

THE UNIVERSITY OF MANITOBA

RAPE AND THE JUDICIAL SYSTEM

A Study of Social Control

Manitoba 1965 - 1980

by

Sandra A. Devon

A THESIS

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DEDICATION

Nguyen Phuong Thuy,

child of brute socialization

In May of 1981, Nguyen Phuong Thuy, 15, slipped out of Vietnam in a thirty-three foot boat with her younger sister and 67 other refugees, fleeing to the safety of neighbouring Thailand. When the craft was well within the presumed safety zone in the Gulf of Thailand, it was attacked and sunk by a vessel carrying eight Thai fishermen, who seized Thuy and another young girl.

During the next 3.5 months, she often was gang-raped 30 times a day. She was kept in a dark locker where the temperature hovered around 100 degrees Fahrenheit and fed a subsistence diet of rice and water. When Thuy passed out, she would be roused by being drenched with a bucket of salt water and then raped again. Her kidnapped companion was treated the same way and then thrown overboard. Thuy was bartered, along with baskets of fish, to 14 other boats, where her ordeal continued. When the last set her ashore, Thai authorities jailed her as an illegal immigrant (Time, Nov. 9, 81:56).

Lorenne Clark and Debra Lewis,

who hastened change, by writing

The fear of rape affects all women. It inhibits their actions and limits their freedom, influencing the way they dress, the hours they keep, and the routes they walk. The fear is well founded, because no woman is immune from rape (1977:23).

ABSTRACT

A review of the literature on violent offences indicates that although defined by law as a serious breach of social justice, the sexual assault of women is treated differently from other forms of violent crime throughout the judicial system. Statistics of incidence, reports to police, founding classifications, arrest, conviction/acquittal, and severity of sanction rates, as well as evidentiary procedures (consent, character, and corroboration) reveal inconsistent criminal judicial sanctioning. Specifically, available evidence indicates that the sexual assault of women is less severely sanctioned by the justice system than are other forms of violent crime. This inconsistent judicial sanctioning is the problem to be examined in this thesis.

Statistical analysis of the phenomenon of sexual violence toward women has for the most part centered on data derived from police records and from interviews with both assault victims and incarcerated assailants. Further description and analysis of this offence at the court level, as well as comparative assessment of judicial response to equivalent sexual and nonsexual violent crimes, however, are both viewed as necessary components to accurate assessment. The purpose of this thesis is, therefore, twofold: firstly, hypotheses testing to ascertain the nature of judicial response to comparable-assault (sexual/nonsexual) offences and specific-assault (sexual) offences, and secondly, provision of a profile of sexual assault and its judicial response at the prosecution level organized under the offender categories of individual/

gang offender and child/adult victim offender. The statistical data gathered for analysis in this work consist of Court of Queen's Bench and County Court sexual and nonsexual violent assault trial variables, of trials involving a male assailant and a female victim, Eastern Judicial District (Winnipeg and environs), Manitoba, 1965 to 1980. Multiple regression and multinomial logit regression are employed as the statistical methods for hypotheses testing. Sexual assault trial profile compilation includes one way frequency and conditional distribution tables illustrating the offender and offence characteristics, which are assessed relative to provincial or national distribution and to comparable literature.

The hypotheses suggest that the sanction of an offence is affected by specific characteristics of that offence, i.e., the nature of the offence (sexual/nonsexual), the socioeconomic status of the offender, the offender/victim relationship (stranger/known), the victim's age or status (child/adult), and the multiplicity of offenders (individual/gang offence). Specifically, the hypotheses suggest that within comparable-assault (sexual/nonsexual) offences, sexual offenders will be less severely sanctioned than will nonsexual offenders and low socioeconomic status offenders (sexual and nonsexual) will be more severely sanctioned than will high socioeconomic status offenders. The hypotheses suggest that within sexual-assault offences, offenders assaulting victims known to them will be less severely sanctioned than will offenders assaulting strangers, offenders assaulting children will be less severely sanctioned than will offenders assaulting adults, and offenders assaulting in gangs will be less severely sanctioned than will offenders assaulting

alone. The dependent variable, sanction, is assessed as a three-faceted variable (conviction rate, imprisonment rate, and length of incarceration), in order to ascertain the degree of differential judicial response to offences beyond a finding of guilt or non-guilt. The results of the analysis verify the anticipated possibility of within-sanction variation. The general trend is that all offenders except known-relation offenders (i.e., sexual offenders, low socioeconomic status offenders, child assailants, and gang offenders) have a greater likelihood of conviction and of imprisonment, but that all of the above offenders, including known-relation offenders, have a likelihood of less severe incarceration, relative to their comparative offender category.

Partial explanation for the within-sanction variation or for the lack of full support of the hypotheses may be the filtering process described by Clark, wherein only assaults of victims judged worthy of the protection of the law are classified as founded and subsequently prosecuted (1977:57). A second major factor which may account for the findings is the challenge of the definition, cause, and consequence of sexual assault directed by feminist groups of the past decade. Both of these possible explanations of the findings suggest direction for future research in the area of the judicial sanctioning of sexual assault. Assessment could be made of the status of the victim (i.e., degree of social conformity) in sexual offences, with this status then measured against judicial sanctioning to assess differential judicial response based on the perceived value of the victim to the social order. Secondly, a time series study could be undertaken to determine the effect of periods of women's challenge to their social role and

subsequent judicial variation in the sanctioning of sexual violence toward females, to assess differential judicial tolerance of sexual violence toward women correlated with female refutation of their traditional social roles.

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Acknowledgement must go, firstly to the women of this study. This work is a recognition of their pain, humiliation, and terror, of their outrage, anger, and their courage. These women suffered violence at the hands of men, and now struggle in an environment of suspicion and disdain to regain some sense of personal control and peace of mind.

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contribution was that of a role model -- was that of causing this writer to aspire to previously unsought realms.

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Chapter I

THE PROBLEM

[A review of the literature on violent offences indicates that although defined by law as a serious breach of social justice, the sexual assault of women is treated differently from other forms of violent crime throughout the judicial system. Statistics of incidence, reports to police, founding classifications, arrest, conviction/acquittal, and severity of sanction rates, as well as evidentiary procedures (consent, character, and corroboration) reveal inconsistent criminal judicial sanctioning. Specifically, available evidence indicates that the sexual assault of women is less severely sanctioned by the justice system than are other forms of violent crime. According to Robin:

Forcible rape is unique among crimes in the manner in which its victims are dealt with by the criminal justice system. Raped women are subjected to an institutionalized sexism that begins with their treatment by the police, continues through a male-dominated criminal justice system influenced by pseudo-scientific notions of victim precipitation, and ends with the systematic acquittal of many de facto guilty rapists (1977:136).

This inconsistent judicial sanctioning is the problem to be examined in this thesis.]

SEXUAL ASSAULT AS SOCIAL CONTROL

Perception of the judicial disparity in the treatment of sexual and nonsexual offences as an issue of sociological enquiry originated in feminist articles of the early 1970's on rape and the sexual assault of *difference*

women. Analysis from this perspective suggests that society, both past (at least 4,000 years) and present is based on the violently enforced, legally prescribed, inferior status of women to men. Such study of the social status of women discloses their forceful relegation to the sphere of sexuality and reproduction -- to the bearing, nurturing, and socializing of children, and to the domestic and sexual servicing of males:

At the core of patriarchy is the individual family unit which originated with the idea of property and the desire to see one's property transmitted to one's biological descendants. ... At this crossroads of sexual possession, property ownership, and the desire to transcend death, developed the institution we know: the present-day patriarchal family with its supernaturalizing of the penis, its division of labor by gender, its emotional, physical, and material possessiveness, its ideal of monogamous marriage until death (and its severe penalties for adultery by the wife), the 'illegitimacy' of a child born outside wedlock, the economic dependency of women, the unpaid domestic services of the wife, the obedience of women and children to male authority, the imprinting and continuation of heterosexual roles (Rich, 1981:44).

Within this system, woman's social definition and, thus, her social value has been that of a sexually-defined dependent. Commensurate with this definition, and its attendant ideology, she has been both encoded (law) and attacked (force).

Legislated Subjugation

Judicial concern with female sexual activity originates or emanates not from an attempt to protect females from attack, but rather to protect female chastity from trespass. Legal curtailment of female sexual trespass developed with the implementation of a system of male-owned private property. Within this system, certainty of paternity, to ensure property transfer to male biological heirs, required exclusive sexual

access to one or more females. Thus rape, previously a common means of individual or tribal acquisition of females, became a property crime committed by male against male. A price was set on the value of this (female) property and its exchange became a legal transaction through purchase/marriage or theft/rape, with either form requiring payment or reparation to the (father or husband) property owner (Horos, 1974:3-9; Clark, 1977: 112-120).

Written law in its origin was a solemn compact among men of property, designed to protect their own male interests by a civilized exchange of goods or silver in place of force wherever possible. The capture of females by force remained perfectly acceptable outside the tribe or city as one of the ready fruits of warfare, but clearly within the social order such a happenstance would lead to chaos. A payment of money to the father of the house was a much more civilized and less dangerous way of acquiring a wife. And so the bride price was codified, at fifty pieces of silver. By this circuitous route the first concept of criminal rape sneaked its tortuous way into man's definition of law. Criminal rape, as a patriarchal father saw it, was a violation of the new way of doing business. It was, in a phrase, the theft of virginity, an embezzlement of his daughter's fair price on the market (Brownmiller, 1975:8).

This original offence of rapere -- to steal, seize or carry away (Horos, 1974:3) has ^{GROWN} proliferated throughout history to assure continued male sexual and reproductive access and control over the female. Women's current social existence is encoded to the degree that law has been created to regulate the entire realm of her sexual possibilities; that ^{KIND OF} law formulated for her.

by bodily part

by age

- Indecent Assault, Gross Indecency, Buggery, Rape;
- Sexual Intercourse with Female Under Fourteen,
- Parent or Guardian Procuring Defilement of Female Under Fourteen or Female Fourteen Years or More,

- Sexual Intercourse with Female Between Fourteen and Sixteen,
 - Seduction of Female Between Sixteen and Eighteen,
 - Householder Permitting Defilement of Female Under the Age of Eighteen,
 - Seduction of Female Who is Less Than Twenty-one,
 - Sexual Intercourse with Female Who is Less Than Twenty-one;
 - Seduction Under Promise of Marriage,
 - Conspiracy to Commit Adultery,
 - Corrupting Children (Adultery in the Home of a Child);
 - Sexual Intercourse with Feeble Minded Woman;
 - Burden of Proof of Chastity,
 - Previous Sexual Intercourse with the Accused;
 - Incest,
 - Sexual Intercourse with Stepdaughter,
 - Parent or Guardian Procuring Defilement of Female;
 - Procuring Miscarriage,
 - Infanticide;
 - Sexual Intercourse with Female Employee,
 - Keeping Common Bawdy-House,
 - Transporting Person to Bawdy-House,
 - Procuring,
 - Soliciting;
 - Abduction of Female (For Sexual Intercourse);
 - Seduction of Females on Vessels,
 - Householder Permitting Defilement of Girl on Premises
(Canadian Criminal Code, 1980, ss. 139-240).
- by marital status
- by sanity
- by degree of chastity
- by consanguinity
- by sexual productivity
- by occupational productivity
- by method
- by locale

Over time, supplemental legislation of a nonsexual nature supported woman's prescribed status within the social order by regulating her activities beyond the reproductive or private sphere as well. Her participation in public life, in both the economic and political arenas, was severely restricted through the creation of legislation regarding wage labor (participation and wages) and suffrage (both the right to vote and the right to become a political representative). This supplemental legislation was instrumental in the maintenance of the social

control of women in that it effectively negated the possibility of disruption or change of the social order, both public and private, through women's potential economic or political activity (Nogiec, 1979; Levine, 1981).

Forcible Subjugation

In concert with the cultural construction of woman's status and hence her social value as a sexual, reproductive, and familial entity, she has been attacked within that sphere. For, as primary to the containment of woman within this prescribed social role as are the legal constraints are the frequent, flagrant, and severe assaults upon her person, i.e., law (and its implementation) and force conjointly enforcing her subjugation, as revealed in the following:

- One in three female children is sexually assaulted; 75% of the assaults are committed by a male relative, -- father, stepfather, grandfather, uncle, brother -- or close male family friend (deFrancis, 1965:66).
- One in five women is sexually assaulted (one every six minutes), that of all violent crime, rape is the fastest growing (increasing 174% between 1961 and 1971), has the lowest arrest rate (51% vs. 79%), the lowest conviction rate (51% vs. 86%), the lowest reported-to-conviction rate (5% vs. 53%), and the highest acquittal rate (41% vs. 24%) (Clark, 1977:61; Solicitor General, Canada, 1977; Canadian Advisory Council Fact Sheet 4).
- One in three rapes is a social rape (gang rape involving two or more males); 50% to 70% of rapists are gang rapists, who thus are as "typical" as the rapist who rapes alone (Clark, 1977:2).
- Physical violence is used in 85% of sexual assaults; of all violent crime (other than murder) rape is the crime most likely to involve injury to the victim, with one in three victims being injured, 6% seriously (Bureau of U.S. Justice, 1982:4).
- One in ten women is battered by her husband (one every eighteen seconds); one in three batterings includes rape or forced sex; wife beating is ten times more frequent than any other crime and ten times

as underreported; for nearly 50% of spousal murders studied, police had received five or more "domestic dispute" calls for assistance for two years prior to the murder, indicating public/judicial awareness of the violence (Roberts, 1982:17-21; Finkelhor, 1981:461).

- 60% of female homicides are wives murdered by husbands or intimates (McLeod, 1980:10).

Utilitarian Function of Violence

As indicated above, sexual assault legislation was not created, nor does it function, to protect the rights of women, but rather for the protection of the rights of men within this male-dominant social order. The utilitarian function of this sexual violence, both incidence and concomitant juridical response, is viewed as that of maintaining the defined social status of women. Klein has suggested that "essentially all women are under house arrest, their activities constrained" (1981:72). Both Klein and Brownmiller define the social prevalence and possibility of rape as a utilitarian function in the subjugation and control of women:

A world without rapists would be a world in which women moved freely without fear of men. That some men rape provides a sufficient threat to keep all women in a constant state of intimidation, forever conscious of the knowledge that the biological tool must be held in awe for it may turn to weapon with sudden swiftness borne of harmful intent (1971:229).

The effectiveness of this behavior on the lifestyle of women, both those who are assaulted and the remainder who are aware not only of the assaults but also of the juridical response to them, is reflected in the long term effect statistics of sexual assault. Roberts (1982) reports that 26% of sexual assault of victims did not feel recovered four to six years later, 10% had sustained long-term physical injuries, 27% felt afraid of being alone, 42% felt afraid of men, 81% reported negative

affects on their sexuality, and 89% felt their lives altered in a major way (p. 11). Smart's (1978) British study on media reports of rape points out that such reports emphasize women's vulnerability and strengthen social control over them by helping to socialize women into "constraining their own forms of behaviour and social activity in the hopes of avoiding rape" (p. 102). Such self-restriction is substantiated by Gordon's (1980) study of women's reactions which found that women do restrict their movements for the sake of safety (p. 5). In the words of Clark:

Any woman who is at all able to learn by means of the empirical method, soon learns to fear men. The concept of man-as-protector has its threatening dimension, for it acknowledges that men are also the danger from which women need protection. We are taught that men will protect us, but that in order to qualify for such protection, we must do as we are told; the penalty for refusing to accept our appointed role is physical and social abuse (1977:138).

Societal action to redress the differential juridical response between sexual assaults and other forms of violent crime is judged unlikely as this differential response is viewed as a direct attempt to preserve the sexual status quo:

The fear of being raped - which every woman knows - has made women, collectively, the largest group of prisoners in America, sentenced to lifelong deprivation of liberty by the frightening reality of sexual assault and by a sexist society and criminal justice system which require that the victim first establish her innocence before the rapist can be convicted (Robin, 1977:136).

and,

It is not accidental but necessary that it remain so. In order to preserve and enhance male supremacy, rape must be both possible and probable; it must remind women who has power over them and keep them solidly in their places (Clark, 1977:28).

HOLISTIC ANALYSIS - THE AGE CONTINUUM OF AGGRESSION

Recent evaluation of the phenomenon of violence against women suggests that this activity serves to establish and maintain a desired social order, i.e., a hierarchically ordered system of male and female social roles based on the sexual division of labor and society. Initially, the abduction and rape of women functioned to establish a social system of patriarchy; currently, the sexual assault of women and concomitant juridical response function to maintain that system of male supremacy and female subjugation.

Rapists have performed their duty so well in fact that the true meaning of their act has largely gone unnoticed. Rather than society's aberrants or 'spoilors of purity', men who commit rape have served in effect as front-line masculine shock troops, terrorist guerillas in the longest sustained battle the world has ever known (Brownmiller, 1975:229).

Based on this perspective of a purposeful continual war against women, writers have begun to analyze the phenomenon of violence toward women from the perspective of its utility as a means of the social control of women, i.e., as a means of the orderly maintenance of social status. Issues such as rape, incest, wife battery and sexual assault, and their ideologized form -- pornography, previously examined as disparate instances of violence are now assessed as varied expressions of the overall phenomenon of violence toward women, as composites forming a continuum of aggression. The various forms of violence against women are understood as degrees on a continuum of aggression to keep woman in her (social) "place". A further development of the assessment of diverse forms of violence as components of a whole social existence is the perception of the various stages of development of victims as degrees on a

continuum of womanhood. In this light, female child or adolescent abuse is understood to be early or initial implementation, through aggression, of a system of male domination and female subjugation, that the female's early "sexual" experiences prepare her to submit in later life to the adult (i.e., boyfriend, husband, stranger) forms of such abuse. The female child and woman are the same social person, merely at different stages of development, and separations in the assessment of sexual assault (e.g., incest as unrelated to adult rape) are seen as false and misleading (Rush, 1974:73). Analysis based on the perspective of an age continuum of aggression therefore permits assessment of the overall phenomenon of violence toward women in society.

Statistical analysis of the phenomenon of sexual violence toward women has for the most part centered on data derived from police records and from interviews with both assault victims and incarcerated assailants. Further description and analysis of this offence at the court level, as well as comparative assessment of judicial response to equivalent sexual and nonsexual violent crimes, however, are both viewed as necessary components to accurate assessment. The purpose of this thesis is, therefore, twofold: firstly, hypotheses testing to ascertain the nature of judicial response to comparable-assault (sexual/nonsexual) offences and specific-assault (sexual) offences, and secondly, provision of a profile of sexual assault and its judicial response at the prosecution level organized under the offender categories of individual/gang offender and child/adult victim offender. The statistical data gathered for analysis in this work consist of Court of Queen's Bench and County Court sexual and nonsexual violent assault trial variables involving a male assailant and a female victim, Eastern Judicial District (Winnipeg and environs), Manitoba, 1965 to 1980.

Chapter II

LITERATURE REVIEW

Review of the literature indicates that there are two distinct schools of thought regarding the sexual assault of women, - that group which does not view the sexual assault of women as inherently unnecessary and undesirable, and that group which does. The first view seeks to withhold condemnation by either denying that the assault occurred, by refuting the seriousness of the assault, by holding all but the offender responsible or culpable (i.e., blaming the victim herself, the victim's mother, the offender's mother, the offender's wife, or women in general), or by demonstrating the functionalism of such activity for society. This first group, then, may be categorized as the Social Order approach to violence against women, based on its view of the sexual assault of women as a natural fact-of-life, therefore not eradicable. The second school of thought, which may be defined as the Social Change approach, defines sexual violence toward women as a social fact-of-order, and bases analysis of this phenomenon in the perspective of its abolition. This approach assesses the historicity and universality of this violence, defines its pathology as social and not personal, stresses its consequences, both social and personal, and recommends avenues for its eradication. In sum, the primary distinction between the schools of thought is that emphasis on "human nature" as explanation of

the phenomenon of sexual violence toward women (and by fiat support of the sexual status quo and thus social order) disallows consideration of gender-based social change, while emphasis on social nature as explanation of such violence demands it. This review will be organized in the following format: the courts, the offender, the offence, social or gang rape, child sexual assault.

THE COURTS

Society's reaction to violence against women may be assessed by the manner in which its laws protect her -- or fail to do so, as evidenced in the following U.S. figures. According to FBI statistics, a man who rapes a woman who reports the rape to police has roughly 7 chances out of 8 of walking away without any conviction. Assuming that only 1 woman in 5 reports the rape, his chances of nonconviction rise to 39 out of 40. Taking into account the high percentage of convicted rapists who receive probation or suspended sentences, the rapist's chances of escaping incarceration are in the vicinity of 98 to 99 out of 100 (California Law Review, 1970, cited in Rioux, 1975:14).

Melani and Fodaski maintain that rape is an aggressive rather than a sexual act, that its motivation and dynamics arise out of hostility rather than sexual need, that sexual domination "fulfills the cultural image of male supremacy", and that the pressure to be masculine is "a factor in much sexual assault" (1974:84). They state that rape and normal sexual behavior are merely differences in degree of coercion; that men in society and in the justice system recognize this commonality and their own practice of coercion; and that "in self protection and in

common cause with other men", they are reluctant to prosecute other men or to "believe a woman's claim" (1974:90).

Society, and its judicial system, condones, and thus perpetuates, violence against women by holding the victim, rather than the assailant, responsible for the occurrence. It does this by seeking the problem, the cause and the solution to this activity in the behaviour of the victim. Victim-blaming succeeds as an acceptable explanation of violence against women, and of society's response to that violence, because of the myths (i.e., the societally promulgated misassumptions of female and male psyche, personality, sexuality, and value) upon which it is based. These myths include a) a healthy woman cannot be raped by one man alone; b) if a woman is not a virgin, it doesn't matter anyhow; c) rape is simply seduction gone wrong; and d) she provoked him by behaving in a seductive fashion (Rioux, 1975:11-12). In the following examples, these myths clearly form the basis of judicial decision making:

- 1) Trinidad, Colorado. A Colorado District Court Judge dismissed a charge of sexual assault against the defendant. He entered the home of the victim by breaking down a door and then sexually assaulted her on the floor. The judge said the incident reminded him of an "attempted seduction" (Winnipeg Tribune, December 31, 1977).
- 2) Honolulu, Hawaii. A District Judge dismissed the rape charge against a U.S. marine based on Oahu. The marine hit the victim with his car while she was jogging. He then forced the victim into the car by threatening her with a broken bottle, then sodomized and raped her. The Judge ruled the woman did not "show enough resistance" (Winnipeg Tribune, March 6, 1978).
- 3) Madison, Wisconsin. A Judge sentenced a man to a year's probation for the rape of a 16 year old student in her school. The judge's reasoning for the light sentence was: "Whether you like it or not, a woman's a sex object, and they're the ones who turn the man on, generally. ... Are we supposed to take an impressionable person ... who can respond to something like that, and punish that person severely because they react to it normally?" (Winnipeg Tribune, January, 1978).

