

# SEVERITY OF SOCIETAL RESPONSE TO CRIME: A SYNTHESIS OF MODELS

PENNY A. GREEN\*  
H. DAVID ALLEN

This paper reviews three bodies of research which relate to the severity of societal response to crime: studies of social complexity, of punitive reaction to high rates of deviance, and of the ability of the justice system to control criminal activity. We present a model aimed at integrating these findings and accounting for some of the inconsistent results among them. We contend that while normative diversity, on the whole, tends to lessen the severity of response, this tendency may be counteracted by an increased rate of deviance and a decreased certainty of punishment—also products of social complexity.

## I. INTRODUCTION

The relationship between social structure and the severity of societal reaction to crime has long been of interest to social scientists. Attempts have been made to link society's response to the level of social disorganization (Sorokin, 1937), the presence or absence of a lower middle class (Ranulf, 1938), the general economic condition (Rusche and Kirchheimer, 1939; Dye, 1966), the degree of cultural consistency (Wood, 1952), and the complexity of the division of labor (Durkheim, 1893). None of these approaches has remained as salient in the literature, while nevertheless generating as many conflicting findings, as Durkheim's.

Our primary goal in this work is to show the points at which three separate bodies of literature, often involving different levels of analysis and different empirical subject matters, should intersect. These bodies are (a) studies of social complexity, (b) studies of societal reaction to high rates of deviance, and (c) studies of the criminal justice system's ability to control criminal activity. We demonstrate that the studies which have attempted to test the Durkheim model have

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\* The authors wish to thank several anonymous reviewers for their helpful comments and suggestions on earlier versions of this manuscript. An earlier version of this paper was presented at the 1980 meeting of the Southern Sociological Society.

failed to include other relevant variables which also affect severity of response. At the same time, we show that the reverse is also true—that studies examining various aspects of the functioning of the criminal justice system have been weakened by their attempts to generate small-scale models which fail to take into account the propositions developed by Durkheim.

It is important, at this point, to note that we are aware of a number of problems with many of the studies upon which we base our models—most particularly in terms of data quality and methodological rigor. Despite these limitations, this *is* the present state of the art. Our aim in this work is to synthesize what is available, noting problem areas where appropriate, and, while keeping these limitations in mind, make some statements about the general relationships between the variables.

In essence, then, we are constructing a theoretical idealization, which, by definition, applies only to hypothetical cases. It will, therefore, rightly appear to the astute reader that in any given situation there will be a greater or lesser degree of divergence between the general relationships predicted by our model and the realities of the actual situation. The strategy behind an idealization, however, “is to state a universally applicable law and then explain systematically actual cases which exhibit behavior inconsistent with the law” (Lopreato and Alston, 1970: 92). By logically demanding that we account for these discrepancies, the idealization surrounds itself with other propositions which relate to the actual situation. As such, it becomes a “focal point of a research program whose execution enhances the probability of producing systematic and cumulative theory” (Lopreato and Alston, 1970: 92). This is something which, at the present time, does not exist with regard to severity of response.

It is necessary to specify exactly what we mean by severity of response. By this concept, we are referring to the intensity of the punishment which the criminal justice system inflicts on individuals who violate legal norms. This, however, in keeping with the purpose of the paper, is a very general conceptualization. Severity can manifest itself in any number of ways. Some of the most common are arrest, conviction, and imprisonment rates, length of sentences given out, length of time actually served, and the tendency to utilize parole. While we are aware that these specific manifestations will be differentially affected by social complexity and crime rates—our two main independent variables—the studies which we

review show the presence of certain general patterns regardless of the specific operationalization. Our aim in this work is to present these generalizations. Furthermore, although we are interested in the relationships which hold true across each of these several levels of analysis, a majority of the studies reviewed utilize some aspect of imprisonment as their primary dependent variable. As such, it will necessarily become an important focus of our work.

## II. STUDIES OF SOCIAL COMPLEXITY

Durkheim theorized that as a society progressed from a state of mechanical to organic solidarity, the shared system of values and beliefs which had previously been the basis of social cohesion would begin to weaken. This weakening, he contended, was the result of the increasing complexity of the division of labor. The division of labor, in turn, develops "as there are more individuals sufficiently in contact to be able to act and react upon one another" (1893: 257). He further contended that this increase in the level of intra-societal relations, which he called the moral or dynamic density of a society, was brought about by three essential forces. These are the geographic concentration of a population, an increase in the population, and an increase in the transportation and communication facilities available (1893: 257-260).

Drawing on Durkheim's concept of moral density, we will use the concept of social complexity to refer to an increase in the level of urbanization, the size of the population, and the degree of interaction among its members. This increase in population and rate of interaction among its members cause an increased diversification of tasks as well as an increase in dependence of one function upon another. The ultimate result of this process is a condition of normative diversity whereby members of the group no longer share the same extensive set of values and beliefs.

This weakening of the collective conscience has a significant effect on the defining characteristics of the legal system. As the normative structure becomes progressively more diverse, many acts which previously violated the collective conscience and constituted part of the penal code are now viewed as more or less private affairs (Ross, 1961; 1973). As a result, the essential nature of law changes from repressive to restitutive. Whereas repressive law addresses violations of the collective conscience and is characterized by a punitive orientation, restitutive law governs the relations between

specialized segments of society. Because violations of these rules do not offend sentiments held by most members of the group, they do not elicit as punitive a response. Rather, the desire is to restore events to their normal working order (Durkheim, 1893: 111-127).

