

THE APPLICATION OF SOCIAL GEOMETRY CONCERNING THE ADMINISTRATION
OF JUSTICE IN CASES OF ASSAULT

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ABSTRACT

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Few studies have examined the influence of social status on adjudication practices involving assaults. Those that have suffer from a number of internal and external validity problems. As a result, we are left without an empirically testable framework to help explain if and how social stratification impacts legal decision-making regarding assaults in the U.S. Black's theory of social geometry presents us with a paradigm that directly addresses the influence of stratification by way of a multi-dimensional approach. Specifically, it suggests that law reacts to the social position of the victim compared to that of the perpetrator awarding greater advantage to those that rank higher. This research suggests that its broad design lends itself for application in providing an empirically testable theory regarding legal behavior in respect to assault outcomes.

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TABLE OF CONTENTS

	Page
CHAPTER 1: INTRODUCTION	1
Study Overview	2
The Prevalence of General Assault	4
Contribution of Current Study	8
CHAPTER 2: WHAT IS THE NATURE OF JUSTICE?	11
Historical Overview	12
Contemporary Understanding of Justice in the U.S.	20
CHAPTER 3: THE ARCHITECTURE OF SOCIAL POSITIONS	24
Defining Social Position	24
Social Dimensions	26
Vertical Dimension	27
The social ecology of money	27
The sacrosanct nature of prosperity	28
Organizational Dimension	30
Normative Dimension	33
The influence of social regulation by social characteristics	33
Women	34
Children	36
Elderly and disabled	37
The influence of social regulation by behavioral attributes	38
Cultural Dimension	39
Education	40

Race/Ethnicity	41
Housing	41
Labor	42
Healthcare	43
Morphological Dimension	44
Employment	45
Marriage and children.....	45
Is there Functionality in Social Positions?	48
Does Law Facilitate Structured Inequality?	51
CHAPTER 4: THEORETICAL CONSIDERATIONS	54
Jurisprudence Model	54
Legal Formalism	55
Legal Positivism	55
Rule of recognition	56
Rule of change	57
Rule of adjudication	58
Rule of law	59
Rule of equal application	60
Empirical support	61
Legal Realism	63
The nature of discretion	64
Critical legal theory	66
Empirical support	67

Social Geometry Model	70
The Equilibrium Effect	72
Measurable Aspect	73
Social Spaces	73
Vertical	74
Direction of response	74
Generalized other	77
Organizational	78
Normative	79
Cultural	81
Morphological	83
CHAPTER 5: PRIOR STUDIES ON ASSAULT	86
Assault Cases and Likelihood of Arrests	86
Assault Cases and Likelihood of Charging and Sentencing	92
CHAPTER 6: RESEARCH QUESTION AND HYPOTHESES	99
Research Question	99
Hypotheses	99
Vertical Dimension – Income	99
Organizational Dimension – Location within Organization	100
Normative Dimension – Gender, Age, and Use of Alcohol and/or Drugs	101
Cultural Dimension – Race and Education	102
Morphological Dimension – Radial and Relational Elements	103
CHAPTER 7: DATA, MEASURES, AND METHODS	105

Data	105
Measures	105
Outcome Variables	105
Graduated legal response	106
Arrest	106
Charged	107
Judicial	107
Explanatory Variables	108
Vertical	108
Organizational	108
Normative	109
Cultural	109
Morphology	110
Jurisprudence Variables	111
Methods	112
Data Setup	112
Statistical Analysis	113
Graduated legal response in assault cases	113
Delineated legal response in assault cases	116
Missing data	117
CHAPTER 8: RESULTS FOR GRADUATED LEGAL RESPONSE	120
Descriptive Profile for Incidents of General Assault	120
Multivariate Results for Incidents of General Assault	121

Model Assessment Using Pseudo R-Squared	124
Descriptive Profile for Incidents of Domestic Assault	128
Multivariate Results for Incidents of Domestic Assault	128
Testing the Organizational Dimension	130
Chapter Summary	133
CHAPTER 9: RESULTS FOR DELINEATED ASSAULT MODELS	135
Multivariate Results for Incidents of General Assault at the Arrest Stage	135
Multivariate Results for Incidents of General Assault at the Charging Stage	139
Multivariate Results for Incidents of General Assault at the Judicial Stage	142
Chapter Summary	146
CHAPTER 10: REVIEW OF THE FINDINGS	147
Wealth	147
Rank within an Organization	149
Normative Perspective	150
Conventionality	153
Social Involvement	155
Jurisprudent Elements	157
Chapter Summary	158
CHAPTER 11: DISCUSSION, LIMITATIONS, AND DIRECTIONS FOR FUTURE RESEARCH	160
Four Principles of Directionality	160
Findings Related to the Jurisprudence Model	162
Measure of Support	164

Contributions of this Study	165
Study Limitations	167
Recommendations for Future Research	169
Conclusion	171
REFERENCES	173

LIST OF TABLES

Table		Page
1	Descriptive Statistics for Study Variables involving General Assault	122
2	Ordered Logit Regression (Standard Errors) Models of the Log Odds of Graduated Legal Response involving General Assault Cases	126
3	Descriptive Statistics for Study Variables involving Domestic Assault	129
4	Ordered Logit Regression (Standard Errors) Models of the Log Odds of Graduated Legal Response involving Domestic Assault Cases	131
5	Binary Logistic Regression (Standard Errors) Models of the Log Odds of the Perpetrator being Arrested in Cases of General Physical Assault	137
6	Binary Logistic Regression (Standard Errors) Models of the Log Odds of the Perpetrator being Charged in Cases of General Physical Assault	140
7	Ordered Logit Regression (Standard Errors) Models of the Log Odds of Judicial Level Response in Cases of General Physical Assault	144

LIST OF FIGURES

Figure		Page
1	Household Income by Race and Hispanic Origin, 2010	43
2	Discretion Points in the Criminal Justice System	65
3	Black's Four Principles of Legal Application in Social Space	75
4	Variable Effects by Stages of Adjudication	143
5	Black's Four Principles of Legal Application as Reported by Results	163

CHAPTER 1: INTRODUCTION

Scholars have long debated the degree to which the law influences legal outcomes in cases such as assault (e.g., Black, 1971, 1976; Hart, 1961; Kadish, 1962; Hagin 1989; Hawkins, 1987; Hindelang, 1978; Klien, Webb, & DiSanto, 1978; Pope, 1975; Smith & Damphouse, 1998; Smith & Visser, 1981). Among the more dominant theories used to explain legal behavior has been the *jurisprudential model of law* (Gillman, 2001; Jasinski, 2003; Lotz & Hewitt, 1977; Maxwell, Robinson, & Post, 2003; D'Alessio & Stolzenberg, 2003). The general position of the jurisprudential paradigm is that legal behavior is a product of human agency or thoughtful discourse. It promotes the view that legal outcomes are both purposeful and directed. Specifically, the theory can be broken into two distinct schools of thought. The first, known as *legal formalism*, or *legal positivism*, proposes that adjudication decisions are based on the seriousness of a particular offense as judged by the rule of law. Here, the law serves as an external constraint on those individuals responsible for making decisions regarding the outcome in criminal cases (Leiter, 2010; Scalia, 1989). The second, more recent interpretation of the jurisprudential model is the *legal realist* approach. It contradicts the positivist view and, in turn, stresses the influence of the predilections of those in authority, in association with political ideology. Legal realists posit that decision-making is actually a reflection of the official's values (usually in conjunction with maintaining the social status quo) as opposed to a representation of statutory language (Douzinas & Gearey, 2005; Gillman, 2001; Kramer, 1995). However, scholars have criticized the notion that legal behavior can be characterized as either completely determined by statutes and the like or as a matter of raw political influence (Caldeira, 1994; Hall, 1995; Phelps & Gates, 1991). In fact, many studies conducted over the last thirty years seem to support the argument that adjudication decisions involving assault cases incorporate both legal

and extra-legal factors such as race (Avakame & Fyfe, 2001; Bachman, 1996; Howerton, 2006; Maxwell, Robinson, & Post, 2003; Myers & Talarico, 1986; Smith & Visser, 1981; Spohn & Cederblom, 1991; Steffensmeier & Demuth, 2001), gender, (Fyfe, Klinger, & Flavin, 1997; Howerton, 2006; Smith & Klein, 1984; Lally & DeMaris, 2012), relationship status (e.g., Buzawa, Austin, & Buzawa, 1995; Fyfe et al., 1997; Oppenlander, 1982; Lally & DeMaris, 2012), and social class (Avakame & Fyfe, 2001; Smith & Klein, 1984).

In the face of substantial evidence suggesting that officials' decision-making cannot be neatly placed into the legalist or realistic frameworks, the jurisprudential model is called into questions. As a result, we are left in need of a theory that generates predictions supportable by the empirical evidence concerning adjudication of criminal cases. It must also be sufficiently flexible to account for official behavior that is both legal and extra-legal in nature (Gillman, 2001). One such theory is Black's social geometry model. In the following sections of this chapter I will delineate the central ideas of this model. I will also lay out the plan of this dissertation.

Study Overview

This research proposes to apply an integrated theoretical model that has the capacity to predict adjudication outcomes involving cases of assault. Social geometry uses a multi-dimensional approach in its attempt to explain observed variations in the behavior of law. Originally proposed by Donald Black (1976), social geometry posits that by holding constant the conduct of parties involved, case outcomes vary with their location and direction in *social space*, or their *social geometry*. The theory attempts to predict when police are more likely to make an arrest, when prosecutors are more likely to file charges, or when a case is likely to attract more punishment. In turn, the amount of law applied in a given case varies with perceived social

distances, such as the degree of intimacy between parties or whether cases involve social superiors against inferiors, as opposed to social inferiors against superiors. Specifically, Black proposes that as relational distances between parties decrease, so too does the likelihood that the law will respond punitively. In addition, the law is more likely to respond punitively to cases involving social inferiors against a superior, compared with cases involving social superiors against inferiors. In order to explain the amount and style of law attracted to an assault case, one needs to look at whether the assault is upward (a lower-class individual assaults an upper-class individual) or downward (an upper-class individual assaults a lower-class individual), or “traverses” large or small expanses of social space (strangers assaulting strangers vs. intimates assaulting each other). The concept can also be applied to the victim’s social position as compared with that of the dominant cultural norms of that society – in this case comparing the social space of the victim with that of the perceived archetypal middle-class American.

Encompassed within this framework are issues of social class, division of labor, social networks, and marginality. More specifically, social geometry considers how applied law is influenced by five social dynamics: 1) The *vertical dimension*, which constitutes wealth and its distribution; 2) The *organizational dimension*, which focuses on the degree of organization within an establishment and the association one has with that establishment; 3) The *normative dimension*, which concentrates on the presence of social control or the amount individuals are and have been subject to in the past; 4) The *cultural dimension*, which is built on the concept that conventionality is considered an elevated social status; and 5) The *morphological (horizontal) dimension*, which encompasses the arrangement of social ties and the resulting behavior of law.

But perhaps the most notable feature of social geometry comes from its association with the principle of pure sociology. As in the case of the jurisprudence model, most sociological

explanations of people's actions and conduct are accounted for by way of their mental constructs or the intent of their actions. However, the approach that pure sociology takes is unique in that it reframes the idea of human behavior in terms of social life rather than in terms of individual behavior. In other words, pure sociology proposes that social life itself *behaves* or varies from one situation to the next. In turn, legal outcomes are explained not by the characteristics of people involved—either individuals or groups—but by the location and direction one occupies in multiple social spaces. The resulting perspective renders the paradigm free from elements of psychology, teleology (overarching purpose or design), and even the individual.

The Prevalence of General Assault

In order to better understand the link between what is written and what is practiced, as well as the influence of extra-legal factors such as social character on the latter, one need look no further than adjudication of cases of assault. Interpersonal violence represents a basic violation of personal freedom. Societies have long recognized the need to regulate such behavior and have created elaborate penalty schemes to address and prevent incidents of violent behavior (Clark, 1909; Englander, 2007). Although the definition of what may constitute an assault may vary from state to state and can encompass a broad range of actions and degrees of severity, the legal concept of assault is consistent across all states. A physical assault (also known as battery) generally refers to the intentional inflicting of bodily harm on another person while a non-physical assault is the *attempt* to commit the same (Bartol, 1995; Englander, 2007; Gardner & Anderson, 2012). Even though the two are distinct from one another, in many cases they are both involved in a physical altercation. For the sake of this research both will be associated with the term assault.

Furthermore, despite empirical data that indicate violent behavior is disproportionately associated with particular demographics, the fact remains that interpersonal violence – particularly nonlethal violence such as assault – is not unique to any one gender, race, ethnicity, age, or social class (Englander, 2007; Giroux, 1996; Monkkonen, 1975; Steinberg, 1981; Sampson, Morenoff, & Raudenbush, 2005; Wolfgang & Cohen, 1970; Zimring & Hawkins, 1997). Irrespective of social boundaries, nonlethal physical assaults have and continue to be the most common form of interpersonal violence found in any society (Hawkins, 1996; Bastian & Taylor, 1994). The U.S. is no exception and leads the industrialized nations in rates of interpersonal violence (Acierno & Resnick, 1997; Parker & Auerhahn, 1998). In 2009, the rate of aggravated assaults (assaults using weapons and/ or causing great bodily harm) reported to the police was 262.8 per 100,000 inhabitants compared with 133.0 for robbery, 28.7 for rape, and 5.0 for murder/manslaughter (Sourcebook, 2010). Comparatively speaking, simple assault (threat of force or force resulting in little or no injury) is approximately 1.5 times more common than aggravated assault (Englander, 2007). In a meta-analysis of interpersonal violence in the U.S., Acierno and Resnick (1997) found that the lifetime victimization rate involving physical assault ranged from 7% to 12% for women and 10% to 19% for men.¹ Again, to put this into perspective, Tjaden and Thoennes (2006) report that women were six times more likely to be physically assaulted than raped. Data also show that those who are economically deprived, non-white, or male are disproportionately arrested, charged, and convicted for assaults (Federal Bureau of Investigation, 2001; Hawkins, 1996; Hindelang, 1978, 1981; LaFree, 1995; Pepinsky & Jesilow, 1984; Reiss & Roth, 1993; Steffensmeier, Ulmer, & Kramer, 1998; Sutherland & Cressey, 1960; Thornberry, 1973; Tittle & Villemez, 1978; Lally & DeMaris, 2012; Western, 2006). As such, based on both the prevalence of assault as compared with other violent crimes

¹ Does not include incidents of sexual assault.

and incarceration demographics, it behooves contemporary sociologists to study the adjudication practices regarding incidents of assault.

The use of a multi-dimensional approach is both unique and advantageous. Many traditional sociological theories use a single or dual-dimensional methodology that attempts to explain some aspect of social life through the application of a particular overarching concept(s). For example, Durkheim (1947) argues that suicide can be best explained by the degree of social integration and regulation found within given societies. Another example is Shaw and McKay's (1969) argument that culture is the main source of inner city street crime suggesting that the lack of social organization within these neighborhoods promotes delinquent behavior. However, relying on a single or dual methodology tends to exclude other significant factors. For instance, Durkheim's theory only addresses social behavior in terms of integration and the degree of social regulation. The theory does not account for other factors found to be influential on suicide rates such as the economic status (See Taylor, Morrell, Slaytor, & Ford, 1998) or sociodemographic distribution (See Girard, 1993; Lester, 1979). Additionally, a construct with limited dimensionality greatly restricts the explanatory power of that theory. For example, social disorganization theory has limited application in being used to explain organized crime, white collar crime, or criminal behavior occurring outside the neighborhood setting. Social geometry addresses these issues by using a multidimensional approach culminating in a unified theory of social space. More to the point, Black posits that the influence of previously identified idiosyncratic factors such as race, gender, and social class on legal decision-making can be better understood by looking at their role in social interactions across the five distinct social dimensions mentioned above. By framing social space in terms of multiple dimensions Black's theory is able to incorporate a wider range of significant influences regarding legal behavior. Furthermore, the

framework allows for application to a broader spectrum of social phenomena- namely any situation where social control (formal or informal) is brought to bear on any form of social conflict (legal or non-legal, civil or criminal). Additionally, theories that attempt to explain social variation along the lines of a single or dual dimension have limited application in societies that are invariant along those particular dimensions. Again, social geometry is able to identify variability along multiple dimensions, which in turn, expands the scope of the theory (Thaxton, 2009).

Additionally, Black's theory does not deny that the seriousness of the offense can influence the degree of punitive response. Rather the theory incorporates both the notion of legal variables (i.e., aggravating and mitigating factors) as well as extra-legal variables (i.e., socio-demographics) in accounting for the responses of the criminal justice system. That is to say when two cases present the same set of circumstances regarding the offense, social geometry is able to explain how and why outcomes may vary for each by drawing our attention to the social spaces occupied by the subjects involved in the cases. Furthermore, by framing these various social characteristics as elements of social space, the framework is able to bring these various concepts under one paradigm, leading to a parsimonious theory (Thaxton, 2009).

Most sources of criminal justice data do not collect sufficient information on the social characteristics of the victims and perpetrators involved in violent crimes to situate them within Black's framework (see Hawkins, 1996). This is because many reports are based on data initially gathered by official sources such as police, probation and correctional departments that do not use socioeconomic and other demographic information in their day-to-day operations. As a way to address this issue, the current study analyzes data from the National Survey of Violence and Threats of Violence against Women and Men in the United States 1994 – 1996. This particular

survey allows for access to both sociodemographic as well as contextual data surrounding incidents of assault. Observed outcomes will be used to gauge the proficiency of social geometry in explaining the amount of variation seen in the application of justice involving physical assaults, while also testing the alternative framework – namely the jurisprudence model.

Contribution of Current Study

As previously stated, critics have pointed out the shortcomings of existing mainstream theories to adequately explain observed patterns in the application of criminal law. This study offers an alternative approach to understanding the underlying mechanisms involved with the performance of law as it is applied in cases of assault. Social geometry has been underutilized as an explanatory model (Turner, 2002). Few studies have examined the connection between social space and adjudication decisions in the case of assault. Of those that have, the overwhelming majority involve only partial tests of the framework. For example, researchers have alternatively tested the morphological dimension (see Avakame & Fyfe, 2001; Berk & Loseke, 1981; Fyfe, Klinger, & Flavin, 1997; Oppenlander, 1982), the morphological and normative dimensions (see Klinger, 1995), the morphological and vertical dimensions (see Cooney, 1992), or the morphological, organizational, and vertical dimensions (see Mullis, 1995). Of the even fewer studies that have incorporated the full multi-dimensional model within their research, observations are restricted to one stage of the criminal justice system such as arrest or sentencing (see Smith & Klien, 1984; Thaxton, 2009). Additionally, many studies suffer from a number of problems, including the failure to differentiate between romantic vs. relative relationships, the failure to employ the proper statistical models, the failure to control for gender, relying solely on official reports, and using small or regional samples. These studies will be explored in more detail as the paper progresses, but for now they reflect that the question is still open as to how

fully social geometry can explain variations in the application of criminal law. This study therefore tests the jurisprudence and social geometry paradigms employing nationally representative data on violent assaults across the full gamut of the adjudication process from arrest to sentence imposed. Additionally, both legal realistic and formalistic perspectives associated with the jurisprudence model are explored alongside all five dimensions proposed by the social geometry model. In the process, the analysis institutes a number of refinements intended to address the limitations of earlier work.

This study attempts to provide a comprehensive examination of the jurisprudence model as well as Black's theory in an effort to explain variation in adjudication processes by assessing the application of the paradigms over a broad category of offenses (i.e., assault cases). In doing so, the observations should capture the processes at work in legal decision-making by incorporating an analysis that stretches over several stages of the criminal justice process rather than simply focusing on one stage. These findings should also provide a more empirically supported paradigm capable of contributing to a broader understanding of the underlying mechanisms involved in the application of the law.

To better understand the "living law" Kantorowicz (1934) tells us that regulations must be interpreted according to their aims, which are found in their effects on social life. That is to say the law cannot be understood without the aid of a sociological study of social reality. It is the intent of this study to provide a comprehensive picture of the issues surrounding the adjudication of assault cases. I begin by presenting a progressive overview concerning philosophical developments leading to our current notions of justice. Building on this topic, I discuss the nature of social stratification and the ambiguous relationship it has had with the legal system overtime. This is followed by an overview of the two opposing models of justice, jurisprudence and social

geometry. As a part of introducing the theoretical outlines of each model, a discussion will ensue regarding the philosophical framework each viewpoint proposes, as well as what empirical support prior studies have found for each framework. Subsequent to this discussion, a review will be presented of previous studies that have tested the general propositions of each theory as they specifically relate to incidents of assault. At this point, having thoroughly examined the theoretical arguments of each framework, I introduce the primary research question posed by this study and present the resulting hypotheses. This is followed by a description of the data used and the methods employed. Afterwards, initial results are presented illustrating the influence of legal and extra-legal factors on the degree of penetration of the accused into the criminal justice system. This is followed by a detailed breakdown testing the same variables' influence on criminal-justice system responses at progressive stages beginning with arrest, continuing to charging, and ending with judicial outcome. A discussion of the findings then ensues ending with a look at specific limitations of the study as well as suggestions for future research.

CHAPTER 2: WHAT IS THE NATURE OF JUSTICE?

Despite the considerable debate over the question of whether contemporary application of the law reflects statutory language or political agendas, legal scholars generally agree that the American criminal justice system was conceived on the notion that justice was defined as the impartial distribution of the law (Friedman, 1985; Fuller, 1969; Kantorowicz, 1934; Schement, 2001; Wlazer, 1985). Connected with this view is what Rawls (1971) terms as the *veil of ignorance*, the job of which is to blind the law from the moral character and social and economic status of those subject to it. In turn, the intent was to create a legal model that focused on the actions taken in any particular case and not the social character of the actors. In fact, the concepts of equality and impartiality seem to be ingrained in many of the symbolic representations connected with our current justice system. This is seen not only in our phraseology, such as in the case of the inscription *equal justice under the law* engraved on the front of the United States Supreme Court building in Washington D.C., but also in imagery. In fact, one of the most iconic symbols used to represent our legal system is that of Lady Justice. Justitia, the Roman goddess of justice, is usually depicted blindfolded while wielding a sword in one hand and balanced scales in the other (Robinson, 2002). Her ubiquitous presence in courtrooms around the country represents the idea that law is blind to the characteristic of the parties involved and distributes justice fairly after weighing the facts involved in the case (Curtis & Resnik, 1987). It is this concept of equality under the law, regardless of individual status, that is the core of our current legal philosophy (Friedman, 1985). Yet, many intractable disagreements have occurred over the definition of justice and to what extent justice is meted out. Historically speaking, the concept of neutrality as a function of the law has not been a consistent theme. In other words, the criterion for adjudication has, at times, taken social status into account (Baker, 2005; Gabel, 1969; Garnsey, 1968; Strachan-Davidson, 1912). Therefore, it behooves us to conduct a thorough discussion of

our evolving notions of justice. As we will see, the topic of whether or not to allow the social characteristics of the offender and victim into legal decision-making is a recurring theme. The purpose of this chapter is to provide a constructive narrative on our notion of what justice exactly is which will later be used for understanding the empirical results and compare them against our current notions of what constitutes an effective and just legal system. Additionally, this chapter sets the foundation for the discussion of possible policy implications proposed later.

Historical Overview

One of the earliest examples of a codified structure employed as a means to arbitrate conflicts can be found in early Greek societies (Gagarin, 1986; Maine, 2009). In particular, Greeks viewed societies that had a mechanism by which to settle disputes as an indication of its civilized character. However, Greek society focused more on the procedural aspect of dispute resolution. This resulted in a system that allowed for social standing to be taken into consideration when deciding outcomes. More specifically, “settlements in preliterate (proto-legal) Greece ...tend to be ad hoc, determined as much by the particular natures of the two disputants as by the objective nature of the ‘crime’ or the situation in general” (Gagarin, 1986, p. 106). The importance of character in the legal process is also evidenced by the writings of both Plato and Aristotle who held that the equal awarding of things to persons of unequal merit was not equal (Garnsey, 1968). The idea of social weighting was a purposeful dimension that adhered to the laws of nature as they understood them. To that extent, social order was maintained, in part, through the official recognition of what they perceived to be social merit in all legal matters.

Legal principles and practices initially developed by early Greek societies were later adopted by their Roman successors (Maine, 2009). As with earlier examples, we again see the

regular admission of character into the judgment criteria of Roman courts. Specifically, with regard to civil lawsuits, Roman citizens were evaluated not only on the merits of their complaint but on the social status of the parties involved in the proceedings.

Even if the plaintiff of low rank had been granted an action and had secured an appearance (which was sometimes a feat in and of itself) he could not have had much confidence in the outcome of the action...Judges and juries were easily impressed by qualities such as social prominence, wealth, and good character and this was thought perfectly proper. (Garnsey, 1968, p. 152)

Similarly, in cases of criminal matters, Romans employed a two-tiered penalty system designed to reflect the social standing of the respondents (Strachan-Davidson, 1912). Distinctions were made not only between upper and lower class, but also citizen vs. foreigner and freemen vs. slaves. Defendants who represented the top of the scale were subject to penalties ranging from monetary fines to deportation. However, for those who found themselves at the lower end of the social spectrum, one could expect everything from hard labor to several aggravated forms of capital punishment including crucifixion (Garnsey, 1968).

Subsequent to the collapse of Roman society, Europe descended first into a system of tribal justice followed by a feudal legal system. No longer were there venues for adjudication of complaints. Rather, under the feudal system, authority returned to the land owners. Consequently, manors lords exercised complete authority over their own subordinate surfs when it came to any perceived infractions. In the absence of a strong arbitrator, property owners were left to resolve their personal conflicts either through violence or economic settlement. This system, which would later become known as the Barbarian Codes, would serve as the basis for European law until the end of the eleventh century (Spierenburg, 1984).

Yet, beginning in the tenth century, Europe began to see the emergence of cogent territorial rulers (Gat, 2006; Jeffery, 1957). As gradual centralization of power took place across the European continent, Barbarian Codes were slowly being replaced by a radically different legal structure aimed at curtailing the use of private violence by noblemen to resolve disputes. Injustices were no longer simply committed against the injured party (or victim's kinship), but now constituted a breach of the king's or lord's *mund* (obligation to protect a person or area). Under this concept, royal authority took on the role of primary adjudicator. Beginning in the twelfth century, under King Henry II, judges began to be dispatched from the central royal court in London to various parts (or circuits) of the country where they would resolve disputes based on local norms. Overtime, these decisions were recorded and disseminated to other judges. The result was a system where magistrate judges adhered to one other's decisions which, in turn, created a unified common law system throughout England. This practice would later set the foundation for our contemporary use of judicial precedent or case law also known as *stare decisis* (Jeffery, 1957).

Again, as in the case of Greek and Roman venues, social status continued to play an influential part in the application of punishment. Namely, early European society employed a legal system that incorporated a weighted penalty scheme based on both the offense and social position of the offender. Typically, commoners received greater penalties than aristocrats or clergy for similar crimes (Foucault, 1977; Spierenburg, 1984). England, for example, under William the Conqueror, established a dual court system that separated secular and ecclesiastic jurisdiction with the latter having authority over cases of spirituality and those ordained by the church. By claiming the benefit of clergy, people could have their case transferred from a secular court to the more lenient ecclesiastic one, thereby avoiding hanging in many cases (Baker, 2005).

Originally those claiming the benefit of clergy demonstrated their clerical status by reading a passage from the Bible. However, by the 13th century, the benefit of clergy was officially extended to all who could read; a trait predominately associated with clergy and those wealthy enough to have received an education (Gabel, 1969). By allowing only the literate to transfer their case to ecclesiastic courts, preferential treatment was allotted to those segments of society that held prestigious positions resulting in reduced penalty.

Not all societies during this time allowed for the incorporation of personal attributes in legal proceeding. For example the Jewish Code of Maimonides directed judges to be impartial with regard to the personal merit of litigants in civil cases. More to the point, the code warned that judges and juries might be unduly influenced by the differing social statuses of parties involved:

If one of the parties to a suit is well clad and the other ill clad, the judge should say to the former, “Either dress him like yourself before the trial is held, or dress like him, then the trial will take place” (Curtis & Resnik, 1987, p. 159).

In effect, the code represented a philosophical statement on the possible ethical implications of an impartial justice system. Namely, when social character is taken into consideration there exist inherent biases in favor of those who occupy a higher social status than other parties in a suit.

Under common law, the primary source of law continued to be based on judicial decree until parliament acquired legislative powers allowing for the adoption of a statutory system. With the seventeenth and eighteenth centuries, we see a paradigm shift away from the thesis of divine right and common law towards one based on enacted written resolutions. With this shift was a growing emphasis on the importance of human reason (Hudson, 1996). It was during this time that legal philosophers such as Jeremy Bentham (1748-1832) promoted the utilization of

regulations as a way to actively control the prevalence of crime. Utilitarianism was an attempt to combine moral and political philosophy in an effort to define the relationship between the state and the application of law. By applying penalties in a defensive manner, it was proposed that the state could reduce the amount of crime present within a given society (Walker, 1991). The basis for this argument was the belief that humans were rational creatures who weighed their actions against the backdrop of possible gain versus possible loss. If the threat of loss (pain) was a realistic possibility, then rational beings would choose not to commit acts that might result in penalty. Ultimately, Bentham believed that the use of demonstrated force by the state was justified if it deterred further injury to society. This premise represented an elemental shift away from the idea that justice was a reactive force used to underscore the existing social structure and instead proposed the idea that proactive laws and their application could diminish future deviant behavior.

Cesare Beccaria (1738-1794) also proposed that individuals had freewill and used rational thought when looking to their own personal wellbeing. He proposed a system of graduated penalties in which the severity of sentence was on par with the gravity of the crime (Hudson, 1996). Again, the locus of power was not based on divine authority as claimed by monarchs but rather through consent of the governed. Beccaria believed that the populace would only authorize the state to employ such force if it were both reasonable and purposeful. Woven within this framework was an emphasis on deterrence through the use of clearly established and consistent publicized penalties. However, anticipatory punishment would only be effective if the penalty fit the crime. In order for this to happen, the system could not allow for variance based on circumstance or social characteristics. Judges in criminal cases would have little room to interpret the law. Not only would offenses be clearly defined but so to the responses. In addition,

swift action by the state would be required to ensure general deterrence. Like the Jewish Code of Maimonides, emphasis was placed on the act and not the actors.

Seventeenth century Colonial American law initially resembled its British counterpart. Based heavily on common law, legal structures allowed for retroactive application and were vague enough to allow judges broad discretion in use (Friedman, 1985). However, as the colonies moved into the eighteenth century and began to press for their own liberation, many of the principles reflected in the work of Bentham and Beccaria were integrated. The idea that rational thought was endemic to all of mankind set the stage for the argument that all were also equal under the law. In other words, although individuals may be unequal in qualities, ranging from intelligence to wealth, no one individual or class is superior as a result of the innate possession of rational thought (Dawes, Fowler, Johnson, McElreath, & Smirnov, 2007; Vallentyne, 2003). Coinciding with this doctrine was the idea that all were also equally accountable for their actions. This concept is conveyed throughout early American literature but particularly in the early Federalist papers. James Madison wrote that everyone is morally accountable for violent behavior based on the fact that all act on free will. Therefore, he argues that the ability to choose equates into equal accountability which also translates to equal treatment (West & Jeffrey, 2006).

Aside from the concept of equal accountability Madison wrote on the government's duty to provide equal protection regardless of social influence based on the combined will of the people.

In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state,

even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. (Madison, 1788, para. 10)

Recall that English common law was based on a progressive collection of judicial rulings. Rulings were based on interpretation of how previous rulings might apply in the current case brought before the magistrate. It was the very character of this interpretive practice that allowed for the influence of religion and class to insert itself translating into a justice system that assigned rights disproportionately by status (Friedman, 1985; Spierenburg, 1984). Although early colonies initially followed the practice of common law, a newly formed American nation will mark a departure from their European predecessor and establish a more consistent and defined system of laws. Combined with the concept of equal protection under the law, the idea that government had the obligation to protect and hold accountable all members of society marked a radical shift in political ideology.

Under the *rule of law*, substantive and procedural laws restrain government control by advancing individual liberties while creating stability and predictability with regard to the daily functions of the political establishment. Through utilization of legal constraints a system is enacted in which individual rights are protected from capricious and abusive application of government use of force (West & Jeffrey, 2006). According to Fuller (1969) the rule of law consists of eight fundamental components:

1. Laws need to exist and be obeyed by all segments of that society, including government officials.

2. Laws need to be published so as to be available to all.
3. Laws cannot be retrospective in nature. The law may only be in effect after passage and applicable in cases where criminal acts were committed after a criminal statute prohibiting the conduct was passed.
4. Laws need to be clear and concise so as to avoid ambiguous enforcement.
5. Laws must not contradict one another.
6. Laws must be realistic in expectations.
7. Laws must remain somewhat constant throughout time to allow the formalization of rules; however, statutes also need to allow for timely revisions when the underlying social and political circumstances have changed.
8. Official action needs to be consistent with the written law.