Further evidence of the link between social role myths and judicial attitudes is given in the Philadelphia study assessing judicial attitudes toward rape victims, wherein comments uttered by 38 judges involved in trying rape cases included: "boys will be boys", "a hostile vagina will not admit a penis", "with the Negro community you really have to redefine the term rape. You never know about them", as well as the definition of rape as "assault with failure to please", "friendly rape", "breach of contract", and "felonious gallantry" (Bohmer, 1974:303-07). While rape according to the law may not be rape according to the judge, the Kalven and Zeisel (1966) study indicates that victims of sexual assault are likely to fare even less well in a trial by judge-and-jury than by judge alone. The authors found that the jury acquitted 60 percent of the rape defendants whom the judge would have found guilty.

THE OFFENDER

Clark, (1977) whose study is of 116 rape cases reported to the Metropolitan Toronto Police Department in 1970, suggests that the inference that men from the lower socio economic strata are "more likely to commit rape than other men" should "be approached with caution" (p. 100). She says that a combination of factors results in this over-representation: 1) that the selective criminal justice system filtering of rape cases "clearly reveals a bias against men of low socio economic status" who may be convicted "as much for that status as for the crime of rape" and 2) that lower socioeconomic status SES men are "neither rich nor powerful" and may commit the kind of rape offence which is

reported to the police and classified as founded "because they have no other means of gaining access to the women they want" (1977:100). Clark attributes the aggression displayed by the rapist to the cultural conception of masculinity, which includes sexual aggression, and to the misogyny inherent in the male role. This misogyny is inclusive of both a) fear that "women do not always accept their oppression willingly", and b) resentment "at having to bargain with women for sexual gratification" (1977:137):

It is hardly surprising, therefore, that this misogyny should be most dramatically expressed by men without the economic or social means to acquire the women they want (1977:137).

Groth and Longo suggest that sexual assault is a chronic behavior, that "contrary to the impression yielded by the general literature, such offenders are serious recidivists" (1971:457). Results of an anonymous questionnaire administered to 83 convicted rapists and 54 convicted child molesters revealed that: 1) the majority of the offenders had been convicted more than once for a sexual assault, and 2) on average, they admitted to having committed 2 to 5 times as many sex crimes for which they were not apprehended. Groth and Longo state that while it is generally true that most criminals get away with more crimes than they are convicted of, "it would appear that it is especially true of offenders who commit sexual assaults" (1981:457). They also found that the sexual offenders' assaultive behavior began at an early age. The modal age for both groups of offenders in the combined sample is 16: "very many sexual aggressors commit their initial offences as juveniles -- typically, such sex offences are dismissed as insignificant" (198:457). They add that arrest records are misleading as to the degree of recidivism "because many juvenile records are destroyed", thus "their records

for sexual offences omit serious crimes they committed as juveniles" (1981:458).

Freudian-oriented criminologists view human nature as biologically determined; they maintain that the natural male role is one of aggression and dominance over the female. In a 900 page analysis of convicted rapists, child molesters, and homosexuals, Gebhard remarks that "the heterosexual adjustment" of rapists "is quantitatively well above average" when compared to a control group of churchmembers and union men (1965:205). On the naturalness of aggression, he states:

Any reasonably experienced male has learned to disregard minor protestations of the female ... a male is supposed to be physically forceful in his sexual behavior. ... Actually there is some sound biology behind this supposition. In many mammals coitus is ordinarily preceded by a physical struggle. ... The physiological by-products of excitement and exertion - the increased heart rate, increased breathing, muscle tension, the greater supply of blood to the body surfaces, etc. -- all of these are also a part of sexual response and it is easy to see how these physiological conditions could facilitate a subsequent sexual response (1965:177-178).

Within this context, rape is defined as a neurotic overreaction stemming from feelings of inadequacy, i.e., a lack of confidence in one's maleness. Rapists, writes Karpman, "are victims of a disease from which many of them suffer more than their victims" (1951:482). However, based in a belief in the appropriateness of male dominance and aggression, psychoanalytical solutions to manifestations of abnormality, such as the inadequacy exhibited in rape, are then sought beyond the behavior of the particular offender. For example, Abrahamson, in a study of convicted rapists, concludes:

... they unconsciously invited sexual aggression, only to respond to it with coolness and rejection. They stimulated their husbands into attempts to prove themselves, attempts which necessarily ended

in frustration and increased their husbands' own doubts about their masculinity. In doing so, the wives unknowingly continued the type of relationship the offender had had with his mother. There can be no doubt that the sexual frustration which the wives caused is one of the factors motivating rape, which might be tentatively described as displaced attempt to force a seductive but rejecting mother into submission (1960:165). (*italics added*)

THE OFFENCE

Perception of rape as a political act is indicated by Millett in the following:

Coitus can scarcely be said to take place in a vacuum; although of itself it appears a biological and physical activity, it is set so deeply within the larger context of human affairs that it serves as a charged microcosm of the variety of attitudes and values to which culture subscribes. Among other things, it may serve as a model of sexual politics on an individual or personal plane (1969:43).

According to Millett, gender is a "status category with political implications" in our society, whereby it is the "birthright priority" of males to rule females. Consent to this system is obtained through the socialization of both sexes to "basic patriarchal politics" with regard to temperament, role, and status. The basic division of personal temperament is that "aggression is male" and "passivity is female", and that therefore the dominant class is "by nature aggressive and the inferior class naturally docile". This socialization is such that use of force is restricted to the male who alone is then "psychologically and technically equipped to perpetrate physical violence", while the female is rendered "innocuous and defenseless" (1969:69). This system, Millett states, is initially implemented within the family -- "patriarchal unit within a patriarchal whole". On the necessity of force, she explains that "so perfect is its system of socialization, so complete the

general assent to its values, so long and so universally has it prevailed in human society, that it scarcely seems to require violent implementation" (1969:68). However, as under all other "total ideologies", "control in patriarchal society would be imperfect even inoperable, unless it had the rule of force to rely upon, both in emergencies and as an ever present instrument of intimidation" (1969:68). Millett defines rape as one such method of control:

In rape, the emotions of aggression, hatred, contempt, and the desire to break or violate personality take a form consummately appropriate to sexual politics (1969:70).

In their study of forced sex in marriage, Finkelhor and Yllo conclude that 1) rape by a husband occurred over twice as often as rape by a stranger, and 2) forced sex (including rape) in marriage is a frequent, perhaps the most frequent, kind of sexual assault (1981:461).

Such incidents seem to occur both in generally violent and in violence-free relationships. ... The offender's goal in many instances appears to be to humiliate and retaliate against his wife, and the abuse may often include anal intercourse (1981:459).

They state that "forced sex is clearly a common element in the battering situation". Of 304 battered women in ten shelters in Minnesota, 36% said they had been raped by their husband or cohabitating partner; of 119 battered women in California, 37% also indicated that forced sex accompanied the battering (1981:459-460).

Freud whose major works included the study of sexual disorders, constructed a theory to account for aggressive nonconsensual sex, in which he viewed this behavior as a necessary biological-constitutional occurrence. Freud stated that the three corollaries of feminine psychology were passivity, masochism, and narcissism. Passivity, or the

"weaker sexual instinct" necessitated that "the achievement of the biological aim [procreation] is entrusted to the aggressiveness of the male, and is to some extent independent of the cooperation of the female" (1964:131):

The male pursues the female for the purposes of sexual union, seizes hold of her and penetrates into her ... by this you have precisely reduced the characteristic of masculinity to the factor of aggressiveness (1964:114-115).

In addition to the necessity of male sexual aggression for the preservation of the human race, Freud allows that "the sexual instinct in man does not originally serve the purpose of procreation, but has as its aim the gain of a particular kind of pleasure" (1959:83). This "pleasure" is not shared by both sexes, however, for Freud claims that within women's psychological make-up, masochism is an erotogenic "lust for pain" and that this pain is the nature of female sexual experience (1959:259). But despite her "lust for pain", woman, according to Freud, "displays a general female tendency to ward off sexuality" (1959:218).

SOCIAL OR GANG RAPE

The Clark study of group rape, based on all rapes reported to the Metropolitan Toronto Police Department in 1970 and to the Vancouver Police Department from 1970 to 1974, cites two major findings: 1) that the number of offenders involved in a complaint is one of the most significant variables in the determination of police classification, i.e., the greater the number of offenders, the lower the probability of a founded classification, and 2) that the multiple offender (forming more than 50% of the rape offender population) is as typical a rapist as the

single offender. Of the statistics Clark concludes:

The inescapable conclusion to be drawn from looking at the facts as they stand now is that the safest way to commit rape is to do it in the company of others. In unity there is apparently, both strength and safety. And when one looks at the facts respecting the differential treatment even of pair rapes as contrasted with cases involving 3 or more offenders, the further moral to be drawn is that the more persons involved in the rape, the safer you are, unless, of course, you happen to be the victim (p. 28).

Brownmiller (1975) suggests that the purpose of gang rape is three-fold. It serves as 1) an expression of manhood, 2) an indication of the property concept of woman, and 3) a mechanism of social control to keep women in line. She states that group rape is simply an "exaggerated form of male bonding" involving "reinforced sadistic impulses" stemming from an attempt to find or prove masculinity and a contempt for women. The act of group rape "forges an alliance among men against the female victim, who becomes for their purposes, Anonymous Woman", thereby strengthening the notion of group masculinity and power (1975:211).

It is within the phenomenon of group rape ... that the male ideology of rape is most strikingly evident. Numerical odds are proof of brutal intention. They are proof too of male bonding ... and proof of a desire to humiliate the victim beyond the act of rape through the process of anonymous mass assault (1975:204).

Belief in the supreme rightness of male dominance allows Freudian criminologists to both define those men who exhibit feelings of inadequacy or lack of confidence as sexual psychopaths and to normalize those men who, on the contrary, display exaggerated masculine behavior. For example, rape in war or domestic group rape, of which the primary characteristics are male bonding and aggression, are rarely considered to be indications of mental disorders and are rarely labelled psychologically inappropriate or pathological. These individuals, when considered, have

been extolled as "well adjusted" and "above average". Guttmacher (1951) assessed gang rapists and stated that "certain rapists behaved like the soldier of a conquering army ... apparently sexually well-adjusted youths have in one night committed a series of burglaries, and, in the course of one of them, committed rape - apparently just another act of plunder" (1951:50).

In his analysis, Mill (1977) not only supports the "naturalness" of male sexual aggression and the "normalcy" of group rapists but proclaims the utility of group rape toward their development:

the perpetrators of this crime are usually adolescents, those in the age range of 13 to 21, behaving in accord with well-established principles of collective behavior. ... particularly true during adolescent years when peer pressure is extremely strong, albeit vital for the development of a healthy personality. Perhaps there is some need for testing individual masculinity by group members and the group psychology allows a greater lessening of social and moral restrictions. To rape a woman in the presence of other males supposedly says something about mutual concepts of masculinity and sexuality of the members, about camaraderie, and about woman's place in relation to men. The adolescent is struggling in an area of uncertainty about his sexuality ... and there is a strong desire to belong to a group so he can prove himself as a man. By sharing the assault with his peers, the group rapist can feel more secure and less anxious in his performance, and in his role within the group receives support (1977:222-223). (italics added).

Mill, in listing factors playing a role in the group rape situation, says of the rape victim: "the victims of group rape are girls with a reputation for 'promiscuity'". He adds that there is a second type of group rape victim who is there because "of fate, she's in the wrong place at the wrong time" (1977:255). Mill does not speak to the "development of a healthy personality" for the gang-rape victim.

CHILD SEXUAL ASSAULT

In her analysis of sexual child abuse, Rush (1971) suggests that the overwhelming proportions of male offenders and female victims reflect a "male dominated society which overtly and covertly subjugates women" (p. 73). The sexual abuse of female children occurs because society "applauds male sexual aggression and denies the female's pain, humiliation, and outrage", and this situation is permitted because "it is an unspoken but prominent factor in socializing and preparing the female to accept a subordinate role". Rush maintains that the family is an instrument of sexual and other forms of child abuse, and that maintenance of the patriarchal family as a social unit is considered more important than intervention, which would end abuse within that family (1971:73-74):

Ingrained in our present family system is the nucleus of male power and domination, and no matter how often we witness the devastatingly harmful effects of this arrangement on women and children, the victims are asked to uphold the family and submit to abuse (1971:72).

Barry (1979) describes the interrelatedness and dependency of sexual assault, prostitution, wife-battering and rape, and physical and sexual child abuse. She states that "across cultures the family is the basic unit of individual male power", and that "female sexual slavery is a family condition", that family slavery is sexual slavery:

Many women and girls directly experience female sexual slavery without every going out of their homes. For them home replaces brothel; they are wives or daughters who are the victims of husbands or fathers instead of pimps. I am speaking, of course, of wife battery and incest, practices which make the private family instead of the public street or 'house' the location of female sexual slavery (1979:163).

According to Barry, the traditionally held argument that domestic violence breeds domestic violence distorts the reality that "it is the fact that sexually abusive men, - pimps, husbands, or fathers - many of whom learn violence at an early age as a means of problem solving, still receive sanction [permission through lack of punishment] for their behavior" (1979:168-169). The result of this causal distortion of violence toward women is societal inaction toward the offender. Barry likens our societal response to incest with our societal response to rape, "based on the rape paradigm" of victimology: the attention (responsibility) is focused on the child, who is accused of seduction, or on the mother, who is accused of abdicating her wifely role, "rather than on the responsible father who forced the sexual act". The outcome of this focus on all but the offender is that "father-daughter incest is implicitly sanctioned - primarily to protect the father" (1979:176).*

In his study of 425 incest cases Bagley (1969) discerned that there were 5 distinct types of incest: functional, accidental or disorganized, pathological, object fixation, and psychopathic. Of the 58 cases of functional-type incest, his second largest category, Bagley states:

...in every case, the wife, if she is alive, gives her tacit or open consent to the incestuous union (which is usually father-daughter); the union appears to have the moral approval of the whole family; and the family usually operates smoothly as a functional unit over an extended period of time, the daughter seemingly very happy in the 'wife' role - although her long-term adjustment is uncertain if the incest is commenced in the post-adolescent phase (1969:4).

* The unspoken notion supporting this misdirection of responsibility is the patriarchal assumption that the male has the right of access to the female body, and if one female is unavailable to him then he as a matter of course will avail himself of an other female. Rather than judge that the male erred in availing himself of that/a female, patriarchy transfers the culpability to the female and asks which female erred in making or not making herself available to him, e.g., wife (withholding), daughter (precocious), girlfriend (seductive), stranger (promiscuous), etc.

Bagley assigned the largest number of incest cases to the 'pathological' category. The example he gives in this category is of the case of a "psychotic" father who during a four-year period carried on incest with his two adolescent daughters:

What is interesting is that neither girl told the other, nor their mother, but seemed to accept that the relationship with their father was a special favor on his behalf. This case is illustrative of the not infrequent tendency for girls to accept, passively or with eagerness, the sexual advances of the father, without denouncing him to his wife (1969:7).

In his study on the sexual behavior in the human male, Kinsey (1948) suggests that charges of child rape are often, in fact, cases of hysteria:

Many small girls reflect the public hysteria over 'being touched' by a strange person; and many a child, who has no idea at all of the mechanics of intercourse, interprets affection and simple caressing from anyone except her own parents as attempts at rape. In consequence, not a few older men serve time in penal institutions for attempting to engage in a sexual act which at their age would not interest most of them, and of which many of them are undoubtedly incapable (1948:237-238).

When faced with the undeniable evidence of such assault in his later study of sexual behavior in the human female in which one in four females reported unwanted preadolescent sexual experience, Kinsey amended his stance toward female sexual assault from one of denial to one of dismissal of import:

It is difficult to understand why a child, except for its cultural conditioning should be disturbed by having its genitalia touched, or disturbed by seeing the genitalia of another person (1953:118).

Kinsey predicts ominous forebodings, should the matter of sexual offenders be pressed (e.g. prosecution):

The current hysteria over sex offenders may well have serious effects on the ability of many of these children to work out sexual adjustments some years later in their marriages (1953:118).

The statistics on child sexual abuse suggest that the sexual assault of female children occurs at least as frequently, if not more so, as the sexual assault of adult females. They further indicate that most of the assaults are perpetrated by adult males in the victim's familial setting (e.g., father, uncle, male family friend, etc.). Rationale given for the lack of prosecution of these offences by both Social Order and Social Change theorists, albeit with considerably opposing intentions, is prosecution's detrimental effects on the maintenance or stability of the patriarchal family and its attendant social roles.

SUMMARY

Review of the literature on male sexual aggression toward women reveals a dual approach to this phenomenon, with one approach maintaining personal pathology (i.e., either of the assailant or of the victim, or of others) and the other maintaining social pathology (i.e., socially ordered hierarchical social roles) as being the basis or the source of both incidence and societal response of this violence. The personal-pathology approach claims that sexual aggression is biological and therefore natural in origin and that sexual violence occurs from a malfunction in adaptation to social role. The social-pathology approach argues that sexual aggression is cultural and therefore unnatural in origin and that sexual violence occurs from adaptation to social role.

Chapter III

GENDER-CONFLICT THEORY OF CRIME

THEORETICAL ORIENTATION

The relevance of sociological theory lies in its reinforcement of a definition of reality; this reinforcement being the determination of the manner in which the world is perceived, implying a framework or limitation on the interpretation of phenomena through the types of questions posited of that system.

Conflict Theory

Hegel's dictum 'the truth is the whole' is congruent with macro sociological theory which postulates that social reality must be viewed from an holistic, historical perspective. Conflict theory is holistic in the sense of taking a world view of existing societies, and historical in that it incorporates into its definition of a society its history and thus its influence on and from other societies. Such a stance in the understanding of social structure, i.e., that of a holist, was taken by Marx. This view led him to the observation that exploitation is a necessary basis of the capitalist system and to the conclusion that such a basis generates polarization of society based on relation to the means of production. Exploitation and polarization stem from the conflict of interests and contradiction inherent within the capitalist system. Within the system, the state is viewed, as per this conflict

perspective, as acting in the service of the ruling class:

The cohesive force of civilized society is the state, which in all typical periods is exclusively the state of the ruling class, and in all cases remains essentially a machine for keeping down the oppressed, exploited class (Engels, 1970:332).

Class relations are sustained by rationalization through ideology. Of ideology, Marx says: "The ruling ideas are nothing more than the ideal expression of the dominant material relationships, the dominant material relationships grasped as ideas" (1976:39). Ideology functions to structure appropriate modes of behavior and to develop a model of social control through which to assure adherence to the desired mode. Given this relationship between social structure, ideology, and social control, then, the legal structure may be defined as the application of the prevailing ideology.

Conflict Theory of Crime

In the words of Quinney: "When a society cannot solve the social problems of its own creation, policies for the control of the population must be devised and implemented" (1970:v). Thus law is created to establish and to maintain a desired social order. On the understanding, then, that "deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'", what becomes problematic is which groups in society affect the content of the system and which groups are affected by it (Becker, 1963:9). Quinney notes that criminal laws:

are formulated by those segments of society which have the power to shape public policy. Public policy is established by some for governing the lives and affairs of all inhabitants of a society. Crime, then, is a definition of human conduct that is created in the course of the political life of the community (1970:43).

Conflict theorists view both criminal law and its application as reflecting the ideology of the dominant class. Class conflict, according to Marx, is the inevitable outcome of the exploitation of the worker under the capitalist system. Manifestation of this conflict within the legal structure results in discrimination directed against the less powerful members of society, e.g., the lower class, political dissidents, minority groups, women. Quinney states:

It can be safely concluded that members of the lower class in comparison to members of the middle and upper classes, have the greatest probability of being arrested and convicted for their behaviors (1970:217).

Conflict manifestation may be one of target (e.g., the powerless) or one of form (e.g., legislative variation). Based on the assumption that "the legal institution is a reflection of the social setting in which it exists", Chambliss notes that "as that setting changes, the legal system changes; even the particular source of changes varies with variations in the social setting" (1969:11). For example, when faced with societal challenge, law may be created or abolished; law, currently in existence, may be implemented more or less strenuously than previously; upon implementation, legal sanctioning may increase or decrease in severity; the source of legal alteration varying with the perceived social setting and the desired social effect. Thus the enforcement of criminal sanctions is dictated by the necessities of the social order, with enforcement efforts seen as being "increased when the interests of the powerful are threatened ..." (Quinney, 1970:18).

In sum, a Conflict theory of crime suggests that the legal structure is viewed as acting in the service of the state and the state as

acting in the service of the ruling class. As such, law becomes "a dynamic force that is continually being created and interpreted" (Quinney, 1970b:37). The basic function of law emerges, therein, as a formal system for legitimation of the social order, maintenance of its relations of production, and control of dissent (Kellough, 1978:1).

Gender-Conflict Theory of Crime

Representation of the world, like the world itself, is the work of men; they describe it from their own point of view, which they confuse with the absolute truth (deBeauvoir, 1970:53).

Conflict theory provides a class analysis of crime, however it fails to perceive crime's gender-based nature, an equivalent, for example, of failing to perceive the racial-based nature of American slavery. Some were ruled and some were rulers, to be sure, but all of the rulers were white. Such racial oversight would be sociologically unimaginable. Such gender oversight is the sociological norm.

The relevance of sociological theory, as mentioned at the outset, lies in its reinforcement of a particular reality, in its limitation of interpretation, and its circumscription of questions posed. MacKinnon asks: "Is there a connection between the fact that the few rule the many and the fact that those few have been men? Is there a relation between the power of some classes over others and that of all men over all women" (1982:517)? We may ask: Is there a connection when law-breaking is punished but sexual law-breaking is not? Is there a relation between state prohibition of man raping woman but permission for man-husband to do so? Conflict theory of crime suggests that law

social order; but what does it suggest when sexual law breaking functions to maintain that same social order? These questions have gone unasked by Conflict theory.

Social status analysis, from a Conflict perspective, states:

According to the materialist conception, the determining factor in history is, in the last resort, the production and reproduction of immediate life (Engels, 1973:71).

Marx and Engels viewed the division of labor in production as "a further extension of the natural divisions of labor imposed by the family" and the division of labor in the family as a further extension of the "division of labor in the sexual act": "there develops the division of labor in the sexual act, then that division of labor which develops spontaneously or 'naturally' by virtue of natural predisposition" (1976:9,20). They suggest that the separation of the spheres of production and reproduction was brought about by the needs of a system of private property, but that women's relegation to the private sphere of reproduction was as a result of natural and not social origins. The domestic slavery of woman and the wage slavery of man were both attributed to and derived from capitalism. The relations of production were thus held to be the determining factor in the subjugation of both men and women and, as such, to be the primary variable assessed in the analysis of the social system. Within the reproductive sphere of the family, women "became a mere instrument of production" (1959:48). Equality of women with men and the freedom of both from exploitation would occur, according to Marx and Engels, with the demise of capitalism and its relations of production, in the transference from a system of private ownership to one of public or communal ownership:

The emancipation of women will only be possible when women can take part in production of a large-social scale and domestic work claims anything but an insignificant amount of her time (Engels, 1975:11).

Implementation of a system of public ownership, for example the socialism of Russia, China, or Cuba, wherein women have become integrated into the productive sphere has not resulted in equal lack of exploitation for women and men, however. For, while women have

"become as free as men to work outside the home ... men remain free from work within it ... Neither technology nor socialism, both of which purport to alter woman's role at the point of production, have ever equalized women's status relative to men (MacKinnon, 1982:23).