It is essential to remember, however, that Durkheim did not envision restitutive law entirely replacing repressive law. Rather, he saw it becoming predominant as the normative structure became more diverse. Despite this predominance, some actions remain violations of the reduced, yet still intact, collective conscience. Because they offend sentiments still held by the majority of the population, they continue to elicit a punitive, vengeful response. Once this often-overlooked feature of Durkheim's theory is recognized, it explains the seemingly contradictory tendencies of the criminal justice system to lessen penalties for, or altogether decriminalize, certain acts while instituting more severe penalties for others.

Durkheim's theory predicts that the evolution toward increasing social complexity should have two distinct, yet interrelated, consequences. First, because the society as a whole is becoming increasingly diversified, we should expect an overall decline in the seriousness with which most criminal activities are viewed. This hypothesis is supported by Figlio's (1975) study of changes in the public's perception of the seriousness of criminal offenses. Utilizing a sample of reformatory inmates and university students, he found that both groups consistently ranked all major offenses less seriously in 1975 than did similar respondents in the original Sellin-Wolfgang study conducted in 1964. Although the absolute level of seriousness had declined, the relative order of the rankings remained the same.

Second, because of the diminished nature of the collective moral fiber, we would expect that many actions previously viewed as serious offenses would now be considered more or less private affairs deserving of little or no punishment. This second proposition is indirectly supported by the findings of Gibbons (1969), Rossi *et al.* (1974), Figlio (1975), and Thomas *et al.* (1976). Each of these studies obtained a ranking of the seriousness of various offenses and/or of the penalties which the respondents felt would be appropriate for these offenses. These studies consistently show that the respondents view crimes such as murder, armed robbery, assault, and rape more seriously than victimless offenses such as possession of marijuana, prostitution, and homosexual activity. When

penalties were assessed, the more serious crimes, understandably, were viewed as deserving more severe sanctions.

The problem with each of these studies, and the reason why we contend that they give only indirect support to the second hypothesis, is that they measure attitudes at only one point in time. We found no longitudinal studies which measured changes in public attitudes. However, in the absence of empirical verification, it is probably reasonable to assume that the public views offenses such as homosexual activity between consenting adults, prostitution, and smoking marijuana less seriously than they have in the past. This idea is also supported by the documented examples provided by Alper (1974) in his discussion of changing concepts of crime and criminal policy.

Because social complexity has progressed further in urban settings, we should expect these areas to respond to more illegal activities in a less punitive manner than would their rural counterparts. Several researchers (Dye, 1966; Neubauer, 1974) have examined the relationship between measures of social complexity and indicators of punitiveness, such as number of prisoners sentenced, number of prisoners per 10,000 members of the population, the tendency to use parole, and the amount of money spent on correctional and law enforcement activities. The results of both studies suggest that as social complexity increases, there is a corresponding decrease in the tendency to emphasize the punishment of deviants. These findings, of course, support Durkheim's general hypothesis.

Durkheim's hypothesis also finds support in three other studies. Rose and Prell (1955) found that judges from rural areas and small towns assigned both longer prison sentences and higher fines for most crimes than did judges from large and medium-sized cities. Green and Allen (1975) found a significant positive correlation between level of urbanization and the tendency to employ parole as a means of release. Finally, in a study of sentencing discrepancies in Canada, Hagan (1977) found that Metis and Indian offenders were more severely sentenced in rural than in urban jurisdictions.

Durkheim's hypothesis finds no support, however, in a cross-cultural study by Spitzer (1975). Analyzing Human Relation Area Files data on 48 societies, he found that "simple" societies have far less severe punishments than do more complex ones. His findings clearly show that social organization has an effect on societal reaction to crime;

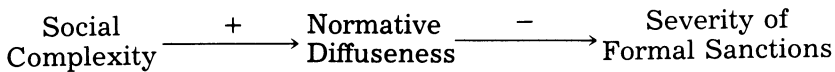
however, the effect is not what had been hypothesized. Spitzer argues that Durkheim's fundamental error was in his contention that specific forms of punishment are caused directly by given forms of moral order. Instead, he claims support for the contention that both morals and punishments are methods of maintaining social order—that they are tools employed by leaders in order to maintain control.

These conflicting findings raise the question of why studies using American states or cities as units of analysis tend to support the Durkheim hypothesis while Spitzer's study does not. One problem which always arises when cross-cultural data are utilized without a thorough analysis of the cultures involved is the unjustified imposition of western interpretations on specific forms of behavior. As case studies of diverse cultural areas have indicated (Scott, 1976), official action taken against an offender assumes a special meaning that can only be interpreted within the context of the culture in question. This is a particular problem when we attempt to operationalize concepts such as severity in a single manner and apply that operationalization to a number of very diverse cultures. It is quite conceivable that responses which Westerners would classify as lenient might in fact be very severe forms of punishment.