To safeguard against legal proceedings that were generally interpretive and retroactive in nature, progressive statesmen saw the need for the creation of a unified legal code structure. A statutory structure was more accessible to the general public and put into place a system that limited the discretionary power of judges. Instead of being retroactive, statutory laws could only be applied after the fact. The use of a statutory model over a common law model was reaffirmed in the case of *U.S. v. Hudson and Goodwin* (11 U.S. 32). In 1812, the US Supreme Court ruled that federal courts had no jurisdiction to define new common law crimes. Furthermore, the Court found that there must always be a statute defining the offense and the associated penalty.

Statutes clearly spell out what behavior constitutes a violation of a particular regulated norm but more importantly the associated penalty. This issue was at the center of debate in an 1819 criminal case involving a charge of stealing public security documents. Defense council argued:

[T]he law to bind (the prisoner) should first be prescribed; that is, not only willed by the legislature, but should also be announced, clearly and plain and published, that every citizen, if he would, could learn its meaning and know the measure of its punishment.

(Friedman, 1985, p. 291)

Furthermore, it is argued that consistent application is only feasible when prohibited actions, not social character, are regulated. Extralegal factors introduce unknown variables that are impossible to anticipate and therefore do not allow for the anticipatory deterrence effect sought after by Beccaria and Bentham. More to the point, the original philosophical groundwork laid for the early American judicial system promoted the principle of equality under the law and would serve as the basis for our contemporary understanding of what constitutes justice.

Contemporary Understanding of Justice in the U.S.

Returning to the original discussion on symbolic imagery associated with our contemporary American legal system recall how some have proposed that core elements connected with our modern concept of justice are symbolized through our use of the image of Justitia. In particular, the blindfold represents the idea that those who are tasked with employing the law should do so undistracted by indicators of perceived merit - wealth or social status. Echoing the philosophy put forth by the Jewish Code of Maimonides, modern courts have also recognized the potential influence attire can have in criminal case outcomes. For example, the US Supreme Court ruled that it was unconstitutional for the state to compel a prisoner to attend court in their detention clothes. This decision reflected the understanding that visual cues can potentially taint the jury's ability to focus solely on the facts of the case and not be unduly influenced by extralegal factors (for further discussion see *Estelle v. Williams*, 1976). However, it has been suggested that the blindfold actually serves to shield those tasked with enforcing the

law from the influence of appointing powers (Curtis & Resnik, 1987; Robinson, 2002). Moreover, justice itself, should serve as an independent guiding force behind the decision-making of those who employ the law, un-swayed by the changing tides of political agendas, public opinion or directed persuasion. In order to safeguard against possible political use of the criminal justice system a buffer is supposed to exist between the administrative, legislative, and judicial bodies (Friedman, 1985). By maintaining three separate but equal branches of government, no one branch has the power to create, enforce, and adjudicate the law. Yet, the legal realist position would argue that even though this arrangement should work in theory it fails to restrict judicial “policy making”.

The balance between truth and fairness is said to be reflected in the form of scales. Yet, others believe it is the depiction of “weighing” one’s actions against elements of right and truth representing the idea that individuals should be accountable for their conduct (Daube, 1951). But what of the sword? Some suggest that this embodies the use of a penalty should justice have need to impose it (Curtis & Resnik, 1987). Previous discussions have focused primarily on the concept of punishment being used as a means by which the state seeks to promote the social benefit of crime reduction. However, others have criticized Bentham’s utilitarian approach as a way of opening the door for inflicting disproportionately severe punishments in order to maximize the effects of deterrence (Lanier & Henry, 1998).

With regard to the actual application of the punishment beginning in the latter half of the nineteenth century, criminologists began looking to the new scientific methods to answer the question of why people offend. As a result, individual and social differences became relevant in the legal process yet again. Beginning in the 1930s the use of indeterminate sentencing began to be widely used throughout the country (Benavides, 2002). With indeterminate sentencing,

convicted offenders are sentenced to a minimum and maximum time frame (ex. twenty-five years to life). When the offender serves his or her minimum sentence he or she becomes eligible for release from prison based on the parole board's decision. This is usually determined by the characteristics and behavior of the person in custody. Once sentencing became dependent on offender characteristics, it became discretionary. Other conditional actions by officials such as plea-bargaining and probation also allowed for disparity in charging and sentencing for similar crimes based on one's employment, education, financial and marital status, and alcohol and drug problems (Andrews & Bonta, 1995). Critics of indeterminate sentencing raise similar alarms of inconsistency. Once more we encounter a system that formulates penalties based, in part, on social character as a way to gauge the chances of reoffending, rather than on the act itself. More to the point, concerns have been raised regarding possible judicial discrimination against minority groups, the unemployed, or those otherwise considered on the fringes of society based on these practices (see Frankel, 1973; Wilson, 1975).

In an effort to reestablish consistency within criminal justice practices, many states during the late 1970s and early 1980s implemented programs designed to limit discretion (Grimes & Rogers, 1999). What would later become known as the *just deserts model* reflected many of Beccaria's original proposals. Policies such as truth in sentencing and determinate sentences which assigned specific incarceration time based on the crime committed not only reintroduced a standard of consistency but also advanced the idea of the law acting as a mechanism for social retribution (Hudson, 1996). According to Lanier and Henry (1998) this model is built around four main constructs: (1) officials' range of discretion should be limited in their application of the law; (2) transparency is necessary in maintaining accountability; (3) penalty assignment should be based on perpetrator's actions only; (4) severity of the penalty

should be on a par with the seriousness of the crime. As a result, attention shifted from deterrence and rehabilitation to punishment.

Our definition of justice has evolved over time. Legitimacy of authority, moral use of punishment, and individual responsibility are enduring issues that persist even in our contemporary attempt to define justice. Yet above all else, it is our ongoing deliberation over the appropriate use of social character in adjudication decisions that has been the center of debate. Current policies are written to safeguard against the incorporation of extralegal factors, such as race, gender, income, or other social status features, in legal judgments. As we will see in future chapters, practice does not always follow procedure. The following chapter will move from the topic of justice to a discussion of social stratification. Concepts such as class and status will be explored in an attempt to better understand how we have come to define these notions and what processes have helped to shape them.

CHAPTER 3: THE ARCHITECTURE OF SOCIAL POSITIONS

Before we can begin to understand why social attributes influence law enforcement practices and judicial decisions, it is necessary to carefully deconstruct the concept of social position so as to identify rudimentary components. Moreover, we need to inquire how these components may act independently or in conjunction with one another with regard to justice outcomes. Although the next section is not designed to be an exhaustive discussion of the topic, it will set the background for us to explore how individual traits can translate into selective enforcement.

Defining Social Position

Perhaps no other subject within the social sciences has produced as much concerted deliberation as the matter of social position and its relationship to the individual experience. Long a source of sociological discourse, philosophers and researchers alike have examined its causes and inquired into its impact on a wide variety of social institutions. Social position refers to the space one occupies within a social sphere such as family, occupation, or professional associations. Moreover, social life consists of a multitude of social spheres or social dimensions. Bourdieu (1985) refers to this multidimensional approach as a form of social topology in which social life is a subjective construct consisting of different social regions one occupies simultaneously.

Thus, the social world can be represented as a space (with several dimensions) constructed on the basis of principles of differentiation or distribution constituted by a set of properties active within the social universe in question, i.e., capable of conferring strength, power within that universe, on their holder. Agents and groups are thus defined by their relative position within that space. (Bourdieu, 1985, pg. 723-724)

As a result, social positions can (and often do) influence social status. So, in effect, social positions directly influence one's ranking within society- the extent to which an individual or group is respected or admired by others (Magee & Galinsky, 2008; Ridgeway & Walker, 1995). As a hierarchical system, societies may vary in ways with which they assign their members status. Yet all social stratification systems are inherently formulated on four key principles (Ballantine & Roberts, 2009; Henslin, 2008; Macionis, 2007; Thompson & Hickey, 2008).

First, stratification appears to be endemic to all societies; no society has the distinction of remaining unstratified. Some suggest that this is reflective of the functional nature of stratification. For example, Davis and Moore (1945) argue that social stratification acts as a structural mechanism and not merely a measure of individual merit. The ranking system employed by societies assigns individuals to structured tiers based on a number of social characteristics, both ascribed and achieved, in order to benefit society based on the individual's ability to contribute. *Second*, although endemic to social life, societies can and do vary in how they extend privileges or restrict access to resources to members of different social strata resulting in disparities ranging from educational attainment and employment to general health and longevity. Typically, privileges decrease and restrictions increase as social status moves downward which, comparatively speaking, comports with the social geometric framework proposed by Black. *Third*, in addition to the elements of universality and variability, social stratification works in conjunction with cultural beliefs that enforce the existing structure enabling it to continue. This ranking classification is generally recognized at both an individual and institutional level. More to the point, social construction of social status may vary. Like any other construct, what constitutes a stratified system can fluctuate from one society to another. For instance, issues of wealth and power may dominate one system while another might be based

simply on variance in prestige. Furthermore, the degree to which inequality exists is also a consideration. Some societies may be characterized as fairly egalitarian in nature while others as inequitable and pluralistic. As a result, how individuals interact between their respective spheres may vary greatly. *Fourth*, social status may be progenitive in nature. Extant generations tend to inherit their social standing from previous ones. Again, this denotes the nature of stratification, supporting the position that it is a social construct rather than it consisting simply of individual traits. However, depending on the degree of freedom within the established social structure of that society, individuals may move vertically from one social tier to another by way of education, employment, or monetary gain to name a few means. Yet despite this, research tends to report that most people remain within the same social standing over their lifetime (Miech, Eaton, & Liang, 2003).

Social Dimensions

Returning to the topological approach to social life, individuals occupy multiple social spheres at any given time. These spheres encompass a variety of social contexts including facets of family life, economic class, labor, social networks, and marginality. Furthermore, the subjective positions one occupies within these spheres or social dimensions are influenced by objective characteristics both ascribed (ex. age, gender, race/ethnicity) and assigned (ex. education, occupation, deviant status) (Lindemann, 2007). Black (1976) proposes that we can divide these social dimensions into five distinct areas: *vertical*, *organizational*, *normative*, *cultural* and *morphological*. Each dimension designates separate social realms in which specific criteria come into play. In addition, no one space supersedes another but rather they all exist as social counterparts.

Vertical Dimension

Matters of economic interests and distribution, a topic well explored by Marx and Engels (1955), affect the position one holds within the vertical dimension of social space. Simply put, the more financial capital one has the higher his or her position on the social ladder. As with other industrial societies, the distribution of wealth in the United States is distributed disproportionately. Gilbert (1998), utilizing data from the annual Census Bureau surveys, found that the poorest one fifth of society receives approximately 3.6 percent of the aggregate income compared with the 49 percent portion that is owned by the richest quintile. Moreover, Gilbert reported that the top 5 percent of households in America receive nearly six times the income share of that of the bottom 20 percent. There is also growing evidence that this gap is increasing. In particular, data seem to indicate that the level of inequality in wages is at its highest level in nearly 40 years (McCall & Percheski, 2010). Part of the explanation for the growth in income disparity directly relates to corporate practices. Executive salary and bonus packages have increased nearly three times from 1970 to 2000 (Jensen & Murphy, 2012). Still others point to the lack of redistributive power of contemporary social welfare policies to keep pace with the growing inequality in both market and disposable income (McCall & Percheski, 2010).

The social ecology of money. Despite the debate over what resources should be considered as the measure for social elites, financial capital remains the principal component. This is because in capitalistic societies money tends to dominate the market-based economy which, in turn, allows for it to be mobilized in the form of political, cultural, social, and knowledge-based capital (Khan, 2012). For example, Bartels (2008) points to the overrepresentation of social elite or capitalist interests in political institutions. Namely, that political decisions and outcomes, "...help produce inequality because elected officials tend to be

keenly aware of and responsive to the interests of the wealthy and often ignore those of poorer citizens” (p. 365). In turn, politicians who act in the best interests of the capitalist class and associated corporations are elected and retained, in part, through lofty campaign funding. In addition to political influence, money can also be used as a form of cultural demarcation. Upper class families tend to convey to their children the attitudes and knowledge needed to succeed in the current educational system which significantly increases the chances for educational attainment (DiMaggio & Mohr, 1985). Academic credentials and qualifications then play a prominent role in the labor market allowing individuals to compete in an ever increasingly competitive field for top-end jobs. Money can also facilitate social networks. Research on elite ties has resulted in a series of reports regarding how the relative small size of the elite groups combined with the density of their social ties help with the coordination of action both commercial (see Useem, 1984) and political (see Burris, 2004). Besides political, cultural, and social influence, a shared knowledge base allows for the construction of a common point of view, which in turn, is central to helping constitute an elite class as well as consolidate their financial interests in ways that limit internal contention (Khan, 2012). Within this social dimension, advantages individuals obtain from initial financial resources may be compounded through the manipulation of other contiguous resources.

The sacrosanct nature of prosperity. Aside from the argument that wealth elevates through tangible resources, is the philosophical stance that social position is the result of individual merit. Furthermore, this notion of *worthiness* permeates the class structure seen in most Western societies. Those with less financial access are seen as deserving of their status through perceived lack of performance while middle and upper classes achieved their position through motivation and perseverance (Young, 2008). Social status has historically been equated

with ethereal affirmation; the measure of financial success acting as a sign of divine approval. Specifically, the Calvinistic belief that financial prosperity was an indication of salvation prompted many to achieve financial security through investments and business ventures (Weber, 1904/2003). The belief that prosperity was an outward reflection of God's favor set the foundation for the connection between class and the concept of worth. A closer look reveals that this frame of reference is made up of four key components (Ballantine & Roberts, 2009).

Predestination - Accompanying the conviction that history was the result of divine intervention was the notion that future events were also preordained. Consequently, deliverance from eternal damnation had already been established, therefore it was prudent to look for tangible signs of salvation in one's life. Eventually, this translated into a belief that monetary achievement was a sign of divine endorsement. Even though one could not change the future, one could stay on the heavenly path by exercising discipline in economic matters. The Calling - Also coinciding with the concept of predestination was the belief that each person was called by God to perform a specific role usually served through occupational choice. But more importantly, work was seen as way to fulfill one's obligation to God. Those who appeared not to adhere to the same principles as the Calvinists were seen as immoral. In turn, people's self-worth became synonymous with their work ethic. Frugality - In order to accumulate wealth, spending was reserved for those items deemed necessary. Wasteful spending was viewed not only as sinful but a denial of one's own salvation. Therefore, delayed gratification became a mark of moral superiority. Idiosyncratic - Salvation was on an individual level. People faced their heavenly fate on their own without assistance from anyone else. This point of view later carries over into matters of general welfare. Religious conviction dictated that people succeeded or failed on their own accord; a position that some continue to subscribe to today.

In a 2006 TIME poll, 61% of self defined Christians surveyed stated that they believed God wanted them to be prosperous, citing biblical text such as Deuteronomy 8:18 - "But you shall remember the Lord your God, for it is He who is giving you power to make wealth, that He may confirm His covenant which He swore to your fathers, as it is this day". Contemporarily known as the *Health and Wealth Gospel* or *Prosperity Theology*, the doctrine follows the same principle that God favors the faithful by allowing them to accumulate wealth (Olsen, 2006). Although, some credit the re-emergence of this philosophy with the increased popularity of televangelism and the appearance of mega-churches throughout the country, others argue that it is more likely a reflection of an ideology that has been present, in one form or another, in American culture from its founding (Biema & Chu, 2006).

Organizational Dimension

Black defines the organizational dimension as one that incorporates the concept involving, "...the capacity for collective action" (1976, p. 85). Through planned, coordinated and purposeful collective action organizations achieve established objectives. As a result, it is this organizational (as opposed to individual) action that helps to establish pseudo social standing as well as various forms of capital. In other words, it is by their very nature that organizations take on their own respective social identity. Yet, an individual's social status can be subject to his or her association with that organization in terms of reputation and respect. In particular, individuals may make inferences as to the social status of an associate from the perceived public standing of the organization they represent; a form of reputation by association (Bothner, Godart, & Lee, 2011). Podolny (2005) argues this is because status is strongly based, in part, on affiliations. Much like how Benoit-Smullyan (1944) found that those who routinely associate with high status people achieve, in some respects, a similar social standing, so too can prestige

and reputation linked with a particular organization be transferred to individuals associated with that same organization. Furthermore, since power tends to follow status, the power wielded by an organization is also imparted, to a degree, onto associated persons, supporting Emerson's (1962) claim that power is more a property of the social relation and not an individual attribute. So it stands to reason that within this social dimension that once that relationship is terminated, so too, the power and prestige that came with the association.

In addition to simple association, the capacity in which one is employed or the rank one occupies on an internal scale within the organization also shapes general social perception of status. Within organizations, structured rank creates an environment allotting associates more authority and privilege than others. This may be reflected in differences ranging from pay and responsibility to general access to resources. Astley and Sachdeva (1984) argue that formal rank, in turn, is a social indicator of one's access to organizational power and resources. There is also a presumption that as one's official rank increases so too does his or her level of skill, ability, and motivation rise in order to successfully meet the escalating needs of the organization. Moreover, the organizational dimension not only reflects the internal hierarchical standing an individual occupies within an organization, but also how that internal status might transfer to external social settings as well (Cooney, 2009).

Yet, unlike the vertical dimension where individual worth serves as the measure of standing, here status is assigned by occupational position as well as the degree to which the affiliated corporation or institution is organized. Consequently, status may not necessarily be transferable. People of wealth may occupy many positions yet still hold their social standing by way of their financial position. However, status gained through a particular occupational position with a particular organization is lost when that person vacates that position. Referring to the

notion of Weberian Stratification, wealth, prestige and power, although closely associated, are not necessarily synonymous. An example of this would include the occupation of police officer. Even though this position carries with it power and prestige, it pays relatively moderate wages with the national average salary as of 2007 listed at just over \$40,000 a year (Bureau of Justice Statistics, 2010). Similarly, the nature of organizational status can be seen when comparing a patrol officer who serves on a small rural department to that of a police lieutenant employed by a larger metropolitan department. Both are police officers, but it is the lieutenant who holds a higher social status based on his rank and association with a larger department. But again, the authority associated with the office does not follow employees once they leave that position, but rather stays with the office (Giddens, 1971). For example, returning to the example of the lieutenant serving on a large metropolitan police department, the rank that he holds while employed at that department carries with it a degree of power and prestige. However, if that person voluntarily leaves that position or is terminated, then that power and prestige does not follow that person but rather is assumed by the next individual who is promoted in his place. Even the influence of professional qualifications can be contingent upon the given context. Davis and Moore (1945) suggest that knowledge or expertise can also translate into power or influence if given the proper venue (i.e., organizational position). For instance, a city administrator can be highly qualified for office by possessing a graduate degree in public administration, holding several licenses for specific public works management, and possessing years of practical experience in the field. Yet, these qualifications do not carry over if the same individual is working as a low level sales representative at a local retail outlet.

Normative Dimension

An area originally explored by Sumner (1906), the normative dimension focuses on the importance of norms and mores and their relationship to social control. Sumner describes folkways as a societal force promoting custom and habit in action thus allowing society to maintain, to an extent, consistency in expected behavior or normalcy. However, the process is not intentional but rather consequential. Sumner writes:

[F]rom the first acts by which men try to satisfy needs, each act stands by itself, and looks no further than the immediate satisfaction. From recurrent needs arise habits from the individual and customs for the group, but these results are consequences which were never conscious, and never foreseen or intended. They are not noticed until they have long existed, and it is still longer before they are appreciated. Another long time must pass, and a higher stage of mental development must be reached, before they can be used as a bias from which to deduce rules for meeting, in the future, problems whose pressure can be foreseen. The folkways, therefore, are not creations of human purpose and wit. They are like products of natural forces which men unconsciously set in operation...which reach final form of maximum adaption to an interest, which are handed down by tradition and admit of no exception or variation. (1906, p. 4)

What Sumner describes is the process by which certain behaviors become socially ingrained and later assumed by the general populace. After it becomes a norm, any deviation is negatively sanctioned either formally or informally.

The influence of social regulation by social characteristics. The normative dimension can be described as a reflection of the application of social control (Black, 1976). A closer examination reveals two distinct areas where one's social standing is conditioned upon either 1)

the degree one is subject to the authority of others (i.e., woman, children, elderly, disabled), or 2) the degree to which social control has been applied to him or her in the past. With respect to the first mentioned position, one's standing is influenced by the degree of access he or she has to various forms of social control (both formal and informal). Here, a balance is struck between the two forms of social regulation. Normative space responds to an imbalance within the system by increasing or decreasing the corresponding form of social control. This results in a dynamic where individuals who are socially restricted in their access to various forms of resources tend to receive supplemental support from official sources. The following are some examples.

Women. Women and children, as minorities, illustrate a group that has historically occupied a subordinate position in almost all societies (Lerner, 1986; Sagarin, 1971). Yet, compared to research on racial, ethnic, and national minorities, issues of female subjugation garner far less inquiry (Hacker, 1971; Ibarra, 1993). Research reveals that women have been subject to similar types of differential opportunities and unequal treatment as racial/ethnic minority groups; specifically with regard to healthcare, education, political representation, and employment (Bishop, 1990; Broder, Kanouse, Mittman, & Bernstein, 2000; Flexner, 1971; Fuller & Schoenberger, 1991; Jacobs, 2003; Jones, 2010). However, unlike the structural mechanisms that distribute power to racial/ethnic groups based on their cultural distance from the majority, disparity in control for women results from a patriarchal system that influences the social arrangements, cognitions, and social expectations of men and women. Moreover, in patriarchal societies, social & cultural definitions of masculinity & femininity directly impact issues ranging from dividing labor to assigning roles within society (Burke, 1989; Jackman, 1994).

However, there are clear signs that formal institutions react to the inherent disadvantages based on social position in an effort to restore a neutral balance in the way of access to resources. These efforts range from constitutional amendments extending women the right to vote on public affairs to legislation ensuring equal rights to own property, enter into legal contracts, serve in the military and have marital as well as parental rights. In particular, within the family setting we see a number of programs that affect single or divorced women with children. The Social Security Act of 1935 created, among other provisions, a program to provide financial aid to mothers with dependent children. Throughout the years the program went by various names; originally known as *Aid to Dependent Children* (and later *Aid to Families with Dependent Children*), AFDC was eventually replaced by the *Temporary Assistance to Needy Families* (TANF) program. Although gender-neutral in name, the program was originally designed to meet the growing needs of single, divorced, or widowed mothers with children (Moffitt, 2003; Skocpol, 1992) – a role which continues to be demonstrated given the fact that over 90% of TANF recipients continue to be female-headed households (U.S. Department of Health and Human Services, 2009). In addition to TANF, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Child Support Enforcement program. Again, even though the program is designed to establish and enforce support orders involving payments made by a parent (either father or mother) for the financial benefit of a child, the overwhelming recipients are females constituting over 87% of the recipients in 2007 alone (U.S. Census Bureau, 2009). Yet, an even clearer example of official intervention on behalf of females is the passage of the National Violence Against Woman Act of 1994. The Act not only established the Office on Violence Against Women within the Department of Justice, but more importantly, it provided federal funding for the investigation and prosecution of violent crimes against women. Additionally,

legislation called for mandatory restitution in cases of battery as well as set the legal platform for civil damages in those cases not criminally prosecuted (U.S. Department of Justice, Office on Violence Against Women, 2012). Recently, Congress passed an expanded version of the bill extending access to services and increased protection against assault to gay, lesbian, and transgender victims (Camia, 2013).

Children. Historically speaking, most industrial societies have restricted the access one has to assets, rights and participation by age. Early Western ideology for dealing with juveniles originated from the Roman philosophy of *patria potestas* whereby the father had total control over the family's actions and welfare in addition to being responsible for punishment and discipline (Schmallenger, 2013). Members of the family were not allowed to enter into legal agreements, seek employment, or marry without the father's permission. In describing this absolute authority Crook (1967) writes:

Roman *potestas*, over agnatic descendants not emancipated, including those adopted, and including also wife ... [were under] the gubernatorial category [which] includes the power of life and death, with exposure at infancy, sale, chastisement, noxal surrender, and the right to force your married children to divorce (though probably not to force them to marry against their will). In the category of property it includes full legal ownership of everything the family has, full power of alienation, and full power to dispose of the whole by will. (p. 113)

Later, Western societies would base their legal principle of *parens patriae* on the former Roman practice, allowing for the state to act in the role of parent. Two key institutions developed as a result of this official position – child protective services and the juvenile court system.

In 1874, based in part on the efforts of the American Society for the Prevention of Cruelty to Animals (ASPCA), New York State passed the first Protective Services Act and Cruelty to Children Act in the nation (McDaniel & Lescher, 2004). Enacted legislation allowed the court system to assume control over children deemed neglected or abused leading to protective action such as relocation and/or medical attention. Today, primary responsibility for child protection is allotted to public child protective services (CPS) agencies which investigate and responds to reports of child abuse and neglect. CPS agencies, in turn, are usually linked to child welfare departments with broader duties, such as foster care and adoption. Both organizations are funded through public revenues and regulated by state statutes.

Another example where the state has stepped into the role of protector and advocate is the juvenile court system. Seeing a need for a separate and distinct mechanism for addressing offenses committed by minors, Cook County, Illinois established the first juvenile court system in 1899 (Krisberg, Schwartz, Litsky, & Austin, 1986). The main goal of the system was to look after the best interests of the minor compared with the more punitive adult court system. Therefore, judges were tasked with the role of interventionist in that they were to determine the root cause(s) of the delinquent behavior and remove or correct for those negative influences through placement and/or treatment. In effect, it was believed that the minor's guardians were not, for all practical purposes, taking proper care of the child prompting the need for the state to step in. Currently, all states have enacted statutes creating specific jurisdiction over juvenile offenders (Gardner & Anderson, 2012).

Elderly and disabled. With the passage of Title XX of the Social Security Act in 1974 states began to establish legislation aimed at looking after the welfare and safety of the elderly and those with disabilities (Mixson, 1995). According to National Association of Adult

Protective Services, the elderly and disabled are generally seen as being at high risk for mistreatment or neglect prompting official measures in the form of adult protective services. By 1991, 42 states had mandatory reporting laws involving the abuse or neglect of an elderly or disabled person (Macolini, 1995; Moskowitz, 1998). In addition, many states passed penalty-enhancement statutes for traditional offenses perpetrated specifically against elderly or disabled victims. At the federal level, the 1994 Crime Control Act gave federal authorities jurisdiction over crimes targeting elderly persons and created stricter penalties for such offenses (Blake, 1996). By 2000, 33 states had established some form of adult protective services in order to provide elderly and disabled abuse victims with a coordinated system of social and health services as a way of protecting against future incidents of abuse be it physical, sexual, emotional, or financial (Teaster, 2003). These programs demonstrate the practice of official intervention at the social service level for those deemed by society to be in need of advocacy. The question germane to this study is: does this phenomenon carry over into the practices of the police, prosecution and corrections?

The influence of social regulation by behavioral attributes. The second area of influence within the normative dimension has to do with the concept of disreputable character as facilitated through that person's current or previous deviant acts. More specifically, it is proposed that once these acts have resulted in some form of social control, a pejorative social label is attached to offenders, placing them at the lower end of the social scale. Link and Phelan (2001) describe this effect as a process of interconnected components beginning with the practice of placing or labeling each other based on differences or similarities. Social norms connect differences to undesirable characteristics or negative stereotypes. Once a person has been associated with an unfavorable stereotype, that individual is categorized as being outside

mainstream society or apart and distinct from the group. This “separation” results in the loss of status which leads to unequal treatment. The negative social characterization that might be placed on an individual can be formal (ex-felon or convicted sex offender) or informal (ex-drug or alcohol addict) in nature. In addition, unlike the previous group (i.e., women, children, elderly) involving subordinate subjects where normative space responds to a social imbalance, here imbalance is actually facilitated. For example, numerous studies have shown that a previous felony conviction (Harding, 2003; Nagin & Waldfogel 1995; Western & Beckett, 1999) and/or sex offender designation (Scott, 2010; Wagner, 2011) not only limits the type of work available to offenders (i.e., temporary, low-skill, low-wage jobs), but also negatively impacts housing options or those willing to rent to them. Alcohol and drug use also suffer the same stigma and marginalization. Room (2005) suggests that this is because substance abuse may signal to others a weakness in character such as lack of control or even moral iniquity. This, in turn, leads to social isolation. For instance Georgia, Minnesota, and Ohio require special license plates be displayed on vehicles of those with repeat DUI convictions indicating their status as a restricted driver (NCSL, 2012). Despite being able to participate in social activities again through the use of their vehicle, they are forced to do so while advertising their previous deviant conduct to others.

Cultural Dimension

Conventionality can serve as a form of elevated social status. Encompassed here are areas of language, lifestyle, education and religion to name a few. Much of Parsons’ (1951) work looks at how culture is fused with basic social interaction through the codification of prevailing norms and values. For Parsons, solidarity is formed through shared values resulting in a system that favors those who adhere to social norms and chastises those who do not. Furthermore, this

system works on a continuum allowing for those who achieve greater cultural capital to hold higher social positions while the inverse is true of those perceived as having lower amounts of such capital.

Education. A good example of cultural capital is educational attainment. Formal education is, fundamentally, the learning of what society values. Education denotes, in a sense, a dedication to those values upon which a society is built. As such, the more educated one is, the more he or she is said to represent important cultural norms. This social recognition of “value” achievement is reflected in educational prestige. That is, the more education one has, the higher he or she is positioned on the social scale (Sawinski, 1986; Torssander & Erikson, 2010; Van De Werfhorst, Sullivan, & Cheung, 2003). Educational attainment is also a process or series of progressive achievements. This is generally represented as a three tiered system consisting of primary, secondary, and tertiary levels of education.² In addition to socially ascribed levels of conventionality, completion of each successive phase of schooling denotes character qualities of intelligence, ambition, and dedication. Likewise, Sawinski explains that the failure to achieve completion of any one particular phase, once engaged, conveys a lack of the previously described characteristics.

We can assume, therefore, that a person's not finishing school is commonly interpreted as a result of his or her not displaying sufficient industriousness, sense of responsibility, moral fiber, or "survival instincts"... Accordingly, we believe that incomplete education, regardless of the level, is ascribed relatively low prestige because persons failing to complete a particular level of education are perceived as not possessing some universally valued attributes. (1986, p. 154)

² Tertiary level of schooling can itself be seen as a progression consisting of trade school and community college, four-year institutions, graduate and post-graduate education.

Race/Ethnicity. Black (1976) explains that race and ethnicity can also serve as a form of conventionality. More specifically, since African Americans and Hispanics are a minority culture in the US, they are considered less conventional than whites. As with most heterogeneous societies, a hierarchical arrangement of racial/ethnic groups forms in which one group emerges dominant. From here, power decreases as groups descend on the corresponding social later. Group ranking is largely determined by the distance from the dominant group in terms of culture (i.e., language, lifestyle, religion, etc.). The result is that those racial/ethnic groups that are perceived as especially different from the dominant group exist at the lower end of the social scale. Yetman and Steele (1982) argue that this scale can be best understood in terms of access to power. Minority groups become socially subordinated to the majority because they lack the power to counteract their subjugation. As a result of this power disadvantage, racial/ethnic minority members tend to work low-paying jobs, reside in economically depressed neighborhoods, have fewer political representatives, and have limited access to education and healthcare (Carnevale & Rose, 2001; Marger, 1991; Massey & Eggers, 1990; Williams & Collins, 2001; Wilson, 1997, 2012). In order to better understand some of the restrictions placed on minorities we need to disentangle some of the key areas where access is limited.

