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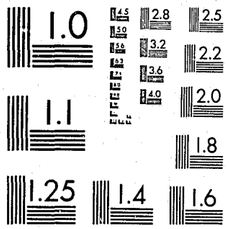

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DETERMINANTS OF SENTENCING VARIATION: THE GEORGIA SAMPLE

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DETERMINANTS OF SENTENCING VARIATION: THE GEORGIA SAMPLE

In recent years, through the implementation of determinate sentencing laws and the promulgation of sentencing guidelines, the framework within which judicial policy is formulated has been significantly modified. Much of the impetus for change derives from a sense that existing sentencing practice is too idiosyncratic and discriminatory, and from a desire to achieve a more just, uniform, even-handed dispensation of legal sanctions. Because the process and outcome of judicial decision-making appears to be in a state of flux, information based on past performance may be misleading for the formulation of new policy. Thus, information that illuminates the de facto guidelines currently employed by practicing courts is crucial if one is to evaluate current practice, to identify areas in which change might be desirable, and to develop effective, rational policy prescriptions. The objective of the present research is to contribute to our understanding of the process and outcome of judicial decision-making within a single judicial system. In this research we identify the principal factors associated with differential sentencing practices; we provide a theory to relate these factors to judicial policy; and we appraise the dual and possibly conflicting statements that, on the one hand, the court's sentencing decisions are just and serve the best interests of society; and, on the other hand, that its decisions are idiosyncratic and discriminatory.

The research focuses on one dimension of the sentencing outcome, the length of sentence received by offenders who were incarcerated. A

theoretical model is developed which explains the sentencing decision as the resultant of an interplay between offense and offender characteristics on the one hand, and the cost of the imposition of sanctions on the other, both mediated by the particular characteristics of the community within which the court operates. The theoretical model is also used to develop the parameters guiding the court's decision when it is given the choice of two alternative sanctions instruments. After the theoretical model is developed, it is subjected to empirical evaluation.

I. EMPIRICAL CORRELATES OF SENTENCE LENGTH

In general, analysis of variation in sentencing may be dichotomized into studies which focus on offense and offender characteristics and studies which focus on the behavior of the judiciary and the environment in which it operates.

A. Offense and Offender Characteristics

The offense record, which comprehends both the offenses resulting in the instant sanction as well as those in the offender's past (accounting for both the number of such offenses as well as their severity), is generally viewed as the principal variable determining the type and length of sentence received. The empirical record leaves no doubt that legal sanctions tend, quite generally, to be more severe for more serious offenses. The principle is established by statutes which set forth minimum

and maximum sentences, is endorsed by official guidelines such as those emanating from Wilkins et al. (1976), and is readily confirmed by statistical evidence (see, for example, Gottfredson and Hindelang, 1979; Jacob and Eisenstein, 1975; Tiffany, 1975; and Wellford, 1975). To illustrate the strength of the empirical relation, consider Table 1, in which the seriousness of UCR Part I offenses is compared to the sentence that offenders received when incarcerated for one of these offenses in violation of the criminal statutes of Georgia, North Carolina, or the United States. As a result of discretionary criminal justice action, one might expect considerable "noise" to be introduced into the relation between seriousness of offense, as measured by the Sellin-Wolfgang index, and the length of sentence received by those incarcerated. Plea bargaining may result in a rape or robbery being adjudicated as an assault; offenders may receive differential treatment because of their age or gender; one court may be more or less lenient compared to another; etc. Yet, despite the potential seriousness of such intervening, attenuating factors, they fail to obscure the basic relation. The hypothesis of a positive relation is supported by all three data sets.[1]

Demographic and socioeconomic characteristics of offenders are widely recognized as correlates of sentencing variation. Empirical

[1]The simple correlation coefficients are 0.94, 0.71, and 0.78 for Georgia, North Carolina, and the United States, respectively, and are statistically significant at the 0.005, 0.05 and 0.025 levels, respectively.