Woman's status in public or private systems of ownership, rather, is based upon her sex or gender, and results from the male-defined and male-desired view of social order, social status, and social role.

The development of capitalism from pre-state to state societies has altered the interrelation of production and reproduction. Ursel states that "in pre-state societies people produced to meet the needs of the reproductive kin-based group, whereas, in state societies the state regulates reproduction [and thus women] to meet the needs of production"; thus "the state in mediating the demands of production with the necessity of reproduction becomes increasingly implicated in the preservation of patriarchy" (1982:23, 27). Eisenstein has defined the status of women in the development of capitalism from pre-state to state societies as a transition from familial patriarchy to state or social patriarchy:

Patriarchy, then, is largely the sexual and economic struggle (because these are never separated in practice) to control women's options in such a way as to keep primary her role as childbearer

and rearer. ... The connection between bearing and rearing children is a political one. ... The state intervenes to maintain and reproduce social cohesion of the political totality. In order to do this the state must maintain the hierarchical relations which structure both the relations of capital and the sex-gender system, through a system of social patriarchy (1979:48; 1980:60).

This system of social patriarchy is patriarchal capitalism, i.e., the sexual-economic division of labor and society. The Marxist definition of power in society as class exploitation through differential relation to the means of production neglects the dual power exploitation of women. MacKinnon notes that "sexuality then is a form of power":

As the organized expropriation of the work of some for the benefit of others defines a class - workers - the organized expropriation of the sexuality of some for the use of others defines the sex, woman. Heterosexuality is its structure, gender and family its congealed forms, sex role its qualities generalized to social persona, reproduction a consequence, and control its issue (1982:516).

Implicit, however, in state control of women's social role, is state support of women's social brutalization:

... in the same way that women continue to be beaten by their husbands because our society permits it - so also, our female children continue to be sexually abused by adult male members of their family because our society is willing to tolerate it, in its conspiracy to preserve the integrity of the home and the family at all cost. ... The commitment to the survival of the family is so strong - and the fantasy of the family as a place of shelter, security and support so prevailing, that the attitudes of society link with the policies of government and the state to ensure that there are few, and often no, alternatives available to the woman who would seek to escape a dangerously violent family relationship. In our culture violence against women, and female children in the home, is the only kind of violence which the state, governments, and social agencies are doing nothing to control (Brown, 1978:2).

This lack of 'social control' of violence toward women is evident in the following example. The Canadian Criminal Justice Statistic Handbook (1977) indicates that for all violent offences, rape is

most frequently classified as unfounded and least frequently classified as founded (actual). In the period 1962 to 1972, Canadian violent "actual" offences increased by more than 100%, except the category of sexual offences which showed the lowest increase of 28%. Violent offence conviction rates increased in all categories, some by as much as 100%, except the category of sexual offences where conviction rates decreased by 25% (1977: 12, 14, 24, 44). At the same time period, incidence studies indicate 2.5 to 25 rapes occurring for each rape reported, and statistics indicate a 'reporting' increase of 174% (Clark, 1977:62). Thus in sum, all violent crime is increasingly reported, increasingly classified as founded, and increasingly convicted, except for the category of rape and sexual offences which is increasingly reported, increasingly* classified as founded, but decreasingly convicted.

The effect, for offender, victim, and society at large, of this lack of judicial retribution is reinforcement of the patriarchal social roles of male sexual aggression and dominance over the female and female vulnerability and dependence on the male and, therefore, reinforcement of the patriarchal social order. Man is covertly permitted to aggress against woman (through lack of negative sanction), and woman is overtly encouraged to exist within a patriarchal sphere of protection (i.e., father, boyfriend, husband)** in the hope of avoiding this aggression.

* While sexual offence cases are increasingly classified as founded they remain consistently less so-classified than other forms of violent crime.

** The irony, of course, is that it is within this same sphere that she is so commonly brutalized.

Thus, judicial response to male sexual assault of females accomplishes the above stated basic function of law, as follows.

- 1) legitimization of the social order: condoned and thus perpetuated male aggression and dominance and female subjugation and dependence;
- 2) maintenance of the relations of production: restricting women's existence to patriarchal family structures ensures male access and control of reproductive and thus productive relations;
- 3) control of dissent: systemic repression of female independence through a socially or artificially created need of patriarchal protection and support.

Patriarchy and its relations of production, be they feudalist, capitalist, socialist, or other, are based upon female child bearing and socializing of future workers. Maintenance of its (patriarchy) social order requires the continued violently enforced, legally prescribed, inferior status of women to men. The sexual assault of women and its concomitant juridical response, then, serve as a means of the social control of women to this status. To this end, as stated earlier, rape must be both possible and probable, and it is not accidental but necessary that it remain so. Thus it becomes apparent that abolition of this violence against women necessitates abolition of this social order and its attendant social roles.

In an accurate analysis of crime, therefore, Conflict theory must include a consideration of both class/capitalism (economic domination and subjugation) and gender/patriarchy (male domination and female subjugation) as determining factors in the function of law. Thus a gender-conflict theory of crime will be the theoretical orientation employed in this thesis in the analysis of violence toward women. Such analysis leads to the positing of questions which would otherwise remain unasked, such as the question of sexual assault and its judicial treatment as

functioning toward the social control of women.

HYPOTHESES

It has been stated above that the sexual assault of women and its concomitant judicial response is a crime unlike other forms of violent crime. This activity is viewed as a political act of subjugation, as the sexual enforcement of women into a prescribed social role. The gender-conflict theory of crime suggests that the basic function of law is 1) a formal system for legitimation of the social order (i.e., class/gender status quo), 2) maintenance of its relations of production (i.e., regulating reproduction [and thus women] to meet the needs of production, and regulating production to meet the needs of capitalism), and 3) control of dissent (i.e., systemic repression by increased or decreased legal sanction). Within this framework, the sexual assault of women and its juridical response is viewed as implementation of this function. It has further been stated that statistics of incidence, reports to police, founding classifications, arrest, conviction/acquittal, and severity of sanction rates reveal inconsistent criminal judicial sanctioning, and that such sanctioning is affected by the factors of sexual/nonsexual nature, offender class, offender/victim relationship, victim age, and multiplicity of offenders.

In order to assess judicial sanctioning, hypotheses testing of comparable-assault (sexual/nonsexual) offences and specific-assault (sexual) offences will include:

H.1 The sanction will vary according to the sexual/nonsexual nature of the offence: sexual offences will receive a lesser proportion of convictions, less severe sanctions, and lesser periods of incarceration.

H.2 The sanction will vary according to the socioeconomic status of the offender: the lower the status, the higher the proportion of convictions, the more severe the sanctions, and the longer the periods of incarceration.

H.3 Within sexual assault offences, the sanction will vary according to the offender/victim relationship: the greater the relationship, the lesser the proportion of convictions, the less severe the sanctions, and the lesser the periods of incarceration.

H.4 Within sexual assault offences, the sanction will vary according to the child/adult status of the victim: the lesser the age status, the lesser the proportion of convictions, the less severe the sanctions, and the lesser the periods of incarceration.

H.5 Within sexual assault offences, the sanction will vary according to the individual/gang nature of the offence: gang offences will receive a lesser proportion of convictions, less severe sanctions, and lesser periods of incarceration.

Chapter IV

METHODOLOGY

The methodological chapter consists of the delineation of the sample utilized in this research, the operationalization and measurement of the central variables, and the statistical analysis employed in both hypotheses testing and profile compilation.

SAMPLE

While there are a number of reasons why criminal justice statistics do not measure actual law-breaking behavior, Black notes that such records can be effectively used as an index of social control operations portraying the amount of socially recognized deviant behavior (1970:235). Within this precept, empirical analysis of the above hypotheses is based on data gathered from Court of Queen's Bench and County Court sexual and nonsexual violent assault trial variables. These variables are drawn from prosecutions in each of the four major categories of violent crime (i.e. homicide, sexual assault, assault/not indecent, robbery) in the Eastern Judicial District (Winnipeg and environs) of Manitoba, and total 659 cases. The cases include all sexual assault trials at Court of Queen's Bench and County Court of offences committed in the years 1965 to 1980 involving a male assailant

and a female victim, and the equivalent number (where possible) per year of comparable (defined by maximum sentence permitted) nonsexual assault trials. Comparable nonsexual cases were selected by year, type of trial (assize or nonassize), and individual or gang nature of the offence; thus, formulation for case selection is:

total sexual assault trials by year	----->	equivalent nonsexual assault trials by year, type of trial, & individual/gang nature.
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These data are contained within Criminal Registers (record books listing each criminal case tried in Manitoba by nature of offence, date of occurrence, verdict, etc.) and in individual case files (victim age, offender/victim relationship, individual or gang offence, etc.). Each case or file pertains to a specific offender, rather than to a specific offence, such that a gang offence involving four offenders would result in four separate cases or files. These records are located in Winnipeg, Manitoba, in the Court of Queen's Bench Prothonotary's Office, Woodsworth Building, in Vault II of the Law Courts Building, and in the Archives Building at 1570 St. James Street. The selected data were recorded on a Case Variable form (see Appendix I), the nature of which was determined by perusal of both the Criminal Registers and the individual case files for available variables.

As indicated at the outset of this work, the purpose of this thesis is twofold. In addition to an assessment of sexual/nonsexual assault trial judicial consistency, this research will develop a profile of sexual assault and its judicial response at Queen's Bench Court and County Court prosecution level, organized within the categories of

individual/gang offences and child/adult victim offences. The variables to be assessed for both hypotheses testing and profile compilation are:

Offender - residence (urban or rural), age, marital status, education, occupation, religion, place of birth, previous convictions;

Offence - nature of offence, sexual offence charged, nonsexual offence charged, time of occurrence (day, date, month, year), single or extended offence (e.g. incest), individual or gang offence, size of gang, victim age or status (child/adult), offender/victim relationship (e.g. stranger), offender use of violence, type of trial (assize/nonassize), verdict, sexual offence convicted, nonsexual offence convicted, severity of sanction (e.g., prison, probation), severity of incarceration (length of sentence).

OPERATIONALIZATION AND MEASUREMENT

Following is the operationalization and measurement of the central variables utilized in this work; included herein are all variables examined in the hypotheses. These variables are ordered according to their status as dependent or independent variable.

Independent Variables

i) Nature of Offence.

Violent crimes, according to the Solicitor General, refer to Criminal Code offences in which "the use or threat of force against the victim is an intrinsic element" (1977:136). Included in this category are 1) homicide (e.g., Murder, Manslaughter, Attempt Murder), 2) sexual offences (e.g., Rape, Indecent Assault, Gross Indecency), 3) assaults/not indecent (e.g., Cause Bodily Harm, Overcome Resistance),

and 4) robbery (e.g., Armed, Assault With Intent to Rob) (1977:34). The data selected for analysis in this study consist of prosecuted offences from these four categories of violent crime. The criterion for classification of selected cases for comparative analysis is the nature of the offence for which the offender is tried, i.e., the sexual or nonsexual nature of the offence charged. An offender may be tried on several charges relating to one offence, for example, Rape, Buggery, Assault Cause Bodily Harm, and Possess Weapon. For purposes of this study, all cases which include a sexual charge are categorized herein as a sexual offence. (The multiplicity of the offence will be assessed in the Profile Compilation section.) Thus, sexual offences consist of cases including at least one sexual charge; nonsexual offences consist of cases with no sexual charge.

A sexual offender who takes the life of his victim is charged, not with a sexual offence, but with a charge of homicide. The nature of that charge is thus a nonsexual offence. Therefore, in this research, all sexual offence cases, by definition, involve victims who did not lose their lives as a result of the assault. In order to maintain parity in the two categories of offences to be assessed, only those nonsexual cases in which the victim did not suffer loss of life were selected. The offences chosen for analysis, then, were based on the following criteria -- sexual or nonsexual, violent, and no loss of victim's life. These offences are:

Sexual Offences:

Rape (s. 143)

Sexual Intercourse with Female Under Fourteen (s. 146.1)

Incest (s. 150)

Buggery (s. 155)

Attempt Rape (s. 145)
 Sexual Intercourse with Female Between Fourteen and Sixteen
 (s. 146.2)
 Indecent Assault on a Female (s. 149)
 Gross Indecency (s. 157);

Nonsexual Offences:

Attempt Murder (s. 222)
 Overcome Resistance or Choke (s. 230)
 Robbery (s. 302)
 Kidnap (s. 247)
 Cause Bodily Harm with Intent (s. 228)
 Extortion (s. 305.1)
 Discharge Firearm (s. 228)
 Abduction of Female (s. 248) or of Child Under 14 (s. 250)
 Possess Weapon (s. 85)
 Utter Threats (s. 331)
 Bodily Harm by Criminal Negligence (s. 204)
 Forcible Confine or Seize (s. 247.2)
 Common Assault Cause Bodily Harm (s. 245.2)
 Assault with Intent (s. 246.1)
 Point or Careless Use of Firearm (s. 84)*.

Of the 659 cases included in the sexual/nonsexual hypotheses testing facet of the study, 378 (57%) were sexual offenders and 281 (43%) were nonsexual offenders. This proportional balance reflects the case selection procedure in which all sexual offence cases tried were selected and were subsequently matched with comparable (i.e., by year and type of trial) nonsexual cases. The smaller proportion of nonsexual offences in this study is a result of the differential proportion of sexual and nonsexual violent crimes prosecuted in the years under consideration. While nonsexual prosecutions in fact outnumber sexual prosecutions, those nonsexual prosecutions include both violent and non-violent (e.g., property) offences. Such non-violent nonsexual offences are, by definition, unsuitable for this comparable violent offence study.

* Bracketed number indicates the 1980 Criminal Code section number for that offence.

ii) Severity of Offence.

The basis of case selection, whether for nature of offence, year of occurrence, or type of trial, was determined by the specifics of the sexual assault offences prosecuted. The initial data collection involved examination of the Criminal Registers of all offences tried and subsequent selection and recording of all sexual offences prosecuted at Queen's Bench Court and County Court levels. These sexual offences were then categorized by year of offence (1965 to 1980), type of trial (assize or non-assize) and severity of offence (determined by maximum sanction allowed by the Criminal Code). The punishment allowed for the sexual offences prosecuted included four levels of maximum severity -- maximum life imprisonment, maximum fourteen years' imprisonment, maximum ten years' imprisonment, and maximum five years' imprisonment. These maximum levels of imprisonment then served as the basis of definition of the severity of an offence. The Criminal Registers were then re-examined and nonsexual violent offences prosecuted were selected and recorded on the Case Variable form in the same categorical proportions as those of the sexual offence cases. Where the yearly nonsexual offence prosecutions (violent) were of an equivalent number to or less than the comparable sexual prosecutions, all such nonsexual cases were selected for analysis. Where the nonsexual offence prosecutions exceeded the number of comparable sexual prosecutions, nonsexual offence cases were selected by stratified random sampling. The operational definition of the variable Severity of Offence for sexual and nonsexual violent offences selected then is as follows:

TABLE 4.1

Severity of Offence

Maximum Punishment	Sexual Offence	Nonsexual Offence
Life	Rape, Sexual Intercourse Female Under Fourteen	Att. Murder, Overcome Resistance or Choke, Robbery, Kidnap
14 Years	Incest, Buggery	Wound or Cause Bodily Harm With Intent, Extortion, Discharge Arm
10 Years	Attempt Rape	Abduction of Female or Child Under 14, Possess Weapon, Utter Threats, Bodily Harm by Criminal Negligence
5 Years	Sexual Intercourse Female Fourteen to Sixteen, Indecent Assault Female, Gross Indecency	Forcible Confine, Common Assault Cause Bodily Harm, Assault with Intent, Point or Careless Use Firearm

Of the 659 cases included in the sexual/nonsexual hypotheses testing facet of the study, the distribution of cases by nature of offence and severity of offence is as follows:

TABLE 4.2

Offence Nature By Severity of Offence

Nature	Life %	Fourteen Years %	Ten Years %	Five Years %	Total % n
Sexual	55(210)	2(9)	7(28)	35(131)	100 (378)
Nonsexual	53(150)	4(11)	10(27)	33(93)	100 (281)

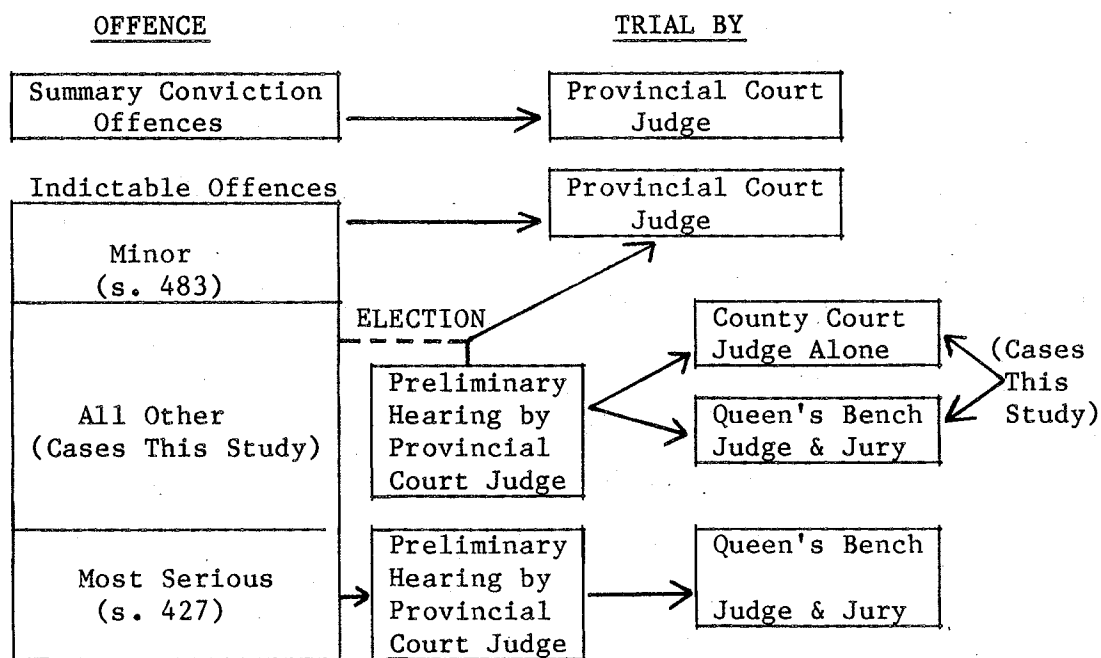
iii) Type of Trial.

Canadian criminal offences are classified by degree of severity into two categories: indictable offences and offences punishable on summary conviction. Summary offences are considered to be of a more minor nature, and have as a maximum penalty upon conviction a jail sentence of six months or a fine of \$500.00, or both. All summary conviction offences are tried before a magistrate or judge or the Provincial Judges' Court. Jury trials are not permitted, nor is a preliminary hearing held. All offences contained within Provincial Statutes and Municipal By-Laws are summary offences. Certain of the less serious indictable offences, i.e., those contained within Criminal Code section 483 (Theft Under \$200.00, Bookmaking, Lotteries, etc.), are designated as within the absolute jurisdiction of the Provincial Judges' Court, and thus are only to be tried at that level (Solicitor General, 1977:27). The Criminal Code and Federal Statutes contain both indictable and summary offences. Certain Criminal Code offences, however, called 'hybrid' offences, are potentially either indictable or punishable by summary conviction. For example, section 245.2 Causing Bodily Harm states:

Every one who unlawfully causes bodily harm to any person or commits an assault that causes bodily harm to any person a) is guilty of an indictable offence and is liable to imprisonment for five years; or b) is guilty of an offence punishable on summary conviction (1980:107).

Indictable crimes are generally the more serious crimes for which the penalties described by law are more severe, i.e., with the maximum sentences ranging from two years to life imprisonment. An accused charged with a Criminal Code indictable offence, except for Criminal Code sections 427 (High Treason, Acts to Harm Her Majesty, Mutiny,

Piracy, Murder, etc.) and 483 (see above Summary Conviction offences), has the option of being tried by a magistrate without a jury (Provincial Judges' Court), a judge without a jury (County Court), or a court composed of judge and jury (Queen's Bench Court). Where an accused elects to be tried by a magistrate and 1) pleads guilty, she or he will then be sentenced by the magistrate, or 2) pleads not guilty, the magistrate then proceeds with a trial or fixes a time for a trial at Provincial Judges' Court level. Where an accused does not elect to be tried by a magistrate, the magistrate then holds a Preliminary Inquiry or Hearing to determine if the accused is to be committed for trial. A finding by the judge that there is insufficient evidence to warrant a trial will cause the case to be 'dismissed' at this point. If the accused is committed for trial, a trial is then scheduled to be held in the accused's choice of court, i.e., County Court if election to trial by judge alone or Queen's Bench Court if election by judge and jury (Sinkwich, 1982: 7-13). The following diagram explains schematically the basic routes which criminal cases take:



* (Sinkwich, 1982:10)

Operationalization of the variable Type of Trial, then, is non-assize (judge alone/County Court) and assize (judge and jury/Queen's Bench Court). Cases selected for analysis in this study thus include cases that are indictable, that are subject to the above named elections, that elected trial by non-assize court (judge alone/County Court) or by assize court (judge and jury/Queen's Bench Court), and that were of a violent sexual or nonsexual nature.* Of the 659 cases of sexual/nonsexual offenders, 432 (65%) elected trial by nonassize court by (judge alone), and 227 (34%) elected trial by assize court (judge and jury). Of the sexual assault offenders, 231 (61%) elected non-assize trials and 147 (39%) elected assize trials. Of nonsexual offenders in this study, 201 (71%) elected non-assize trials and 80 (28%) elected trial by assize court.

iv) Individual or Gang Assault.

Offenders may commit their offences alone or in the company of others. Multiple-offender assaults may result in the arrest of one offender, of some but not all of the offenders, or of all of them. Within the 1965 to 1980 time period under consideration, statute law within the Criminal Code did not provide for increased severity of offence or punishment on the basis of the number of offenders involved in the offence. The Canadian Criminal Code is silent as well as to the joinder of the accused in trial, other than to indicate that the trial judge has discretion as to whether the accused should be tried separately. Appellate Courts in various Canadian Provinces have

* Although sexual assault trials may be held at the Provincial Judges' Court level, these trials were excluded from this study on the basis that trial transcripts are not recorded, thus rendering unavailable to the researcher the bulk of the data available and analyzed from both other Court levels.

held that accused persons allegedly acting in concert or engaged in a common enterprise should be jointly tried and that the trial judge's discretion in refusing severance will not be disturbed unless the decision has resulted in a miscarriage of justice (Prowse, 1984:275). Factors which the Court will consider when deciding if severance should be granted are:

- 1- if the co-accused have antagonistic defences,
- 2- if the evidence that is important with respect to one accused is not admissible at a joint trial,
- 3- if the evidence that is admissible against one accused is prejudicial against a second accused,
- 4- if the confession of one accused will be prejudicial against the other accused in front of the jury,
- 5- if one accused could be a competent and compellable witness against the other accused (Prowse, 1984:275-6).