Housing. Research has long reported that the demographic makeup of neighborhoods in the United States is characterized by disparity in terms of racial composition (see Denton, 1996; Massey & Eggers, 1990; Williams & Collins, 2001; Wilson, 1997, 2012). Although statistics show an increase in racial heterogeneity in smaller cities between 1980 and 2000, larger urban areas still report substantial residential segregation (Massey, Rothwell, & Thurston, 2009; Reardon, Farrell, Matthews, O'Sullivan, Bischoff, & Firebaugh, 2009). Many point to discriminatory practices involving housing and mortgage lending as the source. Reskin (2012)

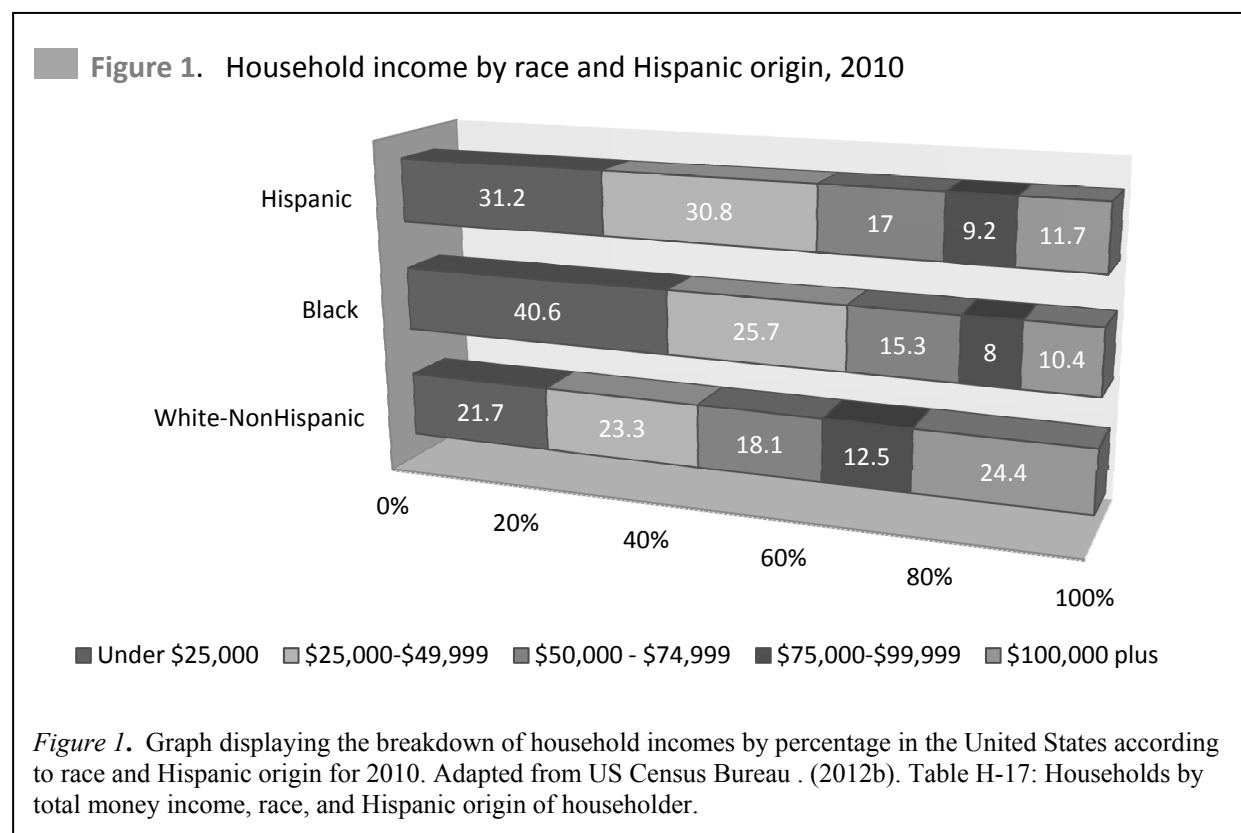
reports that despite the Community Reinvestment Act of 1997 designed to reduce discriminatory credit practices, blacks are still charged higher fees and closing costs, informed about fewer mortgage products, and advised to go with subprime loans when, in fact, they qualify for prime-rates. Massey (1993) indicates similar experiences for Latinos stating that the probability of experiencing housing discrimination increases as their skin color darkens. Supporting this claim is a study conducted by the Department of Housing and Urban Development between 2000 and 2002 involving 30 metropolitan areas. Blacks reported experiencing adverse treatment in roughly one in five house searches while Hispanics fared worse reporting negative treatment in one out of every four housing searches including rental and sales (Pager & Shepard, 2008; Turner, Ross, Gaister, & Yinger, 2002).³

Labor. Despite improvements in labor force participation by minorities, empirical analyses still indicate disparities. Blacks and Hispanic are unemployed at twice the rate of whites (Holzer, Offner, & Sorensen, 2005). Of those employed, minority laborers earn, on average, less annually than their white counterparts (Pager & Shepherd, 2008; Therrien & Ramirez, 2001). Cancio, Evans, and Maume (1996) report that even after controlling for education/training, experience, and length of time on the job, results still indicate that black men earn roughly 15% less than whites. Black women fared only slightly better earning approximately 6% less than their white counter-parts. Trejo (1997) finds that Hispanic men earn around 21% less than non-Hispanic whites, but indicates that age, education, and language skills explain a large portion of this. Still, this leaves a sizable percent of the Hispanic population (roughly 25%) that experiences a discrepancy in pay despite their equal qualifications in comparison to white laborers.

Furthermore, members of minority groups do not appear randomly scattered throughout the

³ Adverse treatment included denial of information regarding availability of housing, denial of opportunity to inspect housing unit, higher rental quote than whites, and fewer occasions of encouragement to complete application.

economic class structure but rather disproportionately clustered at certain points (See figure 1) (Gordon, 1964; Marger, 1991).



Healthcare. Beyond the argument that minorities (in particular black and Hispanic groups) have a lower life expectancy than whites, research also supports the premise that minorities are treated less effectively in comparison to whites even after controlling for income and insurance coverage (Blair et al., 2013; Reskin, 2012; Smedley, Stith, & Nelson, 2003). Examples of this include research showing that blacks and Hispanics are less likely to receive the necessary medication and emergency procedures needed in the case of cardiac care as compared with white patients (Canto et al., 2000; Hannann et al., 1999). Todd, Deaton, D'Adarno, & Goe (2000) report that black and Hispanic patients who seek emergency care at hospitals for bone

fractures and splintering are less likely to receive pain medication than whites seeking treatment for the same injuries. But perhaps one of the largest studies to look at medical treatment by race involved the review of more than 1.7 million records drawn from approximately 500 hospitals. Again, after controlling for variables including patient's age, type of facility, insurance coverage, and severity of illness, researchers find that blacks are significantly less likely than whites to receive a "major therapeutic procedure" in roughly 50% of the 77 disease categories they examine (See Harris, Andrews, & Elixhauser, 1997). Andrew and Elixhauser (2000) found similar results for Hispanics when examining patient records from California, Florida, and New York. They report that Hispanics are less likely to undergo major medical procedure in 38% of 63 different disease categories as compared with their white counterparts. As a result, Blair et al., (2013) report that physicians' racial biases do contribute to overall health disparities.

Morphological (Horizontal) Dimension

Some social positions can be designated based on the arrangement of social ties within a given population. Black (1976) writes that the morphological dimension can be thought of as, "...the distribution of people in relation to one another, including their division of labor, networks of interaction, intimacy, and integration" (p. 37). Within this framework two related subcategories emerge –the degree to which one is socially integrated also known as *radial* integration and the degree of intimacy or *relational distance* present in a given situation. Turning our attention first to the radial aspect of the morphological dimension, Durkheim's (1893) work on social participation helps us understand what happens to society when collective integration is out of balance with moral regulation. In particular, he writes, "[T]he state of integration of a social aggregate can only reflect the intensity of the collective life circulating in it. It is more unified and powerful the more active and constant the intercourse among its members" (p. 202).

With regard to morphological considerations, the higher the degree of social integration one displays the higher radial or social status he or she attains. As such, those who are married, have children, and/or employed occupy a higher social space than those who are not.

Employment. According to Hollingshead (1975) an occupation, "...is presumed to be indicative of the skill and power individuals possess as they perform the maintenance functions in society" (p. 3). In other words, one of the ways that we assess one's societal value is through what he or she does as a way of life. Without such an identity, individuals are seen as not contributing to the "greater good." This, in turn, may be interpreted as an indication of character flaws such as laziness, incompetency, or lacking the mental or physical fortitude required for labor. This results in a mindset where unemployment is often seen as a deviant status (Turner, 1995; Warr, 1987). Contemporary ideology promotes the view that employment is awarded based on personal effort. Individuals allotted positions within societies that employ merit-based systems are assessed on qualities ranging from moral propensity to intelligence to general aptitude regarding specific knowledge. Those who defend the concept of meritocracy argue that privilege or prestige should be earned and not arbitrarily assigned otherwise the system is fundamentally biased (Young, 2008). Industrial societies have attempted to embed this merit-to-reward framework within their culture as a way of preparing future generations for competitive selection (Brooks, 2002). The belief that life recognizes individual achievement and rewards self-propulsion by bestowing material and social remuneration is a common theme.

Marriage and children. Family has long been designated as one of the fundamental institutions of society. Similar to the function of labor, the establishment of the family serves to benefit society. Yet beyond the typical argument of replacing members, economic cooperation, and regulation of sexual behavior is the matter of cultural and social adaptation. Parsons (1951)

believes that the family carries out two primary functions - socialization of children and the stabilization of adult personalities. Accordingly, society benefits from children learning how to take on productive roles in society under established norms and values. Stabilization takes place through the supportive structure provided by the family. Namely, Parsons argues that individuals are better able to handle the stress and anxiety associated with social participation through the emotional support provided by the family. In turn, overall social stability is gained as a result of less conflict and greater productivity. However, specifically with regard to marriage, we see a symbolic commitment which has, overtime, become a cultural construct signifying a transition in character and responsibility. Gilder (1974) argues that, in effect, it symbolizes a commitment not only to another but more importantly the values and norms of that society. Specifically he writes, “Society has had to invest marriage with all the ceremonial sanctity of religion and law. This did not happen as a way to promote intimacy and companionship. It happened to ensure civilized society” (p. 78). So despite the fact that the number of unmarried couples living together has grown to over 7.7 million (US Census Bureau, 2012a) and the social stigma once attached has greatly diminished, married couples still occupy a higher position in society. More to the point, marriage has become so culturally patterned into society that it has also been integrated into other institutions such as religion, education, polity and the economy. Nock (2005) explains that this institutional integration translates into preferential treatment by other segments of society based on cultural assumptions made regarding those who are married including qualities of stability, dedication, and maturity. He writes that as a result:

Employers may prefer married to unmarried workers, for example, or may reward married employees with greater opportunities and benefits. Insurers may discount

policies for married people. And the law gives married partners legal rights vis-a-vis each other that are not granted to unmarried people. (p. 19)

In fact, research supports this statement showing that married individuals tend to earn higher wages (see Ahituv & Lerman, 2007; Antonovics & Town 2004; Cornwell & Rupert, 1997; Hersch & Stratton, 2000; Korenman & Newmark, 1991), have greater access to credit and equity (Jappelli, 1990; Krivo & Kaufman, 2004; Lyons, 2003) and have increased legal privileges such as tax breaks and probate & inheritance benefits compared to their single counterparts (Chase, 1994; Gallanis, 2004).

In addition to the *radial aspect* of social status, there is also a question of to what degree do individuals participate in one another's lives (e.g., as romantic partners, relatives, acquaintances, or strangers)? The general premise here is that society is less likely to intervene in the affairs of those who have an ongoing relationship. The closer the relationship, the more "privacy" is allowed. As we move into the legal aspect of this dimension in the next chapter, we will see how this notion of relational distance translates into less official intervention as the "intimacy gap" closes. But as far as social policy is concerned, one of the best examples of society being reluctant to intervene in certain affairs is that of issues surrounding the family.

Historically speaking, matters such as domestic violence and teenage pregnancy have been considered more private than public concerns. Even though the following chapter will go into much more detail, suffice it to say here that incidents of domestic battery and spousal rape were deemed familial matters and largely ignored by police and prosecutors in the past (Avakame & Fyfe, 2001; Berk & Loseke, 1980-1981; Lally & DeMaris, 2012; Stalans & Lurigio, 1995). Even today, despite state statutes and departmental policies that promote a hard line approach to inter-partner violence, evidence suggests that police are still reluctant to make

arrests compared with assaults committed by strangers (Black, 1980; Buzawa, Austin, & Buzawa, 1995; Lally & DeMaris, 2012). Research thus supports the argument that physical altercations behind proverbial “closed doors” are still, to some extent, a private matter.

Sexual behavior among minors is another area that has been traditionally a topic reserved for the family. Although, contemporarily speaking, teenage pregnancy is recognized as a public health concern, programs such as those offered by most school districts present less than comprehensive instruction on the subject or, at best, promote sexual abstinence rather than safe-sex practices (Furstenberg, 2003; Kaiser Foundation, 2000). In fact, it is estimated that around 35% of all public schools offer abstinence-only or abstinence-until-marriage centered programs while another 24% of teachers reported that they were prohibited from incorporating topics concerning contraception and other safe-sex practices into the curriculum (Fine & McClelland, 2007). However, it is the issue of abortion and parental permission that has generated much of the debate over parent vs. minor rights. Currently, 38 states require minors wishing to get an abortion to either provide parental consent or parental notification (Guttmacher Institute, 2013). Even in states with judicial bypass options (allowing minors to challenge the requirement), in reality they do not present a realistic alternative based on the associated conditions needed to fulfill judicial requirements (Blasdel, 2002). It is through such legislation that the state displays its reluctance to usurp roles traditionally associated with parents, lending support to the argument that formal control is reluctant to insert itself into situations where informal control is perceived to be present.

Is there Functionality in Social Position?

Returning to the discussion of functionality, a particular school of thought is that stratification is beneficial to society because it generates a stable environment wherein its

members are encouraged to work hard in return for social and material gains. Some have argued that such a system serves to benefit industrial societies by acting as a motivating mechanism inducing members to pursue more challenging endeavors that may serve to further support the growing needs of that society (Davis & Moore, 1945; Macionis, 2007). Essentially this incorporates two dimensions. One is that members are provided the opportunity and incentives to achieve certain critical positions within society. The other concerns the motivation to perform well and remain once the position is obtained. Significant to this paradigm is the assertion that as the importance of a role to society increases, so too does the work required to achieve and maintain that position. Consistent with this ideology is the concept of graduated rewards. Specifically, the more effort one must exert in achieving and maintaining the position, the greater the remuneration must be in order to induce individuals to suffer the effort. Some positions appeal to different interests; however all carry with them a degree of prestige which can influence their desirability. By employing a system based on merit, societies make certain that those positions deemed crucial to the populace are filled by those most capable. Consequently, the distribution of compensation becomes unequal thus resulting in institutionalized inequality. More to the point, this perspective promotes the concept of social worth and advances the idea that institutions should treat members of society differently based upon the degree of perceived merit.

Before further analyzing the proposed functionality of a system based on rewards I must identify what remuneration means. Industrial societies tend to designate economic stratification by way of class designation (Levine, 1998). Therefore, the degree to which one receives economic return becomes one of the fundamental indicators of social status. Yet, a position is not assigned power or prestige within a society simply based on income. “Rather, it draws a high

income because it is functionally important and the available personnel are, for one reason or another, scarce” (Davis & Moore, 1945, p. 246-247). In other words, income is merely related to the nature of the work so as to induce members of society to compete for certain positions. Thus, as Weber (1947) points out, stratification consists of additional factors beyond simple economics.

Social indices of respect and importance are reflected in the prestige associated with a particular social status. Some have concluded that prestige may in fact be wealth on display (Veblen, 1899). That is to say that respect is gained by demonstrating material ownership which, in turn, may enable privilege. To what degree this partiality may manifest itself with regard to the law is the primary question at hand. Still others have equated prestige with occupational position. Research tends to support this notion in reporting that occupational position explains roughly as much of the variance in income as does class independently, again supporting the premise that prestige influences reward (Kohn & Schooler, 1983; Schooler & Schoenbach, 1994; Treiman, 1977). Once more, we find the notion that rank or occupational position is a direct reflection of one’s ability. In fact, the terms *occupation* and *prestige* have become so synonymous that a myriad of occupational scales assigning prestige scores to various positions have been generated over the years (ex. Hollingshead Scale of Occupational Status, Duncan Index, Bose Index, Treiman International Prestige Scale).

Likewise, certain occupational prestige scales, such as the Duncan Index, incorporate the influence of education and income when factoring scores (Treiman, 1977). Supporting this practice is research indicating that education seems to be the single most influential factor on occupational attainment (Blau & Duncan, 1972; Crook, 1997; Sewell, Haller, & Ohlendorf, 1970). Conversely, those who occupy positions in society that require little education or formal training

are bestowed little economic return or prestige. Moreover, it has been proposed that prestige can act in the reverse with regard to disproportionate opportunities (Black, 1976). More to the point, those who are either unemployed or employed in low ranking positions are often limited in their access to technology, education, credit, and healthcare, both physical and mental (Banerjee & Duflo, 2007; Beeghle, 2008; Budrys, 2003; Crawford, 2011; Levine & Nidiffer, 1996; Macintyre, Macdonald, & Ellaway, 2008). The question is, do those at the lower end of the social spectrum also receive unequal access to the law resulting in reduced protection for victims and increased punitive response for offenders as compared to those higher on the social ladder?

Does Law Facilitate Structured Inequality?

Rousseau (1754/2004) argues that inequality takes two distinct forms – natural and social. Natural dissimilarity reflects one's ability according to physical disposition (i.e., health, strength, intellect). Yet social disparity is influenced largely by the possession of property. Specifically he writes:

[Social inequality] depends on a kind of conventional inequality and is established or at least authorized by the consent of men. This latter consists of the different privileges which some men enjoy to the prejudice of others, such as that of being more rich, more honored, more powerful, or even in a position to exact obedience. (p. 15)

Simply put, disparity in ownership creates a class structure. An ongoing debate pertains to whether this disparity pits the various classes against one another as a result of the upper class attempting to maintain their position by controlling a larger share of available resources (Marx & Engels, 1846/1947). In turn, the argument for class conflict lends itself to the question of whether or not the manipulation of the legal system is one means of maintaining the status quo. Essentially, Marx proposes that there is a cyclical relationship between power and resources, so

that one begets the other. As a result, those who have little access to resources do not possess the ability to acquire additional resources nor the capacity to change their position. To that extent, wealth has four possible means of distribution: (1) according to need, (2) according to want, (3) according to merit, or (4) according to power. It is the ability to secure wealth through power that Marx believes dominates capitalistic societies. This power would then be used to subject those who occupy a lower status to greater control under the law in order to decrease their access to resources and threaten those in control (Tucker, 1978).

Building on the class conflict argument, Quinney (1974) proposes that the criminal justice system is actually designed to enforce the interests of the social elite. The idea is that laws are not simply a codification of social norms but rather written and enforced as a way to diminish the threat minority groups pose to the dominant culture. In turn, police act as agents of the capitalist class through the direction of the state by maintaining control over the lower classes. Any action that is at odds with established norms is viewed as deviant and usually classified as a crime. This oppressive system facilitates the breakdown of the moral fiber of the working class and is evident in social behavior including drug addiction, alcoholism, and prostitution (Clinard & Meier, 2003). The true nature of the justice system is seen through the asymmetrical application of penalties which is dependent on the *social* character of the offense. Specifically, street level crimes committed by the lower classes are treated more harshly than economic crimes committed by social elites (Chambliss & Mankoff, 1976; Turk, 1969; Vold & Bernard, 1986).

Yet some contend that the arguments put forth by Quinney and other conflict proponents are fundamentally flawed because of their failure to incorporate the concept of economic motivation (Lenski, 1966; Macionis, 2007). Specifically, critics maintain that social classes exist

due to the internal motivation of financial gain not the external manipulation of social institutions thus rendering law ineffective as a way to maintain status quo. Moreover, many challenge the notion that individual control over the means of production is the pinnacle source of power within a stratified society (Giddens, 1971). One need only turn to Weber's (1947) description of bureaucracy to understand the debate. According to the hierarchical principle associated with the bureaucratic model we find that power or the degree of integration one has within an organization increases as he or she ascends the administrative ladder. Furthermore, the extent to which the organization itself is organized may also carry with it a degree of authority and prestige (Black, 1976).

Determining the origins of social inequality and the circumstances that perpetuate it are beyond the scope of this study. Nonetheless, a discussion about social structure is prudent in light of the present inquiry in which we must consider the prospect that law reacts disproportionately based on social position. Despite continued deliberations over the sources of structured inequality the more relevant issue at hand is whether or not the current legal system operates with bias and if so to what extent. As this study progresses toward answering that question we must first examine both the jurisprudence and social geometry frameworks in more detail. The following chapter presents a critical deconstruction of the philosophical groundwork that makes up both theories.

CHAPTER 4: THEORETICAL CONSIDERATIONS

The following discussion involves looking at two separate theoretical models and their possible application in providing a better understanding of legal outcomes in cases of simple and aggravated assaults. Even though both purport to provide an explanation for the underlying mechanisms involved in adjudication decisions, they do so from two distinctly different starting points. Jurisprudence focuses on forces external to the process, presenting a teleological explanation for observed outcomes, while social geometry proposes an internal mechanism, free from human agency. Put another way, the jurisprudence framework is based on the proposition that the law is purposeful and has an intended and directed outcome guided by human agency. Yet, social geometry takes the position that legal behavior is a product of social life, devoid of individual influence. In an effort to get a clearer picture as to why each model assumes its particular stance I will discuss key components of the theoretical arguments starting with the jurisprudence model.

Jurisprudence Model

Traditionally speaking, research involving the examination of criminal justice practices in cases of simple or aggravated assaults have examined, in one form or another, the topic of jurisprudence (for example see D'Alessio & Stolzenberg, 2003; Jasinski, 2003; Maxwell, Robinson, & Post, 2003; Smith & Visher, 1981). The general paradigm attempts to provide a framework that identifies broad concepts and principles that underlie all legal systems. In particular, the model can be broken into two categories - one that explores the conceptual basis for the formation of legal code and procedures, while the other is directed at the application of law as embodied in the core components of the criminal justice system. Within this model, the debate over the nature of law is generally framed by two opposing positions - *Legal Formalism*

which proposes the idea that law envisioned and law in practice are one and the same versus *Legal Realism* which stipulates that law is better defined by what police, courts, and citizens actually do than by strictly adhering to established legal code and rules (D'Amato, 1984; Hall, 1973; Pollack, 1979).

Legal Formalism

Legal formalism generally proposes that cases can be decided primarily by analyzing legal concepts (Leiter, 2010; Pollack, 1979). The formalist paradigm posits that the law is based on human inquiry and that officials use established legal principles to guide and support their decisions. In turn, this practice results in the most suitable outcome based on the circumstances surrounding the action in question. Consequently, legal decision-making is independent from other kinds of reasoning that might rely on non-legal normative considerations of morality or political ideology (Leiter, 2010). Formalist logic proposes that laws are in fact a codification of social norms prompting the need for a legal system whose function is to enforce those recognized norms (Davis & Moore, 1945). Essentially, legal conceptualization might best be framed in terms of standards that are commanding in character based on their social convention. Accordingly, laws should then regulate actions so as to comport with conventional attitudes and behaviors.

Legal Positivism

Falling under the formalist category is the philosophy of *legal positivism* which is generally characterized by two main themes. First, that law and morality are not necessarily synonymous meaning that the validity of law is not based on nor restrained by any form of moral precept (Fuber, 1996). Second, the validity of a law is determined by its recognition and acceptance as a social fact (Audi, 1999). In other words, a law achieves legitimacy only after

members of society recognize and accept it as a valid proclamation of social standard stemming from a social institution or other legitimate authority, and is further promulgated to future generations as such. This suggests that any proposed law must first undergo a process of validation before it reaches a position of acceptance. Because formalism is based on the idea that laws should result from rational deliberation, a legal system, balanced and consistent not only in structure but also in action, is required to administer and maintain the law. In order to create such a legal system, a set of clearly delineated principles or rules are required (Dworkin, 2000; Hart, 1994).

Rule of recognition. A law becomes valid only after it goes through a process of legitimization beginning with legal officials' acceptance that a proposed rule provides the mechanism for not only enforcement, but also imposes a set of limitations regarding their actions of enforcement (Hart, 1994). An example is a state statute that empowers law enforcement to make arrests in cases of physical battery against a domestic partner, yet at the same time may also stipulate that such arrests can only take place when there is probable cause as indicated by observable injury (as opposed to simple allegation by one of the parties [e.g., Indiana Criminal Code 35-42-2-1.3]). The legitimacy of the rule is then disseminated to others by way of officials acknowledging the rule as a valid standard of behavior. Furthermore, those officials accepting the validity of a rule or law place social pressure on one another to conform. Returning to the domestic battery statute, prosecuting attorneys handling cases where there were clear signs of injury to the victim (possibly indicated by requiring medical treatment) understand that if charges are not filed, they face possible sanctions ranging from decreased influence within their extended legal networks to more serious outcomes including civil liability and disbarment for malpractice. Under the framework of legal positivism, the rule has three essential functions:

1. To ascertain the validity of a law in a given legal system.
2. To grant validity to everything else in the given legal system.
3. To unify the laws in the given legal system.

The first function is to provide an assessment of validity for a given law within a legal structure.

Namely, legitimacy is granted to a given rule because it passes the test of already established rules within the given system. A good example of this is the overbreadth doctrine involved in judicial review which stipulates that a law that is too broad in meaning to the point that it impinges on one's constitutionally protected rights is in effect unconstitutional and not valid.⁴

An example of this is the case of *United States v. Stevens* (2010) in which the U.S. Supreme Court deliberated over a federal statute that criminalized the sale or possession of depictions of animal cruelty. In an 8-1 decision, the Court ruled that the law was written in such a manner that it might also prohibit legally protected content such as videos depicting hunting or fishing. As a result, the law was struck down as being overly broad. In other words, the proposed federal statute contradicted already established laws and could not co-exist within the same legal system. In turn, function two stipulates that there be a reciprocating effect whereby new rules serve to validate existing ones. Newly enacted legislation needs to echo the same principles of already established laws and regulations thereby reaffirming the conceptual framework that serves as the foundation for existing legislation; otherwise, a contradictory and dysfunctional system results. Consequently, function three provides that all enacted laws work in concordance with one another reaffirming the content of a particular legal system (Shapiro, 2009).

Rule of change. If a legal system is to remain judicious, it must be able to comport with the social environment in which it operates. In order to do this, the system must remain fluid and sensitive to dynamic changes external to the system while still adhering to the other established

⁴ The overbreadth doctrine primarily deals with First Amendments Rights.

rules. Therefore, a mechanism is needed that allows for the removal or adjusting of existing laws in addition to a means for adding new ones. Employed methods of change must correspond with the principles of logic which are inherent to a rational legal system. The methods, themselves, should be procedural in nature allowing for methodical deliberation before passage thus safeguarding against hastily enacted laws or impulsive removal of others (Hart, 1994).

Rule of adjudication. To ensure that enforcement of the law is not capricious and unwarranted, a process for determining if a law has been violated must be established. The resulting system needs to employ techniques of determination that allow for factual representation of the actions taken by the accused. Those actions are then weighed against the legal norms recognized by the adjudication body. After the process allowing for both sides to present and support their versions of the event is completed, a determination of innocence or guilt is made. If it is found that an action violated the written law, the system prescribes a way to respond through official recourse. The judicial component is usually characterized by two sets of laws:

1. Substantive Law –defines certain behaviors as illegal. It also stipulates how the facts of a particular case will be handled. Additionally, it identifies the elements the State must prove in order to find a person guilty of an offense. Legislative statutes and judicial outcomes are the primary source of substantive law.
2. Procedural Law– encompasses the set of rules that regulate the proceedings of the court in civil and criminal cases. Additionally, it is responsible for outlining the process for determining the rights of parties. Examples of procedural law can be seen in the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution; all of which

outline limitations imposed on the actions of police, prosecutors, defense council, and courts (Gardner & Anderson, 2012).

Rule of law. The formalistic model of law argues that the practice of enforcement is guided entirely by the rule of law (Jasinski, 2003; Thaxton, 2009). Those actions employed by criminal justice officials are not only guided by written law and precedent, but more to the point, are controlled within the parameters set forth by official mandate. Again, the contemporary notion of justice can only be operationalized as a system where officials speak for the interests of the represented rather than their own. As previously stated, early models of policing depict officers as an extension of the codification of norms established within a community (Kadish, 1962). Therefore, clearly established protocols and expectations serve not only as a framework from which to guide legal decisions making, but also to enforce limitation of self-interest (Davis & Moore, 1944).

According to the rule of law doctrine, discretion serves as a counteraction to the principle of law. Weber (1954) writes that law reflects and reinforces rational deliberation resulting in a system that continues to progress in an orderly fashion towards increased stability and organization. This implies that those who enforce the law do so in a systematic and anticipatory manner consistent with the bureaucratic model. However, discretion allows for varying interpretations of possible application thereby rendering the definition of an offense as indefinite. By doing so, the law ceases to be a free-standing institution that regulates and shapes societal interaction based on established principles, but instead takes on a different hue with each encounter resulting in inconsistent outcomes based on the particular individual making the decision. In fact, the extent to which discretion has played a role within policing has varied over time. During the political era of policing, officers had very little, if any, direct supervision,

placing them in the position of enforcing the law according to their own individual judgment.

With the professional era of policing, officer discretion was limited based on the increased use of interdepartmental policies which outlined specific responses officers were to take according to the corresponding offense. Additionally, departments moved to a more rigid hierarchical administrative design thereby decreasing autonomy at lower levels. However, with the advent of the community policing model, departments have again moved towards decentralizing the organizational structure (Walker, 1992). Today, officers are encouraged to think more independently allowing once again for increased use of discretion thereby – in theory- violating the rule of law.

Rule of equal application. Based on the assumption that society is unified in its view on behavioral standards, the formalistic framework argues that law is neutral in nature. Cases are decided based on elements which constitute the seriousness of the offense. In the case of assault, elements such as use of a weapon or injury to the victim serve as aggravators to the offense and call for a greater response from the criminal justice system. Extralegal factors (e.g., race, class, gender, etc.) have no influence on the outcome because they do not speak to the harm caused to society (D'Alessio & Stolzenberg, 2003; Jasinski, 2003). What results is a system of rules in which law is applied equally and consistently across all social borders. It is through uniform application that it is possible to predict the outcome of a case based upon the totality of legally relevant factors (Thaxton, 2009). Even though it is acknowledged that research has reported, with fairly constant results, that certain minority groups tend to receive more punitive reactions from the legal system, under this framework the explanation lies in differential offending patterns rather than biased legal reaction (D'Alessio & Stolzenberg, 2003; Thaxton, 2009). More to the point, the jurisprudence model argues that certain groups such as blacks, Hispanics and

lower class whites commit more crime and with a greater degree of seriousness. To that end, differential offending is explained through alternative influences including social conditions (e.g., poverty, disorganization, differential opportunity, and family structure [see Bursik & Grasmick, 1993; Sampson & Wilson, 1995; Sampson, Raudenbush, & Earls, 1997; Shaw & McKay, 1969; Wilson & Petersilia, 2002]) to biological explanation (e.g., intelligence [see Herrnstein & Murray, 1994]).

Empirical support. A review of the literature reveals there is some support for the argument that legally relevant factors serve as the guiding principle for legal outcomes. In looking at over 5,600 police-citizen encounters involving 24 metropolitan police departments, Smith and Visher (1981) found support that police do respond to the legal seriousness of the offense and victim preferences when making arrest decisions. However, they also note that police systematically arrested blacks and people from lower class neighborhoods more often than whites and people of higher social status. Testing the premise that social status is related to the probability of reporting a crime, Gottfredson and Hindelang (1979) found no empirical support. Instead, their findings indicate that victims are more likely to notify police the more serious the offense.

However, the majority of research exploring the legalistic viewpoint tends to focus on the charging and sentencing phase. Hood and Sparks (1970) report, following an exhaustive review of existing literature, that studies examining sentencing outcomes demonstrate the importance of offense characteristics as well as the comparative insignificance of "personal factors" such as gender, age, and race. Hagan (1974) conducting a meta-analysis looking at judicial sentencing patterns involving non-capital offenses found that when holding constant the nature and number of charges involved, factors such as race, socio-economic status, age and gender became

negligible in explaining differential sentencing outcomes. Kleck (1981) conducting a similar meta-analysis involving 40 studies on non-capital offenses found analogous results. In other words, a substantial majority of the findings indicate that differences observed in sentencing could be attributed to differences in the seriousness of the offense for which they were prosecuted. In addition, although black on white crimes are generally punished more severely than crimes involving other racial combinations, significant findings seem to indicate that legally relevant factors presented the most plausible explanation. In looking at the possible impact of defense council and race of the defendant in federal cases, Tiffany, Avichai, and Peters (1975) find that the factor most relevant in severity of penalty is the seriousness of the offense. Similarly, analyzing data compiled from Baltimore, Chicago, and Detroit, Jacob and Eisenstein (1975) report that the original charge brought in a case appears to have the greatest impact on the length of sentence received. Out of the 1,500 felony cases examined, Jacob and Eisenstein find that after controlling for the defendant's age, race, and dispositional mode (i.e., plea, jury trial, or bench trial) that it is the initial charging decision that serves as the best predictor of sentence length.