evidence with which to confirm the existence of, and to measure the extent of, differential sentencing relating to demographic and socioeconomic characteristics is readily obtained, but the proper inference to be derived from this evidence has not been established. First-order correlation coefficients uniformly support the generalization that women, youth, and whites receive shorter sentences than their opposite cohort. However, because these characteristics are statistically correlated with offense histories, and because sentencing variation typically refers to a single stage of the criminal justice process, thereby distorting the representativeness of the sampled populations, pure gender, age, and race effects are difficult to derive, even with the best of statistical analysis. Measuring gender effects provides a case in point. Analysis of transition probabilities across stages of the criminal justice system supports the contention that females are less likely to be arrested, to be charged if arrested, to be convicted if charged, etc. When controls are introduced to account for offense seriousness, prior criminal record, etc., the residual gender effect may diminish but it usually continues to support the hypothesis that women are treated more leniently (Alabama Section, 1975; Baab and Furgeson, 1967; Bernstein et al., 1977b; Cameron, 1953; Hindelang, 1974; Nagel and Weitzman, 1971; Pope, 1975; Tjaden and Tjaden, 1981); though sometimes the evidence is more favorable to the hypothesis of no gender effect (Bernstein, et al., 1977a; Cohen and Stark, 1974; Green, 1961; Robin, 1965; Rottman and Simon, 1975). Admittedly,

TABLE 1

EXPECTED SENTENCE LENGTH BY OFFENSE SERIOUSNESS: UCR OFFENSES, GEORGIA, NORTH CAROLINA, AND UNITED STATES COURTS[a]

Offense	Sellin-Wolfgang Index[b]	Expected Sentence Length		
		Georgia	North Carolina	United States
Homicide	100.0	8.1	13.4	13.9
Rape	31.7	6.5	16.1	6.1
Aggr. Assault	22.8	2.0	2.7	3.2
Robbery	12.0	4.2	9.3	12.3
Burglary	9.5	2.1	3.5	3.7
Larceny	6.0	1.3	1.9	3.1
M.V. Theft	9.9	1.5	1.9	3.7

[a]Expected length of incarceration at time of admission, in years, for new admissions into the Georgia and North Carolina systems in 1978 and 1979, respectively; sentence received from U.S. District Courts for year ending June 1979 for the United States. The state data reflect the time inmates will actually serve, and are derived from Department of Corrections' experience, taking into account customary parole board decisions, good time, statutory requirements, etc. The U.S. data are simply sentences handed down by the Court; and, hence, are strictly not comparable with the state data.

[b]Derived from Sellin-Wolfgang (1964), with homicide set equal to 100.

Sources Georgia and North Carolina: Orsagh (1980). United States: Sourcebook of Criminal Justice Statistics, 1980: 434-437.

some empiricists allege that, for some offenses, females are treated more harshly. The argument seems sound with respect to some status offenses (Chesney-Lind, 1978b) and non-traditional offenses (Bernstein, et al., 1977a). Also, Clements (1972) and Temin (1973) indicate that statutory provisions designed to provide more favorable treatment for adult females also have had perverse sentencing effects in some judisdictions.[2] The exceptions duly noted and notwithstanding, it can be said that, at present, the weight of evidence still supports the contention that, on the average, females probably receive more favorable sentences.

Much of the extensive racial discrimination literature is statistically flawed. Of the more careful analyses, that of Chiricos, Jackson, and Waldo (1972), Hagan (1975), and Swigert and Farrell (1977) show that

[2]The evidence adduced in support of the latter contention is indirect and lacks generality. The proper question is: On the average, have these statutory provisions resulted in higher incarceration rates for women; and, because of these statutes, do women actually serve more time, if incarcerated? Comparisons among minima, maxima, and indeterminate sentence lengths do not constitute a satisfactory answer.