There is yet a second problem with Spitzer's work, and some insight into this issue can be found by quoting his first hypothesis, as derived from Durkheim: "The greater the complexity and dynamic density of a society, the less severe punishment will be, other things being equal" (1975: 618). While the HRAF societies analyzed by Spitzer have the advantage of representing areas which are not influenced by each other, this serves as well to insure that other things are *not* equal. On the other hand, using American states or cities, it can be concluded that the similarity of institutional structures in effect holds constant problems of basic social order and control. Spitzer was correct in his analysis, but his suggestion that moral order has only a spurious connection with punishment is premature. In light of the other findings, it is equally plausible to argue that in certain situations, problems of the moral order may supersede social control as a predictor of punishment.

In summary, we can say that generally as the social complexity of a society increases, the overall severity of response will tend to decrease. This relationship is presented in Figure 1.

Figure 1. The Durkheimian Model



### III. RESPONSE TO INCREASED CRIME RATES

Durkheim (1893) theorized that increases in the crime rate were a natural consequence of an increasingly complex division of labor, and that as the collectivity evolved in the direction of functional integration, an increase in individual deviation was to be expected. This hypothesis is supported by the work of several researchers. Dye (1966), using states as units of analysis, found strong positive correlations between crime rates and indices of urbanization, industrialization, income, and education. Webb (1972), using communities of 25,000 or more as units of analysis, found weak to moderate correlations between crime rates and measures of population size, population density, and industrial diversification. Lodhi and Tilly (1973) found strong and persistent relationships between the frequency of property crimes and the proportion of the population living in urban communities of 10,000 or more. Spector (1975) found significant positive correlations between city size and the violent crime rate. Green and Allen (1975), using states as units of analysis, found a strong positive correlation between the overall felony rate and the percentage of the population living in urban centers of 2,500 or more. Finally, Flango and Sherbenou (1976) found that the level of urbanization was one of the most important variables explaining variations in intercity crime rates. On the basis of these findings, we can conclude that as the level of social complexity increases, so does the incidence of criminal activity.

Several researchers (Salem and Bowers, 1970; Miller *et al.*, 1971; Thomas and Cage, 1976; Thomas and Foster, 1975; Rankin, 1979) have suggested that society may respond to increased crime rates by stiffening the penalties for such acts as a means to protect itself and to deter individuals from committing future crimes. This reaction should not be surprising, since acts which violate shared values of respect for life and property, remnants of the collective conscience, will tend to elicit a punitive response.<sup>1</sup>

<sup>1</sup> In contrast, an increase in the occurrence of those acts which are viewed as primarily private affairs (such as homosexual behavior, smoking



If rising crime rates create pressure to stiffen penalties, then we should expect to find positive correlations between crime rates and popular attitudes favoring harsher penalties as well as between crime rates and the length of sentences given out to convicted offenders. As will be discussed below, we suggest that the effect of crime rates on length of time actually served is an indirect one which is dependent upon the certainty of punishment.

Several researchers have examined the relationship between crime rates and popular attitudes concerning severity of punishment. Thomas and Cage (1976) found that both the perception of a rising crime rate and the fear of victimization were weakly, but significantly, related to severity of sentencing. Thomas and Foster (1975) found that support for the death penalty was linked to a fear of increasing crime rates, a belief in the efficacy of punishment as a means of deterrence, and a willingness to employ punishment. Finally, Rankin (1979), using NORC data, found a moderately strong nonlinear relationship between the crime rate and the level of support for capital punishment.

Tittle (1969), Green (1974), and Avio and Clark (1974) have examined the relationship between crime rate and length of sentences given out. Tittle, using states as units of analysis, found a weak positive relationship between the average total felony rate for the years 1959-1963 divided by the 1960 population, and the median length of sentences given to state felony offenders imprisoned in 1960. Green, also using states as units of analysis, found weak positive relationships between the felony rate for 1960 and both the minimum and maximum sentences given to offenders who were released from prison in 1970. Finally, Avio and Clark, utilizing Canadian data, found positive and sometimes significant associations between various property crime rates and the average length of sentences given out for those crimes.

There are, however, several problems with the above studies. First, the dependent variables in the Tittle and Green studies are such that a certain proportion of the offenders may have been sentenced prior to the crime rate figures which serve as the independent variable. The fact, however, that Tittle averages his felony rate over a five-year period, while not

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marijuana, and abortion) may lead to an increased level of tolerance. Although Durkheim does state that the severity of response will decrease in direct proportion to the frequency of occurrence (1893: 146), he does not make the necessary distinction between those acts which continue to violate shared sentiments and those which do not.

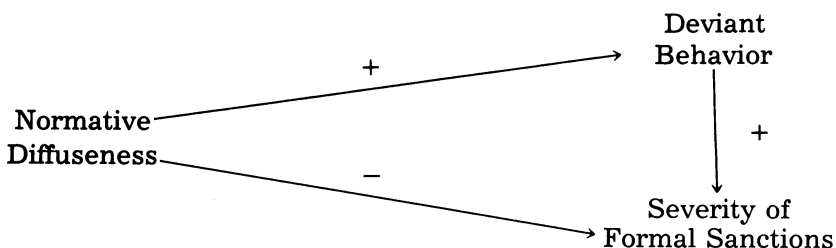


eliminating the problem, should reduce it. Furthermore, because a considerable number of felony offenders spend less than ten years in confinement, it is probably legitimate to assume that the 1960 felony rate could in fact influence the length of the minimum and maximum sentences given to most of the prisoners released in 1970.

