals irrespective of their social positions. What they imply, then, is that there is no racial and class biases in the criminal justice system (see the next section).

The conflict oriented criminologists on the other hand, maintain that this is not the case. They suggest that the criminal justice system is the reflection of the class-structure of society. The social control agencies represent the interests and values of those who control the economic and political power in society. Therefore, the decisions by the agencies of social control are not made uniformly. Endless nonfactors are seen to be operating in the system's decision making process. Among them are race, socioeconomic status, sex and age of the offenders.

Conflict criminologists seem to address themselves to these factors which the consensus model advocates generally ignore. Concerning the operation of the criminal justice system, the work of Chambliss and Seidman (1971) is increasingly assuming centrality in the conflict model. They suggest 18 propositions which provide a framework within which the criminal justice system operates. Among them, propositions 14 and 15 specifically link the social attributes of the offenders to the discretionary disposition by the social control agencies:

Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of an offender, the greater is the likelihood that sanctions will be imposed on him.

When sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest class. (Chambliss and Seidman, 1971: 45)
The above propositions imply that those most likely to be ascribed criminal status are those with little power. Furthermore, they also imply that the labeling of criminal behavior includes a racial component, in the sense that blacks are more likely to receive a harsher penalty than whites. Therefore, it is hypothesized that, (1) the low class offenders receive more severe dispositions than those from the high class, and (2) black offenders receive more severe dispositions than whites.

The purpose of this thesis, therefore, is to examine the salience of class and race in affecting the courts' decisions. Specifically, the problem is to determine how significant these variables are. This thesis addresses itself to this problem by attempting to answer three basic questions. First, are the discretionary dispositions by the courts significantly related to the social attributes of the offenders? Second, how strong are these social attributes in influencing the decisions by the social control agencies? Third, among the social characteristics of the offenders, which ones are the most prominent?

Two sets of variables are specified: legal and nonlegal. Legal variables are the seriousness of the offense, and the number of prior convictions; nonlegal variables are race, age, sex, employment status, marital status, occupation, education and income of the offenders. As it was mentioned earlier, the research question is mainly concerned with the effects of race and class on discretionary dispositions. Other variables such as the legal variables and age, sex, employment status, and marital status are considered as control variables. The reason is that these variables may have contaminating and/or
compounding effect on the relationship between the independent variables (class and race) and the dependent variable (disposition). Their influence, therefore, must be effectively controlled by the research design.

Since the objective of the present study is to examine the salience of class and race in discretionary disposition, it may be desirable to select the data which are as homogeneous as possible in terms of legal variables. In this way it may be easier to control legal variables, while studying the significance of nonlegal variables. Selecting the data from the circuit courts' records, excluding the records of the district courts and juvenile courts, control for court variations in handling the criminal cases; and choosing the data on guilty pleas control for jury variations in determination of guilt. Upon these rationales, this thesis utilizes a random sample of 134 of all felony cases which were pleaded guilty in Kalamazoo county circuit courts in 1977.

This study contains four parts and a conclusion. The first part is theory which deals with the different trends in conflict criminology. The main purpose of this part is to specify these trends and explain the differences between the liberal and radical conflict criminology. The second part is a literature review concerning the relationship between nonlegal variables and discretionary dispositions by the social control agencies. The third part is concerned with the methodology and research design. The fourth part deals with observations and findings.
The Weakness of Traditional Criminology

As mentioned above, traditional criminology views the criminal justice system as the institutionalized collective morality of people in society. The essence of this view is based upon the sociological assumptions this perspective makes about society. Society is assumed as a functionally integrated and stable system in equilibrium. Every part of this system makes for adjustment and adaptation of the whole. Society is held together by the people's consensus (Dahrendorf, 1958). It follows that anything which does not make for adjustment and adaptation of the whole is dysfunctional. This perspective is further characterized as being a-political, a-historical and nonevolutionary which means by implication that it has a more or less static view of society.

Advocates within this tradition view society on the basis of their "fundamental belief in hierarchy and dominance as the basis of law and order" (Taylor et al., 1974: 443). But, historically, this tradition was formed in the eighteenth century's intellectual atmosphere which the principle feature of it was the idea of natural order. The issue of natural order, for sure, is teleology; a philosophical study of the evidence of design in nature. The idea of the natural implies an order of things which exist outside human beings and quite independent of their wishes and intentions. Order implies patterns in the formation of which guiding intelligence had no hand (Ayres, 1978: 63). To the mind of the traditionalists, the law of nature was enacted for the guidance of rational being. Implicit and/or explicit
in this tradition is the application of the so-called orderliness of nature to the human affairs. This metaphysical assumption about social order as analogous to the orderliness of nature, leads, by implication, to the conclusion that the existing order is the only possible order and it is justified by its very presence.

But the nature of reality and assumptions about it are quite different phenomena. A closer look at the empirical data and research concerning the criminal justice system in operation and the scope and extent of crime will show that the "utopia" (the integrated whole) imagined by the traditionalists is less than reality.

In the first place, within the past few decades crime against both person and property has increased (Nettler, 1978; von Hofer, no date). Clark (quoted in Taylor et al., 1974: 452) has pointed out that about seven-eights of the reported FBI Index crime are crimes against property. In the same manner Taylor et al., have indicated that:

In 1971, for example, some \(1 \frac{1}{2}\) million indictable crimes were reported to the police in Britain (a country of around \(54\) million inhabitants). This represents an increase of some \(1,400\) percent on the number reported in 1901, with an increase in population over the same period of just under 50 percent. Approximately 96 percent of these offences were offences against property (the headline crimes of violence against the person and sexual offences being a very small proportion of total crime). (Taylor et al., 1974: 452)

Viser (1974: ix) points to the drastic increase in crime in the United States in the 1960s:

The decade of the sixties was characterized by a surging increase in crime. The annual incidence of violent crimes rose from \(160\) per 100,000 inhabitants to \(393\) per 100,000 inhabitants for the United States as a whole. Murder increased by \(70\)% throughout the decade, rape by \(113\)% and
robbery by a whopping 212%. Even during the first three and one half years of the Nixon Administration, bringing us into the 1970's major crimes increased by more than 30%.

In the second place, the correctional institutions are hanging in the dilemma of punishment or treatment (von Hofer and Tham, no date; Törnvist, 1965; Anttila, 1972; Conrad, 1975; Glaser, 1975). The effectiveness of imprisonment is being held in question especially in terms of reintegration into the whole of society. Prisons, instead of rehabilitating and/or deterring the criminals, produce more problems for the offenders which appear to further involve them in criminal activities; deprivation of liberty weakens the inmates' ties with their families, deprivation of goods and services make them physically ill; deprivation of heterosexual relationships drive some to homosexuality; and the process of labeling, stigmatizing, and tagging produces identity problems for them. Therefore, as previous research results have shown, imprisonment, at least the way it is implemented today, does not work (Sykes, 1973; Irwin, 1973; Hanley, Banks and Zimbardo, 1973; Chiricos and Waldo, 1970; Hopkins, 1976; Waller, 1972; Burkhuiszer and Hoekstra, 1973; Korbin et al., 1972; Daleschol, 1969). Furthermore, punishment, as a measure of specific deterrence, actually does not deter the inmates. The sum total of this mishmash and confusing situation is best expressed by an economics professor, Festus J. Viser (1974: ix):

Justice proved to be an unsure, much debated concept. It is overwhelmingly true that the largest portion of crimes continues to be committed by persons who have been previously confined in penal institutions. Our system of justice is producing more criminals than it is reforming individuals for honest productive lives. Juvenile reform institutions do not work effectively in spite of a cost that exceeds psychotherapeutic institutions or even high cost institutions of higher learning. The whole concept of justice
remains hazy in our thinking—we cannot agree on its basic meaning much less its important policy implications.

In the third place, the traditional criminology may be characterized as the criminology of the lower class. The explanation of white collar crime is almost neglected by the traditional writers in the field, though its significance may not be less than the crime committed by the underprivileged people. The ex-Attorney General of the United States, Ramsey Clark, describes the situation as the following:

The crimes to which we pay least attention are those committed by people of advantage who have an easier, less offensive, less visible way of doing wrong. White-collar crime is usually the act of respected and successful people. Illicit gains from white-collar crime far exceed those of all other crime combined. . . . One corporate price-fixing conspiracy criminally converted more money each year it continued than all of the hundreds of thousands of burglaries, larcenies of theft in the entire nation during those same years. Reported bank embezzlements, deposits diverted by bank employees, cost ten times more than bank robberies each year. (Clark, 1970: 38)

In conclusion, the traditional criminology with strong positivistic orientation considers the high incidence of crime among the lower class as given and real. It ignores variations within the criminal justice process and the inherent conflict therein. The advocates of this tradition try to explain the correlation between low class and high crime rates in terms of some individual and environmental characteristics. They attempt "to specify the unique strains that were experienced by lower status Americans which would account for their more frequent criminal or delinquent behavior" (Chiricos and Waldo, 1975: 769). Merton's theory of anomie (1938), Cloward and Ohlin's differential opportunity theory (1960), Miller's theory of lower
class culture (1958), and Cohen's reactive theory (1955), are all parts of such attempts. But a number of studies (Nye et al., 1958; Akers, 1964; Voss, 1966; Williams and Gold, 1972; Chambliss, 1976a) have shown that, at least among the juveniles, the more frequent law violating behavior among lower class people is not as consistent as once thought. These findings, therefore, make an alternative view of the criminal justice system more attractive. Conflict model may be considered as an attempt toward more fully understanding crime and the criminal justice system. In the next chapter conflict criminology and the two major trends, liberal and radical, within this perspective will be elaborated.
CHAPTER I

CONFLICT THEORY AND CRIME

Introduction

Conflict theory has a long history. The presence of conflict in society was recognized in the writing of the early religions, like Buddhism and Zoroasterianism, and the early philosophers such as Plato and Heraclitus. Buddhism and Zoroasterianism maintained that the world is characterized by the struggle between good and bad, while Plato believed that the truth is discovered only through the dialectical process. And while discussing conflict theory within the field of social sciences the names of "Ibn Khaldun, Machiavelli, Bodin, Hobbes, Hume, Ferguson, Smith, Malthus as its historical representatives" (Zeitlin, 1973: 103) are frequently seen in the literature.

With the development of Darwin's biological evolutionary theory based upon the principles of "natural selection" and "the struggle for existence," some sociologists, known as social Darwinists, tried to apply these principles in their theory of social conflict. The major spokesmen of this trend were Gumplovicz (who considered social and cultural evolution as the struggle between social groups), Ratzenhofer (who believed that the social order is the organization of the struggle for existence), Small, and Sumner. Conflict theory is further developed in the works of Marx, Simmel, and Dahrendorf.

Conflict theory, therefore, "is neither new to the western mind nor a novelty to sociology per se" (Friedrichs, 1970: 45). Having a
long history as early as the whole history of human knowledge, conflict
theory becomes so diverse, omnibus, vague and complex that it seems
difficult to assert that there is a systematic, coherent body of
knowledge known as conflict theory. In fact, among conflict theorists
there are as many differences as similarities. Consequently, "the
existing diversity of empirical and theoretical approaches to the
study of social conflict has produced a state of conceptual and termi-
nological confusion which impedes both comparisons between distinct
classes of conflict phenomena and the process of theoretical integra-
tion" (Fink, 1962: 42).

This "state of conceptual and terminological confusion" is further
complicated when one aims to study crime within the conflict perspec-
tive. Therefore, the first task of conflict criminology is to clarify
the theoretical and conceptual confusions resulting from the existence
of different trends in conflict theory. The second task is to estab-
lish certain specific, testable and internally consistent propositions
linking social conflict to the etiology of crime.

The main purpose of the theory chapter of this thesis is to
evaluate two major trends in conflict criminology; liberal and radical;
and then to select out a number of testable propositions concerning
the racial and class biases in the criminal justice system.

Two Major Trends in Conflict Criminology

The common denominator of all the different trends in the conflict
perspective is the assertion that society consists of congeries of
groups in conflict over the scarce resources. Chambliss (1976b: 1)
specifies three major theoretical traditions within the conflict perspective. First, those emphasizing power as the source of conflict; second, those who seek the role of interest groups in their etiology of conflict; and finally, the Marxian tradition utilizing the dialectical method. This classification, although it may be useful for certain purposes, may not be useful in distinguishing the dominant trends in conflict oriented criminology for two reasons. First, these categories are not mutually exclusive. Frequently the concepts of interest groups and powerful groups are used interchangeably; therefore, the difference between the first and the second category is vague. Second, Marxian tradition utilizes both the concept of interest and power within the context of class-structure of society.

Turk (1977) specifies two major trends in conflict criminology; Marxians and Weberians. According to him, two basic disagreements characterize the works of Marxians and Weberians conflict criminologists. These disagreements are "over the nature of scientific inquiry and of social organization" (p. 212). Concerning the nature of scientific inquiry, Weberians assume the position of value-neutrality, while Marxians "deny the possibility and desirability of value neutral inquiry and knowledge" (p. 212). In their analysis of social organization, "Marxians and Weberians disagree on the significance of economic relative to non-economic interests, values, resources, and relationships." Accordingly, the Marxians tend to interpret "every social conflict and every measure of social power as an expression, device, or function of economic struggle . . . the explanatory and predictive significance of non-economic phenomena is minimized" (p. 213). "In contrast, the
Weberians," Turk maintains, "are far more willing to treat the primacy of economic or material phenomena as empirically open—even though agreeing that material resources ultimately bound the possibilities for human welfare and gratification" (p. 214).

Turk's classification of the major trends in conflict criminology is useful and clearly specifies the points of agreement and disagreement between conflict criminologists. But considering the two major trends as Weberians and Marxians produces confusion for several reasons. First, neither Marx nor Weber are recognized as being criminologists. Second, the "Weberian" criminologists are not Weberian on several issues including the nature of scientific inquiry and the minimum unit of sociological analysis. For Weber is a subjectivist and considers social interaction as the minimum unit of analysis; while the "Weberian" criminologists are mostly positivists and consider the imperatively coordinated associations as their minimum units of analysis.

An alternative way of classifying the different trends in conflict criminology is required. In this thesis, two major trends in conflict criminology are distinguished; liberal or pluralist and radical. Liberals are following Weber, Dahrendorf, and Simmel's tradition, and have a positivistic orientation. They follow the principle of value "neutrality," assuming that an objective reality exists independent of human consciousness, and emphasize the prediction of future events based upon the present findings. Radicals, on the other hand, are Marxist and emphasize the dialectical method and critical approach. Their critical mode of inquiry is the radical philosophy which
maintains that the explanation of the existing order is possible by
the negation of it. Instead of merely looking at the "objective
reality," they say, one must negate the established order in order to
understand what he/she experiences. The distinguishing figures in
liberal conflict criminology are Austin Turk and George Vold. Vold
followed Simmel's theory of group conflicts and Turk extended
Dahrendorf's theory of social conflict into the field of criminology.
Among the radicals, Richard Quinney, William Chambliss, and Taylor
et al., and a few others, are the most prominent figures, and all have
the Marxist orientation in one way or another.