Some arguments alleging discrimination against women are specious. That three-quarters of all incarcerated females, but only half of all incarcerated males, have been confined for relatively minor offenses does not warrant the inference that women are treated more harshly (Chesney-Lind, 1978a). Such ratios would obtain, for example, if three-quarters of all female offenses and half of all male offenses are minor, and if males are twice as likely (or half as likely!) to be incarcerated for any particular offense. Nor will discrimination have been demonstrated if the overwhelming proportion of arrestees for prostitution are women (Chesney-Lind, 1978a), or if, on the average, women are convicted of more serious charges (Bernstein, 1977a).

sentencing is biased against blacks. So does Uhlman (1979), though he thinks its actual effect is very small; and Unnever et al. (1980), but the sample used by the latter is small and non-random. Lizzote (1978) finds no direct bias in his sample of Chicago defendants. However, because blacks are less likely to make bail, and because making bail is related to sentence length, he argues the existence of serious indirect discrimination.[3] Post-incarceration treatment would also appear to be biased: discrimination against blacks is found in the decision to grant parole (Carroll and Mondrick, 1976) and in the use of early release via "shock probation" (Petersen and Friday, 1975). Finally Bullock (1961) shows that, in the Texas criminal justice system, blacks received longer sentences for burglary, but shorter sentences for homicide and rape.

On the other hand, in their reanalyses of the earlier empirical evidence, Hindelang (1969), Hagan (1974), and Wellford (1975) conclude that little, if any, racial bias can be found in sentencing decisions. Much of the more recent evidence supports this view. No sentencing bias was found in Washington, D.C. (Rhodes, 1978), Denver (Britt and Larntz, 1980), Atlanta (Gibson, 1978)[4] or Chicago, Baltimore or Detroit (Eisenstein and Jacob, 1977); none within Texas counties (Baab and Furgeson (1967)) or California

[3]Failure to make bail depends upon the seriousness of the offense and one's prior record, both of which are related to race in Lizzote's sample, thereby diminishing and possibly removing this second-order racial effect.

[4]Substantial racial bias was found in Atlanta, but it was both pro- and anti-black, with the effects equally distributed.

counties (Pope,1975); nor in juvenile courts in North Carolina (Clarke and Koch, 1980). See also Cohen and Kluegel, 1978); and none in federal parole decisions (Elion and Megargee, 1979).

In law and in practice, the criminal justice system treats adults more harshly than juveniles. But does sentence severity increase with age within the juvenile and adult offender populations? Casual empiricism suggests that it does. For example, the age-specific ratio of incarcerations to arrests increases with age. However, more careful analysis, in which offense seriousness and prior record are taken into account, yields mixed results. Age was found to be unrelated to sentence severity by Baab and Furgeson (1967); Britt and Larntz (1980), Clark and Koch (1976), Green (1961), Pope (1975), and Rhodes (1978) with respect to adult populations, and by Clark and Koch (1980) and Cohen and Kluegel (1978) with respect to juvenile populations. On the other hand, Zimring (1978) found young adults to be treated more leniently and Greenwood et al. (1980) that leniency was the rule within the adult population in two of the three jurisdictions which they examined.

B. Effects of Resource Constraints

Does sentence severity vary with the quantity of resources available to the criminal justice system? The question has not been

subjected to systematic empirical investigation. Indirect evidence relating to the question may be obtained by observing the effect of plea bargaining on conviction rates and sentence length. The argument is that, as case loads increase, the prosecutor and court will strive to maintain conviction rates by trading off a reduced sentence for a certain conviction. Support for this argument is found in Gillespie (1975), where it is shown that conviction rates increase when resources are more ample, and that sentence length is lower where more plea bargaining takes place. Additional evidence is offered by Rhodes (1976; 1977), who finds a relation between resource availability and case filings and also between the demand for trial and sentence length. On the other hand, Rhodes (1978), using data for Washington, D.C., concludes that plea bargaining had no effect on sentencing practice; while Rubinstein et al. (1978) found that the complete elimination of plea bargaining failed to produce more trials, fewer convictions, and harsher sentences.[5]

[5]The latter study relates to the first full year subsequent to the elimination of plea bargaining in Alaska. The plea bargain effect did vary substantially by offense, but its overall effect in this first year was not consistent with the resource scarcity argument.