Operationalization of the variable Individual or Gang Offence is individual (offender acting alone) and gang (assault involving two or more offenders). Of the 659 offenders in this study, 169 (25%) were gang offenders -- 85 sexual assault and 84 nonsexual assault gang offenders. Of the total number of offences, 68 (12%) were gang offences: 33 sexual assault and 35 nonsexual assault gang offences. In sum, of those assaults prosecuted at Queen's Bench or County Court levels, 26% of the offender population were gang offenders and 12% of the offences were multiple-offender offences. In all but one of the sexual assault multiple-offender cases, the offenders were jointly tried. All but four of the nonsexual multiple-offender cases were tried jointly. Multiple-offender sexual assaults included from two to five

individuals, while multiple-offender nonsexual assaults included from two to four individuals.

v) Offender Occupation or Class.

The scale utilized to classify offender occupation is the Blishen Socio-Economic Index for Occupations in Canada. The Blishen occupational index is a system whereby occupations listed in the Canadian 1961 Census are ranked in terms of "socio-economic status" or "prestige". The ranking is based on the distribution of education and income characteristics of males, aged 15 years and above, during the preceding 12 months. The Blishen data on income were based on a 20% sample of private non-farm households, and the data on education were based on a total enumeration of the labor force. The scale ranges from a high of 76 (Chemical Engineers) to a low of 25 (Trappers & Hunters), and is inclusive of 320 census occupational titles. Blishen's scale is then subdivided into four 'class' categories, as follows: lower (to 30 on the Blishen scale), lower-middle (30 to 39 on the scale), middle (39 to 59), and upper (59+).

Where occupations listed in the cases within this study were not explicitly categorized in Blishen's scale, the score for the closest possible occupation was given. The Blishen category for laborer ranges from 26 to 30 (e.g., 26 = labourer, textiles, 28 = labourer, all other industries, 30 = labourer, trade). For purposes of this study, where a non-specific occupation of laborer was listed, the Blishen laborer mean of 28 was selected as the designated score.

Of the 659 cases for which the offender's occupation was sought, that information was obtained for 591 (96%) of the cases. While the Blishen scale ranges from a high of 76 to a low of 25, the occupations of this study range from a high of 75 (Physician) to a low of 25 (Trapper). The mode of occupations of this study was 28 (labourer) with 196 (33%) cases occurring within this category. The median occupational score was between scores 28 and 29. An additional score was created by the researcher to encompass those occupational classifications which were beyond categorization on the Blishen scale, i.e., the categories of student and retired. This score included 22 cases, or 4% of all known offender occupations. The class distribution of the offender's occupation by nature of offence, for those cases wherein this information was available, is as follows:

TABLE 4.3

Offence Nature by Offender Class

Nature	Lower %	Lower Middle %	Middle %	Upper %	Total %	Total n
Sexual	56	28	12	4	100	322
Nonsexual	57	29	10	2	100	247

Thus the variable Occupation is operationalized in two ways: 1) as a non-collapsed scale ranging from 25 to 75 and 2) as a Class variable, inclusive of four ordinal categories.

vi) Offender-Victim Relation.

The variable Offender-Victim Relation and the subsequent variable to be assessed, Victim Age, pertain only to cases of sexual assault prosecutions. This information was, for the most part, not provided in nonsexual offence records or files.

The variable Offender-Victim Relation pertains to the degree of knowledge or relationship of the assailant and the victim at the time of the assault. Offender-victim relationship data were inclusive of four major categories -- 1) stranger, 2) met that day, 3) some knowledge of, and 4) relative. These categories are defined as follows:

- 1) stranger: cases wherein the victim had no acquaintance of the assailant prior to the time of the assault, e.g., assaulted on the street, pulled between buildings, pulled into a passing car, was the victim of a break-and-enter into her residence or place of employment;
- 2) met that day: cases wherein the victim first met, and spent a period of time with, the assailant that day, at the end of which time the assault occurred, e.g., met the assailant at the residence of relatives or friends, met in a place of occupation, entertainment, education, or transportation, and was assaulted there or accepted the offer of transportation and was assaulted en route or upon arrival;
- 3) some knowledge of: cases wherein the victim had met or known the offender prior to the day of the assault, e.g., neighbor, date, friend, employer, co-worker, teacher, parent's friend, repairman, father of the child the victim was babysitting;
- 4) relative: cases wherein the assailant is a relative of the victim, e.g., father, stepfather, grandfather, brother, uncle, cousin, stepbrother, former husband, brother-in-law.

The Offender-Victim Relation variable will be assessed in its non-collapsed form, that is utilizing the above four categories of relationship, as well as in a more compacted form of Stranger/Known. This dichotomous variable will be created twice, in two definably distinct forms. The first dichotomous form or variable will divide the above four categories of knowledge as Stranger (Stranger + Met That Day) versus Known (Some Knowledge Of + Relative). The second dichotomous form or variable will divide the above four categories of knowledge as Stranger (Stranger) versus Known (Met That Day + Some Knowledge Of + Relative). The purpose of employing both forms of the dichotomous variable is to permit comparison of this variable data with that of other studies so defined. For example, the Clark and Lewis Canadian work (1977) defines "known" offender/victim relationship as excluding assailants "met that day" of the offence, where the Amir American work (1971) defines "known" relationships as inclusive of assailants met the day of the offence. In sum, the non-collapsed Offender-Victim Relation variable will permit assessment of the range of distribution as it occurs over the entire scale of relationship categories, and the distinctive dichotomous Stranger-Known variables will permit both a more focused depiction of known-status and a comparative assessment with existing literature.

Of the 378 cases of sexual assault prosecutions in this study, the offender-victim relationship within the non-collapsed variable is as follows: 1) stranger -- 118 (34%), 2) met that day -- 80 (23%), 3) some knowledge of -- 112 (33%), and 4) relative -- 32 (9%). When this variable is dichotomized the "relation" distribution is noticeably affected

by the method of category-definition, as follows -- 1) stranger (including met that day) 62% versus known 38%, or 2) stranger 31% versus known (including met that day) 69%. The outcome of this category-definition factor is that stranger-to-stranger assaults may be defined as the "norm" (comprising two-thirds of all cases), while conversely "known" assaults as well may be defined as the norm (comprising two-thirds of all cases).

vii) Victim Age.

According to the Criminal Code, no person under the age of seven "shall be convicted of an offence", and no person between the ages of seven and fourteen shall be convicted of an offence "unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong" (ss. 12 & 13). Further, Criminal Code section 147 states that "no male person shall be deemed to commit an offence" of Rape, Attempted Rape, Sexual Intercourse With A Female Under Fourteen or With a Female Between Fourteen and Sixteen, or Incest while he is under the age of fourteen. With respect to the age of the victim, the Criminal code states that the consent to an act by a victim under the age of fourteen "is not a defence to the charge" (s.140). Thus the Criminal Code states that males under the age of fourteen may commit sexual intercourse assault without the liability of ensuing criminal charges whereas females under the age of fourteen may only engage in sexual intercourse with the liability of ensuing criminal charges. More succinctly, the state through the Criminal Code never imposes criminal sanction for under-fourteen male sexual intercourse, but always imposes criminal sanction for under-fourteen female sexual intercourse

(consensual or not). Examination of the Criminal Code reveals that the state regulates, in the form of statutes, the sexual activity throughout the entire age span of females. Age-specific examples are:

- Sexual Intercourse with Female Under Fourteen (s. 146.1),
- Parent or Guardian Procuring Defilement of Female Under Fourteen, or Female Fourteen Years of More (s. 166),
- Sexual Intercourse with Female Between Fourteen and Sixteen (s. 146.2),
- Seduction of Female Between Sixteen and Eighteen (s. 151),
- Householder Permitting Defilement of Female Under the Age of Eighteen (s. 16),
- Seduction of Female Who is Less Than Twenty-one (s. 152),
- Sexual Intercourse with Female Who is Less Than Twenty-one (s. 153).

Non age-specific statutes covering the entire female age span are:

- Rape (s. 143),
- Attempted Rape (s. 149),
- Indecent Assault Female (s. 149),
- Incest (s. 150),
- Sexual Intercourse with Stepdaughter, Foster Daughter, or Female Ward (s. 153),
- Sexual Intercourse with Feeble Minded Female Person (s. 148),
- Seduction of Female Passengers on Vessels (s. 152).

In sum, the variable victim age, with respect to both consensual and non-consensual female sexual activity, appears of utmost relevance to the justice system, with absolute criminal sanctioning being negatively correlated with victim age, i.e., the younger the victim the increase in likelihood of absolute criminal sanctioning.

Of the 378 cases of sexual assault offence prosecutions wherein female victim age data is collected, there are 33 (9%) cases of no information. Two additional scores or values (i.e., 88 and 89) are created to encompass those victims whose specific age was unavailable, but whose status was determinable by the file data or by the specific

charge laid (e.g., Sexual Intercourse Female Under Fourteen). In these instances a victim is defined as a child if under the apparent age of fourteen. Adult status is determined by file data indicating the victim's marital, parental (with children), residential, and occupational statuses. Of these, there are six cases (2%) wherein the victim is defined as a child, and 68 cases (20%) wherein the victim was defined as an adult. Of the 271 victims whose specific age is known, the modal age is 17, and the median age is between ages 16 and 17, and the mean age is 18. The age categories of 12 to 22 years each contain from 10 to 32 victims, while each age category under 12 and over 22 years contain no more than 7 such-age victims. The age range of victims extends from two years to eighty-two years.

For purposes of hypotheses testing, the variable victim age is assessed as a dichotomous variable of child/adult victim. Child victims included all females under the age of fourteen years. This age limit is selected to conform with the Criminal Code age wherein consent to the act by the victim is not a defence against prosecution. All victims fourteen years of age and over are classified, herein, as adults. Of the 345 victims in this study, 271 (78%) are adults and 74 (21%) are children.

Dependent Variables

Each hypothesis suggests that certain independent variables (e.g., nature of offence, type of trial) affect the sanction imposed upon the offender by the judicial system. This sanction encompasses three distinct judicial facets: 1) verdict, 2) severity of sanction, and 3) severity of incarceration. These dependent variables are operationalized as follows.

i) Verdict.

The variable verdict has three distinct categories or values. Possible verdicts within the judicial system include a) acquittal and b) conviction. A third category, "other", is created to include trial outcomes other than acquittals or convictions.

a) Acquittal: An acquittal is entered in either one of two circumstances -- 1) if the judge or jury accepts the evidence of alibi or 2) if, although the judge or jury do not accept the alibi evidence, they have a reasonable doubt based on the evidence (Prowse, 1983: 3-4).

b) Conviction: A conviction is entered against an accused if the judge or jury do not accept the alibi evidence and find that on the whole of the evidence, the Crown has proved the case beyond a reasonable doubt (Prowse, 1983:4). Yogis states that one is convicted "upon a valid plea of guilty or a verdict of guilty and judgement of conviction entered thereupon" (1983: 52). There exists also the possibility of a "directed verdict", which is a verdict returned by a jury at the direction of the trial judge, by whose instruction the jury is bound. In criminal proceedings, there may be a directed verdict of acquittal but there may not be a directed verdict of conviction (Yogis, 1983: 66).

c) Other: The Verdict category "other" is exclusive of all trials resulting in either conviction or acquittal. Included within this category are trials terminated as "Stay", "Withdraw", "Dismissed", and "Discharge". Briefly, these terms are applied as follows:

Stay - A stay is a halt in a judicial proceeding where, by its order, the court will not take further action until the occurrence of some event. Inherent jurisdiction rests with the court to stay all proceedings that are, for example, frivolous or vexatious or an abuse of the process of the court. A stay may be temporary or permanent (Yogis, 1983:202).

Withdraw - When a charge is withdrawn, the judicial process ceases to operate and the issue is removed from the consideration of the courts. Withdrawal of a charge is permanent (Yogis, 1983:227).

Dismiss - A finding by a Provincial Court Judge at a Preliminary Hearing that there is insufficient evidence to warrant a trial will cause a case to be dismissed at this point. As well, where the Crown fails to move the case towards final resolution or trial as required by the court schedule, the matter may be dismissed for 'want of prosecution' (Sinkwich, 1982:7-13).

Discharge - Where an accused pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life, the court may, instead of convicting the accused, direct that the accused be discharged absolutely or upon the conditions prescribed in a probation order (Yogis, 1983:66; Sinkwich, 1982:12-13).

Of the 659 cases under consideration in this work, the conditional distribution of the variable Verdict by the variable Nature of Offence is:

TABLE 4.4

Offence Nature By Verdict

Nature	Convict %	Acquit %	Other %	Total %	n
Sexual	76	17	7	100	378
Nonsexual	79	13	8	100	281

For purposes of hypothesis testing, only the Verdict alternatives of Convict and Acquit are assessed, as the category Other contains too few cases.

ii) Severity of Sanction.

The second facet of the dependent variable, "sanction" is Severity of Sanction. This variable is created to ascertain the degree of differential judicial response to offences beyond a simple finding of guilt or non-guilt. The necessity for assessment of the data via this variable is the possibility of a distortion or misinterpretation of findings should analysis include only the judicial finding of guilt or non-guilt. The possibility exists, for example, that the findings would indicate more severe sanctioning (i.e., conviction or acquittal) for one or the other nature of offence (i.e., sexual/nonsexual), but that more extensive analysis would reveal that though there may be a larger number of conviction rulings for one nature of offence, that the range of subsequent sentencing options (i.e., incarceration, fee payment, probation, suspended sentence, length of incarceration) in fact reverses this original finding of severity of judicial response by nature of offence. Thus the variables Severity of Sanction and Severity of Incarceration are created to assess the entire range of judicial sanctioning.

The categories or values selected for inclusion in the Severity of Sanction variable include all sanctions imposed in the prosecution data. These options are rank ordered on a continuum from "most serious" to "least serious" according to the degree of deprivation of the rights of the offender, as follows: 1) prison or jail; 2) alternate incarceration (e.g., Psychiatric Institute, Portage Home for Boys); 3) fee payment (e.g., fine, court costs); 4) probation; 5) treatment (e.g., Alcohol treatment, Psychiatric or Psychological counseling); 6) suspended sentence; 7) acquit; 8) other. Much sentencing includes more than

one of the above options, e.g., a jail sentence to be followed by a probationary period, or a fee payment plus probationary period, however, for purposes of this variable, a case is coded by its 'most serious' or severe sanction only. This range of options is included in sections 662 and 663 of the Criminal Code -- 1) where an accused pleads guilty or is found guilty of an offence the court may, instead of convicting the accused direct that he be discharged absolutely, and that he may or may not also be bound by a probation order; the discharged accused shall be deemed not to have been convicted, and 2) where an accused is convicted, the court may a) suspend the passing of sentence and/or order probation, b) impose a fine and/or order probation, and c) sentence imprisonment and/or order probation (1980:251-252).

Data regarding the variable Severity of Sanction is available in 658 cases. The conditional distribution of that data is displayed in the following bivariate Severity of Sanction by Nature of Offence contingency table.

TABLE 4.5

Offence Nature by Severity of Sanction

Nature	Prison %	Fee %	Probation %	SS %	Acquit %	Other %	Total %	Total n
Sexual	60	4	5	8	16	7	100	377
Nonsexual	57	7	8	5	13	8	100	281

For the purposes of hypotheses testing, however, the scale is reduced from eight to four values, (prison, fee payment, probation, and suspended sentence), in order to assess only those cases in which the offenders have been convicted.

iii) Severity of Incarceration.

Further to the Severity of Sanction variable above, accurate analysis of judicial sanctioning requires assessment of the severity of incarceration for convicted offences. Bivariate conditional distribution of the variables Nature of Offence by Severity of Offence Convicted indicates the potential proportion of cases which may be sentenced to serving those time categories:

TABLE 4.6

Offence Nature By Severity of Incarceration

Nature	Life %	Fourteen Years %	Ten Years %	Five Years %	Total %	Total n
Sexual	45	2	8	44	100	270
Nonsexual	39	8	12	34	94*	220

* 6% of Nonsexual Offences were convicted of reduced charges having a maximum 2 year sentence.

The severity of incarceration variable was operationalized to code incarceration by the number of months of sentence, rather than by number of years, because of the proportion of offenders receiving sentences of less than one year (24% sexual and 39% nonsexual offenders). Univariate distribution frequencies for sexual and nonsexual assault prosecutions are:

<u>Distribution</u>	<u>Sexual Offences</u>	<u>Nonsexual Offences</u>
Total Cases Charged	378	281
Total Cases Convicted	287 (76%)	221 (79%)
Total Cases Incarcerated	226 (84%)	161 (73%)
Mode	36 months	12 months
Median	23.5 months	16.5 months
Range	1 to 241 months	1 to 264 months.

STATISTICAL ANALYSIS

Analysis of these data is of a twofold nature: 1) hypothesis testing to assess the relationship between the dependent and independent variables of comparable-assault (sexual/nonsexual) offences and specific-assault (sexual) offences, and 2) sexual assault prosecution profile compilation.

i) Hypothesis Testing

To determine whether the relation between the dependent variable sanction and the independent variables nature of offence, offender socioeconomic status, offender/victim relationship, child/adult victim status, and individual/gang nature of offence is empirically supported, multiple regression and multinomial logit regression are employed as statistical methods for data analysis. The specific form of regression is selected on the basis of the characteristic of the dependent variable which is assessed, as indicated above, as three separate facets: a) verdict, b) severity of sanction, and c) severity of incarceration.

Multinomial (dichotomous or polychotomous) logit regression provides for a non-linear examination of discrete, nominal or ordinal, dependent variables. This analysis allows for the simultaneous examination of two or more possibilities of the dependent variable as well as examination of all influential factors. This method has a dual use: 1) by looking at relative sizes of coefficients in any one row, one can examine the most likely alternative for an observation or case with a particular characteristics, and 2) by looking at the coefficients in any one column, one can examine which characteristics are most strongly associated with selection of a particular outcome or value of the dependent variable. The larger a positive estimated coefficient the greater will be the likelihood of that alternative, and the larger a negative coefficient, the lesser the likelihood of that alternative (Knapp, 1982:134). Thus, the statistical suitability of multinomial logit regression for assessing the nominal dependent variable verdict (convict/ acquit) and the ordinal dependent variable severity of sanction (prison, fee, probation, suspended sentence) includes: 1) the test of overall goodness-of-fit, 2) the overall explanatory effect of each characteristic or independent variable, and 3) the relative importance of a characteristic or independent variable in explaining a particular subsequent alternative of the dependent variable. The LIMDEP Package is utilized to compute the multinomial logit regression analysis. This is a program for estimating the parameters of a variety of regression-like models with qualitative responses (e.g., probit/ logit) or limited responses (e.g., truncated), as well as numerous other single and multiple-equation models (Greene, 1983:170).

The dependent variable severity of incarceration is a continuous-interval variable, and thus is suited to the analysis technique of multiple regression. The Statistical Analysis System (SAS) Package is employed in multiple regression analysis. For both multiple regression and multinomial logit regression, an independent variable is deemed to have significant effect on the dependent variable if the t-test associated with its regression coefficient is significant at the .05 level of significance.

ii) Sexual Assault Trial Profile Compilation

For purposes of describing these data, one way frequency distribution tables are constructed. These tables enable the determination of the measures of central tendency of the mean, median, and mode, and the measures of dispersion of the range and the standard deviation. Description is in the form of conditional distribution tables illustrating the offender and offence characteristic relative to the offender categories of individual/gang offender and child/adult victim offender. The offender-category distributions are assessed relative to all sexual offence prosecutions within the study and, where applicable, to provincial or national distribution (1971 Canadian Census), as well as to comparable literature. The Statistical Analysis System Package (SAS) is utilized in the computation of the above analysis.

Chapter V

ANALYSIS OF DATA AND RESULTS

Analysis of the data is of a twofold nature: 1) hypothesis testing to assess the relationship between the dependent and independent variables of comparable-assault (sexual and nonsexual) offences and specific-assault (sexual) offences, and 2) sexual assault prosecution profile compilation. Analysis and results are presented in that order.

HYPOTHESES ANALYSIS AND RESULTS

From the review of the literature, a number of specific hypotheses are identified which can be adequately tested from the available data. The hypotheses are as follows:

H.1 The sanction will vary according to the sexual/nonsexual nature of the offence: sexual offences will receive a lesser proportion of convictions, less severe sanctions, and lesser periods of incarceration.

H.2 The sanction will vary according to the socioeconomic status of the offender: the lower the status, the higher the proportion of convictions, the more severe the sanctions, and the longer the periods of incarceration.

H.3 Within sexual assault offences, the sanction will vary according to the offender/victim relationship: the greater the relationship, the lesser the proportion of convictions, the less severe the sanctions, and the lesser the periods of incarceration.

H.4 Within sexual assault offences, the sanction will vary according to the child/adult status of the victim: the lesser the age status, the lesser the proportion of convictions, the less severe the sanctions, and the lesser the periods of incarceration.

H.5 Within sexual assault offences, the sanction will vary according to the individual/gang nature of the offences: gang offences will receive a lesser proportion of convictions, less severe sanctions, and lesser periods of incarceration.

The hypotheses to be tested suggest that the sanction of an offence is affected by specific characteristics of that offence. The dependent variable, sanction, is assessed as a three-faceted variable: a) verdict (conviction, acquittal), b) severity of sanction (prison, fee payment, probation, and suspended sentence), and c) severity of incarceration (incarceration period imposed). Hypotheses one and two are comparable-assault (sexual/nonsexual offences) assessment, and include a data base of 659 cases. These hypotheses test the effect on the sanction of the independent variables nature of offence (sexual/nonsexual) and offender socioeconomic status (occupation). Hypotheses three, four, and five are specific-assault (sexual offences) assessment, and test the effect of the independent variables offender/victim relationship (stranger/known), victim status (child/adult), and multiple offender (individual/gang) offences on the sanction of the offence. These hypotheses include

a data base of 378 cases.

Statistical analyses includes multinomial logit regression of the nominal and ordinal dependent variables verdict and severity of sanction, and multiple regression of the continuous dependent variable severity of incarceration. The regression analysis tests the additional effect of the hypothesized independent variable on the sanction while controlling for the variables denoted as significant by the literature. Regression tables are accompanied by a bivariate conditional distribution table illustrating the proportional distribution of the hypothesized dependent and independent variables. Hypotheses analysis and results are presented in the format of the dependent variable sanction: a) verdict, b) severity of sanction, and c) severity of incarceration.

A) Verdict.

It has been hypothesized that the verdict, i.e., conviction and acquittal, will vary according to the nature of the offence and the socioeconomic status of the offender in comparable-assault (sexual/non-sexual) offences.

TABLE 5.1

Logit Coefficients Sexual/Nonsexual Offences
Verdict By Offence Nature & Offender Occupation

Characteristic	Convict		Acquit	
	t	$\bar{\beta}_1$	$\bar{\beta}_2$	
Type of Trial (if Jury)	- .617	- .022	.022	
Occupation (Blisshen)	7.530 *	.006	-.006	
Ind./Gang (if Gang)	.620	.024	-.024	
Nature (if Sexual)	2.247 *	.079	-.079	

* Significant at $\alpha = .05$.

n = 536.