But these two categories are not strictly mutually exclusive.
There are overlaps between them. As an example, Dahrendorf's charac-
terization of social conflict, and his critique of the consensus model
of society are accepted by both radicals and liberals. But Dahrendorf
considers his theory of social conflict as a complementary to the
consensus theory which is a non-Marxist formulation; while the radicals
reject the validity of the latter. Furthermore, implicit in the
liberals' theory is their utilization of dialectic. What makes
liberals is that they do not challenge the existing power structure,
while radicals are normatively committed to the elimination of social
inequality by challenging the whole structure of society.

The Liberal Conflict Criminology

Dahrendorf starts his theory of social conflict by criticizing
both functionalism and the Marxian theory of class struggle. He
criticizes the consensus model as utopian and unreal. According to
him, functionalists' emphasis on consensus "means, by implication, the absence of structurally generated conflict" (Dahrendorf, 1968: 109). What the word system in functionalist terminology connotes is its closeness. What it implies is "essentially something self-sufficient, internally consistent, and close to outside" (p. 117). Dahrendorf further continues that "the structural-functional theory also deals with societies from which historical change is absent, and that is in this sense, utopian . . . because it is exclusively concerned with spelling out the conditions of the functioning of a utopian social system" (p. 118). He then concludes that there is a need for a radical revision of the theory and its assumptions: that "society is held together not by consensus but by constraint, not by universal agreement but by the coercion of some by others" (p. 127).

Similarly, Dahrendorf criticizes the Marxian model of social conflict from two angles. First, class conflict based on property is just one kind of conflict. Second, Marxian theory is limited in its applicability to other kinds of conflict. Marxian model, therefore, like functionalism, deals with some aspects of reality not the whole aspect. According to him "a theory of class based on the division of society into owners and nonowners of means of production looses its analytical value as soon as legal ownership and factual control are separated" (Dahrendorf, 1959: 136). He then concludes that any departure from the Marxian model has to be started from this point. The key factor for him, is not the possession or nonpossession of the means of production, but the possession of authority. The authority structure of any given society, therefore, is the key variable in his theory of social conflict:
The authority structure of entire societies as well as particular institutional orders within societies (such as industry) is, in terms of the theory here advanced, the structural determinant of class formation and class conflict. The specific type of change of social structures caused by social classes and their conflict is ultimately the result of the differential distribution of positions of authority in societies and their institutional orders. Control over the means of production is but a special case of authority, and the connection of control with legal property an incidental phenomenon of the industrializing societies of Europe and the United States. Classes are tied neither to private property nor to industry or economic structures in general, but as an element of social structure and a factor effecting change they are as universal as their determinant, namely, authority and its distribution itself. (Dahrendorf, 1959: 136-137)

Dahrendorf's approach toward a theory of social conflict is based on the assumption that conflict is structurally determined. He does not consider his theory as a general theory of social conflict but as "one of the most important, if not the most important type of social conflict . . . an explanation of the frictions between rulers and ruled in given social structural organizations" (Dahrendorf, 1958: 172-173). The essential elements of his theory of social conflict and change are the following:

1. Every society is subjected at every moment to change: social change is ubiquitous.
2. Every society experiences at every moment social conflict: social conflict is ubiquitous.
3. Every element in a society contributes to its change.
4. Every society rests on constraint of some of its members by others (Dahrendorf, 1958: 174).

Dahrendorf maintains that the structural origin of social conflict lies in the superordinate and subordinate relations which are dominant in certain units of social organization. Borrowing Weber's concept,
these analytical units are "imperatively coordinated associations."
In any of these units "some positions are entrusted with a right to
exercise control over other positions in order to ensure effective
coercion; it means, in other words, that there is a differential
distribution of power and authority (Dahrendorf, 1959: 165).

According to his model of social conflict, there are two aggre-
gates of positions of authority in any given imperatively coordinated
association. One is the position of ruler or superordinate which is
classified by an interest in maintaining the status quo. The other
is that of subordinates which is characterized by an interest in
changing the social structure toward their own benefit. The conflict
is between these two interests.

Conflict groups, according to Dahrendorf, differ significantly
from classes. Conflict groups, in his coercion model of society, are
"groupings based on positions in the imperatively coordinated associ-
ation" (Dahrendorf, 1959: 192). There are plurality of these associ-
ations in "most capitalist" society characterized by the separation of
ownership from control over the means of production. Therefore, those
who are at the bottom of one may be at the top of the other:

For the individual incumbent of roles, domination in one
association does not involve domination in all others to
which he belongs, and subjection, conversely, in one
association does not mean subjection in all . . . although
empirically a certain correlation of the authority
positions of individuals in different associations seem
likely, it is by no means general and is in any case a
matter of specific empirical conditions. (p. 171)

Furthermore;

. . . since domination in industry does not necessarily
involve domination in the state, or a church, or other

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
association, total societies can present the picture of plurality of competing dominant (and, conversely) subjected aggregates. (pp. 171-172)

While Dahrendorf claims that his theory transcends the Marxian model of social conflict, "his works appears to have been welcomed and developed (by American sociologists, in particular) because it arrived at a non-Marxist formulation which developed (rather than denied) the fundamental assumptions about consensus in society" (Taylor et al., 1973: 238).

Dahrendorf never demonstrates the priority of authority to the relations to, and possession of, the means of production, nor does he show the differences between classes and other conflict groups (Berghe, 1974: 288). Furthermore, social conflict as the struggle for authority suggested by Dahrendorf is more of psychological rather than sociological law. It is also not clear whether men struggle for authority itself or struggle against the abuse of authority, exploitation, . . . as Zeitlin (1973: 119) explains:

But this sound like a dogma—wherever there is authority, men will struggle for it. It is more in the nature of a psychological law than a sociological proposition. For it implies that conflicts are generated by authority differences themselves, rather than by oppression, exploitation, abuse of authority, and other substantive issues (emphasis in the original).

Almost within the same period that Dahrendorf was presenting his theory of social conflict, George Vold (1958) was building his conflict theory of crime upon the Simmel's social-psychological model of conflict. Vold believes that conflict theory rests on the theories of personality formation and social processes designating collective behavior. The implicit assumption he draws from the above view is
that society consists of "congeries of groups held together in a
shifting but dynamic equilibrium of opposing group interest and
efforts" (p. 204). Vold, like Dahrendorf, suggests his theory not
as a replacement but as a supplement of Consensus Theory. Neither
Dahrendorf nor Vold challenges the dominant paradigm of their time.
Both try to reconcile consensus theory with the theory of social
conflict. In this respect Vold declares that:

As social interaction processes grind their way through
varying kinds of uneasy adjustment to a more or less
stable equilibrium of balanced forces in opposition,
the resulting condition of relative stability is what is
usually called social order or social organization. But
it is the adjustment, one to another, of the many groups
of varying strengths and of different interests that is
the essence of society as a functioning reality. (pp.
204-205)

And Dahrendorf maintains that:

It seems meaningful to say that both models [conflict and
consensus model] are in a certain sense valid and analyti-
cally fruitful. Stability and change, integration and
conflict, function and dysfunction, consensus and
constraint, it would seem, two equally valid aspects of
every imaginable society. (Dahrendorf, 1958: 174)

Vold believes that the whole criminalization process is the
product of the conflict between those who violate the law and those
who support it. But at every stage of the conflict process the
principle of compromise is operating from the positions of strength:

The struggle between those who support the law and those
who violate it existed in the community before there was
legislative action; it was the basis for the battle in
the legislature, it is then continued through the judicial
proceeding of prosecution and trial; and it culminates
eventually in the prison treatment of the violators by
those who wish to have the law enforced. The principle
of compromise from positions of strength operates at every
stage of this conflict process. (Vold, 1958: 209)
Vold's theory on group conflict and his theoretical concepts have two major weaknesses. First, the concept of "dynamic equilibrium" is vague. What does equilibrium mean? Physical scientists define equilibrium as any balance of forces, whatsoever; and they have no judgment for their definition. Nor do they insist on the possibility of having a balance of forces in practice. Vold has the same conception of equilibrium; balance of forces in opposition but as an implicit value judgment for his definition; equilibrium is good. On the other hand, what this definition implies is that there is no powerful group in society which would be able to translate their interests into criminal law. But, if so, then whom does the law represent? If it follows that the law represents everybody which means that there is no conflict in society, which is the opposite of what Vold has intended to say. Vold tries to correct himself by using the concept of dynamic or shifting equilibrium instead of merely equilibrium. But again he put himself into another problem by using two contradictory terms together. Dynamic means something which is moving and equilibrium by definition implies a state of not moving. The argument here is that using the terminologies of both consensus and conflict model and linking them together in a mechanical way produces more confusion than reconciling these two paradigms. However, liberals (more than both functionalists and radicals) are attempting to create a model which includes both of these two paradigms. The works of Austin Turk is also a part of these attempts.

Austin Turk starts his theory on crime by complaining about the poverty of criminology in explaining the phenomenon of crime and lack
of integrity between theory and practice. In the introduction of his book, *Criminality and Legal Order*, he says:

Embarrassment provided much of the initial push that led to the writing of this book. I was embarrassed at my lack of good answers when confronted by perceptive students who wondered, somewhat irrelevantly, why criminology is "such a confused mishmash" and who found their texts vague and sometimes contradictory, though stuffed with anecdotes and data from sources which were shot through with defects according to those same texts. Some of these students were especially bothered by the "unreality" of criminological studies, by which they meant the lack of sustained attention to connections between the theories and statistics on crime and what they heard every day about relations among social conflicts, political maneuvers, and law violation and enforcement. (Turk, 1969: vii)

Turk (1966) conceptualizes the relationship between conflict and crime within four propositions: first, criminal behavior may be an indicator of an individual's internal tensions generated through his interaction with the environment, or out of his inability to satisfy the contradictory expectations of others. Socialization of offenders in a criminogenic subculture is the second source of conflict. The third source of conflict is the offender's socialization in a different culture with different legal code, and finally, crime is the manifestation of the realistic conflict of interests. According to him, "the first two perspectives are associated with an almost exclusive concern with explaining the behavior of deviants who are only incidentally and sometimes officially criminals. The third and especially the fourth evidence are more concerned with the nature of law and with nonpathological dimensions of intergroup conflict . . ." (pp. 339-346). He further maintains that criminalization is not restricted within "the narrow limits imposed by structures for the administration of"
justice" (p. 342). In this respect, he widens the scope of the conflict theory to cover both individual psychological and social conflict. The former is deviance-pathology and the latter is social conflict-political. "The most critical problem in criminological theory today," he suggests, "is to determine whether and how the two orientations--which may be called the 'deviance-pathology' and the 'social conflict-political'--can be integrated" (p. 340).

But Turk (1969) in his later work on Criminality and the Legal Order seems to concentrate rather exclusively on the second orientation--social conflict-political--while trying to apply Dahrendorf theory of social conflict in explaining crime:

Effort to determine causes of criminality have floundered on the fact that criminality is not a biological, psychological, or even behavioral phenomena, but a social status defined by the way in which an individual is perceived, evaluated, and treated by legal authorities. Legal, extra-legal, and illegal criteria are used by those who enforce legal norms in determining whether and in what ways individuals are punishable. (p. 25)

Following the tradition of Simmel, Dahrendorf, and Vold, Turk maintains that "society is neither a perfect cooperative of 'all for one and one for all,' boon granted the ignorant many by the enlightened few, nor a Darwinian jungle" (p. 32). But his theory more heavily rests upon Dahrendorf's than upon anybody else. Like Dahrendorf, he believes that the patterns of conflict involves two groups with inevitably different perspective. These are, on the one hand, the dominant authority holders, and superordinate, and on the other hand, subjects subordinate and nonauthority holders. He again, like Dahrendorf, makes a non-Marxist formulation by saying that:
"his is not to say that any specific population can be readily
dichotomized into a ruling elite and a powerless mass" (p. 33). It
is within authority-subject dichotomy that the criminological study
must addresses itself to. More specifically Turk says:

The study of criminality becomes the study of relations
between the statuses and roles of legal authorities--
creators, interpreters, and enforcers of right-wrong
standards for individuals in the political collectivity--
and those of subjects-acceptors or resisters but not
makers of such law creating, interpreting, and enforcing
decisions. (p. 35)

The authorities and subjects may or may not be aware of the
patterns of interaction in which they express their distinctive
expectation in society. This degree of awareness of the interaction
pattern by the actors, according to Turk, may range from a full
awareness to a complete ignorance. Within this range a norm may be
either cultural or social. A norm is cultural when it is expressed
by the use of symbols. But it is social when there is no symbolic
representation, but it is understood through inference and generaliza-
tion by the actor. But the main question for Turk is what constitutes
legal norms. Social norms become legal norms in authority subject
relationships:

Observed patterns in coercion imply certain social norms;
when the people involved happen to be the authorities
and the subjects of a political community, the inferred
social norms are called the "legal" norms of that
collectivity. (p. 37)

On the other hand, the legality of cultural norms is determined
by the authorities. "A cultural norm is a law if the authorities say
that it is, meaning by this that they are prepared to use their power
against, to sanction, those who by their actions deny its relevance
as a guide for behavior" (p. 38). The loyalty of any kind of norm, social or cultural, depends upon authority. In this respect, the concept of authority is a central concept of Turk's theory of criminalization.

What is authority? Turk does not consider Weber's typology of authority into charismatic, traditional, and legal appropriate; because, he says, it does not provide an explanation of authority. He suggests that to explain authority one must know the criteria the people use to validate their social order; and how and why the people accept or reject any criteria of authority. According to him:

... there is another explanation of authority that seems to make better sense of authority-subject relations than any version of the norm internalization idea. This is basically the idea that people, both eventual authorities and eventual subjects, learn and continually re-learn to interact with one another as respectively, occupants of superior and inferior statuses and performers of dominating and submitting roles. That the learning process is never completed--implying that authority-subject relations are never finally stabilized--is insured by the fact that modifications are introduced into any fragment of thought or behavior by the peculiarities of individual combinations of physical attributes and experiences as both an organism and a social animal who uses symbols. (pp. 41-42)

For Turk the question of how authority comes into being is an irrelevant question. But the crucial point for him is how authority-subject relationships is explained. As it was mentioned above, the starting point in explaining this relationship is the individual peculiarities. From this, he concludes that even at the very lowest level of interaction, there is a potential for conflict between two individuals.

Authority-subject relationships are learned but each have their own part for learning: authorities learn the norms of deciding which
is called "social norm of domination" (p. 43), and subjects learn the norms of accepting which is called "social norm of deference" (p. 43). Therefore law breaking "is a measure of the extent to which rules and ruled, decision-makers and decision acceptors, are not bound together in a perfectly stable authority relationship" (p. 48). This is so, because of individual peculiarity, and because learning process is never perfect.