THE THEORETICAL MODEL

We advance for consideration the thesis that sentencing decisions are guided by utilitarian principles; that the court strives, through sentencing, to maximize societal wellbeing. The utilitarian model to be developed is a direct descendant of the path-breaking work of Becker (1968), whose model has been further articulated by Stigler (1970) and Landes (1974). The model shall be used to deduce a sentence response to characteristics associated with individual offenders, with the community in which the court functions, and with the costs of imposing sanctions.

The basic structure of the model may be described by the following seven propositions.[6] A graphic representation of the model appears in the four panels of Figure 1.

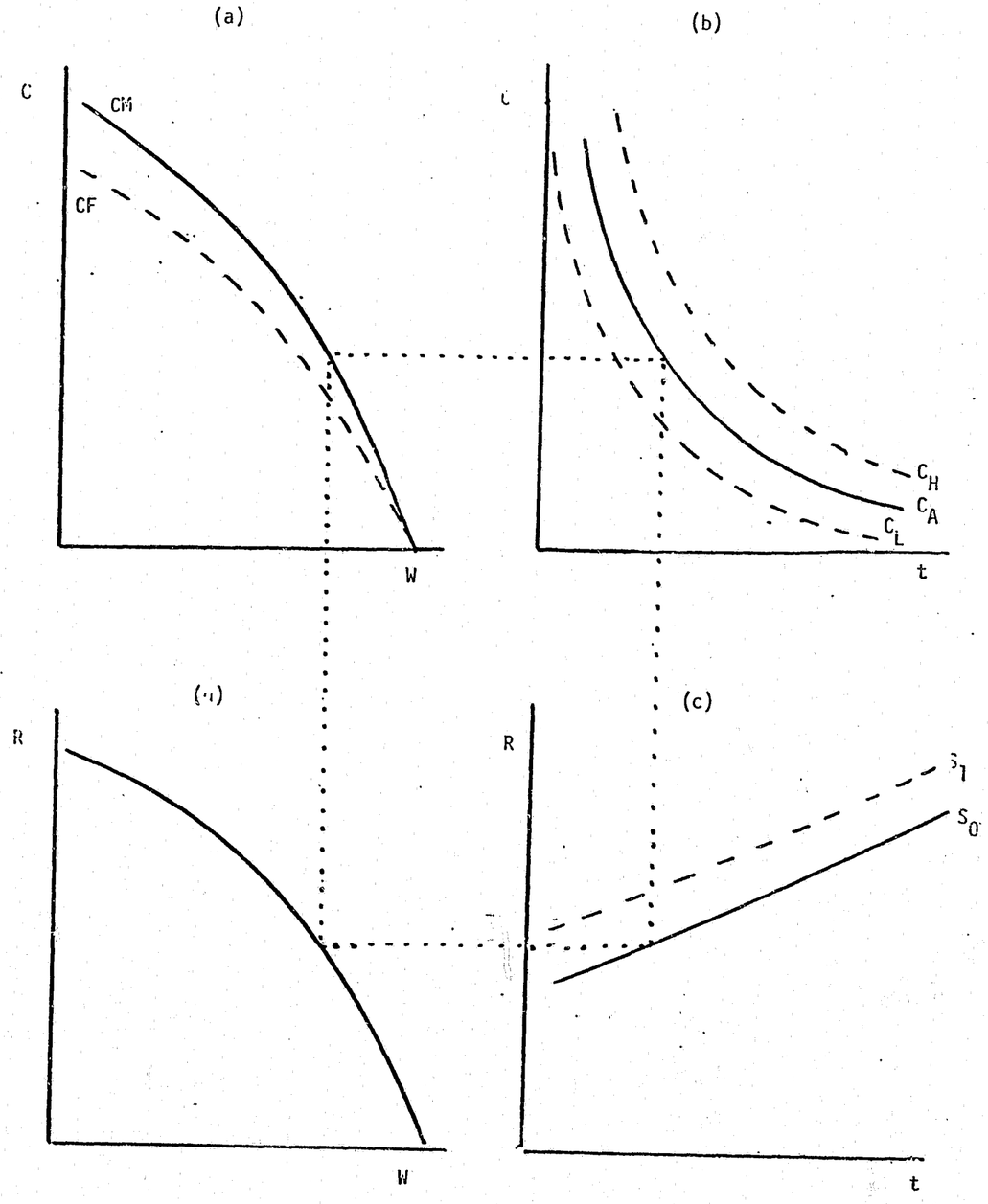
(1) A crime (C) reduces societal wellbeing (W). (Figure 1a)

(2) W is defined to exclude the wellbeing of the offender population.