Interpretation of the multinomial logit regression figures (Table 5.1) is as follows: a) the t-test is the statistical test of significance (significant at $\alpha = .05$), and b) the row coefficients denote the most likely alternative of the particular characteristic of an offence. Interpretation is such that the greater a positive coefficient, the greater the likelihood of that association, and the greater a negative coefficient, the lesser the likelihood (Knapp, 1982:134).

The t-test of Table 5.1 indicates that for comparable-assault (sexual/nonsexual) offences, when controlling for the specified variables, the nature of the offence has a significant effect on the verdict of the offence. Table 5.1 indicates that sexual offences are more likely to result in a conviction than are nonsexual offences, however, contrary to the hypothesized probability.

TABLE 5.2

Conditional Distribution Sexual/Nonsexual Offences
Verdict By Offence Nature

Characteristic Nature	Conviction	Acquittal	Total	
	%	%	%	n
Sexual	81	19	100	353
Nonsexual	86	14	100	258

Bivariate distribution (Table 5.2) illustrates the hypothesized probability of a lesser proportion of convictions for sexual than nonsexual offences (81% vs. 86%). The inconsistency in the conviction probability for sexual offences in logit analysis (Table 5.1) and bivariate distribution (Table 5.2) appears the result of the additional effects of the

control variables within the multinomial logit regression, as follows. Although the offender occupational distribution for sexual and nonsexual offences is similar, there is a dissimilar distribution of gang offences (22% sexual offences versus 30% nonsexual offences) and of jury trials (39% sexual offences versus 28% nonsexual offences). The conviction rate by individual/gang nature is comparable (83% versus 82%), and thus dissimilar distribution of this characteristic would have no apparent effect on sexual offence conviction rates. The conviction rate by type of trial (jury 79% versus judge alone 85%), however, may affect the conviction rate by nature of offence, such that the greater proportion of less frequently convicted jury trials for sexual offences results in an apparent lesser frequency of convictions for sexual offences in a bivariate distribution. Thus, multinomial logit regression does not support Hypothesis One that sexual offences will receive a lesser proportion of convictions, and indicates, contrary to the hypothesized probability, a greater likelihood of convictions for sexual offences than for nonsexual offences.

The t-test of Table 5.1 indicates that for comparable-assault (sexual/nonsexual) offences, when controlling for the specified variables, the offender socioeconomic status has a significant effect on the verdict of the offence. Table 5.1 indicates that low socioeconomic status offenders are more likely to be convicted than high socioeconomic status offenders, in accordance with the hypothesized probability.

TABLE 5.3
 Conditional Distribution Sexual/Nonsexual Offences
 Verdict By Offender Class

Characteristic Class	Conviction	Acquittal	Total	
	%	%	%	n
Lower	84	16	100	306
Lower Middle	81	18	100	156
Middle	81	18	100	60
Upper	75	25	100	16

Bivariate distribution (Table 5.3) illustrates the trend suggested by the logit coefficient of a greater proportion of convictions for low occupational status offenders than for high occupational status offenders (84% vs. 75%). Thus, multinomial logit regression does support Hypothesis Two that low socioeconomic status offenders will receive a higher proportion of convictions than high socioeconomic status offenders.

It has also been hypothesized that the verdict will vary according to the offender/victim relationship, victim status, and individual/gang nature in specific-assault (sexual) offences.

TABLE 5.4

Logit Coefficients Sexual Offences - Verdict By
Offender/Victim Relation, Individual/Gang, and Victim Status

Characteristic	t	Convict $\bar{\beta}_1$	Acquit $\bar{\beta}_2$
Type of Trial (if Jury)	-1.748	-.088	.088
Occupation (Blisshen)	4.789*	.008	-.008
Relation (if Known)	-1.511	-.072	.072
Ind./Gang (if Gang)	1.780	.117	-.117
Victim Status (if Child)	.527	.027	-.027

* Significant at $\alpha = .05$

n = 311.

The t-test of Table 5.4 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, offender/victim relationship does not have a significant effect on the verdict of an offence. Although not significant, the trend suggested by the row coefficient is that known-relation offenders are less likely to be convicted than stranger-relation offenders, in accordance with the hypothesized probability.

TABLE 5.5

Conditional Distribution Sexual Offences
Verdict By Offender/Victim Relation

Characteristic Relation	Conviction %	Acquittal %	Total %	n
Known	78	22	100	209
Stranger	84	16	100	114

Bivariate distribution (Table 5.5) illustrates the trend suggested by the logit coefficient, although not significant, of a lesser proportion of convictions for known-relation offenders than stranger-relation offenders (78% versus 84%). Thus multinomial logit regression does not support Hypothesis Three that known-relation offenders will receive a lesser proportion of convictions than stranger-relation offenders, but does suggest a trend, although not significant, of a lesser likelihood of convictions for known-relation offenders, in accordance with the hypothesized probability.

The t-test of Table 5.4 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, child/adult status does not have a significant effect on the verdict of an offence. Although not significant, the trend suggested by the row coefficient is that child assailants are more likely to be convicted than are adult-victim assailants, contrary to the hypothesized probability.

TABLE 5.6

Conditional Distribution Sexual Offences
Verdict By Victim Status

Characteristic Victim Status	Conviction %	Acquittal %	Total %	n
Child	84	16	100	70
Adult	80	20	100	255

Bivariate distribution (Table 5.6) illustrates the trend suggested by the logit coefficient, although not significant, of a greater proportion of convictions for child assailants than for adult-victim assailants

(84% versus 80%). Thus, multinomial logit regression does not support Hypothesis Four that child assailants will receive a lesser proportion of convictions than adult-victim assailants, and suggests the trend, although not significant, of a greater likelihood of convictions for child assailants, contrary to the hypothesized probability.

The t-test of Table 5.4 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, the individual/gang nature of the offence does not have a significant effect on the verdict of the offence. Although not significant, the trend suggested by the row coefficient is that gang offenders are more likely to be convicted than are individual offenders, contrary to the hypothesized probability.

TABLE 5.7

Conditional Distribution Sexual Offences
Verdict by Individual/Gang Offence

Characteristic	Conviction	Acquittal	Total	
	%	%	%	n
Gang	86	14	100	79
Individual	80	20	100	274

Bivariate distribution (Table 5.7) illustrates the trend suggested by the logit coefficient, although not significant, of a greater proportion of convictions for gang offenders than for individual offenders (86% versus 80%). Thus, multinomial logit regression does not support Hypothesis Five that gang offenders will receive a lesser proportion of convictions than individual offenders, and suggests a trend, although not significant, of a greater likelihood of conviction for gang offenders, contrary to the hypothesized probability.

B) Severity of Sanction.

It has been hypothesized that the severity of sanction (i.e., prison, fee payment, probation, and suspended sentence), will vary according to the nature of the offence and the socioeconomic status of the offender in comparable-assault (sexual/nonsexual) offences.

TABLE 5.8

Logit Coefficients Sexual/Nonsexual Offences
Severity of Sanction By Offence Nature and Offender Occupation

Characteristic	Prison		Fee		Probation		Suspended Sentence
	t	$\bar{\beta}_1$	t	$\bar{\beta}_2$	t	$\bar{\beta}_3$	$\bar{\beta}_4$
Type of Trial (if Jury)	2.955*	.222	.170	-.075	.375	-.061	-.086
Occupation (if Low)	5.244*	.008	.548	-.002	.067	-.002	-.003
Ind./Gang (if Gang)	2.492*	.138	1.617	-.011	1.095	-.032	-.095
Nature (if Sexual)	-.157	.086	-2.099*	-.060	-1.541	-.039	-.013

* Significant at $\alpha = .05$.

n = 447.

It should be noted that sentencing frequently includes more than one of the sanction alternatives and that, herein, cases have been coded according to the most severe sanction alternative.

The t-test of Table 5.8 indicates that for comparable-assault (sexual/nonsexual) offences, when controlling for the specified variables, a sexual offence has a significant effect on the sanction fee payment. Table 5.8 indicates that a sexual offender is less likely to be sanctioned to a fee payment than is a nonsexual offender. Although not significant, the trend suggested by the row coefficient is that sexual offenders are more likely to be imprisoned than are nonsexual offenders, contrary to the hypothesized probability.

TABLE 5.9

Conditional Distribution Sexual/Nonsexual Offences
Severity of Sanction By Offence Nature

Nature	Prison %	Fee %	Sub-Total %	Probation %	SS %	Total %	n
Sexual	78	5	83	7	10	100	291
Nonsexual	73	9	83	11	6	100	220

Bivariate distribution (Table 5.9) illustrates the trend suggested by the logit coefficient, although not significant, of a greater frequency of imprisonment for sexual offenders than for nonsexual offenders (78% versus 73%). Bivariate distribution illustrates that sexual and nonsexual offences are similar at the midpoint severity of sanction (83%), but that this similarity of severity results from differential fee sanctioning, as sexual offenders are sanctioned to fee payment less frequently than nonsexual offenders (5% versus 9%), as suggested by logit analysis (Table 5.8). Thus, multinomial logit regression does not support Hypothesis One that sexual offenders will be less severely sanctioned than nonsexual offenders, but suggests the trend, although not significant, of a greater likelihood of imprisonment for sexual offenders, contrary to the hypothesized probability.

The t-test of Table 5.8 indicates that for comparable-assault (sexual/nonsexual) offences, when controlling for the specified variables, socioeconomic status of the offender has a significant effect on the severity of sanction of the offence. Table 5.8 indicates that a low occupational status offender is more likely to be imprisoned than a high occupational status offender, in accordance with the hypothesized probability.

TABLE 5.10

Conditional Distribution Sexual/Nonsexual Offences
Severity of Sanction By Offender Occupation

Class	Prison %	Fee %	Sub-Total %	Probation %	SS %	Total %	n
Lower	80	7	87	6	8	100	256
Lower Middle	69	8	77	12	9	100	128
Middle	65	10	75	8	17	100	51
Upper	77	23	100	0	0	100	13

Bivariate distribution (Table 5.10) illustrates the trend suggested by the logit coefficient of a greater frequency of imprisonment for low occupational status offenders than for higher occupational status offenders (80% versus 77%). Table 5.10 illustrates a dissimilarity at the midpoint severity of sanction, with low occupational status offenders incurring less severity of sanction than high status offenders (87% versus 100%), but that this dissimilarity of severity results from differential fee sanctioning. Although not significant, the trends suggested by the row coefficients of logit analysis (Table 5.8) are illustrated in the marked difference in the frequency of fee payment as the sanction alternative for low and high status offenders (7% versus 23%) wherein low status offenders are sentenced roughly equally to each sanction alternative other than prison while upper status offenders are all sentenced to fee payment (Table 5.10). Thus, multinomial logit regression does support Hypothesis Two that low socioeconomic status offenders will be more severely sanctioned (i.e., more frequently imprisoned) than

will high socioeconomic status offenders.

It has also been hypothesized that the severity of sanction will vary according to the offender/victim relation, victim status, and individual/gang nature of the offence in specific-assault (sexual) offences.

TABLE 5.11

Logit Coefficients Sexual Offences
Severity of Sanction By Offender/Victim Relation,
Victim Status, and Individual/Gang Offence

Characteristic	Prison		Fee		Probation		SS
	t	$\bar{\beta}_1$	t	$\bar{\beta}_2$	t	$\bar{\beta}_3$	$\bar{\beta}_4$
Type of Trial (if Jury)	2.043*	.181	-1.060	-.078	.434	-.019	-.084
Occupation (Blishen)	3.540*	.009	-.995	-.002	-2.221*	-.004	-.003
Relation (if Known)	-.499	-.035	.166	.012	-.082	.005	.017
Victim Status (if Child)	.623	.031	-1.275	-.076	2.643*	.074	-.029
Ind./Gang (if Gang)	1.816	.117	1.582	.012	1.133	.001	-.130

* Significant at $\alpha = .05$

n = 254.

The t-test of Table 5.11 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, offender/victim relationship does not have a significant effect on the severity of sanction of the offence. Although not significant, the trend suggested by the row coefficient is that known-relation offenders are less likely to be imprisoned than stranger-relation offenders, in accordance with the hypothesized probability.

TABLE 5.12

Conditional Distribution Sexual/Nonsexual Offences
Severity of Sanction By Offender/Victim Relation

Relation	Prison %	Fee %	Sub-Total %	Probation %	SS %	Total %	n
Stranger	83	5	88	5	7	100	98
Known	73	9	79	9	12	100	165

Bivariate distribution (Table 5.12) illustrates the trend suggested by the logit coefficient, although not significant, of a lesser frequency of imprisonment for known-relation offenders than for stranger-relation offenders (73% versus 83%). Thus, multinomial logit regression does not support Hypothesis Three that known-relation offenders will be less severely sanctioned than stranger-relation offenders, but suggests the trend, although not significant, of a lesser likelihood of imprisonment for known-relation offenders, in accordance with the hypothesized probability.

The t-test of Table 5.11 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, a child-victim offence has a significant effect on the sanction probation of an offence. Table 5.11 indicates that a child assailant is more likely to receive probation than is an adult-victim assailant. Although not significant, the trend suggested by the row coefficient is that child assailants are more likely to be imprisoned than are adult-victim assailants, contrary to the hypothesized probability.

TABLE 5.13

Conditional Distribution Sexual Offences
Severity of Sanction By Victim Status

Status	Prison %	Fee %	Sub-Total %	Probation %	SS %	Total %	n
Child	64	2	66	22	12	100	59
Adult	80	7	87	3	9	100	209

Bivariate distribution (Table 5.13) illustrates the hypothesized probability of a lesser severity of sanction for child assailants than for adult-victim assailants (64% versus 80% imprisonment). The inconsistency in the imprisonment probability for child assailants in logit analysis (Table 5.11), although not significant, and bivariate distribution (Table 5.13) appears a factor of the beta size (i.e., a weak victim status/prison rate relationship of .03) rather than of the additional effects of the control variables, as control variable distribution illustrates support of lesser imprisonment for child assailants, as follows. Although the occupational distribution for child and adult victim offences is similar, there is a dissimilar distribution of jury trials (11% child vs. 47% adult-victim), of known-relation offences (75% child vs. 34% adult victim), and of gang offences (3% child versus 28% adult victim). The imprisonment rate by type of trial (jury 90% versus judge alone 70%), by offender/victim relation (known 73% versus stranger 83%), and by individual/gang (gang 88% versus individual 75%) thus results in the probability of lesser imprisonment for child assailants, consistent with the hypothesized probability. Thus, multinomial logit regression does not support Hypothesis Four that child assailants will

be less severely sanctioned than adult-victim assailants. The multinomial logit trend of greater imprisonment for child assailants, although not significant, is qualified, however, in that both control variables and bivariate distribution illustrate lesser likelihood of imprisonment for child assailants, in accordance with the hypothesized probability.

The t-test of Table 5.11 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, the individual/gang nature does not have a significant effect on the severity of sanction of the offence. Although not significant, the trend suggested by the row coefficient is that gang offenders are more likely to be imprisoned than individual offenders, contrary to the hypothesized probability.

TABLE 5.14

Conditional Distribution Sexual Offences
Severity of Sanction By Individual/Gang Offence

Characteristic	Prison %	Fee %	Sub-Total %	Probation %	SS %	Total %	n
Gang	88	6	94	3	3	100	70
Individual	75	5	80	8	12	100	221

Bivariate distribution (Table 5.14) illustrates the trend suggested by the logit coefficient, although not significant, of a greater frequency of imprisonment for gang offenders than for individual offenders (88% versus 75%). Thus, multinomial logit regression does not support Hypothesis Five that gang offenders will be less severely sanctioned than individual offenders, and suggests the trend, although not significant, of a greater likelihood of imprisonment for gang offenders, contrary to the hypothesized probability.

C) Severity of Incarceration.

It has been hypothesized that severity of incarceration will vary according to the nature of the offence and to the offender socioeconomic status in comparable-assault (sexual/nonsexual) offences.

TABLE 5.15

Multiple Regression Coefficients - Sexual/Nonsexual Offences
Severity of Incarceration By Offence Nature and Offender Occupation

Characteristic	t	$\bar{\beta}_i$
Type of Trial (if Jury)	.0001**	36.143
Occupation (Blichen)	.690	- .101
Ind./Gang (if Gang)	.198	- 5.758
Nature (if Sexual)	.961	- .201

* Months

** Significant at $\alpha = .05$
 $R^2 = 19\%$
 $n = 334.$

The t-test of Table 5.15 indicates that for comparable-assault (sexual/nonsexual) offences, when controlling for the specified variables, the nature of the offence does not have a significant effect on the severity of incarceration of the offence. Although not significant, the trend suggested by the multiple regression coefficient is that sexual offenders are likely to be less severely incarcerated than nonsexual offenders, in accordance with the hypothesized probability.

TABLE 5.16

Conditional Distribution Sexual/Nonsexual Offences
Severity of Incarceration* By Offence Nature

Characteristic Nature	1 yr or less %	2-4 %	5-9 %	Sub- Total %	10-14 %	15-19 %	20+ %	Total %	n
Sexual	28	52	12	92	6(14)**	1(3)	.4(1)	100	226
Nonsexual	45	35	11	92	6(9)	2(3)	1(1)	100	160

* In year(s)

** Bracketed figure indicates number of cases.

TABLE 5.17

Measurement Sexual/Nonsexual Offences
Severity of Incarceration* By Offence Nature

Nature	Modal Year	Modal Year Group	Mean	Median	St. Dev.	Range	Min./Max. Yrs.
Sexual	1(28%)	2-4(52%)	3.2	1.9	3.4	19	1-20
Non- Sexual	1(45%)	1(45%)	2.8	1.3	3.7	21	1-22

* In Year(s).

Although not significant, the trend suggested by the coefficient of Table 5.15 with respect to severity of incarceration for sexual offenders is inconsistent with that illustrated in bivariate distribution (Table 5.16), wherein sexual offenders incur a smaller proportion of the least severe incarceration of one year or less (28% versus 45%), and a larger proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (64% versus 46%). Table 5.17 illustrates the longer average sentence for sexual than for nonsexual offenders (3.2 years versus 2.8 years), the more severe modal year-group for sexual than

nonsexual offenders (2 to 4 years versus 1 years), and the similar maximum incarceration sentence (20 years versus 22 years). The inconsistency in the incarceration probability of sexual offenders in regression analysis (Table 5.15) and bivariate distribution (Table 5.16) appears the result of the additional effects of the control variables within the multiple regression analysis, as follows. Although the occupational distribution for sexual and nonsexual offences is similar, there is a dissimilar distribution of gang offences (22% sexual offences versus 30% nonsexual offences) and of jury trials (39% sexual offences versus 28% nonsexual offences). The incarceration rate by individual/gang nature is such that gang offenders incur a larger proportion of the least severe incarceration of one year or less (36% versus 29%) and a smaller proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (63% versus 71%). The incarceration rate by type of trial is such that jury trials incur a smaller proportion of the least severe incarceration of one year or less (21% vs. 37%) and a larger proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (78% versus 62%). Thus, the smaller proportion of less severely incarcerated gang offences and the greater proportion of more severely incarcerated jury trials results in an apparent greater severity of incarceration of sexual offences in a bivariate distribution. Thus, multiple regression does not support Hypothesis One that sexual offenders will be less severely incarcerated than nonsexual offenders, although does suggest the trend, albeit not significant, of a likelihood of less severe incarceration for sexual offenders, in accordance with the hypothesized probability.

The t-test of Table 5.15 indicates that for comparable-assault

(sexual/nonsexual) offences, when controlling for the specified variables, the socioeconomic status of the offender does not have a significant effect on the severity of incarceration of the offence. Although not significant, the trend suggested by the multiple regression coefficient is that low occupational status offenders are likely to be less severely incarcerated than high occupational status offenders, contrary to the hypothesized probability.

TABLE 5.18

Conditional Distribution Severity of Incarceration* By Offender Class

Class	1 yr. or less %	2-4 %	5-9 %	Sub- total %	10-14 %	15-19 %	20+ %	Total %	n
Lower	38	39	16	93	4(9)	1 (3)	0	100	203
Lower- Middle	37	29	25	91	6(5)	2 (2)	0	100	88
Middle	33	48	12	93	6(2)	0	0	100	33
Upper	30	50	10	90	0	0	10(1)	100%	10

(1) Class Unknown.

* In Year(s).

TABLE 5.19

Measurement Severity of Incarceration* By Offender Class

Class	Modal Year	Modal Year Group	Mean	Median	St. Dv.	Range	Min./Max. Yrs.
Lower	1(10%)	2-4(39%)	2.8	1.7	2.8	14	1-15
Lower Middle	1(10%)	1(37%)	3.2	1.9	3.2	15	1-16
Middle	.5, 1.5, 3(9%)	2-4(48%)	2.6	1.7	2.5	11	1-12
Upper	.5, 1.5, 3(20%)	2-4(50%)	3.6	1.5	3.6	19	1-20

Bivariate distribution (Table 5.18) illustrates the trend suggested by the multiple regression coefficient, although not significant, wherein lower status offenders incur a larger proportion of the least severe incarceration of one year or less (38% vs. 30%), and a smaller proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (55% vs. 60%). Table 5.19 illustrates the shorter average sentence for lower status than for upper status offenders (2.8 years versus 3.6 years), and the lesser maximum sentence (15 years versus 20 years). Thus, multiple regression does not support Hypothesis Two that low socioeconomic status offenders will be more severely incarcerated than high socioeconomic status offenders, and suggests the trend, although not significant, of a likelihood of less severe incarceration for low socioeconomic status offenders, contrary to the hypothesized probability.

It has also been hypothesized that severity of incarceration will vary according to the offender/victim relation, victim status, and individual/gang nature of the offence in specific-assault (sexual) offences.

TABLE 5.20

Multiple Regression Coefficients - Sexual Offences
Severity of Incarceration By Offender/Victim Relation,
Individual/Gang, and Victim Status

Characteristic	t	\bar{B}
Type of Trial (if jury)	.0008*	22.442**
Occupation (Blisshen)	.743	.114
Relation (if Known)	.004*	-18.119
Victim Status (if Child)	.271	-8.569
Ind./Gang (if Gang)	.079	-12.961
		$R^2 = 13\%$
* Significant at $\alpha = .05$.		n = 168.
		** Months

The t-test of Table 5.20 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, offender/victim relation has a significant effect on the severity of incarceration of an offence. Table 5.21 multiple regression coefficient indicates that a known-relation offender will receive a sentence approximately one and one-half years' shorter than a stranger-relation offender, in accordance with the hypothesized probability.

TABLE 5.21

Conditional Distribution Sexual offences
Severity of Incarceration* By Offender/Victim Relation

Characteristic Relation	1 Yr. or less %	2-4 %	5-9 %	Sub-Total %	10-14 %	15-19 %	20+ %	Total %	n
Stranger	21	41	30	92	4(3)**	2(2)	1(1)	100	80
Known	33	49	9	91	7(9)	1(1)	0	100	120

* In Year(s)

** Number of cases bracketed.

TABLE 5.22

Measurement Sexual Offences
Severity of Incarceration* By Offender/Victim Relation

Relation	Modal Year	Modal Year Group	Mean	Median	St. Dv.	Range	Min./Max. Yrs.
Stranger	1(21%)	2-4(41%)	3.9	2.2	3.8	19	1-20
Known	1(33%)	2-4(49%)	2.6	1.7	3	14	1-15

* In Year(s).