Turk in his theory of crime attempts to specify the conditions which determine the probability of criminalization. Since crime is the manifestation of social conflict, the conditions leading to conflict must be specified first. These conditions, he suggests, are the following: the degree of congruence between cultural norms and social norms of both authorities and subjects. Conflict is most likely when there is a high congruence between cultural and social norms of both subjects and authorities. Conflict is least likely when there is low congruence between cultural and social norms of both subjects and authorities. There are two other alternatives which fall between these two extremes. The two other factors affecting the probability of having normative legal conflict are the degree of organization and the degree of sophistication of both authorities and subjects. Considering these two variables simultaneously, four types of situation are created: (1) organized, unsophisticated; (2) unorganized, unsophisticated; (3) organized, sophisticated; (4) unorganized, sophisticated" (p. 59):

Therefore, we may tentatively conclude that conflict between authorities and subjects is most probable if the subjects are highly organized and relatively unsophisticated, less
probable if they are unorganized and unsophisticated, still
less probable if organized but unsophisticated, and least
probable if unorganized and sophisticated. (pp. 59-60)

A group is organized when an attribute or an act of that group is
integrated into a system of relationship. In other words:

An individual who has group support for his behavior is
going to be more stubborn in the face of efforts to make
him change than is someone who has only himself as an ally.
This implies that conflict is more probable, the more
organized are those who have an illegal attribute or engage
in an illegal act. (p. 68)

According to Turk sophistication is:

. . . knowledge of patterns in the behavior of others which
is used in attempts to manipulate them. Sophisticated norm
resisters are more accurate in assessing the strength and
weakness of their position relative to authorities, and
consequently better able to avoid open warfare with the
superior enemy without making significant concessions.
(pp. 58-59)

In sum, Turk's theory of normative conflict contains three major
variables: congruence of cultural and social norms, the degree of
organization, and the degree of sophistication of both authorities
and subjects. According to his table of the expected relative
probabilities of normative conflict (p. 63), authorities can vary
within two dimensions from high to low congruence of cultural and
social norms and from low to high sophistication. Therefore there
are $2^2$ or four ideal possibilities for authorities. But subjects can
vary within three dimensions: congruence of cultural and social
norms, organization, and sophistication. Therefore, there are $2^3$ or
eight ideal alternatives for the subjects. Taking all together, both
authorities and subjects can vary within a five dimensions; and each
dimension can have two extreme alternatives. There are the $2^5$ or 32
ideal alternatives for expected relative probabilities of normative
legal conflict. The probabilities of conflict will be highest (1) when there is a high congruence of cultural and social norms for both authorities and subjects; (2) when both authorities and subjects are unsophisticated; (3) when subjects are organized. The probabilities of conflict between authorities and subjects are lowest (1) when there is a low congruence between cultural and social norms for both authorities and subjects; (2) when both authorities and subjects are sophisticated; and (3) when subjects are unorganized. The other possibilities are within these two extremes. Turk in his theory of conflict and crime concluded that "when there is conflict over legal norms, criminalization is caused by the implementation of decisions made by norm enforcers--especially first level enforcers--on when and how to use their power to assign criminal status" (p. 78). Criminality rates, for him, is the consequence of the criminalization of some proportion of population by another.

Turk's theory of conflict and crime gives a new insight into the field of criminology by emphasizing the importance of power in the criminalization process. But his theory is impaired by a number of shortcomings. First, although his theory appears to be on the structural level, his basic assumption about the ultimate source of conflict is on the individual level. In other words, his starting point is from the individual level. This is, of course, true that each person "has a unique slant in the world." This is also true that between any two individuals there is a potential for conflict, but it is the linkage between the individual peculiarity and the inevitability of authority-subject differentiation which has remained
vague and unexplained. How does individual peculiarity explain power relationship? He has no explanation.

Turk defines individual peculiarities as the "combination of physical attributes and experiences as both an organism and a social animal who uses symbols" (p. 42). This definition may be true, but the logical precedence of individual peculiarities to authority-subject differentiation remains in doubt.

Second, within the perspective of normative conflict, Turk's theory of criminalization is rather tautological. There are two sets of norms; norms of domination and norms of deference. Individuals learn these norms according to his bio-social characteristics which determines his capacity to learn them. Assignment of criminal status depends upon the lack of congruence between social and cultural norms. On the other hand, he suggests that "law breaking is taken to be an indicator of the failure or lack of authority, it is a measure of the extent to which rulers and ruled, decision-makers and decision acceptors, are not bound together in a perfectly stable relationship" (p. 48). The only way that makes him able to escape from this circular reasoning is claiming an obvious fact that "because an authority relationship can never be finally perfected . . . and therefore challenges to authority, will occur in any political-legal structure" (p. 48). But again, the link which joins the imperfectability of the authority relationship to criminalization process is missing.

Third, Turk does not explain the sources of power and authority. His theory does not explain why some subjects commit crime while some don't. It is more of a descriptive nature than explanation. Taylor et al. (1973: 24) are pointing out that:
Turk's view is essentially descriptive: but even as a description it is contentious. We can be sure that an adequate description of deviance and dissent—the acts of men who have not been conditioned to accept the authorities as fact of life requires something more in the way of a description of human consciousness than is allowed by the adoption of the terminology of behaviorist psychologist. More importantly, however, there is in Turk no attempt to explain how authority relationships are linked with, or drive from, the wider system of social stratification. (p. 249)

Liberal conflict criminologists do not challenge the structure of society. They generally have a pluralistic conception of society. Implicit in their writing is the acceptance of the existing power structure, although they claimed to be value neutral. The reason seems to be that those criminologists who study within the framework provided by the system, whatsoever, inevitably lead to the assumption that the structure is necessarily and essentially an ontological given (a feature of social essence). For example, Turk emphasizes that investigators must search "independently the pattern of conflict and to analyze these patterns in the neutral, testable language of science instead of the partisan, value-oriented language of involvement" (Turk, 1969: 58). But as Taylor et al. (1973: 245) are saying, "it is on the basis of such a 'neutral' appraisal of the evidence that Turk is led into offer advice and prescriptions to authority-holders (not in this society, of course--in any society )":

Where an attribute or act has been integrated into a system of relationships, implying that it is a part of some role which the individual performs, then we can expect that some kind and degree of coercion will be required to break the behavior pattern or to eliminate the attribute. In this connection, it is noteworthy that efforts to reform or educate the stigmatized so that their stigma is removed have been characterized historically by the reluctance of reformers and educators to recognize that their work
depends ultimately upon the application of force to break apart the social and cultural contexts in which undesired patterns originate and are maintained. (Turk, 1969: 58)

Although liberal conflict criminology emphasizes on the phenomenon of social conflict, and although implicit in their theory is the presence of dialectical thinking, the theory as a whole is a-historical and static. Liberal conflict criminologists are further characterized as being positivists, value "neutral" and to a certain extent individualists.

Radical Conflict Criminology

The source of inspiration of the radical wing of conflict criminology is Karl Marx whose concepts of the mode of production, class struggle, and dialectical methods are the major analytical tools in this perspective. Although Marx had never intensively studied crime, those criminologists who use Marx's analytical concepts and believe that the total transformation of capitalist society is the prerequisite for the solution of crime problems are known as Marxist or radical criminologists.

The most fundamental element of Marx's theory is his master concept mode of production with its two analytical aspects; forces of production, and relations of production. The forces of production refer to the direct producers, skills, knowledge and experiences plus tools and equipment with which they produce; while the relations of production refer to the ownership of the means of production. According to Marx every society is primarily identified according to its prevailing mode of production at a particular historical period.
Generally speaking, radical conflict theory "implies an alienation theory of discontent and a growth definition of deviation" (Horton, 1966: 72). The values implied in the definition of health point to requisites of change. Because for Marxists, specially Marxist orthodoxy, revolution is the only remedy of social problems. Health is equated with the realization of communist society. Social problems are the consequence of capitalist system.

For Engles, Marx's collaborator, crime is a sign of lack of morality and an indicator of social decline which is the consequence of capitalist mode of production. According to Engles (quoted in Taylor et al., 1973: 210):

If the influences demoralizing to the working man act more powerfully, more concentratedly than usual, he becomes an offender as certainly as water abandons the fluid for the vaporous state at 80 degrees Reaumur. Under the brutal and brutalising treatment of the bourgeoisie, the working man becomes precisely as much a thing without volition as water, and is subject to the laws of nature with precisely the same necessity; at a certain point all freedom ceases.

Radical criminologists, therefore, begin their analysis of crime by challenging the structure of capitalism. David M. Gordon (1976) in his economic analysis of crime in the United States, suggests that crime is a rational response to the capitalist institutions based on competition, and inequalities in the allocation of resources. The capitalist state, he says, by means of criminal law tend to neutralize the challenges of its opponents to overthrow the whole system:

If the system did not effect this neutralization, if so many of the poor were not trapped in the debilitating system of crime and punishment, then they might otherwise gather the strength to oppose the system which reinforces their misery. Like many other institutions in this country, the system of crime and punishment serves an important
function for the capitalist class by dividing and weakening those who might potentially seek to overthrow the capitalist system. Although the capitalists have not created the system, in any direct sense, they would doubtless hate to have to do without it. (Gordon, 1976: 208)

Concerning the criminal justice system, Gordon maintains that the United States system of public justice has dual characteristics: on the one hand, it ignores certain kinds of crimes, corporate and white collar crime; on the other hand, it puts too much emphasis on crimes by the lower class people. This duality, according to him, "can fruitfully be explained by a dynamic view of the class-biased role of public institutions and the vested interests which evolve out of the state's activities" (p. 209).

Finally, Gordon argues that crime in capitalist societies is rational. It is an act of survival in an insecure society:

... nearly all crimes in capitalist societies represent perfectly rational responses to the structure of institutions upon which capitalist societies are based. Crimes of many different varieties constitute functionally similar responses to the organization of capitalist institutions, for these crimes help provide a means of survival in a society within which survival is never assured. Three different kinds of crime in the United States provide the most important examples of this functionally similar rationality among different kinds of crime: ghetto crime, organized crime, and corporate (or white-collar) crime. (p. 200)

While Gordon emphasizes that crime in the capitalist society is rational, he does not explain why some people commit crime and some don't. Furthermore, he does not analyze the phenomenon of crime historically.

Another major characteristic of radical criminologists is their contention that crime and criminal law are not universal phenomena which exist in all societies at all times, but rather they are the
by-product of formal States. In other words, no law has politicality and its violation is not crime, unless it is created and defined formally by the States. As Kennedy (1976: 62) says:

Crime and penal sanction in being limited to specific countries and to a period of Western history are not universal but are a function of the emergence of formally rational States, of citizenship under such states, and of the transfer of the power of pardon from communities based upon the ethic of shared responsibility to a political or territorial community founded upon the fiction of individual responsibility. With these institutions developed two related legal orders: state-guaranteed commercial and/or civil codes, and criminal laws—both of which define the general role expectations of citizenship at any given point in the history of formally rational states and the institutions supporting them.

The third major characteristic of radical criminologists is their emphasis on criminal law. In fact, radical criminologists study of criminal law is one of their major contributions in the field of criminology. For them, crime and criminal law are not two separate solid realities. But rather the study of the offender and his behavior, and criminal law and its formulation are two complementary approaches in criminology. As Quinney (1970) declares, the study of criminal behavior and criminal definition would make it possible to develop a new theoretical framework for the study of crime:

Two schools of thought have developed. Some argue that crime is properly studied by examining the offender and his behavior. Others are convicted that the criminal law is the correct object: how it is formulated, enforced, and administered. The two need not become dead locked in polemics. The long overdue interest in criminal definitions happily corrects the absurdities brought about by studying the offender alone; the two approaches actually complement one another. A synthesis of the criminal behavior and criminal definition can provide a new theoretical framework for the study of crime. (Quinney, 1970: 4)
Quinney in his theory of social reality of crime assumes a nominalistic ontological position rather than that of the positivists. He believes that any phenomenon is real only when it is imagined by man. Imagination is the process by which human being gives meaning to his experience. Quinney, therefore, does not accept any universal essence. He believes that the theory of crime must be a theory which deals with the problematic nature of human existence. While he recognizes that "the mind is unable to frame a concept that corresponds to an objective reality (Quinney, 1970: 4), he concludes that theory must give meaning to the man's experiences.

Quinney's theory of social reality of crime consists of six propositions that emphasize the political nature of crime in a politically and segmentally organized society characterized by conflict. The first proposition is the definition of crime as a human conduct defined by authorities in society. Second, crime is a definition of the behavior which is in conflict with the interests of the powerful groups in society. Third, the powerful groups apply the criminal definition and enforce the administration of criminal law. Fourth, in the segmentally organized society, behavior patterns associated with criminal definitions develop and within this context people engage in activities which have relative probabilities of being defined as criminal. Fifth, various means of communication help diffuse the conception of crime throughout society. And finally, the social reality of crime is the product of formulation, enforcement and application of criminal definition, the development of behavior pattern related to that definition, and the construction of criminal conception.
Quinney's contention is to demystify criminal law in the United States and redirect criminological studies toward the politicality of criminal actions and the role of powerful groups in creating criminal definitions.

Crime and criminal law, according to him, are the realities which are constructed by the powerful groups in society:

The social reality of crime in politically organized society is constructed as a political act. Both private and governmental groups have a vested interest in constructing particular criminal conceptions that instruct official policy. From beginning to end, then, the construction of the social reality of crime is a political matter. (p. 304)

Quinney's major contribution is his sociological study of criminal law. His belief in the fact that crime is a reality which is constructed seems to be true. But his nominalistic ontological position creates confusion. He is saying: "any phenomenon is real to us only when we can imagine it" (p. v). Since human beings can imagine any phenomenon more than one way, therefore, "the social reality of crime" could be imagined in different ways. But there is only one social reality of crime; which is constructed by the powerful group in society. It follows that there must be a prerequisite for imagination: the existence of powerful groups. That is, imagination has a materialistic basis. This is true that if man cannot imagine any thing, he would not be able to prove its existence. But it does not explain why people imagine in certain ways. The argument here is that what human beings construct socially is the product of his imagination and the external forces which affect imagination in an organic and dialectical fashion. Quinney, however, does not reject the consequence of imagination which he calls the phenomenal reality:
Crime begins in the mind. In this sense a conceptual reality of crime is constructed. But the consequence of such construction is a world of actions and events; that is, a phenomenal reality. The whole developmental complex of conception and phenomenon, in reference to crime, is the construction of the reality of crime. (p. 316)

The next spokesman of radical criminology is William J. Chambliss, who like Quinney and Kennedy believes that crime and criminal law are not universal phenomena which exist in all society at any historical period, "rather these phenomena have unique characteristics depending on their particular historical period" (Chambliss, 1976b: 5). While Quinney is implicitly affected by Dahrendorf and Turk's tradition in the sense of utilizing the concept of power in his theory, Chambliss is closer to Marxist orthodoxy in a sense of utilizing the concept of class. According to Chambliss, "criminal behavior is explained by the forces of class interests and class struggle, and most fundamentally by the contradictions inherent in the social relations created by the society's particular mode of production" (p. 5).