(3) The sanction of incarceration (S) has both incapacitative (I) and deterrent (D) effects. D includes both specific and general effects.

[6]The description excludes a number of details essential for mathematical rigor but dispensible if one is willing to forego logical purity. Some of this detail is implicitly incorporated into Figure 1 by virtue of the manner in which the curves in that figure have been drawn.

FIGURE 1



(4) The severity of S is a function of time incarcerated (t).

(5) Both I and D increase as t increases. (Figure 1b).

(6) S requires the expenditure of economic resources, R. R increases as t increases. (Figure 1c).

(7) R is scarce. An increase in R devoted to S implies a diminution in the provision of other public and private goods. Thus, ceteris paribus, an increase in R reduces W. (Figure 1d).

Under appropriate and not unreasonable conditions, the four functional relations depicted in Figure 1 form a complete system from which a unique, equilibrium set of W, C, t, and R values may be derived. In Figure 1, assuming that the solid curves represent the four relations of the model, an equilibrium solution may be obtained by forming a rectangle whose four corners just touch the four curves. The solution indicated in the figure consists of the values W*, C*, t*, and R*. A heuristic example will show why the solution is unique. Suppose we elect to spend R**<R*. We become better off in that W is now greater than W*. But R** implies shorter prison sentences and a higher crime rate. The higher crime rate, in turn, implies that W is less than W*. Thus, we have a contradiction: W is both greater than and less than W*.[7]

[7] The example does not prove that W* is either unique or that it is a maximum. That proof requires a mathematical analysis which is beyond the scope of this paper. The complete mathematical model is available from the author upon request.

We now consider the effect of a change in the system's parameters on these equilibrium values.

Offense Seriousness

Assume

(8) There are two offense types, C_F and C_M.

(9) C_F is defined to be more serious than C_M in the sense that a C_F event reduces W more than a C_M event. The dotted curve in Figure 1 depicts the manner in which the relation between W and the offense rate shifts as one moves from less to more serious offenses. (The common point on the abscissa of Figure 1a follows from the fact that the offense rate is zero at that point.)

(10) S applied to C_F (C_M) has its primary I and D effects on potential C_F (C_M) offenses.

We now assume a shift toward more serious offenses. In Figure 1a this is represented by a shift from C_M to the dotted curve, C_F. The other relations are held constant. It should be clear that, when a rectangle is imposed on the configuration of functional forms in Figure 1 that, the result will show that wellbeing diminishes, offense rates fall (!),[8]

[8] The lower offense rate is consistent with the empirical fact that more serious offenses tend to occur less frequently.

criminal justice expenditures increase, and prison sentences lengthen.

Offender Characteristics

Assume:

(11) The population may be dichotomized into persons having either high or low criminal propensities measured in terms of their crime rate response to a given length of incarceration. In Figure 1b the crime rate response of the two populations is reflected by the C_H and C_L curves. We also assume that the dichotomization is designed such that the average offense rate for the aggregate population remains constant.

(12) Sanctions imposed on offenders who are members of the one population primarily affect the members of that population.

Assuming that the other functions remain constant, the result of this conceptual differentiation is to raise (lower) the length of sentence imposed on the more (less) criminogenic population.

The General Offense Rate

Up to this point we have assumed either implicitly or explicitly that the overall crime rate is constant. We now relax that assumption. In Figure 1b we impose a shift from C_A to C_H with no compensating C_L shift. Because there are more offenders, and because we do not expect

R to diminish, we can expect more offenders to be apprehended, convicted, and sent to prison. Hence, the cost of providing t* will exceed R*. That is, it is likely that S_0 will shift to S_1.[9] Whether t increases or decreases cannot be predicted from the model without more knowledge about the values of the system's parameters. This much can be said: Given an increase in crime, the greater the loss in wellbeing from the consequent rise in expenditures to combat crime (R) relative to the improvement due to its effect in countering that increase, the greater the increase in the number of offenders incarcerated, and the greater the increase in the average cost of incarceration, the less will be the increase in t. Indeed, if these differentials are sufficiently large, social optimization may require a reduction in t. The theory is essentially ambiguous. The effect on t will depend upon the environment within which the rise in crime occurred.