A final problem with at least two of the above studies is that they are cross-sectional rather than time-series analyses. As such, they give only tentative support to the hypothesis that increases in crime rates result in an increase in the length of sentences given to convicted offenders. Obviously, national time-series data are necessary in order to adequately test this hypothesis. However, until such time as those data become available, the studies reviewed allow us to draw the tentative conclusion that individuals respond to actual or perceived increases in the crime rate by generating pressures on the justice system to impose harsher punishments on offenders.

Figure 2, based on the Repressive Response Model developed by Bowers and Salem (1972), attempts to account for the interrelationships between normative diffuseness, rate of deviance, and severity of response. It describes their findings in a study of administrative response to illegal student drinking on college campuses. Their results show that the severity of formal sanctions is positively related to the amount of deviant behavior and negatively related to the diffuseness of the normative climate regarding student drinking. This model is unbalanced, since the diffuseness of the normative climate is also positively related to the amount of deviant behavior.

Figure 2. The Repressive Response Model



This model is relevant to the theories and findings presented above for several reasons. First, the link between social complexity and diffuseness of the normative climate indicates that this model can be applied to broader evolutionary trends toward increased complexity. Second, the

studies noted above have shown that, at least in some respects, urban areas may be less punishment-oriented than their more rural counterparts. Much of this effect may be due to their greater tendency to view many illegal acts as essentially private affairs. Third, it has been shown that increased social complexity leads to increases in the amount of deviance. This occurs both directly, through the undermining of traditional value systems, and indirectly, through the development of more laws. Fourth, an increase in the incidence of deviant acts which violate sentiments held by the majority of the population (for example, personal and property crimes which have identifiable victims and potentially serious consequences) results in pressures to make punishments more severe.

#### IV. FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM

Several bodies of literature relate either directly or indirectly to the functioning of the criminal justice system. These are studies concerning the relationship between crime rates, certainty, and severity; the complexity of the legal system; and constant incarceration rates. They will be discussed separately and then summarized in the form of a model which describes their predicted interconnections.

##### *Crime Rate, Certainty, and Severity*

The independent effects of social complexity and increasing crime rates have been outlined above. In reality, however, these two variables interact, through the criminal justice system, to produce differential effects on two of the most salient aspects of the punishment process—its certainty and severity.

The first demonstrated effect of increased complexity on the functioning of the justice system is a decrease in the certainty of imprisonment (Green, 1974). It is reasonable to hypothesize that this decreased certainty both influences and is influenced by the rate of deviant behavior. Researchers have, with one exception (Forst, 1976), consistently found significant negative relationships between crime rates and certainty of apprehension and/or imprisonment (Gibbs, 1968; Gray and Martin, 1969; Chiricos and Waldo, 1970; Phillips and Votey, 1972; Ehrlich, 1973; 1975; Carr-Hill and Stern, 1973; Tittle and Rowe, 1974; Logan, 1975; Erickson and Gibbs, 1975; 1976; Silberman, 1976; Erickson *et al.*, 1977; Blumstein and Nagin, 1977; Cook, 1977; Geerken and Gove, 1977; Blumstein, 1978; Jensen *et al.*, 1978; Pontell, 1978; Vandaele, 1978; Nagin, 1978a).

Until several years ago, these findings were interpreted almost exclusively as supporting the deterrence hypothesis. Recently, however, a system-capacity model has been developed as an alternative explanation for these results (Votey and Phillips, 1972; Phillips and Votey, 1972; Logan, 1975; Geerken and Gove, 1977; Pontell, 1978; Nagin, 1978a). The system-capacity model assumes that the criminal justice system has limited resources and that these resources do not increase proportionately with increases in the crime rate (Phillips and Votey, 1972; Shinnar and Shinnar, 1975).

It has further been argued that the simple regression techniques which have ordinarily been utilized to examine the relationship between crime rates and sanctions do not allow one to partition the deterrent from the overload effects (Orsagh, 1973; Logan, 1975; Blumstein, 1978; Blumstein and Nagin, 1977; Greenberg, 1977; Cook, 1977; Fisher and Nagin, 1978; Nagin, 1978a; 1978b; Panel on Research on Deterrent and Incapacitative Effects, 1978). Utilizing statistical techniques more sensitive to the potential overload effects, several studies lend support to the contention that the negative impact of crime on certainty may be as great as or perhaps greater than the effect of certainty on crime (Logan, 1975; Shinnar and Shinnar, 1975; Pontell, 1978; Nagin, 1978a).

In summary, then, the evidence thus far points to a two-way negative relationship between crime rate and certainty that appears to be caused by both deterrence and system overload. At this point, however, nothing can be firmly concluded about the size of the relative contribution of each. Obviously, more research is needed in this area to determine the specific conditions under which the relative contributions of each will vary.

A second consequence of increased social complexity is a negative relationship between certainty and severity. Logan (1972) gives two reasons why we should expect certainty to exert a negative influence on severity. First, when conditions of low certainty exist, judges may respond by dealing out exceptionally long sentences to defendants who are convicted. His second reason is the widespread use of adaptive measures such as plea bargaining, which would raise the conviction rate while reducing the length of sentences given out and hence the actual length of time served. This idea is supported by Green's (1974) study which found weak to moderate negative correlations between her measure of certainty for 1960 and both the average length of the maximum sentences which were

given to felons released in 1970 and the average length of time that these same individuals actually served in prison.