It is worth noting that the original charge has the greatest impact on the length of the sentence; it is fixed at the beginning of the felony disposition process and serves as a given for all subsequent decisions. It constrains prosecutor, defense counsel, and judge. Moreover, we should not be surprised to find that the judge's discretion has little effect in sentencing when we remember that the judge is only one of the many participants in the processing of felony defendants. He has almost no control over the decision to dismiss charges...Consequently, the sentencing decision is largely formulated before the defendant stands in front of the judge to hear his fate. The judge responds with sentences

which are considered legitimate within the organizational framework in which he works.

(Jacob & Eisenstein, 1975, p. 631)

More recently Klein, Berk, and Hickman (2006) looked at capital punishment cases handled by the US Attorney General's office from 1995 through 2000. The study consisted of 312 cases for which defendant- and victim-race data were available. Initial results seemed to indicate that there were large race effects present in the data. However, researchers ultimately found that by controlling for case characteristics they were able to eliminate race effects thus supporting the argument that penalty was driven by the heinousness of the crime rather than race of participants. With regard to enforcement practices Petrocelli et al. (2003) found that none of the demographic and socioeconomic characteristics they looked at exerted direct effects on the number of police stops. Likewise, Withrow (2004) found that an officer's decision to stop and search was based on the contextual situation more so than the race or class of the driver.

Legal Realism

This form of jurisprudence challenges the legal formalism notion that officials mechanically apply the written law to decide on appropriate action and ultimately asks the question: if law is rule-governed then why, when all things are equal, do outcomes vary? Unlike the argument posed by legal formalists, who present a rule and principle-based view of decision-making, legal realism asserts that the justice system is an inherently subjective and capricious one that produces inconsistent results based largely on the personal predilections of those officials involved in deciding the outcome (D'Amato, 1984). In other words, legal realism is not concerned with what the law *should* be, but rather seeks to explain what the law *is* as practice. Legal realists frame the issue in terms of an ontological duality argument in which the written law does not reflect the belief system employed. Here, statutes and case law are not necessarily

seen as a mandate as much as a set of guidelines thus allowing for interpretation. Accordingly, statutes and other forms of legislation are still recognized as the basis for law, but it is argued that they are too indeterminate to be significant influences on officials' decisions (Murphy & Coleman, 1984). Because the law is indeterminate, legal practitioners actually decide cases, in part, on the basis of non-legal considerations. As a result, legal outcomes can depend on the participants themselves resulting in decision-making based not only on legislation but also political, social, and moral conviction. Again, legal realism does not deny that statutes and the like can guide an official's actions when the official's attitude recommends conformity with the law. Instead, the theory does not accept the notion that the law, as written, possesses the ability to provide reasons for conformity with stated recommendations which exist independently of the official's attitudes (Green, 2005).

The nature of discretion. As stated previously, under this framework, statutes and case law are seen more as legal guides and not necessarily commands, consequently allowing for variability in decision-making. This fluidity is generally synonymous with the concept of discretion thus allowing officials to make the "best decision for the common good". Yet as Walker (1992) points out uncontrolled discretion can produce results that are inconsistent with the intended function of the justice process including denial of equal protection of the law, denial of due process, and ineffective policy implementation. Moreover, officials tend to have greater "flexibility" with regard to options at the earlier stages of the criminal justice process allowing for extra-legal factors to play a larger role at these stages (Kadish, 1962). The broader the question, the more room there is for discretion. Figure 2 displays the general discretionary decision points as one progresses through the criminal justice process.

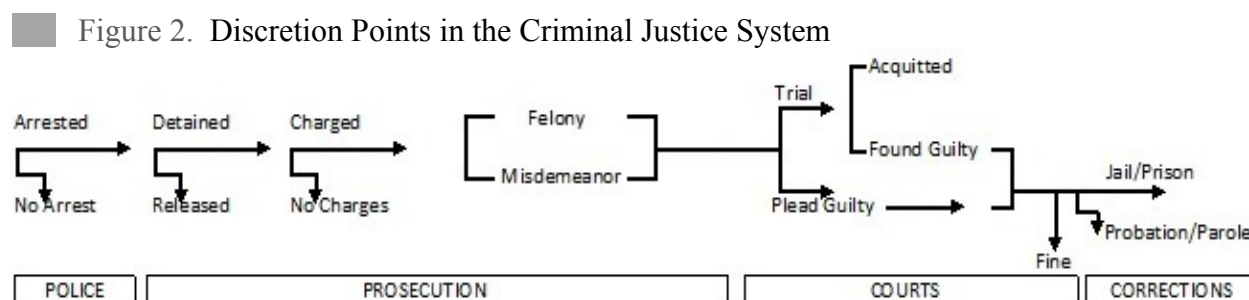


Figure 2. General discretion points available to law enforcement by stages. Adapted from Walkers, S. (1992) *The police in America* (2nd ed.). New York, NY: McGraw Hill, p. 200.

Due to the progressive nature of the adjudication process, discretion becomes more constrained as one advances from one stage to the next. Police and prosecutors are allotted broad discretionary powers as a function of the introductory phase of the system. These agencies act as gatekeepers deciding on which cases merit official legal response. Once in the system, courts and corrections have less room to decide arbitrarily on a course of action. So the question of constraints must be raised at some point. Legal realism argues that rules carry little weight since there is no real magisterial body to enforce them, especially at the early stages of the criminal justice process. That is to say, there is little, or at worst, a complete absence of a regulatory body to oversee the enforcement decisions of police and prosecuting attorneys. Therefore, if discretion is an inherent quality of law then to what degree are the powers allocated to those officials restrained and by whom? Murphy and Coleman (1984) suggest that in the absence of legal restraints officials are still held to moral and political criticism. In other words, legal decisions are nevertheless subject to mechanisms of popular control.

Proponents of legal realism state that their theory promotes scientific examination of the law by analyzing the contributory factors associated with the decision-making process. This methodology contradicts the notion that legal outcomes are the result of the logical consequences

of rules. Therefore, realism's legal arbitrary model could in fact be interpreted as a counterargument to formalism's model of rules. It is this arbitrary nature that convolutes attempts to form predictive models of legal outcomes. Yet some schools of thought associated with the realist perspective attempt to provide insight into the motivating factors behind legal outcomes. One of the most dominant schools to evolve out of legal realism is Critical Legal Studies (Altman, 1990; Douzinas & Gearey, 2005).

Critical legal theory. Consistent with being a derivative of legal realism, proponents of critical legal theory argue that the logic and composition of law are, in fact, a direct reflection of the power relationships found within society (Douzinas & Gearey, 2005; Kramer, 1995; Unger, 1986). The law, as practiced, serves to maintain the interests of the wealthy and powerful who use the law as a means to maintain their social position. Here, the divide between law and politics is absent resulting in a system highly susceptible to external influence. Namely, that officials operating within the system, allow political, social or other affluent bodies to assert their position within the justice process in order to promote their agenda. Yet this is not a new proposition; the principle claim that the law is a mechanism from which power is wielded by the upper social class is similar to arguments made by Karl Marx, Friedrich Engels, Max Weber, as well as Michel Foucault (Kramer, 1995; Litowitz, 1997). That is to say, previous work has suggested that legal outcomes are not the result of deductive methods aimed at providing equitable resolution, but rather the end product of plutocratic social control.

One of the perspectives to build on the general position that law serves as a mechanism to ensure the current stratification structure is *feminist legal theory* (FLT). FLT promotes the view that the law has and continues to play a dominant role in maintaining women as second class citizens. This theory seeks to explain why women are suppressed and controlled in ways that

men are not, forcing a deconstructionist approach to the current legal structure in order to identify the foundational concepts which are, in essence, patriarchal in nature (Kline, 1989; Quinn, 2012). Following in the footsteps of general critical theory, FLT maintains that the primary purpose of law is to stabilize current social arrangements; namely maintain a male-centered system of power (Minow, 1991). To that end, the theory ultimately seeks to define an approach allowing women the same justice, freedom, and equality that men are afforded thus creating a framework which is both critical and constructive. Proponents of FLT point to legal issues ranging from reproductive autonomy to debates over insurance benefits regarding pregnancies (Smith, 2010; Estrich, 2001). Proponents of FLT remind us that the discipline of one's wife and marital rape were, at one time, legally permissible. Marital rape was not a legally cogent offense until reformer efforts in the 1960s forced many states to re-evaluate their position (Pracher, 2010). Sexual assault, in general, was difficult to assert at all stages of the criminal justice process due to strict corroboration conditions and related rules of evidence. Continuing along those lines, some suggest that males are still afforded a legal advantage in cases of interpersonal violence (Avakame & Fyfe, 2001; Fyfe, Klinger, & Flavin, 1997; Klinger, 1995). Essentially, feminist legal theory argues that in cases of battery where both genders were involved, female victims are not afforded the same legal benefit as men (Estrich, 2001; Kramer, 1995; Rhode 1997).

Empirical support. Numerous studies have been conducted looking at law enforcement practices with regard to targeted enforcement against minorities and the poor. A 2001 study looking at traffic stops conducted by the Cincinnati Police Department found that black drivers had a 36 percent greater chance of being stopped than whites (Bostaph, 2007). However, Bostaph added that when looked at in the context of location that, “ Officers...who worked in

areas with high levels of relative deprivation had a higher disproportionality index score; in other words, they stopped black drivers at disproportionate levels” (2007, p. 413). Lundman and Kaufman (2003) utilizing a 1999 national survey also indicate that black drivers report significantly more traffic stops than whites. With regard to actual citations being issued, Engel and Calnon (2004) using the 1999 Police-Public Contact Survey find that black drivers are 47 percent more likely to receive a traffic citation than white drivers. Another area that has received some attention is the disproportionate rate at which minorities are arrested for drug related charges. A 2000 survey found that blacks were five times more likely to be arrested for drug offenses than whites (Substance Abuse & Mental Health Services Administration, 2001). Likewise, 2000 data show that blacks (57%) are disproportionately represented in the percentage of drug traffickers who are convicted as opposed to whites (42%) (Maguire & Pastore, 2000).

Some studies looking at sentencing patterns suggest that the apparent race effect is actually a result of being able to post bond prior to trial. In looking at over 2,100 felony cases handled by the Superior Court of Washington, DC Albonetti (1991) finds that those who bond out of jail prior to their sentencing receive less severe penalties than those who cannot. This is based on the notion of causal attribution. Those who remain free before trial are more likely to be viewed as situational offenders compared with those who remain in custody and are seen as having a more enduring criminal disposition (Carroll & Payne, 1976). Moreover, Albonetti points out that minorities typically tend to be more unlikely to be able to post bond after initial incarceration compared to white offenders suggesting that the issue is more likely that of class dominance rather than race.

With regard to the arguments put forth by feminist legal theory, research has found that in certain cases, women appear to be at a legal disadvantage as offenders. Some studies indicate

that females are treated less favorably at the front end of the system (i.e., arrest) but more favorably at conviction and sentencing (see Ghali & Chesney, 1986; Wilbanks, 1986). This is particularly true in the case of status offenses. Numerous studies find that females are not only referred more often to the juvenile justice system by parents for status offenses but are also more likely to be arrested compared with male offenders for similar status offenses (Alexander, 1999; Chesney & Shelden, 2004; Humphrey, 2004). However, some studies find that women are discriminated against at the pretrial level as well. In looking at close to 4,000 cases handled by district courts in Washington, DC, Figueira-McDonough (1985) report that women are given fewer opportunities to plea bargain to lesser crimes compared with their male counterparts. She also indicates that males are more likely to receive both charge and sentence reduction as opposed to female offenders. As in the case of selective enforcement with status offenses, some researchers find that women can face discrimination as victims pertaining to sex offenses. In conducting a meta-analysis of previous research involving sexual assault cases, Whatley (1996) finds that female victims are routinely held accountable for their attire at the time of attack as well as their sexual reputation. This, in turn, may lead to the notion of blameworthiness on behalf of the victim thereby decreasing the likelihood or severity of penalties applied to the male perpetrator.

So as illustrated, the jurisprudence framework ranges from a culmination of codified social norms which are intended to serve as a rational guide in dealing with offenses to a politically influenced system whose function is to maintain the status quo. Nevertheless, despite the seemingly contradictory nature of the model, the jurisprudence framework is united in depicting law as driven by agency – either by rational design or individual motive. It is the idea that law is created by society for society. However the next proposed model suggests a new

ontology of social life resulting in a theoretical construct where the law is driven by an internal mechanism far removed from human behavior. Here social action takes on a character of its own thereby replacing individual action and removing agency from the framework.

Social Geometry Model

Social geometry is a study of social behavior independent of biological or psychological explanation. Also termed *pure sociology*, Black (1976) directs our attention away from the motivations of the perpetrator, the victim, or even officials involved in the legal decision-making and instead looks solely at how the incident can attract more or less law based on the social positions occupied by the parties (Thaxton, 2009). To that end, social geometry proposes that, holding constant the actions of parties involved, cases are adjudicated differently according to the particular position subjects occupy within their respective social spaces (Cooney, 2009).

Black (1995) writes:

Instead of the action of people as such—persons and groups—human behavior becomes the action of social life: social action. And instead of a characteristic of human beings with their own propensities, human behavior becomes a characteristic of social beings with their own propensities. Just as a call to police or a lawsuit is the behavior of law (an increase of law in a specific location and direction in social space), so a visit to a physician is the behavior of medicine (an increase of medicine)...Social action replaces individual action. Human behavior becomes the behavior of social life. People disappear. (pp. 859-860)

Furthermore, since social geometry is based on the premise that 1) it is innate for societies to assign social designators to all members, and 2) law reacts to associated social positions, Black (1995) argues that the paradigm is not restricted in its application by time or

space. As a result, predictions using the framework should be possible regardless of legal setting (civil or criminal), which society is considered, and what time period is examined.

It should be noted that Black's attempt to remove the individual aspect from social behavior has been harshly criticized. Some have argued that Black's effort to eliminate all psychological assumptions regarding individuals renders his theory logically incoherent and methodologically deficient (see Greenberg, 1983; Hunt, 1983). Others have stated that the conceptual framework is not defensible as an approximation (see Turner, 2008), or that other social mechanisms that do incorporate physiological factors can better explain observed phenomena (See Turner, 2008; Marshall, 2008). In response, Black (1995) states that his work not only reveals that social reality is separate and apart from individual reality, but that there is compelling empirical support that removal of the individual as the unit of analysis is not only feasible but also prudent in a sociological analysis of legal behavior (see also Borg & Parker, 2001; Campbell, 2005; Cooney, 2009; Geiger-Oneto & Phillips, 2003; Lee, 2005; Terrill & Mastrofski, 1998, Thaxton, 2009). As to the argument that other more psychologically coupled explanations may offer alternative insight into legal outcomes, Michalski, (2008), points to the issue of parsimony. Namely, given all possible explanations for a social phenomenon, scientific evaluation favors the least complicated as opposed to more cumbersome ones. An example of this may involve contrasting the proposition that law varies directly with one's social position with an alternative theory that proposes cognitive bias can form within an individual based on his or her direct and/or vicarious negative experiences with a particular social group [race/ethnicity, gender, class, etc.] thereby increasing the probability of prejudicial treatment if the individual happens to occupy an authoritative position. In this case social geometry poses a more simplistic explanation with fewer mechanisms or contingencies. In general, Black responds to levied

criticism by suggesting that any theory which proposes new theoretical constructs, or those that depart from traditionally held beliefs, initially elicit a negative response. “Because it overturns fundamental conceptions of reality, a revolutionary theory may cause reactions akin to ‘culture shock,’ a form of personal disorientation ...” (Black, 1995, p. 864).

In order to gauge the validity of the arguments proposed by social geometry, we need to breakdown some of the key statements proffered by the theory. This also allows for critical analysis against the backdrop of the deconstructed jurisprudence model. In the first section, I look at how social geometry works within an environment which seeks to maintain a balance of the various forms of social control. Subsequent sections examine the measurable aspect of the theory as well as identify five operating social spaces.

The Equilibrium Effect

Black (1995) writes that a purely sociological approach to the law should include scientific observation of legal behavior and not simply an assessment of legal policy or individual motivation. To that end, in order to gauge legal effectiveness, one must not only compare “Law in Theory” to “Law in Action” but also take note of patterns seen in legal outcomes (Black & Maleski, 1973). Since law is a form of social control, Black proposes that law varies with other forms of social control in respect to non-legal authority. As a result, in cases where informal social control is strong, law will be weak. More to the point, the law is seen as operating within a larger sphere of social control in which legal application is greater or weaker in an effort to maintain balance within the system. Cooney (2009) points to the diminished application of popular justice (handling conflict with non-legal means such as through violence or toleration) in response to law taking on a dominant role in contemporary societies.

Furthermore, law has a propensity to defer to non-legal authority. Therefore those formal organizations that have their own form of regulation (e.g., medical and legal professions, religious organizations, tribal entities) will experience less interdiction and lower penalties compared with other groups or organizations that do not employ some form of internal regulation (Black, 1971, 1976; Cooney, 2009). Similarly, we would expect to find the same pattern of legal deferment in private settings such as in the case of domestic conflict (Lally & DeMaris, 2012).

Measureable Aspect

Black stipulates that, as opposed to the formalist model, law is not simply another term for rules, but, "... rather it is the *observable* dispositions of legal agents (e.g., police, attorneys, judges, juries, *et cetera*) and, therefore, amenable to scientific inquiry" (Thaxton, 2009, p. 196). In other words, social geometry purports that the degree to which law reacts is quantifiable and therefore allows for predictions as to which cases will attract more law than others (Black, 1995; Cooney, 2009). Michaels and Sherman (1978) explain that the term *more law* refers to a greater number of arrests, charges, trials, and convictions. This is an important aspect to the theory because it allows for scientific inquiry which can result in gauging the impact of social influences regarding legal behavior. In the case of this study, I look to see what variables increase or decrease the amount of law applied in the allegation of assault.

Social Spaces

Black (1976) identifies law as a form of social control employed by the State. Accordingly, all aspects of applied law, ranging from police involvement and prosecution to sentencing practices are forms of social control. The quantity of law that is applied by the justice system is determined by the location one occupies within the previously identified five social

spaces at any one time.⁵ Recall that these five dimensions incorporate many prominent sociological propositions including issues of class, norms, networks, marginality, and division of labor. What results is a multidimensional model that provides a framework for explaining and predicting the dynamic relationship between the application of law and human behavior.

Vertical. The vertical dimension, as previously mentioned, looks at wealth and its distribution. Social geometry defines stratification as a reflection of the distribution of rank and wealth in society as reflected by the difference in economic and social capital one possesses (Kuo, Longmire, Cuvelier, & Chang, 2010).

Direction of response. In relation to legal considerations, Black (1976) argues that the greater the vertical disparity between parties, the greater the perceived distance with regard to the offense. To help clarify this effect Black identifies four components that condition the application of law within a stratified society.⁶ 1) *Downward law is greater than upward law.* Here an offense committed against a person of higher social status by someone of lower social status would attract more law than vice versa. An example might include a situation where an out- of- work laborer on social assistance assaults a successful entrepreneur. Under this proposition the offender would more likely be arrested and prosecuted than if the situation were reversed and the entrepreneur assaulted the laborer. 2) *Downward law increases with vertical distance.* The greater the distance in social status the greater the punitive response when the complaint is directed downward. Building on the previous example, lowering the status of the offender from simply receiving unemployment benefits to being homeless and receiving no benefits should increase the likelihood of arrest and prosecution. 3) *Upward law decreases with*

⁵ Again, according to Black, the spaces act independently from one another. No one space supersedes another nor is there a cumulative effect.

⁶ It is important to note that Black's four conditional propositions apply in one form or another to all five dimensions.

Propositions one, two and three comport with Marx and Engels' (1955) notions of status and power in that the more resources one is perceived to have, the greater protection and privilege one is afforded. However, proposition four is somewhat contrary to the first three. In the fourth proposition, Black (1976) argues that high status (in this case wealth) may actually result in a stronger punitive response. That is, wealthy offenders are held to a higher standard because *both* parties are of high social value creating somewhat of a status liability issue. One study conducted at the University of California, Irvine seems to support this notion.

Undergraduates were given the choice between two scenarios, one involving the murder of a doctor's wife by her husband, the other involved the same scenario of murder but between people of lesser status. The survey found that participants in the survey were more likely to convict the doctor for the murder as compared with the counter scenario involving subjects of lesser status (Rosoff, 1989). Similar studies tend to support the argument that the prominence typically associated with high-status persons can also serve to make them more vulnerable to allegations of misconduct (Adut, 2005; Fine, 1996; Phillips, Turco, & Zuckerman, 2013).

By and large, research generally supports the notion that income plays an influential role in legal outcomes. Bynum, Cordner, & Greene, (1982) report that when deciding on whether or not to indict, prosecutors are less likely to drop charges in cases where the victim occupies a higher social class than his or her offender. Mooney (1986) looked at sanctions levied by university officials and consistent with Black's predictions, officials were more lenient on those students who had higher GPAs and listed above average incomes. Terrill and Mastrofski (1998) also report findings consistent with social geometry's vertical predictions. In their study on the use of force by police, researchers wanted to know if the suspect's attitude towards police during the encounter had any real impact on official outcome. Based on observational data gathered

from the Indianapolis, Indiana and St. Petersburg, Florida police departments, Terrill and Mastrofski find that officers did not display more coercive behavior towards disrespectful suspects. However, they did find that, "... poor and younger suspects were all treated more forcefully, irrespective of their behavior" (p. 215).

Generalized other. Aside from the assessment of social distance between victim and offender, there exists a general measure against which one is compared in the absence of the other party. Originally proposed by Mead (1934), the generalized other represents a collection of roles and attitudes that people use as a reference point for gauging the appropriateness of their own actions. It is a social construct reflecting society's rules, norms, roles, and social understandings. Mead argues that it is through the generalized other that a community exercises control over its individual members. Yet this construct not only serves as an internal guide for self reflection and action, but also as an external measure of appropriateness of others' behavior. We can see this in situations where officials are not able to identify one of the involved parties (e.g., police do not locate the suspect in a battery case or offenders committing "victimless" crimes), law may, in fact, compare the identified party with the generalized other. An example of this could involve a case where police respond to a call where a homeless illegal immigrant was physically assaulted while sleeping in an abandoned building but no suspect is identified. Police will not invest as much effort in looking for the perpetrator as they would if the assault victim was a white middle class home owning citizen on his or her way to work again assaulted by an unknown subject. Holdsworth and Morgan (2007) describe the social application of the generalized other when they write, "What is relevant here is that generalized others embody normalized practices; it is through these references that norms and reference groups... are associated with what people actually do and say...." (p. 414). In other words, the social

standards cultivated by a given society culminate in a culturally constructed generalized other. Furthermore, when gauging the proper placement of the victim or offender in the absence of the other, the law compares the actor to the generalized other or the social conceptualization of the typical citizen. This construct represents the social midpoint or norm in terms of status within a given community-in most cases what might commonly be known as middle-class America. If the identified subject (victim or offender) falls lower on the social scale than the conceptual “average citizen” then they will fare worse than if the actor occupies a higher social space in comparison to the generalized other. A good illustration of this is provided by Chiu (1994) when she provides a critical analysis of cultural defenses used by defendants who invoke their cultural background to justify conduct deemed criminal by US courts. Specifically, Chiu explains that in fact it is the cultural background of the defendant on trial more so than the actions. “[W]here the jury finds common ground with the defendant, its deliberation and verdict become an exercise in recognizing cultural sameness, not difference” (Chiu, 1994, p. 1114). Again referencing the above studies conducted by Mooney (1986) and Terrill and Mastrofski (1998), researchers find that the amount of law applied to offenders depends primarily on their socioeconomic background in the absence of any identified victims.

Organizational. Within the organizational dimension, Black suggests that the standard of measure used in gauging the degree to which an establishment is organized is, “...the presence and number of administrative officers, the centralization and continuity of decision-making, and the quantity of collective action” (1976, p. 85). Returning to the argument that the social standing of an organization transfers to its representative based on his or her association and rank, offenses committed in an upward direction should attract greater sanctions than those committed in a downward direction. As one commits an offense against someone in the downward direction

law decreases with greater distance. As one commits the same offense in an upward direction, law intensifies as distance increases. Accordingly, a battery committed against a supervisor or person of authority by an employee or subordinate should result in a greater response from officials than if the offense was committed by a person of authority against his or her subordinate. Accordingly, sanctions will be imposed more severely at elevated organizational levels. A clear example of this can be seen within the Uniform Code of Military Justice (UCMJ). The military equivalent of criminal assault is outlined in Article 128 under which the maximum penalty for confinement, if convicted, increases based on the victim's rank starting with enlisted (3-6 months) to warrant officer (18 months) to commissioned officer (3 years). However, in concordance with Black's fourth principle, rank of the perpetrator also increases the potential for penalty; namely in addition to being charged with the principal offense (in this case assault), commissioned officers face the additional charge of Article 133—Conduct Unbecoming an Officer and Gentleman. This charge stems from the philosophy that military officers require a certain degree of integrity to properly discharge duties. The resulting combination of officer on officer violence results in a charging situation that attracts the greatest punitive response as opposed to enlisted on enlisted, officer on enlisted, or even enlisted on officer violence. Even though there are some offenses that carry greater maximum penalties involving subordinate on superior violence (see Article 90—Assaulting or Willfully Disobeying Superior Officer) they are applicable to both enlisted and officers alike.⁷

Normative. Black (1976) describes the normative dimension as one that focuses on the presence of social control or the amount of social control individuals are and have been subject to in the past. As explained in Chapter 3, there are two aspects to normative space: regulation

⁷ Article 90 of the UCMJ also requires that the superior commissioned officer be involved in official duties at the time of the assault.

and reputation. Regulation refers to the degree one is routinely subject to the authority or control of others. Black reasons that the law varies with other forms of social control and that a balance is struck between formal (ex. police and courts) and informal (ex. social action) control within society. As such, the law recognizes that those who are dependent on others, (i.e., women, children, elderly, and disabled) have less access to other forms of social control causing the law to “step in” to balance the equation. Consequently, these individuals attract less law as offenders and more as victims. Indeed, one of the most consistent findings in empirical literature is that women are routinely penalized in criminal cases less severely than their male counterparts (Demuth & Steffensmeier; 2004; Feldmeyer & Ulmer, 2011; Mustard, 2001; Spohn & Beichner, 2000; Steffensmeier & Demuth, 2006) and there are more likely to be punitive measures applied in situations involving female victims (Curry, Lee, and Rodriquez , 2004; Franklin & Fearn, 2008; Johnson, Van Winderden, & Nieuwbeerta, 2010; Lally & DeMaris, 2012).

Black (1976) describes the second aspect of normative space as having to do with, “...a person’s reputation for good and evil” (p. 111). Because the normative dimension reflects social norms, mores, and folkways, any form of deviance or abnormality elicits a social control response. Individuals who have acquired a reputation for deviance (i.e., have behaved in such a manner as to elicit the response of formal social control in the past) occupy a lower status within that society. As such, persons with criminal histories attract more attention from the law in subsequent contacts resulting in a greater likelihood of penalties such as arrest, charging, convicting and sentencing. Cooney (2009) also introduces the concept of situational deviance. A victim with no criminal past but who may have been engaged in deviant behavior (e.g., consuming alcohol or drugs) at the time they were victimized would attract less of a response from the law compared to a non-deviant victim. Consequently, Black’s four conditional

principles would suggest that reputable victims and disreputable perpetrators would attract a greater legal response than reputable perpetrators with disreputable victims. In fact we see evidence of this discriminatory effect in cases of assault involving prostitutes (See Valor-Segura, Expósito, & Moya, 2011; Fox & Levin, 1994; Quinet, 2011; Turvey, 2011), intoxicated subjects (drugs or alcohol) (see Egger, 2002; Finch & Munro, 2005; Meyer, 2010), and even the homeless (see Huey, 2012; Kinsella, 2012;) as victims.

Cultural. With the cultural dimension cultural integration serves to elevate one's social status. The stronger ties one has to society the more culturally integrated he or she is said to be. As previously suggested language, lifestyle, and religion serve as measures in gauging one's degree of integration. Here, as in other dimensions, law is directed to a greater extent against those who are perceived as less conventional. Continuing with Black's (1976) argument that race also serves as a form of conventionality, numerous studies investigating the role of race (victim and/or perpetrator) in the application of the death penalty seem to support the notion that minority cultures are considered less conventional than whites. Some research indicates that minority offenders are sentenced to death more often than their white counterparts (see Dodge, 1990; Lynch & Haney, 2009; Paternoster, 1991). Conversely, other studies find a lower likelihood of the death penalty being applied in cases where the victim was a minority as compared to cases where the victim was white (see Baldus, Woodworth, & Pulaski, 1990; Bowers, 1983; Pierce & Radelet, 2002; Phillips, 2008). Moreover, it appears that the victim's race plays a greater role in legal outcomes than the defendant's. Namely, even after controlling for defendant's race, those accused of murdering a white victim were more likely to receive the death penalty than those charged in the death of a minority (see Hinderson, Potter, & Radelet, 2006; Radelet & Pierce, 2011; Sorensen & Wallace, 1999; Williams, Demuth, & Holcomb,

2008). Revisiting the role of the generalized other, Feldmeyer and Ulmer (2011) investigate the proposal that the greater the population of minorities in a community, the larger the perceived threat to the majority resulting in longer prison sentences for minorities convicted of a crime. However, what they find with regard to Hispanics populations was the opposite. Specifically, when comparing minority population size by federal districts, they find that Hispanic defendants receive the most severe sentences in districts where their numbers are small (1%-3%) compared to districts with much higher concentrations (28%-42%). One of the possible explanations that they give is based on the associated cultural distance within each community.

Cultural factors may also lie behind the differences in treatment of Hispanics in the most and least populous Hispanic districts. Where Hispanics are least numerous, perhaps they are seen as especially alien... Conversely, where Hispanics are most numerous, and in fact constitute a substantial portion of the population, they may be more commonly perceived as integrated members of the population. (p. 260)

Education also seems to influence legal outcomes to a degree. As previously discussed, education can be viewed as a form of accepting society's values and principles. The more educated one is, the more he or she is said to represent the social normative model. Mustard (2001) looking at over 77,000 federal sentencing cases between 1991 and 1994, finds that even after controlling for offense level, criminal history, district, race/ethnicity and gender, perpetrators who did not graduate from high school received longer prison sentences (approx. 1.2 months longer) than those who did graduate. Conversely, in the case of drug offenses, those with college degrees received shorter sentences than those with only a high school degree. In looking at federal sentencing data from 2000 to 2002, Feldmeyer and Ulmer (2011) find similar results,

reporting that after controlling for demographics, offense type, and criminal history, prison sentence length was reduced by 1 percent for every year of education the defendant possessed.

Morphological. The morphological (horizontal) dimension encompasses the arrangement of social ties and the resulting behavior of law. There are two distinct aspects within this social space – *radial* and *relational*. The radial aspect implies that the more socially integrated the victim is, as gauged by marital, employment and parental status, the more serious the offense as viewed by law. Likewise, the higher radial status (or degree of social participation) the offender occupies as compared to the victim the less serious the crime. Beginning with the issue of employment, proponents of contemporary merit-based systems, such as civil service programs, argue that the system enhances employment hiring practices, ensures fair promotion, and safeguards against capricious termination by focusing on the competency of the individual in question. Yet some maintain that this idea of deservedness can also lead to discriminatory action within the legal system (Black, 1976). In the case of police contacts, there is evidence that officers take employment into account when dealing with victims. Bynum et al., (1982) report that police tend to be less willing to invest time in criminal complaints if the victim had indicated that he or she was unemployed at the time police were called. This seems to suggest that police are gauging the seriousness of the complaint based on the status of the complainant. With regard to sentencing practices, much data exists supporting the notion that employment status impacts the amount of law applied in criminal cases for both victim and perpetrator. In general, there is empirical support for the argument that victims suffer from the stigma attached to unemployment resulting in an increased likelihood that criminal charges against their offenders will be dropped (see Belknap, 2001; Bynum et al., 1982; Williams, 1976). Similarly, research finds that offenders

who are unemployed receive stricter penalties and sentences compared to offenders who are employed (Bickle & Peterson, 1991; Boritch, 1992; Kruttschnitt, 1984).

A review of studies examining the effect of marital and parental status on legal outcomes seems to initially support social geometry's proposition that marriage and children add to one's social status. In Daily's (1987) analysis of over 2,000 cases handled by the New York City Court System, she finds that both men and women, married with children, receive more lenient treatment from the court system than "non-familied" individuals. Results were found while also controlling for age, gender, offense type, criminal record, race/ethnicity and employment status. Steffensmeier, Kramer, & Streifel (1993) report similar findings in that defendants who have children or are pregnant tend to receive more lenient sentences than those without dependents. Freiburger (2010), in looking at the impact of parental status, finds that criminal defendants who are caretakers of children are less likely to be incarcerated than those who are not. Similar studies looking at criminal case outcomes, controlling for contextual and demographic variables, report that marital and parental status affect legal response in predicted directions (Hartley, Maddan, & Spohn, 2007; Kingsnorth, MacIntosh, & Sutherland, 2002; Supreme Judicial Court of Massachusetts, 1990).