Bivariate distribution (Table 5.21) illustrates the trend suggested by the multiple regression coefficient wherein known-relation offenders incur a larger proportion of the least severe incarceration period of one year or less (33% versus 21%) and a smaller proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (58% versus 71%). Table 5.22 illustrates the shorter average sentence for known than stranger-relation offenders (2.6 years versus 3.9 years), and the lesser maximum sentence (15 years versus 20 years). Thus, multiple regression does support Hypothesis Three that known-relation offenders will incur a lesser severity of incarceration than stranger-relation offenders.

The t-test of Table 5.20 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, the victim status does not have a significant effect on the severity of incarceration of the offence. Although not significant, the trend suggested by the multiple regression coefficient is that child assailants are likely to be less severely incarcerated than adult-victim assailants, in accordance with the hypothesized probability.

TABLE 5.23

Conditional Distribution Sexual offences
Severity of Incarceration* By Victim Status

Characteristic Status	1 Yr. or less %	2-4 %	5-9 %	Sub-Total %	10-14 %	15-19 %	20+ %	Total %	n
Child	34	47	18	100	0	0	0	100	38
Adult	27	45	18	90	6(11)**	2(3)	1(1)	100	167

* In Year(s)

** Number of cases bracketed.

TABLE 5.24

Measurement Sexual Offences
Severity of Incarceration* By Victim Status

Class	Modal Year	Modal Year Group	Mean	Median	St. Dv.	Range	Min./Max. Yrs.
Child	1+2(34%)	2-4(47%)	2	1.3	1.6	6	1-7
Adult	1(27%)	2-4(45%)	3.3	2.2	3.5	19	1-20

* In Year(s).

Bivariate distribution (Tables 5.23 and 5.24) illustrates the trend suggested by the multiple regression coefficient wherein child assailants incur a larger proportion of the least severe incarceration period of one year or less (34% versus 27%), a similar proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (65% versus 63%), a shorter average sentence (2 years versus 3.3 years), and a marked lesser maximum sentence (7 years versus 20 years). Thus, multiple regression does not support Hypothesis Four that child assailants will be less severely incarcerated, although suggests the trend, albeit not significant, of a likelihood of less severe incarceration for child assailants, in accordance with the hypothesized probability.

The t-test of Table 5.20 indicates that for specific-assault (sexual) offences, when controlling for the specified variables, the individual/gang nature of the offence does not have a significant effect on the severity of incarceration of the offence. Although not significant, the trend suggested by the multiple regression coefficient is that

gang offenders are likely to be less severely incarcerated than individual offenders, in accordance with the hypothesized probability.

TABLE 5.25

Conditional Distribution Sexual Offences
Severity of Incarceration* By Individual/Gang Offence

Characteristic	1 yr. or less	2-4	5-9	Sub-total	10-14	15-19	20+	Total	n
Individual	27%	55%	11%	93%	5%(9)**	1%(2)	1(1)	100%	165
Gang	33%	44%	13%	90%	8%(5)	2%(1)	0	100%	61

* In Year(s).

** Number of cases bracketed.

TABLE 5.26

Measurement Sexual Offences
Severity of Incarceration* By Individual/Gang Offence

Nature	Modal Year	Modal Year Group	Mean	Median	St. Dv.	Range	Min./Max. Yrs.
Individual	1+2 (27%)	2-4(55%)	3.1	1.9	3.4	19	1-20
Gang	1(33%)	2-4(44%)	3.3	2.2	3.3	14	1-15

* In Year(s).

Bivariate distribution (Tables 5.25 and 5.26) illustrates the trend suggested by the multiple regression coefficient wherein gang offenders incur a larger proportion of the least severe incarceration period of one year or less (33% versus 27%) and a smaller proportion of the two subsequent more severe periods of 2 to 4 and 5 to 9 years (57% versus 66%), a similar average sentence (3.3 years versus 3.1 years), and a lesser maximum sentence (15 years versus 20 years). Thus, multiple regression does not support Hypothesis Five that gang offenders will be less severely incarcerated, although suggests the trend, albeit not significantly, of a likelihood of less severe incarceration for gang offenders, in accordance with the hypothesized probability.

SUMMARY

The dependent variable, sanction, is assessed as a three-faceted variable in order to ascertain the degree of differential judicial response to offences beyond a simple finding of guilt or non-guilt. The possibility exists, for example, that the findings would indicate greater severity of sanction for certain offences with respect to conviction rates, but that more extensive analysis would indicate less severity of sanction with respect to imprisonment rates, thus reversing, or at least modifying, the original finding. The results of this analysis are as follows:

H.1 The sanction will vary according to the sexual/nonsexual nature of the offence: sexual offences will receive a lesser proportion of convictions, less severe sanctions, and lesser periods of

incarceration. The analysis indicates a greater likelihood of conviction and imprisonment of sexual offenders than of nonsexual offenders, contrary to the hypothesized probability, but indicates a likelihood of less severe incarceration of sexual offenders, in accordance with the hypothesized probability.

H.2 The sanction will vary according to the socioeconomic status of the offender: the lower the status, the higher the proportion of convictions, the more severe the sanctions, and the longer the periods of incarceration. The analysis indicates a greater likelihood of conviction and imprisonment of low socioeconomic status offenders than of high status offenders, in accordance with the hypothesized probability, but indicates a likelihood of less severe incarceration of low socioeconomic status offenders, contrary to the hypothesized probability.

H.3 Within sexual assault offences, the sanction will vary according to the offender/victim relationship: the greater the relationship, the lesser the proportion of convictions, the less severe the sanctions, and the lesser the periods of incarceration. The analysis indicates a lesser likelihood of conviction and imprisonment and a likelihood of less severe incarceration of known-relation offenders than of stranger-relation offenders, in accordance with the hypothesized probability.

H.4 Within sexual assault offences, the sanction will vary according to the child/adult status of the victim: the lesser the age status, the lesser the proportion of convictions, the less severe the sanctions, and the lesser the periods of incarceration. The analysis

indicates a greater likelihood of conviction and imprisonment of child assailants than of adult-victim assailants, contrary to the hypothesized probability, but indicates a likelihood of less severe incarceration of child assailants, in accordance with the hypothesized probability.

H.5 Within sexual assault offences, the sanction will vary according to the individual/gang nature of the offence: gang offences will receive a lesser proportion of convictions, less severe sanctions, and lesser periods of incarceration. The analysis indicates a greater likelihood of conviction and imprisonment of gang offenders than of individual offenders, contrary to the hypothesized probability, but indicates a likelihood of less severe incarceration of gang offenders, in accordance with the hypothesized probability.

SEXUAL ASSAULT PROSECUTION PROFILE

The Sexual assault prosecution profile consists of description of offender and offence characteristics. Offender characteristics include place of birth, religion, age, marital status, education, socioeconomic status (occupation), and previous convictions. Offence characteristics include time of offence, number of victims, victim age, offender/victim relationship, individual/gang offence, offence frequency (e.g., single offence, extended-incest offence), offender use of violence, type of trial, offences charged, offences convicted, verdict, and offence disposition. Description is in the form of conditional distribution tables illustrating the offender/offence characteristic by the offender-category (i.e., individual/gang offender and child/adult

victim offender). Offender category distributions are assessed relative to all sexual offence prosecutions within the study and, where applicable, to provincial or national distribution (1971 Canadian Census), and to comparable studies.

OFFENDER DEMOGRAPHIC CHARACTERISTICS

Offender Place of Birth

TABLE 5.28

Sexual Offences
Offender Place of Birth

Place	Manitoba* %	All Cases %	Individual/Gang %	Child/Adult Victim %
Canada	84	87	85	87
U.S. & U.K.	4	3	3	3
West Europe	8	6	6	6
East Europe	4	2	2	1
Other	1	3	3	3

* Statistics Canada 1971.

n = 373 (5).

The majority of the sexual offenders (87%) in this study are Canadian-born. The offender place-of-birth distribution is similar to the provincial distribution, with a slight overrepresentation of

Canadians (87% versus 84%), and with that overrepresentation increasing to 9% amongst gang offenders. The Clark study found the sexual offender distribution to be 63% Canadian, 15% American, and 17% European (1977:97). Mohr, as well, found 83% of the sexual offenders to be Canadian-born (Clark, 1977:210).

Proportional distribution by offender-category in this study indicates that a larger proportion of gang offenders than individual offenders are Canadian-born (92% versus 85%). Child-victim and adult-victim offenders have a comparable Canadian-born distribution (87%).

Offender Religion

TABLE 5.29
Sexual Offences
Offender Religion

Religion	Manitoba* %	All Cases %	Individual/Gang %	Child/Adult Victim %
Catholic**	35	56	55	57
Jewish	2	1	1	0
Protestant***	63	42	44	42

* Statistics Canada 1971. n = 296 (19).

** Includes Roman Catholic and Ukrainian Catholic.

*** Includes Baptist, Lutheran, Mennonite, Presbyterian, United Church, and Protestant.

The majority of the sexual offenders (56%) in this study are Catholic. Protestants form the second largest group (42%), and members of the Jewish faith form the smallest sexual offender population proportion (1%). McCaldon found the religious distribution of sexual

offenders to be Catholic 27%, Jewish 0%, Protestant 40%, and Other 33% (1967:44).

Proportional distribution by offender-category in this study indicates that Catholics are the most frequent sexual offenders in each category, with their proportion increasing for child-victims (57% versus 56%) and gang offences (61% versus 55%). The denominational distribution for Manitoba males of those faiths is Catholic 35%, Jewish 2%, and Protestant 63%. Based on the provincial distribution, members of the Protestant and Jewish faiths are underrepresented in all offender categories but gang offenders wherein the Jewish proportion equals that of the Jewish general population, whereas, Catholic offenders have an over-representation of 57% as individual offenders, 60% as adult-victim offenders, 62% as child-victim offenders, and 74% as gang offenders.

Offender Age

TABLE 5.30

Sexual Offences
Offender Age

Age Group	Manitoba* %	All Cases %	Individual/Gang %		Child/Adult Victim %	
15-19	14	12	6	32	8	13
20-24	12	34	31	44	23	37
25-29	10	22	24	18	13	24
30-34	8	10	13	2	12	10
35-39	8	9	11	2	15	8
40-44	8	6	7	1	11	4
45-49	8	3	3	-	8	1
50-54	7	2	3	-	3	2
55-59	7	1	1	-	4	-
60-64	6	-	-	-	-	-
65-69	4	.3	.3	-	1	-
70-75	8	.3	.3	-	1	-

* Statistics Canada 1971.

n = 368(10).

TABLE 5.31

Measurement Sexual Offences
Offender Age

Measure	All Cases Age	Individual/Gang Age		Child/Adult Victim Age	
Modal Age	20,22,+23	22	19	20	23
Modal Age Group	20-24	20-24	20-24	20-24	20-24
Mean	28	30	22	33	26
Median	24.5	26.5	20.5	30.5	24
St. Dev. of Years	9	10	4	12	7
Range of Years	59	58	24	57	38
Min./Max. Age	16-75	17-75	16-40	18-75	16-54

The majority of the offenders (66%) in this study are generally young -- between 20 and 34 years of age, with from 4 to 28 offenders at each age within this range. Comparable figures from other studies are: Clark - 65% aged 20 to 34 years (1977:96) and Amir - 50% aged 20 to 34 years (1977:52). The proportion of offenders over the age of 30 are: this study 32%, Clark 40% (1977:96), McCaldon 47% (1967:43), and Amir 15% (1971:52). The average age for all the sexual offenders is 28, and the offender age range is from 16 to 75. There are no offenders in the 60 to 64 range. Based on the provincial distribution of males aged 15 and over, sexual offenders in the 20 to 35 age group have an over-representation of 120% above their comparable age cohorts within the provincial population.

Proportional distribution of offender-category in this study indicates that the modal age group is similar for individual/gang

offenders and child/adult victim offenders (20-24 years). Gang offenders tend to be the youngest offenders (average age 22), and child-victim offenders tend to be the oldest offenders (average age 33). There is a marked difference in the age range of individual and gang offenders (17-75 years versus 16-40 years), and of child-victim and adult-victim offenders (18-75 years versus 16-54 years). That is, men tend to stop sexually assaulting in gangs at the age of 40, and to stop assaulting adult women at the age of 54, but continue to assault individually and to assault female children until the age of 75.

Offender Marital Status

TABLE 5.32

Sexual Offences
Offender Marital Status

Status	Manitoba* %	All Cases %	Individual/Gang %	Child/Adult Victim %
Single	31	44	38	65
Married	65	37	42	22
Separated	-	6	7	6
Divorced	1	3	4	-
Widowed	3	1	1	1
Common Law	-	8	9	6

* Statistics Canada 1971.

n = 366 (12).

TABLE 5.33

Sexual Offences
Spousal Status

Status*	Manitoba** %	All Cases %	Individual/Gang %	Child/Adult %	Victim
No Spouse	35	54	49	72	57
Spouse	65	45	51	28	42

* Spouse (Married or Common Law); No Spouse (All Other Categories)

** Statistics Canada 1971.

The largest marital category of sexual offenders (44%) in this study are single. The second most frequent marital status is that of married (37%). When the marital status categories are collapsed into a dichotomy, i.e., that of having or not having a partner, the status pattern is more distinctive, with the majority of offenders (54%) having no spouse and 45% having a married or common law spouse. Other studies indicate a similar distribution, with the larger proportion of offenders having no spouse: Amir 84% (1971:62), McCaldon 57% (1967:42), and Clark 59% (1977:170). The marital status distribution pattern of sexual offenders (54% no spouse versus 45% spouse), however, is contrary to that of the provincial population (35% no spouse versus 65% spouse).

Proportional distribution by offender-category in this study indicates that a larger proportion of gang offenders than individual offenders are single (72% versus 49%) and that a comparable proportion of child-victim and adult-victim offenders are single (57% versus 54%).

Offender Education

TABLE 5.34
Sexual Offences
Offender Education

Level*	Manitoba** %	All Cases %	Individual/Gang %		Child/Adult Victim %	
Elementary	47	12	14	4	16	8
High School	31	82	79	92	80	85
Tech/Voc.	8	.8	.7	1	-	1
University	10	5	6	2	3	5

* Not necessarily completed.

n = 353(25).

** Statistics Canada 1971.

The majority of offenders (82%) in this study have some high school education. A small proportion (12%) attained a maximum of grade 6 education, and a still smaller proportion (5%) had some university training or had obtained a university degree. The modal grades are grade 8 and 11, and the median grade is 9.5. McCaldon indicates a dissimilar educational pattern, with 80% of sexual offenders having a maximum of grade 6 education, 20% having some or completed high school, and no offenders having been educated beyond the high school level. Based on the provincial distribution of male level of education, sexual offenders are more highly educated than the average male Manitoban (82% high school versus 31%).

Proportional distribution by offender category indicates that gang offenders are more highly educated than individual offenders, having both a smaller proportion of maximum elementary-level schooling (4% versus 14%) and a larger proportion of maximum high school education

(92% versus 79%). Child-victim offenders are less highly educated than are adult-victim offenders, having a larger proportion of maximum elementary-level schooling (16% versus 8%) and a slightly smaller proportion of maximum high school education (80% versus 85%). The modal grade in each category, however, is grade 10, and the median grade in each offender category is grade 9. Not included in the above statistics are seven (2%) of the offenders whose educational status was listed as illiterate, one offender who was attending a school for the deaf, and 17 offenders whose education was not listed.

Offender Socioeconomic Class

TABLE 5.35

Sexual Offences
Offender Occupational Status*

Blishen Scale	All Cases %	Individual/Gang %	Child/Adult Victim %
25-29 Lower	56	57	55
30-34 Lower-	24	23	26
35-39 Middle	4	4	6
40-44	4	3	1
45-49 Middle	6	6	6
50-54	1	1	3
55-59	1	1	-
60-64 Upper	2	2	-
65-75	2	1	4

* Based on the Blishen Socioeconomic Index.

n = 322(56).

TABLE 5.36

Sexual Offences
Offender Socioeconomic Class*

Status*	All Cases %	Individual/Gang %		Child/Adult %	Victim
Lower	56	57	54	55	55
Lower Middle	28	27	32	32	28
Middle	12	12	10	11	11
Upper	4	3	4	1	5

* Based on the Blishen Socio-economic Index. n = 322(56).

The majority of the sexual offenders (84%) in this study are of a lower or lower-middle socioeconomic status. This status includes men occupied as caretakers, orderlies, window washers, elevator operators, garbage collectors, police and RCMP officers, security guards, and firefighters. Twelve per cent of offenders are classified as middle class, including men occupied as clergy and pastors, real estate and insurance agents, restaurateurs, photographers, and professional athletes. The upper socioeconomic status contained the smallest proportion of offenders (4%). Included in this percentage are accountants, engineers, chemists, lawyers, teachers, managers and superintendents, physicians, researchers, and computer specialists. The modal occupation is the Blishen category of 28 (on a scale of 25 to 75), which includes men occupied as labourers (29%), shoe shiners, janitors, baker's helper, dishwashers, and movers, etc. Comparable studies of offender socio-

economic status are: Clark - 90% lower socioeconomic and semi-skilled (1977:99), Mohr - 84% low socioeconomic status and semi-skilled (1965:9), Amir - 90% lower socioeconomic status (1971:70), and Svalastoga - 89% unskilled or vagabonds (1962:51). Svalastoga indicates .7% of offenders as upper middle class, Clark shows 3% as self-employed, and McCaldon found no upper class status offenders.

Proportional distribution by offender-category in this study indicates that gang and individual offenders contained comparable proportions of lower/lower middle (86% versus 84%) and upper (4% versus 3%) status offenders. Child-victim offenders include a larger proportion of lower/lower middle status (87% versus 83%) and a smaller proportion of upper status (1% versus 5%) offenders than do adult-victim offenders. The median occupation in each offender-category is 28.5 (e.g., laborers). The three Blighen occupational values 28, 29, and 30 contain 55% of all sexual offenders. Not included in the above statistics are 16 (5%) offenders whose occupations are listed in court records as student, retired, gentleman, and Indian.

Offender Previous Convictions

TABLE 5.37

Sexual Offences
Offender Previous Convictions

No. of Convictions	All Cases	Individual/Gang		Child/Adult Victim	
	%	%	%	%	%
1-4	59	58	67	60	56
5-9	23	24	17	23	24
10-14	10	10	11	7	11
15-19	3	3	-	3	3
20-26	4	4	5	7	3

n = 137.

TABLE 5.38

Measurement Sexual Offences
Offender Previous Convictions

Measure	All Cases #	Individual/Gang #	Child/Adult #	Victim	
Proportion	36%	40%	21%	40%	35%
Modal No.	1	1	2	4	1
Modal No. Group	1-4	1-4	1-4	1-4	1-4
Mean	5	6	5	6	5
Median	3.5	3.5	3	3.5	3.5
St. Dev.	5	5	5	6	5
Range	24	24	19	24	21
Min./Max. No.	1-25	1-25	1-20	1-25	1-22

The majority of the sexual offenders (64%) in this study do not have a record of previous convictions. Of offenders with previous convictions (36%), the average number of convictions is five, the modal number is one, and the modal-group number of convictions is one to four previous convictions per offender. Amir found that 51% of sexual offenders had no previous record and that 49% were previously convicted. Of those convicted, 93% had from one to four prior convictions, and 7% had five to ten prior convictions (1971:112). LaFree found a previous sexual offender conviction record of 63%, of which 37% were for sexual offences (1980:840). Groth found a previous conviction rate of 65% for rapists and 37% for child-victim offenders. Groth found, as well, a 67% rate of undetected offences by rapists and a 50% rate of undetected offences by child-victim offenders (1982:452-454).

Proportional distribution by offender category in this study, indicates that a smaller proportion of gang offenders than individual offenders have a record of previous convictions (21% versus 40%), that

gang offenders have a lesser average number of previous convictions (5 versus 6), and a lesser maximum-number of previous convictions (20 versus 25). A larger proportion of child-victim offenders than adult-victim offenders have a record of previous convictions (40% versus 35%), child-victim offenders have a greater average number of previous convictions (6 versus 5), and greater maximum-number of previous convictions (25 versus 22).

OFFENCE CHARACTERISTICS:

Time of Offence

TABLE 5.39

Sexual Offences
Month of Offence

Month	All Cases	Individual/Gang		Child/Adult Victim	
	%	%		%	
January	4	5	1	8	4
February	6	7	3	7	5
March	6	7	2	8	5
April	3	4	2	1	4
May	10	9	14	10	9
June	9	8	13	8	10
July	12	10	16	11	13
August	10	12	6	8	10
September	8	11	-	14	7
October	10	9	15	5	11
November	10	9	16	10	11
December	8	8	9	8	9

n = 373(5).

TABLE 5.40

Sexual Offences
Season of Offence

Season*	All Cases %	Individual/Gang %	Child/Adult %	Victim
Winter	16	19	6	23 14
Spring	22	21	29	19 23
Summer	30	33	22	33 30
Fall	28	26	40	23 31

n = 373(5).

* Winter (Jan./Mar.), Spring (Apr./June),
Summer (July/Sept.), Fall (Oct./Dec.)

The seasonal majority of sexual offences in this study is the summer months of July through September (30%), with the greatest monthly number of offences occurring in July (12%). Amir's findings matched the above figures, with 32% of offences occurring in the summer months and 12% occurring in July (1971:75). The Clark distribution indicated summer as the most frequent season of offences (36%), but September as the modal month (13%) (1977:208). Chappell, however, found offences to occur equally in spring, summer, and fall (25%), and found, as well, no specific modal month, with the proportion ranging from 6% to 9% per month throughout the year (1973:10). All studies found the sexual assault occurrence rate to decrease during the January to March winter months.

Proportional distribution by offender-category in this study indicates that gang offenders are the only offender category to have the fall as the season of most frequent assaults, and are the only offender category to never assault during a specific month (September) throughout the fifteen year research period. Distribution indicates, as well, that

children are assaulted more frequently throughout the winter and summer months than are adults.

The modal date of assault in this study is the first of the month, with 10% of all cases, 12% of individual-offender cases, 22% of child-victim assaults, and 6% of adult-victim assaults occurring on this date. Gang offences occur most frequently on the 18th of the month (12%), although the second modal date of gang offences is the thirtieth of each month (8%).

TABLE 5.41

Sexual Offences
Day of Offence

Day*	All Cases %	Individual/Gang %	Child/Adult Victim %
Monday	7	8	3
Tuesday	14	13	16
Wednesday	15	15	16
Thursday	9	9	9
Friday	17	20	7
Saturday	21	19	28
Sunday	17	16	19

n = 373(5).

TABLE 5.42

Sexual Offences
Period-of-the-Week of Offence

Period of Week	All Cases %	Individual/Gang %	Child/Adult Victim %
Weekday	45	45	46
Weekend*	55	55	54

* Includes Friday, Saturday and Sunday.