The Costs of Sanctions

The cost of sanctions may be depicted by a shift in the S function, as shown in Figure 1c. A rise in the function leads to the unambiguous result that the length of incarceration will diminish and crime rates increase.

[9] At the limit the S function will not shift at all: the number of incarcerated offenders does not increase. In that event, it should be evident that t will increase.

Alternative Sanctions Instruments

Suppose there are two time-dependent sanctions, S_0 and S_1. Choosing between them involves two general considerations: their relative cost (Figure 1c) and their relative effectiveness (Figure 1b). Effectiveness, in turn, implies an overall shift in the I and D effect, resulting in an overall change in the offense rate, with consequent second-order effects on the costs of the sanction. Thus, the choice is complex and not readily depicted in Figure 1. Obviously, if S_1 costs more than S_0 and is also less effective, it would be rejected. But if, on the other hand, it is cheaper and less effective, the decision comes down to a calculus that must balance cost savings against additional criminal victimization. Additional complexity is introduced if the two sanctions may be used complementarily rather than as substitutes. Suffice it to say that the rule that determines which sanction to use, or, if both, how much of each, is complex and analytically ambiguous. Its determination depends upon the model's empirical parameters.

III. EMPIRICAL EVALUATION: THE GEORGIA SAMPLE

We propose to estimate the parameters of the foregoing theoretical model using data drawn from the Georgia criminal justice system. The sample consists of all offenders newly incarcerated in 1978 for one or more UCR Part I Index offenses. The sample size is 3713, distributed across offenses as indicated in Table 2. The dependent variable

is expected sentence length, defined as in Table 1. The independent variables consist of demographic indicators for race, sex, and age: NW (nonwhite=1; white=0), SEX (female=1; male=0), and AGE; two offense record indices, SCORE and PRIOR, which express the number and severity of offenses related, respectively, to the offender's instant incarceration and his past record[10]; an alternative sanction, PBTN, defined as the number of years of post-incarceration probation; and two indicators of the demand for criminal justice services: the offense rate, CRM, and the ratio of incarcerations to arrests, INC. CRM provides an index of the community's general criminal propensities; INC an index of the general level of sanctions. CRM and INC pertain to judicial districts (42 districts), the other variables to the individual offender.

The empirical model has been estimated using Ordinary Least Squares. The regression coefficients, with their accompanying t-statistics, are provided in Table 2, expressed in elasticity units. Robbery is included in the All Violent offense category and excluded from All Property category.

The results reported in Table 2 support the contention found in the sentencing variation literature that the most important determinant of the length of sentence is the seriousness of the offense(s) resulting in the instant incarceration. Within each UCR offense category, the coefficient of SCORE is positive and statistically significant. Also consistent with the literature, the offender's prior criminal

[10] The offenses are assigned the seriousness scores used by the Georgia Department of Offender Rehabilitation. See Orsagh, 1981.

history significantly affects his sentence: all coefficients are positive, and all but two are statistically significant. Note, also, that SCORE's effect on the sentence received is significantly greater than that of PRIOR.

Did the Georgia courts discriminate among offenders on the basis of sex, race, or age? Because females are less criminogenic, utilitarian principles lead one to expect females to receive lighter sentences. Our regression model provides some support for the expectation. Six of the seven coefficients are negative. However, except for homicide, the standard errors of the coefficients are too large to permit rejection of the null hypothesis at conventional levels of significance. Because blacks and youths have greater criminal propensities, ceteris paribus, one would expect these populations to receive harsher sentences. The evidence almost supports the contrary view. Four of the race and three of the age coefficients are negative and one of each -- homicide and larceny, respectively -- is statistically significant. Thus, one may properly conclude that, if anything, blacks and youths are treated more leniently than whites and older persons.[11]