The relational aspect encompasses the degree to which actors (victim and perpetrators) participate in one another's lives. In general, this area can be broken down into four categories: romantic, relatives, acquaintances, and strangers. Black (1976) theorizes that as relational distance increases so too the likelihood that law will intervene and the greater the penalty. That is to say, intimacy repels law. Yet how can marriage propel one to a higher social status while at the same time act as an inhibitor to legal recourse? Although legal benefit may be given to individuals with a marital status reflecting their commitment to social values, relational distance

looks at the familiarity, or more to the point, the amount of informal social control *between* the victim and perpetrator. So, in cases where subjects are involved with a physical altercation outside of any intimate or familial relationship, marriage enhances social status (e.g., victim is married and suspect is not, victim will gain some benefit in legal outcome based in part on marital status). Yet, when the battery takes place *within* the domestic relationship, then social geometry tends to focus on the amount of intimacy present. Research generally supports this claim reporting that crimes perpetrated against intimate partners receive less attention from the law than those offenses committed by strangers. In reviewing North Carolina capital cases from 1978 – 1987, Rapaport (1991) finds that homicides involving strangers were less likely to receive the death penalty than cases involving the murder of a spouse or child. In fact, one of the most consistent findings to come out of studies looking at the impact of victim-perpetrator relationships on legal decision-making finds that the smaller the relational distance between the two actors the less likely formal action will be taken by police, prosecutors and courts (Black, 1971; Buzawa, Austin, & Buzawa, 1995; Bynum et al., 1982; Cannavale, 1976; Lally & DeMaris, 2012; Williams, 1976).

Both jurisprudence and social geometry models present us with possible frameworks from which to better understand the underlying mechanisms involved with legal outcomes regarding assault cases. However, it would appear that they do so from diametrically opposite positions; one asserting that law, in design and action, is a product of directed human measures, the other purporting to describe how social dimensions compel legal behavior in the absence of agency. Moving forward in my inquiry into the source of legal behavior involving assault cases, the following chapter presets an overview of existing literature specially looking at the impact of both legal and extra-legal variables in cases of simple and aggravated assault.

CHAPTER 5: PRIOR STUDIES ON ASSAULT

As previously stated, there are few studies that have examined the adjudication of assault cases from a social geometry vs. jurisprudence stance. Of those that have, none employ all five dimensions at multiple stages of the criminal justice system. However, insight can be gained from looking at the partial tests that have been performed. The following studies give us an overview of the literature that has looked at the influence of both legal and the extra-legal factors of race/ethnicity and education (cultural dimension), gender, age, alcohol and drug use (normative dimension), representation of formally structured groups (organizational dimension), marital and employment status (radial), and degrees of familiarity between victim and perpetrator (relational distance) on legal outcomes in incidents of assault.

Assault Cases and Likelihood of Arrests

Beginning in the 1970s, research began to emerge proposing that police were less likely to make arrests in cases of domestic battery than cases involving non-intimate assaults. Black (1971), utilizing data from a 1966 study involving Boston, Chicago and Washington, D.C. found that the likelihood of arrest varied depending on the type of relationship involved. Specifically, those conflicts involving family members were least likely to involve an apprehension while those incidents involving a stranger had the highest probability of arrest. Martin (1976) and Dobash and Dobash (1979) came to similar conclusions; police were less inclined to arrest suspects in domestic violence cases compared with other types of assaults. However, these findings have been criticized based on the fact that researchers do not distinguish between intimate partner violence and that involving relatives (Avakame & Fyfe, 2001; Klinger, 1995).

Berk and Loseke (1981), in response to the claim that police routinely fail to arrest offenders in cases of domestic battery, conducted an analysis on the role that personal

characteristics and contextual elements play in the decision to arrest. Even though Berk and Loseke fail to conduct a comparative analysis of romantic *versus* non-romantic assault, a requirement to determine if differential treatment was present, their findings partially support Black's normative dimension. In conjunction with finding that certain contextual elements influence the outcome, the research also finds that suspect intoxication significantly increases the odds that an arrest will be made. However, factors such as race and marital status have no apparent influence. There is also no apparent affect regarding the indication of injury. Worden and Pollitz (1984) replicate Berk and Loseke's study and report similar findings. They also claim that their data support Black's notion that the smaller the relational distance, the less likely police will make an arrest. However, as in the case of Berk and Loseke, a proper comparison of romantic *versus* non-romantic assault is not conducted.

Oppenlander (1982) reports that police are *more* likely to arrest in cases of domestic disputes as compared with non-related disputants. Even though Oppenlander includes relatives, ex-spouses, and cohabitants under the term "domestic", she does make a cursory distinction between the groups in her narrative. However, in the comparison of the two categories, the presence of a female victim increases the probability of arrest in both domestic and assault cases. Injury to the victim also increased the likelihood of arrest.

Smith and Klein (1984) actually incorporate all five dimensions in their analysis of police response to assault cases by utilizing data from a 1977 study involving 24 police departments. They report that police, in general, are more inclined to arrest male as opposed to female suspects accused of assault. Furthermore, arrest is most likely when disputes are between men and least likely in disputes between women. Suspects who had been drinking alcohol or displayed a negative or "antagonistic" attitude towards police were also more likely to be

arrested. However, researchers point out that no support is found for the argument that race influences arrest decisions. Similarly, injury to a party or use of a weapon does not appear to increase the probability of arrest. Yet, Smith and Klein report an inverse relationship is found between the socioeconomic status of the neighborhood and probability of incarceration. Conversely, a linear relationship is found between the bureaucratic and professional structure of the police department and the likelihood of arrest thus supporting Black's notion that an increase in organization is associated with an increase in law. This is due to the function of social distance. As an agency increases in organizational structure so too does the organizational gap widen between agency and individual thereby increasing the agency's status. But perhaps one of the more interesting findings is when Smith and Klein look at likelihood of arrest for domestic vs. non-domestic disputes based on the socioeconomic character of the neighborhood. They report that for neighborhoods defined as "high and middle status", police are much less likely to arrest in cases of domestic battery as compared with non-domestic assaults. In contrast, police are equally likely to take into custody suspects of both domestic and non-domestic disputes in neighborhoods categorized as being "low-status". However, Klinger (1995) criticizes Smith and Klein for how they operationalized the term "domestic"; specifically that the definition was based on whether disputants lived together (domestic) or not (nondomestic). Klinger argues that this definition does not take into account romantic relationships involving non-cohabitating couples. By not separating intimate from non-intimate relationships within the non-domestic category, we are not able to get an accurate picture on how police differ in their handling of domestic disputes from non-domestic disputes.

Focusing on domestic assaults Waaland and Keeley (1985) employ a survey asking police officers how they would respond to proposed scenarios. Based on officer responses, they

report no connection between extralegal factors and police decisions citing that legal factors play the determining role. Specifically they write, "...presumptive judgments clearly are best predicted by the victim injury...Surprisingly, occupation, victim antagonism, and drinking cues do not meaningfully affect officers' decisions" (p. 362). Nevertheless, the results from this study are somewhat dubious given the limitations of the sample. In particular only 36 officers were surveyed all of whom were from one police department.

Klinger (1995) using data from 77 incidents handled by the Metro-Dade Police Department in Florida compares spouse v. non-spousal physical assaults. Although findings indicate a slightly lower arrest rate involving domestic parties, the difference is not statistically significant⁸. Klinger's study also suffers from a number of validity issues. In addition to relying on a small number of cases for his analysis, Klinger fails to control for gender. Instead he limits his domestic incidents to only male-on-female assaults. A true test of the argument that male domestic batterers are less likely to be arrested can only be done if female offenders are included in the analysis.

Buzawa, Austin, and Buzawa (1995), use official data from a midsized, midwestern police department to look at assault cases. After classifying incidents as either domestic, acquaintance, or stranger, their findings indicate that as relational distance decreases between the offender and victim so too the likelihood of arrest. Yet, legal relevant factors also play a decisive role. In cases where a weapon was used or injury to the victim was serious, likelihood of arrest went up significantly. But again, like Klinger, they fail to control for gender.

Fyfe, Klinger, and Flavin (1997) set out to test what has commonly been referred to in literature as the leniency thesis - the proposal that police are less likely to make an arrest in cases involving males who had assaulted a woman with whom they had an intimate relationship

⁸ Klinger included dating, cohabiting, married, estranged, and former heterosexual couples

compared with other scenarios. After controlling for both gender and relational distance, researchers conclude that, "...police treat men who beat their spouses less punitively than other violent offenders" (p. 455). Furthermore, they indicate that the use of a weapon or if an officer was attacked increases the likelihood of an arrest. As with Klinger, their research contained a number of validity issues including relying on a regional sample, an *n* of only 356 cases, and total reliance on official data which is notorious for under representing the prevalence of domestic assaults (Mosher, Miethe, & Phillips, 2002).⁹

Avakame and Fyfe (2001), also investigate the leniency thesis, only this time using a national survey (National Crime Victimization Survey) with a fairly sizable number of cases (2,394). Again, they report finding support for the argument that police are less likely to initiate an arrest in regard to male-on-female spousal assaults as compared to other relational categories. Avakame and Fyfe also report that the chance of arrest for male-on-female spousal assaults increases with victim's and offender's age. There is also a linear relationship between victim's income level and probability of an arrest. In addition, the likelihood of incarceration increases if the victim is white or the suspect is black, the victim was injured, a weapon was used or use of drugs or alcohol by the offender was indicated. However, again like Klinger, Avakame and Fyfe fail to control for gender, instead choosing to limit domestic incidents to only male-on-female assaults. This fails to show the true impact of gender if female offenders are not taken into account.

Using data from the National Incident-Based Reporting System (NIBRS) Stolzenberg and Alessio (2004) examine over 500,000 violent criminal incidents reported in 2000 spanning nineteen states and the District of Columbia. Data show that in cases of aggravated assault where

⁹ The data used in this study come from police records for the City of Chester, Kansas obtained during a lawsuit alleging police failure to protect a female victim of domestic assault (Hynson v. City of Chester, 1988).

the victim is female odds of arrest are elevated by 13 percent compared to cases where the victim is male. Victim's gender had a greater influence in cases of simple assault where the odds of arrest increase by 25 percent when the victim is female. The same appears in cases where simple assaults are committed by females resulting in a 9 percent decrease in the odds of incarceration compared to cases in which the offender is male. Yet, researchers indicate that the odds of arrest actually increase by 5 percent when the offender in an aggravated assault case is female.

Researchers also test the impact of offender substance use. Data show that perpetrators who were under the influence of alcohol or drugs at the time of their offense increase their odds of arrest by as much as 46 percent for aggravated assaults and 72 percent for simple assaults. Race also appears to play a significant role in the decision to arrest indicated by the finding that black victims have 20 percent lower odds of seeing their assaulter incarcerated for incidents of aggravated assault than their white counterparts. Similar results are found for cases of simple assault where being a black victim reduces the odds of arrest by 21 percent. Yet interestingly, Stolzenberg and Alessio further report that black offenders also see a decrease in the odds of being arrested for aggravated and simple assaults by 11 and 10 percent respectively as compared with white perpetrators. Another significant factor is age, as indicated by the 1 percent increase in the odds of arrest for every 1 year increment in the age of the victim (aggravated and simple assaults). The possible impact of relational distance is examined and reveals that, contrary to what social geometry would predict, police are less likely to make an arrest in assault cases involving strangers as opposed to those where the victim and the perpetrator are familiar.

Researchers also controlled for legal variables including use of a weapon and serious injury. Results show that weapons actually decrease the odds of arrest by 5 percent. Stolzenberg and Alessio (2004) suggest that the use of weapons increases the sophistication of the crime and

therefore makes it more cumbersome to solve. Outcomes also seem to be affected by incidents involving serious injury resulting in an increase in the odds of arrest by 28 percent.

Lally and DeMaris (2012) employ marginal logistic regression models using incident-based data from the National Survey of Violence Against Women and Men (1994-1996) in order to examine the impact of legal and extra-legal variables in the likelihood of incarceration. Based on approximately 7,000 cases, researchers find that victim's demographic characteristics have no significant influence on legal outcomes in assault cases. However, data indicate that the probability of arrest is reduced if the victim uses alcohol or the combination of alcohol and drugs at time of assault. Conversely, use of alcohol or drugs by the perpetrators increases probability of arrest. Probability of incarceration is elevated in incidents where males assault females versus cases of male-on-male assaults. Additionally, it appears that police are less likely to make arrests in situations where the victim and perpetrator are intimate partners, relatives, or acquaintances compared with being strangers. And like previous studies have shown, legal variables such as the use of a weapon during the commission of the assault and/or cases where the victim is injured also play a significant role in increasing the likelihood of arrest.

Assault Cases and Likelihood of Charging and Sentencing

The majority of literature that tests the impact of extralegal factors associated with assault cases tends to focus on the arrest stage of the criminal process. Nevertheless, a number of past studies do examine the role of legal and extralegal features at the charging and sentencing phase. Nagel (1969) presents us with an analysis of how class, gender, race, age and education may impact pre-sentencing and sentencing practices involving felony assault cases. Using a 1962 national sample consisting of 846 cases, Nagel reports that defendants who were male, black, or lower class, are more likely to plead guilty or be found guilty, be sentenced to prison, and receive

a longer prison sentence. Those who are under the age of twenty-one or possess less than a high school education are also more likely to plead guilty or be found guilty and sentenced to prison. However, since Nagel fails to employ any test for statistical significance, the generality of his findings to any larger population is unclear.

Pope (1975) examines the judicial practices of 12 California counties and finds that the offender's age, race and gender does not influence charging decisions. Nevertheless, males consistently receive lengthier sentences as compared with their female counterparts. Age and race differences observed at the bivariate level disappear once criminal history is controlled. More specifically, those offenders who are male and have either a criminal record and/or are on some type of judicial supervision (i.e., probation or parole) are the most likely to receive severe sentences. Still, even though Pope did employ a predictive attribute analysis (PAA) model in his assessment, the simple step-wise procedure may not have the predictive power needed to empirically assess the validity of his statements.

Myers and Talarico (1986) report that blacks are actually at *less* risk of receiving a prison sentence than whites with regard to aggravated assault convictions. Researchers came to this conclusion after looking at felony convictions in Georgia from 1976 through 1982. After controlling for gender, age, offense seriousness, and regional SES characteristics, this race effect in sentencing outcomes remains. Nevertheless, Myers and Talarico comment that these findings might be atypical and reflect the regional tendency of leniency towards black offenders.

Testing the liberation hypothesis (the premise that racial discrimination is only manifested in less serious cases), Spohn and Cederblom (1991) examine sentencing outcomes involving violent felony convictions in Detroit, MI. After looking at over 4,600 cases, they come to the conclusion that compared with other more serious violent felonies (i.e., murder, robbery,

sex offenses) assaults seems to be the most susceptible to racial influence. Specifically, black defendants faced a greater risk of incarceration than whites convicted of felony assault. The authors then take a closer look at how race influences sentencing outcomes at varying degrees of seriousness at the offense level. For the purpose of this analysis assault cases were broken down into three categories – prior criminal record, presence of a gun, and relational distance. Results indicate that, “...race was a significant predictor of incarceration for *each* of the less serious conditions but had no effect on incarceration in *any* of the more serious conditions” (Spohn & Cederblom, 1991, p. 320).

Although very little research exists specifically looking at the influence of organizational status in assault cases, Hagan (1999) compares judicial decisions involving both non-violent and violent incidents between individuals and with corporate entities as victims. Cases were gathered from police records in several suburban communities in Toronto Canada spanning 1976 -1977. The sample was eventually narrowed down to 200 individual and 200 corporate victims. After controlling for socio-demographics, perpetrator’s criminal history, and seriousness of offense, Hagan reports that organizational status does play a significant role as a deciding factor in convictions. He writes, “As well, corporate actors [victims] are more likely than individuals to obtain convictions, and, the larger the organization, the greater is the likelihood of conviction” (Hagan, 1999, p. 363). In other words, when the victim is associated with a corporation (e.g., corporate officer or manager) as compared to an unassociated victim, his or her organizational status serves to benefit him or her in legal outcomes.

Steffensmeier and Demuth (2001) look at Pennsylvania sentencing practices from 1991-1994 involving both violent and non-violent cases. Overall, the researchers report that ethnicity does influence the probability of incarceration and length of sentence, specifically favoring white

defendants. With regard to assault, findings indicate that blacks and Hispanics are significantly more likely to receive jail or prison sentences for both aggravated and misdemeanor assault charges than whites. Additionally, this group is at greater risk for longer sentences involving felony assault convictions compared to their white counterparts. However, Steffensmeier and Demuth warn that their results should be interpreted cautiously in that additional information regarding case characteristics might account for the race/ethnicity effects observed.

For example, the cultural emphasis on loyalty and honor among Hispanic males may discourage actions that contribute to sentence “breaks,” such as plea bargaining and providing assistance to law enforcement by informing on criminal associates ... Also, Hispanics may face language barriers that disadvantage them in court proceedings (e.g., not grasping the subtleties of plea negotiation). (p. 167)

Maxwell et al., (2003) investigates the impact that race and age may have on charging and sentencing practices involving violent crimes. Their research utilizes the National Pretrial Reporting Program which tracks felony cases from pretrial release decisions through sentencing. Data from 1990 through 1996 were combined into one dataset ultimately yielding 156,409 weighted cases. With regard to all violent crimes, age of the defendant appears to be inversely related to the probability of being found guilty and to length of sentence.¹⁰ Pertaining to assault, results indicate that Hispanics are more likely to have their charges upheld and remain in custody prior to their trial compared to white defendants. Asians are also more likely to have their initial charge for assault upheld. Blacks are more likely to be found guilty of assault while Hispanics are more likely to receive a prison sentence. Finally, blacks, Hispanics, and Asians are all significantly more likely to receive longer sentences than their white counterparts.

¹⁰ The violent crimes category includes assault, robbery, and murder.

In looking at over 400 domestic violence cases, Dinovitzer and Dawson (2007) find that employment status serves as a significant predictor for the likelihood of incarceration as well as sentencing length. In particular, defendants charged with domestic violence who indicate they are employed are 58 percent less likely to receive a jail sentence than those who are unemployed charged with the same offense. Furthermore, out of those who are employed and receive jail sentences, the terms, on average, are 63 days shorter than for defendants who indicate they are not working at the time.

Caravelis, Chiricos, & Bales (2011) decided to look at the likelihood that perpetrators being charged and sentenced in Florida would receive the enhanced designation of Habitual Offender. To meet the qualifications, offenders must have two or more prior felony convictions, and committed the latest offense either within five years of being placed under the supervision of the Florida Department of Correction or the offender's previous felony conviction date. Subjects who are designated as Habitual Offenders are given lengthier sentences and are less eligible for early release (i.e., must serve minimum term and receive less gain time). In looking at over 26,000 cases involving subjects sentenced to prison from 2002 to 2004, researchers find that blacks have odds of Habitualization 42 percent higher than eligible white defendants in cases of felony aggravated non-physical assaults (involving the threat to use a deadly weapon or intent to commit a felony). However, Hispanics fared worse having odds twice that of whites of being designated as Habitual Offenders in cases of aggravated physical assaults.

Also interested in the role race, age and gender play in the odds of sentencing outcomes for felony assault, Warren, Chiricos, and Bales (2012) utilize data from the Florida Department of Corrections Sentencing Guidelines database. Their sample included 501,027 subjects sentenced in the State of Florida from 2000 to 2006. With regard to jail sentences, in most

observations, there are no significant differences in race/ethnicity, gender, or age except for two categories. After controlling for criminal history and seriousness of offense, it appears that black females ages 18-29 have 36 percent lower odds of being sentenced to jail (as opposed to being sentenced to probation) than black males within the same age group. White females ages 30-69 have 43 percent lower odds of jail time than black males ages 18-29 years. When looking specifically at the likelihood of prison, race, age/ethnicity and gender all play a significant role in felony assault case outcomes. Again, after controlling for criminal history and seriousness of offense, in general, black offenders appeared to have the greatest odds of receiving a prison sentence as compared to whites and Hispanics.¹¹ For all female offenders, there appears to be a direct relationship between age and likelihood of a prison sentence. In other words, the odds of penitentiary time increase as the age of the offender increases. However, for male offenders there is no consistent pattern with regard to age: there is a direct relationship for whites but an inverse relationship for blacks. Finally, females have significantly lower odds of receiving a prison sentence compared with their male counterparts.

In summary, the studies conducted thus far provide mixed results as to the validity of the predictive power of social geometry. Moreover, of those studies that have examined the possible influence of extralegal factors involved in assault cases, none have done so from all five social dimensions and across the full spectrum of the criminal justice process. As such, Black's theory has yet to be systematically tested. However, what these studies do reveal is that legal outcomes are not simply based on judicial guidelines but rather that social status also seems to impact legal response. Furthermore, we can see that in contrast to the argument that the law is being intentionally manipulated in order to retain positions of power by the dominant in society,

¹¹ The exception to this was for one age group (30-69 yrs. old) where black male offenders appeared to have lower odds of prison time as compared with their white and Hispanic counterparts.

support exists for the contrary. Namely, Black's argument that law, in fact, can act as a social equalizer specifically in the case of female offenders and victims providing legal advantage to both compared with their male counterparts, appears to have some support. The next two chapters will explain in detail the strategy I plan to employ in order to provide a methodical and comprehensive analysis of the predictive power of social geometry. Chapter 6 will present the research question and resulting hypotheses that serve to predict the legal outcomes of assault cases based on the assumptions put forward by Black. Chapter 7 follows with a description of the data used for this study as well as the measures and methods employed.

CHAPTER 6: RESEARCH QUESTION AND HYPOTHESES

Research Question

This study assess the independent effects of the five previously discussed dimensions of social geometry (vertical, organizational, normative, cultural, morphological) on the probability of being arrested, charged, convicted, sentenced, and on the length of sentence relating to violent assault cases. Other factors are also tested such as the use of intoxicants and weapons, victim injury, and perpetrator instigation in order to gauge the impact of aggravating and mitigating circumstance related to the application of law. Ultimately, this research asks the question, can Black's theory of social geometry help us understand how social status might influence the adjudication of cases of assault?

Based on the review of previous literature several hypotheses are proposed. The aim of this section is to set forth a set of predictions regarding the relationship that may exist between the five social dimensions (as defined by social geometry) and the application of law. To clarify, the application of law is meant to reflect the administration of legal action at each stage of the criminal justice process. Actions may include arrest by police, charging by prosecutor, conviction by court, sentencing by judge and length of time sentenced. Moreover, by encompassing all stages of the adjudication process, a comprehensive understanding is gained of the system's overall response to incidents of violent assaults based on individual and offense characteristics.

Hypotheses

Vertical Dimension – Income

Hypothesis 1 (H1): There is a positive relationship between the income of the victim and the application of law. The higher the individual income of the victim the higher the likelihood

of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence. Income and social position have a direct relationship in industrial societies. According to the first principle of social geometry downward law is greater than upward law. Recall that this basically translates into the notion that offenses committed against a person of higher social status by someone of lower social status would attract more law (e.g., increased likelihood of arrest, charges, or conviction) than vice versa.

Hypothesis 2 (H2): There is a positive relationship between the joint income of the victim and perpetrator and the application of law. For example, the higher the joint income of a married couple the greater the likelihood of the offending spouse being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence. Again, income acts as a form of social status. High social status dyads attract more law than those at low-status elevations. The fourth principle of social geometry stipulates that the higher the social status of individuals involved in an altercation as a collective group, the greater the likelihood the perpetrator will be penalized.

Organizational Dimension – Location within Organization

Hypothesis 3 (H3): There is an inverse relationship between the hierarchical status distance linking the perpetrator and the victim and the application of law. Perpetrators higher in an organizational chain than the victim are less likely to be arrested, charged, convicted, sentenced to jail/prison or given long sentences as compared with those perpetrators at an equal or lesser status than the victim. Organizational status increases directly according to the number of administrative officers, the centralization and continuity of decision-making, and the quantity of collective action present. The social standing of an organization transfers to its representative based on his or her association and rank. According to the third principle

of social geometry, upward law decreases with vertical distance. The greater the distance in social status the smaller the punitive response will be when the complaint is directed upward.

Normative Dimension – Gender, Age, and Use of Alcohol and/or Drugs

Hypothesis 4 (H4): There is a positive relationship between use of alcohol and/or drugs by the perpetrator and arrest while conversely there is a negative relationship between use of alcohol and/or drugs by the victim and the application of law. There will be an increased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence if they consumed any alcohol and/or drugs immediately prior to the incident. Use of alcohol and/or drugs immediately prior to the incident by the victim will decrease the likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence. Individuals who consume alcohol and/or drugs are considered somewhat socially deviant and therefore less normative.

Hypothesis 5 (H5): There is a positive relationship between the victim being female and the application of law while conversely there is a negative relationship between the perpetrator being female and the application of law. There will be an increased likelihood of the perpetrator being arrested, charged, sentenced to jail/prison or receiving a longer sentence if the victim is female. Conversely, there will be a decreased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence should they be female. The law recognizes that those who are dependent on others, (i.e., women, children, elderly, and disabled) have less access to other forms of social control causing the law to “step in” to balance the equation. Consequently, these individuals attract less law as offenders and more as victims.

Hypothesis 6 (H6): There is a positive relation between the age of the victim and the application of law. The likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence will increase with the age of the victim. Again, social geometry postulates that the law acts as a balancing agent restoring control to those who are dependent on others and have less access to other forms of social control. Since the elderly are considered a vulnerable segment of the population, assaults against older members of society would receive greater legal attention (i.e., enhanced punitive response towards perpetrators) than those cases involving younger victims.

Cultural Dimension – Race and Education

Hypothesis 7(H7): There is a negative relationship between the victim being nonwhite and the application of law. There will be a decreased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison and or receiving a longer sentence if the victim is not white. Cultural integration advances one's social status. As previously suggested language, lifestyle, and religion serve as measures for gauging one's degree of integration. As in other dimensions, law is directed to a greater extent against those who are perceived as less conventional. Social geometry asserts that race also serves as a form of conventionality. Therefore, minority victims will receive less attention from the law than their white counterparts.

Hypothesis 8 (H8): White victims battered by nonwhite perpetrators will attract more law than other victim-perpetrator profiles. There will be an increased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence if the victim is white and the perpetrator is nonwhite. As previously indicated, minorities are perceived as less conventional. Law is directed against those who are perceived as less

conventional. In line with the first principle of social geometry, downward law is greater than upward law. Therefore offenses committed against whites by nonwhites would attract more law than vice versa.

Hypothesis 9 (H9): There is a positive relationship between the education of the victim and the application of law. The higher the individual education of the victim the higher the likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence. Education also serves as an indication of conventionality resulting in a greater legal response for victims of assault in relation to the years of education they received.

Morphological Dimension – Radial and Relational Elements

- Radial Element – Marital Status, Employment, Children

Hypothesis 10 (H10): There is a positive relationship between the degree of integration of the victim and the application of law. Social integration is a form of status and is acquired through participation in social rituals, norms and customs. The more integrated into society a victim is, as demonstrated by being married, employed, and parents, the greater the likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence.

- Relational Element – Relational Distance

Hypothesis 11 (H11): There is a positive relationship between relational distance and the application of law. When comparing the probability of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence between that of relatives, romantic partners, acquaintances, and strangers; the greater the relational distance the greater the likelihood of a punitive response. This is based on the premise that social

geometry works within an environment which seeks to maintain a balance of the various forms of social control. Since law is a form of social control, it varies with other forms of social control (such as non-legal authority or informal social control). In cases where informal social control is strong, law will be weak and vice versa. Black (1976) theorizes that informal social control increases concomitantly with the degree of familiarity between two subjects. As a result, as relational distance increases, so, too, the likelihood that law will intervene and the greater the penalty.

While previous research indicates that there may be evidence for a social-status effect involving assault case outcomes, what does exist is relatively limited to a few stages of the adjudicative process. The hypotheses outlined in this chapter are designed to serve as testable propositions for social geometry's argument that the inclusion of social dimensions in legal decision-making is not only a function of the criminal justice process at particular stages but systemic as well. The following chapter will outline how I proceeded with the empirical assessment of the proposed hypotheses. In Chapter 7, I provide an overview of the data used for this study and describe the methods and measures employed in the analysis. By way of explanation, this section will describe what approaches were used to answer the research questions, detail how they were accomplished, and give justification for the experimental design.

CHAPTER 7: DATA, MEASURES, AND METHODS

Data

Data are from the survey of Violence and Threats of Violence Against Women and Men in the United States, 1994 – 1996 (NVAWS hereafter). Conducted in 1995-96, the survey involved telephone interviews with a national probability sample of approximately 8000 English-speaking women and men aged 18 and older residing in households throughout the United States. Respondents were asked about their general fear of violence and ways in which they managed those fears, emotional abuse on the part of marital or cohabiting partners, and incidents of actual or threatened violence experienced by all types of perpetrators. Those disclosing victimization were asked more detailed questions about the characteristics and consequences of those experiences. Although the household participation rate was 72.1 percent, once the interview was begun, fully 97 percent of respondents completed it (Tjaden & Thoennes, 1999).

Measures

Outcome Variables

Many factors can come into play as an event progresses. Moreover, some research suggests that if extra-legal factors are present in legal decision-making, influence is strongest at earlier stages of the legal process (see Mears, 1998; Piehl & Bushway, 2007; Thaxton, 2007). Therefore, an analysis that stretches over several stages of the criminal justice process will be more revealing than simply focusing on one. With this in mind, the current study looks at legal outcomes beginning at the decision to arrest through subsequent stages of adjudication. This is done from several observational points. Initial analyses examine the impact of social geometric and jurisprudential variables on the overall criminal justice response to allegations of assault. Then, in order to gauge the validity of the argument that non-legal variables may play a larger role at

earlier stages in the process, analyses are broken down into three distinct phases – arrest, charging, and judicial. The following is a more detailed discussion of each dependent variable.

Graduated legal response. I begin by looking at how the law responds to assault cases across the progressive stages of the justice process by employing an ordered regressand. Specifically, the response variable is a measure of involvement of the perpetrator in the increasing punitive phases found within the criminal justice system that are set into motion once an allegation of an offense has been made. In order to measure the degree to which the law may respond, given the characteristics of the case and actors, the variable consists of the ordered categories of *no arrest* coded as 0, *arrest* coded as 1, *charge* coded as 2, *conviction* coded as 3, *sentenced* coded as 4, *jail* coded as 5, and *prison* coded as 6. This coding format is used for discussion of the descriptive statistics as well. However, for theoretical presentation of the ordered logit model we need to think of the dependent variable in terms of reverse coding. This is because ordered logit models employ cumulative logits that are set up to predict the odds of a lower, vs. higher response value, with different cutpoints denoting what “lower vs. higher” means. Therefore, results report the odds of a more intense, vs. a less intense penetration into the system based on the regressors in the model.¹²

Arrest. The decision to arrest represents a sanctioned use of force to deprive one of their liberties under authority empowered by government. Law prescribes that when an officer establishes probable cause corroborating that a person has committed an offense, official action may take place. In turn an arrest sets the stage for the next step of the justice process –charging. In other words, the decision to arrest signifies the initial step into what possibly may continue onto a much more extended legal process. Yet, the question remains as to the degree to which

¹² Even though the actual coding of the GLR dependent variable does not reverse (i.e., from 0 → 6 to 6 → 0) in SPSS it does so in SAS.

extra-legal factors influence the decision to arrest. A dummy variable is created to measure if the perpetrator of a particular physical assault was arrested as indicted by the victim and coded 1 (*yes*) and 0 (*no*).

Charged. Once an arrest has been made the criminal process progresses to the charging phase where a formal accusation is rendered by a government official (usually a prosecuting representative) asserting that the arrestee has committed a specific crime. However, the charging phase is not simply a continuation of the arrest process but rather a separate and distinct segment of the criminal justice process where allegations are weighed against the standard of probable cause. Nevertheless, similar to the decision by officers to arrest, prosecutors may be influenced by the social characteristics of the actors involved over, or in conjunction with, jurisprudential elements. A dummy variable is used to measure whether or not the perpetrator of a particular assault was charged as indicted by the victim and is also coded 1 (*yes*) and 0 (*no*).