Chambliss' theory on crime is formulated into fifteen hypotheses which are classified into three main categories, each including five hypotheses. The first category is "on the content and operation of the criminal law," which includes: (1) ruling class defines acts as criminal; (2) violation of the laws by the members of the ruling class will be ignored, while members of subject classes will be punished; (3) it is in the interest of the ruling class to label other persons' behavior as criminal, the behavior labeled "criminal" may or may not be tolerated by society at large; (4) criminal label is applied more frequently to the lower classes because bourgeoisie control the State and therefore, protect themselves from being

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
stigmatized; (5) further industrialization of the capitalist societies widens the gap between bourgeoisie and proletariat; and penal law expands to control the latter and coerce them into submission.

The second category is on the consequences of crime for society; (6) crime creates a false consciousness among the lower class and make them think their own interests and the interests of the ruling class are identical; (7) crime diverts the attention of the lower classes from their exploitation by the capitalist class toward other members of their own class; (8) crime reduces surplus labor by creating jobs for law enforcers, social workers, professors of criminology and other people whose employment is dependent upon the commission of crime; (9) labeling, stigmatizing and defining people as criminal "permits greater control of proletariat"; (10) crime is a social reality which exists to serve for the interest of those who created it.

The third category is concerned with the etiology of criminal behavior. (11) Criminal and noncriminal behaviors have their roots in people's social position in the class structure of society. "Crime is a reaction to the life conditions of a person's social class." (12) Concentration of criminal acts in the lower classes are due to the fact that the ruling class define only the acts growing out of the lower class as criminal. (13) The lower classes are more likely to be arrested and convicted because the law enforcement agencies are under the control of bourgeoisie. (14) Crime varies in different societies with different political and economic structures. (15) Socialist societies, with the less intense class conflict, should have lower crime rates than capitalist societies because the former reduce the forces which otherwise lead to more definitions of crime.
Quinney's theory of social reality of crime, as it was mentioned earlier, is mainly concerned with creation and enforcement of criminal law. While his theory is useful in explaining criminal law, it does not explain the etiology of crime. Chambliss' propositions although contain both the content and operation of criminal law, and etiology of criminal behavior, they are very general. In other words, these propositions are as general as Marx's theory of class struggle. This is, in fact, the main problem with radical criminology.

Generally speaking, radical criminology is characterized as being historical, structural, normatively committed to the elimination of inequality, and dialectical. Within this context two major interrelated fields of radical criminology might be seen: sociology of criminal law, and etiology of crime. The former constitutes radical criminology's major contribution. But in case of the etiology of crime, there are not very much interest. Therefore, the propositions remain on a general level: crime is the manifestation of social conflict; and the structure of society is criminogenic. Theories and research are badly needed to elaborate the way social structure directly or indirectly (through the social institutions) affects the individual's propensity to commit crime. Discussion on the etiology of crime is out of the scope and the content of this thesis. In the next chapter the importance of liberal and radical conflict criminology for the study of the criminal justice system will be discussed.
CHAPTER II

CONFLICT CRIMINOLOGY AND RACIAL AND CLASS BIASES
IN THE CRIMINAL JUSTICE SYSTEM

In the previous chapter two major trends, liberal and radical, in conflict criminology were discussed. In this chapter the major contention is to discuss the implications of each of the above models for the study of the criminal justice system; and to draw specific propositions which are related to the racial and class biases in the courts' disposition.

The nature of lawmaking and enforcement is one of the major points of agreement between radicals and liberals. Both liberals and radicals agree that the designation of criminal status is not merely determined by legalistic criteria. Indeed, the ascription of criminal status "is that of criminalization—the classification of individuals as 'criminals' of one sort or another because of what or who they are, or are imputed to be, as much as, or more than, because of anything they may have done" (Turk, 1977: 217). Turk (1969: 9-10) maintains that "criminal status may be ascribed to persons because of real or fancied attributes, because of what they are rather than what they do, and justified by reference to real or imagined or fabricated behavior." This may imply that criminal behavior is neither necessary nor sufficient in the conviction of the offender. As Turk declares, "as the power difference favoring the enforcers increases, the probability of criminalization of the opposition increases" (p. 68). In other words, the less powerful offenders are more probably to be ascribed criminal status. Similarly, Quinney (1970: 141-142) maintains that:
As in the use of discretion by the police, the boundaries of discretion in the administration of criminal law are not clearly defined. Obviously judicial decisions are not made uniformly. Decisions are made according to a host of extra-legal factors, including the age of the offender, his race, and social class.

Perhaps the most obvious example of judicial discretion occurs in the handling of cases of persons from minority groups. Negroes, in comparison to whites, are convicted with lesser evidence and sentenced to more severe punishments.

In short, both liberals and radicals "concur in disbelieving and debunking the "justice through law" mystique of societies characterized by built-in social inequities sustained by political repression" (Turk, 1977: 217).

If both liberals and radicals agree on the nature of law and law enforcement, what then is the point of distinguishing between these two major trends in conflict criminology for the study of the criminal justice system? What is the merit of radicals over liberals that this thesis entitled itself to a radical interpretation?

As it was mentioned earlier, central to the liberal conflict criminology is the concept of authority. Authority is defined as the legitimate power. But what is power? How do some people become powerful and some do not? Is there any material basis for the acquisition of power? Or power differences among people just happened to be so? The argument here is that emphasizing on the role of power is not sufficient enough in explaining the criminalization process. Liberal conflict criminologists do not emphasize enough on the role of the economic factor in ascribing criminal status. They rigidly differentiate between power and wealth, and go on to explain power as an ontological given (a feature of social essence) without referring
to its material basis. In other words, they define power as control over people, while wealth is considered as control over things. But this rigid classification of wealth and power would disappear if wealth is defined not merely as control over things, but as control over productive things. In this sense, control of wealth means control over both things and people. In short, power does not seem to provide a sufficient basis for the study of the way the criminal justice system operates.

Another point with liberal conflict criminologists which creates confusion is their conception of class and class formation. For liberals, classes are "merely social categories resulting from the aggregative and disaggregative effects of technological, demographic, cultural, and social organizational changes" (p. 215). They further maintain that "perceptive and energetic persons in each category lead their fellows in organizing to secure or advance their collective interests, which may or may not be construed as primarily economic" (p. 215). Since there are plurality of social aggregates in society, according to liberals, a person who is at the top of one aggregate may be at the bottom of another and vice versa. Therefore, by implication, there is no upper or lower class people in the sense that some groups of people are at the top and some at the bottom of all social aggregates. If so, what then the existence or nonexistence of radical and class biases in the criminal justice system would mean? Furthermore, the liberal conflict criminologists have not yet presented a systematic study of the criminal justice system.
But the radicals emphasize both on the concept of power and economic factors in criminalization process. In this respect, their theory has a wider scope than the liberals'. They maintain that the economic factors are the ultimate sources of power. From the radical perspective the operation of the criminal justice system must be understood in its organic relationship with the capitalist mode of production. Since capitalist societies, according to the radical model, are characterized by conflict, "the legal system in its normative structures and organizational operations will exhibit those norms and those practices that maintain and enhance the position of entrenched power-holders" (Chambliss and Seidman, 1971: 473).

Furthermore, the radicals consider classes as the social aggregates created by historical emergences of differential control over the means of production. Radicals reject the pluralistic view of society and maintain that economic factors are the primary sources of social differentiation while demographic and cultural differentiation are secondary. In the study of the criminal justice system, therefore, the concept of class as defined as historical emergence of differential control over the means of life is assumed centrality.

Chambliss and Seidman (1971) present an extensive analysis of the operation of the criminal justice system. Their works are increasingly assuming centrality in the field of sociology of criminal law and the administration of criminal justice. They suggest eighteen propositions for the explanation of the decision making process and the kind of decision made by the social control agencies. Central to these propositions are the following points: first, the
operation of the criminal justice system is the reflection of the class-struggle inherent in a highly stratified society. "In this struggle the agencies that enforce and interpret the laws are inevitably reflecting the interests and values of those who control the economic and political pinacles of power and resources in the society" (Chambliss, 1975: 476). Second, within this struggle the criminal justice system is functioning in such a way that it maximizes rewards and minimizes organizational strains. Third, consequently the criminal justice system is in continuous adjustment and readjustment to the requirement of the dominant class in society. These propositions are the following:

1. The legal system is organized through bureaucratically structured agencies, some of which are primarily norm-creating agencies and others of which are primarily norm-enforcing agencies.

2. The formal role-expectation for each official position in the bureaucracy is defined by authoritatively decreed rules issuing from officials in other positions who themselves operate under position-defining norms giving them the power to issue such rules.

3. Rules, whether defining norm-creating positions or norm-applying positions, necessarily require discretion in the role-occupant for their application.

4. In addition, the rules are for a variety of reasons frequently vague, ambiguous, contradictory, or weakly or inadequately sanctioned.

5. Therefore, each level of the bureaucracy possesses considerable discretion as to the performance of its duties.

6. The decision to create rules by rule-creating officials or to enforce rules by rule-enforcing officials will be determined primarily by criteria derived from the bureaucratic nature of the legal system.

7. Rule-creation and rule-enforcement will take place when such creation enforcement increases the rewards for
the agencies and their officials, and they will not take place when they are conducive to organizational strain.

8. The creation of the rules which define the roles of law-enforcing agencies has been primarily the task of the appellate courts, for which the principal rewards are in the form of approval of other judges, lawyers, and higher-status middle-class persons generally.

9. The explicit value-set of judges, lawyers, and higher-status middle-class persons generally is that which is embodied in the aims of legal-rational legitimacy.

10. Therefore, the rules created by appellate courts will tend to conform to the requirements of legal-rational legitimacy and to the specific administrative requirements of the court organization.

11. The enforcement of laws against persons who possess little or no political power will generally be rewarding to the enforcement agencies of the legal system, while the enforcement of laws against persons who possess political power will be conducive to strains for those agencies.

12. In complex societies, political power is closely tied to social position.

13. Therefore, those laws which prohibit certain types of behavior popular among lower-class persons are more likely to be enforced, while laws restricting the behavior of middle- or upper-class persons are not likely to be enforced.

14. Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of an offender, the greater is the likelihood that sanctions will be imposed on him.

15. When sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest social class.

16. Legal-rational legitimacy requires that laws be stated in general terms equally applicable to all.

17. Therefore, the rules defining the roles of law-enforcement officials will require them to apply the law in an equitable manner.

18. Therefore, to the extent that the rules to be applied are potentially applicable to persons of different social
classes, the role-performance of law-enforcement officials may be expected to differ from the role-expectation embodied in the norms defining their positions.

Chambliss further elaborated the effects of extra-legal factors on the legal process in his six propositions which link the class of the offender to the outcome of the legal process. Since these propositions were stated into continuous statement consisting general variables, they closely match the requirement of "good" theoretical statements (for criteria of a good theory refer to Rago, 1972):

The lower class person is (1) more likely to be scrutinized and therefore to be observed in any violation of the law, (2) more likely to be arrested if discovered under suspicious circumstances, (3) more likely to spend time between arrest and trial in jail, (4) more likely to come to trial, (5) more likely to be found guilty, and (6) if found guilty more likely to receive harsh punishment than his middle or upper class counterpart. (Chambliss, 1975: 96-97)

In other words, according to the radical conflict criminologists, the imposition of sanction for the less powerful and the less wealthy offenders is more certain and more severe. In the following section the related studies on the discretionary disposition by the social control agencies will be reviewed to see how much the above propositions are supported.

Prior Empirical Studies

Although conflict criminology tries, almost for the first time, to give a theoretical explanation to the influence of the nonlegal variables on sentencing, the empirical studies of the effects of these variables on the operation of the legal system in the United States have a longer history. One may suggest that the origin of the debate over the influence of nonlegal factors on discretionary
disposition goes back to Thorstín Sellin's provocative critique of
the administration of justice in 1935:

Laws are made by dominant interest groups in society, who
believe in protection for the social values which they
conceive to be important. These laws are, furthermore,
administered by men imbued with the ideas and concepts
of the social environment which has molded their person-
alities. The judge is no exception to this rule. The
judicial toga can never be a symbol of theoretical
impartiality in justice. . . . It would be denying to
the judge the ordinary attributes of human nature if we
were to assume that he could render justice free from
all preconceptions. (1935: 212-213)

Studies on the relationship between extralegal factors and crimi-
nal sentencing have been conducted by criminologists. These extralegal
factors were mainly indicated by race, income, occupation, and educa-
tion or a combination of them as a measure of SES. Each or a combina-
tion of some of these indicators have been considered as an independent
variable representing the socioeconomic status of the offender, and
criminal disposition as the dependent variable.

Each of the following studies attempts to test the effects of non-
legal factors on sentencing at different stages of decision making
process by the social control agencies: decision to arrest, judicial
decision making, juvenile court, capital punishment, and so forth.

Entree to criminal justice system is started with arrest. There-
fore, it is quite logical to start reviewing articles from this point.
The circumstances affecting police decision to arrest a suspect is the
subject of an article by Black (1971). The independent variables were
the race of the suspect, the seriousness of the offense, the availa-
bility of the evidence, the preference of the complainant for police
action and his relationship with the suspect, the suspect's degree of
respect toward the police, and the way police handle the incident. Primarily, he found that there is a relationship between race and the arrest rate. That is, disproportionately black arrest rates were higher than the white. But, he declared, "(n)o evidence exists to show that the police discriminate on the basis of race. The police arrest blacks at a comparatively high rate, but the difference between the races appears to result primarily from the greater rate at which blacks show disrespect for the police" (p. 1109). But the variable of "the degree of respect for the police" which makes for an outlet to take the blame of discrimination off the police is vague and could be interpreted in different ways: Are the blacks generally disrespectful toward the police? Do the police tend to arrest people according to the degree of people's respect to them? What is the police approach to black and white suspects before arresting them? Of course, people behave differently depending on their race, sex, and socio-economic status. Does it mean that the behavior of a black suspect is disrespectful toward the police, and therefore, it is the reason for the higher arrest rate for blacks? Furthermore, as presented in his table, the arrest rate among the antagonistic suspects was higher for blacks than for whites. But in this respect, the number of arrested suspects of both groups were not large enough to make a valid conclusion.

Bullock (1961) studied the effect of the racial factor in the length of prison sentences. His study was conducted among 3,644 inmates in a Texas state prison. Using tests of significance and measures of association, he found that certain extralegal factors were significantly associated with the length of sentences imposed upon
the offenders. According to him, "Negro prisoners were observed to be more greatly exposed to these factors than white prisoners, but were also observed to receive sentences significantly different from those given white prisoners even when these factors were controlled" (p. 417).

But the study conducted by Chiricos and Waldo (1975: 753-772) on the relationship between socioeconomic status and criminal sentencing; proposition 15 of Chambliss and Seidman, came about with a different conclusion. They used socioeconomic status as the independent variable and sentence length as the dependent variable, controlling the seriousness of the offense. Their data were derived from the adult correctional agencies of North Carolina, South Carolina, and Florida. On the basis of their literature review, including those reviewed by Hagan (1974), which did not show any firm conclusion (one way or another) about the relationship between SES and sentencing, and on the basis of their research findings, Chiricos and Waldo prematurely claimed that Chambliss and Seidman's proposition should be modified or rejected.