Probation and incarceration are generally viewed as substitutable sanctions. It is obvious from the regression coefficients that the court, in fact, did treat time incarcerated and time on post-prison probation as substitutes. Except for burglary, the coefficients are negative and statistically significant. The marginal rate of substitution

[11]Strictly speaking, the dichotomy is white/nonwhite. But the overwhelming proportion of nonwhites are blacks. Hence, white/black is effectively equivalent to white/nonwhite.

between these two sanctions appears to vary considerably across offense categories. For example, when the elasticities are converted back into year-for-year units, we obtain ratios of in-prison time to post-prison probation time for homicide, robbery, and larceny of 1:1, 6:1, and 8:1, respectively.

Our theory does not provide a predictable sentencing response to variations in the general crime rate. The response we argued, would be environment-specific. It is, therefore, of some interest to note that all coefficients of CRM are negative and statistically significant. Evidently, the incremental cost of processing the additional offenders associated with a higher offense rate[12] was greater than the incremental cost to society of additional victimizations. Consequently, where crime rates were higher, the court, operating as an extension of the common will, chose shorter sentences (and higher crime rates) as the lesser evil.

Further evidence of the common willingness of communities to sustain proportionately higher victimization rates as the crime rate rises, rather than incur the necessary additional expenditures for law enforcement services to prevent that rise, is provided by the behavior of the INC coefficient. All seven coefficients that relate sentence length to the proportion of arrestees who end up incarcerated are negative, and that for larceny is statistically significant. One plausible inference is that the judiciary, faced with increasing

[12]This assumes that the community maintains a constant rate at which offenders are sanctioned. The presence of INC in the regression assures this condition.

case loads, tried to maintain a given incarceration rate by reducing sentence length, possibly through plea bargaining, in jurisdictions where crime rates increased.

Table 2

DETERMINANTS OF LENGTH OF PRISON SENTENCE:
GEORGIA, 1978: OLS PROCEDURE

Dependent Variable	Independent Variables							
	NW	SEX	AGE	SCORE	PRIOR	PBTN	CRM	INC
(1) Homicide (324)	-.34 (3.59)	-.24 (2.86)	-.13 (1.82)	.40 (6.22)	.03 (1.85)	-.07 (7.55)	-.13 (3.84)	-.04 (1.33)
(2) Rape (91)	-.05 (.27)	- -	-.11 (.52)	.29 (2.45)	.10 (2.90)	-.11 (3.75)	-.28 (2.73)	-.07 (.65)
(3) Assault (334)	-.21 (1.35)	-.22 (1.41)	-.02 (.16)	.70 (7.34)	.08 (3.23)	-.12 (4.09)	-.18 (3.21)	-.07 (1.59)
(4) Robbery (685)	.11 (1.25)	-.24 (1.81)	.17 (1.68)	.23 (3.41)	.10 (6.48)	-.05 (3.96)	-.15 (3.91)	-.00 (.12)
(5) Burglary (1457)	.08 (.94)	-.28 (1.21)	.09 (.81)	.57 (7.95)	.13 (7.11)	.00 (.28)	-.21 (3.81)	-.04 (.85)
(6) Larceny (613)	-.08 (.66)	-.14 (1.20)	.44 (3.65)	.52 (8.41)	.03 (1.26)	-.09 (4.32)	-.39 (5.21)	-.17 (3.33)
(7) Auto (209)	.05 (.35)	.51 (1.47)	.24 (1.47)	.86 (5.04)	.01 (.31)	-.16 (4.92)	-.25 (2.60)	-.14 (1.61)
(8) All Violent (1434)	-.07 (1.05)	-.12 (1.54)	.17 (3.07)	.61 (14.18)	.07 (6.29)	-.10 (9.93)	-.17 (6.51)	-.04 (1.74)
(9) All Property (2279)	.05 (.77)	-.19 (1.78)	.13 (1.64)	.62 (12.34)	.10 (6.52)	-.01 (.89)	-.25 (5.62)	-.07 (2.00)

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