Judicial. Once official charges have been filed criminal prosecution continues into the court system, the outcome of which concludes in a judgment of guilt or innocence. For cases where the perpetrator has been adjudged guilty and a conviction is rendered, the court's next responsibility is to levy a punitive response. Sentencing options for persons found guilty of assault range from financial penalties, restitution, and community service to court supervision, probation and incarceration (McClure & Eimermann, 2012). For the purposes of this study sentencing and incarceration term are separate and distinct verdicts. Here, sentencing refers to whether or not the perpetrator was sentenced to jail or prison. However, that sentence may be probated for a period of time (i.e., community service/probation) resulting in no actual time incarcerated. Length of incarceration or actual jail/prison sentence received is reflected as a higher assigned value within the *judicial* dependent variable. So in order to see how likely one is

to progress from one level of the judicial process to the next the judicial variable consists of the ordered categories of *no conviction* coded as 0, *conviction* coded as 1, *sentenced* coded as 2, *jail* coded as 3, and *prison* coded as 4. Yet again, as in the case of my discussion on the *graduated legal response* variable, we need to think of the dependent variable in terms of more intense, vs. a less intense penetration into the system.

Explanatory Variables

In order to test the validity of Black's predictions, dimensions were tapped through the use of social components reflecting those dynamics prescribed by social geometry. As such, variables were selected according to the social dimensions they represent (see the paragraph headings below). Since certain information on the perpetrator was only gathered for instances of domestic violence (spouses or domestic partners), a separate analysis is also conducted allowing observation of how two differing social positions, within various social dimensions, can affect legal outcomes.

Vertical. *Perpetrator's income, Victim's income, and Family income:* Respondent's personal income, the perpetrator's personal income and reported household income were originally grouped into 10 categories ranging from under \$5,000 to \$100,000 and over. Midpoints are set for each category and divided by 1,000. Income is then used as a continuous measure.

Organizational. *Authority:* Society consists of many informal hierarchical dyadic relationships. This includes boss/subordinate, doctor/patient, teacher/student, clergy/parishioner, etc. Within these interactions there exists a status imbalance allotting one greater social standing than the other based on their role and association with the organization they represent. In other words, society endows a degree of authority to persons who are central to the organization they

represent (Baumgarnter, 1999). The victim's hierarchical position within these dyadic relationships as compared with the perpetrator's is tapped by a dichotomous variable coded as 1 (*perpetrator in position of authority*) and 0 for (*perpetrator not in position of authority*).

Normative. *Gender of victim:* The gender of the victim is measured through a dummy variable coded as 0 (male) and 1 (female). *Gender of perpetrator/victim:* The combination of gender of the perpetrator and gender of the victim was tapped with three dummy variables identifying a male assaulting a female, a female assaulting a female, and a female assaulting a male (a male assaulting a male was the reference group). *Substance use:* The influence of substance use, at the time of assault, is investigated through a series of dummy variables identifying whether the perpetrator had recently consumed alcohol, drugs, or both (not using a substance is the reference category). Analogous dummy measures were created for the victim's recent substance use. *Victim's Age:* Only respondents 18 years or older were surveyed. Ages range from 18 through 91 and are coded as continuous. *Perpetrator's age:* Data on the perpetrator's age is only available for current domestic partners. Ages also range from 18 through 91 and are coded as continuous.

Cultural. *Victim's race:* In order to gauge the impact of race and ethnicity separately, race of the victim is tapped by creating a dummy variable indicating if the victim was black non-Hispanic (coded 1) or white non-Hispanic (coded 0). *Victim's ethnicity:* Ethnicity of the victim is also represented as a dummy variable and coded 1 for Hispanic or 0 for non-Hispanic. *Race of partner/victim:* When just looking at the incidents of domestic assaults, the number of cases drops to 534. Therefore, in order to avoid issues with low cell counts the combination of race/ethnicity of partner with race/ethnicity of victim is tapped with three dummy variables. Categories created are nonwhite assaulting white non-Hispanic, nonwhite assaulting nonwhite,

white non-Hispanic assaulting nonwhite, and white non-Hispanic assaulting white non-Hispanic (reference category).

Victim's education: For victim's education, midpoints are calculated and assigned as 0 (*no schooling*), 4 (*1st-8th grade*), 10 (*some high school*), 12 (*high school graduate*), 14 (*some college*), 16 (*four-year college degree*), and 18 (*postgraduate*), then treated as continuous in the models.

Morphology. *Married:* The victim's marital status was collapsed into a dichotomous variable coded as 1 (*married*) and 0 (*not married*). *Children:* This variable was collapsed into a dichotomous variable coded as 1 (*had children under 18 yrs*) and 0 (*did not have any children under 18 yrs*). *Employed:* Employment status was collapsed into a dichotomous variable, coded as 1 (*currently employed*) and 0 (*not currently employed*), with the former including full-time and part-time workers as well as those in current military service. The "not currently employed" category includes those who were looking for work, the retired, students, homemakers, and others. *Employment partner/victim:* Looking at violence in current domestic relations I utilize the same employment definitions when combining employment status of the domestic partner with employment status of the victim. This is tapped with three dummy variables: employed assaulting non-employed, non-employed assaulting employed, and non- employed assaulting non-employed (employed assaulting employed serves as the reference category).

Relationship to perpetrator: Three dummy variables classify victim-perpetrator incidents by relationship. Here, I am testing how police practices vary by the perceived presence of informal social control within the dyad. Created are three variables representing different levels of familiarity; including romantic, relative, and acquaintance relationships (stranger is the

reference category). Romantics include those who are current or past: spouses, cohabiting, or dating partners. Relatives include nuclear and extended family members.

Jurisprudent Variables

While the primary interest of this study centers around the effects of social dimensions on the likelihood of legal response and to what degree, jurisprudential influences are also considered in view of the fact that they too most likely impact legal response. Furthermore, these measures permit us to separate the effects of socio-demographics from related situational characteristics thus allowing us to test certain aspects of the jurisprudence model (Benson, Fox, DeMaris, & Van Wyk, 2003).

Perpetrator initiated: A legal consideration in assault cases is who initiated the incident. Many, if not most, states recognize the right for people to defend themselves to a degree. As a key legal consideration, it is important that this aspect be accounted for in the analysis. This is tapped by creating a dummy variable coded 0 (victim initiated) and 1 (perpetrator initiated).

Weapon used: A common aggravating factor associated with enhanced penalties is the use of a weapon by the perpetrator during the assault. A dummy variable was created coded 0 (no weapon used) and 1 (weapon used). *Public location:* Like weapon use, assaults that take place in public locations aggravate the offense. This is usually based on the argument that it represents a greater breach of civil peace. Respondents are given a list of possible locations where they were assaulted. These locations are then collapsed into non-public (coded 0) and public (coded 1) locations. *Injury:* Assaults that result in physical injury to the victim usually result in enhanced penalties. Furthermore, injury resulting in the need for immediate medical intervention is deemed especially egregious (Englander, 2007; Friedman, 1985; Gardner & Anderson, 2012). To tap the possible impact of the degree of injury, two dummy variables are created - *Injury not requiring*

immediate treatment and *Injury requiring immediate treatment*. Victim not injured serves as the reference category. In looking at domestic assaults, I simplify the question as to whether or not the victim was injured. This is due to low cell counts not allowing for the same breakdown with injury as in the general assault models. Again, a dummy variable is constructed by coding it 0 (victim not injured) and 1 (victim injured).

Methods

Data Setup

For this analysis, female and male responses were combined into one dataset to allow for the testing of possible gender influences. Also, since the scope of this study involves examining legal response to assaults the cases here are restricted to those who indicated they had been victims of a battery as an adult. This, in turn, produces 5,653 victim cases. Each victim could contribute up to six physical assault incidents to the dataset. As described in the dataset documentation (Tjaden & Thoennes, 1999), if a victim was assaulted multiple times by the same perpetrator, only the most recent assault was described. Even though not explicitly stated in the documentation for the dataset, it is assumed that all incidents described by victims began with the most recent incident and ended with the most distal one. However, multiple incidents were relatively rare. For example, all 5,653 victims contributed at least one incident, but only 1,020 victims contributed at least two incidents. Only 6 victims reported 6 incidents of physical assault. Based on the comparatively low number of multiple assaults reported by the same victim, the unit of analysis will remain person-level as opposed to incident-level, and will only incorporate the most recent account. Furthermore, in order to perform an analysis that accurately reflects a graduated legal response the point of observation must begin with the decision to arrest or not. This can only be done by restricting cases to incidents that began with police being called to the

scene of the assault resulting in a final *N* of 1,405 cases consisting of 575 female and 830 male victims.

Statistical Analysis

Initial analyses focus on two areas – general assault cases and interpersonal violence in the current intimate relationship. That is to say, the study will incorporate responses from victims reporting general physical assaults and a separate analysis involving just those who specifically report violence within their current intimate relationship. The decision to conduct a separate analysis on domestic assault cases is based on the fact that demographic information (other than gender) on the perpetrator is only available in cases where respondents had indicated violence within their current intimate relationship. Both general and domestic analyses estimate ordered logit regression models for the likelihood of progressing from one stage of criminal justice process to the next, beginning with arrest and moving through the charging, conviction and sentencing phases.

Even though my primary interest in this study is to identify the ways in which geometric and jurisprudential variables affect the overall legal response to assault cases, I employ a secondary analysis to better understand how and where these same variables play a role at distinct phases of the criminal justice process (i.e., arrest, charging and judicial stages). This provides a more complete picture of the practices taking place within the decision-making process and how trends may vary from one stage to the next.

Graduated legal response in assault cases. In the first analysis I examine the graduated legal response (GLR) to general assault cases based on demographic information and social dimensions as proposed by Black. In addition, the influence of jurisprudential agents, or those legally recognized elements which act as aggravating factors, is also explored. In order to assess

the extent to which law responds based on social geometric and jurisprudential factors, an ordered regressand was created by ranking punitive action ranging from no arrest through prison sentence. An ordered logit regression analysis is carried out consisting of a series of three progressive models starting with demographic and social geometry variables followed by the addition of jurisprudential elements and finally possible interaction effects between selected geometric and jurisprudential elements.

Since the outcome variable (GLR) represents different degrees of legal response, ranging from no arrest to prison, I chose to treat it as ordinal in nature. Based on the ordered values present in the regressand, the model best suited for analysis is the ordered logit model, a variant of logistic regression (DeMaris, 2004). Here I present the ordered logit regression model used to estimate the log odds of graduated legal response in cases of general physical assault:

$$\text{Log } O_{\leq j} = \beta_0^j + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_k X_k$$

Effects are interpreted in the same manner as with binary logistic regression. However, the outcome is the log odds of greater legal response vs. lesser. In particular, what I am looking at is the log odds of a perpetrator experiencing greater vs. lesser penetration into the criminal justice system. Greater vs. less penetration is determined by a set of cutpoints for the dependent variable. With multiple response categories (> 2), the effect of x_k causes a change in the odds of belonging to group 1 vs. 2 and 3 and... J or 1 and 2 vs. 3 and... J . The model allows me to see how particular variables influence the odds of greater, vs. lesser, penetration into the criminal justice system. This is accomplished by employing $J-1$ bifurcations of Y allowing us to gauge the probability of being lower on Y (the sum of the probabilities that $Y \leq j$) compared with the probability of being higher on Y (the sum of probabilities that $Y > j$) (DeMaris, 2004). To better

illustrate this I explicate an ordered logit model by employing some of the regressors from the GLR model.

$$\begin{aligned}
 \text{Log } O \leq 0 &= \beta_0^0 + \beta_1 \text{AGE} + \beta_2 \text{EDUCATION} + \beta_3 \text{EMPLOYED} + \varepsilon \\
 \text{Log } O \leq 1 &= \beta_0^1 + \beta_1 \text{AGE} + \beta_2 \text{EDUCATION} + \beta_3 \text{EMPLOYED} + \varepsilon \\
 \text{Log } O \leq 2 &= \beta_0^2 + \beta_1 \text{AGE} + \beta_2 \text{EDUCATION} + \beta_3 \text{EMPLOYED} + \varepsilon \\
 &\vdots \\
 \text{Log } O \leq 5 &= \beta_0^5 + \beta_1 \text{AGE} + \beta_2 \text{EDUCATION} + \beta_3 \text{EMPLOYED} + \varepsilon
 \end{aligned}$$

A similar ordered logit regression analysis is carried out involving only domestic violence cases in order to better gauge possible interactions between partners' social status and legal outcomes. Here the ordered regressand is the same as the one employed in the general assault model. However, a different approach is taken in analytical design. Recall that information on certain perpetrator characteristics (e.g., employment status, race, income, age, etc) is only available on current domestic partners. This provides for an opportunity to take a closer look at the potential effects that disproportionate social positioning within a relationship may have on legal outcomes. Three progressive models are used beginning with a look at how employment status (morphological dimension) and race (cultural dimension) influence the likelihood of perpetrators of assault progressing from one legal stage to the next.

The next model adds the combination of victim and perpetrator incomes (vertical dimension) and ages (normative dimension). Here I employ DeMaris's (2007) level-polarity-disparity scheme. To test for the effects of a disproportion in income among domestic partners on the GLR, I use domestic partners' average income (level), the absolute difference in domestic partners' level of income (disparity), and a dummy variable for the perpetrator earning a higher income than the victim (polarity). I also include a term representing the interaction between income disparity and if the perpetrator earns a higher income. A similar approach is used for age.

The third model adds the two most commonly used aggravating jurisprudence variables – use of a weapon and injury. Again, due to the low cell count, injury was condensed into a dummy variable flagging incidents where the victim indicated he or she had been injured during the assault.

It should also be noted that normally a test of the proportional odds assumption is conducted when using ordered logit models. Unfortunately, in using multiple imputation to replace missing values, a test of parallel lines is not legitimate because the resulting distribution of the average test statistics is unknown.

Delineated legal response in assault cases. Following the general analyses I present a breakdown of assault cases at key stages of the justice process. As previously discussed, some researchers suggest that extra-legal factors have their greatest influence at early stages of the adjudication process (i.e., arrest and charging). To test this, I begin by presenting the results of three logistic regression analyses concerning arrest practices in general assault cases. This is followed by three similar logistic regression models examining charging decisions. Finally, three ordered logit regression models designed to evaluate the legal response found at the judicial level are presented. Each analysis consists of three progressive models. Social geometric and general demographic variables are initially introduced in the first model, followed by the addition of jurisprudential variables in the second model, and eventuating in the third model where interactions between extralegal and legally recognized jurisprudential variables are considered.

With regard to the first two delineated models (arrested and charged), binary logistic regression is best suited to estimate the probability of an event when the regressand is dichotomous (DeMaris, 2013). Although a full comparative analysis between linear and logistic regression models is beyond the scope of the study, it is important to note that there are inherent

problems when applying a linear probability model to a dichotomous dependent variable - namely, heteroscedastic errors (nonconstant error variance) and incorrect functional form. (For a more in-depth discussion on this issue see DeMaris, 2013). Below I present the binary logistic regression model used to estimate the log odds of arrest in cases of general physical assault:

$$\pi = \frac{e^{\beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_K X_K}}{1 + e^{\beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_K X_K}}$$

With binary logistic regression the outcome is usually coded as "0" or "1" allowing for easier interpretation. In the case of dichotomous response variables, we interpret the marginal effect of x_k as the expected change in the odds of belonging to group 1 vs. 2, (or in this case 1 vs. 0), which is the multiplicative effect, $\exp(\beta)$, given a unit change in the predictor (Liao, 1994). The notation π represents the mean of a dummy coded variable corresponding to the proportion of the people in the category of interest (i.e., arrest or charged). The notation e represents the exponentiation of the linear predictor $\beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_K X_K$. By adding the denominator $1 + e^{\beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_K X_K}$ we are normalizing the equation and thereby constraining π to fall between zero and one, correcting for the problems associated with using a linear probability model for a dichotomous regressand. Here I estimate a logistic regression model for arrest as a function of age, education and employment.

$$\pi = \frac{e^{\beta_0 + \beta_1 \text{AGE} + \beta_2 \text{EDUCATION} + \beta_3 \text{EMPLOYMENT}}}{1 + e^{\beta_0 + \beta_1 \text{AGE} + \beta_2 \text{EDUCATION} + \beta_3 \text{EMPLOYMENT}}}$$

Missing data. Missing data are replaced using Rubin's (1987) multiple imputation (MI) procedure. Regressions are run on the same dataset multiple times after which the imputed datasets are analyzed separately allowing for the results to be averaged. For the purpose of this research a minimum of 10 imputations are generated from which results are pooled. Linear

regression methods are used to impute scale variables while logistic regression equations are used to impute nominal variables. The general idea is to impute incomplete variables one at a time using the stand-in variable from one step as a predictor in all following steps. In effect, MI is attempting to simulate both the process producing the data and the uncertainty associated with the parameters of the probability data distribution.

Imputation is preferred over listwise deletion because no units are lost. In other words, analysis can be carried out using larger more complete datasets which in turn avert loss of power resulting from a diminished sample size (Schafer & Graham, 2002). With regard to simple vs. multiple imputation, MI provides better estimates of missing values by way of employing more rigorous diagnostic methods. Simple imputation substitutes a value for each missing value usually using either the variable's mean based on complete cases or imputed from the mean conditional on observed values of other variables. MI maintains the same advantage as single imputation over listwise deletion by employing a conditional distribution, but in addition MI solves the problem of understating uncertainty. Yuan (2000) explain why this is the case.

[Single imputation] treats missing values as if they were known in the complete-data analyses. Single imputation does not reflect the uncertainty about the predictions of the unknown missing values, and the resulting estimated variances of the parameter estimates will be biased toward zero. Instead of filling in a single value for each missing value, a multiple imputation procedure... replaces each missing value with a set of plausible values that represent the uncertainty about the right value to impute. (p. 1)

The survey chosen for this study affords a unique opportunity to look at how individual and dyadic characteristics affect the criminal justice adjudication process involving incidents of assault. Measures and methods chosen allow for a detailed examination of the influence of both

geometric and jurisprudential variables. Chapter 8 presents the results of two ordered logit analyses looking first at the overall general legal response to assault cases followed by a more focused observation of legal outcomes involving domestic violence.

CHAPTER 8: RESULTS FOR GRADUATED LEGAL RESPONSE

In the following analysis, I examine the graduated legal response to assault cases based on general demographic information and social dimensions as proposed by Black. In addition, the influence of aggravating contextual agents (legally recognized) is also explored. Recall that in order to assess the extent to which law responds based on social geometric and jurisprudential factors, an ordered regressand was created by ranking punitive action ranging from no arrest through prison sentence. This section begins by looking at the descriptive profile of the variables of interest involved in the general assault analysis. This is followed by the results of an ordered logit regression analysis consisting of a series of three progressive models starting with demographic and social geometry variables followed by the addition of jurisprudential elements and finally possible interaction effects. A similar analysis is carried out involving only domestic violence cases in order to better gauge possible interactions between partners' social status and legal outcomes. Here too, a descriptive profile is presented followed by results of an ordered logit regression analysis. Finally, the section closes with a brief discussion of an analysis conducted testing Black's proposed organizational dimension.

Descriptive Profile for Incidents of General Assault

Table 1. displays the range, means and standard deviations for the independent and dependent variables of interest. Recall that the coding used for all descriptive results progresses from 0 = no arrest, 1 = arrest up to 6 = prison. As indicated, 37.8% of assaults reported to police resulted in an arrest, while 28.9% were charged. Of those cases that advanced to the judicial stage, the average outcome was between conviction and some type of sentencing (1.519) including deferred sentences such as in the case with probation. In total, the mean legal response (GLR) did not equate to much over arrest (1.092). The gender breakdown of respondents was

approximately 59% male and 41% female with the average age just over 40 yrs. The majority of victims were white non-Hispanic (75.7%) followed by black non-Hispanic (11.6%) and Hispanic (7.3%). Victims reported an average education of just under 2 years of college and were typically employed at least part-time. The average income for victims was a little over \$31,000 individually and slightly over \$50,000 for the household. Over half of the victims were married and/or had children at 57.5% and 52.6% respectively. Perpetrators were reported as having consumed alcohol or drugs during the incident more often than the victim. Conversely, results indicate that perpetrators and victims consumed the combination of alcohol and drugs at similar rates during the assault. Some form of weapon was involved in 40.7% of the assaults. Additionally, 9.4% resulted in injury to the victim where no immediate treatment was needed compared with 11.1% who sought and received treatment immediately after the assault. Data show that perpetrators tended to initiate physical contact 94.1% of the time while 40% occurred in a public setting. Male-on-male violence accounted for the majority of the attacks (53.5%), followed by male-on-female (37.5%), female-on-male (5.8%), and finally female-on-female (3.3%). The most prevalent form of relationship between the perpetrator and the victim was that of stranger (49.2%), followed by romantic (34.9%), acquaintance (13.6%), and relative (2.3%).

Multivariate Results for Incidents of General Assault

Coefficient estimates and standard errors for the ordered logit models analyzing graduated legal response to general assaults are reported in Table 2. Model 1 presents the main-effects for the vertical, normative, cultural, and morphological social geometric dimensions as well as general demographics.

Table 1. Descriptive Statistics for Study Variables involving General Assault

Variable	Range	M	SD
<i>Official Response</i>			
Arrest	0-1	0.378	0.485
Charge	0-1	0.289	0.453
Judicial ^a	0-4	1.519	1.500
Graduated Legal Response ^b	0-6	1.092	1.641
<i>Victim</i>			
Age	18-85	40.029	12.635
Gender ^c	0-1	0.409	0.492
White/NH ^d	0-1	0.757	0.429
Black/NH	0-1	0.116	0.320
Hispanic	0-1	0.073	0.261
Education	0-18	13.619	2.543
Employed	0-1	0.733	0.443
Income	2.5-125	31.188	25.255
Family Income	2.5-125	50.141	31.175
Married	0-1	0.575	0.495
Children	0-1	0.526	0.500
Consumed ^e			
Alcohol	0-1	0.154	0.362
Drugs	0-1	0.011	0.104
Both	0-1	0.007	0.081
<i>Perpetrator</i>			
Consumed ^e			
Alcohol	0-1	0.482	0.500
Drugs	0-1	0.074	0.262
Both	0-1	0.007	0.081
<i>Jurisprudent Characteristics</i>			
Perpetrator initiated	0-1	0.941	0.235
Weapon used	0-1	0.407	0.492
Victim injured ^f			
Not requiring immediate treatment	0-1	0.094	0.292
Requiring immediate treatment	0-1	0.111	0.315
Public location	0-1	0.400	0.490
<i>Assaults by GenderMix</i>			
Male assaulting male ^d	0-1	0.535	0.500
Male assaulting female	0-1	0.375	0.484
Female assaulting female	0-1	0.033	0.178
Female assaulting male	0-1	0.058	0.233
<i>Assaults by Relationship</i>			
Romantic relationship	0-1	0.349	0.477
Relative relationship	0-1	0.023	0.152
Acquaintance relationship	0-1	0.136	0.343
Stranger relationship ^d	0-1	0.492	0.500

Note: N = 1,405

^a 0 = no conviction, 1 = conviction, 2 = sentenced, 3 = jail, 4 = prison.

^b 0 = no arrest, 1 = arrest, 2 = charge, 3 = conviction, 4 = sentenced, 5 = jail, 6 = prison.

^c 1 = female.

^d Reference category.

^e Not consuming substances is reference group.

^f Victim not injured is reference group.

The degree of legal response is largely unaffected by the victim's demographic characteristics except in the case of Hispanics.¹³ Here we can see that Hispanics victims tend to be less likely to see their batterer progress through the legal system as compared with white victims. This effect suggests that the odds of a perpetrator advancing from one level of the legal process to the next is approximately 40% ($\exp[-.520] = 0.595$) lower for those who assault Hispanics compared to white victims, other things being equal. The amount of legal response was also reduced if the victim indicated that he or she had been consuming alcohol at the time of the assault. Here we see that victims who had been drinking alcohol resulted in a 40% ($\exp[-.508] = 0.602$) reduction in odds of legal action compared to their abstemious counterparts. In contrast, the perpetrator's condition does not seem to rise to the level of significant influence. As predicted, females who assault males have approximately 56% ($\exp[-.831] = 0.436$) lower odds of advancing through the legal system as compared with males who assail other males. Finally, when looking at relationship categories, data indicate that assaults committed within romantic relationships have roughly 43% ($\exp[-.569] = 0.566$) lower odds of attracting legal action than the same act committed by strangers.

Model 2 adds legally relevant factors that directly relate to the seriousness of the offense.

Of those presented, only the use of a weapon by the perpetrator seems to have any significant

¹³ It should be noted that although individual and family income are presented together in the tables, analyses were run both ways (i.e., employing them separately and together within the models). In all cases, income (individual and family) never reached significant levels.

influence in the overall legal process. Committing a battery through the use of a weapon increases the odds of official response by 34% ($\exp[.291] = 1.338$) or one-third. When looking at the complete criminal justice process, elements of the crime that include perpetrator initiation, injury to the victim, and location, do not appear to have a significant impact on the outcome. What should also be noted is that even after the addition of the jurisprudential variables, the effect of the social geometric variables remained relatively unchanged and significant.

Model 3 adds terms representing the possible interaction between extralegal and legally recognized contextual variables. The first interaction involved the creation of a two-way cross-product term that contained the variables for *victim alcohol consumption* and the *use of a weapon* by the perpetrator. This was used to determine if the condition of the victim influenced the effect of weapon use. In addition, three two-way cross-products were introduced into the full model representing the possible interaction between the *victim – perpetrators gender mix* with *public location of assault*. This was to evaluate if effects seen in the gender mix were conditioned by location. For example, was the law more likely to react to females assaulting males if the act took place in public? However, none of the interaction terms reaches significance at conventional levels.

Model Assessment Using Pseudo R-Squared.

In order to assess the discriminatory power of the models, two options are available -both R-squared analogues. When utilizing any form of logistic regression analysis it should be noted that an equivalent statistic to R-squared does not exist. This is because the resulting model estimates from logistic regression analyses are maximum likelihood estimates produced through an iterative process (Long, 1997). Given the fact that pseudo R-squareds are not calculated to minimize variance, the standard OLS approach to goodness-of-fit is not applicable. However, as

a means of assessing a model's predictive power, several pseudo R-squareds have been developed. Arguably one of the best suited analogs for binary responses is Nagelkerke's R^2 . This is based on two key properties. First, it is nondecreasing in x meaning that its value will not decrease as regressors are added to the model. Second, and more importantly, it is scaled to ensure that the response lies between 0 and 1. (For a more in-depth discussion on the use of R-squared analogues see DeMaris, 2004). Because I am using pooled data from imputed datasets, I average the pseudo R-squared values based on the number of imputations run (10). Additionally, since Nagelkerke's R^2 only has meaning when compared to another Nagelkerke's R^2 (using the same data and predicting the same outcome) I employ it within analyses to gauge which model better predicts the outcome. When only controlling for social geometric variables, Model 1 reports a pseudo R-squared value of 0.058. This value increases to 0.067 when jurisprudential variables are added in model 2. The addition of interactive terms in Model 3 indicates a nominal increase in the pseudo R-squared value of 0.001. Results indicate that the best predictor of legal response to assault cases involves the inclusion of both social geometry *and* jurisprudential considerations.

Table 2 Ordered Logit Regression (Standard Errors) Models of the Log Odds of Graduated Legal Response involving General Assault Cases^a

Predictor	Model 1	Model 2	Model 3
Intercept	-0.453 (0.449)	-0.487 (0.475)	-0.467 (0.476)
Intercept ₁	0.289 (0.448)	0.259 (0.474)	0.280 (0.475)
Intercept ₂	1.018 (0.449)*	0.992 (0.475)*	1.014 (0.477)*
Intercept ₃	1.607 (0.451)***	1.583 (0.478)**	1.605 (0.479)**
Intercept ₄	1.936 (0.454)***	1.912 (0.480)***	1.934 (0.482)***
Intercept ₅	2.474 (0.461)***	2.453 (0.487)***	2.476 (0.489)***
<i>Victim</i>			
Age	0.000 (0.005)	0.000 (0.005)	0.000 (0.005)
Black/NH ^b	0.076 (0.170)	0.040 (0.172)	0.041 (0.172)
Hispanic ^b	-0.520 (0.226)*	-0.514 (0.228)*	-0.522 (0.228)*
Education	-0.023 (0.024)	-0.023 (0.025)	-0.023 (0.025)
Employed	-0.060 (0.133)	-0.059 (0.134)	-0.068 (0.136)
Income ^c	-0.005 (0.004)	-0.005 (0.004)	-0.005 (0.004)
Family Income ^c	0.000 (0.003)	0.000 (0.003)	0.000 (0.003)
Married	0.149 (0.122)	0.153 (0.123)	0.147 (0.123)
Children	-0.026 (0.124)	-0.006 (0.124)	-0.001 (0.124)
Using alcohol ^d	-0.508 (0.166)**	-0.513 (0.172)**	-0.518 (0.173)**
Using drugs ^d	-0.003 (0.484)	-0.057 (0.467)	-0.044 (0.466)
Using both ^d	-0.781 (0.700)	-0.862 (0.721)	-0.849 (0.723)
<i>Perpetrator</i>			
Using alcohol ^e	0.204 (0.239)	0.193 (0.256)	0.241 (0.290)
Using drugs ^e	-0.446 (0.341)	-0.478 (0.354)	-0.494 (0.364)
Using both ^e	0.353 (0.288)	0.296 (0.295)	0.302 (0.291)
<i>Assaults by Gender Mix^f</i>			
Male assaulting female	0.119 (0.206)	0.132 (0.210)	0.125 (0.245)
Female assaulting female	-0.446 (0.326)	-0.396 (0.334)	-0.215 (0.448)
Female assaulting male	-0.831 (0.338)*	-0.833 (0.340)*	-0.862 (0.375)*

Table 2 cont.

<i>Assaults by Relationship^g</i>			
Romantic relationship	-0.569 (0.242)*	-0.615 (0.249)*	-0.598 (0.252)*
Relative relationship	-0.016 (0.382)	-0.096 (0.389)	-0.104 (0.388)
Acquaintance relationship	0.093 (0.170)	0.079 (0.172)	0.084 (0.172)
<i>Jurisprudent Characteristics</i>			
Perpetrator initiated		-0.124 (0.232)	-0.135 (0.232)
Weapon used		0.291 (0.132)*	0.358 (0.224)
Injury not requiring treatment ^h		0.215 (0.183)	0.211 (0.185)
Injury requiring treatment ^h		0.178 (0.201)	0.170 (0.197)
Public location		-0.150 (0.132)	-0.138 (0.159)
<i>Victim use of Alcohol x Weapon</i>			
Using alcohol x weapon			-0.121 (0.310)
<i>Assaults by Gender Mix x Public Location</i>			
Male assaults female x occurred in public location			0.008 (0.334)
Female assaults female x occurred in public location			-0.372 (0.648)
Female assaults male x occurred in public location			0.279 (0.884)
Pseudo-R ²	0.058	0.067	0.068

N = 1,405

^a Based on multiple imputation with 10 replications of the data to replace missing values^b White Non-Hispanic is reference group.^c Income is measured in \$1,000 increments.^d Victim not using substances is reference group.^e Perpetrator not using substances is reference group.^f Male assaulting male is reference group.^g Stranger relationship is reference group.^h No injury is reference group.

*p < .05 **p < .01 ***p < .001

Descriptive Profile for Incidents of Domestic Assault

Table 3 presents the range, means and standard deviations for the independent and dependent variables of interest. Given the possible degree of legal response to domestic battery, the average case does not meet the level of arrest (0.806). This corresponds to the findings reported in Table 2 indicating a significantly diminished legal response in the case of domestic assaults. Figures indicate that 71.6% of the couples were married (as compared with unmarried cohabitating couples). Victims reported a slightly higher average income (\$28,170) than perpetrators (\$25,351) while both indicated a mean age of around 40 years. The majority of violence occurred within households where both subjects were employed (54.7%), followed by employed assaulting a non-employed partner (20.3%), non-employed assaulting employed (15.8%), and non-employed assaulting non-employed (9.2%). Most assaults were between white non-Hispanics (75.9%), followed by non-white on non-white (16.2%), non-white on white non-Hispanic (5.0%), and white non-Hispanic on non-white (2.9%). A weapon was used in 7.8% of the assaults and injury occurred to the victim about a quarter of the time (24.7%).

Multivariate Results for Incidents of Domestic Assault

Coefficient estimates and standard errors for the ordered logit models testing graduated legal response to domestic assaults are reported in Table 4. Model 1 tests the effects of morphological and cultural social geometric dimensions. There does not appear to be any significant relationship between marital status, employment status, or racial/ethnic composition of the couples involved and legal outcome. Model 2 adds the vertical dimension of income as well as the normative dimension of age. Although age does not seem to affect the degree of legal response, income does.