The racial and class biases in the juvenile courts were the subject of investigation by Terry (1967) and Thornberry (1973). Although there were similarities in their research design, they reached at quite opposite conclusions.

The first study conducted by Terry (1967) on the relationship between juvenile offenders' sex, ethnic background, and socioeconomic status, and the kind of decisions made by social control agencies showed no discretionary disposition based on the above variables.
This study utilized data on 9,023 juvenile cases in a single community during a five-year period. Terry tested hypotheses relating each of the above extralegal factors to the severity of disposition accorded juvenile offenders by social control agencies at three stages of the police department, the probation department, and the juvenile court. He concluded that the severity of disposition by social control agencies is not the function of the offender's socioeconomic status and minority status. But he found that females are more severely sanctioned by the juvenile court, while sex-differences are unimportant at the police and probation department.

The other study was conducted by Terence P. Thornberry (1973: 90-98) on the relationship between race, SES and sentencing among data collected of 3,475 boys born in 1945, between their 10th and 17th birthday, living in Philadelphia, and having at least one officially recorded delinquency. His research objective was to investigate the discretionary disposition at police and court level. Here again, socioeconomic status and race were considered as the independent variables and police and court disposition as the dependent variables. Using percentage conditional tables, his study showed that people from low socioeconomic status are treated more severely than those from high socioeconomic status throughout the juvenile justice system. In this respect:

At the levels of the police and the juvenile court the low SES subjects are treated consistently more severely than their counterparts, even when both legal variables are simultaneously controlled. At the level of the intake hearing the results are similar, but not as pronounced. When both legal variables are controlled simultaneously, and when the offense had a high seriousness score, the
low SES subjects are not more likely to be treated more severely than the high SES subjects. (p. 97)

Nonlegal variables and judicial decision making has also been the subject of investigation by Edward Green (1969) and Mistretta and Miles (1976). Although their research designs were quite different, in case of race both draw similar conclusions from their findings. But Mistretta and Miles found a significant relationship between SES and disposition. Edward Green (1969) in his paper on the factors affecting the sentencing practice attempted to search for the effects of legal and nonlegal variables on judicial decision making. His data were derived from official court and police records of the city of Philadelphia. The total of 1,437 convicted criminal cases were comprised the research sample which were tried by eighteen judges within a period of seventeen months during the years 1956-1957. Three sets of variables constituted his independent variables: legal factors, nonlegal factors, and factors in criminal prosecution. The severity of sentences was considered as the dependent variable. Among the nonlegal factors, he found that female defendants receive significantly less severe disposition than males. But after he controlled for the seriousness of offense, the difference in sentences between sexes declined to nonsignificant level. Similarly, in case of age and race differences and the severity of sentencing, he found no significant relationship between them, while controlling for the type of crime, the number of prior conviction, and the number of bills of indictment. Finally he concluded that:

The criteria for sentencing recognized in the law, the nature of the offense and the offender's prior criminal
record, make a decisive contribution to the determination of the weight of the penalties; and in applying these criteria, the judges display a sensibility for the relative importance of each. The marked variations in sentences according to sex, age, and race are due to differences in criminal behavior patterns associated with bio-social variables, not to hidden prejudice. (Green, 1969: 437)

In another study conducted by him, Green (1964) examined the influence of racial factor on sentencing. The main question in this study was how much the inter and intra-racial crime would contribute to the severity of sentencing. For this purpose, he developed four offender-victims categories as follows: Negro versus White, White versus White, Negro versus Negro, and White versus Negro. His research sample contained 118 cases of robbery and 291 cases of burglary derived from the 1,437 consecutive cases disposed of by conviction in a criminal court of Philadelphia (the latter figure constitutes the data of his original study on factors affecting sentencing which was discussed before). The severity of the sentence was considered as the dependent variable consisting of penitentiary (prison sentence of more than one year), prison (prison sentence of three to eleven and one-half months), and nonimprisonment (including probation or its equivalent in the form of bench parole). Within the two categories of offenses, robbery and burglary, he hypothesized that "patterns of criminal behavior constituting a given offense differ intrinsically not only between the races but within each race according to the race of the victim and that such differences are legally sufficient to account for the apparent racial differential in sentencing" (1964: 349-350). He found that the seriousness of the offender's prior record weighs heavily in determining the sentence; while he found no significant support for the court's
differentiation of the seriousness of crimes on the basis of the race of the offender relative to the race of the victim.

Mistretta and Miles (1976) studied factors affecting jury and judicial decision making in a county court in Illinois. Their sample included twenty-nine felony and misdemeanor trials collected over the time period of 1972-1973. Among other things, they found that socio-economic status was one of the factors strongly affecting the decision of the verdict, while the age, race, style of dress of the defendant, and level of criminal charges against him and variation in district attorneys did not significantly affect them. "High socio-economic status is related to the verdict in such a way that high status persons are more likely to be found not guilty than low socio-economic persons" (p. 28). The correlation between SES and judicial decision as measured by correlation coefficient with the value of .343 was statistically significant at 5 percent level. According to them, "the fact that SES has such a strong affect in the courtroom can be viewed as evidence supportive of the conflict model of the criminal justice system as posited by Chambliss and Seidman" (p. 35).

While Mistretta and Miles (1976) and Green (1964, 1969) found no significant relationship between race and sentencing, the importance of race in discretionary disposition is confirmed in a study conducted by Petersen and Friday (1975) on the factors affecting early release from incarceration (shock probation). Their data were collected at a medium security prison in Ohio for male offenders between the ages of sixteen and thirty. Their sample included 575 cases of which 202 were shock probation cases and 373 were control group who were eligible for
early release under Ohio law during the same period. They found that two sets of variables were associated with early release from prison:

"(1) non-legal variables: race, education, father's education and legal residence; and (2) legal variables: probation department recommendation, offense, prior record, number of bills of indictment and plea" (p. 80). According to their findings, race was a central factor in the decision making process. For blacks, race was the most important variable influencing judicial process for early release, while for whites the legal variable of offense was the most important variable. The next important variable for both black and white was education. For blacks the chance of being granted shock probation was further affected by probation department recommendation.

Here again, like other findings, the research findings on the factors affecting the imposition of capital punishment are not consistent. An extensive research was done by Hugo A. Bedau (1965) of the factors affecting the disposition of capital punishment in Oregon in the period of 1903-1964. During that period 92 individuals were sentenced to death, and fifty-eight (63 percent) of this number were executed. The characteristics of the offenders reported in his study were sex, race, nativity, occupation, age, and previous criminal record. His findings were: first, all of the ninety-two death sentences were issued to males, except one female whose death sentence was commuted. Second, in the case of race, among whites fifty-two persons were executed and twenty-one persons were commuted, but for nonwhites this figure reduced to six and two respectively. On this basis, he concluded that an inference of bias in the use of commutation authority
is not supported in Oregon because "the numbers of commutations for whites and nonwhites has been almost exactly proportional to the numbers of whites and nonwhites sentenced" (p. 12). Third, Bedau's findings showed that people of low occupation are more likely to be executed than those with high occupation. Fourth, the youth of the murderer increases the likelihood of commutation. His findings, were consistent with, but did not confirm, "the view that young male adults guilty of felony murder (quite apart from their race and previous criminal record) are, if sentenced to death, not likely to receive clemency" (p. 16). Bedau does not make any firm conclusion concerning the effects of extra-legal factors on capital punishment.

But Bedau's previous study on the same topic was based upon a larger population. In this study, Bedau (1964) was examining the 232 death sentences, 157 executions, and 32 commutations in New Jersey in the period of 1907 to 1960. He found statistically significant relationships between male sex, felony murder, and previous criminal record and execution of death sentence. He also found the same association between female sex, nonfelony murder, no previous criminal record, and extreme youth, and commutation. But he did not find any statistically significant relationship between "execution and nonwhite race, foreign nativity, age or occupation" (p. 52). Nevertheless, his findings showed that "among white murderers sentenced to death, felony murder is significantly correlated with execution; among non-felony murderers, previous criminal record is significantly related to execution" (p. 52).
But a study conducted by Edwin D. Wolf (1964) on factors affecting jury sentencing in capital cases reached to a different conclusion. His data were derived from the New Jersey capital cases from 1937 to 1961. During this period 66 men were sentenced to death in New Jersey. His findings suggested that at .05 level the relationship between race and sentence is statistically significant. But when he tested the effect of the type of crime, he found that Negroes are more frequently sentenced to death because they are involved more in felony-murders which usually result in capital punishment. Nevertheless, he finally found that:

Negroes who commit felony murders get almost 50 percent more death sentences than whites; on the other hand, Negroes who commit non-felony murders received only 25 percent more death sentences than whites. Again for Negro defendants, there is a large difference between death for felony-murder and death for non-felony murder, while for whites, the difference is much less. All of these data support the conclusion that type of crime is not an independent variable which is related to the death sentence; rather in felony murder cases, race appears to be determinative more often than in non-felony murder cases. (Wolf, 1964: 61-62)

The effect of racial factor on the imposition of death penalty for rape is the subject of research conducted by Wolfgang and Riedel (1973). Their data were gathered for a twenty-year period (1945-1965) which consist of 3,000 rape convictions in 230 counties in eleven states. Controlling for nonracial factors, they found that racial factor of the relationship between the defendant and victim would result in the use of death penalty. According to them, whether or not a contemporaneous offense has been committed, if the defendant is black and the victim is white, the defendant is about eighteen times more likely to receive the death penalty than when the defendant is
in any other racial combination of defendant and victim" (p. 132).

As their research results have showed:

It cannot be said that blacks are more frequently sentenced to death because they have a longer prior criminal record than whites, because they used more force on the victim, because they committed a robbery or burglary, because they entered premises without authorization, because they used a weapon or threatened the victim with a weapon, because they had an accomplice in the commission of the rape, because they impregnated the victim, because they more frequently attacked persons under age sixteen, and so forth. All the non-racial factors in each of the states analyzed "washout"... The only variable of statistical significance that remains is race. (pp. 132-133)

Similarly, Johnson (1957) in his study on the selective factors influencing capital punishment examined the significance of legal and nonlegal variables on the imposition of the death penalty. His data were based upon 660 convicted capital offenders in central prison, Raleigh, North Carolina, since 1909. Among the legal variables with high execution rates were rape and murder. First degree burglary was the second most important legal variable in the imposition of the death penalty. Male of the offender, occupation, education and the race of the offender were among the nonlegal variables which significantly contributed to capital punishment disposition. "The racial mores," according to him, "would appear to be a major influence in first degree burglary and rape cases, and to a lesser extent murder cases" (p. 169). Using chi-square as the test of significance, the effects of all the nonlegal variables, however, were statistically significant at less than one percent level.

Finally, Hagan (1974) reviewed twenty studies on the relationship between extra-legal attributes of the offenders and judicial sentencing. These extra-legal factors were race, sex, age, and socio-economic status
of the defendant which were considered as the independent variables. After re-analyzing the data and using chi-square ($\chi^2$) as the test of significance and Goodman and Kruskal's Tau-B ($T_b$) as the measure of association, he concluded that "while there may be evidence of differential sentencing, knowledge of extra-legal offender characteristics contributes relatively little to our ability to predict judicial dispositions. Only in rare instances did knowledge of extra-legal attributes of the offender increase our accuracy in predicting judicial disposition by more than 5%" (p. 379). He further concluded that, "fragmentary sources of data are necessarily inadequate to the question at issue. It could be suggested that what is required is longitudinal data, based on observations of defendants' experiences in transit through the criminal justice system" (p. 379). Hagan, however, did not suggest modification of rejection of the propositions presented by Chambliss and Seidman.

The studies reviewed so far on the effects of extra-legal factors on the decision making process in the criminal justice system were inconclusive and contradictory. Some of them concluded that the extra-legal factors, whatever, contribute significantly in sentencing process (Bullock, 1961; Mistretta and Miles, 1976; Thornberry, 1973; Wolfgang and Riedel, 1973; Johnson, 1957; Petersen and Friday, 1975; Wolf, 1964). And some maintain that the effects of nonlegal variables on sentencing are not significant (Black, 1971; Chiricos and Waldo, 1975; Terry, 1967; Green, 1964, 1969; Bedau, 1964 and 1965). In other words, all of these studies could roughly be divided into two categories: those which showed that nonlegal variables significantly
affect sentencing; and those which did not do so. In none of them were the theoretical implications of the findings explained. What does the presence of racial and/or class bias in the criminal justice system mean? Does it mean that in an unequal society equal justice is practically impossible? Or, does it mean that the system is not perfect enough to take care of everybody equally? And what about those which showed that there is no racial and/or class bias in the system of justice? Here again, does it mean that the system is perfect and treat the criminals irrespective of their social position? How is this impartiality of the criminal justice system possible? In short, the argument here is that the empirical findings of the relationship between nonlegal variable and disposition will be useful only if they are put in an appropriate general theoretical framework.

The reviewed studies, however, had a common denominator; all considered court and police disposition as the dependent variables, and nonlegal factors as the independent variables, while controlling for legal variables. But there were variations in their research designs and inconsistencies in the operationalization of variables. For example, Thornberry (1973) considered the occupation of the father of the juvenile offender as the indicator of his socioeconomic status. The problem with this measure is that it may not represent the person's overall social position. Chiricos and Waldo (1975) overcame this problem by using income, education, and occupation as the main dimensions of a person's socioeconomic status.

Some of the studies used sentence length as the dependent variable (Bullock, 1961; Chiricos and Waldo, 1975); and the rest considered
sentence conviction, or charge reduction, arrest rate, appellate review, execution as the dependent variables. These variations in the operationalization of both dependent and independent variables, while making it difficult to compare findings of different studies, are useful because they make it possible to check the influence of nonlegal factors on disposition at various levels of criminal justice process.
CHAPTER III

METHODOLOGY AND STUDY DESIGN

Statement of the Hypothesis

As mentioned in the previous chapter, the social position of an offender and discretionary disposition is problematic in radical conflict criminology. According to the radical model, the criminal justice system is not free of racial and class biases. And the application of criminal justice is influenced by the current values and norms which represent one group in society but not others. It is further maintained that these biases are not random but have implications for persons with different socioeconomic status, and race.

The objectives of the present study are: first, to conduct an empirical evaluation of the hypothesis drawn from the premises of the radical conflict criminology on the operation of the criminal justice; second, to give a theoretical explanation for the existence or non-existence of class and racial factors in judicial dispositions.

Chambliss and Seidman, the major spokesmen of the radical wing of conflict criminology, maintain that:

1. Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of an offender, the greater is the likelihood that sanctions will be imposed on him.