Although certainty seems to exert an independent effect on severity, it is also conceivable that severity affects the level of certainty. It has been argued (Miller *et al.*, 1971; Bailey and Smith, 1972; Bankston and Cramer, 1974; Wilson, 1975: 179) that severe penalties imposed in response to increasing crime rates may result in a reluctance on the part of juries to convict the accused, thereby reducing the certainty of imprisonment. In addition, Salem and Bowers (1970) contend that if the law is not a reflection of the norms and values held by certain segments of the population, members of these subcultures may actually protect offenders from detection by the law—especially as penalties grow more severe. This, of course, also results in a reduction in the certainty of arrest, conviction, and imprisonment. This hypothesis is supported by the works of Logan (1972) and Bailey and Smith (1972). Both studies show weak to substantial negative correlations between severity, operationalized in terms of length of time served, for years  $t-1$ ,  $t-2$  . . .  $t-n$  and certainty for year  $t$ .

Although the Logan (1972), Bailey and Smith (1972), and Green (1974) studies lend support to the hypothesis that there is a negative relationship between certainty and severity, it is still premature to draw any firm conclusions. The reason for this is that the theoretical explanations given for the negative relationships are phrased in terms of a daily ongoing process, whereas the data supporting the hypotheses cover much broader spans of time. Obviously, more studies, particularly time-series analyses, are needed in this area before we can begin to draw firm conclusions.

As was suggested earlier, certainty of punishment may act as an intervening variable conditioning the influence of the crime rate on severity of response—particularly on the length of time actually served by convicted offenders. Tittle (1969) suggests that under conditions of low certainty, such as in urban areas, judges may respond to high crime rates by giving out longer sentences. This idea is supported by Bullock's (1961) study of sentencing disparities in Texas. He found that prisoners sentenced in areas having a large number of cities tended to receive longer sentences than prisoners sentenced in areas having only small towns. On the other hand, under conditions of low certainty, Logan (1972) found weak to moderate negative correlations between crime rates (except homicide and larceny) and length of time actually served.

Under conditions of high certainty, he found weak to moderate positive correlations between the variables—again with the exception of homicide and larceny. These findings suggest that while urban judges may give out longer sentences in response to high crime rates and low certainty of imprisonment, felons convicted in these areas do not spend as much time in prison as those convicted in more rural settings.

### *Increased Legal Complexity*

The third consequence of increased social complexity is an increase in the size and internal complexity of the legal system. Several scholars (Dye, 1966; Geerken and Gove, 1975) have theorized that as the size and complexity of a social system increases, so do the number of legal norms. Dye suggests that the reason for this is that as complexity increases, individual behavior becomes less predictable. Therefore, it is necessary to enact more rules to insure some degree of uniformity (1966: 216). His findings show moderately strong positive correlations between levels of urbanization, industrialization, and both the number of bills introduced into and the number of laws enacted by state legislatures, and they thus support this hypothesis.

A concomitant development is an increase in the internal complexity of the legal system itself. Weberian theory postulates that the growth of specialization and bureaucracy are closely related to economic development (Weber, 1946: 196-244). Since economic development is closely linked to urbanization, increases in both urbanization and economic development should be associated with increased legal complexity. This hypothesis is supported by the work of Schwartz and Miller (1964). After examining 51 societies placed on a folk-urban continuum, they found that the majority of the societies having the most complex legal systems tended to be ranked toward the urban end of the continuum. These findings support the hypothesis that social complexity has a strong influence on the degree of legal complexity.

It is reasonable to hypothesize that when an increasing number of crimes must be processed through a complex legal system, the result is a backlog of cases and an overcrowding of the courts. Because of the length of time involved in a courtroom trial, the lack of convincing evidence, and the presence of legal technicalities, the American ideal of trial by jury is not always the most efficient manner to process a large number of cases. It has been suggested that this condition

results in the widespread use of measures such as plea bargaining (Blumberg, 1967: 21; Alschuler, 1968: 51; *Harvard Law Review*, 1970: 1387; *Duquesne Law Review*, 1971: 253; *Wayne Law Review*, 1971: 1239; *Yale Law Journal*, 1972: 286; Neubauer, 1975; Nagin, 1978b).

Despite the importance that has been attributed to it in theory, the actual effect of caseloads on court dispositions has been the subject of very little empirical research. Comparing two judicial districts in Minnesota on the basis of caseload per attorney, Rhodes (1976) found that the heavy caseload district disposed of significantly more cases by way of guilty pleas than did its less burdened counterpart. This relationship held for overall felony rates as well as when the results were broken down by offense category (except for vandalism and narcotic sales). This study is particularly important as it examines the impact of caseload per attorney rather than the absolute number of cases being processed without controlling for number of court personnel.

Feeley (1978; 1979) compared the mode of disposition between high- and low-volume Connecticut courts, but did not control for number of court personnel. Despite this limitation, he still found that 30 percent of all cases in the high-volume courts were settled by means of charge reductions, compared with only 11 percent in the low-volume courts. More important, when he compared the percentage of felony charges which were reduced to misdemeanors, the percentages were 70 and 18 percent respectively.