Table 3. Descriptive Statistics for Study Variables involving Domestic Assault

Variable	Range	M	SD
<i>Official Response</i>			
Graduated Legal Response ^a	0-6	0.806	1.344
Couple married ^b	0-1	0.716	0.451
Victim's income	2.5-125	28.170	24.909
Victim's age	18-80	39.301	12.063
Perpetrator's income	2.5-125	25.351	20.197
Perpetrator's age	18-81	40.614	12.123
<i>Assaults by Employment Mix</i>			
Employed assaulting employed ^c	0-1	0.547	0.498
Employed assaulting non-employed	0-1	0.203	0.403
Non-employed assaulting employed	0-1	0.158	0.365
Non-employed assaulting non-employed	0-1	0.092	0.289
<i>Assaults by Race Mix</i>			
White/non-Hispanic assaulting white/non-Hispanic ^c	0-1	0.759	0.428
White/non-Hispanic assaulting non-White	0-1	0.029	0.168
Non-White assaulting white/non-Hispanic	0-1	0.050	0.217
Non-White assaulting non-White	0-1	0.162	0.369
<i>Jurisprudent Characteristics</i>			
Weapon	0-1	0.078	0.269
Victim injured	0-1	0.247	0.431

Note: N = 534

^a 0 = no arrest, 1 = arrest, 2 = charge, 3 = conviction, 4 = sentenced, 5 = jail, 6 = prison.

^b Unmarried cohabitating couples is reference category.

^c Reference category.

Based on Black's proposal that wealthier defendants, when compared to their victims, have a greater legal advantage, I ask the question of how individual income might affect the odds of legal response in relation to income disparity. The results indicate that the effect of income disparity is 0.054 - 0.063*perpetrator earns more. This means the effect is 0.054 if the victim earns more and -0.009 if the perpetrator earns more. Given the fact income disparity was not significant, the interpretation is that the effect of disparity becomes weaker (or negative) in cases

where the perpetrator earns more.¹⁴ In other words, income disparity (the degree to which there is disparity between victim and perpetrator's income) by itself does not affect legal response. Yet, in spite of the coefficient being small in magnitude, those cases where perpetrators earn more than victims, the likelihood of punitive response decreases in the predicted direction. Model 2 reported a Nagelkerke R^2 value of 0.237.

Model 3 adds the legal aggravating elements of weapon use and injury.¹⁵ Again, I find that in cases where the perpetrator earns more than the victim, the likelihood of punitive response decreases. Weapon use within domestic assaults did not appear to have a significant impact on legal outcomes. However, perpetrators who caused injury to their partners have three times ($\exp[1.118] = 3.059$) greater odds of receiving a severe response from the law as did assaults not resulting in harm. Model 3 reported a Nagelkerke R^2 value of 0.289.

Testing the Organizational Dimension

Testing the plausibility that law reacts to the organizational dimension one occupies in social space, a separate analysis was conducted to specifically test the proposition. If left in the graduated legal response model regarding general assault, the variable representing the organizational dimension would be missing 87% of the data before imputing. This appears to be based on the fact that the question relating to the organizational position of the perpetrator was only asked if the respondent answered affirmative to having been assaulted by an acquaintance. Otherwise the question was bypassed. At this level of missing data, results become unreliable (see Lee, 2011), so a third model was created conditioned on an affirmative response to being assaulted by an acquaintance (model not shown). This resulted in an N=191 leaving only 15% of the data missing for the variable *Authority*.

¹⁴ Income disparity $p = 0.109$

¹⁵ Only weapon use and injury were tested in the domestic models based on significant effects for those variables found in the GLR (and subsequent delineated) models.

Table 4 Ordered Logit Regression (Standard Errors) Models of the Log Odds of Graduated Legal Response involving Domestic Assault Cases^a

Predictor	Model 1	Model 2	Model 3
Intercept	0.440 (0.692)	0.854 (1.696)	1.611 (1.791)
Intercept ₁	1.345 (0.715)	1.881 (1.691)	2.686 (1.782)
Intercept ₂	1.974 (0.742)*	2.570 (1.697)	3.414 (1.785)
Intercept ₃	2.947 (0.821)**	3.654 (1.726)	4.554 (1.811)*
Intercept ₄	3.183 (0.851)**	3.929 (1.734)*	4.834 (1.817)*
Intercept ₅	4.614 (1.214)***	5.504 (1.917)**	6.442 (1.981)**
Married ^b	-0.453 (0.585)	-0.641 (0.973)	-0.472 (0.965)
<i>Employment Mix^c</i>			
Employed assaulting non-employed	0.068 (0.710)	0.378 (0.907)	0.691 (0.921)
Non-employed assaulting employed	-0.267 (0.759)	-0.853 (0.887)	-0.836 (0.954)
Non-employed assaulting Non-employed	0.417 (0.639)	-0.064 (0.895)	-0.245 (0.958)
<i>Race Mix^d</i>			
Non-White assaults non-White	0.324 (0.693)	0.452 (0.807)	0.571 (0.791)
Non-White assaults White non-Hispanic	0.507 (1.087)	0.837 (1.717)	0.517 (1.794)
White non-Hispanic assaults non-White	-0.063 (1.486)	1.086 (2.236)	1.182 (2.333)
<i>LPD Income</i>			
Average income		-0.040 (0.027)	-0.041 (0.030)
Income disparity		0.054 (0.030)	0.060 (0.031)
Perpetrator earns more		0.590 (1.121)	0.491 (1.270)
Income disparity x perpetrator earns more		-0.063 (0.030)*	-0.064 (0.030)*
<i>LPD Age</i>			
Average age		0.021 (0.028)	0.014 (0.031)
Age disparity		-0.064 (0.132)	-0.056 (0.150)
Perpetrator is older		0.907 (1.042)	1.277 (1.206)
Age disparity x perpetrator is older		-0.116 (0.146)	-0.147 (0.164)

*Table 2 Cont.**Jurisprudence Characteristics*

Weapon used			0.672 (0.891)
Victim injured			1.118 (0.514)*
Pseudo-R ²	0.066	0.237	0.289

N = 534^a Based on multiple imputation with 10 replications of the data to replace missing values^b Non-married cohabitating couple is reference group.^c Employed assaulting employed is the reference group.^d White non-Hispanic assaulting White non-Hispanic is reference group.**p* < .05

The model included regressors that represented basic demographic characteristics (i.e., respondent's age, education, income, marital status, employment, race and ethnicity) along with the variable *Authority*. As with the previous models, missing data were imputed. Upon initial observation it would appear that there was a 20% reduction in odds that those in positions of authority (i.e., superior, physician, priest, etc) would be held accountable for their assaults on subordinates (employee, patient, parishioner) compared with victims being assaulted by someone not in a supervisory position over them. However, the effects did not meet the level of significance.

Chapter Summary

In sum, analysis involving general assault cases finds that victims who are Hispanic or have been drinking alcohol at the time of the offense receive less attention from the law as compared with whites or those not consuming drugs or alcohol. In addition, incidents involving a female assaulting a male or in which victim and perpetrator are romantically involved, are significantly less likely to eventuate in the adjudication of the perpetrator. Conversely, use of a weapon increases the amount of law applied. When examining cases of domestic assault, results appear to indicate that the perpetrator's income relative to victim's income affects the likelihood of legal response. Specifically, legal advantage is afforded to perpetrators earning higher incomes than their victims. Domestic assaults resulting in injury magnify the odds of a punitive response by three times. Investigation into the possible effects of social positions within an organization on legal outcomes failed to come to any significant conclusion. With the exception of the organizational dimension, the analyses seem to show empirical support for the argument that criminal law responds, in part, to the vertical, normative, cultural, and morphological social

spaces we occupy. However, results also show the influence of legal aggravating factors such as injury to the victim and use of a weapon.

The models provided in this chapter give us a better understanding of the factors that influence the overall legal response to assault cases. Yet in order to gain greater insight into the underlying mechanics involved in the adjudication process one needs to look at the influence these variables have at distinct stages of the criminal justice system. In the following chapter, I present a critical deconstruction of the effects each social dimension, as well as jurisprudence factors, have at the arrest, conviction, and judicial phases of the justice process.

CHAPTER 9: RESULTS FOR DELINEATED ASSAULT MODELS

This chapter examines the effects of social characteristics and legally relevant factors at crucial stages of the justice process. Analyses will consist of three models in which social geometric and general demographic variables are initially introduced followed by the addition of jurisprudential variables eventuating in the full model where possible interactions between extralegal and legally recognized variables are considered. As previously discussed in the methods section, some researchers suggest that extra-legal factors have their greatest influence at earlier stages of the adjudication process – i.e., arrest and charging. As such, I begin by presenting the results of three logistic regression analyses concerning arrest practices in general assault cases. This is followed by three similar logistic regression models examining charging decisions. The chapter ends by presenting three ordered logistic regression models designed to evaluate the legal response found at the judicial level.

Multivariate Results for Incidents of General Assault at the Arrest Stage

Results for the binary logistic regression models testing arrest decisions involved with general assaults are reported in Table 5. Model 1 presents the main-effects for the vertical, normative, cultural and morphological dimensions as well as general demographics. At this stage it does not appear that demographics play a significant role in likelihood of arrest. However, data do indicate a bias effect when it comes to victims and alcohol consumption. It appears the odds are 30% ($\exp[-0.368] = 0.692$) lower that police will make an arrest for assault if the victim had been drinking alcohol at the time of the incident. As with the graduated legal response model, the perpetrator's condition does not seem to play a major role. Turning our attention to assaults by gender mix, not surprisingly we see that females who assault males have roughly half ($\exp[-0.719] = 0.487$) the odds being arrested as do men who assault other men. However, for the first

time we see that females who assault other females are also at lower odds ($\exp[-0.865] = 0.421$) of being arrested. The $R^2_{\text{Nagelkerke}}$ value reported for model 1 is 0.058.

Model 2 indicates that police react the most to perpetrators who use weapons during the commission of an assault increasing the odds of arrest by 42% ($\exp[0.350] = 1.419$). The gender mix of female on male and female on female assaults remains significant with nominal change in effects. Perpetrator initiation, injury to the victim, and location of offense do not appear to play a significant role in the decision to arrest. The $R^2_{\text{Nagelkerke}}$ value increased to 0.067. Model 3 adds the interactions of *victim use of alcohol x weapon* and *assaults by gender mix x public location*. Again, as in the graduated legal response models, there are no indications that the interaction between social geometric and jurisprudient agents plays any distinct role in the decision to arrest. The $R^2_{\text{Nagelkerke}}$ value increased slightly to 0.071.

Table 5 Binary Logistic Regression (Standard Errors) Models of the Log Odds of the Perpetrator being Arrested in Cases of General Physical Assault

Predictor	Model 1	Model 2	Model 3
Intercept	0.326 (0.503)	0.364(0.550)	0.343 (0.548)
<i>Victim</i>			
Age	0.000 (0.005)	-0.001 (0.005)	0.000 (0.005)
Black/NH ^b	0.013 (0.948)	-0.024 (0.195)	-0.007 (0.197)
Hispanic ^b	-0.268 (0.246)	-0.278 (0.232)	-0.276 (0.235)
Education	-0.046 (0.107)	-0.047 (0.029)	-0.046 (0.028)
Employed	-0.091 (0.149)	-0.089 (0.149)	-0.088 (0.151)
Income ^c	-0.004 (0.004)	-0.004 (0.004)	-0.004 (0.004)
Family Income ^c	0.003 (0.004)	0.003 (0.004)	0.003 (0.004)
Married	0.159 (0.135)	0.164 (0.137)	0.166 (0.138)
Children	-0.152 (0.135)	-0.143 (0.137)	-0.136 (0.139)
Using alcohol ^d	-0.368 (0.178)*	-0.360 (0.183)*	-0.360 (0.182)*
Using drugs ^d	0.384 (0.559)	0.362 (0.561)	0.339 (0.553)
Using both ^d	-0.813 (0.727)	-0.777 (0.746)	-0.804 (0.743)
<i>Perpetrator</i>			
Using alcohol ^e	0.316 (0.273)	0.322 (0.276)	0.328 (0.301)
Using drugs ^e	-0.330 (0.354)	-0.401 (0.359)	-0.411 (0.352)
Using both ^e	0.302 (0.443)	0.269 (0.449)	0.295 (0.407)
<i>Assaults by Gender Mix^f</i>			
Male assaulting female	0.058 (0.225)	0.081 (0.232)	0.007 (0.272)
Female assaulting female	-0.865 (0.391)*	-0.777 (0.393)*	-0.641 (0.510)
Female assaulting male	-0.719 (0.352)*	-0.753 (0.357)*	-0.845 (0.392)*
<i>Assaults by Relationship^g</i>			
Romantic relationship	-0.418 (0.256)	-0.398 (0.268)	-0.354 (0.276)
Relative relationship	-0.077 (0.423)	-0.100 (0.433)	-0.116 (0.437)
Acquaintance relationship	-0.115 (0.185)	-0.112 (0.191)	-0.111 (0.193)

Table 5 cont.

<i>Jurisprudent Characteristics</i>			
Perpetrator initiated	-0.118 (0.252)		-0.118 (0.254)
Weapon used	0.350 (0.150)*		0.340 (0.267)
Injury not requiring treatment ^h	0.061 (0.220)		0.063 (0.223)
Injury requiring treatment ^h	0.060 (0.202)		0.061 (0.204)
Public location	-0.100 (0.144)		-0.125 (0.173)
<i>Victim use of Alcohol x Weapon</i>			
Using alcohol x weapon			0.042 (0.496)
<i>Assaults by Gender Mix x Public Location</i>			
Male assaults female x occurred in public location			0.205 (0.369)
Female assaults female x occurred in public location			-0.333 (0.769)
Female assaults male x occurred in public location			0.295 (0.925)
Pseudo-R ²	0.058	0.067	0.071

N = 1,405
^a Based on multiple imputation with 10 replications of the data to replace missing values.^b White Non-Hispanic is reference group.^c Income is measured in \$1,000 increments.^d Victim not using substances is reference group.^e Perpetrator not using substances is reference group.^f Male assaulting male is reference group.^g Stranger relationship is reference group.^h No injury is reference group.**p* < .05 ***p* < .01 ****p* < .001

Multivariate Results for Incidents of General Assault at the Charging Stage

Results for the binary logistic regression models testing charging practices involved with general assaults are reported in Table 6. It is here in Model 1 that the effect of ethnicity becomes apparent. Specifically, Hispanic victims have 65% ($\exp[-1.061] = 0.346$) lower odds of seeing their assaulter charged than white victims. As in the case of arrest, consumption of alcohol by the victim immediately prior to the assault results in 41% ($\exp[-0.531] = 0.588$) lower odds that prosecuting attorneys will press charges for the incident. Although the effect of female assaulting female is not seen here, the odds associated with the decision to charge are reduced by 62% ($\exp[-0.969] = 0.379$) for incidents where females attack males. Also, relationship status appears to influence the legal decision-making process at this stage. The odds that prosecutors will file charges for assault decrease by 58% ($\exp[-0.860] = 0.423$) if the offense took place between intimate partners as compared with incidents involving strangers. Model 1 has an $R^2_{\text{Nagelkerke}}$ value of 0.081.

In Model 2, data indicate that both weapon and injury requiring treatment increase the odds of charging. Use of a weapon during an assault enhances the odds that the state will file charges by upwards of 42% ($\exp[0.352] = 1.422$). Furthermore, while controlling for weapon use, the odds of being charged for assault increase by 86% ($\exp[0.621] = 1.861$) if the victim receives injuries requiring immediate medical attention. Again, there appears to be no real change in significance levels or effects seen in Model 1 when the jurisprudential variables are added in model 2. The $R^2_{\text{Nagelkerke}}$ value reported for model 2 increases slightly to 0.105. Model 3 does not indicate any interaction effects between social geometric and jurisprudential variables are taking place. The $R^2_{\text{Nagelkerke}}$ value remains effectively unchanged.

Table 6 Binary Logistic Regression (Standard Errors) Models of the Log Odds of the Perpetrator being Charged in Cases of General Physical Assault^a

Predictor	Model 1	Model 2	Model 3
Intercept	-0.238 (0.555)	-0.478 (0.604)	-0.477 (0.606)
<i>Victim</i>			
Age	-0.004 (0.006)	-0.004 (0.006)	-0.004 (0.006)
Black/NH ^b	0.095 (0.200)	0.047 (0.204)	0.060 (0.204)
Hispanic ^b	-1.061 (0.312)***	-1.062 (0.314)***	-1.063 (0.315)***
Education	0.005 (0.030)	0.007 (0.031)	0.006 (0.031)
Employed	-0.100 (0.160)	-0.111 (0.162)	-0.121 (0.162)
Income ^c	-0.004 (0.005)	-0.005 (0.005)	-0.005 (0.005)
Family Income ^c	-0.002 (0.004)	-0.003 (0.004)	-0.002 (0.004)
Married	0.068 (0.147)	0.120 (0.150)	0.120 (0.150)
Children	0.059 (0.147)	0.069 (0.149)	0.075 (0.150)
Using alcohol ^d	-0.531 (0.196)**	-0.650 (0.206)**	-0.654 (0.207)**
Using drugs ^d	-0.027 (0.544)	-0.135 (0.582)	-0.145 (0.584)
Using both ^e	-0.642 (0.734)	-0.818 (0.778)	-0.841 (0.786)
<i>Perpetrator</i>			
Using alcohol ^e	0.111 (0.254)	0.096 (0.262)	0.088 (0.286)
Using drugs ^e	-0.254 (0.335)	-0.316 (0.359)	-0.312 (0.360)
Using both ^e	0.277 (0.299)	0.208 (0.282)	0.206 (0.281)
<i>Assaults by Gender Mix^f</i>			
Male assaulting female	0.222 (0.238)	0.249 (0.243)	0.245 (0.289)
Female assaulting female	-0.330 (0.370)	-0.257 (0.385)	0.042 (0.506)
Female assaulting male	-0.969 (0.440)*	-0.926 (0.447)*	-0.944 (0.497)
<i>Assaults by Relationship^g</i>			
Romantic relationship	-0.860 (0.271)**	-0.928 (0.290)**	-0.914 (0.304)**
Relative relationship	-0.114 (0.411)	-0.171 (0.423)	-0.196 (0.423)
Acquaintance relationship	0.124 (0.193)	0.140 (0.199)	0.153 (0.200)

Table 6 cont.

<i>Jurisprudent Characteristics</i>			
Perpetrator initiated		0.033 (0.275)	0.025 (0.276)
Weapon used		0.352 (0.165)*	0.334 (0.227)
Injury not requiring treatment ^h		0.506 (0.270)	0.508 (0.270)
Injury requiring treatment ^h		0.621 (0.254)*	0.619 (0.256)*
Public location		-0.104 (0.158)	-0.078 (0.180)
<i>Victim use of Alcohol x Weapon</i>			
Using alcohol x weapon			0.043 (0.297)
<i>Assaults by Gender Mix x Public Location</i>			
Male assaults female x occurred in public location			0.021 (0.383)
Female assaults female x occurred in public location			-0.667 (0.744)
Female assaults male x occurred in public location			0.162 (1.249)
Pseudo-R ²	0.081	0.105	0.107

N = 1,405

^a Based on multiple imputation with 10 replications of the data to replace missing values

^b White Non-Hispanic is reference group.

^c Income is measured in \$1,000 increments.

^d Victim not using substances is reference group.

^e Perpetrator not using substances is reference group.

^f Male assaulting male is reference group.

^g Stranger relationship is reference group.

^h No injury is reference group.

p* < .05 *p* < .01 ****p* < .001

Multivariate Results for Incidents of General Assault at the Judicial Stage

Results for the ordered logit regression models testing decision-making involved with general assaults at the judicial stages are reported in Table 7. The judicial regressand is a composite of the progressive legal stages available once official actions have advanced the case to the court system (for specific coding refer back to Chapter 7). Possible outcomes at this level include conviction, sentencing, and incarceration (jail or prison). As with the omnibus graduated legal response analysis, the outcome variable involved here is ordinal and is best evaluated by way of ordered logit modeling.

Model 1 reveals that basic demographics do not appear to play a significant role at the judicial level; nor does the use of alcohol or controlled substances by either victim or perpetrator. Yet again it is apparent that females who assault other females are less likely to draw punitive legal action. Specifically, female on female violence decreases the odds that progressive judicial response will occur by 73% ($\exp[-1.313] = 0.269$) as compared with males who assail other males. Relational distance also appears to be a significant factor represented by the lower odds of legal response to assaults involving intimate couples ($\exp[-1.100] = 0.333$) and relatives ($\exp[-1.445] = 0.236$) as weighed against violence perpetrated by strangers. $R^2_{\text{Nagelkerke}}$ value is reported as 0.148.

Model 2 adds jurisprudential variables to gauge their impact on judiciary outcomes. Once more, after controlling for demographics, substance use, and relationship status, weapon use increases the odds by 69% ($\exp[0.525] = 1.690$) that a perpetrator will progress through the court system and receive a harsher outcome. As with all previous models, the addition of significant legally relevant factors does not alter the impact of social geometric variables except in the case of assaults involving relatives which is no longer significant. However, the $R^2_{\text{Nagelkerke}}$ value does

increase by 2.4%. Model 3 does not indicate any significant interaction effects and reports a nominal increase in the pseudo R^2 value.

Figure 4 presents a comparative view of the odds ratios of both social geometric and jurisprudential variables as reported at corresponding legal stages. By looking at the delineated and complete analyses together, variations of influence across different stages are revealed. For the purpose of this comparative picture, data were compiled from the second models (Model 2) in tables 2, 5, 6, & 7 which contain both social dimensions and legally relevant variables without the addition of cross-products.

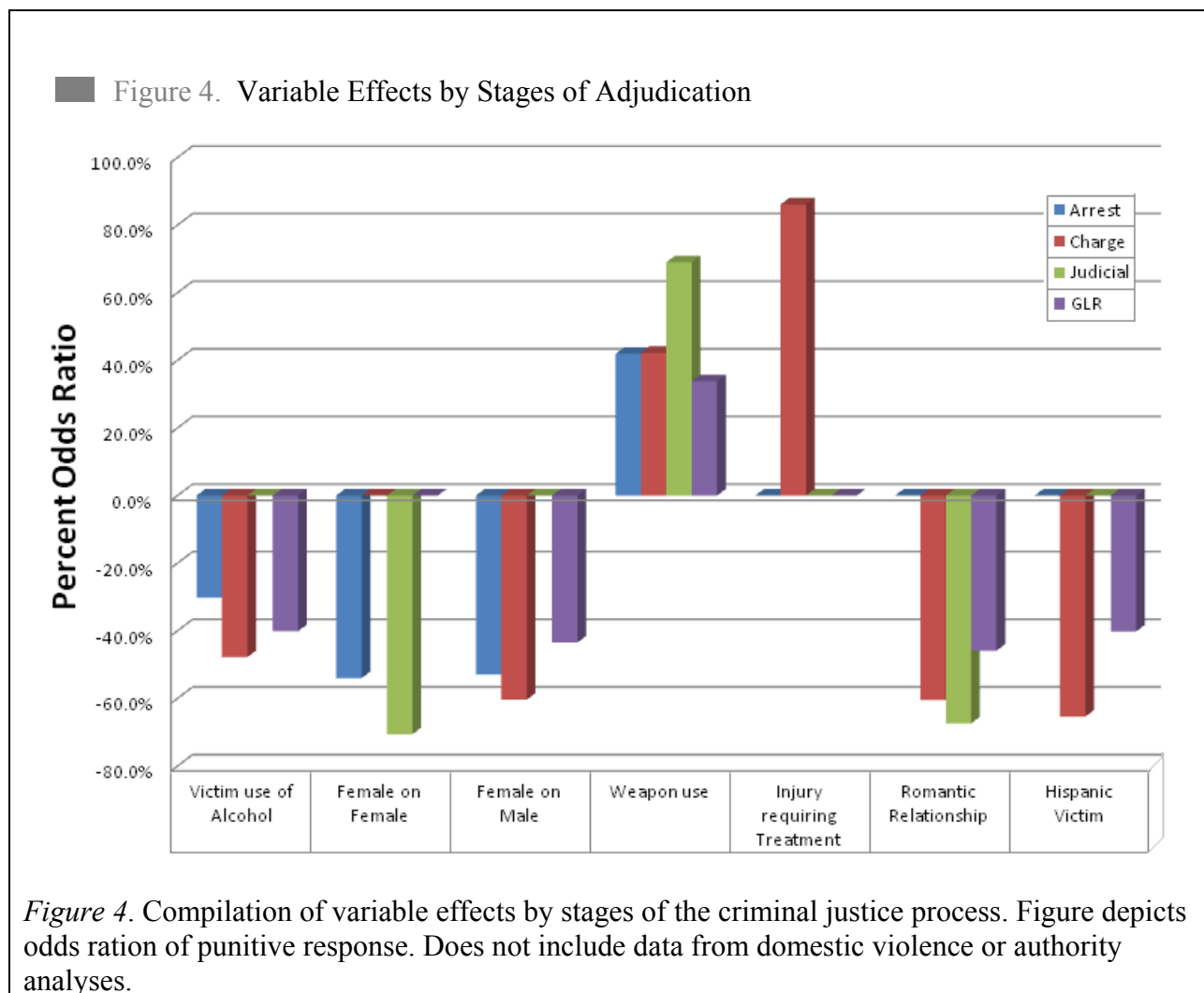


Table 7 Ordered Logit Regression (Standard Errors) Models of the Log Odds of Judicial Level Response in Cases of General Physical Assault^a

Predictor	Model 1	Model 2	Model 3
Intercept	-0.236 (0.866)	-0.538 (0.928)	-0.424 (0.936)
Intercept ₁	0.963 (0.868)	0.682 (0.930)	0.806 (0.938)
Intercept ₂	1.470 (0.871)	1.200 (0.932)	1.331 (0.940)
Intercept ₃	2.180 (0.876)*	1.929 (0.937)*	2.069 (0.945)*
<i>Victim</i>			
Age	0.009 (0.010)	0.009 (0.010)	0.009 (0.010)
Black/NH ^b	0.352 (0.323)	0.283 (0.333)	0.246 (0.333)
Hispanic ^b	0.305 (0.536)	0.374 (0.537)	0.364 (0.542)
Education	0.042 (0.052)	0.052 (0.054)	0.063 (0.055)
Employed	-0.028 (0.262)	-0.078 (0.265)	-0.064 (0.267)
Income ^c	-0.004 (0.007)	-0.003 (0.008)	-0.003 (0.008)
Family Income ^c	0.001 (0.006)	0.000 (0.007)	-0.001 (0.007)
Married	0.322 (0.243)	0.267 (0.249)	0.229 (0.253)
Children	-0.015 (0.233)	0.029 (0.236)	0.074 (0.239)
Using alcohol ^d	-0.491 (0.328)	-0.485 (0.339)	-0.512 (0.341)
Using drugs ^d	0.681 (0.946)	0.587 (0.982)	0.584 (1.029)
Using both ^d	-0.833 (1.656)	-0.780 (1.683)	-0.687 (1.706)
<i>Perpetrator</i>			
Using alcohol ^e	0.003 (0.283)	0.059 (0.292)	0.303 (0.336)
Using drugs ^e	-0.048 (0.367)	-0.059 (0.370)	-0.102 (0.378)
Using both ^e	0.286 (0.354)	0.345 (0.367)	0.356 (0.369)
<i>Assaults by Gender Mix^f</i>			
Male assaulting female	-0.236 (0.378)	-0.115 (0.388)	-0.387 (0.483)
Female assaulting female	-1.313 (0.608)*	-1.226 (0.622)*	-1.747 (0.839)*
Female assaulting male	-0.713 (0.781)	-0.687 (0.781)	-0.806 (0.799)

Table 7 cont.

<i>Assaults by Relationship^g</i>			
Romantic relationship	-1.100 (0.419)**	-1.122 (0.456)*	-0.988 (0.489)*
Relative relationship	-1.445 (0.714)*	-1.318 (0.729)	-1.242 (0.731)
Acquaintance relationship	-0.426 (0.284)	-0.409 (0.298)	-0.447 (0.301)
<i>Jurisprudent Characteristics</i>			
Perpetrator initiated		-0.535 (0.415)	-0.560 (0.417)
Weapon used		0.525 (0.230)*	0.859 (0.315)*
Injury not requiring treatment ^h		-0.203 (0.395)	-0.172 (0.404)
Injury requiring treatment ^h		-0.179 (0.333)	-0.138 (0.335)
Public location		-0.246 (0.249)	-0.423 (0.287)
<i>Victim use of Alcohol x Weapon</i>			
Using alcohol x weapon			-0.668 (0.447)
<i>Assaults by Gender Mix x Public Location</i>			
Male assaults female x occurred in public location			0.573 (0.627)
Female assaults female x occurred in public location			1.308 (1.220)
Pseudo-R ²	0.148	0.172	0.184

N = 1,405

^a Based on multiple imputation with 10 replications of the data to replace missing values^b White Non-Hispanic is reference group.^c Income is measured in \$1,000 increments.^d Victim not using substances is reference group.^e Perpetrator not using substances is reference group.^f Male assaulting male is reference group.^g Stranger relationship is reference group.^h No injury is reference group.

*p < .05 **p < .01 ***p < .001

Chapter Summary

The effects of victims consuming alcohol at time of assault, female on male violence, and being a Hispanic victim seem to be most pronounced at the charging stage - reducing the odds of criminal indictment. Use of a weapon during the commission of an assault has the highest impact on increasing the odds of punitive response at the judicial level. Similarly, intimate partner violence has the greatest effect of reducing the odds of prosecution once the case has advanced to the court system compared to other phases. Yet interestingly enough, assaults by relatives result in even greater reluctance to penalize perpetrators (as compared to other relationships) once the case has reached the court system. Victim injury requiring immediate treatment only appears to be a significant factor at the charging phase increasing the odds of criminal indictment by over 80% as compared with no injury. Finally, incidents involving female on female assaults had the greatest influence on decision-making at the judicial phase reducing odds of punitive response by 73.1% compared to male on male violence. However, despite the fact that female on female assaults and injury requiring immediate treatment are factors that influence legal outcomes, they do not appear to reach the level of significance in the GLR model of general assault. In the following chapter I will discuss how the results of both omnibus and delineated findings translate into theoretical application.

CHAPTER 10: REVIEW OF THE FINDINGS

The debate over the degree to which social attributes influence legal outcomes continues to be an important topic (Avakame & Fyfe, 2001; Cooney, 2009; Fyfe, Klinger, & Flavin, 1997; Thaxton, 2009). Black (1976) proposes that the relationship between social character and the behavior of law is best understood through his theory of Social Geometry which identifies five social dimensions; each subject to the four-part hierarchical principle of legal application. Previous studies have been limited, for the most part, in providing only partial tests of the framework or restricting their analysis to a single stage of the criminal justice process (e.g., Berk & Loseke, 1981; Fyfe, Klinger, & Flavin, 1997; Klinger, 1995; Mullis, 1995; Oppenlander, 1982; Smith & Klien, 1984). The current study expands on existing research by employing nationally representative data, involving all suggested dimensions and across the full gamut of the adjudication process from arrest to sentence imposed. This chapter presents a critical assessment of the analytical results for this study as related to the proposed hypotheses.

Wealth

Both legal realism and social geometry paradigms argue that the economic standing of the victim and perpetrator influence the outcome in criminal cases. In general, wealth equates with social worth, prompting the law to react more favorably towards those who have a better economic standing compared to their adversarial counterparts. Many studies seem to support the argument that legal response is conditioned by one's financial status (e.g., Mooney, 1986; Rosoff, 1989; Terrill & Mastrofski, 1998). Hypothesis one formulates a prediction based on the notion that income influences the amount of law applied in assault cases.

Hypothesis 1 (H1): There is a positive relationship between the income of the victim and the application of law. The higher the individual income of the victim the higher the

likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence.

Results from this study present somewhat of a mixed picture. Upon initial observation the victim's income does not appear to play a significant role in assault cases – either by stage or overall legal process. However, when looking at the possible effect of income from a comparative perspective involving both victim and perpetrator, I find that law does take into account economic standing to a degree. In cases of domestic assault, income differences become relevant when the perpetrator earns more than his or her victim. Data indicate that income disparity alone is not significant. Yet the effect of disparity becomes weaker (or negative) in cases where the perpetrator earns more. In other words, the likelihood of punitive response drops as the amount of money the perpetrator earns over the victim increases thus supporting Black's hierarchical principal that law increases with vertical distance. However, this effect is relatively small only decreasing the odds of legal response by less than 1% per unit increase in income disparity. A legal realist position would predict income to have a more substantial effect on official decision-making, being the pivotal factor allowing the upper class to maintain its current social position. Yet, social geometry makes no such claim. Rather, Black argues that no social dimension carries more weight than the other. As such, the legal system reacts similarly to all five social spaces and simply predicts the effect without emphasis on the magnitude of the effect.

The second hypothesis concerning income, was:

Hypothesis 2 (H2): There is a positive relationship between the joint income of the victim and perpetrator and the application of law. For example, the higher the joint income of a married couple the greater the likelihood of the offending spouse being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence.