2. When sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest social class. (Chambliss and Seidman, 1971: 475)

The above propositions may imply that (1) laws are stated in general terms which are potentially applicable to all the people
irrespective of their social position. (2) But, actually, sanctions are not equally imposed on all the offenders from all classes. (3) The imposition of sanctions is more severe and more certain for the lower class people. In other words, the above propositions suggest that there is an inverse relationship between the social position of the offender and the certainty and severity of sanction. All of the above implications may be related to the research questions. But it may not be possible to test the relationship between SES and certainty of sanction. For the data are restricted to those who have already been convicted. For testing such a proposition, it is required to have data on both the convicted and nonconvicted defendants. Therefore, it is preferred to derive hypotheses on the relationship between the social position of the offender and the severity of disposition as derived from the above propositions:

1. The offenders with lower socioeconomic status group (SES) receive the more severe dispositions than those with high SES.
2. Black offenders receive the more severe dispositions than whites.

Variables of Study

Based upon the literature reviewed, two sets of independent variables are recognized in this study:

1. Legal variables: seriousness of the offense, prior convictions, number of charges, and type of plea.
2. Nonlegal variables: income, occupation, education, race, sex, age, employment status, and marital status of the offender.
The dependent variable is the courts' disposition concerning each individual case. This variable includes the following items: probation length, fine, costs of restitution, jail length and prison length. The dispositions are collapsed into four categories of probation, jail, short-term imprisonment, and long-term imprisonment, which will be discussed in the last section of this chapter.

Control Variables

The variables of income, occupation, education and race are the major independent variables of concern in the hypotheses. But other variables are also involved in the courts' decision making process and their effects must be controlled by the research design. The legal variables, age, sex, marital status, and employment status are such variables which are not related to the hypotheses, and are considered as the control variables. These variables may indicate whether or not the relationship between SES and race and the severity of disposition is spurious or real. Therefore, their significance in discretionary dispositions must be studied. Otherwise, it would not be possible to verify whether the discretionary disposition is due to the difference in race and SES of the offenders or to the contaminating effects of the control variables.

Sources of Data

For a better test of the salience of the nonlegal variables, it was desirable to select the data which were as homogeneous as possible in terms of legal variables. In this way one would easily be able to
control the legal factors, while testing the significance of the non-legal factors. Selecting only the circuit courts' records on felony cases was one way of making the data homogeneous on the legal factors.

The circuit courts, or the courts of general jurisdiction, have jurisdiction over all actions except those given by the statute to another court. Generally, in criminal cases, especially where the offense involved constitutes a felony, circuit courts have the original jurisdiction. Within their jurisdiction, they also have the superintending control over the district courts and the lower courts and are the appellate courts of the district courts.

The way the circuit courts function may be summarized as the following: After the defendant receives the accusatory pleading from the courts, he/she would enter a plea to the charge alleged in the complaint. "Depending upon the jurisdiction, the defendant may enter one or more of the following pleas: (1) guilty; (2) not guilty; (3) Nolo contendere; (4) not guilty by reason of insanity; (5) former jeopardy; or (6) former judgment of acquittal or conviction" (Stuckey, 1976: 49). Except for the plea number four, the defendant will be presumed to have been sane at the time the crime was committed. If the defendant enters a plea of guilty, nothing would remain for the court to do, but to give judgment and determine punishment. In other cases, the court will decide on the defendant's case. A trial will take place, if a plea of not guilty or not guilty by reason of insanity is entered.

The other way of making the data more homogeneous on the legal factors was selecting the sample from the population of only one of
the above pleas. The number of cases on the pleas number 3 through 6 were not large enough to study. Since the hypotheses were about the salience of race and class in discretionary disposition, the guilty pleas were considered to be appropriate for this study. For it controls for the jury variation in the determination of guilt.

Based upon the above rationales, a sample of 134 from the population of 475 felony cases which pleaded guilty in Kalamazoo County circuit courts in 1977 were selected. The sample was random with replacement. For each case a protocol was provided which included the following items:

1. Legal Variables
   a. the number of charges
   b. the type of offense
   c. the number of prior convictions
2. The General Characteristics of the Defendant
   a. sex
   b. age
   c. marital status
   d. number of children
   e. employment status
   f. income
   g. occupation
   h. education
   i. race
3. Disposition
   a. probation length
b. fine

c. restitution

d. jail length

e. prison length

f. costs

g. other sentences

In order to secure the confidentiality of the cases, no name was recorded. But the file numbers were recorded in order to keep access to the files in case of the need for a more detailed information. However, the file numbers were not coded. Instead an ID number was assigned for each individual case.

The first source of data was the file room of the Kalamazoo County circuit courts. In this section, the files of all felony cases from all circuit courts in the county were kept. But these files did not include all the information needed. For example, the race of the offenders was not recorded, and the age, occupation and some other social characteristics were incomplete. Complementary sources of data were needed. Data on race and age were gathered from the prosecutor's office. The investigation office's records were helpful in finding some of the missing data. Finally, the probation department's records were also helpful in completing the protocols. Nevertheless, in a number of cases data on several independent variables were missing; and out of 13\frac{1}{4} felony cases 12 cases were remanded to the district courts for plea (no disposition was recorded).
Measurement and Coding

Where possible, all the data were measured on the ordinal level of measurement on a high to low continuum. Although the sample size in relation to population was statistically appropriate when considering the number of independent variables, it was not large enough to make more than five categories for each dependent and independent variable. Therefore, it was necessary to collapse the data as much as possible.

After all the data were collected, they were coded and punched on the IBM cards. The data on income and education were coded according to the table of standardized scores for income and education published by the U.S. Bureau of the Census (1963). The data on occupation were coded according to the table of standardized scores on occupational prestige published by Nam and Powers (1968) for 1960. It deserves mentioning at this point that before collecting the data the intention was to construct a single measure of the socioeconomic status of the offenders by computing the average of the standardized scores on income, occupation and education; but since the data on income were incomplete, education and occupation were used as the independent measures of class. In other words, it was assumed that if both education and occupation significantly affect the courts' decision, one can say that class may be a factor in discretionary disposition. This point will be further analyzed in the next chapter on observations and findings.

The data on the type of offense included the following charges: larceny, breaking and entering, entry without breaking, assault,
kidnapping and armed robbery, unarmed robbery, receiving and concealing stolen property over $100, embezzlement, false pretenses, possession of a controlled substance, delivery of and obtaining controlled substance, carrying dangerous weapon, escape from prison, uttering and publishing, criminal sexual conduct, resisting and obstructing police officer preserving peace, unlawful driving away of a vehicle and driving under the influence of liquor.

These offenses were ranked according to their degree of seriousness as defined by the statute into five categories ranging from one to five or from low to high serious offenses respectively. In other words, the degree of seriousness of each of these offenses was measured according to the amount of punishment specified in the statute. These are the following:

1. one year imprisonment or $500
2. 2-5 years imprisonment and/or $500-$3,000
3. 7-10 years imprisonment and/or $5,000
4. 11-20 years imprisonment and/or $25,000
5. Life or any term of years

Similarly, dispositions were ranked into four categories according to their degree of severity ranging from one to four or from low to high severe dispositions. Dispositions included the following items, from low to high severe dispositions:

1. Probation
   a. fine and cost only
   b. probation one year or less plus fine, cost and restitution
   c. probation more than one year plus fine, cost, and restitution
2. Jail
   a. jail term less than six months and plus fine, cost, and restitution
   b. jail term six months and less than a year plus fine, cost and restitution
   c. jail term one year

3. Short Term Imprisonment
   a. prison term less than two years
   b. prison term from two to three years
   c. prison term from three to four years

4. Long Term Imprisonment
   a. prison term from four to seven years
   b. prison term more than seven years

Since the variables were measured on the ordinal level, a measure of association for the ordinal data must be used. Kendall's Tau-B is a measure of degree of association which is symmetrical and shows the direction of association. It also takes account of the nontrivial ties in expressing the relationship between two variables. It's value varies from -1.0 to +1.0, depending upon the direction of association, and its magnitude indicates the strength of association. Among other measures of ordinal variables, Kendall's Tau-B, therefore, seems to be the most appropriate one. But for a number of cases when the independent variables such as race, employment status, and marital status were on the nominal level of measurement chi-square was utilized as a test of significance along with Kendall's Tau-B. A five percent level of significance was utilized in testing the hypotheses. The level of significance, Kendall's Tau-B, and chi-square were computed by the SPSS program.
CHAPTER IV

OBSERVATION AND FINDINGS

The General Characteristics of the Data

One hundred nineteen or 88.8 percent of the offenders were charged with one offense, thirteen or 9.7 percent with two offenses, and two or 1.5 percent with three offenses. The data were, therefore, homogeneous in terms of the number of charges. The slight variation in the number of charges did not seem to have any significant effect on the findings. In fact, the data were naturally controlled by this variable. But in the cases of the number of prior convictions and the seriousness of the offense there were variations.

The distribution of the data on a number of nonlegal variables did not show enough variation to run any statistical manipulation: 114 or 88.4 percent of the cases were male, and fifteen or 11.6 percent were female. The race of one female was not reported, and among the fourteen females whose race was reported ten or 71.4 percent were black and four or 28.6 percent were white. Eighty-five or 66 percent of the offenders had no children; and seventy-four or 55 percent of the data on income were missing. It deserves mentioning at this point that the percentage of the missing data for different variables varied.

There were variations in the distribution of the data within the categories of age, race, employment status, education and income. But, in the case of reported occupation 89 percent of the cases belong
to the lowest category of this variable. However, since this variable was very important for testing the hypotheses, its relationship with disposition was tested in order to verify if this slight variation had any influence on the courts' decision.

Control Variables

As it was mentioned before, for testing the hypotheses, two sets of variables were taken into consideration. The first was legal variables such as the seriousness of the offense and the number of prior convictions and the second set was the nonlegal variables such as race, age, employment status, income, occupation and education. The legal variables and sex, age, employment status, and marital status constituted the control variables; while race, income, occupation and education were the main variables which were directly related to the hypotheses.

A - Legal Variables

1. Seriousness of the offense

The seriousness of the offense appears to be the major determinant of the level of punishment by the courts. As Table I shows, there is a positive association between disposition and the seriousness of the offense.
The magnitude of Tau-B shows that this association is far below perfect. Even when the number of prior convictions are controlled, there is only a slight change in the magnitude of Tau-B. In the case of those with no prior conviction the value of Tau-B is 0.38; while in the case of those with one or more prior convictions this value decreased to 0.30 (Table II and Table III). This suggests that other factors may have been involved in the decision making process by the courts. In fact, this imperfect correlation between the seriousness of the offense and the severity of disposition seems to be consistent with the conflict proposition which states that criminal behavior is
neither necessary nor sufficient for the ascription of criminal status. For if the discretionary disposition was only measured by the legal criteria, a stronger correlation between the seriousness of the offense and the severity of disposition would be expected. In any case, however, the association between the seriousness of the offense and the severity of disposition was statistically significant at less than 5 percent level.

Table II

Disposition by the Seriousness of the 
Offense with no Prior Conviction

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Low 1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>High 5</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>75.0%</td>
<td>12</td>
<td>(3)</td>
<td></td>
<td></td>
<td>4.3</td>
<td>20.0</td>
</tr>
<tr>
<td>63.2</td>
<td>63.2</td>
<td>(12)</td>
<td></td>
<td></td>
<td>14.3</td>
<td>20.0</td>
</tr>
<tr>
<td>53.8</td>
<td>53.8</td>
<td>(7)</td>
<td></td>
<td></td>
<td>57.1</td>
<td>20.0</td>
</tr>
<tr>
<td>14.3</td>
<td>14.3</td>
<td>(1)</td>
<td></td>
<td></td>
<td>20.0</td>
<td></td>
</tr>
<tr>
<td>20.0</td>
<td>20.0</td>
<td>(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25.0</td>
<td>25.0</td>
<td>(1)</td>
<td></td>
<td></td>
<td>57.1</td>
<td>20.0</td>
</tr>
<tr>
<td>31.6</td>
<td>31.6</td>
<td>(6)</td>
<td></td>
<td></td>
<td>20.0</td>
<td></td>
</tr>
<tr>
<td>38.5</td>
<td>38.5</td>
<td>(5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>57.1</td>
<td>57.1</td>
<td>(4)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.0</td>
<td>20.0</td>
<td>(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>0.0</td>
<td>5.3</td>
<td>28.6</td>
<td>40.0</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>(0)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>5.3</td>
<td>(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28.6</td>
<td>28.6</td>
<td>(2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40.0</td>
<td>40.0</td>
<td>(2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>20.0</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>(0)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>(0)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>(0)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.0</td>
<td>20.0</td>
<td>(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>N</td>
<td>4</td>
<td>19</td>
<td>13</td>
<td>7</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.38  

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
Table III

Disposition by the Seriousness of the Offense with One or More Prior Convictions

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Low</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>High</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td>50.0%</td>
<td>46.9</td>
<td>31.8</td>
<td>8.3</td>
<td>0.0</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(15)</td>
<td>(7)</td>
<td>(1)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Jail</td>
<td>50.0%</td>
<td>21.9</td>
<td>31.8</td>
<td>50.0</td>
<td>0.0</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(7)</td>
<td>(7)</td>
<td>(6)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>0.0</td>
<td>31.3</td>
<td>18.2</td>
<td>16.7</td>
<td>66.7</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(10)</td>
<td>(4)</td>
<td>(2)</td>
<td>(2)</td>
<td></td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>0.0</td>
<td>0.0</td>
<td>18.2</td>
<td>25.0</td>
<td>33.3</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(0)</td>
<td>(4)</td>
<td>(3)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td><strong>N</strong></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>32</td>
<td>22</td>
<td>12</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.30  \( p < 0.05 \) significant

2. Number of prior convictions

The other legal variable which had significant effect on disposition was the number of prior convictions. As Table IV shows, 50.0 percent of the offenders who had no prior convictions received probation, while for those with one or more prior convictions this amount reduced to 34.2 percent. But 14.6 percent of those who had no prior convictions were imprisoned, while for those who had one or more prior convictions this figure increased to 35.7 percent. The percentage difference for the former is 15.8 percent while for the latter is 21.1 percent. This may suggest that the influence of the number of
prior convictions is more prominent in the case of imprisonment than in the case of probation. However, as the size of Tau-B shows the overall association between the number of prior convictions and dispositions is not very strong. Nevertheless, the relationship is statistically significant (Table IV).

Table IV

Disposition According to the Number of Prior Convictions of the Offenders

<table>
<thead>
<tr>
<th>Disposition</th>
<th>No Prior Conviction</th>
<th>One or More Prior Convictions</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>50.0% (24)</td>
<td>34.2% (25)</td>
<td>49</td>
</tr>
<tr>
<td>Jail</td>
<td>35.4 (17)</td>
<td>30.1 (22)</td>
<td>39</td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>10.4 (5)</td>
<td>24.7 (18)</td>
<td>23</td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>4.2 (2)</td>
<td>11.0 (8)</td>
<td>10</td>
</tr>
<tr>
<td>N</td>
<td>100% 48</td>
<td>100% 73</td>
<td>121</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.20  p < 0.05 significant

The above findings have shown that the seriousness of the offense and the number of prior convictions have negative effects on the courts' disposition. That is, the more serious the offense, the greater the severity of disposition; the greater the number of prior convictions, the greater the severity of disposition. But the

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
magnitude of the association between the seriousness of the offense and the severity of disposition as computed by Tau-B is not more than 0.38 for those with one or more prior convictions. This suggests that other factors, other than legal variables, might have been involved in discretionary disposition which will be discussed in the following section. In hypotheses testing the probable contaminating effect of these two variables must be taken into consideration.