While the findings of Rhodes and Feeley lend support to the heavy caseload hypothesis (despite Feeley's arguments to the contrary), Heumann's (1975; 1978) results suggest that factors other than heavy caseloads may influence the decision to plea bargain. Heumann examined the impact of total number of cases (again, not controlling for number of court personnel) on the tendency to plea bargain over a 75-year period in Connecticut. After dividing the nine Superior Courts into high- and low-volume, he compared their tendencies to plea bargain. He found that between 1880 and 1925, the low-volume courts had a consistently higher trial/total disposition ratio than did the high-volume courts. Between 1930 and 1954, the rates were much more even. While the aggregate nature of his statistics conceals a considerable amount of information and therefore must be interpreted with caution, his data do reveal one important finding—that is, the use of plea bargaining is not a new phenomenon. Also, when Heumann compared the



trial rate for 1970-71 with that for 1972-73 when caseload pressure was cut in half with no significant decline in personnel, he found that the trial rate remained essentially the same.

While these results suggest that organizational factors other than caseload pressure can and do contribute to the decision to plea bargain (Feeley, 1978; 1979; Heumann, 1975; 1978; Nardulli, 1978), they do not at this point allow us to discount the impact of case pressure. Therefore, we can come to the tentative conclusion that an indirect consequence of increasing social complexity is an overburdening of the courts and the use of measures such as plea bargaining to insure a high conviction rate and at least make it appear as though crime is being controlled.

### *Constant Incarceration Rates*

It has been hypothesized and to an extent empirically verified that societies have inherent homeostatic processes which operate to maintain a relatively constant level of punishment regardless of the rate of deviant behavior (Blumstein and Cohen, 1973; Blumstein *et al.*, 1976; Nagin, 1978a). Utilizing U. S. imprisonment data (prisoners per 100,000 members of the population) for the years 1930-1970 and for Norway for 1880-1964, Blumstein and Cohen (1973) found that the imprisonment rate fluctuated within a very narrow range over that period of time. Blumstein, Cohen, and Nagin (1976) obtained essentially the same results when they examined Canadian data for the years 1880-1959.

These researchers argue that in any society, there is a fairly stable level of punishment and that as the incidence of criminal behavior either increases or decreases, society, or more specifically, the justice system, modifies the working definition of what constitutes a punishable act. They argue that the social forces accounting for this stability include more than simply prison cell capacity or even the limited willingness of taxpayers to shoulder the economic burden of incarceration. Rather, they contend that more fundamental processes are at work. If too large a proportion of the society is declared deviant, then the fundamental stability of the society may well be disrupted. Likewise, if too few are punished, the basic identifying values of the society will not be adequately articulated and reinforced, again leading to social instability (1976: 319).



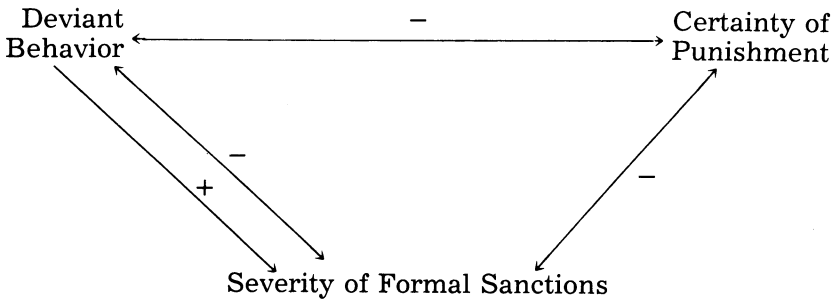
They predict that as the incidence of deviant behavior increases, the criminal justice system can make the necessary adaptations in any or all of four possible ways. First, only the more serious version of an offense will be prosecuted (for example, drug trafficking as opposed to personal use). Second, the severity of punishment can be reduced by an increased willingness on the part of prosecutors or judges to drop, or use lesser, charges. Third, judges can reduce the punishment by more frequent use of probation or suspended sentences. Finally, prison sentences can be shortened by early release via parole.

The ultimate result of this process is the simultaneous creation of pressures to ignore, decriminalize, or lessen penalties for certain offenses while cracking down on and/or increasing penalties for others. This contention is supported by Blumstein and Cohen's data showing that although the overall felony rate increased significantly between 1960 and 1970, the arrest rates increased for the more serious crimes and decreased for victimless offenses (1973).

It is important to remember that public attitudes concerning the seriousness of offenses and the appropriateness of specific sanctions are often inconsistent (Duffee and Ritti, 1977) and in a constant though gradual state of flux (Alper, 1974; Figlio, 1975; Rankin, 1979). Furthermore, it is common knowledge that many laws and penalties remain "on the books" long after they cease to reflect public sentiments (Rose and Prell, 1955; Blumstein and Cohen, 1980). As a result, there is always some discrepancy between moral and legal limits of acceptable behavior.