While the analysis testing the reciprocal nature of income concerning the victim and perpetrator showed support for the proposed social geometry principle of directionality, models testing the fourth principal regarding class liability failed to substantiate the argument that high-status couples are held to higher standards of conduct as reflected in hypothesis 2. This also counters the argument of legal realists who propose that the legal system operates in a manner favorable to the social elite. Even though the coefficients were in the predicted direction reflecting the social geometry position, findings were not significant.

Rank within an Organization

Black (1976) defines the organizational dimension as, "...the corporate aspect of social life – the capacity for collective action" (p. 85). Under the original definition, organization can be measured through various aspects of the institution, such as the number of administrative officers or the degree to which decision-making is concordant and centralized. As such, the capacity for collective action is the measure by which we gauge the degree of organization. Subsequently within this dimension an organization has more status than an individual on his or her own. However, Cooney (2009) expands on Black's original definition by proposing that the higher the office individuals hold in an organization, the greater their vicarious organizational status. Following Cooney's characterization of the organizational dimension, hypothesis three proposes the following:

Hypothesis 3 (H3): There is an inverse relationship between the hierarchical status distance linking the perpetrator and the victim and the application of law. Perpetrators higher in an organizational chain than the victim are less likely to be arrested, charged, convicted, sentenced to jail/prison or given long sentences as compared with those perpetrators at an equal or lesser status than the victim.

An ordered logit analysis testing the possible influence of the organizational status of the perpetrator compared to that of the victim indicated no significant findings. After controlling for basic demographics, the organizational coefficient is reported in the predicted direction (i.e., those in a position of authority over the victim are less likely to attract legal response after an assault). However, the effect was not significant. Here too, data do not support the legal realist argument that rank is afforded greater legal benefit as compared with subordinates.

Normative Perspective

In what Cooney (2009) terms an assessment of respectability, the normative dimension represents the social sphere where we assess an individual's qualities and attributes according to the contemporary norms as defined by the dominant culture. Located within this domain are matters concerning behavior and what conventionality might deem deviant. Hypothesis 4 conceptualizes the behavioral element through assessing the potential for legal action in cases where individuals consume alcohol and/or drugs immediately prior to an assault.

Hypothesis 4 (H4): There is a positive relationship between use of alcohol and/or drugs by the perpetrator and arrest while conversely there is a negative relationship between use of alcohol and/or drugs by the victim and the application of law. There will be an increased likelihood of perpetrators being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence if they consumed any alcohol and/or drugs immediately prior to the incident.

The findings related to this hypothesis are actually in two parts. Data from both the omnibus and delineated models failed to report any significant effects regarding the use of intoxicating substances by the perpetrator. It does not appear that officials are significantly influenced by this aspect of the perpetrator's behavior when determining what actions to take in response to an

assault complaint. Yet, use of alcohol by the victim does appear to be relevant in predicting the amount of law applied in assault cases. This is true not only at the arrest and charging phase, but in the overall adjudication process as well. In general, officials are less likely to react to claims of assault if the victim had been drinking immediately prior to the incident. So the question must be asked, why does the victim's behavior seem to be the only significant consideration when compared to the perpetrator's behavior? As in the case of the death penalty where the victim's race appears to be the best predictor of legal outcomes, research also shows that police officers tend to focus more on whether the victim, not the perpetrator, was intoxicated prior to the battery (Aramburu & Leigh, 1991). Moreover, Stewart and Maddren (1997) find that the level of blame to both victim and assailant is influenced more by the victim's intoxication than the assailant's. In other words, officials are sometimes inclined to blame the victim for provoking their attacker (Hart, 1993). Subsequently, officials tend to impute the character of disrespectability with regard to victims based on their consumption of alcohol which translates into less need to respond. These findings are consistent with Black's (1976) proposal regarding low normative status, in that appearing disreputable can stigmatize the victim and influence the outcome.

Gender also seems to play a role in the decision to pursue legal action. Previous work generally supports the argument that females attract less law as offenders and more as victims compared to men. (Friedrich, 1977; Pastor, 1978; Rubinstein, 1973; Smith, Makarios, & Alpert, 2006). Hypothesis 5 reflects this view.

Hypothesis 5 (H5): There is a positive relationship between the victim being female and the application of law while conversely there is a negative relationship between the perpetrator being female and the application of law. There will be an increased likelihood of the perpetrator being arrested, charged, sentenced to jail/prison or receiving

a longer sentence if the victim is female. Conversely, there will be a decreased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence should they be female.

Although incidents where males assaulted females did not significantly affect observed legal outcomes, when looking at the general response of the legal system in cases of assault, as reflected by the omnibus (GLR) models, data indicate that females who assault males are less likely to attract legal action as compared to men who assault other men. I find that the effects of females assaulting males on the odds of arrest exist even after controlling for the victim's sociodemographics and situational (jurisprudential) factors. A closer look at the impact at the delineated legal stages reveals that police are less likely to arrest female suspects who have been accused of assaulting men even after controlling for relationship status. Prosecutors are also more reluctant to charge females arrested for assaulting men as compared with male on male violence. Similarly, females who assault other females appear less likely to be arrested as compared to males who assault other males. The same mitigating effect is seen at the judicial phase of the criminal process resulting in lower odds of female offenders progressing through the court system.

Revisiting Black's argument that law varies with other forms of social control, Black theorizes that those who are dependent on others, (i.e., women, children, and the elderly) have less access to other forms of control, prompting the law to react accordingly in an effort to balance the situation (Black, 1976). Here we can apply the quadripartite status effect where downward law is greater than upward law. In a downward direction, law (punitive response) intensifies as the status difference increases; in an upward direction, law decreases as status distance increases. Additionally, law is greater at high-status than low status elevation. In this

case status equals access to social control. So, compared to men assaulting men, women assaulting other women would still attract less law. However, this result is not significant enough across all legal stages to create an overall effect. These results are, however, in direct contradiction to the legal realist position that men have a legal advantage in assault cases over women.

Age is another category that Black (1976) predicts will act as a mechanism for normative response. Black argues that those who are too young or too old to access traditional mechanisms of informal social control receive preferential treatment from the legal system as a way to balance the system. The survey used for the current study only contains responses for those 18 years and older. As such, hypothesis 6 is written to reflect the normative dimension according to the later part of the prediction.

Hypothesis 6 (H6): There is a positive relation between the age of the victim and the application of law. The likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence will increase with the age of the victim.

However, none of the analyses performed indicated that age was a significant factor in the decision-making process regarding assault cases.

Conventionality

Within the cultural dimension, conventionality serves as the measure of social status. Within this dimension both race and ethnicity are considered. Race may be gauged by the group's frequency within a given population; the dominant group having the greater frequency. Ethnicity may be understood in terms of collective expression incorporating traits ranging from language and traditions to religion (Cooney, 2009). Conventionality then is gauged by the degree

to which cultural traits vary from the dominant group. Hypotheses 7 and 8 predict that those who are not of Caucasian descent will be at a disadvantage when it comes to legal response.

Hypothesis 7(H7): There is a negative relationship between the victim being nonwhite and the application of law. There will be a decreased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison and or receiving a longer sentence if the victim is not white.

Hypothesis 8 (H8): White victims battered by nonwhite perpetrators will attract more law than other victim-perpetrator profiles. There will be an increased likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence if the victim is white and the perpetrator is nonwhite.

In general, the legal response to Hispanic assault victims is strikingly lower than their White counterparts. Data indicate that odds are almost half that of white victims that the law will respond to claims of assault. Nowhere is this effect seen greater than at the charging phase where prosecutors seem less willing to file charges against perpetrators whose victims were Hispanic. Numerically speaking, Hispanics constitute a smaller segment of the population relative to the black and white populace in the United States. Similarly, it could be argued that based on matters of language and tradition, Hispanic culture would be considered the most divergent from mainstream society.

Education has long been associated with class, status, income and social advantage (Parsons, 1942; Duncan, 1961; Shavit & Blossfeld, 1993; Van De Werfhorst, Sullivan, & Cheung, 2003; Torssander & Erickson, 2010). Again, one of the earliest examples of this was the English doctrine regarding the benefit of clergy whereby those who were literate could avoid the

death penalty (Cooney, 2009). Social Geometry proposes that legal advantage is to be derived from educational attainment.

Hypothesis 9 (H9): There is a positive relationship between the education of the victim and the application of law. The higher the individual education of the victim the higher the likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence.

Analyses conducted by this study failed to show support for the argument that education influences legal outcomes. Despite the fact that some tend to interchange the concept of education and affluence, the fact is that many studies show financial standing and education are separate and distinct from one another with regard to social and legal influence (e.g., Hansen, Weisbrod, & Scanlon, 1970; Mustard, 2001; Sundquist & Johansson, 1997). So while the data in this study support the argument that income plays a deciding factor in how the law behaves, it would appear that education is not a significant feature in assault outcomes.

Social Involvement

Hypotheses 10 and 11 test the morphological dimension of sociability based on the distribution of people in relation to one another. Here, observations are framed in terms of the horizontal social interactions. Incorporated within this dimension are matters of collective social action, division of labor, and relational distance.

Radial Element – Marital Status, Employment, Children

From a conventional standpoint those who are more integrated through social networks are seen as occupying a central position in society. One approach to gauge conventionality is to measure the degree of social participation through marriage, work, and children.

Hypothesis 10 (H10): There is a positive relationship between the degree of integration of the victim and the application of law. Social integration is a form of status and is acquired through participation in social rituals, norms and customs. The more integrated into society a victim is, as demonstrated by being married, employed, and parents, the greater the likelihood of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence.

This study did not find empirical support for the notion that the legal system is significantly influenced by one's employment or parental status when it comes to assault cases. Once again it could be that, comparatively speaking, other aspects, closely associated with the tested variables (such as income rather than employment or relationship status rather than children) are the true influencing factors. Marital status, per se, (i.e., married verses not married) also does not appear to be a significant determinant in assault cases. Yet again, it could be that this social facet is simply being conceptualized too narrowly for the given analyses. The second aspect of the morphological dimension (i.e., relational) provides a more in depth look at the influential mechanics of relational distance with regard to legal response.

Relational Element – Relational Distance

Despite nationwide initiatives to implement policies aimed at curtailing domestic battery, many still argue that officials are less likely react to cases of inter-partner violence compared with other forms of physical assault (Black, 1980; Buzawa, Austin, & Buzawa, 1995).

Hypothesis 11 reflects Black's theory of law proposing that the smaller the relational distance between the victim and perpetrator, (e.g., spouse v. stranger) the less likely law will react (Black, 1980).

Hypothesis 11 (H11): There is a positive relationship between relational distance and the application of law. When comparing the probability of the perpetrator being arrested, charged, convicted, sentenced to jail/prison or receiving a longer sentence between that of relatives, romantic partners, acquaintances, and strangers; the greater the relational distance the greater the likelihood of a punitive response.

Once I was able to disentangle the effects of relationship status, as characterized as strangers, acquaintances, relatives and romantic partners, from the weight of contextual elements and the structural effects of SES, I found that the influence of relational distance was consistent with Black's theory of legal response. In particular, assaults involving intimate-partners attract less attention from the law than do assaults committed by strangers as seen in the omnibus model. Moreover, data support the argument that the relationship the perpetrator has to the victim clearly affects the decision to charge as well as to what extent the offender progresses through the court system. Also found at the judicial level is the reluctance to penalize assaulters who are related to their victims. However, this effect disappeared once jurisprudential variables were introduced into the model. In general, it would appear Black's claim that intimacy repels law is substantiated by the overall legal response to assault cases. Thus, it is possible that the main mechanism at work is the perceived presence of other forms of social control in the relationship. Put another way, the amount of formal control, in this case legal enforcement, applied in any given situation is inversely proportional to the amount of informal control perceived present.

Jurisprudential Elements

In addition to the presence of social geometric influences, jurisprudential factors also play a role in legal outcomes. The law, as written, typically recognizes that certain aspects of an offense reflect the seriousness of the action. Injury resulting from a battery or use of a weapon by the

offender denotes a heightened form of assault and is usually reflected as such through the associated codification as an aggravating element. Results do not indicate that location of the offense or who was responsible for initiating the conflict carries any significant weight in the decision-making process. However, use of a weapon increases the odds of punitive response at every stage of the criminal justice process as well as causing the overall effect of increasing the odds of legal response in assaults cases. The effect of weapon use is observed even after controlling for injury to the victim. In many jurisdictions, using a weapon during an assault aggravates the status to the level of felony (Marvell & Moody, 1995). Consequently, the law views felonies as a more serious threat to social order than misdemeanors which, in turn, increases the perceived need to react (Black, 1971; Lundman, Sykes, & Clark, 1978). Additionally, injury, of some form, increases the odds of official recourse. Assault victims, in general, who report an injury requiring immediate treatment, have, on average, 80% greater odds of seeing their offender charged than those who did not receive an injury. A greater effect is seen in cases of domestic battery where odds are three times higher that perpetrators will receive a punitive response from the law if they injured their victims in any way. Signs of injury serve as tangible evidence that a crime was committed, therefore making it easier to identify the aggressor. These results provide partial support for the legal formalist argument that the law operates according to written mandate.

Chapter Summary

Utilizing Black's theory of social geometry as the theoretical construct from which to inquire about and interpret the results of the empirical assessment, this study finds support for the argument that legally relevant factors are not the only determinants in adjudication outcomes. Specifically, it would appear that the law takes into account not only contextual (jurisprudent)

factors associated with the offense, but also the position one occupies within his or her respective vertical, normative, cultural, and morphological social spaces when determining the appropriate response. Yet, results do not support the legal realist position that the law, as practiced, is an instrument of the social elite preserving the hierarchical structure through inequitable action. Namely, an individual's income and gender do not influence the behavior of law in ways that comport with the realist perspective. Nevertheless, data indicate that legal behavior is a product of both human initiative and social life. This presents us with a picture of the law in which not only is the seriousness of the action considered, but so is one's standing in various social spheres. In the next chapter I will discuss the limitations of the current study, as well as explore possible directions for future research. This will be followed by concluding remarks.

CHAPTER 11: DISCUSSION, LIMITATIONS, AND DIRECTIONS FOR FUTURE RESEARCH

The debate over the degree to which extralegal factors such as race, gender, and age influence legal outcomes in cases such as assault continues today (e.g., Black, 1971, 1976; Hart, 1961; Kadish, 1962; Hagin 1989; Hawkins, 1987; Hindelang, 1978; Klien, Webb, & DiSanto, 1978; Pope, 1975; Smith & Damphouse, 1998; Smith & Visser, 1981). In the current study I explore the possibility that assault case outcomes vary with regard to one's location and direction in *social space*, or his or her *social geometry*. My findings are generally in line with this notion which suggests that the law, despite the contention that the American criminal justice system is founded upon principles of equality and impartiality, reacts disproportionately to cases based, in part, on the social characteristics of the participants. This study reveals that it is through the combined influences of social status and legally relevant factors (e.g., use of a weapon or injury to the victim) that we begin to understand the underlying mechanics involved in legal response. Yet, these variables carry different weight depending on the stage of adjudication. For example, use of alcohol by the victim, gender of the participants, and the use of a weapon all play a role across the full spectrum of the legal process. However, variables such as ethnicity of the victim and injury requiring treatment of the victim have a particular influence at the charging phase (or in the case of the relationship of the participants to one another at both the charging and judicial phases).

Four Principles of Directionality

Partial support is also found for the argument that the application of law is conditioned by the direction in which it is applied. Figure 5 illustrates how significant findings comport with Black's four principles of legal application. Recall that proposition 1 argues that downward law is more punitive than upward law. In other words, an offense committed against a person of

higher social status by someone of lower social status would attract greater punitive response than vice versa. Data seem to support this assertion by reporting that victims who were either Hispanic or had been consuming alcohol prior to an assault are less likely to receive legal redress than their non-Hispanic or abstemious counterparts.

Proposition 2, which states that downward law (legal action aimed at perpetrators of lower status than the victim) increases in punitive response with vertical distance is corroborated by the findings that as relational distance increases so too do the odds of punitive response. Moreover, it would appear that as the degree of familiarity between the victim and perpetrator increases the actions of the perpetrator (i.e., assault) gains increasing legitimacy. Stated another way, it would appear that the law reacts in proportion to the amount of perceived informal social control present within a given situation.

Conversely, proposition 3 stipulates that upward law (legal action aimed at perpetrators of higher status than the victim) decreases in punitive response with vertical distance. Analysis confirms that the law reacts more favorably to perpetrators who reported earning higher wages than their victims. Furthermore, the odds of a punitive response from officials drop as the disparity in income between the victim and perpetrator grows.

Finally, proposition 4 states that high social status dyads attract more law than low-status dyads. Upon initial observation, when looking at the results comparing assaults by gender, it would appear that legal advantage is afforded to females who commit assaults compared with males who commit the same offense. Yet a closer look at the data reveal a more complex pattern suggesting that the combined status of parties involved in a criminal incident do affect the odds of legal response. For example, in a patriarchal society males occupy a higher social position than women (Kline, 1989; Minow, 1991; Quinn, 2012). As a result when two males are involved

in an altercation their combined status should attract the most law compared with an assault incident involving two females resulting in the least. And this is what I found in this study.

Findings Related to the Jurisprudence Model

In addition to testing the predictions made by social geometry, this research also compared results against the jurisprudence model. Recall that the model can be broken into two categories - *Legal Formalism* which proposes the idea that law as written and law in practice are one and the same (Leiter, 2010; Pollack, 1979) verses *Legal Realism* or more specifically *Critical Legal Theory* which argues that the law, as practiced, serves to maintain the interests of the wealthy and powerful who use the law as a means to maintain their social position (Douzinas & Gearey, 2005; Kramer, 1995; Unger, 1986).

Findings indicate that legally aggravating circumstances do, in fact, increase the odds of the law reacting to complaints of assault. Namely, the use of a weapon and/or injury to the victim enhances the likelihood that the perpetrator will be penalized. However, it is interesting to note two particular findings. First, even with the addition of jurisprudential variables in the second models, social geometric variables remained significant. Second, there were no interaction effects observed between the two categories of variables. This suggests that although social geometric and jurisprudential factors maintain separate spheres of influence, nevertheless both must be considered in the complete picture of legal decision-making.

Yet, results do not support the legal realist (critical theory) position that the law is subjective and capricious based largely on the personal predilections of officials. To begin with, although findings indicate that Hispanic victims are at a legal disadvantage, in general there appears to be no difference in the way the law treats black and white assault victims.

Figure 5. Black's Four Principles of Legal Application as Reported by Results


STATUS High  Low	PROPOSITION 1 Victim Offender ↓ ↑ ++ + Offender Victim		ETHNICITY Non-Hispanic Offender Victim ↑ ++ + Offender Hispanic Victim	ALCOHOL USE Victim not Offender Using Alcohol ↑ ++ + Offender Victim using Alcohol
	PROPOSITION 2 Victim Victim Victim ↓ ↓ ↓ + ++ +++ Offender Offender Offender			RELATIONAL DISTANCE Victim Victim Victim ↓ ↓ ↓ + ++ +++ Relative Romantic Stranger
	PROPOSITION 3 Offender Offender Offender ↑ ↑ ↑ +++ ++ + Victim Victim Victim			INCOME Offender Offender Offender \$ > victim \$\$ > victim \$\$\$ > victim ↑ ↑ ↑ +++ ++ + Victim Victim Victim
	PROPOSITION 4 Victim-Offender +++ Victim-Offender ++ Victim-Offender +		ASSAULT BY GENDER Male Victim-Male Offender +++ Male Victim -Female Offender ++ Female Victim -Female Offender +	

Figure 5. Black's four components that condition the application of law compared to study's findings. Proposition 1: Downward law is more punitive than upward law. Proposition 2: Downward law increases in punitive response with vertical distance. Proposition 3: Upward law decreases in punitive response with vertical distance. Proposition 4: High social status attracts more law than low-status elevations. Note: ↓↑ denotes direction of applied law where + represents degree of punitive response for comparative purposes.

Under the critical model, we would expect to see white victims evoking a greater legal response than blacks. Additionally, factors such as education and employment, variables that carry much weight under the critical model, do not appear to significantly affect assault case outcomes. Victim and household income also do not seem to play an influential role in legal response. Moreover, when income does prove to be a determining factor, it is in cases where the perpetrator earns more than the victim resulting in a relatively small effect. Again, under the critical paradigm the effects of income should be fairly significant (Kramer, 1995; Litowitz, 1997). Finally, contrary to the critical position that male offenders are treated more leniently than female offenders, data indicate that, in fact, females are less likely to draw a punitive response than their male counterparts.

Measure of Support

Even though results from this study find partial support for both social geometry and jurisprudential (particularly legal formalism) models the question remains, to what degree? One way to answer this is to look at the data across all stages and compare those findings that comport with the paradigms' (social geometry or jurisprudential) predictions against those that did not. From this we can see the percentage of predictions that garnered support.¹⁶

Beginning with social geometry, out of the twenty-one variables used to test Black's predictions in the overall graduated legal response model (GLR) four (19%) were significant and in predicted directions. Specifically, significant findings represented cultural (ethnicity), normative (victim using alcohol and female assaulting male) and morphological (romantic relationship) dimensions. Furthermore, recall that the organizational dimension was tested separately (due to the amount of missing data) resulting in no significant findings. Following the

¹⁶ For the purpose of comparison I used the second models in the analyses which contained both social geometry and jurisprudential variables.

general GLR analysis I analyzed the graduated legal response of domestic assault cases. Out of the fifteen variables used to test social geometry's predictions only one dimension (7%), vertical (income disparity x perpetrator earns more), found support and in the predicted direction. Within the delineated models, using the same twenty-one variables, support ranged from 10% in the judicial analysis, to 14% in the arrest analysis, to 19% in the charging analysis again representing cultural (ethnicity), normative (victim using alcohol, female assaulting female, female assaulting male) and morphological (romantic relationship) dimensions.

Looking at the jurisprudence perspective recall that five variables were present in the GLR and delineated models; perpetrator initiated, weapon used, injury requiring treatment, injury not requiring treatment, and public location. A review of results shows that one (20%) of the aggravating factors present within the GLR model was significant and in the predicted direction – namely use of a weapon. Support in delineated models ranged from 20% (weapons use) in the arrest and judicial analyses, to 40% (weapons use and injury to victim) in the charging analysis. In the case of domestic assault, only one out of two jurisprudential variables (injury, not weapon use) proves to be significant. So it would appear that even though support is found for both approaches (social geometric and jurisprudential [legal formalism]) not all areas tested were significant.

Contributions of this Study

The efforts represented in the current study offer contributions beyond the existing literature. First, I demonstrate that social characteristics of the actors (perpetrator and victim) involved in assaults are likely to distinguish trajectories of legal outcomes. Prior research has focused almost exclusively on either the victim or perpetrator's characteristics – not both (see Freiburger, 2010; Howell & Hutto, 2012; Klinger, 1995; Kruttschnitt, 1980-1981; Mustard,

2001; Spohn & Cederblom, 1991; Warren, Chiricos, & Bales, 2012; Wu & DeLone, 2012). The current study extends such considerations by examining how the law takes into account the actions and attributes of both subjects.

Second, although this study only found some of the variables tested to be significant predictors, it did so in four of the five proposed social dimensions.¹⁷ Past research has not tested Black's theory in as comprehensive a fashion. As previously discussed, numerous studies have examined criminal justice practices in an attempt to gauge the possible influence of extra-legal factors. Much of the research that does find evidence of non-statutory influence does so from a single or dual-dimensional explanation (e.g., racial or ethnic profiling in the case of discriminatory traffic stops [See Bostaph, 2007; Engel & Calnon, 2004; Lundman & Kaufman, 2003] or income determining the likelihood of receiving a prison sentence [See Clarke & Koch, 1976; Reiman & Leighton, 2012]. While acknowledging the important contributions of the scholarly work conducted in the area of extra-legal influences a gap remained with respect to fully understanding the relationship each area of influence (i.e., race, gender, income, etc) might have with one another. By framing social space in terms of multiple dimensions Black's theory is able to incorporate a wider range of significant influences regarding legal behavior. Namely, social geometry is able to incorporate many of the previously identified extra-legal influences under one unifying concept. Thus Black is able to acknowledge the contribution of each dimension while at the same time not assigning weight to any particular one.

Third, findings from this study provide partial support for both jurisprudence (legal formalism) *and* social geometry paradigms. Although initially it would appear that the two theories provide explanations for legal outcomes from diametrically opposite positions – one asserting that law, in design and action, is a product of directed human measures, the other

¹⁷ Recall that there were no significant findings when testing the organizational dimension.

purporting that social dimensions compel legal behavior in the absence of agency – the two actually appear to work in conjunction with one another. This finding supports Black's (1995) claim that he did not frame his argument in opposition to the jurisprudential model, but rather to be applied as an additional explanation for variations in legal outcomes once statutorily relevant factors (i.e., aggravating factors) have been held constant. In the face of substantial evidence suggesting that officials' decision-making cannot be neatly placed into the jurisprudential framework, results from this study show that social geometry provides for additional explanation while also being sufficiently flexible to account for official behavior that is both legal and extra-legal in nature. Moreover, attempts to find any interactive effects between the two were unsupported, suggesting that both legal and non-legal variables exert distinct influence within the legal system.

Finally, I was able not only to distinguish how legal and non-legal influences shape decision-making, but also to provide a comparative picture of the unique effect each variable has at each legal stage. Scholarship has tended to focus on only one stage of the criminal justice process such as arrest or sentencing, limiting our understanding of the overall legal process. As demonstrated, some variables are influential only at certain stages of adjudication while the effects for others are present across the entire spectrum. For instance, use of alcohol by the victim during an assault has a mitigating effect at the arrest and charging phases but not at the judicial stage. Conversely, the aggravating effects of the perpetrator using a weapon are seen at all stages.

Study Limitations

All studies have limitations, including this one. To begin with, data for this study are based on the Violence and Threats of Violence Against Women and Men survey conducted in

1995 and 1996. Although Black (1976) argues that the principles of social geometry are unchanging in nature across time and location, this cannot be tested by using cross-sectional data.

In addition, although the study did evaluate the odds of punitive response in assault cases based on both victim and perpetrator characteristics, information on the later was limited in the general and delineated analyses. Furthermore, some studies suggest that criminal histories also play a significant role in determining the amount of punitive response a perpetrator will receive (see Feldmeyer & Ulmer, 2011; Hagan, 1999; Mustard, 2001; Pope, 1975; Warren, Chiricos, & Bales, 2012). Unfortunately, data used for this inquiry did not contain such information.

Another consideration is the fact that this study was also not able to control for the social demographics of the legal practitioners themselves. For example, some studies have shown that the race/ethnicity of judges does seem to play a role in how they decide on a case (see Morin, 2014; Spohn & Cederblom, 1991). In order to fully rule out the notion that individual prejudices are the main mechanisms behind observed outcomes, analyses need to also control for characteristics associated with those making the decisions.

Along those lines, it is further recognized that much of the data for this study are based on the victim's personal knowledge of the outcome of his or her individual cases. Although most respondents would be in the position to know whether or not his or her attacker was arrested at the time of the assault, it is possible that some victims did not provide an accurate account of what transpired after the initial arrest, having not participated in subsequent legal procedures (i.e., charging, trial, sentencing).

Recommendations for Future Research

The current study reveals that the methods behind the adjudication process are complex and layered, combining the influence of social characteristics and statutory elements. Yet, there still remain many unanswered questions deserving further exploration. For example, studies using more recent data might better assess the long term impact of policies designed to provide protection to minority classes (e.g., Violence Against Women Act of 1994 or Hate Crimes Prevention Act of 1998). Subsequent studies might allow us to see whether changes in policies, procedures, and statutes have decreased the influence of demographics in assault cases; or, per Black's argument, that despite our attempts to legislate out these influences, there will always be a relationship between legal outcomes and the social attributes of those involved.

A more rigorous test of the predictions made by social geometry regarding the dyadic nature of social space is also warranted. Future work needs to further explore the argument that the law compares the social character of the victim and perpetrator to one another by utilizing sources that compile detailed data on both. With the advent of more powerful tools, such as the National Incident Based Reporting System (NIBRS) which not only reports the victim's characteristics but also the arrestee's age, gender, race, ethnicity and resident status, researchers could conduct more thorough tests of Black's four principles of law (i.e., degree of social status = degree of legal benefit).

Additional research is needed as to the possible weight each social dimension might carry when deciding disciplinary response; not only as compared to one other but also framed in terms of legal vs. extra-legal influence. Although Black argues that each dimension is separate and distinct, neither more important nor more influential than the other, this argument has yet to be

fully tested. Moreover, it might be interesting to see if legally recognized elements of the law are more important when considering legal action, or do social characteristics supersede them?

Yet another area that should be further explored is: 1) how the degree to which institutions and organizations are organized influences legal outcomes, and 2) how one's position within that organization can affect the law's reaction to allegations of assault. The limited research that has been conducted on this topic finds evidence that, like other social dimensions, the higher status an institution (or one's association with that institution) has as designated by the higher degree of organization, the greater the legal advantage (see Hagan, 1999; Smith & Klein, 1984). In other words, more research is needed to see if: 1) the law takes into account the degree to which an establishment is organized as characterized by the presence and number of administrative officers, the centralization and continuity of decision-making, and the quantity of collective action? 2) If so, does the degree of organization translate into a form of social status which, in turn, creates a legal advantage? 3) Does this prestige effect transfer over to individuals associated with the establishment? 4) Does the position one occupies within the establishment also play a significant role in legal outcomes?

But the subject that poses the greatest need for further research and perhaps the most controversial aspect of Black's argument is that of social life. Recall that Black (1995) argues that the law does not adhere to the psychological dispositions of people but rather is a separate and distinct construct acting autonomously as part of the social world. Yet despite findings from this research showing that the law acts beyond the confines of statutory provisions, further work on this topic is needed in order to truly conduct a more in-depth examination of Black's argument of reification and the law.¹⁸ In fact, Litowitz (2000) writes that although the idea of

¹⁸ Reification generally refers to the practice of treating an abstract construct (such as the law) as a real, capable of autonomous action. Similar to the German concept of *Verdinglichung* ("to turn into a thing").

framing the concept of legal behavior as a natural force is not new, there exists little in the way of literature on the subject.

The term reification finds active use in legal scholarship, both among critical legal scholars and mainstream thinkers. But despite broad use of the term, there has been little scholarship specifically devoted to the place of reification in law and legal theory. The few articles that have tackled this subject are deeply flawed...As a result, little scholarship has been devoted exclusively to reification as a problem within the law. (p. 402)

Future research exploring the merits of Black's argument concerning social life should incorporate data on the decision-makers themselves including police, prosecutors, judges and juries. Only after the attributes of those responsible for deciding on legal recourse are controlled, can the officials themselves be eliminated as possible influences on the operation of law.

Conclusion

Obviously, more research is needed concerning the effects of social characteristics on legal behavior. Yet, the current study does add to our understanding of the responsive nature of law. In particular, this work is the first to present a complete picture of the legal process from arrest to sentencing testing all five of the proposed dimensions posited by Black's social geometry theory. Furthermore, partial support was found in four of the five proposed dimensions (with the exception of the organizational dimension), indicating that assault cases are not just about the act of violence but also whom it was committed against and by whom. This implies that incorporated into our legal structure is a somewhat hidden unofficially recognized secondary set of criteria evaluating the social standing of each person involved in the conflict. In turn, a penalty is levied on those deemed as having low social rank (or at least lower than the other

subject involved) putting them at a legal disadvantage. Furthermore, behavior of the legal system is not a purposeful mechanism in which to perpetuate the power of the affluent but rather the assignment of rank is conditioned upon the perception of what constitutes normal in that society. In other words, this standard is not necessarily the social mean of a society (i.e., average salary, average years of education, or average marital status of individuals), but rather it is based on a set of ideals. Therefore in a society where the majority of the population is Hispanic yet the dominant ethnicity is non-Hispanic, the law will favor the latter. In male dominated societies, women are less likely to be arrested and prosecuted for assaulting men (as opposed to men assaulting men) because it is believed that women are the frailer of the two and less capable of harming men. In cultures where alcohol is legal, yet still seen as a somewhat deviant indulgence, inebriated victims of assault are less likely to receive protection from the law.

Overlaying this system of regulation by social attribution is the official codified legal structure which attempts to assign punitive response based on the severity of the offense as prescribed by law. Yet, instead of one legal process dominating the other it appears that the two seem to work in conjunction, operating side-by-side to create a system of law that attempts to be equitable in structure yet remains prejudicial in nature. Moreover, despite pressure from victim advocacy groups, the introduction of pro-arrest policies encouraging the incarceration of domestic assaulters, and changes in training tactics for law enforcement, it would seem that who was involved in an assault is as important as what was done.

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