B - Nonlegal Variables

1. Age

The offenders were divided into five categories according to their age. As Table V shows, 55.6 percent of those who were below the age of 19 and 43.8 percent of those who are above the age of 30 received probation, but for 20-24 and 25-29 year old age groups, the percentage of those who received probation reduced to 34.7 and 28.6 respectively. On the other hand, 11.1 percent of those who were below the age of 19 received imprisonment (both short and long term imprisonment); while this amount increased to 40.8 percent for the 20-24 age group. According to this table, it may be possible to assert that those who were below the age of 19 received the least severe and those who belonged to 20-24 age group received the most severe punishment. Nevertheless, these data did not show any significant relationship between disposition and the age of the offender.
Table V

Disposition According to the Age of the Offenders

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Less than 19</th>
<th>20-24</th>
<th>25-29</th>
<th>30-34</th>
<th>35 or more</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>55.6% (15)</td>
<td>34.7% (17)</td>
<td>28.6% (4)</td>
<td>43.8% (7)</td>
<td>43.8% (7)</td>
<td>50</td>
</tr>
<tr>
<td>Jail</td>
<td>33.3% (9)</td>
<td>24.5% (12)</td>
<td>50.0% (7)</td>
<td>37.5% (6)</td>
<td>31.3% (5)</td>
<td>39</td>
</tr>
<tr>
<td>Short</td>
<td>3.7% (1)</td>
<td>28.6% (14)</td>
<td>21.4% (3)</td>
<td>12.5% (2)</td>
<td>18.8% (3)</td>
<td>23</td>
</tr>
<tr>
<td>Short</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long</td>
<td>7.4% (2)</td>
<td>12.2% (6)</td>
<td>0.0% (0)</td>
<td>6.3% (1)</td>
<td>6.3% (1)</td>
<td>10</td>
</tr>
<tr>
<td>Long</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>100% 37</td>
<td>100% 49</td>
<td>100% 14</td>
<td>100% 16</td>
<td>100% 16</td>
<td>122</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.04  p > .05  not significant

2. Employment status

Table VI shows the relationship between employment status of the offender and disposition. According to this table 51.3 percent of those employed received probation, while among those unemployed this figure reduced to 33.8 percent. On the other hand, 25.6 percent of the employed were imprisoned, while for unemployed this figure increased to 28.6 percent. In the first case, the percentage difference is 17.5, while in the second case the percentage difference is 3.6. This suggests that the effect of employment status is more prominent for receiving
probation than imprisonment. Tau-B showed a slight association (Tau-B = 0.13) between this variable and disposition, but this association is not significant at 5 percent level. If unemployment is considered an indicator of social disadvantage, the direction of association between employment status and severity of disposition appeared to be consistent with the conflict model.

Table VI
Disposition According to the Employment Status of the Offender

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Employed</th>
<th>Unemployed</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>51.3%</td>
<td>33.8%</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>(20)</td>
<td>(26)</td>
<td></td>
</tr>
<tr>
<td>Jail</td>
<td>23.1%</td>
<td>37.7%</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(29)</td>
<td></td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>20.5%</td>
<td>18.2%</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(14)</td>
<td></td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>5.1%</td>
<td>10.4%</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(8)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>39</td>
<td>77</td>
<td>116</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.13  p > .05  not significant

\[ \chi^2 = 4.59 \quad p > .05 \quad \text{not significant} \]

3. Marital status

Marital status did not seem to have any significant effect on disposition. According to Table VII, 45.8 percent of the married
offenders received probation, while the figure for the single, and
divorced and separated reduced to 42.9 percent and 21.1 percent
respectively. But 20.8 percent of the married received jail terms,
while this figure increased to 31.2 percent and 52.6 percent for
single and divorced/separated groups respectively. These figures may
suggest that the marital status of the offender might be a factor
influencing dispositions if only probation and jail terms are taken
into consideration. That is, married offenders were most likely and
divorced/separated offenders were least likely to receive probation.
And, the married offenders were least likely and divorced/separated
were most likely to receive jail terms. But marital status did not
seem to play any significant role in cases of those who received
imprisonment. However, as Tau-B showed, there is no significant
relationship between marital status and disposition. A point deserves
mentioning here, marital status is a nominal variable. Tau-B,
therefore, may not be an appropriate measure of association. But the
computation of \( x^2 \) did not show any significant association either
\( (x^2 = 6.20 \quad p > .05 \text{ not significant}). \)

4. Sex

The influence of the offender's sex could not be measured because
there were too few females \( (N=15) \) in the sample.

The foregoing analysis has shown that among the control variables,
only legal variables, such as the seriousness of the offence and the
number of prior convictions had significant influence on the courts'
disposition, while the influences of age, marital status, and employment
Table VII
Disposition According to the Marital Status of the Offender

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Married</th>
<th>Single</th>
<th>Divorced/ Separated</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>45.8 (11)</td>
<td>42.9 (33)</td>
<td>27.1 (4)</td>
<td>48</td>
</tr>
<tr>
<td>Jail</td>
<td>20.8 (5)</td>
<td>31.2 (24)</td>
<td>52.6 (10)</td>
<td>39</td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>25.0 (6)</td>
<td>18.2 (14)</td>
<td>15.8 (3)</td>
<td>23</td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>8.3 (2)</td>
<td>7.8 (6)</td>
<td>10.5 (2)</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>100% 24</td>
<td>100% 77</td>
<td>100% 19</td>
<td>120</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.07  p > .05  not significant
\( x^2 = 6.20 \)  p > .05  not significant

status were not statistically significant. In testing the research hypotheses in the following section, the legal variables must be taken into consideration.

Testing the Hypotheses

1. Race and disposition

Among the nonlegal variables race was the only variable significantly affecting disposition. Of the 120 cases in which the race of the offender was reported, 69 or 58 percent were white and 51 or 42
percent were black. According to Table VIII, 53.6 percent of the whites received probation while for blacks this figure reduced to 25.5 percent. On the other hand, blacks were more likely to be imprisoned (both long and short term). Comparatively, only 23.2 percent of whites received a jail term and 23.2 percent were imprisoned, while for blacks these figures increased to 43.1 percent and 31.3 percent respectively. Such figures suggest that race may have a significant influence on the courts' decision. That is, blacks were receiving harsher penalties than whites.

Table VIII

Disposition According to the Race of the Offender

<table>
<thead>
<tr>
<th>Disposition</th>
<th>White</th>
<th>Black</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>53.6%</td>
<td>25.5%</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>(37)</td>
<td>(13)</td>
<td></td>
</tr>
<tr>
<td>Jail</td>
<td>23.2%</td>
<td>43.1%</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>(16)</td>
<td>(22)</td>
<td></td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>14.5%</td>
<td>23.5%</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>(10)</td>
<td>(12)</td>
<td></td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>8.7%</td>
<td>7.8%</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>(6)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>69</td>
<td>51</td>
<td>120</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.21 p < 0.05 significant
Chi-square = 10.59 p < .05 significant
Here again race is a nominal variable, but for the computation of Tau-B it is assumed as an ordinal variable (white = 1, black = 2).

The positive sign of Tau-B shows that the blacks were receiving the more severe punishment than the whites.

When the number of prior convictions was controlled, a legal variable found to be significantly associated with disposition, the greater severity of sentence for blacks was supported only for those who had no prior conviction. The size and the sign of Tau-B (Tau-B = 0.34) showed that the race of the offender was a very significant factor in discretionary disposition. When there was no prior conviction, blacks may receive much harsher punishment than whites (Table IX), but when there has been a prior conviction, the racial factor is less important.

Table IX

<table>
<thead>
<tr>
<th>Race</th>
<th>White</th>
<th>Black</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposition</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td>69.2% (18)</td>
<td>27.3% (6)</td>
<td>24</td>
</tr>
<tr>
<td>Jail</td>
<td>19.2% (5)</td>
<td>54.5% (12)</td>
<td>17</td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>3.8% (1)</td>
<td>18.2% (4)</td>
<td>5</td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>7.7% (2)</td>
<td>0.0% (0)</td>
<td>2</td>
</tr>
<tr>
<td>N</td>
<td>100</td>
<td>100</td>
<td>48</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.34  p < .05  significant
Chi-square = 12.44   p < .05  significant

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
For those offenders who had one or more prior conviction, the effect of race was not significant. This suggests that race was a factor influencing the courts' decision only for first-time offenders. While not statistically significant the trend, however, was similar; among whites 42.9 percent received probation, while for blacks this figure was 24.1 percent (see Table X). Likewise, the percentage of whites in the categories of jail and imprisonment was lower than for blacks. In other words, for those who had one or more prior conviction, the relationship is not statistically significant, but the pattern or trend is clearly the same--harsher dispositions for blacks.

Table X
Disposition by Race of the Offender
With One or More Prior Convictions

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Race</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>White</td>
<td>Black</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>Probation</td>
<td>42.9%</td>
<td>24.1%</td>
</tr>
<tr>
<td></td>
<td>(18)</td>
<td>(7)</td>
</tr>
<tr>
<td>Jail</td>
<td>26.2%</td>
<td>34.5%</td>
</tr>
<tr>
<td></td>
<td>(11)</td>
<td>(10)</td>
</tr>
<tr>
<td>Short</td>
<td>21.4%</td>
<td>27.6%</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>(9)</td>
<td>(8)</td>
</tr>
<tr>
<td>Long</td>
<td>9.5%</td>
<td>13.8%</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>(4)</td>
<td>(4)</td>
</tr>
<tr>
<td>N</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>N</td>
<td>42</td>
<td>29</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.16  p > .05  not significant
Chi-square = 2.66  p > .05  not significant
One may argue that the presence of a harsher punishment for blacks might be due to the fact that blacks commit more serious offenses than whites. Unfortunately, the sample size was not large enough for a simultaneous control of both the number of prior convictions and the seriousness of the offense. Nevertheless, it may be possible to check the validity of the argument by testing the relationship between race and the seriousness of the offense. If there is a significant relationship between race and the seriousness of the offense, and if the test shows that blacks committed the more serious offenses, the above argument might be supported. But as the following table (Table XI) shows, there was no significant relationship between race and seriousness of the offense. In other words, the seriousness of the offense does not appear to have any significant effect on the relationship between race and the severity of disposition. Therefore, one may suggest that the relationship between race and the severity of disposition is not spurious, but real.

2. **Class and disposition**

Before collecting the data, the plan had been to construct a single measure of class by computing the average of the standardized scores on income, occupation, and education. Unfortunately, the data on income were incomplete. Of 134 cases only 60 or 45 percent of the cases was the income reported. Even among the reported cases, there were problems. In most of the cases the income was reported on either a per-hour, weekly, or sometimes even monthly wage basis. Computation of the yearly income on these data involved the assumption
Table XI
Seriousness of the Offense According to the Race of the Offender

<table>
<thead>
<tr>
<th>The Seriousness of the Offense</th>
<th>Race</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>White</td>
<td>Black</td>
<td>N</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>6.8%</td>
<td>7.4%</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(5)</td>
<td>(4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>41.9%</td>
<td>46.3%</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(31)</td>
<td>(25)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>32.4%</td>
<td>20.4%</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(24)</td>
<td>(11)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>12.2%</td>
<td>18.5%</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(10)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>6.8%</td>
<td>7.4%</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(5)</td>
<td>(4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>128</td>
<td></td>
</tr>
<tr>
<td></td>
<td>74</td>
<td>54</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Kendall's Tau-B = -0.01 not significant

that the offender's income would remain the same without fluctuation, which may not be true. In addition, there was insufficient variation within the categories of occupation for testing the hypotheses. Eighty-nine percent of the reported occupations belonged to the lowest category. However, it was decided to consider each of these variables as a separate indicator of class.

3. Income

Since a higher percentage of the data on income were missing and the rest were inaccurate, any analysis of the data based on
income was considered to be misleading. This variable was, therefore, omitted from the analysis.

4. Occupation

Since the sample size was not large enough, the occupations were collapsed and ranked into three categories of low and medium prestige occupations. Based upon Nam and Powers' (1968) scale, the scores for the lowest category ranged from the lowest up to 33. For the medium, they ranged from 34 to 66. (There was no high prestige occupation except for two cases which their scores were about 66 and were included in the medium category.) The analysis was handicapped because 89 percent of the cases were within the first category (Table XII). The slight variation in occupation did not appear to have any relationship with disposition.

5. Education

Education was divided into four categories; elementary (until eighth grade), high school (until eleventh grade), high school graduate, and college or more. According to Table XIII, the distribution of dispositions within the categories of education did not follow any specific pattern. The data did not show any significant relationship between disposition and education of the offender.

When the number of prior convictions was controlled, the data showed a slight association between education and disposition for cases with no prior conviction, but this association was not significant. According to Table XIV, 60.0 percent of the college group
Table XII
Disposition According to the Occupation of the Offender

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Low</th>
<th>Medium</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>44.9% (40)</td>
<td>36.4% (4)</td>
<td>44</td>
</tr>
<tr>
<td>Jail</td>
<td>29.2 (26)</td>
<td>18.2 (2)</td>
<td>28</td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>18.0 (16)</td>
<td>36.4 (4)</td>
<td>20</td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>7.9 (7)</td>
<td>9.1 (1)</td>
<td>8</td>
</tr>
</tbody>
</table>

N = 89 11 100

Kendall's Tau-B = 0.085  p > 0.05 not significant

Table XIII
Disposition According to the Education of the Offender

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Elementary</th>
<th>High School</th>
<th>High School Graduate</th>
<th>College</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>20.0% (2)</td>
<td>47.5% (28)</td>
<td>37.8% (14)</td>
<td>25.0% (3)</td>
<td>47</td>
</tr>
<tr>
<td>Jail</td>
<td>50.0% (5)</td>
<td>25.4% (15)</td>
<td>35.1% (13)</td>
<td>50.0% (6)</td>
<td>39</td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>10.0% (1)</td>
<td>22.0% (13)</td>
<td>18.9% (7)</td>
<td>8.3% (1)</td>
<td>22</td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>20.0% (2)</td>
<td>5.1% (3)</td>
<td>8.1% (3)</td>
<td>16.7% (2)</td>
<td>10</td>
</tr>
</tbody>
</table>

N = 100 100 100 100 118

Kendall's Tau-B = 0.03  p > 0.05 not significant
received probation, while for the high school graduate, high school, and elementary group this figure reduced slightly to 54.5, 54.2 and 16.7 percent respectively. But in case of jail, 20.0 percent of the college group received jail terms, while for the high school graduate, high school, and elementary group 36.4, 37.5 and 50.0 percent respectively received such a sentence. These figures suggested that for those who had no prior conviction, education may have a slight effect on the courts' decision.