If the basic social process which Blumstein and Cohen (1973) identify is in fact in operation, then we can legitimately conceive of the criminal justice system as an adaptive mechanism which to a greater or lesser degree mediates the conflict between public attitudes concerning the seriousness of certain offenses and the appropriateness of certain penalties and the formal laws which designate some actions as illegal and specify the severity of the penalties to be imposed. This adaptive function can take the form of neutralizing over-severe penalties which do not reflect public sentiments or stiffening legally reduced penalties to bring them more in line with popular sentiments. Campbell and Ross (1968) and Ross (1976) have demonstrated the existence of the former process, while Joo Shin (1973) has demonstrated the latter.

Figure 3. The Criminal Justice Model

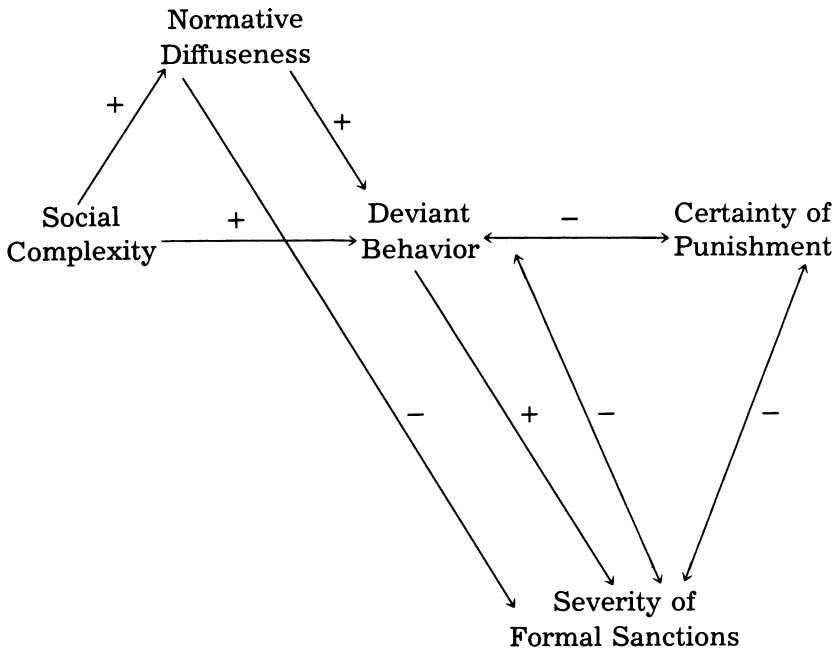


It can be seen from the preceding discussion that the certainty with which the justice system controls criminal activity is influenced by the rate of deviance, the severity of response, and the level of social complexity. Figure 3 diagrams the relationship between these variables. It incorporates the predictions and findings of the deterrence, system-capacity, and constant incarceration literature. The negative relationship between crime rate and both certainty and severity has been predicted and well documented, and the literature suggests that this is the product of both deterrence and system overload. The positive relationship between crime rate and severity has been predicted but not so consistently documented (Nagin, 1978b). In accordance with both Durkheim and the constant incarceration literature, this model predicts that increases in the rate of criminal behavior will have the simultaneous effects of creating pressures to diminish penalties for, ignore, or altogether decriminalize some actions while instituting harsher penalties for others. We further predict that for reasons discussed in the next section of the paper, the pressures generated to stiffen penalties for certain offenses will manifest themselves more in the length of sentences given out rather than in the length of time actually served.

## V. A PROPOSED SYNTHESIS

If the findings of the Durkheim, Repressive Response, and Criminal Justice models are synthesized into a single theory, the predicted relationships can be expressed by the symbolic model presented in Figure 4. This model hypothesizes that the severity of formal sanctions is the product of normative diffuseness, crime rates, and certainty of imprisonment. In

Figure 4. Synthesized Societal Response Model



addition, it demonstrates that the conflicting pressures brought to bear on the criminal justice system can begin to be specified.

On the one hand there is a move toward the privatization and decriminalization of many illegal acts; on the other, there is pressure to punish those who violate collective values. This model incorporates the seemingly contradictory findings which show that in urban areas where crime rates are high and certainty of imprisonment is low, there are positive correlations between crime rates and length of sentences given out (Bullock, 1961) and negative correlations between crime rates and length of time actually served (Logan, 1972). If severity of response were a unidimensional phenomenon, then this contradiction should not exist.

In explaining this contradiction, it is important to remember that two more or less distinct groups of individuals are officially responsible for the imposition of formal sanctions: those who impose the sanctions and those who carry them out. On the one hand, state legislators and judges are charged with setting the length of sentences for specific crimes. It should be noted that the Repressive Response, the Criminal Justice, and the Synthesized Societal Response models all assume that

those who are officially charged with setting the penalties believe in their deterrent effects or are at least subject to pressure from those who do. Therefore, it is quite logical that in the face of a rising crime rate and low certainty of punishment, elected officials would respond to what they believe to be the sentiments of their constituents (Bankston and Cramer, 1974).

Blumstein and Cohen (1980) found that while those in their sample usually favored sentences longer than the amount of time actually served by convicted offenders, there was considerable agreement between the length of sentences assigned by the respondents and those assigned by the courts. This high level of agreement suggests that because of increased visibility, judges and legislators may be more likely to assign or vote for sentences which most closely reflect their constituents' attitudes. There were, however, several exceptions to this pattern. The sentences given by respondents were more severe for murder, voluntary manslaughter, and assault with intent to kill. They were less severe for narcotic sales and sodomy. These exceptions are evidence of the condition discussed above—namely, that because of institutional lag time, there is very often a divergence between legal and moral boundaries.