The majority of the daily sexual offences in this study occur on a Saturday (21%), and during the weekend (55%) rather than during the week. Amir's findings concur, with the modal day being Saturday (24%) and the modal week period being the weekend (54%) (197:81). Wilson found Saturday as the day of most frequent assault (26%), but found a slightly smaller proportion of offences committed on the weekend than during the week (49% versus 51%) (1978:27). Clark's study indicates the modal assault day to be Friday (20%), and the modal week period to be during the week rather than the weekend (44% versus 56%) (1977:62).

Proportional distribution by offender-category in this study indicates that gang and individual assaults occur more frequently on the weekend than during the week, as do child-victim and adult-victim assaults. Gang assaults and child/adult victim assaults occur most frequently on Saturday, and individual offender assaults occur most frequently on Friday. In all offender categories, Monday is the day of least assault.

Number of Victims Per Offence

TABLE 5.43

Sexual Offences
Number of Victims Per Offence

Number of Victims	All Cases		Individual/Gang		Child/Adult Victim	
	%		%		%	
One	94		95	91	91	95
Two	3		2	9	4	3
Three	1		1	-	4	-
Four	.7(2)*		1	-	-	1
Five	.3(1)		.5(1)	-	-	.5(1)

* Number of cases bracketed.

n = 271 (107).

The majority of the sexual offences (94%) in this study involve one victim. This is comparable to Clark's figure of 98% for one-victim offences (1977-131).

Proportional distribution by offender-category in this study indicates that a larger proportion of gang offences involve two victims (9% versus 2%) and a smaller proportion involve one victim assaults (91% versus 95%) than do individual offences. A larger proportion of child assaults involve two or more victims (8% versus 4.5%) and a smaller proportion involve one victim assaults (91% versus 95%) than do adult-victim assaults.

Victim Age

TABLE 5.44

Sexual Offences
Victim Age

Age Group	Manitoba*	All Cases	Individual/Gang	Child/Adult Victim
	%	%	%	%
2-9	18	10	13	38
10-14	10	24	27	62
15-19	10	36	29	50
20-24	8	17	17	23
25-29	7	4	5	5
30-34	5	2	3	3
35-39	5	2	2	3
40-44	5	-	-	-
45-49	6	1	.4	1
50-54	5	1	-	1
55-59	5	1	1	1
60-64	4	-	-	-
65-69	3	.3	.5	.5
70-82	7	1	1	1

* Statistics Canada 1971.

n = 271 (107).

TABLE 5.45
Measurement Sexual Offences
Victim Age

Measure	All Cases Age	Individual/Gang Age	Child/Adult Victim Age		
Modal Age	17	17	17	13	17
Modal Age Group	15-19	15-19	15-19	10-14	15-19
Mean Age	18	18	20	10	22
Median Age	16.5	15.5	17.5	11	17.5
St. Dev. of Years	11	11	9	3	11
Range of Years	80	80	44	11	68
Min./Max. Age	2-82	2-82	13-51	2-13	14-82

The majority of the sexual assault victims (60%) in this study are relatively young -- between 14 and 24 years of age, with from 5 to 32 victims at each age within this range. Comparable figures from other studies are: Clark - 58% aged 14 to 24 years (1977:80), Amir - 38% aged 15-24 (1971:52), McCaldon - 41% aged 16 to 25 (1967:42), and Meyer - 36% aged 14 to 20 (1979:37). The proportion of victims over the age of 30 are, in this study 8%, Clark 29%, Amir 24%, and McCaldon 18%. Children 14 years of age and under form 34% of the victims of this study, compared with Meyer - 28% for 13 and under, McCaldon - 41% for 15 or less, and Amir - 28% for victims 14 years of age and under. There are no victims in this study in the 40 to 44 and 60 to 44 age range. Mohr found no victims between 30 to 34 years (1965:6), and McCaldon found none within the 26 to 40 range. Clark's Toronto police records study

found 6% of victims in the 30 to 34 age range, but none of these cases reached the preliminary hearing level of prosecution (1977:80). The average age for all victims is 18, for child victims is 10 years, and the victim age range is from 2 years to 82 years. Based on the provincial distribution of female ages, female sexual victims in the 9 years of age or less and the 25 years of age and more are underrepresented relative to females within the provincial population. Female sexual victims within the 10 to 24 age range have a 175% overrepresentation, relative to comparable-age females in the province.

Proportional distribution by offender-category in this study indicates that the modal age (17) and the modal age group (15 to 19) are similar for individual and gang offence victims, although the victims of gang assaults tend to be slightly older than the victims of individual assaults (20 years versus 18 years). There is a marked difference in the age range of victims of individual and of gang assaults (2 to 82 years versus 13 to 51 years). That is, men in gangs don't assault females until the females are 13 or after they are 50 years of age, but men alone assault females who are between the ages of 2 years and 82 years.

TABLE 5.46

Sexual Offences
Offender/Victim Relation

Relationship*	All Cases	Individual/Gang		Child/Adult Victim	
	%	%	%	%	%
Stranger	34	30	48	21	39
Met That Day	23	19	40	4	27
Some Knowledge	33	38	12	49	29
Relative	9	12	0	26	5

* See Definitions Chapter III.

n = 340.

TABLE 5.47

Sexual Offences
Offender/Victim Relation

Relationship	All Cases %	Individual/Gang %	Child/Adult Victim %
Stranger*	34	30	48
Known	66	70	52

* Stranger category excludes all other categories. n = 340.

TABLE 5.48

Sexual Offences
Offender/Victim Relation

Relationship	All Cases %	Individual/Gang %	Child/Adult Victim %
Stranger*	58	49	87
Known	42	50	12

* Stranger category includes Met That Day Cases. n = 340.

The majority of prosecuted sexual assaults in this study occur both amongst individuals who, prior to the assault were strangers (34%), and amongst individuals who prior to the assault were known to each other, such as a neighbour, employer, parent's friend, etc. (33%). The third largest category of prosecuted assaults includes assaults wherein the offender and victim met the day of the offence (23%). The assault relationship with the smallest proportion of trials is the category of relative, including father, grandfather, brother, etc. (9%). Studies examining sexual assault offender/victim relationship found the following: McCaldon - 79% stranger, 14% known, 7% relative (1967:42); Myers -

72% stranger, 21% known, 7% relative (1979:442); Svalastoga - 54% stranger, 35% known, 8% relative (1962:52); Amir - 42% stranger, 14% met that day, 30% known, 2% relative (1971:234); and Clark - 64% stranger and met that day, 36% known (1977:71). When the relationship categories are collapsed into a dichotomous relation -- stranger or known -- the distribution pattern becomes more distinctive. Within this study, the definition of sexual assault as occurring between strangers or acquaintances is clearly dependent upon the categorization of individuals met the day of the assault. When individuals met the day of the offence are defined as known to each other, all cases become assaults wherein an apparent interpersonal relationship exists between offender and victim (Table 4.47). Definition as strangers of cases wherein the individuals met in the situation out of which the assault developed, however, results in only child-victim assaults involving a majority of individuals known to each other prior to the assault.

Proportional distribution by offender-category in this study indicates that gang assaults are more frequently perpetrated against strangers than are individual assaults. A larger proportion of female children are known by their assailants than are adult female victims of sexual assault.

TABLE 5.49

Sexual Offences
Individual/Gang Offences

Offence	All Cases %	Individual/Gang %	Child/Adult Victim %
Individual	90	100	99
Gang Offence	10	-	3

n = 326.

TABLE 5.50

Sexual Offences
Size of Gang

Number of Offenders	All Cases %	Individual/Gang %	Child/Adult Victim %
Two	46	-	46
Three	28	-	28
Four	14	-	14
Five	12	-	12

n = 85.

The majority of the sexual offences (90%) in this study are individual-offender assaults, and 10% of the offences are gang assaults including from 2 to 5 men. The majority of the offenders assault alone (77%), and 22% of the offenders assault in gangs. The majority of gang offenders (54%) assault in groups of 3 or more men, and 46% of sexual offenders assault in pairs. Of the sexual assault victims, 77% are assaulted by a single assailant and 23% are assaulted by a gang of two to five men. Amir found that 43% of assaults are gang assaults. Of the gang offender population, 38% are pair assaults, and 62% of the assaults involve 3 or more men. Of the sexual assault victims, 57% are assaulted by a single assailant and 43% are assaulted by a gang of 2 or more men (1971: 199-200). Clark found that 51% of the offenders are gang offenders. Of the gang offender population, 33% assault in pairs and 67% assault in gangs of 3 or more men (1977:129).

Proportional distribution by offender-category indicates that female children are considerably less frequently gang-assaulted than

are adult women (3% vs. 28%). Distribution by size of the gang indicates that the assault of children involves pair offenders only and the assault of adult women involves from 2 to 5 men.

Offence Frequency/Repeat Offenders

TABLE 5.51

Sexual Offences
Offence Frequency/Repeat Offenders

Offence	All Cases %	Individual/Gang %	Child/Adult Victim %
Single Offence	88	85	100
Separate Offences*	5	6	-
Extended Offence**	6	8	-

* Repeat offender/different victims/different times. n = 375(3).

** Same victim/different times (e.g., incest).

The majority of the sexual offenders prosecuted (88%) in this study are tried for the commission of a single offence, although this trial frequently includes multiple charges, e.g., Rape, Buggery, Forcible Confinement, and Possessing a Weapon. Of the remaining offenders, 5% are prosecuted for two or more distinct sexual assaults involving different victims and times, and 6% are prosecuted for extended offences, such as repeated rapes of their daughters over periods of weeks or years.

Proportional distribution by offender-category in this study indicates that all gang offences (100%) and the majority of

individual-offender assaults (85%) are single-offence prosecutions. Child-assailants are prosecuted less frequently than adult-assailants for single offences (67% versus 94%) and more frequently for separate (8% vs. 3%) and extended (25% versus 2%) offences.

Offender Use of Violence

TABLE 5.52

Sexual Offences
Use of Violence*

Form of Violence	All Cases %	Individual/Gang %	Child/Adult Victim %
Physical Violence**	78	76	75
Weapon	21	23	22

* Additional to the sexual violence.

n = 99.

** Includes Attempt Murder, Overcome Resistance or Choke, Cause Bodily Harm With Intent, Common Assault Cause Bodily Harm, Assault With Intent.

The majority of the sexual offenders in this study facing multiple charges (55%) are prosecuted for nonsexual violent offences in addition to the sexual violence. These nonsexual violent offences include Attempted Murder, Overcoming Resistance or Choking, Abduction, Causing Bodily Harm, Possessing a Weapon, Uttering Threats, etc. Of those offenders charged with additional nonsexual violence, 78% are charged with committing physical violence to the victim and 21% are charged with possession of a weapon. These figures represent, not the degree of violence utilized during the offence, but rather the violence

that was identified and prosecuted, and thus must be taken as minimums. Studies which indicate the use of additional violence against the victim are: Amir - 85% physical violence, 21% weapon, 25% threats (1971:155); Brickman - 91% physical force, 12% weapon, 70% threats (1980:5); Clark - 32% physical violence, 13% weapon, 37% threats (1977: 67-68); McCaldon - 84% physical violence, 16% weapon (1967:40).

Proportional distribution by offender-category in this study indicates that gang offenders have a higher proportion of charges for physical violence (87% versus 76%) and a lesser proportion of charges for possession of a weapon (12% versus 23%) than do individual offenders. Child-assailants are charged less frequently with additional non-sexual violence than adult-victim assailants (75% versus 78%) and charged less frequently, as well, with possession of a weapon (12% versus 22%).

Type of Trial

TABLE 5.53

Sexual Offences
Type of Trial

Type of Trial	All Cases %	Individual/Gang %	Child/Adult Victim %
Nonassize (Judge)	61	70	89
Assize (Judge & Jury)	39	30	11

n = 378.

The majority of the sexual offenders (61%) in this study are prosecuted by a non-assize (judge alone) court. Proportional distribution by offender category indicates that gang offenders are less frequently tried by judge alone (32% versus 70%) and more frequently tried by assize or judge and jury court (68% versus 30%) than are individual offenders. Child-victim offenders are more frequently tried by judge alone (89% versus 53%) and less frequently tried by judge and jury (11% versus 47%) than are adult-victim offenders.

Sexual Offences Charged

TABLE 5.54

Sexual Offences Charged
Distribution

Offence	Distribution*	
	%	(n)
Rape	41	(309)
S.I. Female Under 14	4	(34)
Incest	2	(12)
Buggery	1	(7)
Attempt Rape	5	(35)
S.I. Female 14-16	2	(15)
Indecent Assault	36	(272)
Gross Indecency	9	(72)

* Includes first four charges.

n = 758.

Rape (41%) and Indecent Assault (36%) form the majority (77%) of the first to fourth sexual offences charged in this study. Two percent of all sexual offences charged are for Incest. The least frequently charged offence is Buggery (1%), which is never charged as a first offence, but is laid as a second, third, or fourth charge.

TABLE 5.55

Sexual Offences Charged*
By Offender Category

Offence	All Cases	Individual/Gang		Child/Adult Victim	
	%	%	%	%	%
Rape	50	42	75	16	58
S.I. Female Under 14	6	6	3	18	.2
Incest	2	3	-	7	1
Attempt Rape	7	8	3	1	9
S.I. Female 14-16	2	1	6	-	3
Indecent Assault	31	37	12	55	26
Gross Indecency	1	2	-	3	1

* First Charge.

n = 378.

Rape (50%) and Indecent Assault (31%) form the majority (81%) of first or most severe sexual offences charged against offenders in this study. Distribution patterns within offender categories indicate that the majority of gang offenders are charged with Rape as compared to a more bimodal charge distribution of Rape (42%) and Indecent Assault (37%) for individual offenders. Contrary to individual offenders, gang offenders are never charged with Incest, and are not charged with Gross Indecency as a first offence. Individual and gang offences charged

reflect the age of the victims, with gang offenders charged less frequently with Sexual Intercourse Female Under Fourteen (3% versus 6%) and more frequently with Sexual Intercourse Female Fourteen to Sixteen (6% versus 1%) than are individual offenders. The majority of child-victim offenders (55%) are charged with Indecent Assault. Child-assailants are charged less frequently with Rape (16% versus 58%) and more frequently with Sexual Intercourse Under 14 (18% versus 2%), Incest (7% versus 1%), Indecent Assault (55% versus 26%), and Gross Indecency (3% versus 1%) than are adult-victim offenders.

Sexual Offences Convicted

TABLE 5.56

Sexual Offences Convicted
Distribution and Rate

Offence	Distribution*		Conviction Rate** &
	%	(n)	
Rape	34	(118)	38
S.I. Female Under 14	5	(19)	55
Incest	2	(8)	66
Buggery	1	(3)	43
Attempt Rape	7	(24)	68
S.I. Female 14-16	2	(6)	40
Indecent Assault	36	(123)	45
Gross Indecency	12	(41)	57

n = 344.

* Includes first four charges.

** Charged-to-Conviction.

Two hundred and eighty-seven offenders (76%) are convicted of a total of 344 sexual offences for all charges laid against them. Indecent Assault (36%) and Rape (34%) form the majority of offences (70%) of which sexual offenders are convicted. Buggery (1%), Sexual

Intercourse with Female Fourteen to Sixteen (2%), and Incest (2%) form the smallest proportion of offences of which offenders are convicted. The conviction rate, i.e., offences-charged-to-offences-convicted, is highest for Attempted Rape (68%) and Incest (66%), and lowest for Rape (38%) and Sexual Intercourse with a Female Fourteen to Sixteen (40%), when the first four charges are considered.

TABLE 5.57

Sexual Offences Convicted*
By Offender Category

Offence	All Cases %	Individual/Gang %	Child/Adult Victim %
Rape	38	32	59
S.I. Female Under 14	7	8	4
Incest	2	3	-
Attempted Rape	8	9	6
S.I. Female 14-16	2	-	8
Indecent Assault	37	45	14
Gross Indecency	5	3	9

* First Charge.

n = 270.

Rape (38%) and Indecent Assault (37%) constitute the majority of first-charge or most severe offences convicted (75%). Incest (2%), Sexual Intercourse with a Female Fourteen to Sixteen (2%), and Gross Indecency (5%) form the smallest proportion of convicted first-charge offences. Distribution patterns within offender categories indicate that the majority of gang offenders are convicted of Rape (59%) and that the majority of individual offenders are convicted of Indecent Assault

(45%). Child-victim offenders are less frequently convicted of Rape (2% versus 50%) and more frequently convicted of Indecent Assault (57% versus 32%) than are adult-victim offenders.

TABLE 5.58

Sexual Offences Convicted* By Offender Category
Rate of Conviction**

Offence	All Cases %	Individual/Gang %		Child/Adult Victim %	
Rape	55	52	61	8	60
S.I. Female Under 14	86	84	100	100	83
Incest	67	67	-	80	67
Attempt Rape	82	76	∅	∅	62
S.I. Female 14-16	62	0	100	-	62
Indecent Assault	85	76	90	80	86
Gross Indecency	∅	∅	∅	∅	∅

* First Charge.

** Charged-to-Conviction.

n = 270.

∅ = more convictions
than charges.

The conviction rate of first charges is highest for all offenders charged with Sexual Intercourse with a Female Under Fourteen (86%) and with Indecent Assault (85%), and lowest for those charged with Rape (55%). Within offender categories, gang offenders are more frequently convicted of Rape than are individual offenders (61% versus 52%), and child-victim offenders are less frequently convicted of Rape (8% versus 60%) than are adult-victim offenders.

Additional Offences (Nonsexual) Charged and Convicted

TABLE 5.59

Additional Offences (Nonsexual) Charged and Convicted*
Distribution and Rate of Conviction

Offence	Charged %	Convicted %	Rate %
Attempt Murder	2	3	67
Overcome or Choke	9	11	41
Robbery or Attempt	4	7	75
Abduct or Confine**	21	20	36
Break and Enter	4	6	85
Cause Bodily Harm***	43	41	41
Extortion	.5	1	100
Possess Weapon	12	9	32
Utter Threats	1	1	50
Theft	1	1	50
Escape Custody	.5	-	-

* First four charges. n = 181 n = 77 n = 42%

** Includes Kidnap, Abduction of Female or Child Under Fourteen, and Forceable Confine or Seize.

*** Includes Cause Bodily Harm With Intent, Common Assault Cause Bodily Harm, and Assault With Intent.

There are 181 nonsexual charges laid against the 378 offenders, in addition to the 758 sexual charges. The offences of Cause Bodily Harm (43%), Abduct or Confine (21%), and Possess Weapon (12%), constitute the majority (76%) of nonsexual charges laid. Excluding the single extortion charge, which resulted in a conviction (100% rate), the highest rate of conviction is for the offence of Break and Enter, and the lowest rate of conviction is for the offences Posses Weapon, Abduct or Confine, Overcome or Choke, and Cause Bodily Harm.

TABLE 5.60

Additional Offences (Nonsexual) Charged and Convicted*
Conviction Rate** By Offender Category

Offence	Individual		Gang		Child Victim		Adult Victim	
	Charges	Rate	Charges	Rate	Charges	Rate	Charges	Rate
	#	%	#	%	#	%	#	%
Attempt Murder	3	67	-	-	-	-	1	0
Overcome or Choke	17	41	-	-	-	-	11	45
Robbery or Attempt	8	75	-	-	-	-	6	83
Abduct or Confine***	25	28	14	50	3	33	34	38
Break & Enter	7	86	-	-	1	100	7	71
Cause Bodily Harm***	62	47	16	19	6	17	64	48
Extortion	1	100	-	-	-	-	-	-
Posses Weapon	20	35	2	0	1	0	19	31
Utter Threats	2	50	-	-	1	100	-	-
Theft	2	50	-	-	-	-	2	50
Escape Custody	1	0	-	-	1	0	-	-

* First four charges.

** Charged-to-Conviction.

*** See Footnote *** Table 5.59.

Distribution by offender-category indicates that the offences of Cause Bodily Harm, Abduct or Confine, and Possess Weapon, in that order, constitute the majority of nonsexual charges laid in each offender category. Excluding the single Extortion charge, which resulted in a conviction (100% rate), conviction rates indicate that gang and individual offenders are less frequently convicted of committing bodily harm to their victims and more frequently convicted of non-physically violent offences. Gang offenders are most frequently convicted of Abduction or Confinement, and individual offenders of Breaking and Entering and Robbery or Attempted Robbery. Child-victim and adult-victim assailants, as well, are less frequently convicted of committing bodily harm to their victims than of committing non-physically violent offences. Child-victim assailants are most frequently convicted of Breaking and

Entering and Uttering Threats, and adult-victim assailants are most frequently convicted of Robbery or Attempted Robbery and Breaking and Entering, additional to the sexual violence convictions.

Offence Verdict

TABLE 5.61

Sexual Offences
Verdict

Verdict	All Cases %	Individual/Gang %	Child/Adult Victim %
Convict	76	75	80
Acquit	17	19	15
Other	7	6	7

n = 378.

The majority of offenders (76%) prosecuted for sexual offences in this study are convicted. Of the remaining offenders, 17% are acquitted, and 7% of cases are terminated within the Other category (e.g., Dismiss, Discharge, Stay). These figures are similar to those for sexual offenders found by LaFree - 83% convict, 17% acquit (1980:845), Galvin - 92% convict, 8% acquit (1983:132); and Chandler - 96% convict, 4% acquit (Galvin, 1983:130).

Proportional distribution by offender-category in this study indicates that gang offenders have a higher conviction rate (80% versus 75%) and a lower acquittal rate (15% versus 19%) than do individual offenders. Child-victim offenders have a higher conviction rate (80% versus 76%) and a lower acquittal rate (15% versus 18%) than do adult-victim offenders. The proportion of prosecutions resolved within the other category is fairly consistent for all offender categories.

Offence Disposition

TABLE 5.63

Sexual Offences
Severity of Sanction

Sanction	Canada*	All Cases %	Individual/Gang %	Child/Adult Victim %
Prison	54	78	88	64
Fee	10	5	6	2
Probation	30	7	3	22
Suspended Sentence	6	10	3	12

* Statistics Canada 1972.

n = 291.

The majority of convicted sexual offenders (78%) in this study are imprisoned. The subsequent most frequent disposition is suspended sentence (10%), followed by probation (7%) and fee payment (5%). Hindelong found an imprisonment rate of 64%, a probation rate of 27%, and a combined suspended sentence and fee payment rate of 9% (1977:107). National sexual offender disposition figures (1972) indicate distribution to be imprisonment 54%, fee payment 10%, probation 30%, and suspended sentence 6% (1977:44). Based on the national disposition rates, sexual offenders prosecuted within the Eastern Judicial District of Manitoba are more frequently imprisoned (78% versus 54%) and given suspended sentence (10% versus 6%), and less frequently given fee payment (5% versus 10%) and probation (7% versus 30%).