Table XIV

Disposition According to the Education of the Offender for Those With No Prior Conviction

<table>
<thead>
<tr>
<th>Education</th>
<th>Elementary</th>
<th>High School</th>
<th>High School Graduate</th>
<th>College</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>16.7% (1)</td>
<td>54.2% (13)</td>
<td>54.5% (6)</td>
<td>60.0% (3)</td>
</tr>
<tr>
<td>Jail</td>
<td>50.0% (3)</td>
<td>37.5% (9)</td>
<td>36.4% (4)</td>
<td>20.0% (1)</td>
</tr>
<tr>
<td>Short</td>
<td>0.0% (0)</td>
<td>8.3% (2)</td>
<td>9.1% (1)</td>
<td>20.0% (1)</td>
</tr>
<tr>
<td>Imprisonment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long</td>
<td>33.3% (2)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Imprisonment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>100 6</td>
<td>100 24</td>
<td>100 11</td>
<td>100 5</td>
</tr>
</tbody>
</table>

Kendall's Tau-B = -0.18  p > .05  not significant

This slight association between education and the courts' disposition disappeared for those offenders who had one or more prior conviction.
Table XV

Disposition According to the Education of the Offender
For Those With One or More Prior Conviction

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Elementary</th>
<th>High School</th>
<th>High School Graduate</th>
<th>College</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation</td>
<td>25.0%</td>
<td>42.9%</td>
<td>30.8%</td>
<td>0.0%</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(15)</td>
<td>(8)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Jail</td>
<td>50.0%</td>
<td>17.1%</td>
<td>34.6%</td>
<td>71.4%</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(6)</td>
<td>(9)</td>
<td>(5)</td>
<td></td>
</tr>
<tr>
<td>Short Imprisonment</td>
<td>25.0%</td>
<td>31.4%</td>
<td>23.1%</td>
<td>0.0%</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(11)</td>
<td>(6)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Long Imprisonment</td>
<td>0.0%</td>
<td>8.6%</td>
<td>11.5%</td>
<td>28.6%</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(3)</td>
<td>(3)</td>
<td>(2)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>35</td>
<td>26</td>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>

Kendall's Tau-B = 0.10 \( p > 0.05 \) not significant

The foregoing analysis has shown that among the main variables related to the hypotheses, race was the most important predictor of the courts' decision. But when the number of prior conviction was controlled its influence was only significant for those cases with no prior conviction. Among the indicators of class, income was omitted. Data on occupation were not appropriate for testing hypotheses because 89 percent of the cases were concentrated in the lowest category. The last indicator of class, education, did not show any significant relationship with disposition. When the number of prior convictions was controlled, there was a slight association between this variable.
and disposition. The negative sign of Tau-B showed that the lower educated people would receive harsher punishment.

The findings may be ranked according to the magnitude of Tau-B and summarized in the following table.

Table XVI

Disposition According to Legal and Nonlegal Variables

<table>
<thead>
<tr>
<th>Variables</th>
<th>N</th>
<th>%</th>
<th>Tau-B</th>
<th>P  .05</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seriousness of the offense with no prior conviction</td>
<td>121</td>
<td>100</td>
<td>0.38</td>
<td>S</td>
</tr>
<tr>
<td>Race with no prior convictions</td>
<td>48</td>
<td>40</td>
<td>0.34</td>
<td>S</td>
</tr>
<tr>
<td>Seriousness of the offense</td>
<td>122</td>
<td>100</td>
<td>0.32</td>
<td>S</td>
</tr>
<tr>
<td>Seriousness of the offense with one or more prior convictions</td>
<td>121</td>
<td>100</td>
<td>0.30</td>
<td>S</td>
</tr>
<tr>
<td>Race</td>
<td>120</td>
<td>100</td>
<td>0.21</td>
<td>S</td>
</tr>
<tr>
<td>Prior convictions</td>
<td>121</td>
<td>100</td>
<td>0.20</td>
<td>S</td>
</tr>
<tr>
<td>Education with no prior conviction</td>
<td>46</td>
<td>39</td>
<td>-0.18</td>
<td>NS</td>
</tr>
<tr>
<td>Race with one or more prior convictions</td>
<td>77</td>
<td>60</td>
<td>0.16</td>
<td>NS</td>
</tr>
<tr>
<td>Employment status</td>
<td>116</td>
<td>100</td>
<td>0.13</td>
<td>NS</td>
</tr>
<tr>
<td>Education with one or more prior convictions</td>
<td>72</td>
<td>61</td>
<td>0.10</td>
<td>NS</td>
</tr>
<tr>
<td>Occupation</td>
<td>100</td>
<td>100</td>
<td>0.09</td>
<td>NS</td>
</tr>
<tr>
<td>Marital status</td>
<td>120</td>
<td>100</td>
<td>0.07</td>
<td>NS</td>
</tr>
<tr>
<td>Age</td>
<td>122</td>
<td>100</td>
<td>0.04</td>
<td>NS</td>
</tr>
<tr>
<td>Education</td>
<td>118</td>
<td>100</td>
<td>0.03</td>
<td>NS</td>
</tr>
</tbody>
</table>

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
As the above table shows, for first-time offenders the seriousness of the offense is the best predictor of the court's outcome. But the magnitude of Tau-B shows that the relationship between the seriousness of the offense and severity of disposition is not strong enough to account exclusively for the court's decision. This may support the conflict model's proposition that legal variables are not sufficient conditions in criminal sentencing. After the seriousness of the offense, race was the best predictor of the court's outcome for first time offenders. For those with one or more prior convictions the seriousness of the offense was still the best predictor, but the influence of race was not significant. The number of prior convictions appears to be the third predictor of application of disposition. The rest of the variables did not show any statistically significant relationship with disposition. The relationship between the employment status and disposition was not statistically significant. But the direction of relationship was toward the expected direction, in the sense that the unemployed would receive a harsher penalty.

In sum, concerning the research hypotheses, the significance of race on discretionary disposition supports the hypothesis that the ascription of criminal status includes a racial component. Education did not show any significant relationship with disposition. But for first time offenders the relationship between education and the severity of disposition was toward the expected direction: the lower educated offenders would receive a harsher punishment. For the reasons discussed earlier, the data on occupation and income were not appropriate for testing the hypothesis. This thesis, therefore, cannot make
any conclusion concerning the relationship between the SES of the offender and the courts' disposition.
SUMMARY AND CONCLUSION

For the radical conflict criminologists the operation of the criminal justice system is problematic. While both radical and liberal conflict criminologists "agree that the production of officially designated criminals is not equivalent to the identification of those who commit crimes even by legalistic criteria" (Turk, 1977: 217); the radicals, however, present a more comprehensive picture of the operation of the criminal justice system. According to the radical conflict model those most likely to be ascribed criminal status are those with little power. It also suggests that the labeling of criminal behavior includes a racial component; in the sense that blacks are more likely to receive a harsher penalty than whites.

The task of investigating the significance of the racial and class factors in influencing the courts' disposition was, therefore, the central problem in this thesis. In order to test the salience of these factors, and based upon the literature reviewed, two sets of variables were specified. The first set was the legal variables such as the seriousness of the offense, and prior conviction. The second set was the nonlegal variables including race, age, sex, employment status, and marital status, occupation, and education. Legal variables, and age, sex, employment status, and marital status which were not related to the research questions were considered as the control variables. Based upon two conflict propositions suggested by Chambliss and Seidman (1971), it was hypothesized that the lower the social position of the offender the harsher would be the courts'
disposition. The data were a random sample of 134 felony cases which pleaded guilty in Kalamazoo County circuit courts in 1977.

The legal variables had significant influence on the courts' decision, while among the nonlegal variables race, after seriousness of the offense, was the most salient factor. When the number of prior convictions was controlled the influence of race was significant only for first time offenders. Other nonlegal variables such as occupation, education, age, employment status, and marital status did not have any significant effect on the courts' disposition. The data on occupation were primarily available for the lowest category of occupation (89 percent of the cases) and hence made it difficult to study. Therefore, it was not possible to compare the discretionary disposition along the lines of occupation. In addition, a high proportion of the data on income were missing, and the rest was not accurate. This variable was omitted from the study.

Concerning the research hypothesis, the most significant finding to emerge from the analysis was the importance of racial variable in the application of discretionary disposition. The findings support the hypothesis that blacks were more likely than whites to receive a more severe disposition. This was consistent with the radical conflict criminologists' proposition on the existence of racial bias in the criminal justice system. But this finding was mitigated by the number of prior convictions. That is, when the number of prior convictions were controlled, the significance of race in discretionary disposition was restricted to only first time offenders. Although the relationship between race and sentencing for those with one or
more prior convictions was not significant, the direction of the relationship, however, was toward the expected direction.

The nonsignificant relationship between race and sentencing for the offenders who have one or more prior convictions does not deny the importance of race in discretionary disposition. It may suggest that in this case the courts' decision is more affected by the prior records of the offender than by his skin color.

It also deserves mentioning that the complexity of the relationship between race and sentencing, and the significance of other factors in discretionary disposition, are acknowledged. Without doubt other factors might have been involved in the decision making process which are not detected in this study. Nevertheless, as data shows race significantly affects the courts' decisions.

It deserves mentioning that some criminologists have suggested that racial discrimination may also be affected by the presence or absence of public in decision making. For example, "Green," as mentioned by Petersen and Friday (1975: 86), "has suggested that if minority group discrimination occurs in the administration of justice, it is more likely to occur in the less public phases of the judicial process than in the court room." Since the data of this thesis are all consist of guilty pleas, which means the absence of public in this particular phase of decision making process, the incidence of harsher penalties for blacks is consistent with Green's statement. In short, although previous investigations on the influence of race on sentencing were inconclusive, the current findings have shown that blacks are more likely to receive a harsher punishment than whites.
The data were not sufficient for testing the significance of the class factor in the discretionary application of dispositions. The only available indicators of class were income, education and occupation. A high proportion of the data on income were missing and the rest was not accurate. The data on occupation were highly concentrated in the lowest category of occupational groups. The only remaining variable was the education of the offender. If education is considered as a crude measure of class, one can say that class (as measured by the offender's education) may be a factor affecting the courts' decision only for first time offenders in a sense that the lower educated offenders received harsher punishments. But this association was not statistically significant. However, with these data at hand, one cannot make any conclusion, one way or another, concerning the existence or nonexistence of class bias in the Kalamazoo County circuit courts.

But why is such a high percentage of the cases processed by the court composed of offenders from the lower class? A number of explanations may be suggested. One may say that the lower class people are more likely to be convicted than their upper class counterparts, because the former do not have as much access to the legal facilities as the latter do. This may be true, but it becomes tautological if one tries to explain the high crime rate among the lower class people only as the consequence of class discrimination by the social control agencies. It may also be meaningful to argue that the judges' decisions may be affected by the manner the defendants behave in the court room. A middle class judge may consider the behavior of a lower class defendant as more offensive than a middle class defendant.
While there might be some truth in the above assertions, they do not give a satisfactory explanation of the high crime rate among the lower class people. A more plausible explanation may be that the types of crime that this thesis was studying were all lower class crime. Of 134 reported cases, 73 cases (or 58 percent) were crime against property; including larceny, breaking and entering, armed and unarmed robbery, embezzlement; 13 (or 10 percent) of the cases dealt with drugs; 11 (or 8.2 percent) of the cases were misdemeanors; 12 (or 9 percent) of the cases were assault; and the rest were different kinds of crime. It may be said that a high rate of crime against property among the lower class people were directly related to their daily needs. It is plausible to argue that crime among the lower class people is an act of survival. In this respect, the absence of "legitimate" means for the lower class people to achieve their ends may be a factor responsible for a high crime rate among these people, as it is implied from the theories of Merton (1938) and Cloward and Ohlin (1960).

The above explanation, however, does not contradict radical conflict propositions on class biases in the administration of criminal justice. On the contrary, the radical conflict criminology considers the differential access to the means of life as the manifestation of social inequality. The radical model maintains that not only social inequalities deprive and restrict the access of socially disadvantaged people from the means of life, and therefore lead them toward criminality, but also their very social positions become a factor in their ascription of criminal status.
The correlation between low class and high crime rates, therefore, may be due to the above factors. However, a more detailed evaluation of the data in this respect is out of the scope and content of this thesis.
Selected References

Akers, R. L.  
1964  "Socioeconomic status and delinquency behavior: a retest."  

Anttila, I.  
1972  "Punishment vs. treatment - is there a third alternative?"  

Ayres, C. E.  

Bedau, H. A.  
1964  "Death sentences in New Jersey, 1907-1960."  
Rutgers Law Review 19.

1965  "Capital punishment in Oregon, 1903-64."  

Berghe, P. L.  

Black, D.  

Buikhuisen, W. and H. A. Hoekstra  
1973  Factors related to recidivism (mimeo). The Netherlands: Criminological Institute, Groningen University.

Bullock, H.  

Chambliss, W. J.  


Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
Chambliss, W. J. and R. B. Seidman
1971 Law, Order and Power. Addison-Wesley.

Chiricos, T. G. and G. P. Waldo

Clark, R.

Cloward, R. A. and L. E. Ohlin

Cohen, A. K.

Conrad, J. P.
1975 "We never should have promised a hospital." Federal Probation. December, pp. 3-9.

Dahrendorf, R.

Daleschol, E.

Fink, C. F.

Friedrichs, R. W.

Glaser, Daniel
Gordon, D. M.  

Green, E.  


Hagan, J.  

Hanley, C., C. Banks and P. Zimbardo  

Hofer, V.  
no Dutch prison population (mimeo). University of Stockholm.
date Department of Criminology. Stockholm.

Hofer, V. and H. Tham  
no Beware of general prevention (mimeo).
date

Hopkins, A.  

Horton, J.  

Irwin, J.  

Johnson, Elmer H.  

Kennedy, M. C.  
Korbin, S., E. W. Hansen, S. G. Lubeck and R. Yemen

Merton, R. K.

Miller, W. B.

Mistretta, M. J. and W. Miles

Nam, C. B. and M. C. Powers

Nettler, G.

Nye, F. E., J. F. Short, Jr. and V. J. Olson

Petersen, D. and P. C. Friday

Quinney, R.

Sellin, Thorsten

Sykes, G. M.

Taylor, I. R., P. Walton and J. Young

Terry, R. M.  

Thornberry, T. P.  
1973  "Race, SES, and criminal sentencing in the juvenile justice system." Journal of Criminal Law and Criminology 64:80-98.

Törngqvist, K. E.  

Turk, A. T.  

U.S. Bureau of the Census  

Viser, F. J. (ed.)  

Vold, G.  

Voss, H. L.  

Williams, J. R. and M. Gold  

Wolf, E. D.  

Wolfgang, M. E. and M. Riedel  

Zeitlin, I. M.  