Statements by Rooney and Gibbons (1966) and Gibbons (1969) attest to the tendency of state legislators to be especially conservative in liberalizing criminal penalties, even when their constituencies support these liberalizations. Part of the reason for this attitude may be that being unable to adequately assess the true attitudes of the voters, legislators may view the public relations hazard of maintaining a hard line on crime as being less dangerous to their positions than taking a more liberal stance. On the other hand, there are counselors and parole boards whose responsibility it is to determine if and when a particular individual should be released. While these functionaries are subject to certain community pressures, their actions are, on the whole, less visible than those of elected representatives. Furthermore, being more directly aware of actual prison conditions such as overcrowding and ineffective job and educational programs, these individuals may be more likely to suggest the use of parole, work release, and halfway houses. For reasons discussed above, this tendency should be more pronounced in urban than in rural areas.

## VI. SUMMARY AND CONCLUSIONS

The purpose of this paper has been to review and synthesize three bodies of literature which attempt to explain the severity with which society responds to deviant behavior. The synthesized model which we develop predicts that three closely related variables—all products of increasing social complexity—exert the greatest influence on severity of response. The first of these is an increase in the level of normative diversity brought about by an increasingly complex division of labor. As stated above, Durkheim contended that as the division of labor became more complex, many acts which previously violated the collective conscience and elicited a punitive response would gradually come to be viewed as essentially private affairs.

The second variable influencing severity of response is an increase in the number of actions which violate legal norms. This is the result of increased specialization as well as the concomitant breakdown of the consensus as to what constitutes socially acceptable behavior. We suggest that increases in those activities which have come to be viewed as essentially private affairs will result in pressures to lessen penalties for, ignore, or decriminalize them altogether. In contrast, increases in the number of acts which violate still intact collective values will result in pressures to crack down on and stiffen penalties for these offenses. Furthermore, because two of the most salient dimensions of the punishment process—the length of sentences given out and the length of time actually served—are under the control of two essentially different sets of actors, they may be differentially affected by the pressures generated by increasing crime rates. We come to the tentative conclusion that it is as a result of this differential control that we find, under conditions of low certainty, positive correlations between crime rates and the length of sentences given out and negative correlations between crime rates and the length of time actually served.

The third variable which influences severity of response is the certainty of punishment. It has been, to an extent, empirically verified that increases in the rate of criminal activity tax the resources of the justice system, and as a result, lead to an overworking of the police and courts. This diminishes the certainty of apprehension and imprisonment and has a negative effect on severity of response. Not only does certainty have a negative impact on severity, but the

literature also suggests that severity may have a negative effect on certainty.

The research on constant incarceration rates focuses attention on the dynamic aspects of the punishment process and on the role of the criminal justice system as a mediator in the omnipresent conflict between legal and moral boundaries. As the works by Campbell and Ross (1968), Ross (1976), and Joo Shin (1973) demonstrate, various functionaries within the justice system are capable of increasing or decreasing the actual amount of punishment meted out to bring it more in line with popular sentiment and, we might speculate, maintain it at a relatively constant level.

Finally, our model predicts a simultaneous system in which the rate of deviant behavior, certainty of punishment, and severity of response all exert a reciprocal influence upon one another. Because of the problems pointed out by several researchers concerning the use of simple regression techniques in situations such as this (Orsagh, 1973; Nagin, 1978a; 1978b; Fisher and Nagin, 1978), we suggest the use of simultaneous equation models. If the appropriate assumptions are met, this statistical technique should allow the researcher to begin to partition out the independent effects of each of the reciprocally influenced variables.

In conclusion, we must reiterate the tentative nature of the relationships which we present in Figure 4. As has been noted throughout the paper, the evidence upon which we base our model is often skimpy, and the studies reviewed vary not only in terms of levels of analysis, but also with respect to data quality and methodological rigor. Despite these limitations, there do appear to be certain general statements which can be made about the relationships between the variables.

It is our hope that our Synthesized Societal Response Model will be accepted for what it is intended to be—a theoretical idealization. Because of its logical demand that we account systematically for discrepancies between what the model asserts and what observation reveals, its primary purpose should be to stimulate additional research. In the most general sense, this research should be directed toward specifying the conditions under which the predicted relationships can be expected to hold true.

For example, as was noted earlier, an increase in the total volume of criminal activity can be expected to result in pressures to crack down on certain offenses while decriminalizing or simply failing to prosecute others. The

question then should be asked for which types of offenses is this the case and what impact does an increase in each have on the various operationalizations of certainty and severity? Another problematic area is the relationship between certainty and severity. Considerably more work is needed in order to specify the separate effects of certainty of (1) arrest, (2) conviction, and (3) imprisonment on the various operationalizations of severity. And again, we must ask for which types of offenses can these relationships be expected to hold true?

These are only several of the many research questions which we hope our model will generate. It is only by stating the general propositions of a theoretical model and then systematically specifying the conditions under which these propositions are valid that a comprehensive and verifiable theory of severity of response will truly be possible.

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