Proportional distribution by offender-category in this study indicates that gang offenders are imprisoned more frequently (88% versus 75%) and given suspended sentence less frequently (3% versus 12%)

than are individual offenders. Child-victim offenders are imprisoned less frequently (64% versus 80%) and given suspended sentences more frequently (12% versus 9%) than adult-victim offenders. Probation, the second most frequent child-assailant disposition (22%) is given child-assailants seven times more frequently than adult victim assailants. Thus, imprisonment is the most likely outcome of sexual offence prosecutions of individual and gang offenders and of child and adult victim assailants.

TABLE 5.64

Sexual Offences
Severity of Incarceration

No. of Yrs.	Canada*	All Cases %	Individual/Gang %	Child/Adult Victim %		
1 or Less	55	28	27	33	34	27
2-4	32	51	55	43	47	45
5-9	8	12	12	13	19	19
10-14	3	5	5	8	-	7
15-19	1	1	1	2	-	2
20	2	.4	.6	0	-	.6

* Statistics Canada 1972.

n = 226.

TABLE 5.65

Measurement Sexual Offences
Severity of Incarceration

Measure	All Cases yrs.	Individual/Gang yrs.	Child/Adult Victim yrs.
Proportion Incar.	79%	75%	89%
Modal Year	1	1.5+2	.5+3
Modal Year Group	2-4	2-4	2-4
Mean of Year	3.2	3	3
Median of Year	1.9	1.5	2
St. Dev. of Years	3.4	3	3
Range of Years	19	19	14
Min./Max. Yrs.	1-20	1-20	1-15

The majority of the imprisoned sexual offenders (52%) in this study are sentenced to incarceration periods of 2 years or less. Relative to 1972 national violent offender (sexual and nonsexual) incarceration rates, sexual offenders prosecuted within the Eastern Judicial District of Manitoba incur more severe incarceration periods (Table 5.64). Distribution figures indicate that the sexual offenders incur a smaller proportion of the least severe incarceration period of 1 year or less (28% versus 55%), and a larger proportion of the two subsequent more severe time periods of 2 to 4 and 5 to 9 years (63% versus 40%) than do violent offenders nationally.

Proportional distribution by offender-category, in this study, indicates that gang offenders are more frequently incarcerated than

are individual offenders (89% versus 75%), that the incarceration is for a comparable average length of time (3 years), and that the gang offender maximum sentence is less severe than that of the individual offender (15 years vs. 20 years). Child-victim offenders are less frequently incarcerated than are adult-victim offenders (64% versus 80%), are sentenced to shorter average sentences (2 years versus 3.3 years), and to markedly less severe maximum sentences (7 years versus 20 years).

Of the sexual offenders sentenced to imprisonment in this study, 3% are also sentenced to receive corporeal punishment, ranging from 5 to 12 lashes. Within offender categories, gang offenders are more frequently sentenced to receive the lash (10% versus .4%) and to receive a greater number of lashes (9-12 versus 5) than are individual offenders. Child-victim offenders received no corporeal punishment, whilst 4% of adult-victim offenders received between 5 and 12 lashes. Corporeal punishment has not been imposed on sexual offenders in this study since 1968.

Of the convicted sexual offenders in this study, 6% received a sanction of a fine or court costs. The majority of offenders sanctioned to fee payment (56%) paid a fine or court costs of \$300.00 or less. The range of sentenced payments is from \$100.00 to \$2,000.00 and the average fee payment is \$450.00. Proportional distribution by offender-category in this study indicates that a comparable proportion of gang and individual offenders are sanctioned a fee payment (6% versus 5%), but that gang offenders pay a smaller average sum (\$150.00 versus \$550.00) and a lesser maximum sum (\$200.00 versus \$2,000.00). Child assailants are sanctioned a fee payment more frequently than adult-victim assailants (15% versus 3%), pay a smaller average sum (\$400.00 versus \$457.00)

and a lesser maximum sum (\$500.00 versus \$2,000.00).

Of the convicted sexual offenders in this study, 28% are sentenced to probation. The majority of offenders sentenced to probation (89%) receive sentences of two years or less. The average probation sentence is for 1 year and 6 months, and sentences range from 6 months to 4 years. Proportional distribution by offender-category in this study indicates that a smaller proportion of gang offenders than of individual offenders receive probation (12% vs. 18%), that gang offenders receive a lesser average probationary period (13 months versus 19 months) and a lesser maximum period (2 years versus 4 years). A larger proportion of child assailants than of adult-victim assailants are given probation (42% versus 23%), child assailants receive a longer average probationary period (2 years versus 1 1/2 years) and a greater maximum probationary period (4 years versus 3 years).

Of the convicted sexual offenders in this study, 15% receive suspended sentences. The majority of offenders so sentenced (93%) receive sentences of 2 years or less. The average suspended sentence is for 1 year and 8 months, and sentences range from 1 to 3 years. Proportional distribution by offender-category in this study indicates that a smaller proportion of gang offenders than of individual offenders receive suspended sentences (4% versus 18%), that gang offenders receive a lesser average suspended sentence (1.3 years versus 1.8 years) and a lesser maximum suspended sentence period (2 years versus 3 years). A smaller proportion of child assailants than of adult victim assailants receive suspended sentences (2% versus 11%), but both receive a similar average sentence (1.8 years) and a similar maximum sentence (three years).

SUMMARY

The above analysis indicates that a prosecuted sexual offender is most likely to be Canadian-born, Catholic, aged 28 years, single, have a grade nine education, be of the lower socioeconomic status, occupied possibly as a labourer, and have no previous criminal convictions. A prosecuted gang offender is most likely to be Canadian-born, Catholic, aged 22 years, single, have a grade nine education, be of the lower socioeconomic status, occupied possibly as a labourer, and have no previous criminal convictions. A prosecuted child assailant is most likely to be Canadian-born, Catholic, aged 33 years, single, have a grade nine education, be of the lower socioeconomic status, occupied possibly as a laborer, and have no previous criminal convictions.

A prosecuted sexual offence is most likely to occur in the summer, particularly in July, on a Saturday. The offence is likely to involve one victim, aged 15 to 19 years, occur amongst strangers, involve a lone offender, be single offence, include physical violence to the victim. Trial is likely to be before a non-assize (judge alone) court, for a charge of Rape, result in a conviction for the offence of Indecent Assault, and the imprisonment of the offender for two years or less. A prosecuted gang offence is most likely to occur in the fall, particularly in November, on a Saturday. The offence is likely to involve one victim, aged 15 to 19 years, occur amongst strangers, include three or more offenders, be a single offence, include physical violence to the victim. Trial is likely to be before an assize (judge and jury) court,

for the charge of Rape, result in the conviction for the offence of Rape, and the imprisonment of the offenders for two years. A prosecuted child-assault is most likely to occur in the summer, particularly in September, on a Saturday. The offence is likely to involve one victim, aged 10 years, known to the offender, involve a lone offender, be a single offence, include physical violence to the child. Trial is likely to be before a non-assize (judge alone) court, for the charge of Indecent Assault, result in conviction for the offence of Indecent Assault, and the imprisonment of the offender for fifteen months.

The above summary is simply the most common prosecuted sexual offender and offence profile of the Manitoba data. The court records however indicate a range of offender, victim, and offence characteristics as follows. The Manitoba prosecuted sexual offender may be from Jamaica or from Holland, may be Hindi or atheist, may be aged fourteen or seventy-five, may be married or widowed. He may be illiterate or have a post-doctoral degree, be of the lower or the upper class, occupied as a plumber, grocer, or chemist, have no or twenty-five previous convictions, for Rape, Incest, or for Theft. The Manitoba prosecuted offence may occur in winter or in fall, in February or September, on a Tuesday or a Sunday. The offence may include one or five offenders, be a single assault or be repeated for weeks or for years, occur against a neighbor or one's child. The offence may involve one or five victims, aged two to eighty-two, include the promise of candy, threats of death, or razor gashings, may result in bruised limbs, torn genitals, or a broken jaw. The charge may be for Rape, Buggery, or for Attempted Murder, and may result in dismissal or conviction, for the offence of Attempted Rape, Indecent Assault, or Theft. The offender may receive a suspended sentence, a \$25.00 fine, or imprisonment for one day, six months, or twenty years.

Chapter VI

SUMMARY

SUMMARY.

Conflict theory suggests that law is created to establish and maintain a desired social order. Conflict theorists view both criminal law and its application as reflecting the ideology of the dominant class. They suggest that the basic function of law is as a formal system of legitimation of the social order, of maintenance of its relations of production, and of control of dissent (Kellough, 1978:1). Marx suggests that the separation of the spheres of production and reproduction was brought about by the needs of a system of private property, but that women's relegation to the private sphere of reproduction was as a result of natural and not social origins (1959:48). The development of capitalism from pre-state to state societies, however, altered the interrelation of production and reproduction. Ursel states that in pre-state societies people produced to meet the needs of the reproductive kin-based group, whereas, in state societies the state regulates reproduction [and thus women] to meet the needs of production. Thus, "the state in mediating the demands of production with the necessity of reproduction becomes increasingly implicated in the preservation of patriarchy" (Ursel, 1982: 23,27). Eisenstein has defined the status of women in the development of capitalism from pre-state to state societies as a transition from familial patriarchy to state or social patriarchy:

The state intervenes to maintain and reproduce social cohesion of the political totality. In order to do this the state must maintain the hierarchical relations which structure both the relations of capital and the sex/gender system, through a system of social patriarchy (1980:60).

Implicit, however, in state control of women's social role, is state support of women's social brutalization:

... in the same way that women continue to be beaten by their husbands because our society permits it -- so also our female children continue to be sexually abused by adult male members of their family because our society is willing to tolerate it, in its conspiracy to preserve the integrity of the home and the family at all cost (Brown, 1978:2).

Rush maintains that maintenance of the patriarchal family as a social unit is considered more important than intervention, which would end the abuse:

Ingrained in our present family system is the nucleus of male power and domination, and no matter how often we witness the devastatingly harmful effects of this arrangement on women and children, the victims are asked to uphold the family and submit to abuse (1971:72).

Patriarchy and its relations of production, be they feudalist, capitalist, socialist, or other, are based on female child bearing and socializing of future workers. Maintenance of its (patriarchy) social order requires the continued violently enforced, legally prescribed, inferior status of women to men. The sexual assault of women and its concomitant juridical response thus serve as a means of the social control of women to this status. To this end, then, "rape must be both possible and probable, ... it is not accidental but necessary that it remain so" (Clark, 1977:28).

The effect, for offender, victim, and society at large, of this violence toward women, and its concomitant judicial response, is

reinforcement of the patriarchal social roles of male sexual aggression and dominance over the female and female vulnerability and dependence on the male, and therefore reinforcement of patriarchal social order. Thus male violence and its judicial response accomplish the above stated basic function of law: 1) legitimation of the social order through condoned and thus perpetuated male aggression or dominance and female subjugation and dependence, 2) maintenance of the relations of production through the restriction of women's existence to patriarchal family structures which ensure male access and control of reproductive and thus productive relations, and 3) control of dissent through systematic repression of female autonomy by a socially or artificially created need of patriarchal protection and support.

Class conflict, according to Marx, is the inevitable outcome of the exploitation of the worker under the capitalist system. Manifestation of this conflict within the legal structure results in discrimination directed against the less powerful members of society. Conflict manifestation may be one of target (e.g., the powerless) or one of form (e.g., specific legislation); however the enforcement of criminal sanctions is seen as dictated by the necessities of the desired social order. Thus, while criminal justice statistics do not measure actual law-breaking behavior, they may be used as an index of social control operations portraying the amount of socially recognized deviant behavior (Black, 1970:235).

It is suggested in this work, then, that the sexual assault of women and its concomitant judicial responses is a crime unlike other forms of violent crime. This activity is viewed as a political act

of subjugation, as sexual enforcement of women into a prescribed social role. It is further suggested that judicial sanctioning of this behavior is affected by the factors of class, age, victim/offender relationship, and multiplicity of offenders. Judicial sanctioning is assessed as a three-faceted variable, in order to ascertain the degree of differential judicial response to offences beyond a finding of guilt or non-guilt. The possibility exists, for example, that the findings would indicate greater severity of sanction for certain offences or offenders with respect to verdict (i.e., conviction rates), but that further analysis would indicate less severity of sanction with respect to imprisonment rates or length of sentence, thus reversing or modifying the original finding. Assessment of sanction variation on the basis of gender or class discrimination is undertaken in analysis of the comparable-assault (sexual/nonsexual) offences. Assessment of sanction variation on the basis of victim age, offender/victim relationship, and multiplicity of offenders is undertaken in analysis of specific-assault (sexual) offences. The results verify the anticipated possibility of within-sanction variation, wherein, for example, there may be a greater likelihood of conviction, but a lesser likelihood of imprisonment or a likelihood of less severe incarceration, and thus summation will be in terms of general trends.

The analysis indicates a greater likelihood of conviction and imprisonment of sexual offenders than of nonsexual offenders, contrary to the hypothesized probability, but indicates a likelihood of less severe incarceration of sexual offenders, in accordance with the hypothesized probability. The analysis indicates a greater likelihood of conviction and imprisonment of low socioeconomic status offenders

than of high status offenders, in accordance with the hypothesized probability, but indicates a likelihood of less severe incarceration of low socioeconomic status offenders, contrary to the hypothesized probability. The analysis indicates a lesser likelihood of conviction and imprisonment and a likelihood of less severe incarceration of offenders assaulting females known to them than of offenders assaulting females who are strangers to them, in accordance with the hypothesized probability. The analysis indicates a greater likelihood of conviction and imprisonment of child assailants than of adult-victim assailants, contrary to the hypothesized probability, but indicates a likelihood of less severe incarceration of child assailants, in accordance with the hypothesized probability. And finally, the analysis indicates a greater likelihood of conviction and imprisonment of gang offenders than of individual offenders, contrary to the hypothesized probability, but indicates a likelihood of less severe incarceration of gang offenders, in accordance with the hypothesized probability. Thus, the general trend is that all offenders except known-relation offenders (i.e., sexual offenders, low socioeconomic status offenders, child assailants, and gang offenders) have a greater likelihood of conviction and of imprisonment, but that all offenders, including known-relation offenders, have a likelihood of less severe incarceration.

Partial explanation for the within-sanction variation or for the lack of full support of the hypotheses may be the filtering process described by Clark, wherein only assaults of victims judged worthy of the protection of the law (i.e., women acquiescing to their designated

social role), are classified as founded and subsequently prosecuted (1977:57). In this light, the conviction and imprisonment rates would reflect juridical recognition of the "value" of the victim to patriarchal social order, and the lesser severity of incarceration would reflect judicial reluctance to decisively deter this form of behavior. A second major factor which may account for the findings is the challenge of the definition, cause, and consequence of sexual assault directed by feminist groups of the past decade. The result of this challenge to the legislated social order is the revised Canadian Criminal Code sexual assault legislation, which degenderizes sexual assault (i.e., which alters the social definition of females as sexual victims and of males as sexual aggressors) and which recognizes the violent, as opposed to a sexual, nature of the offence (Criminal Code, 1983, s.246).

Both these possible explanations of the findings suggest direction for future research in the area of the judicial sanctioning of sexual assault. Assessment could be made of the status of the victim in sexual offences (i.e., the degree of her conformity to the designated female role), with this status then measured against judicial sanctioning to assess differential judicial response based on the perceived value of the victim to patriarchal social order. Secondly, a time series study could be undertaken to determine the effect of periods of women's challenge to their social role and subsequent judicial variation in the sanctioning of male violence toward females, to assess differential judicial tolerance of sexual violence toward women correlated with female refutation of patriarchal social roles.

DISCUSSION

It takes violence or the threat of violence to maintain the unearned dominance of any group of human beings over another (Steinem, 1984:21).

Men have historically and universally employed both law and force to establish and maintain a desired social order, and they have historically and universally analyzed, assessed, and criticized both method employed and order established. Historians, sociologists, and other social scientists from Plato, Rousseau, and Pareto, to Erikson, Solzhenitsyn, and Quinney have written of attempts through the combination of law and force to control nations, social and economic classes, racial and ethnic groups, subcultures and interest groups, and various individuals. They have written of genocide, fratricide, infanticide, and suicide. Whether their political stances favored social order or social change, whether their theoretical approach was a macro or micro analysis, these writers endeavored to delineate the basis of social control or social order of the system they were studying and its effects on the individuals involved. Absent from their analysis, however, was assessment of the use of law and force as a means of the social control of women in the establishment and maintenance of that social order. Where the issues of force and women was mentioned, the focus became a psychopathological one, as involving an aberrant woman, an aberrant man, or an aberrant situation, that is, as individual deviance without general social import. The status of woman, when considered, was not attributed to enforced adoption of a specific social

role (i.e., social status as a result of social control), but was for the most part attributed to biological determination -- her perceived physical and psychological capacity to bear and nurture children. Marx, for example, speaks of the naturalness of the division of labor in society as "that division of labor which develops spontaneously or 'naturally' by virtue of natural predisposition" (Arthur, 1970:20).

Recently, however, many writers have included the status of women in their social system analysis from the purview of both law and force, and have suggested that society, both recent past (at least 4,000 years) and present is based on the violently enforced, legally prescribed, inferior status of women to men. Such study of the social status of women discloses their forceful relegation to the sphere of sexuality and reproduction -- to the bearing, nurturing, and socializing of children, and to the domestic and sexual servicing of males. Rich states:

... but we must remember that a father is simply a male who has possession and control of a female (or more than one) and her offspring. It is not from God the Father that we derive the idea of paternal authority; it is out of the struggle for paternal control of the family that God the Father is created (Rich, 1976:51).

Analysis by these writers of the enforced status of women has included historical, cross cultural, economic, biological, psychological, and physical-violence considerations. In the words of Barry:

There is nothing unique across cultures in the practices of the enslavement of women except perhaps the diversity in the strategies men employ to carry them out. Female sexual slavery is a global phenomenon (1979:164).

The proceeding analysis is not, in any meaningful sense, an assessment of crimes against women. It is, rather, an analysis of the functioning of a system created by men to maintain a social order which will guarantee male pursuit of profit and power. Although the women in this study have been victimized, the crimes of which they suffered are not defined within Criminal Code section 143-Rape or Section 152-Seduction Under Promise of Marriage. The statutes of Canada's Criminal Code, which have been utilized to accomplish this research, do not ensure, nor undertake to ensure, the freedom of women from abuse.

The rights guaranteed by the enactment and implementation of the laws included in this analysis are rights guaranteed to men. For it is man's assumed right to the ownership of property which behooved him to create laws claiming ownership of women and their children, enforcing on them his name, and conditioning them to his ideology in public schools which instill in them his interpretation of natural social order and natural social roles. Subsequently, it is man's assumed right to exercise physical violence to maintain his position of profit and power which permits him to brutalize other nations, other men, and women and their children. It is these rights of men, and not the rights of the physical and mental autonomy of women, which form the content of the Canadian Criminal Code.

For to accept a special burden of self-protection is to reinforce the concept that women must live and move about in fear and can never expect to achieve the personal freedom, independence and self-assurance of men. That's what rape is all about, isn't? (Brownmiller, 1975:449).

Laws which address the protection of women address the protection of her liberty, not the protection of her chastity. Implementation of such laws ensure her freedom of movement, not the restriction of that movement. The Canadian Criminal Code represents a system of social order established to restrict or regulate the movement of women. Women's value to man, within this male-dominant social order, is in reproductive, domestic, and sexual servicing. Thus the laws which he creates to maintain this social order reflect his primary concern with the restriction of her sexual activity by all others, herself included, but him.

The mother-child relationship is the essential human relationship. In the creation of the patriarchal family, violence is done to this fundamental human unit. It is not simply that woman in her full meaning and capacity is domesticated and confined within strictly defined limits. Even safely caged in a single aspect of her being -- the maternal -- she remains an object of mistrust, suspicion, misogyny in both overt and insidious forms (Rich, 1976:116).

And further, Rich states:

But the patriarchal institution of motherhood is not the 'human condition' any more than rape, prostitution, and slavery are. (Those who speak largely of the human condition are usually those most exempt from its oppressions -- whether of sex, race, or servitude.) (1976:15).

And it is within this social order that the repeated raping by a man of his daughter(s) is rationalized as a "functional necessity for family survival" (Bagley, 1969:8) or as public "hysteria" (Kinsey, 1948:237). Within this social order men banter with each other for power, over the bodies of women, as in expressed in Cleaver's accounting of both his modus operandi -- "I practiced on black ghetto girls and then crossed the tracks and sought out white prey" and his political motivation:

Rape was an insurrectionary act. It delighted me that I was defying and trampling upon the white man's law, upon his system of values, that I was defiling his women (1968:14).

Through his laws, man has implemented and maintains a system within which he has exclusive and continuous access and control of female sexuality and within which he may reprimand other men for the trespass of his rights. The degree to which this trespass is repugnant to him is the degree to which this behavior is sanctioned by his courts. The present study indicates the contemporary form and degree of that repugnance.

Method shapes each theory's vision of social reality. It identifies its central problem, groups, and process, and creates as a consequence its distinctive conception of politics as such (MacKinnon, 1982:527).

The method of understanding the facet of violence toward women which serves as the data within this work must include a gender-political context. For only within this context can the holistic scope and analysis of male violence toward women, including incest, rape, wife battering and sexual assault, and its ideologized form -- pornography, be distinguished. Within this perspective, the utilitarian function of protective legislation and forcible subjugation is exposed.

This work is an endeavor toward that exposition. Its aim is the description of that violence and its functioning within the justice system within a holistic perspective. Its goal, in the tradition of Brownmiller,

My purpose ... has been to give rape its history.
Now we must deny it a future (1975:454).

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APPENDIX II

Socioeconomic Index*

Occupation

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34	Furnace Workers and Heaters -- Metal; Plumbers; Pipefitters, Switch and Signal Workers -- Railroad
33	Furriers; Miners; Welders and Flame Cutters; Boilermakers; Platers; Structural Metal Workers; Bartenders
32	Bus Drivers; Metal Working Machine Operators; Shipping and Receiving Clerks; Filers, Grinders, and Sharpeners
31	Cutters and Markers -- Textiles; Garment and Glove Leather; Porters and Baggage Carriers; Crushers; Millers; Moulders; Barbers and Hairdressers; Mechanics; Repairpersons -- Motor Vehicle; Cabinet and Furniture Makers -- Wood

APPENDIX II continued

Socioeconomic Index*	Occupation
30	Painters -- Construction and Maintenance; Butchers and Meat Cutters; Taxi Drivers and Chauffeurs, Glaziers; Paperhangers; Drivers -- Sales; Service Station Attendants; Tailors; Laborers -- Trade; Upholsterers; Waiters; Carpenter; Clay, Glass, and Stone Workers
29	Bricklayers, Stonemasons, and Tilesetters; Blacksmiths; Agricultural Occupations; Messengers; Milk Processors
28	Janitors and Cleaners -- Building; Laborers -- Food and Beverage; Kitchen Helpers and Related Service Workers; Farm Laborers; Launderers and Dry Cleaners
27	Laborers -- Logging; Laborers -- Construction; Laborers -- Local Administration (garbage collectors)
26	Laborers -- Textile and Clothing
25	Trapping, Fishing, and Hunting Occupations.

* Graded in accordance with the Blishen Socio-Economic Index (1967:44-50).

